

OSHA Listens: Meeting Agenda

9 a.m.	Welcome and Introductory Comments	David Michaels, Assistant Secretary, OSHA Deborah Berkowitz, Chief of Staff, OSHA
9:10-9:50	Panel 1	Tonya Ford, Uncle killed at ADM facility in 2009 Katherine Rodriguez, Father killed at British Petroleum in 2004 Wanda Morillo, Husband killed in a NJ industrial explosion in 2005 Celeste Monforton, American Public Health Association Linda Reinstein, Asbestos Disease Awareness Organization
9:50-10:30	Panel 2	Marc Freedman, U.S. Chamber of Commerce Keith Smith, National Association of Manufacturers Frank White, ORC Stephen Sandherr, Association of General Contractors
10:30-10:40	Break	
10:40-11:20	Panel 3	Workers United Peg Seminario, AFL-CIO Scott Schneider, Laborers' Health and Safety Fund Mike Wright, United Steel Workers
11:20-11:50	Panel 4	Chris Patton, American Society for Safety Engineers Katherine Kirkland, Association of Occupational and Environmental Clinics Aaron Trippler, American Industrial Hygiene Association
11:50-12:30	Panel 5	Kathleen McPhaul, American Public Health Association, Univ. of Maryland Nursing Hestor Lipscomb, Duke University Medical School Rick Neitzel, National Hearing Conservation Association Matt Schudtz, University of Maryland Law School
12:30-1:30	Lunch	
1:30-2:00	Panel 6	Karen Harned, Nat'l Federation of Independent Business, Small Business Legal Center Cynthia Hilton, Institute of Makers of Explosives Thomas Slavin, Navistar, Inc.
2:00-2:30	Panel 7	Andrew Youpel, Brandenburg Industrial Service Company Robert Matuga, National Association of Home Builders Tom Broderick, Construction Safety Council

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

February 10, 2010
OSHA Listening Session
Washington, DC

Comments submitted by
Don Villarejo, Ph.D.
Founder and Director Emeritus
California Institute for Rural Studies, Inc.

SKIP [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.

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 is 29.4 per 100,000 FTE. 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.

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. Specifically, the occupational fatality rate for all industries demonstrates a statistically significant decline of about 24% during the period 1992-2007 (Figure 2).

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). 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.

SKIP [What do these findings have to do with OSHA? Simply put, the available evidence strongly suggests that OSHA education and enforcement is likely 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 an effort to determine what factors are associated with reductions in the frequency of indemnity claims.¹ 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 that results in permanent disability, hospitalization, or a medically certified inability to return to work for more than three days.

¹ California Indemnity Claim Frequency Analysis, April 25, 2002, Workers Compensation Insurance Rating Bureau of California, San Francisco, CA.

Fig 1 & 2 show data are not helpful W/O agriculture > 3/4 of all farms are exempt from reporting (Don Villarejo)

changing 2008

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 that prevent generalization of these California findings to all states.

- California is one of just a relative handful of states requiring workers compensation coverage for virtually all workers, including all ~~workers~~ ^{hired} in agriculture;
- The association between reduced indemnity claim frequency and Cal-OSHA enforcement is a general finding for all industries and can not be assumed to be valid for any specific industry;
- Unlike Federal OSHA, Cal-OSHA enforcement programs apply to all farms, and does not exclude farms with 10 or ~~more~~ ^{fewer} employees;
- California employment law is generally stricter than Federal law.

Despite ~~the importance of the findings~~ ^{Cal} 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).

Importantly, ~~all too often~~ ^{Cal} California's hired farm workforce is ill informed about the rights and responsibilities of employees. A recent research paper reported on a California-wide cross-sectional health survey included the disturbing finding that ~~just 60%~~ ^{workers are} 40% of undocumented male workers ~~were even aware of workers compensation.~~ ^{exists} ^{did not even know that} 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.³

The difficulty of ~~reducing~~ ^{Cal} occupational fatalities in agriculture can be studied by examining the recent experience in California associated with heat-related occupational injuries and illnesses. 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 indicates that Cal-OSHA field investigators were vigorous in seeking compliance, especially in 2007 and 2008. The number of inspections among farm employers was 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 was seriously lacking in 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, those citations were

² Villarejo D McCurdy SA, "The Health of California's Hired Farm Laborers," *American Journal of Industrial Medicine*, 2010 (in press; Special Issue on Migration and Health, Spring 2010).

