



**EVALUATION OF THE
DOMESTIC CHILD LABOR PROGRAM**

**WAGE AND HOUR DIVISION
EMPLOYMENT STANDARDS ADMINISTRATION**

**REPORT NO: 2E-04-420-0001
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ACRONYMS

BLS	-	Bureau of Labor Statistics
CL	-	Child Labor
ESA	-	Employment Standards Administration
FLSA	-	Federal Labor Standards Act of 1938
GPRA	-	Government Performance and Results Act
HO	-	Hazardous Order
IRS	-	Internal Revenue Service
MOU	-	Memorandum of Understanding
MSPA	-	Migrant and Seasonal Agricultural Workers Protection Act
NACLHO	-	Non-Agricultural Child Labor Hazardous Occupations Orders
WH	-	Wage and Hour
WHD	-	Wage and Hour Division

EXECUTIVE SUMMARY

We conducted an evaluation of the Wage and Hour Division's (WHD) Domestic Child Labor (CL) Program. This evaluation was designed to provide WH management with information and recommended actions to further enhance the effectiveness of the program. While we did not examine other programs administered by WHD, we believe that many of our CL findings are applicable to other WH programs.

FINDINGS AND RECOMMENATIONS

Our evaluation identified specific areas where WHD can better execute aspects of the Child Labor Program.

Finding A- WHD Has Not Updated the Non-Agricultural Child Labor Hazardous Occupations Orders

The Non-Agricultural Child Labor Hazardous Occupations Orders (NACLHO) used by WHD to determine the most significant child labor violations must be updated. In the 1999 ESA Strategic Plan, WHD was instructed to review NACLHO. We believe that with the advances made in technology and in industry in the last five years, WHD has been remiss in not reviewing the NACHLO to ensure that it is up-to-date and reflects current industry occupations. In 2000, WHD entered into a cooperative agreement with the Department of Health and Human Services' National Institute For Occupational Safety and Health (NIOSH) to review all child labor hazardous occupations orders (HOs). In May 2002, NIOSH issued a report highlighting specific orders that should be revised. In a July 2002 letter, the WHD Administrator acknowledged that WHD is working to implement changes to some of HOs recommended by NIOSH. We believe that an in-depth review is needed to ensure that appropriate industries are covered by the HOs. We recommend that WHD do the following:

- (1) Review and update the listing of Non-Agricultural Child Labor Hazardous Occupations Orders to ensure it meets current safety guidelines.
- (2) Develop a periodic review and rulemaking system that will ensure youth work activities are consistently protected.

Finding B- Management and Investigative Tools Used by WHD Have Not Been Reviewed and Updated

The management and investigative tools used by WHD to identify and substantiate child labor law compliance have not been reviewed and updated. We believe that WHD has been proactive in providing support to field staff regarding technical issues, however, WHD has not comprehensively assessed which innovative local initiatives and investigative tools are best suited to fulfill its mission.

It is essential for WHD to provide better worker protection by coordinating strong enforcement efforts with compliance assistance to help employers comply with the myriad of Federal labor laws.

We recommended WHD do the following:

- (3) Conduct a best practices evaluation of each regional and district office's child labor initiatives to assess their effectiveness.
- (4) Evaluate all regional and district offices' inventories to identify all requisite equipment necessary for WHD to carry out its mission and program goals.
- (5) Pursue developing formal relationships with public and private data collection agencies (such as IRS and Dunn & Bradstreet) to gain access to employer data for WHD mission related actions.

Finding C- Outreach Efforts Undertaken by WHD Have Not Been Consistently Implemented

WHD has not been consistent in the development and execution of outreach programs and beneficial relationships with Federal, state and local employment issuance and regulatory agencies. We found that WHD has not consistently worked with state and local agencies that are responsible for issuing youth employment certifications. A closer relationship with these agencies may reduce the number of illegally employed youth. Additionally, when WHD has entered into relationships through Memorandums of Understanding (MOUs) with other Federal, state and local regulatory agencies, the result has sometimes produced a limited mission-enhancing relationship for WHD.

We recommend that WHD do the following:

- (6) Establish and maintain formal relationships with states' and territories' employment certification issuing agencies to ensure youth and employers have clear information on both Federal and state Child Labor laws and requirements.
- (7) Develop formal and informal relationships with Federal, state and local regulatory agencies that augment and enhance WH mission-related goals.

AGENCY RESPONSE AND OIG CONCLUSION

In response to OIG's official draft report, WHD generally agreed with our findings and recommendations. As a result of corrective actions planned or already taken, we consider all seven recommendations to be resolved. Further, we consider recommendation 7 to be closed. The remaining recommendations will be closed pending OIG's receipt of appropriate documentation of corrective actions as specified in the report. In addition, WHD provided a few technical corrections/suggestions to enhance the accuracy of the report. These adjustments are incorporated in the final report. The Agency's complete response is found in Appendix D.

BACKGROUND

The Wage and Hour Division (WHD) is responsible for protecting 130 million workers by ensuring compliance with labor standards in more than 7 million workplaces. WHD achieves compliance with labor standards through its enforcement program, as well as promoting voluntary compliance through education. The Wage and Hour Division was created with the enactment of the Fair Labor Standards Act (FLSA) of 1938. The Division is part of the Employment Standards Administration (ESA) in the Department of Labor (DOL).

In addition to enforcing Federal minimum wage, overtime pay, recordkeeping, and child labor requirements of FLSA, the WHD also enforces the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), the Employee Polygraph Protection Act, the Family and Medical Leave Act, wage garnishment provisions of the Consumer Credit Protection Act, and a number of employment standards and worker protections as provided in several immigration related statutes. Additionally, WHD administers and enforces the prevailing wage requirements of the Davis Bacon Act and the Service Contract Act, as well as other statutes applicable to federal contracts for construction and for the provision of goods and services.

