



Health, Education and Human Services Division

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The Honorable Henry Waxman
Ranking Minority Member
Committee on Government Reform and Oversight
House of Representatives

The Honorable Tom Lantos
House of Representatives

The Honorable Bernard Sanders
House of Representatives

Subject: Child Labor in Agriculture: Characteristics and Legality of Work

According to recent estimates from the Current Population Survey (CPS), about 3.4 million individuals work in agriculture, and 15-to-17-year-olds make up about 4 percent of that workforce.¹ In comparison, 15-to-17-year-olds account for about 2 percent of the nonagricultural workforce. Multiple federal and state agencies share responsibility for enforcing laws protecting children working in agriculture, but a number of questions have been raised about the precise number of children working in agriculture and the conditions and legality of that work.

In order to obtain more information about these issues, you asked that we undertake a study of child labor (defined as anyone under age 18) in agriculture. This correspondence presents preliminary results on three objectives of that study: (1) to determine, given the data available, the extent

¹Industries included as "agriculture" vary. Typically, estimates include the harvesting or cultivating of crops, and agricultural services (such as farm labor and management services), but in some cases estimates will also include other industries, such as livestock, fisheries, forestry, and hunting and trapping. CPS agriculture data cited above include crop production, agricultural services, and livestock.

and prevalence of children working in agriculture; (2) to describe and analyze the legislative protections available to children working in agriculture; and (3) to assess the enforcement of these laws as they apply to children working in agriculture. We will provide other information you requested on the effect of this work on children's educational attainment at a later date.

To address these objectives, we obtained and evaluated data on the characteristics of children working in agriculture and reviewed methodologies used to collect the data. We also interviewed officials responsible for collecting these data. We reviewed provisions of federal and selected state laws to determine their coverage and application to children working in agriculture, obtained and reviewed enforcement statistics from key federal and state agencies responsible for enforcing child labor laws or safety and health regulations in the agricultural industry, and interviewed officials overseeing the enforcement of these laws. We also interviewed growers and their representatives, as well as farmworker advocates, to obtain their views on the extent of child labor used in agriculture. We performed this work in accordance with generally accepted government auditing standards between October 1997 and March 1998.

RESULTS IN BRIEF

Limitations in available information make it difficult to provide precise estimates about the number of children working in agriculture or the conditions under which they are working—including the illnesses and injuries they may be experiencing. Available estimates on the number of children working suffer from methodological problems that likely result in an undercounting of the total number. For example, nationally representative data do not include working children younger than 14. An inadequate level of detail is available about children's hours of work or the tasks they perform, and injuries and illnesses may be underreported. The best available nationally representative estimates indicate that, on average, 155,000 15-to-17-year-olds may be working in agriculture, and as many as 300,000 may work in agriculture at some point during the year. While the best available estimates show a lower injury rate for children working in agriculture than for those working in other industries, the injuries may be more severe, and the fatality rate is higher for children working in agriculture.

The Fair Labor Standards Act (FLSA) generally provides fewer protections for children working in agriculture than children working in other industries. Thus, children can legally work in agriculture under conditions that would be illegal in other work settings.

Although enforcement agencies report few violations of labor laws involving children, these reported violations may not fully reflect the extent to which children are working illegally. On the one hand, they may accurately reflect a low level of violations because fewer children may be working in agriculture now than in the past, and the less stringent legal protections mean that child labor in agriculture is more likely to be legal. On the other hand, the relatively low level of enforcement resources devoted to agriculture, the operational difficulties associated with enforcing key provisions of pertinent laws, and data systems that underreport violations involving children may mean that enforcement agencies may not be detecting or measuring the full extent of illegal child labor in agriculture.