³ Mines R, "Indigenous Farmworker Study," preliminary draft, September 2009.

later reduced to the relatively minor category "Other" and the corresponding penalties substantially reduced. **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 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 delays are so serious that 31st 47 Cal-OSHA enforcement staff publicly complained about the extremely long delays in handling appeals by employers.

One of the most disturbing findings of this review of Cal-OSHA enforcement was that 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 of associations between heat illness violations and accidents that resulted in a Cal-OSHA inspection 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 on the same work site: the employers in question have multiple crop fields, often adjacent, but each is treated as a separate work establishment.

For all of these reasons, 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.

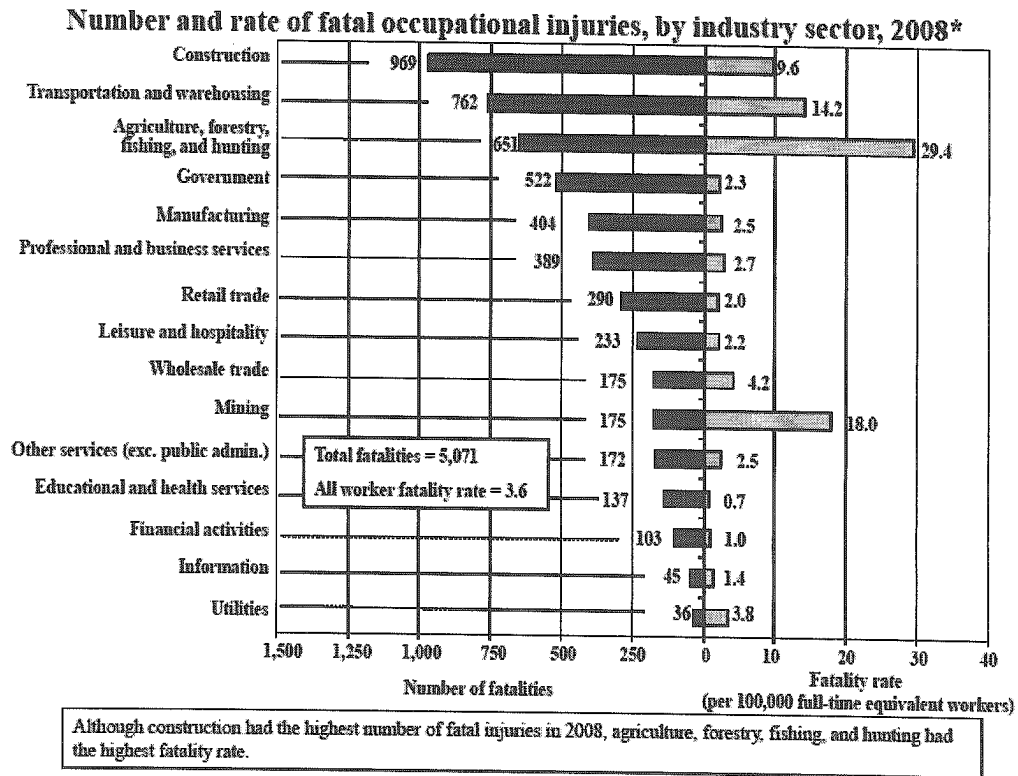
What can OSHA do to reduce occupational fatalities in agriculture?

- More and better enforcement focused on agriculture; - more focus on agriculture than Cal-OSHA (200)
- Expedite the appeal process, especially for non-serious citations; - Cal-OSHA has more cases (197)
- Extend enforcement to all farms nationally, not just those with more than ten workers (the vast majority of U.S. farm workplaces with hired workers are presently exempt from OSHA enforcement because they have fewer than 11 employees);
- Take account of the specific circumstances of agriculture in considering "Repeat" citations. The U.S. Census of Agriculture considers a farm to be a single establishment unless it has separately managed locations in non-contiguous counties.⁴ OSHA should follow suit and designate farms with numerous crop fields in a single or contiguous counties as a single establishment; work site;
- 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.

