

**Occupational Fatalities in Agriculture:
Assessing the Impact of OSHA Enforcement and Education**

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Thank you for the opportunity to comment. My remarks reflect my own personal views, and not the views of the California Institute for Rural Studies, or of organizations for which I have served as a private consultant.

My concerns are occupational safety risks faced by this nation's estimated 2.5 million agricultural workers. Quite apart from the usual problem of underreporting of workplace injuries and illnesses that is commonplace in most industries, Congressional restrictions on even gathering information from farm employers who have ten or fewer employees severely limits our knowledge. More than 90% of U.S. farms with hired farm labor are exempt from reporting owing to this restriction.¹ Some 48% of all farm laborers reportedly work on farms with less than 11 employees.² Thus, we lack reports of occupational injuries and illnesses for nearly half of all farm laborers.

For this reason, my initial comments refer to information reported in the annual Census of Fatal Occupational Injuries which gathers reports of workplace fatalities from many different sources, not just information submitted by employers, and thereby is the only reliable official indicator of workplace risk in agriculture available today. The most recent estimate of occupational fatalities in U.S. employment demonstrates that the Agriculture, Forestry and Fishing (AFF) industry sector had the highest rate of occupational fatalities as compared with all other industries (Figure 1). While the rate for all U.S. industries during 2008 is estimated to have been 3.6 fatalities per 100,000 full-time-equivalent-employment (FTE) the rate of on-the-job deaths in the AFF sector was 29.4 per 100,000 FTE.³ Although the AFF sector ranked third among all industry sectors in the annual number of job-related deaths (651), workers in this sector were eight times more likely to have been killed.⁴ It is important to note that, according to the Current Population Survey, more than 90% of employment in the AFF sector was in agriculture, which justifies the focus on farm workers.

¹ United States. Department of Agriculture, *2007 Census of Agriculture. United States. Summary and State Data*, Volume 1. Geographic Area Series. Part 51, National Agricultural Statistics Service, February 2009. Cf. "Table 7. Hired Farm Labor – Workers and Payroll: 2007," p. 336. As indicated by the table, of 482,186 farms reporting hired labor, there were 439,073 farms with fewer than 10 employees.

² United States. Department of Agriculture, *Farm Labor*, National Agricultural Statistics Service, Quarterly Reports for 2009. Cf. Table, "Hired Workers: Distribution by Category, United States," in which the four quarterly reports indicate 48% of workers were employed on farms with 10 or fewer workers.

³ <http://www.bls.gov/iif/oshwc/cfoi/cfch0007.pdf>, p. 13. Accessed 2/10/10.

⁴ Ibid.

Equally disturbing is the evidence that while the U.S. occupational fatality rate has been declining in recent years, there is no evidence of any improvement whatsoever in the rate for those who work on our nation's farms. The occupational fatality rate for all industries demonstrates a statistically significant decline of about 24% during the period 1992-2007 (Figure 2).⁵ However, for farm workers – farmers, ranchers, unpaid family workers, hired labor, and contract labor – the occupational fatality rate has remained at about 28 deaths per 100,000 FTE during entire period 1992-2006 (Figure 3).⁶

What do these findings have to do with OSHA? Simply put, the available evidence strongly suggests that OSHA education and enforcement is the single most important factor in preventing serious occupational injuries and fatalities. The Workers Compensation Insurance Rating Bureau (WCIRB) of California examined all claims for indemnity losses in every industry in an effort to determine what factors are associated with reductions in the frequency of indemnity claims.⁷ As you are aware, virtually every employed worker in California is required to be covered by workers compensation, either through insurance purchased by the employer or through an employer's approved self-insurance. An indemnity claim is for an injury resulting in permanent disability, hospitalization, or a medically certified inability to resume work after three days.

The WCIRB multivariate analysis considered a large number of possible factors, and the results were quite striking. Among all factors considered, the Cal-OSHA program of enforcement and education was the largest single factor contributing to a decline in the frequency of indemnity claims.

There are several caveats that must be noted limiting generalization of these California findings to all states.