BACKGROUND

The responsibility for enforcing laws protecting children and other individuals working in agriculture rests with a number of agencies. The Department of Labor's Wage and Hour Division (WHD) is responsible for enforcing FLSA, the federal law that establishes child labor and other labor standards (for example, minimum wage and hours of work) for employers and employees engaged in interstate commerce. States also enforce their own child labor laws that apply to children working in agriculture. Labor's Occupational Safety and Health Administration (OSHA) is generally responsible for enforcing safety and health provisions for workers in all industries—along with its state partners—although in 1997 OSHA transferred some of its authority over agricultural employers to WHD. The Environmental Protection Agency (EPA) is responsible for regulating the sale and use of pesticides. Among other responsibilities, the Department of Agriculture oversees the collection of information about selected farm characteristics, such as acreage and sales, but has no enforcement authority over agricultural employers for labor or safety and health laws that affect children or other workers.

LIMITED DATA ARE AVAILABLE ON THE NUMBER OF CHILDREN IN AGRICULTURE AND CONDITIONS UNDER WHICH THEY WORK

Data limitations result in incomplete estimates of the number of children working and little information about their working conditions and work-related injuries and illnesses.

Incomplete Estimates of the Number of Children Working in Agriculture

While several major sources of data provide nationally representative estimates of the number of children working in agriculture, these sources measure different populations and include different age ranges. Each also has limitations that need to be considered when using the data (see table 1).

Table 1: Differences in National Estimates of Children Working in Agriculture

	CPS annual averages	CPS work experience	NAWS ^a
How data collected	National household survey	March supplement to CPS	National survey of employed farmworkers
Time period measured	One week each month	Activity in prior calendar year	Three times per year
Ages included	15-17	15-17	14-17
Agricultural sectors included	Crops, livestock, agricultural services	Crops, livestock, agricultural services	Crops
Class of worker surveyed	Hired workers, self-employed, unpaid family workers	Hired workers, self-employed, unpaid family workers	Hired workers
Most recent estimate	155,000 (1997 annual average)	290,000 (work experience during 1996)	128,500 (1993-96 average)

^aNational Agricultural Workers Survey.

The first estimate, derived from the monthly CPS, shows that, for 1997, on average, about 155,000 15-to-17-year-olds worked in agriculture.² The bulk of

²The CPS is conducted by the Bureau of the Census for the Bureau of Labor Statistics (BLS). It is a monthly survey of a nationally representative sample of

these workers (about 116,000) were wage and salary workers (that is, hired farmworkers), while about 24,000 were self-employed, and 15,000 were unpaid family workers.³ Annual averages between 1992 and 1997 generally showed little change in the overall number of workers.

A second CPS estimate shows that over the past few years, about 300,000 of the 15-to-17-year-olds who worked at some time during the year reported that their longest job was in agriculture. This estimate comes from a yearly collection of work experience data and is distinguished from the "point estimates" above because it represents work experience over the span of an entire year.⁴ Of course, the number who work at any time during the year is much higher than the number who work in any given week.

It may be more difficult for the CPS to get complete coverage of agricultural workers compared with workers in other industries. In a household survey like the CPS, which relies on address lists and for which most of the interviewing is done by phone, certain groups are harder to interview. These could include migrants, those who do not live in established residences, and those who do not have ready access to telephones—conditions that apply to many farmworkers. In addition, the CPS collects labor force information only for individuals 15 and older. As a result, these data are likely to underestimate somewhat the total number of children working in agriculture.

households. It is designed to develop estimates of demographic, social, and economic characteristics of the population. The official monthly employment and unemployment estimates are derived from the CPS. The monthly CPS data reflect a person's activity during a particular week (called the reference week).

³These workers made up about 5 percent of all employed 15-to-17-year-olds.

⁴In supplementary questions each March, the CPS asks about a person's activities during the prior calendar year, including how many weeks the person worked and the characteristics of the longest job held.

Another source is the National Agricultural Workers Survey (NAWS).⁵ Recent NAWS estimates indicate that there are about 129,000 14-to-17-year-old hired farmworkers working on crops. These children make up about 7 percent of all hired farmworkers working on crops.⁶ NAWS trend data must be interpreted carefully, but this is a slight increase over data from earlier periods, when about 5 percent of hired farmworkers working on crops were 14 to 17 years old (about 91,000). NAWS also collects information from farmworkers about whether their children work and found that about 13 percent of farmworkers' children 10 to 17 years old do farm work, but most of these children were 16 and 17 years old.