Domestic Child Labor policies are divided into two industrial areas, non-agricultural and agricultural. More inspections are initiated in the non-agricultural sector (i.e. grocery stores, quick service restaurants, full service restaurants and construction) than in the agricultural sector.

The child labor standards contained in the FLSA are designed to protect the educational opportunities of youth and prohibit employment that could be life threatening or detrimental to their health. These standards place restrictions on work hours for youth under 16 and provide a prohibition on specific agricultural and non-agricultural hazardous occupations that are too dangerous for youth to perform. Many States also have laws that protect child laborers. WHD often coordinates with states to expand child labor investigative actions. This coordination has led to Federal and state child labor regulatory agencies working jointly on cases where Federal and state child labor standards overlap; this coordination is not limited to compliance education.

WHD administers the Domestic Child Labor Program through its National Executive Leadership Team, 5 Regional Offices, and 55 District Offices. The WHD National Executive Leadership Team, comprised of high-level WHD headquarters and regional officials, interprets and develops the educational outreach policies and specific industry enforcement initiatives. Each District Office is responsible for implementing national policies, initiatives and compliance education, conducting independent complaint investigations, and developing specific local initiatives. WH officials stated that 70 percent of WH investigative work is complaint driven, while 30 percent is the result of locally targeted compliance actions and enforcement activities.

The Wage and Hour mission is to promote and achieve compliance with labor standards that protect and enhance the welfare of the Nation's workforce. Ensuring that adequate emphasis continues to be placed on compliance with child labor standards is the challenge faced by WHD, as additional enforcement responsibilities have been undertaken by the agency over the years.

PURPOSE, SCOPE AND METHODOLOGY

PURPOSE

The purpose of this evaluation was to review certain practices, policies and procedures of WHD's Domestic Child Labor (CL) Program and provide WH management with information and recommended actions to further enhance the effectiveness of the program. While we did not examine other programs administered by WHD, we believe that many of our CL findings are applicable to other WH programs.

SCOPE

We evaluated the enforcement and educational outreach efforts of WHD in agricultural and non-agricultural industries. This review focused on the following:

- Industries where CL violations were most likely to occur
- Compliance review procedures
- Formal and informal relationships with other federal, state and local agencies
- Educational/outreach programs and innovations

METHODOLOGY

We utilized both qualitative and quantitative analytical methods to evaluate the Child Labor program.

Qualitative Methods

We conducted site visits to all 5 regional offices and 14 district/area offices to compare the similarities and differences among various offices nationwide. We interviewed Regional Administrators and their Deputies, District Directors and Assistant District Directors, as well as WH field investigators. We reviewed case files from each district office that illustrated the variety of outcomes ranging from violations where no civil monetary penalty was assessed, to cases where substantial penalties were assessed.

Quantitative Methods

We analyzed civil monetary penalties, CL injuries and fatalities, compliance actions in various industries, and time spent by investigators in enforcement and public outreach. Our goal through these analyses was to identify trends and to determine the effectiveness of CL compliance reviews conducted by WHD.

This review was conducted according to the *Quality Standards for Inspections* published by the President's Council on Integrity and Efficiency.

FINDINGS AND RECOMMENDATIONS

FINDING A: WHD Has Not Updated the Non-Agricultural Child Labor Hazardous Occupations Orders

The Non-Agricultural Child Labor Hazardous Occupations Orders (NACLHO) used by WHD to determine the most significant child labor violations must be updated. In the 1999 ESA Strategic Plan, WHD was instructed to review NACLHO. We believe that with the advances made in technology and in industry in the last five years, WHD has been remiss in not reviewing the NACLHO to ensure that it is up-to-date and reflects current industry occupations. In 2000, WHD entered into a cooperative agreement with the Department of Health and Human Services' National Institute For Occupational Safety and Health (NIOSH) to review all child labor hazardous occupations orders (HOs). In May 2002, NIOSH issued a report highlighting specific orders that should be revised. In a July 2002 letter, the WHD Administrator acknowledged that WHD is working to implement changes to some of HOs recommended by NIOSH. We believe that a further in-depth review is needed to ensure that appropriate industries are covered by the HOs.

1. Criteria for Determining Hazardous Occupations Orders

For regulatory purposes, HOs under FLSA are broken down by agricultural and non-agricultural occupations. Under the FLSA, youth must be 18 years old to work in any non-agricultural occupation that the Secretary of Labor finds and orders to be particularly hazardous or detrimental to a youth's health. This minimum age requirement also applies to youth employed by parents or guardians. See Appendix A for the complete listing of NACLHO. The criteria used by WHD to determine whether a child is employed in a hazardous non-agricultural occupation have not been updated in more than 60 years. However, as a result of extensive discussions with agricultural industry officials, WHD did revise the Agricultural Child Labor Hazardous Occupations Orders (ACLHO)¹ in 1971.

2. Results of the NIOSH Recommendations to the U.S. Department of Labor for Changes to Hazardous Orders

The May 2002 NIOSH review of the Child Labor Hazardous Occupations Orders highlighted specific changes that should be made to the existing HOs. NIOSH proposed several types of revisions to the HOs: 1) Prohibited actions must be defined better, 2) Associated legislative provisions must be incorporated into the HOs, 3) Some HOs should be expanded to include associated work, and, 4) In some cases, current exemptions should be removed from certain HOs. Additionally, NIOSH recommended the development of several new HOs to protect youth from hazardous work not adequately addressed in the existing regulations.

¹ The Secretary of Labor has designated occupations where youth under the age of 16 may not be employed at any time. However, exceptions to these hazardous occupations have been applied to youth under 16 years old that are employed by a parent or guardian on a family owned or operated farm. Additionally, certain exceptions exist under regulated conditions for youth who are 14 and 15 years old who are in the following categories: Student-Learners, 4-H Extension Service Training Program, and the Vocational Agricultural Training Program. See Appendices B and C for a complete listing of the Agricultural Child Labor Hazardous Occupations and Descriptions of Youth Agricultural Exceptions by Category.

