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# ***Activity and Regulation of Farm Labor Contractors***

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## ABSTRACT

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Farm labor contractors (FLCs) are intermediaries who earn money matching seasonal workers and seasonal jobs in agriculture. They have a generally unsavory reputation: A century of experience has yielded a record containing many instances of contractors abusing vulnerable workers. The federal government began to regulate the activities of FLCs in 1965; one of the federal regulations prohibited FLCs from hiring illegal or undocumented workers.

In spite of the tightening of federal regulation of FLCs in 1974 and again in 1982 in an attempt to reduce their importance in the farm labor market, FLC activities have been expanding. The number of farms using FLCs has increased, the number of farmworkers employed by FLCs has risen, and the FLC wage bill grew faster than the total farm wage bill. FLC employment is concentrated by size of farm, commodity, and region. The most important users of FLCs are large fruit and vegetable farms in California.

Farm labor contractors appear to employ at least as many undocumented workers as do growers who hire farmworkers directly, suggesting that 20 to 30 percent of all FLC workers and 50 to 100 percent of the workers in some harvest crews are undocumented. FLCs employ undocumented workers despite potential fines of \$1,000 per worker because most FLCs are not convinced that DOL will enforce its regulations. For example, DOL located only 1,100 undocumented workers employed by FLCs in 1983, a year in which the Immigration and Naturalization Service (INS) apprehended 1.2 million illegal aliens.<sup>1</sup> And during the early 1980s, only 173 of the 15,000 to 18,000 registered

FLCs were actually fined for hiring undocumented workers.

DOL enforcement of the federal prohibition against FLCs' hiring undocumented workers has been ineffective because of administrative flaws:

- The fact that DOL must rely on INS to identify undocumented workers hampers DOL enforcement strategies.
- DOL can only enforce civil penalties against FLC violators; criminal penalties that might change FLC behavior are enforced by the U.S. Attorney General's office and are low priority items of the regional U.S. attorneys.

But enforcement is also ineffective because economic incentives are strong:

- The availability of undocumented workers encourages a proliferation of FLCs, reducing FLC margins, pushing more FLCs to hire undocumented workers, and making enforcement more difficult.

A general employer sanctions law is likely to encourage employers to become more nimble and flexible in adjusting their practices to the law or evading the law entirely. Such employer flexibility among FLCs is reflected in the alleged proliferation of small and unregistered FLCs and the tendency of many farms to substitute FLC crews for workers hired directly. The FLC experience suggests that enforcement of an employer sanctions law will be very difficult, and that inadequate enforcement will encourage subcontracting and other forms of flexible employment.

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## PREFACE

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Immigration reform is one of the most contentious issues facing the United States. After years of study, a Simpson-Mazzoli Immigration Reform Bill was debated in Congress in 1982, 1983, 1984, and 1985. Congressional failure to enact reform legislation despite widespread agreement that illegal immigration should be curtailed reflects the emotions and the lack of reliable data and analysis on the effects of proposed immigration reforms.

The major enforcement feature of the immigration reform proposal is a system of employer sanctions or

fines on employers who knowingly hire illegal aliens. Proponents argue that sanctions are the only effective way to close the labor market door which attracts illegal aliens to the United States, while opponents believe that sanctions are likely to be ineffective at best and at worst lead to employer discrimination against Hispanics. The evidence from other nations and from states which enacted employer sanctions laws is ambiguous, further obscuring the debate.

Curiously absent from the congressional debate has been the experience under the only federal employer

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<sup>1</sup>Both agencies double-count individuals who are caught several times.



sanctions law: the 20 year federal prohibition against farm labor contractors' (FLCs) hiring illegal aliens. Proponents and opponents of sanctions apparently avoided the FLC experience: proponents for fear that sanctions would be shown ineffective; opponents because the dominance of Hispanic farmworkers seemingly belies discrimination.

This study was undertaken to fill the important void on the effectiveness of a federal employer sanctions law in an industry acknowledged to hire undocumented

workers. We are grateful to the Rosenberg Foundation, the Sloan Foundation, the German Marshall Fund, the Giannini Foundation, and to the UCD Public Service Research Program for their support of this project. Richard Mines and Ricardo Amon provided valuable insights about how farm labor contractors operate in California, and John Fitzpatrick and Spencer Fields assembled the unpublished federal and state enforcement and employment data in the report. The conclusions are our own.