NAWS data also show a growing proportion of workers between 14 and 17 years old working away from their parents. (NAWS analysts refer to this group as unaccompanied minors.) Recent NAWS estimates show them to be about 2.6 percent of all hired farmworkers (about 47,000). This trend is not inconsistent with the experiences of enforcement officials and farmworker advocates, who noted an increase of young men entering the country illegally without their parents to do agricultural work.

Because NAWS focuses solely on hired crop farmworkers, it does not include agricultural workers who are self-employed or unpaid family workers nor those working with livestock. NAWS also interviews only workers 14 years of age and older. Additionally, NAWS has an extremely complex sampling design and has small sample sizes, which may lead to imprecise estimates for some individual variables. As a result, the NAWS data as well may underreport the total number of children working in agriculture.

⁵The National Agricultural Workers Survey is an agricultural-payroll based survey that has been carried out by Labor since 1988. Three times each year, Labor surveys a sample of hired farmworkers (for a yearly total of about 2,500) about their working and living conditions and other information. It gathers detailed demographic and employment information about hired farmworkers aged 14 and older working on crops.

⁶In 1992, the Commission on Agricultural Workers estimated that there were 2.5 million hired farmworkers. Applying to the Commission's estimate the proportion of agricultural workers who work in crops or agricultural services (as reported by the 1990 census) yields an estimate of about 1.81 million hired farmworkers who work on crops. The NAWS applies the percentage of 14-to-17-year-old farmworkers in the NAWS survey to the 1.81 million estimate to derive these numeric totals.

Few Data on Working Conditions

Few data exist to document the wages received by these children, their hours of work, or occupations they perform. For example, NAWS and CPS collect some wage information for children aged 14 or 15 through 17 (respectively). NAWS data indicate that these children earn just over \$4 an hour, on average. CPS wage data for agricultural workers, even annual averages, would be very imprecise, with large margins of error, because of the very small sample size. Also, while CPS reported that about half of hired farmworkers aged 15 to 17 worked 1 to 3 months during the year, and NAWS data indicate that one-third of young hired farmworkers worked full-time, while half worked 25 hours or less per week, neither source provides information about when during the day this work occurred.⁷ Some data are available on the general operations children perform or the crops they work on, but these data are based on a small number of respondents. Additionally, there are no nationally representative estimates about specific tasks children perform (such as riding tractors or using knives).

Severe Work-Related Injury or Death May Be More Likely for Children Working in Agriculture Than in Other Industries

Agriculture is a hazardous industry, having one of the highest rates of injuries, fatalities, and lost workdays. Although a number of data sources do exist that document the injury and illness experience of children working in agriculture, a number of concerns have been raised about the extent to which these data adequately record injuries and fatalities to children working in agriculture. Nonetheless, available data indicate that although the relative number of injuries experienced by children working in agriculture is not as high as in other industries, the severity may be greater, and these children may suffer a disproportionate number of fatalities.

Concerns about the quality of injury and illness data relate to the data source and the link between the injury or illness and the workplace. Much of the data on occupational injuries are self-reported by employers, and it is unknown whether employers report events accurately especially if an injury or fatality involves transient or undocumented workers or if the employer or child is not

⁷CPS agricultural employment data exhibit a strong seasonal pattern and it is likely that most of these young workers performed their work during the summer months.

covered by applicable child labor or safety and health laws.⁸ Also, health practitioners may have difficulty determining whether an injury to a young child is occupationally related. This is especially the case for chronic injuries or illnesses from sustained exposure to pesticides. A number of officials questioned whether health officials are always adequately trained to recognize the effects of pesticide exposure on children. In addition, others question whether children are appropriately classified in order for the injury or fatality to be recorded in these systems. For example, two children in Florida died after having been run over by farm machinery. While these children were not legally classified as working, their deaths still resulted from their being on a farm and with their parents, who were working at the time of the deaths. Farmworker advocates and others said that it is a common practice for children to help out their parents on a farm on an informal basis, but these kinds of deaths may not be included in estimates of work-related deaths.