NIOSH based these proposed HOs on work associated with deaths and severe injuries of youth, work with high fatality rates, and work associated with disabling health conditions. It should be noted that recommended changes in the NIOSH report are limited to areas where WHD has regulatory authority. Additionally, NIOSH emphasized that any proposed revision or addition should be coupled with appropriate public awareness efforts.

RECOMMENDATIONS

Upon a review of the NIOSH report, WHD stated that they are working to implement some of the recommended changes to the Hazardous Orders. However, incorporation of these recommendations is only a preliminary step. The development of a periodic review and rulemaking mechanism to ensure that youth work activities are consistently protected as new industries and occupations are evolving should be implemented.

We recommend that WHD:

- (1) Update the listing of Non-Agricultural Child Labor Hazardous Occupations Orders to ensure it meets current safety guidelines. WHD should review all new and updated hazardous equipment reviews conducted by the Occupational Safety and Health Administration, the Department of Health and Human Services, and National Institutes of Occupational Safety and Health, to ensure that industry regulations are considered. Furthermore, WHD should provide OIG with a written response 120 days after the final issuance of this evaluation, specifying which specific NIOSH recommendations will be added to the Hazardous Orders.
- (2) Develop a periodic review and rulemaking system that will ensure youth work activities are consistently protected.

WHD's Response to Recommendation 1

*“...WHD commissioned the recently issued report from the National Institute for Occupational Safety and Health (NIOSH) for a comprehensive compilation of the data on youth workplace fatalities and injuries. This data will provide the foundation for the agency's deliberations on subsequent regulatory action, additional research, compliance assistance or other compliance strategies. The report includes data from a range of sources including OSHA's Survey of Occupational Injuries and Illnesses. For this reason, we do believe additional review of OSHA data is useful at this time. ...WHD is already working to implement some of the changes to the Hazardous Orders (HOs) recommended by the Report. WHD will update the ban found in HO 1 against minors working with explosive materials. WHD is working to publish a final rule amending HO 2 to implement the **Teen Drive for Employment Act** and HO 12 to implement the **Compactors and Balers Safety Standards Modernization Act**. WHD has also proposed revisions to HO 16, regarding work on roofs, as recommended by NIOSH.”*

“In the coming months, WHD will be conducting stakeholder meetings seeking comments for State labor agencies, employers, unions, researchers and child advocacy groups regarding the NIOSH recommendations. These comments will assist WHD in developing a regulatory plan to update the HOs. It is important to note, however, that all NIOSH recommendations may not be appropriate for regulatory action. Moreover, the deliberative nature of rulemaking requires consideration of a number of factors and cannot be undertaken based

solely on the recommendations of a single entity. Under these circumstances, WHD and the Department may not be in a position to fully evaluate the recommendation and determine an appropriate course of action within 120 days of issuance of your final report. However, WHD will, at that time, provide notice of any proposed regulatory activities related to specific NIOSH recommendations if such proposals have been reviewed and cleared within the Department.”

OIG’s Conclusion

We consider recommendation 1 to be resolved. WHD’s proposed corrective actions adequately address the need to change current safety guidelines within the Non-Agricultural Child Labor Hazardous Occupations Orders. This recommendation will be closed, pending receipt by this office of status reports/updates of proposed regulatory activities related to specific NIOSH recommendations that have been reviewed and cleared within the Department. These updates should be provided by **January 17, 2003** and **July 18, 2003**.

WHD’s Response to Recommendation 2

“Occupational restrictions for youth employment must be based on a thorough analysis of the available scientific data and an evaluation of other economic and social factors. The analysis of research data and review of relevant scientific literature requires expertise in scientific and statistical methodology not currently available to WHD. Depending on the status of the agency’s responses to the NIOSH recommendations, WHD will request additional funding in either fiscal year 2005 or 2006 to establish a comprehensive periodic - and objective - evaluation of data on youth employment and injuries, and other pertinent occupational and industry information. If the Department is successful in obtaining additional funding, the resulting analysis will be considered in relation to other factors in determining the most effective approach, including rulemaking, for ensuring that youth workers are safely employed.”

OIG’s Conclusion

While we consider this recommendation to be resolved, we feel that there are actions that WHD can take prior to addressing specific scientific and statistical resource needs. We will take steps to close this recommendation pending receipt by this office of status reports/updates of planned changes to the Hazardous Occupations Orders, as well as the status of actions to develop a periodic review and rulemaking system. These updates should be provided by **January 17, 2003** and **July 18, 2003**.

FINDING B: Management and Investigative Tools Used by WHD Have Not Been Reviewed and Updated

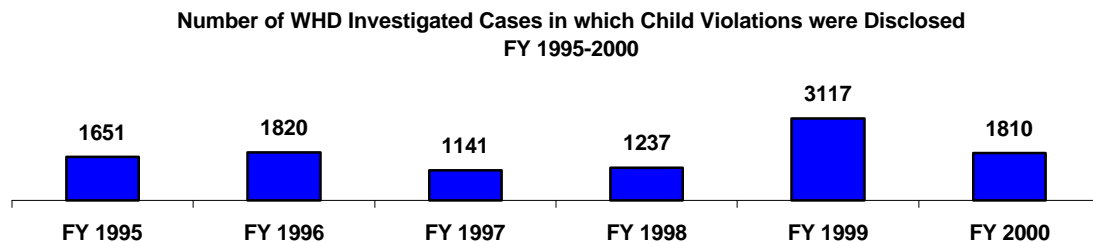
The management and investigative tools used by WHD to identify and substantiate child labor law compliance have not been reviewed and updated. We believe that WHD has been proactive in providing support to field staff regarding technical issues, however, WHD has not comprehensively assessed which innovative local initiatives and investigative tools are best suited to fulfill its mission.

One of the Secretary's top goals is to better protect workers by coordinating strong enforcement efforts with compliance assistance efforts to help employers comply with the myriad of labor laws. Since the number of workplaces in the country far exceed Wage and Hour investigator resources to inspect all of them, any methods WHD can utilize to improve investigation of child labor violations and facilitate employer compliance with child labor standards should be pursued.