- California is one of a few states requiring workers compensation coverage for virtually all workers, including all workers in agriculture;
- The association between reduced indemnity claim frequency and Cal-OSHA enforcement is a general finding for all industries and cannot be assumed to be valid for any specific industry, such as agriculture;
- Unlike Federal OSHA, Cal-OSHA enforcement programs apply to all farms, and do not exclude farms with 10 or fewer employees;
- California employment law is generally stricter than federal law.

Despite the importance of the findings regarding the central importance of OSHA enforcement and education, there is recent evidence that a substantially greater effort is needed. In California, the rate of occupational fatalities in agriculture has not declined in the recent past. When the 3-year average rate of occupational fatalities for 1995-97 is compared with that for 2005-07, the rate was unchanged for farm workers, but there were significant declines for all industries combined and for manufacturing (Figure 4).⁸

⁵ Ibid, p. 1.

⁶ United States. Department of Labor, *Census of Fatal Occupational Injuries*, Bureau of Labor Statistics, 2007, "Table A-5. Fatal occupational injuries by occupation and event or exposure, All United States." Data for Agricultural Workers added to corresponding figures for Agricultural Managers, which includes Farmers and Ranchers. For all prior years, through 1992, data was compiled from comparable tables.

⁷ *California Indemnity Claim Frequency Analysis*, April 25, 2002, Workers Compensation Insurance Rating Bureau of California, San Francisco, CA.

⁸ <http://www.dir.ca.gov/dlsr/fatal.htm>. Cf. "Table A-5. Fatal occupational injuries by occupation and event or exposure, California." Accessed 2/10/10.

Importantly, all too often California's hired farm workforce is ill-informed about the rights and responsibilities of employees. A recent research paper reporting on a California-wide cross-sectional health survey included the disturbing finding that just 40% of undocumented male workers were even aware of workers compensation.⁹

The problem of worker education is becoming even more difficult as increasing numbers of indigenous migrants from southern Mexico and Central America travel to the U.S. seeking employment. An estimated 29% of current California farm laborers are indigenous Mexican migrants, whose mother tongue is neither English nor Spanish.¹⁰

The difficulty of reducing occupational fatalities in agriculture can be examined in the experience in California with heat-related occupational injuries, illnesses and deaths. Heatstroke fatalities occur mainly among farm laborers. Review of all 504 Cal-OSHA cases opened during the period 2005-08 in which citations were initially issued to farm employers for violations of the heat illness standard (T8 3395) indicates that Cal-OSHA field investigators were vigorous in seeking compliance, especially in 2007 and 2008. The number of inspections among farm employers substantially increased, and the number of cases in which citations for violation of the heat illness standard rose dramatically.

On the other hand, the enforcement effort seriously lacked follow-up. In the 225 such cases that had been officially closed by mid-April 2009, final penalty assessments were only 57% of the initial penalty amounts. Additionally, in 29% of closed cases in which initial "Serious" citations had been issued by OSHA inspectors, those citations had been reduced to the relatively minor category "Other", with correspondingly reduced penalties, in the process of later review by Cal-OSHA management and contest to the Cal-OSHA Appeals Board by the cited employers. **Conversely, there was not one single instance in which an initial penalty amount was subsequently raised nor an "Other" citation raised to the level of "Serious", "Willful" or "Repeat".**

There is also an unacceptably long delay in reaching the conclusion of open cases that are contested by the employer. Fewer than half of all cases in which a citation was issued to a farm employer during 2006 for a heat illness violation, and which the employer appealed, had been finally closed by mid-April 2009. The shortcomings of the Cal-OSHA Appeals Board are sufficiently serious that 47 of the agency's officers publicly complained about pro-employer bias in handling cases appealed by employers.

One of the most disturbing findings of this review of Cal-OSHA enforcement was the association between heat illness violations and accidents that resulted in a Cal-OSHA inspection. Accident inspections in which a heat illness violation was found were more than twice as likely to be associated with an initial "Serious" or "Willful" citation as compared all other types of inspections – complaint, planned, or program related – involving heat illness citations. This finding suggests that many workers are still at unacceptable risk, and that more vigorous enforcement efforts are required.