NTJCN Review → see memorandum

⁴ 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/tif/oshnotice10.htm>.

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

13

3.6
 29.4

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

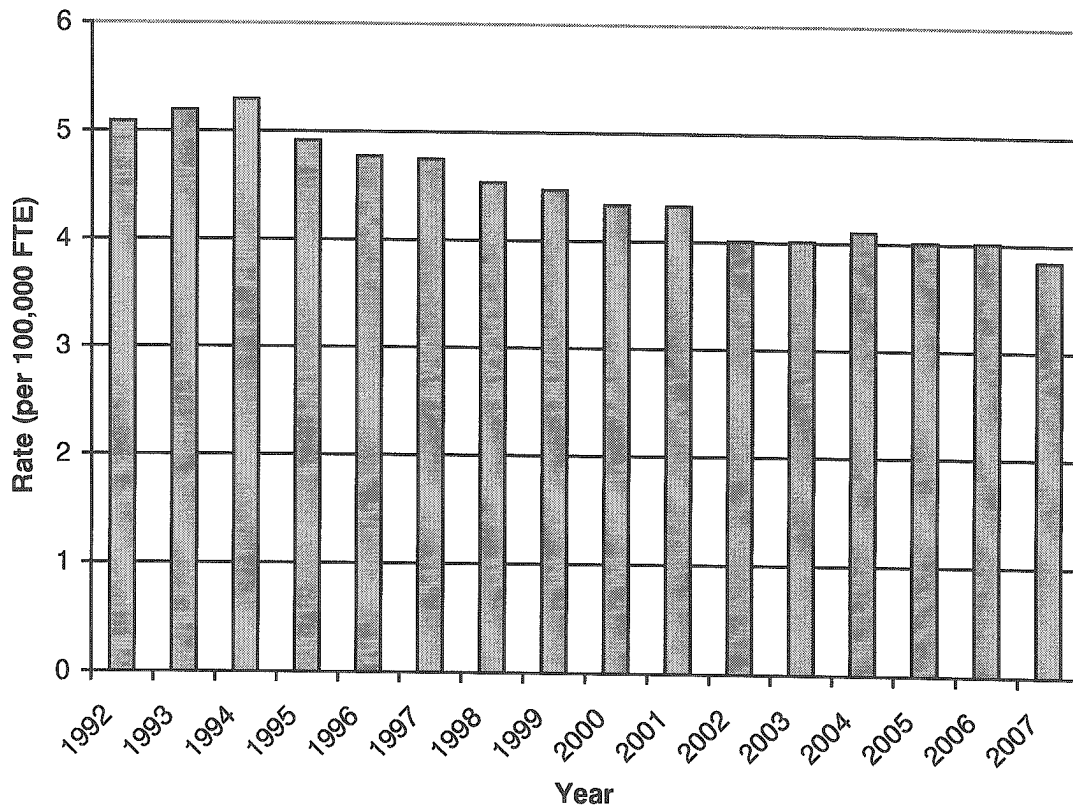


Figure 3. Occupational Fatalities, Rate (per 100,000 FTE), Farm Workers, U.S., 1992-2006
Source : DoL, BLS CFOI