1. Examining Best Practices of Individual District Offices

WHD conducts two types of Child Labor investigations. They are 1) individual complaints and 2) targeted investigations - this includes compliance and recidivism reviews. Between FY 1995 and 2000, WHD closed 10,852 child labor cases² - see Figure 1 below.

Figure 1.

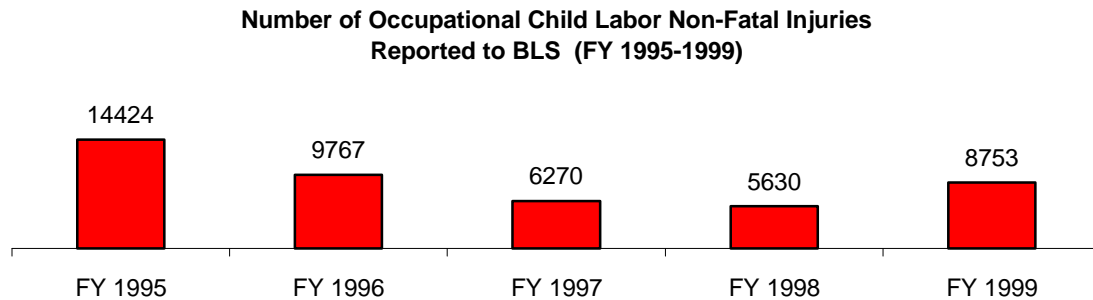


In addition, we compared WHD's data to the number of occupational, non-fatal child labor accidents reported by the Bureau of Labor Statistics (BLS). We found that BLS reported 44, 844 youth injuries during this same period³ - see Figure 2 below.

² The high number of closed investigations for FY 1999 is a result of Wage and Hour transferring information between data storage systems. This data transfer resulted in FY 1998 closed cases being included in FY 1999 case information.

³ Employers and state labor regulatory agencies provide BLS with the Non-Fatal Child Labor accident data on a voluntary basis. This data is protected under a pledge of confidentiality. The names of employers are not provided to DOL enforcement agencies. Additionally, it should be noted that BLS data is incongruent with WHD enforcement data in three areas. 1) BLS data sometime includes 18 and 19 year olds. The FLSA child labor provisions do not regulate youth employment in this age group. 2) BLS accident data reports incidents in establishments that are not covered under FLSA. 3) BLS data reports accidents that do not necessarily correlate to youth who are illegally employed.

Figure 2.



WH officials advised us that several offices were implementing proactive and innovative programs that have resulted in reducing child labor violations. We visited several suggested offices and found this information to be correct. For example, the WH district office in Springfield, Illinois has developed a program that allows employers to self-assess for child labor compliance. Other offices we visited, such as Chicago, Sacramento, San Antonio, and San Diego, also had innovative programs that facilitated high levels of compliance. If a best practices study was conducted of the results that these local initiatives have had, a number of these approaches could be integrated into WH's national agenda. Additionally, we believe that implementing a review of agency best practices augments the spirit of the Secretary's statement to the National Federation of Independent Business on June 14, 2002. She stated, "The idea that government ought to provide business with the knowledge and tools to help people comply with its regulations...should be a top priority of the Department of Labor...whose time has come." These best practices are efforts by WH offices to provide employers with innovative tools that educate and enforce DOL labor regulations.

2. Necessary Investigative Equipment

During the course of our evaluation, we discovered two areas where WH field staff expressed concern that they did not have the appropriate tools to effectively conduct, document and substantiate child labor violations. First, we visited several offices that did not have sufficient recording equipment to effectively document and substantiate child labor violations. For example, while interviewing personnel in several offices, both directors and investigators reported that they have had to use their own personal video equipment and cameras to document child labor violations. The District office had not acquired the appropriate equipment for use by the staff. It was further noted that in agricultural areas, investigators frequently need equipment that can document activities from much greater distances. Investigators stated that there were times when they were precluded from effectively recording certain observed instances of apparent child labor violations because the office's equipment was not capable of recording from long distances. During subsequent meetings with WH management, we were informed that regional and district offices were responsible for equipping staff with all requisite inspection tools.

Secondly, several WH regional and district offices reported to us that they did not have access to the same targeting data as WH headquarters. The use of Dunn & Bradstreet merchant data (via the University of Tennessee) to randomly select firms for investigations is a key component in WH headquarters' methodology for targeting supermarkets and the quick service and full service restaurant industries. WH field management informed us that they used either WH staff experience or such resources as the public telephone book to select employers for local enforcement initiatives. Notwithstanding the fact that the WHD National

Leadership Executive Team asserts that WH field management has access to Dunn & Bradstreet data, we believe that WH field management has not been properly advised on the availability of Dunn & Bradstreet data. In addition to the Dunn & Bradstreet data, WH field management and staff noted that Internal Revenue Service (IRS) has developed a database that stores employer information. WH field staff thought that access to this data would be helpful for them to target more effectively. We discussed with the Department of Treasury, Office of Inspector General for Tax Administration how WHD might obtain this information. We were told that WHD may only request non-sensitive data (i.e. employer name and address), because 26 U.S.C. §6103⁴ precludes IRS from sharing specific taxpayer information. We contend that even non-sensitive information may be helpful in WH's development of an employer information database.

RECOMMENDATIONS

After meeting with members of the WHD National Leadership Executive Team, we concluded that: 1) WH offices should decide which tools are needed in their respective locations, however, WH management should provide guidance regarding the minimal equipment essential to achieve its mission and 2) WH regional and district offices should have access to the same targeting data as WH headquarters. WH management can resolve these issues in three steps. First, WHD should survey and evaluate existing inventories and reach a consensus on those basic tools and related training needed by staff to effectively document and substantiate child labor violations, as well as provide management with real-time reports of imminent danger. Secondly, WH headquarters should inform district offices of all available targeting data resources. Finally, WHD should develop formal relationships with public and private data collection agencies (such as IRS and Dunn & Bradstreet) to gain access to employer data for WH mission related actions.

