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PESTICIDE RECORDKEEPING IN THE 1990 FARM BILL

The 1990 farm bill requires, for the first time, that farmers and other applicators of dangerous pesticides keep standard records of pesticide use. As finally approved by Congress, recordkeeping is a compromise between strong House language and weak Senate provisions. The final law, when signed by the President, will require records only of pesticides classified for restricted-use. While limiting public access to data, the law explicitly guarantees health care personnel access to information needed to diagnose and treat persons who may have been exposed to pesticides.

Until this farm bill, the federal government was prohibited from requiring private applicators of pesticides to keep records. (Private applicators, who account for about 75% of all pesticide applicators, apply pesticides to their own land or the land of their employers; commercial applicators apply pesticides for hire and are already required to keep certain records.) While the federal government's hands were tied, state governments had stepped in to the void. Eleven states require private applicators to keep records.¹

The U.S. Department of Agriculture (USDA), in consultation with the U.S. Environmental Protection Agency (EPA), will begin implementing the farm bill recordkeeping provisions in the next six months. Details of the new recordkeeping requirement are below.

- o **Who must keep records?** Anyone applying restricted-use pesticides is required to keep records for at least two years after each application. If commercial applicators are hired, they must within thirty days provide copies of application records to the person for whom the chemicals were applied.
- o **What information will records include?** Records must show at least product name, amount, approximate date of application, and location of pesticide application. They may be more detailed if the state has recordkeeping requirements for commercial applicators. The new federal requirements explicitly do not preempt any state laws.

¹ California, Texas, Washington, New Jersey, New York, Kansas, Maine, New Hampshire, Massachusetts, Connecticut, and Arizona are the states that currently require some type of record of private applicators.

- o **Who can see the records?** Most importantly for farmworkers, health care personnel treating victims of suspected pesticide exposure are guaranteed prompt access to records -- immediate access if the situation is an emergency. This will be of great benefit to medical personnel in diagnosing and treating their patients. Patients being treated do not have to be farmworkers in order for health personnel to access records.

Other public access to records is extremely limited. While recordkeeping approved by the House of Representatives would have guaranteed much less restricted public access and direct worker access to records, those elements were stricken during House/Senate debate over the final farm bill.

Records will be available to any federal or state agency that deals with pesticide use, or with health or environmental issues related to pesticides. In order to minimize bureaucratic burdens on pesticide users, federal requests will be made through the USDA; state requests will be funneled similarly through one lead agency designated by each state. Government agencies are prohibited from releasing data that directly or indirectly reveals the identity of pesticide users -- a restriction added at the request of growers, but which will likely interfere with the public need to know about pesticide use.

- o **What ongoing use will be made of these records?** The USDA and EPA are required to use these records to develop and maintain a data base on pesticide use. Every April 1, Congress will receive an annual report from these two agencies addressing agricultural and non-agricultural pesticide use, based on information from these records.
- o **Who will enforce recordkeeping and access provisions?** Enforcement is the responsibility of the USDA. Violations of recordkeeping or access provisions are punishable by not more than \$500 for the first offense; not less than \$1,000 for the second offense unless the violator can show a good faith effort to comply.

The farm bill recordkeeping requirements are important because they will provide reliable information on pesticide use in the 39 states that do not already require private applicators to keep records. They will also explicitly guarantee that health personnel can see these records -- a rare guarantee even in the states that do require records. These federal recordkeeping requirements will provide a floor of minimum safety and health measures, while allowing states to continue unimpeded with stronger pesticide safety efforts.



PESTICIDE RECORDKEEPING AND THE FARM BILL

by Isabel Kaldenbach

Workers' and consumers' right to know about pesticide applications were part of this year's debate on the farm bill. In September, the U.S. Congress will have the opportunity to approve meaningful pesticide recordkeeping. Both chambers of Congress passed recordkeeping requirements in their separate versions of the 1990 farm bill -- but there is good news and bad news. The recordkeeping to be required, and the availability of records, differ enormously in the two versions.

The good news comes from the U.S. House of Representatives. House language is much better than the Senate's -- it requires more comprehensive records, covers a wider universe of pesticides, and allows access to records to parties affected by pesticide use.

The House bill requires that records be kept of all pesticides used for agricultural production or other commercial purposes. Access to records is guaranteed for health professionals treating individuals who may have been exposed to pesticides, and for state, federal, and local governments. Employees are also explicitly guaranteed direct access to the records. Records collected by the government are available under the Freedom of Information Act (FOIA), with some provisions added at the request of farm groups that protect names and addresses from public scrutiny, but leave available the county in which the pesticide was applied. This concession brought the support of the National Farmers Union, a 750,000 member organization, and cleared the provision with the influential leadership of the House Agriculture Committee.