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## HISTORY OF FARM LABOR CONTRACTING

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The contract labor system—one of the few organizing influences in a disorganized market—brings together workers and jobs in an otherwise chaotic market. The farm labor contracting system in California was last thoroughly studied in the early 1950s by Lloyd H. Fisher. While the details have changed, the general system that he described remains much the same today. The agricultural labor contractor is a specialized intermediary who performs functions normally undertaken by one or the other of the two parties he brings together. As the farmer becomes “increasingly a pure entrepreneur” stripping away the conventional duties of recruiting workers, assigning tasks and supervising, the labor contractor assumes these obligations for the employer. When workers are unable to provide themselves with housing, transportation and food, the contractor provides them (Fisher, p. 75).

Today, most workers hired by farm labor contractors (FLCs) in California are nonmigrants who provide for their own basic needs. However, some still rely on the contractor to supply housing, transportation, and food. Agricultural employers still rely as much or even more on FLCs “to relieve the producer of all relations with the laborers who harvest his crop” (Fisher, p. 78).

The state's farm labor market provides the essential conditions for a labor contracting system to flourish: seasonal fluctuations in the demand for labor and a need for unskilled labor. Construction and the garment industries have similar labor market patterns; labor contracting systems also play a large role in these industries.

Fisher's study of the methods and practices of California FLCs concluded that they provide seven general types of services: recruiting, daily transportation of workers, supervision, payment of workers, payment of payroll taxes, management of labor camps, and miscellaneous services such as providing drinking water in the fields. This list is basically unchanged

today.

The history of contractors in agriculture began nearly a century ago. In the 1870s, Chinese “boss men” or contractors acted as intermediaries between workers and employers who had no common language (Fisher). The Chinese contractor maintained a fairly well organized “gang” of workers. Employers were pleased with the system which provided workers when needed who then “melted away” when the work was done.

With the Chinese Exclusion Act of 1882, farmers turned to Japanese workers to fill the gap. The Japanese contractor, however, was not simply an agent for the employer, but acquired near monopoly power on seasonal labor by underbidding competing groups such as the Chinese. Japanese contractors respected each other's territory and formed an association to set prices to employers and wages to workers. Japanese FLCs also employed trade union tactics such as striking, honoring strikes by other Japanese FLCs, and boycotting certain farmers blacklisted by Japanese contractors. This behavior, as well as the propensity of the Japanese to become landowners, contributed to anti-Japanese sentiment and the virtual disappearance of Japanese contract labor by 1919 (Fisher).

When Mexican immigration increased during World War I under lax enforcement of federal immigration laws, Mexican contractors emerged to serve as agents of the employers. But determined not to permit FLCs to resort to union tactics, growers developed contracts to secure their dominance over contractors. Beginning in 1928 in the Imperial Valley, workers called strikes against labor contractors who withheld wages and against the contracting system. After intervention by the California Department of Industrial Relations, a loose nonbinding “agreement” was reached in which growers agreed that certain contract labor abuses enumerated by the Confederation of Mexican Labor Unions should be eliminated (Fisher).

Between 1920 and 1930 about 31,000 Filipinos



entered California, and the majority found employment in agriculture. As with other immigrant groups, Filipino workers were organized under the contractor system, but their system resembled the Japanese system in that both workers and contractors were members of a "trade guild." Also like the Japanese, Filipino contractors established themselves by underbidding others—this time it was the Mexicans. Once established, Filipino FLCs raised prices to growers. However, because the disciplined Filipino crews offered a reliable source of labor, many growers preferred Filipino workers to Mexican. Filipino contractor crews eventually became the major source of labor for lettuce harvesting in the Salinas Valley and asparagus harvesting statewide (Fisher).

Relationships between contractors and other employment bodies have not changed significantly over the last century. Although the farm labor contractor and the public employment service respond to the same need to match seasonal workers with seasonal jobs in a dispersed industry, the employment service has never been as successful at matching workers to jobs. It is a referral agency only and so cannot perform the seven broad functions undertaken by FLCs. Furthermore, as a government agency it is more constrained by regulations, for example, the prohibition against referrals to a farm where there is a labor dispute.