We recommend that WHD:

- (3) Conduct a best practices evaluation of each regional and district office's child labor initiatives to assess their effectiveness. This analysis will assist WHD in identifying whether their enforcement and outreach actions are effectively reaching employers. Additionally, several best practices may be applied nationally and/or to other WH regions.
- (4) Evaluate all regional and district offices' inventories to identify all requisite equipment necessary for WHD to carry out its mission and program goals. Once this inventory assessment is completed, offices should maintain the minimum level of equipment and related appropriate training for staff.
- (5) Pursue developing a formal relationship with public and private data collection agencies (such as IRS and Dunn & Bradstreet) to gain access to employer data for WH mission related actions.

⁴ The complete legal citation of this code is 26 U.S.C. § 6103, Subpart F, Chapter 61, Subchapter B, Section 6103.

WHD's Response to Recommendation 3

"We are pleased that the draft report notes the innovative and proactive programs of respective regional and district offices and agree that those with a positive impact on child labor compliance should be shared throughout the organization. WHD's fiscal year 2003 Annual Performance Plan challenges the agency to 'maintain or increase child labor compliance, with a focus on industries with the highest youth employment and the greatest risk of serious injury.' Under the plan, each Region and District Office will develop locally targeted initiatives in the grocery store, full-service restaurant, and quick-service restaurant industries. The agency's regional administrators will be directed to provide the status and results of the various child labor initiatives - including a detailed analysis and recommendation of effectiveness - on a quarterly basis throughout the upcoming fiscal year. These reports will be provided to the WHD's Executive Leadership Team and the agency's national child labor initiative team and used to develop goals, evaluate strategies and recommend expanding initiatives for the agency's fiscal year 2004 performance plan. Through this process, we believe we can most effectively evaluate, share and replicate 'best practices' in the child labor program."

OIG's Conclusion

We consider this recommendation to be resolved. It will be closed upon receipt by this office of a copy of the agency's Fiscal Year 2004 performance plan, highlighting which local and regional initiatives were incorporated into national WH policies. This plan should be provided no later than **July 18, 2003**.

WHD's Response to Recommendation 4

"WHD recognizes that various investigative situations may require tools not traditionally used during the normal course of an investigation. WHD is willing to accommodate those requirements as needed and resources permit. Regional and district offices currently have the responsibility and means (through their discretionary budget funds) to properly equip investigators to perform the job. The WHD Executive Leadership Team will evaluate the agency's tools and equipment needs at an upcoming meeting of the Leadership Team."

OIG's Conclusion

We consider recommendation 4 to be resolved. It will be closed upon receipt of the results of WHD's evaluation of the minimum level of investigative equipment required by WH staff. The information should be submitted to this office by **January 17, 2003**.

WHD's Response to Recommendation 5

"WHD is in the process of renewing its contract with the University of Tennessee, which employs the Dunn & Bradstreet data for statistical employer sampling. To the extent that district offices are unaware of the availability of the resource, WHD will remind all offices of this resource and procedures for utilizing it once the contract is finalized."

"With respect to the data for the Internal Revenue Service (IRS), WHD understands that the IRS will not release associated industry codes for employers. Since the agency's targeted

enforcement program is oriented towards low-wage industries - and for child labor, industries that employ large numbers of young workers and industries in which young workers may be injured - the IRS database would not be of use to WHD in selecting employers for investigation. If IRS were willing to provide a database of employers by industry, WHD would agree that the data would be useful and seek access to it. If, in future, however, WHD has need of a large employer database for direct mailings or other direct access to employers that is not industry specific, we will certainly take into account the availability of the IRS information. For this reason, we appreciate the recommendation.”

OIG’s Conclusion

We consider this recommendation to be resolved. It will be closed pending receipt by this office of the following information:

- Please provide a copy of WHD’s memorandum to district offices regarding Dunn & Bradstreet data by **January 17, 2003**.
- To resolve the issue of what data/information IRS can share with WHD for mission related activities, please provide a copy of both the formal request and IRS’ response regarding WHD’s employer data requirements. This information should be provided by **July 18, 2003**.

FINDING C: Outreach Efforts Undertaken by WHD Have Not Been Consistently Implemented

WHD has not been consistent in the development and execution of outreach programs and beneficial relationships with Federal, state and local employment issuance and regulatory agencies. We found that WHD has not consistently worked with state and local agencies that are responsible for issuing youth employment certifications. A closer relationship with these agencies may reduce the number of illegally employed youth. Additionally, when WHD has entered into relationships through Memorandums of Understanding (MOUs) with other Federal, state and local regulatory agencies, the result has sometimes produced a limited mission-enhancing relationship for WHD.

1. Issuance of Employment Certifications

While reviewing state and territorial policies associated with the issuance of employment certifications to youth that are eligible to work, we identified differences in the process of certification issuance. The following table describes each of the issuance processes:

Table 1: Employment Certificate Issuance by State and Territory

Employment Certificate Issuing Entities	Number of States and Territories
Employment Certifications issued by State Labor Departments	14
Employment Certifications issued by Schools Districts	25
Employment Certifications issued by State Labor Departments and School Districts	4
States/Territories with no issuance of Employment Certifications	11

During our review, we found that 7 of the 19 offices we visited consulted with the specified issuing agency concerning basic procedures used to identify illegal youth employment. Since each state and territory has a prescribed procedure for certification issuance, WH policies should reflect these procedures in order to facilitate working relationships with the issuing agency. These relationships, if properly developed and implemented, would create a primary contact for youth and employers who may be unaware of Federal, state and local CL laws. They would also allow for the development of clearly stated information on Federal and state CL laws and requirements.