For 1992 through 1995, BLS data show that between 400 and 600 workers younger than 18 suffered work-related injuries each year while working in agriculture.⁹ Recent estimates from the National Institute for Occupational Safety and Health (NIOSH) showed that the estimated injury rate for 14-to-17-year-old workers in agriculture was 4.3 per 100 full-time-equivalent workers—less than the rate of 5.8 for 14-to-17-year-old workers in all industries. However, fractures and dislocations were more common in agriculture (14

⁸For example, only three work-related deaths to children younger than 18 were reported to OSHA by employers in fiscal year 1997. Although employers are required by law to report work-related deaths to OSHA, the small number of deaths reported may mean that employers are not notifying OSHA of work-related deaths as they are required to do. Or, because farms with fewer than 11 employees are not required to track this information for OSHA, they may be less likely to report deaths to OSHA. A number of analysts believe that smaller farms may be more hazardous than larger ones; as a result, these data may not reflect the number of injuries and fatalities in agriculture occurring on farms not covered by safety and health regulations.

⁹These data, from the Survey of Occupational Injuries and Illnesses, are collected from a sample of records employers with 11 or more workers must complete to report any work-related injury or illness requiring more than first aid.

percent) than in other industries (3 percent), which may indicate that agricultural injuries may be more severe.¹⁰

Available fatality data show that children working in agriculture also may experience a disproportionately high number of fatalities. For example, BLS data show that, between 1992 and 1996, about 140 children younger than 18 were killed while doing agricultural work, which is about 40 percent of all fatalities suffered by children working in all industries.¹¹ However, available CPS data show that 15-to-17-year-olds working in agriculture make up only 5 percent of all 15-to-17-year-old workers. Also, more than half of these deaths were transportation incidents involving overturned or jack-knifed vehicles or falls from vehicles and contact with objects or equipment. More than half of these fatalities occurred to children working in the family business, who are not likely to be covered by child labor laws or other safety and health regulations. NIOSH reported recently that work-related deaths to children aged 16 and 17 working in agriculture accounted for about 30 percent of all work-related deaths in this age group between 1980 and 1989 (in cases for which industry information was known).¹²

In addition to injuries and fatalities, exposure to pesticides has been raised as a major concern, especially in light of the difficulty of knowing the long-term effects of pesticide exposure on children. However, limited data exist to identify the extent to which children working in agriculture are exposed to pesticides. Data collected by EPA on occupational pesticide exposure found, between 1985 and 1992, over 750 cases of exposure involving children under 18,

¹⁰These data are collected through the National Electronic Injury Surveillance System, which collects information on emergency room visits from a nationally representative sample of hospitals. These estimates represent only the last 6 months of 1992, as more recent data are not yet available.

¹¹These data are from the Census of Fatal Occupational Injuries, which is a database BLS maintains to track work-related fatalities. The data are based on several types of administrative records such as death certificates and state workers' compensation records.

¹²For these data, agriculture includes not only crop production, agricultural services, and livestock, but forestry and fishing as well. These data are from the National Traumatic Occupational Fatalities Surveillance system, which is based on death certificate information for victims at least 16 years old whose death resulted from an injury at work. This information is provided by vital statistics reporting units throughout the United States.

which accounted for almost 4 percent of all reported exposure. However, these data are quite limited in that they include only exposure occurring in selected states and exposure to 28 pesticides and do not differentiate whether the exposure occurred on a farm or in some other location.¹³ Additionally, while a number of states have pesticide monitoring systems—and our review of two of them, Florida and California, for the past several years showed 1 percent or less of the occupational exposure involved anyone younger than 18—officials agreed that these systems may not capture all exposure, especially exposure to children.