Another disturbing finding is that California farm employers who have been repeatedly cited for violations of the heat illness standard are rarely cited as "Repeat" violators. The reason is that such a citation is issued only if the violation occurs at the

⁹ Villarejo D McCurdy SA, "The Health of California's Hired Farm Laborers," *American Journal of Industrial Medicine*. 2010 Feb 26;53(4):387-397. (Epub ahead of print).

¹⁰ Mines R Nichols S Runsten D, *Final Report of the Indigenous Farmworker Study*, 2010. Cf. http://www.indigenousfarmworkers.org/IFS%20Full%20Report%20_Jan2010.pdf

same work site: the employers in question have multiple crop fields, often adjacent, but each is treated as a separate establishment.

Illustrative of the apparent lack of vigorous enforcement is the handling of health illnesses cases involving Giumarra Vineyards Corporation. On July 28, 2004, Asuncion Valdivia died of heatstroke following a 10-hour shift picking table grapes in 100-degree heat on a company property. One year later, on July 21, 2005, Augustine Gudino died of heatstroke after working at a company vineyard, although his employer-of-record was a farm labor contractor who hires and supervises crews of workers for the Guimarra firm.

During 2007 and 2008, Giumarra was the subject of five separate citations for violations of California's heat illness standard (T8 3395) that was first ordered by the governor on an emergency basis in 2005, and finalized in 2006. All five of the cases remain "open" at this writing. In none of these citations was Giumarra cited for a repeat violation. It was as though each referred to a different establishment.

An additional disturbing finding regarding the prevalence of occupational safety risks at Giumarra Vineyards was disclosed in the newly released ODI establishment-specific injury rate data made available by U.S. OSHA. The Total Case Rate (TCR) of occupational injuries and illnesses for Giumarra Vineyards was reported to be 10.48, five times larger than the median TCR of 2.0 for all U.S. crop farms. Giumarra's TCR was even greater than the 7.5 TCR cut-off for the 3rd Quartile of crop farms.

Unlike brick and mortar worksites, crop farm operations are typically conducted on several individual fields, all under single management. Large farms may have dozens of such fields. There is an important Federal precedent in how to distinguish a single-establishment farm from a multi-establishment farm: the U.S. Census of Agriculture considers a farm to be a single establishment business unless it has separately managed locations in non-contiguous counties.¹¹ By this criterion, each of Giumarra's fields and vineyards in Kern and Tulare Counties cannot be treated as separate establishments.

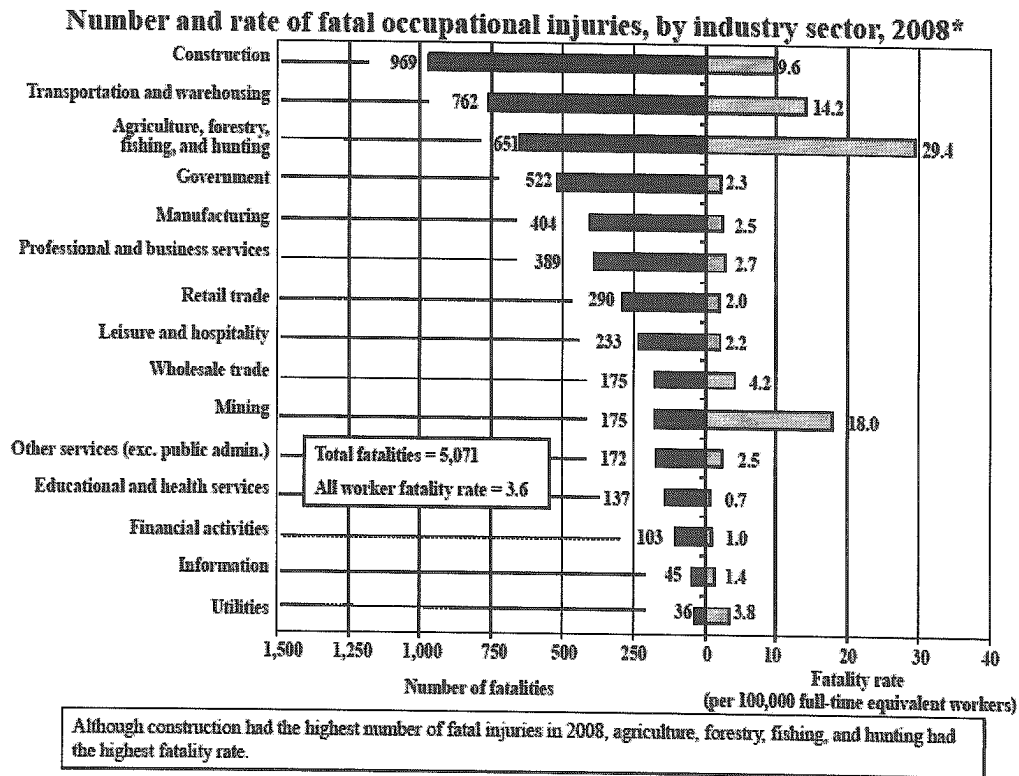
In the face of the inadequacy of Cal-OSHA's enforcement of the heat illness standard, several individual farm laborers, including a survivor of a woman who died from occupational heatstroke after a long day toiling in a vineyard during the heat of a San Joaquin Valley summer, have joined with the United Farm Workers of America in a civil complaint against Cal-OSHA. The complaint details specific claims of lack of enforcement by the agency. At this writing, the case remains unresolved.