Labor contractors and unions usually compete in providing similar services and are almost always hostile to each other.<sup>2</sup> A grower can either make an agreement

with a union to procure workers at specified wages and working conditions or use a labor contractor. Most growers are reluctant to make agreements with unions, yet they permit a contractor to perform union-like services.

Fisher wrote that the unionization of seasonal workers would either destroy the contractor system or transfer its functions to the trade union (p. 87). The recent development of a state-regulated system of collective bargaining has not destroyed the contractor system, but it has re-emphasized the competitive relationship between the two institutions. In the Salinas Valley, where union penetration is the greatest, the percentage of workers employed by FLCs is low. In the San Joaquin Valley, the FLC percentage of total employment is high and the number of union contracts is low. Some instances have been reported where the two institutions coexist, for example, a union contract which allows the grower to hire FLC workers for particular tasks such as thinning and hoeing. More often, however, disputes erupt when a union accuses a grower of failing to bargain in good faith by giving union work to a labor contractor.

When Fisher examined the farm labor market in 1952, there were few laws regulating FLCs and few relevant statistics. Twelve years later, the Farm Labor Contractor Registration Act of 1963 marked the first federal regulation of FLCs. This report evaluates two decades of FLC regulation and examines trends in the activities of FLCs.

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## TRENDS IN FARM LABOR AND FARM LABOR CONTRACTORS

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Of the 2.2 million farms in the United States in 1982, less than half (about 1 million) hired any workers. Most of these (about 870,000 farms) hired workers directly; 140,000 farms hired workers through FLCs. The distribution of hired farmworkers and wages among the three major commodity subsectors of farming is shown in Table 1. Livestock producers, including dairy and poultry, make up one-half of all farm employers. But horticultural crops, which include fruits and nuts, vegetables, and horticultural specialties such as mushrooms and flowers—FVH farms—are the most labor intensive. So even though FVH farms constitute only 8 percent of the farm employers, they pay one-third of all agricultural wages. These FVH farms are concentrated in California, Florida, and Texas. In 1982, these states paid 22, 6, and 6 percent, respectively, of all direct-hire

agricultural wages.

Livestock farms also represent the largest percentage of FLC employers—43 percent in 1982 (Table 2). But almost two-thirds of FLC wages are paid by FVH farms, meaning that the concentration of FLC workers on FVH farms is much higher than direct-hire workers on these farms. California, Florida, and Texas, pay respectively, 38, 18, and 8 percent of FLC wages for a total of 64 percent of all U.S. contract wages.

Agricultural employment, especially contract labor, is concentrated on large farms. The largest farms, those grossing over \$500,000 in annual sales, pay slightly under half of all direct-hire wages (46 percent) and slightly over half of FLC wages (52 percent) (Table 3). Large employers—those who pay wages in the highest farm wage category—pay a high percentage of the farm

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<sup>2</sup>A notable exception is the 1973 Teamster contract with the National Farm Labor Contractors Association (House of Representatives, Committee on Education and Labor, 1973, p. 84).



wage bill. They paid 54 percent of direct hire wages and 69 percent of FLC wages in 1982 (Table 3).

Between 1974 and 1982, while the total number of farms decreased, farm employment increased. But FLC employment increased at a faster rate than did direct hires. This high growth rate of FLCs is especially significant in light of other developments. First, FLC expansion occurred simultaneously with increased statutory regulation of FLCs including the prohibition against hiring undocumented workers, which had been predicted to put many FLCs out of business. Second, the increased use of FLCs indicates that farm employment has been fragmenting while farm production is being concentrated on fewer and larger farms.

The number of farms decreased by 3 percent between 1978 and 1982 while those hiring workers directly increased 5 percent and the number of farms hiring FLCs increased 17 percent (Figure 1). Wages paid to directly hired employees increased 81 percent, while wages paid to FLC employees increased 116 percent. Over the same period, the FLC percentage of the total wage bill increased from 10 to 12 percent.