PROTECTIONS ARE FEWER FOR CHILDREN WORKING IN AGRICULTURE THAN IN OTHER INDUSTRIES

Children working in agriculture generally receive less protection under the federal law than children working in other industries. As shown in table 2, children working in agriculture are legally permitted to work at younger ages, in more hazardous occupations, and for longer periods of time than their peers in other industries.¹⁴ To illustrate, a 13-year-old may not, under federal law, be employed to perform clerical work in an air-conditioned office but may be employed to pick strawberries in a field in the heat of the summer; a 16-year-old may not operate a power saw in a shop or a forklift in a warehouse but may operate either on a farm; and a 14- or 15-year-old working in a retail establishment may work only between the hours of 7 a.m. and 7 p.m. (9 p.m. during the summer) and may not work more than 18 hours in a school week or

¹³In previous reports, we noted that this database had numerous limitations, such as the limited coverage, the potential underreporting of likely exposure, and lack of key data collected. For example, see Pesticides on Farms: Limited Capability Exists to Monitor Occupational Illnesses and Injury (GAO/PEMD-94-6, Dec. 15, 1993). EPA will soon receive new data covering 1993-96 and exposure to all pesticides.

¹⁴The law also excludes employers from maximum hours (overtime pay) requirements for their agricultural employees and small farmers (employers who did not use more than 500 man-days of agricultural labor during any calendar quarter during the preceding calendar year) are exempt from paying the minimum wage to agricultural employees. Moreover, parents who employ their children on a farm may have their children work on the farm at any age and in any occupation, regardless of how hazardous a task they perform. Parents who employ their children in other industries, however, have restrictions on what occupations their children work in.

3 hours in a school day, while the same child may work an unlimited number of hours picking grapes, as long as he or she is not working during school hours.

Table 2: Comparison of FLSA Child Labor Protections for Agricultural and Nonagricultural Workers Younger Than 18

Age	Agricultural occupations			Nonagricultural occupations ^a		
	Allowable occupations	Allowable hours	Other conditions	Allowable occupations	Allowable hours	Other conditions
16 and 17	All	All	None	Nonhazardous ^b	All	None
14 and 15	Nonhazardous ^c	Unlimited hours outside school	None	Those explicitly permitted by Labor ^d	Nonschool; up to 40 hours in nonschool week; up to 18 in school week; up to 8 on nonschool day; up to 3 on school day; between 7 a.m. and 7 p.m. (9 p.m. in summer)	None
12 and 13	Nonhazardous ^c	Unlimited hours outside school	Written consent of parent or work on farm where parent is employed	None	None	N/A
Younger than 12	Nonhazardous ^c	Unlimited hours outside school	On small farm with written consent of parent ^e	None	None	N/A
10 and 11	Hand harvest short season crops (nonhazardous)	Up to 5 hours a day and 30 hours a week outside school	Under terms of waiver issued by Labor, which includes various protections, including parental consent ^f	None	None	N/A

^aStatutory exemptions allow children to work as newspaper deliverers, actors, and makers of certain live wreaths, regardless of age.

^bOccupations not declared particularly hazardous or detrimental to health or well-being by the Secretary of Labor under 29 C.F.R. 570.50 *et seq.* for children between 16 and 18 years old.

^cAgricultural occupations not declared particularly hazardous under 29 C.F.R. 570.70 *et seq.* for children under 16 years old.

^dNonmanufacturing and nonmining occupations declared permissible under 29 C.F.R. 570.31 *et seq.*

^eA small farm is an agricultural employer who did not use, during any calendar quarter in the preceding year, more than 500 man-days of agricultural labor.

^fLabor officials said, as a result of court decision, Labor can no longer grant such waivers .

Some state laws provide more stringent protections for children than the federal law. For example, California generally prohibits employers from employing 16-and 17-year-olds working in any industry (including agriculture) for more than 4 hours on a school day. It also requires that all children working in any industry (including agriculture) be issued a work permit by their

school that verifies their age and specifies the hours they are permitted to work. California also has instituted an "agricultural zone of danger" provision that prohibits children 12 or younger from working or accompanying an employed parent near unprotected water hazards, unprotected chemicals, or moving equipment. In these situations, California may be able to cite an employer even if it cannot prove that a child was working. Florida also limits the number of hours in a day a child can work in any industry, including agriculture.