2. Development of Memorandums of Understanding

WHD Field Operations Handbook, §52g10 and §52g11, provides regional and district offices with guidelines for building effective relationships with state and local agencies assisting with the core mission of the agency. WH management has made it standard practice that MOUs should augment and enhance child labor compliance. During our evaluation, WHD provided a list of 46 established agreements with 28 states and territories highlighting their joint efforts. We determined that 63% of these agreements were mutually beneficial, while the remaining 37% were limited. This determination was made based on our review of the scope of each agreement. It should be noted that the limited agreements confined

enforcement efforts to specific investigations and inquires. WHD should consider pursuing relationships with State and local regulatory agencies that encompass all aspects of WH mission related requirements.

A specific example of a narrowly scoped agricultural MOU is the 1986 agreement with the *Pennsylvania Department of Labor and Industry*. This agreement permits the coordination of investigations of farm labor contractors. Activities include conducting joint education programs and seminars explaining the State Labor Farm Act and MSPA to farmers and farm workers; providing cross training to investigative personnel; and, meeting occasionally to discuss mutual problems, statutory changes and other concerns.

We found this agreement exclusively served WH compliance needs for MSPA. However, we believe the agency should consider whether this agreement could be expanded to accommodate other core WH needs.

We also determined through interviews with WH officials that many MOUs were developed by district level management and were based on working arrangements between specific district management personnel and state and/or local labor regulatory agency management officials. As a result, many of these agreements became obsolete once the management official of either entity changed.

3. Compliance Assistance Efforts

Our review did confirm that WHD has taken steps to provide compliance assistance for employers, teens, parents and educators. In particular, the FLSA child labor provisions have been linked to the DOL website under the section *Major Laws and Regulations Enforced by the Department of Labor*, and on DOL's *YouthRules!* website. Further, WHD has produced such informational items as posters, handouts, bookmarks, etc. All of these efforts are consistent with the Secretary of Labor's desire for agencies to increase compliance assistance to the public.

RECOMMENDATIONS

The Secretary of Labor also continues to encourage DOL agencies to form mutually advantageous joint ventures because workers are better protected when employers, employees and government work together. WHD should continue to encourage the establishment of these agreements that enhance the mission of the agency, consistent with the new Departmental rules governing MOUs.

We recommend that WHD:

- (6) Establish and maintain formal relationships with states' and territories' employment certification issuing agencies to ensure youth and employers have clear information on both Federal and state Child Labor laws and requirements.
- (7) Develop formal and informal relationships with Federal, state and local regulatory agencies that augment and enhance WH mission-related goals. These relationships should include but not be limited to: a) cross-training of staff concerning child labor compliance activities; b) development of clear guidelines for joint enforcement

activities; c) information sharing; d) roundtable discussions of effective outreach strategies; e) relationship sunset dates; and f) initiative effectiveness evaluations.

WHD's Response to Recommendation 6

*“All WHD district offices will soon be reaching out to their State’s work permit and issuing officers or school principals informing them of the Department’s new public awareness campaign and website, entitled **YouthRules!**. As part of this outreach, WHD district offices will offer to work with the permit-issuing official to ensure that employers and others have knowledge of the Federal child labor requirements.”*

OIG's Conclusion

We consider recommendation 6 to be resolved. It will be closed upon receipt by this office of a listing of appropriate state employment certification issuing officials who were contacted. A copy of this listing should be provided by **January 17, 2003**.

WHD's Response to Recommendation 7

“In August 2002, WHD met with representatives from the Interstate Labor Standards Association (ILSA), an association of State labor officials, to revitalize past efforts to improve cooperative state and federal efforts towards ensuring safe and appropriate work experiences for young workers. WHD has likewise invited the National Association of Government Labor Officials, OSHA and NIOSH to participate in this joint federal-state partnership. Through this effort, we will encourage continued coordination and communication between WHD field offices and the respective state labor officials, including the specific elements noted in your recommendation.”

OIG's Conclusion

We concur with the corrective actions taken by WHD and consider this recommendation to be both resolved and closed.

APPENDIX A

**Non-Agricultural Child Labor
Hazardous Occupations Orders**

Non-Agricultural Child Labor Hazardous Occupations Orders

1. Manufacturing and storing explosives.
2. Motor-vehicle driving and outside helper on a motor vehicle.
3. Coal mining.
4. Logging and sawmilling.
5. Power-driven wood-working machines. *
6. Exposure to radioactive substances.
7. Power-driven hoisting apparatus, including forklifts.
8. Power-driven metal-forming, punching and shearing machines. *
9. Mining, other than coal mining.
10. Operating power-driven meat processing equipment, including meat slicers and other food slicers, in retail establishments (such as grocery stores, restaurants, kitchens and delis), wholesale establishments, and most occupations in meat slaughtering, packing, processing, or rendering. *
11. Power-driven bakery machines including vertical dough or batter mixers.
12. Power-driven paper-product machines including scrap paper balers and cardboard box compactors. *
13. Manufacturing bricks, tile, and kindred products.
14. Power-driven circular saws, bandsaws, and guillotine shears.
15. Wrecking, demolition, and shipbreaking operation.
16. Roofing Operations. *
17. Excavation Operations. *

* These HO's provide limited exemptions for 16 and 17 year olds who are bona-fide student learners and apprentices. All of these Occupations are listed in Subpart E of Part 570 of Title 29 of the Code of Federal Regulations.