Also between 1978 and 1982, both farm employment and FLC employment became increasingly concentrated (1) on FVH farms, (2) in the major FVH states, (3) on large farms, and (4) with large employers. FLC employment on FVH farms increased from 52 to 62 percent of FLC wages (Table 3, Figure 2); while direct-hire employment on FVH farms grew only slightly, from 32 to 33 percent of direct-hire wages.

In California, the major U.S. supplier of fruits and vegetables, FLC growth and concentration increased even faster than the national rate. FLC wages paid in California increased from 15 to 19 percent of the total wage bill. The number of farms hiring FLCs increased 36 percent, while the number of California farms hiring workers directly increased 28 percent. Contract wages in California increased by 123 percent compared to a 74 percent increase in the direct-hire wage bill. FLC growth rate was also greater than the direct-hire growth rate in Texas and Florida (Table 4, Figure 3).

Large farms are increasingly using FLCs, even though these farms are most likely to maintain their own personnel departments that hire workers directly. Almost 52 percent of contract wages were paid by farms grossing over \$500,000 annually in 1982, compared to 40 percent in 1974 (Table 3). Farms grossing over \$100,000 annually paid 79 percent of contract wages in 1982.

The use of FLCs has increased in other states as well, even in states where the total number of farms has decreased. In North Carolina, for example, the number of farms hiring FLCs increased by 26 percent between 1974 and 1982, while farms hiring workers directly decreased 10 percent and the total number of farms decreased 13 percent. The number of farms hiring FLCs increased 20 percent in New York, compared to a 2 percent increase in farms hiring workers directly and a 3 percent decrease in the number of farms.

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## FEDERAL REGULATION OF FARM LABOR CONTRACTORS

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A need to regulate farm labor contractors has long been recognized. Since the early 1930s congressional committees, governmental agencies, presidential commissions, and church and civic organizations studied the plight of migrant workers. A series of congressional hearings in 1960 and 1961 resulted in the House of Representatives passing an FLC registration act, but the Senate did not pass it. A House report referred to the condition of migratory workers as a "long-festering sore in our society" and concluded that "[f]ailure to take prompt remedial action may be viewed as a repudiation of our moral responsibility to our own people" (U.S. Congress, House of Representatives, 1961, p. 3).

Congressional hearings also documented the poor conditions of migrant workers and abuses by farm labor contractors. In the early 1960s, farmworkers were still excluded from the protection of the National Labor Relations Act, federal wage and hour legislation, unemployment compensation, work place safety

standards, workmen's compensation, and most of the child labor protections. The only federal protections available to agricultural workers were old-age survivors insurance and disability insurance (Social Security), and then only if the worker earned enough to qualify. Nine states and Puerto Rico had laws or regulations applying to farm labor contractors, but state officials complained that enforcement in any one state only caused the offenders to move to another state.

The average wage of migrant workers who worked at least 25 days was \$6.25 a day; they worked an average 109 days a year for an annual average income of \$681.25 (U.S. Congress, Senate, 1963, p. 45). Many abuses of workers by farm labor contractors were documented in *A Summary of Farm Labor Crew Practices* prepared by the Department of Labor (DOL) in 1962, reported in U.S. Congress, Senate, 1963, pp. 38-41. Abuses listed include: overcharging workers for transportation advances or collecting for transpor-



tation expenses from both employers and workers; abandoning a crew without means of transportation; failing to return workers to their homes; short-counting or short-weighing units produced or requiring workers to overfill standard units paid by piece rate; collecting wages from employers, withholding wages from workers and then abandoning workers without paying them; taking a percentage of the workers' earnings; paying less than the agreed rate and making improper deductions; charging workers for rental of equipment which was provided free by the grower; giving the employer inflated production figures; and keeping bonus or other money due workers. Other problems were also documented: consistent attempts to employ underage workers during school hours, illegal sale of liquor and drugs, gambling by FLCs, and trafficking in prostitution.