Other protections, such as for safety and health, also are less stringent for agricultural employees compared with those in other industries. For example, for many years, OSHA has had a rider attached to its appropriations bill that says that none of its appropriated funds may be used to issue or enforce standards or regulations applicable to farming operations with 10 or fewer employees unless they provide housing for agricultural workers on site. This prohibition remains even if OSHA receives a complaint about unsatisfactory working conditions from a worker or if a worker is killed. OSHA has no such prohibition for any other industry. Although OSHA is responsible for regulating all chemicals, it has deferred to EPA authority for all issues related to pesticide usage. In turn, EPA enforces the Worker Protection Standard, which requires that employers provide training to workers about pesticides, not allow workers to enter fields for a set period of time after pesticides have been applied, and provide workers with personal protective equipment, among other requirements. However, these provisions apply to those who are classified as working on farms (and in a few cases, family members of farm owners) but exclude children living on farms or those working in an informal capacity.

**FEW CHILD LABOR VIOLATIONS ARE REPORTED,
BUT MORE VIOLATIONS MAY BE OCCURRING**

Federal and selected state enforcement agencies report few child labor violations in agriculture. For example, Labor's WHD reported only 14 child labor violations in agriculture in fiscal year 1997. Some factors suggest that the actual number of violations is probably small. Other factors, however, suggest that, in fact, violations are occurring that are not detected or are detected but are not recorded in such a way that the involvement of children can be identified.

Few Child Labor Violations Are Found in Agriculture

Federal and selected state enforcement agencies have reported relatively few child labor violations in agriculture over the past 5 years, and the number

detected has declined. In fiscal year 1993, WHD detected 54 violations under the agricultural protections of FLSA, while in fiscal year 1997, it detected only 14.¹⁵ The 14 violations in fiscal year 1997 involved 22 children and were located in 12 different states: Georgia, Illinois, Michigan, Mississippi (2), New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Texas, and Virginia (2). About half of the violations occurred because children were performing tasks prohibited by law, whereas the other half were for being too young to work or working during school hours. Although WHD officials said they seek out potential child labor violations in every inspection they conduct, these violations were found in less than 4 percent of inspections conducted in agriculture.

California has also seen a decline in agricultural child labor violations—from 153 in calendar year 1993 to 39 in calendar year 1997.¹⁶ The 39 violations in calendar year 1997 represent about 9 percent of all inspections performed in agriculture. Officials said they issue the majority of violations because the employer does not have the required work permits. California officials said the state has rarely had the occasion to apply the agricultural zone of danger provision.

The Number of Violations May Actually Be Small

Several factors suggest that, in fact, the number of children working illegally in agriculture may be small. Grower representatives, enforcement agencies, and others told us that they believed the number of children working in agriculture today was not as large as in the past and that the number of children working in agriculture was not as great as some believe. They said the potential liability and the bureaucratic "hassle" of using children discourages their employment. Also, labor surpluses in key agricultural locations and the availability of legal and illegal foreign labor mean that growers can hire adults (who are generally

¹⁵A child may be working in an agricultural industry but performing an occupation considered nonagricultural under FLSA. For example, a child may be employed by an apricot grower but be working in the packing house, packing apricots into crates. In such cases, the nonagricultural protections of FLSA would apply. This type of situation accounted for an additional 78 child labor violations in agricultural industries in fiscal year 1997.

¹⁶The database used by the California Division of Labor Standards Enforcement does not provide information on the conditions surrounding the violation, such as the type of violation, the number of children involved, or employer size. To get this information, officials would have to manually pull and review case files.

more productive) instead of children.¹⁷ According to several grower representatives, even in the face of labor shortages, growers would prefer not to hire anyone younger than 18. Federal and state enforcement officials told us that even when they target enforcement to look for child labor violations, they often see little evidence of it.

Second, because children are allowed to work in agriculture at younger ages, do more hazardous occupations, and work longer hours, work that would be illegal in an industrial setting would not necessarily be illegal in an agricultural setting. Enforcement officials agreed that children may be working but said that much of the labor may be within the confines of the law. They also said that if nonagriculture protections in FLSA for child labor were applied to agriculture, there would be an increase in the number of violations found.