What can OSHA do to reduce occupational fatalities in agriculture?

- More and better enforcement focused on agriculture;
- Expedite the appeal process, especially for non-serious citations;
- Extend enforcement to all farms nationally, not just those with more than ten workers;
- Take account of the specific circumstances of agriculture in considering "Repeat" citations. OSHA should designate farms with numerous crop fields in a single or contiguous counties under common management as a single establishment;
- Initiate programs to directly engage representatives of groups of indigenous migrant workers from Mexico and Central America in devising programs to inform newly arrived workers of their rights and responsibilities under U.S. law.

¹¹ Villarejo D, *Getting Bigger: Large Scale Farming in California*, California Institute for Rural Studies, Davis, CA, March 1980, 104 p.

Figure 1. Number and Rate of Fatal Occupational Injuries, by Industry Sector, 2008
Source: DoL, BLS CFOI (Preliminary data)



*Data for 2008 are preliminary.

NOTE: In 2008, CFOI implemented a new methodology, using hours worked for fatality rate calculations rather than employment. For additional information on the fatality rate methodology changes please see <http://www.bls.gov/iif/oshnotice10.htm>.

SOURCE: U.S. Bureau of Labor Statistics, U.S. Department of Labor, 2009.

Figure 2. Occupational Fatalities, Rate (per 100,000 FTE), All Industries, U.S., 1992-2007, *Source* : DoL, BLS CFOI