The bad news comes from the U.S. Senate, whose recordkeeping language was drafted by the Agriculture Committee and left unchanged on the Senate floor. Senate language requires limited records and virtually no access to them. Records are to be kept only of pesticides classified as restricted use (those highly-toxic chemicals requiring an applicator's license), and records include such vague information as "approximate date" applied. Access is exclusively the domain of state and federal officials,

and is explicitly denied to anyone else. Medical personnel treating emergencies can see only pesticide name and label information. Labels do not provide important diagnostic information; "emergency" is undefined; and use of the term "medical" may preclude access by non-doctors -- nurses, for example. By denying everyone else access to any information, the Senate slams the door on employees and rural communities. The Senate language sets a dangerous precedent for future debate at the state and federal levels.

An Analysis Of A Legislative Proposal To Give Farmworkers And Communities The "Right To Know" Their Pesticide Exposure

During full Senate consideration of the farm bill, an amendment was suggested to bring recordkeeping in line with the House provision. Sponsors were Senators Lautenberg (D-NJ), Jeffords (R-VT), Lieberman (D-CT), Reid (D-NV), Kerry (D-MA), Cranston (D-CA), and Pell (D-RI). But political horse-trading led to withdrawal of the amendment and a mere colloquy on the Senate floor.

In the House, recordkeeping was originally drafted by Rep. George Miller (D-CA). A compromise version was negotiated with the leadership of the House Agriculture Committee, and the final House version was introduced by Committee Chairman de la Garza (D-TX) on behalf of Reps. Jontz (D-IN) and Miller. De la Garza's efforts were the significant boost that virtually ensured acceptance by the House.

House language and the Lautenberg-Jeffords amendment were developed by a broad coalition including the Farmworker Justice Fund, AFL-CIO, American Public Health Association, U.S. Catholic Conference, Sierra Club, Natural Resources Defense Council, National Audubon Society, Consumers
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Union (publisher of Consumer Reports), and the U.S. Public Interest Research Group (U.S. PIRG). These groups are urging the House-Senate Conference Committee to adopt the House version.

The pesticide records required under the stronger House provisions provide benefits in various arenas:

Worker Safety. Farmworkers and others who apply pesticides are the only workers without the right to know which hazardous chemicals are used at their workplace. Access to these records will provide them with this crucial information. Several lawmakers recognized this and addressed worker issues at length; their comments are included separately in this issue.

Public Health. Health professionals treating workers and others exposed to pesticide applications need records in order to diagnose and treat exposure accurately. They need to know not only what was applied, but when, where, how much, and how it was applied. Health personnel need information in non-emergency situations as well as in emergencies-- to treat long-term health problems such as cancer, birth defects, and neurological disorders as well as immediate poisonings and their after-effects. And records are needed of general use pesticides because many are suspected of causing cancer or birth defects.

Community Right-to-Know. Senator Lautenberg's interest and sponsorship were spawned by his work on Superfund, especially the 1986 right-to-know provisions which he authored. "Those provisions gave communities the right-to-know what chemicals they were being exposed to," he said during farm bill consideration this year. "We need to provide access to pesticide information as well as chemical information." It is especially important that local

governments have access to pesticide records since they are responsible for the safety of drinking water supplies. "Agricultural contamination is most prevalent in precisely those areas most dependent on ground water," said Senator Jeffords.

Environment. Pesticides have tainted nearly 15,000 miles of U.S. rivers and over 140,000 acres of U.S. lakes. Accessible information is needed on the effects of all pesticides--general as well as restricted use--on wildlife and natural resources.

Residues on food. Consumer demand for more accountability of food supply safety has broadened the net of those interested in recordkeeping. Senator Reid: "The fact that some chemicals used in food production and lawn care may have adverse health affects on people raises a number of important issues...The American people need to know and have a right to know what these products are."

Benefits to Farmers. Records can document the responsible use of pesticides, can aid farmers investigating integrated pest management techniques, and can verify that certain pesticides have not been used. Some growers were frustrated during last year's Alar controversy when the apple producers could not prove convincingly they had not used the pesticide. Records are not burdensome -- growers who contract with many of the largest food processors must already keep records, as must growers living in the 11 states that require recordkeeping, and growers keep track of pesticide use for business purposes.

The fate of recordkeeping now depends on conference activity. Neither the Senate nor the House has selected conferees yet, though it is certain that conferees will come from the Agriculture Committee members. The conference committee is scheduled to meet in September.

Congressional Hearings on Children and Toxics

The Select Committee on Children, Youth, and Families of the U.S. House of Representatives held two hearings in September about children's exposure to toxics, including lead and pesticides. Several witnesses discussed farmworker children's exposure to pesticides. Congressman George Miller (D-CA) chairs the committee.

The hearing record is open until September 27 for written testimony from all interested individuals and

organizations. The committee wants to hear from farmworker families about their experiences and concerns about their children's exposure to pesticides. Send written testimony to the: Select Committee on Children, Youth, and Families, U.S. House of Representatives, Washington, D.C. 20515. For further information, contact Felicia Kornbluh on the committee staff at 202-226-7660.