Additional Violations May Exist

Several other factors may suggest that additional violations do occur.¹⁸ Resources devoted to enforcement in agriculture and operational difficulties in enforcing laws may cause some violations to go undetected. Also, some violations that involve children are not currently reported in a way that identifies the extent to which children are involved.

¹⁷In 1997, we estimated that there were as many as 600,000 agricultural workers working in the United States who were not legally authorized to do so. See H-2A Agricultural Guestworker Program: Changes Could Improve Services to Employers and Better Protect Workers (GAO/HEHS-98-20, Dec. 31, 1997).

¹⁸For example, recently, one researcher tried to develop estimates of illegal employment in agriculture by using several different sources and a number of assumptions. Using historical data on the proportion of child labor violations that occurred in agriculture to estimate potential child labor violations that currently exist, and combining the 1987-91 proportion with his estimates of child labor violations in nonagricultural industries, he estimated that about 4,900 children younger than 18 work under illegal conditions in agriculture during the course of a year and about 2,500 do so in an average week. (Douglas Kruse, Illegal Child Labor in the United States, School of Management and Labor Relations, Rutgers University, National Bureau of Economic Research, Nov. 1997.)

Relatively Few Enforcement
Resources Are Devoted to Agriculture

Enforcement agencies are required to enforce a large number of laws and standards, and they have only a limited number of enforcement investigators. In fact, until an increase last year, the number of WHD enforcement officers had declined about 18 percent over the past decade, from about 950 in fiscal year 1987 to 780 in fiscal year 1996. Also, even though WHD has devoted about 15 percent of its inspections to agriculture over the past 5 years, in fiscal year 1997, only about 6 percent of its total direct enforcement hours were dedicated to child labor detection in all industries. Because the majority of WHD's inspections are performed in nonagricultural industries, this means that less than 6 percent of its enforcement hours were likely devoted to looking for illegal child labor in agriculture. OSHA has devoted less than 3 percent of its inspections over the past 5 years to agriculture, even though agriculture is often considered to be one of the most hazardous industries. According to OSHA officials, this is in part because of the prohibitions OSHA faces in inspecting agricultural workplaces and also because of the few standards OSHA has that apply directly to agricultural settings.

Others question whether enforcement agencies spend the quality of resources necessary to detect child labor violations. For example, they question whether an adequate number of enforcement officials speak the native languages of these children and their parents or whether investigators enter the fields at times when the violations are most likely to occur or when children and their parents are able to talk freely with the investigators.

Operational Difficulties Make It Hard
to Enforce Key Legal Provisions

Even if enforcement agencies increased the quantity and quality of enforcement resources devoted to detecting illegal child labor in agriculture, they would still face a number of operational difficulties to enforce key provisions of FLSA, state child labor laws, and other safety and health regulations. This is because the nature of agriculture and the unique characteristics of this population make it more difficult to enforce these provisions. Traditionally, much of the hired farmworker population has been mobile, hesitant to report violations for fear of employer retaliation, distrustful of enforcement agencies, or willing to have children work because of the need for the additional income. Also, because the worksite constantly changes, and in some cases, like an orange grove, covers a large amount of acreage, it is difficult for investigators to witness the violation occurring. Moreover, Labor officials said that when agricultural crews with

children are found by investigators, the children are often told by their parents or others to stop working until the investigator leaves, thus preventing the investigator from observing child labor violations.

These characteristics complicate obtaining the information necessary to document violations, such as the child's age and the employment relationship between the employer and the child. Enforcement agencies must document how old the child is in order to cite the employer. Yet finding acceptable documentation is difficult with this population because the children may be migrant or may not be attending school or both the parents and children may lie about the child's age so that the children can continue working. Enforcement officials also said that fraudulent documentation is quite common yet difficult to question. To issue any type of citation, investigators must prove that the child was actually working for the employer and not just being in the fields because of a lack of daycare. To do so requires investigators to review key documents such as payroll records or workers' compensation records. In some cases, they need to videotape a violation to document its occurrence. However, given the uniqueness of the work locations and conditions, observing this work is difficult, and when children work under their parents' names, there is no record of their employment in existing documents. This means that investigators must conduct additional activities to prove that an employment relationship exists.