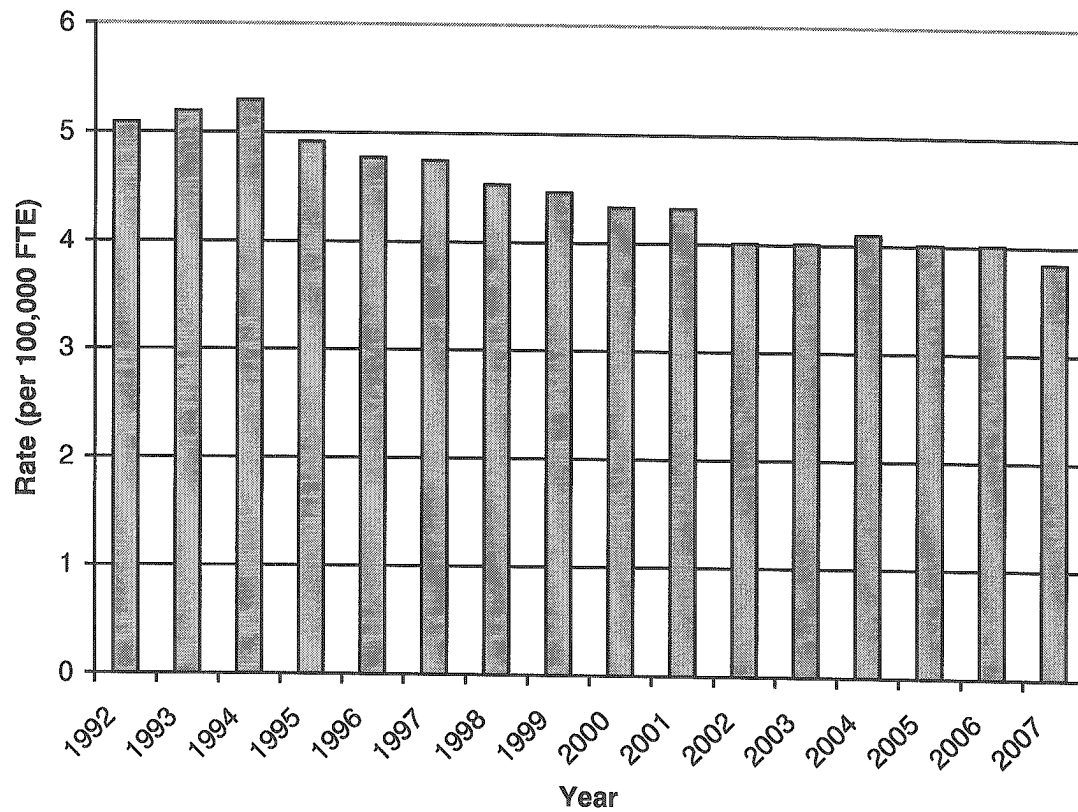


Figure 3. Occupational Fatalities, Rate (per 100,000 FTE), Farm Workers, U.S., 1992-2006
Source : DoL, BLS CFOI

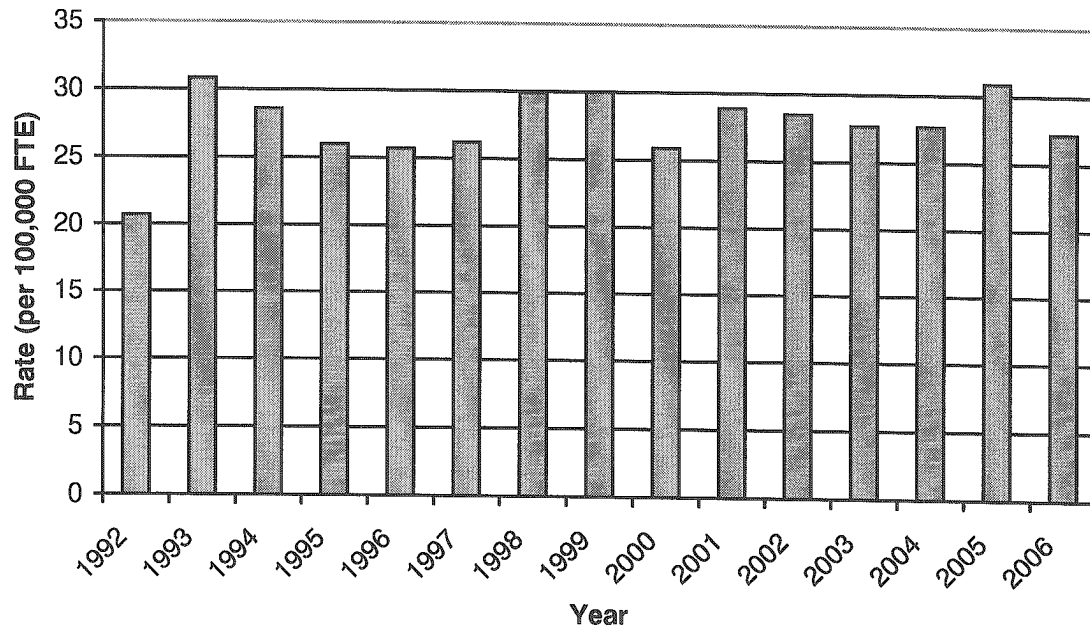


Figure 4. Occupational Fatality, Incidence Rate, by Industry, California, 1995-1997 vs. 2005-2007