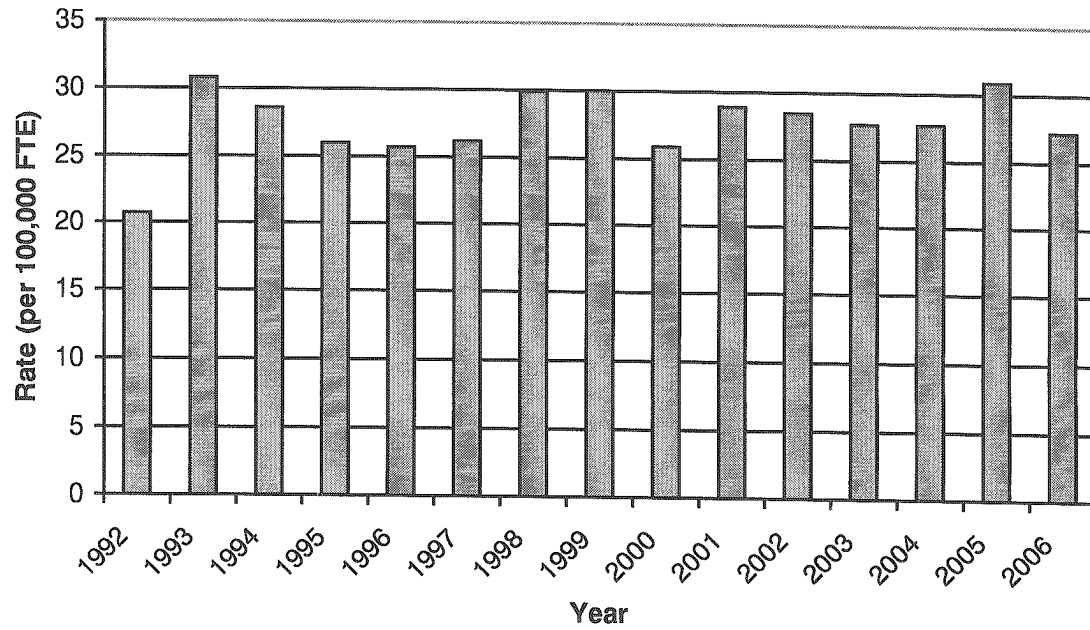
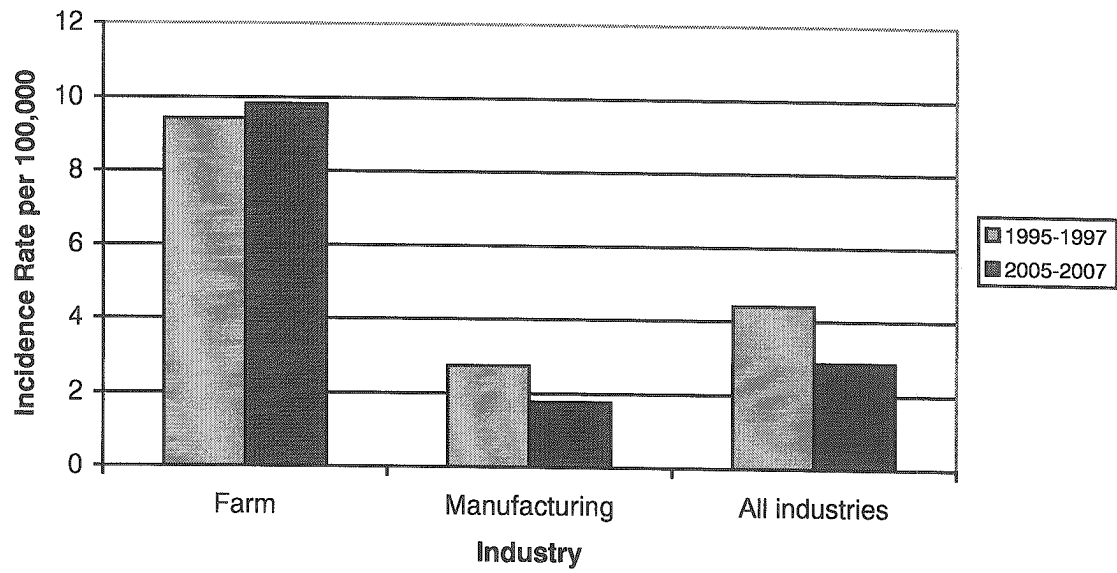


Figure 4. Occupational Fatality, Incidence Rate, by Industry, California, 1995-1997 vs. 2005-2007



Additional Comments

Exclusion of farms with 10 or fewer employees

Cf. 2009, *Farm Labor*, USDA/NASS, 48% of direct-hire workers

Cf. CoA, 2007, Table 7. State Data. Less than 10: 439,073/482,186 = 91%

Note: CalOSHA all farms regardless of size: Less than 10 = 22,296

However, CalDIR does not collect injury data from all farms

Injury by size of farm

Cf. CoA, 1992 & 1997. Reports of fatalities & injuries for all farms ER & EE

Inadequate data, very likely underreporting

What about FLCs and non-farm businesses employing farm laborers?

Cf. CA EDD report from 1992: overlap