APPENDIX B

**Agricultural Child Labor
Hazardous Occupations Orders**

Agricultural Child Labor Hazardous Occupations Orders

1. Operating a tractor of over 20 PTO horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor.
2. Operating or assisting to operate (including starting, stopping, adjusting, feeding or any other activity involving physical contact associated with the operation) any of the following machines:
 - a. Corn picker, cotton picker, grain combine, bay mower, forage harvester, hay baler, potato digger, or mobile pea viner;
 - b. Feed grinder, crop dryer, forage blower, auger conveyor, or the unloading mechanism of a nongravity-type self-loading wagon or trailer; or
 - c. Power post-hole digger, power post driver, or nonwalking type rotary tiller.
3. Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:
 - a. Trencher or earthmoving equipment;
 - b. Fork lift;
 - c. Potato combine; or
 - d. Power-driven circular, band, or chain saw.
4. Working on a farm in a yard, pen or stall occupied by a:
 - a. Bull, boar, or stud horse maintained for breeding purposes; or
 - b. Sow with suckling pigs, or cow with newborn calf (with umbilical cord present).
5. Felling, bucking, skidding, loading or unloading timber with butt diameter of more than 6 inches.
6. Working from a ladder or scaffold (painting, repairing or building structures, pruning trees, picking fruit, etc.) at a height of over 20 feet.
7. Driving a bus, truck, or automobile when transporting passengers, or riding on a tractor as a passenger or helper.

CONTINUED ON NEXT PAGE

Agricultural Child Labor Hazardous Occupations Orders
(continued)

8. Working inside:
 - a. A fruit, forage, or grain storage designed to retain an oxygen deficient or toxic atmosphere;
 - b. An upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position;
 - c. A manure pit; or
 - d. A horizontal silo while operating a tractor for packing purposes.
9. Handling or applying (including cleaning or decontaminating equipment, disposal or return of empty containers, or serving as a flagman for aircraft applying) agricultural chemicals classified under the Federal Insecticide, Fungicide and Rodenticide Act (as amended by Federal Environmental Pesticide Control Act of 1972, 7 U.S.C. 136 et seq.) as Toxicity Category I, identified by the word "Danger" and/or "Poison" with skull and crossbones; or Toxicity Category II, identified by the word "Warning" on the label;
10. Handling or using a blasting agent, including but not limited to, dynamite, black powder, sensitized ammonium nitrate, blasting caps and primer cord; or
11. Transporting, transferring or applying anhydrous ammonia.

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APPENDIX C

**Descriptions of Youth
Agricultural Exceptions by
Category**

Descriptions of Youth Agricultural Exceptions by Category

Student-Learners

Student-learners in a bona-fide, vocational agricultural program may work in the occupations listed in items 1 through 6 of the hazardous occupations order. For student-learners a work agreement must exist that states the following conditions:

- Work is incidental to training, intermittent, or for short periods of time;
- Work is under close supervision of a qualified person;
- Safety instructions are given by the school and correlate with on-the-job training;
- And a schedule of organized and progressive work processes has been prepared.

Additionally, the written agreement must contain the name of the student-learner, and be signed by the employer and the school authority; each specified individual must keep copies of the agreement.

4-H Extension Service Training Program

Minors 14 and 15 years old who hold certificates of completion of either the tractor operation or machine operation program may work in the occupations for which they have been trained. Occupations for which they have valid certificates are covered by items 1 and 2 of the hazardous occupations order. Farmers employing minors who have completed this program must keep a copy of the certificates on file with the minor's records.

Vocational Agricultural Training Program

Minors 14 and 15 years old who hold certificates for either tractor operation or machine operation program of the U.S. Office of Education Vocational Agricultural Training Program may work in the occupations for which they have been trained. Occupations for which these certificates are valid are covered by items 1 and 2 of the hazardous occupations order. Farmers employing minors who have completed this program must keep a copy of the certificate on file with the minor's records. *Information on this program is available from vocational agricultural teachers.*

WHD revised the following listing of agricultural HOs in 1971. This listing may not reflect changes in policies or reorganizations of Federal and/or State agencies that are equally responsible for local implementation of these HOs. See Appendix 2 for a complete listing of Agricultural Child Labor Hazardous Occupations.

APPENDIX D

Agency's Response



Reply to the Attention of:

SEP 24 2002

MEMORANDUM FOR SYLVIA T. HOROWITZ
Acting Deputy Inspector General
Office of Communication, Inspection and Evaluations

FROM:

A handwritten signature in black ink, appearing to read "TIMOTHY D. McCUTCHEN".

TIMOTHY D. McCUTCHEN
Administrator

SUBJECT:

Evaluation of the Domestic Child Labor Program
Draft Report No. 2E-04-420-0001

Thank you for the opportunity to review and comment on the draft report of the practices, policies, and procedures of the Employment Standards Administration Wage and Hour Division (WHD) domestic child labor program. Generally, we agree in principle with your draft recommendations. Our specific comments, including proposed actions, are discussed below:

Non-Agricultural Child Labor Hazardous Occupations Orders

Recommendation 1: Update the listing of Non-Agricultural Child Labor Hazardous Occupations Orders to ensure it meets current safety guidelines. WHD should review all new and updated hazardous equipment reviews conducted by the Occupational Safety and Health Administration, the Department of Health and Human Services, and National Institutes of Occupational Safety and Health, to ensure that industry regulations are considered. Furthermore, WHD should provide OIG with a written response 120 days after the final issuance of this evaluation, specifying which specific NIOSH recommendations will be added to the Hazardous Orders. (Page 4 of the draft report)

As page 3 of your report notes, WHD commissioned the recently issued report from the National Institute for Occupational Safety and Health (NIOSH) for a comprehensive compilation of the data on youth workplace fatalities and injuries. This data will provide the foundation for the agency's deliberations on subsequent regulatory action, additional research, compliance assistance or other compliance strategies. The report includes data from a range of sources including OSHA's Survey of Occupational Injuries and Illnesses. For this reason, we do believe additional review of OSHA data is useful at this time.

As we have indicated in our response to NIOSH, WHD is already working to implement some of the changes to the Hazardous Orders (HOs) recommended by the Report. WHD will update the ban found in HO 1 against minors working with explosive materials. WHD is working to publish a final rule amending HO 2 to implement the *Teen Drive for Employment Act* and HO 12 to implement the *Compactors and Balers Safety Standards Modernization Act*. WHD has also proposed revisions to HO 16, regarding work on roofs, as recommended by NIOSH.