Finally, even if enforcement agencies wanted to target illegal child labor in agriculture, which WHD and some state agencies have done, the lack of data about where children are, who they are, what they work on, and other key working conditions raises serious questions about how effective these targeting efforts may be.

Data Systems Reflect a Narrow View
of What Constitutes Illegal Child Labor

Another reason for the small number of detected violations is that enforcement data systems have been designed with a very narrow view of what constitutes illegal child labor. Child labor violations are considered to be those that are detected under the child-related provisions of FLSA rather than any violation of other laws (such as wages or safety and health) that involve children. If all violations involving children were counted, there would likely be a significant increase in the number of violations concerning children working in agriculture. For example, an employer who illegally employs a child may be cited only for failure to have proof of the child's age on file, which is a "recordkeeping" violation rather than a child labor violation. Because of the difficulties

associated with proving age for the hired farmworker community (which WHD would have to do in order to cite the employer for a child labor violation), WHD may be likely to cite employers for recordkeeping violations rather than child labor violations. WHD officials said that they issue numerous recordkeeping violations every year for all the laws they enforce but would not be able to determine from the case files how many were related to child labor.

Other violations related to working conditions (such as wages) and safety and health (such as housing or pesticide exposure) may also involve children, but the data are not collected or recorded in such a way as to identify how children are involved. This is because these laws apply to all agricultural workers, regardless of age. For example, NAWS reported that about 8 percent of 14-to-17-year-old hired farmworkers did not receive minimum wage, but WHD has no data on the number of citations, if any, issued for minimum wage violations involving children in this age group. WHD issued more than 300 citations last year to agricultural employers for not paying their workers minimum wage, but case files provide no information on the ages of the workers involved. Farmworker advocates and selected enforcement officials told us that the single greatest problem currently facing children working in agriculture is children working under their parents' payroll numbers. This situation can often result in a minimum wage violation because the employer records reflect wages paid to the parent when the work was actually performed not only by the parent but also by the child.

WHD also found more than 900 violations of the Migrant and Seasonal Agricultural Worker Protection Act, which requires employers to provide promised wages, adequate housing conditions, and safe transportation. No information is available on the extent to which children were involved in these violations. Last year, OSHA cited employers about 175 times for not providing hired farmworkers adequate housing conditions. NAWS data show that 28 percent of farmworkers have children living with them, but OSHA case files for these violations provide no age data to document whether children were involved. Moreover, EPA's database of inspections performed by EPA and state agricultural agencies to enforce the Worker Protection Standard provides no information on violations regarding worker training, early reentry of fields, or other worker-related provisions, let alone age information.

AGENCY COMMENTS

We solicited comments on a draft of this correspondence from Labor, the Environmental Protection Agency (EPA), and the Department of Agriculture. Labor and EPA provided technical comments from agency officials who had

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responsibility for the issues discussed in this correspondence. We incorporated these comments as appropriate to improve the clarity and accuracy of this correspondence and will revisit other issues raised as we proceed with our longer-term work. The Department of Agriculture had no comments.

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As arranged with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this correspondence until 7 days after its issue date. At that time, we will send copies to the Secretary of Labor, Labor's Wage and Hour Division Administrator, and Labor's Assistant Secretary for Occupational Safety and Health, the Administrator of EPA, the Secretary of Agriculture, and state enforcement agencies. Copies will be available to others upon request.

Please contact me on (202) 512-7014 if you or your staffs have any questions. Major contributors to this correspondence were Charles Jeszeck, Assistant Director; Lori Rectanus, Senior Project Manager; Kopp Michelotti, Senior Evaluator; and Robert C. Crystal, Assistant General Counsel.



Carlotta C. Joyner
Director, Education
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(205369)

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