In the coming months, WHD will be conducting stakeholder meetings seeking comments from State labor agencies, employers, unions, researchers and child advocacy groups regarding the NIOSH recommendations. These comments will assist WHD in developing a regulatory plan to update the HOs. It is important to note, however, that all NIOSH recommendations may not be appropriate for regulatory action. Moreover, the deliberative nature of rulemaking requires consideration of a number of factors and cannot be undertaken based solely on the recommendations of a single entity. Under these circumstances, WHD and the Department may not be in a position to fully evaluate the recommendation and determine an appropriate course of action within 120 days of issuance of your final report. However, WHD will, at that time, provide notice of any proposed regulatory activities related to specific NIOSH recommendations if such proposals have been reviewed and cleared within the Department.

Recommendation 2: Develop a periodic review and rulemaking system that will ensure youth work activities are consistently protected. (Page 4 of the draft report)

Occupational restrictions for youth employment must be based on a thorough analysis of the available scientific data and an evaluation of other economic and social factors. The analysis of research data and review of relevant scientific literature requires expertise in scientific and statistical methodology not currently available to WHD. Depending on the status of the agency's responses to the NIOSH recommendations, WHD will request additional funding in either fiscal year 2005 or 2006 to establish a comprehensive periodic – and objective – evaluation of data on youth employment and injuries, and other pertinent occupational and industry information. If the Department is successful in obtaining additional funding, the resulting analysis will be considered in relation to other factors in determining the most effective approach, including rulemaking, for ensuring that young workers are safely employed.

Management and Investigative Tools

Recommendation 3: Conduct a best practice evaluation of each regional and district office's child labor initiatives to assess their effectiveness. This analysis will assist WHD in identifying whether their enforcement and other actions are effectively reaching employers. Additionally, several best practices may be applied nationally and/or to other WHD regions. (Page 7 of the draft report)

We are pleased that the draft report notes the innovative and proactive programs of the respective regional and district offices and agree that those with a positive impact on child labor compliance should be shared throughout the organization. (Page 6 of the draft report) WHD's fiscal year 2003 Annual Performance Plan challenges the agency to "maintain or increase child labor compliance, with a focus on industries with the highest youth employment and the greatest risk of serious injury." Under the plan, each Region and District Office will develop locally targeted initiatives in the grocery store, full-service restaurant, and quick-service restaurant industries. The agency's regional administrators will be directed to provide the status and results of the various child labor initiatives – including a detailed analysis and recommendation of effectiveness – on a quarterly basis throughout the upcoming fiscal year. These reports will be provided to the WHD's Executive Leadership Team and the agency's national child labor initiative team and used to develop goals, evaluate strategies and recommend expanding initiatives for the agency's fiscal year 2004 performance plan. Through this process, we believe we can most effectively evaluate, share and replicate "best practices" in the child labor program.

Recommendation 4: Evaluate all regional and district offices' inventories to identify all requisite equipment necessary for WHD to carry out its mission and program goals. Once this inventory assessment is completed, offices should maintain the minimum level of equipment and related appropriate training for staff.

WHD recognizes that various investigative situations may require tools not traditionally used during the normal course of an investigation. WHD is willing to accommodate those requirements as needed and resources permit. Regional and district offices currently have the responsibility and means (through their discretionary budget funds) to properly equip investigators to perform the job. The WHD Executive Leadership Team will evaluate the agency's tools and equipment needs at an upcoming meeting of the Leadership Team.

Recommendation 5: Pursue developing a formal relationship with public and private data collection agencies (such as IRS and Dunn and Bradstreet) to gain access to employer data for WHD mission related actions.

WHD is in the process of renewing its contract with the University of Tennessee, which employs the Dunn and Bradstreet data for statistical employer sampling. To the extent that district offices are unaware of the availability of the resource, WHD will remind all offices of this resource and procedures for utilizing it once the contract is finalized.

With respect to the data from the Internal Revenue Service (IRS), WHD understands that the IRS will not release associated industry codes for employers. Since the agency's targeted enforcement program is oriented towards low-wage industries – and for child labor, industries that employ large numbers of young workers and industries in which young workers may be injured – the IRS database would not be of use to WHD in selecting employers for investigation. If IRS were willing to provide a database of employers by industry, WHD would agree that the data would be useful and seek access

to it. If, in the future, however, WHD has need of a large employer database for direct mailings or other direct access to employers that is not industry specific, we will certainly take into account the availability of the IRS information. For this reason, we appreciate the recommendation.

Outreach Efforts Undertaken by WHD

Recommendation 6: Establish and maintain formal relationships with states' and territories' employment certification issuing agencies to ensure youth and employers have clear information on both Federal and state Child Labor laws and requirements.

All WHD district offices will soon be reaching out to their State's work permit issuing officers or school principals informing them of the Department's new public awareness campaign and website, entitled *YouthRules!*. As part of this outreach, WHD district offices will offer to work with the permit-issuing official to ensure that employers and others have knowledge of the Federal child labor requirements.

Recommendation 7: Develop formal and informal relationships with Federal, state and local regulatory agencies that augment and enhance WHD mission-related goals. These relationships should include but not be limited to: a) cross-training of staff concerning child labor compliance activities; b) development of clear guidelines for joint enforcement activities; c) information sharing; d) roundtable discussions of effective outreach strategies; e) relationship sunset dates; and f) initiatives effectiveness evaluations.

In August 2002, WHD met with representatives from the Interstate Labor Standards Association (ILSA), an association of State labor officials, to revitalize past efforts to improve cooperative state and federal efforts towards ensuring safe and appropriate work experiences for young workers. WHD has likewise invited the National Association of Government Labor Officials, OSHA and NIOSH to participate in this joint federal-state partnership. Through this effort, we will encourage continued coordination and communication between WHD field offices and the respective state labor officials, including the specific elements noted in your recommendation.

Thank you again, for this useful evaluation and for the opportunity to comment. Attached is an annotated copy of the report with a few technical corrections and suggestions.

Attachment