In 1964, both houses of Congress approved the Farm Labor Contractor Registration Act of 1963 (FLCRA) which became effective in 1965. (FLCRA was opposed by farm organizations and some governmental agencies, such as the Florida Farm Labor Department.) The act emphasized registration of FLCs. But enforcement of FLCRA was minimal and virtually no sanctions were applied to violators. In 1974, Congress modified its approach to broaden coverage and to apply civil sanctions for violations, including the hiring of undocumented workers. Enforcement was increased, but fixed-situs employers, such as growers and packing shed operators, who were required to register, protested loudly. In 1983, Congress passed the Migrant and Seasonal Workers Protection Act (MSPA) to replace FLCRA and shifted the focus from registering FLCs to protecting workers. The evolution of the registration, sanctions, and worker protection system reflects considerable congressional frustration with the difficulty of protecting farmworkers while still promoting an efficient agricultural sector.

### **The Farm Labor Contractor Registration Act of 1963**

The FLCRA of 1963 required all FLCs who, for a fee, recruit, solicit, hire, furnish, or transport ten or more migrant workers for interstate agricultural employment to obtain a certificate of registration. But the registration requirements did not apply to farmers, processors, canners, ginners, packing shed operators, or nursery operators who engaged in such activities solely for their own operations; to any nonprofit charitable organization; to any full-time or regular employee of any of the above persons, institutions or organizations; or to any person who obtained migrant workers from a foreign nation, if their employment was subject to an agreement with the foreign nation. To obtain a registration certificate, the FLC had to file a written application with the Secretary of Labor, show proof of

financial responsibility or of an insurance policy in prescribed minimum amounts against liability arising from the transportation of migrant workers, and file a set of fingerprints.

FLCRA imposed additional responsibilities and costs on FLCs which were not required of growers who hired workers directly. An FLC was obligated to disclose to each worker when recruited the area of employment, the crops, and the operations in which he or she might be employed; the transportation, housing, and insurance which would be provided; wage rates; and the charges levied by the FLC for his or her services. At the place of employment, the FLC was required to post terms and conditions of employment. If the FLC paid workers directly, payroll records showing total earnings, deductions, net earnings, and rates of pay and hours worked had to be maintained. The FLC was required to give each worker a statement of all sums paid to the FLC for the labor of the worker and an itemized statement of all sums withheld from this amount.

The only sanctions for violators were (1) refusal to issue, suspend, revoke, or refusal to renew a certificate or (2) criminal prosecution with a fine up to \$500. A registration certificate could be refused, suspended, revoked, or renewal could be refused after notice and hearing, if the FLC (1) knowingly made misrepresentations or false statements in the application for registration; (2) knowingly gave misleading information to a migrant worker concerning the terms, conditions, or existence of employment; (3) failed to perform agreements entered into with farm operators; (4) failed to comply with arrangements made with workers; (5) failed to show satisfactory financial responsibility or to keep the required insurance policy in effect; (6) knowingly recruited, employed, or utilized the services of a person who was violating the immigration and nationality laws; (7) had been convicted of a crime related to gambling or alcoholic liquors in connection with FLC activities, or specified other crimes such as murder, rape, assault with intent to kill, extortion, bribery, and prostitution; (8) failed to comply with applicable rules of the Interstate Commerce Commission; (9) knowingly employed a person who violated any of the above; or (10) failed to comply with provisions of the act.

The effect of FLCRA during its first decade appears to have been minimal, largely because of the low level of enforcement by DOL. Farm labor contractors feared enforcement initially and many attempted to register. However, they soon learned that there were no inspectors to enforce the law, so many never registered again nor attempted to comply with the obligations imposed (U.S. Congress, Senate, 1974, pp. 217-218; U.S. Congress, House of Representatives, 1971-72, p.



244). Registration increased to a peak of 3,129 in 1968 and then decreased (Table 5).

DOL did not seriously enforce FLCRA until it was sued by the NAACP, 15 other organizations and 398 named workers in 1971. Although aimed principally at discrimination and exploitation of workers by the Farm Labor Service, the NAACP suit also contained allegations concerning nonenforcement of FLCRA. The complaint alleged that the Farm Labor Service referred workers to FLCs who violated regulations and refused to pay minimum or prevailing wages. One of the specific allegations stated that Legal Services attorneys had been unsuccessful at the local, regional, and national levels in trying to report violations of FLCRA to authorities at DOL.

In answer to the NAACP complaint, DOL issued a "Review of the Rural Manpower Service" in 1972 (U.S. Congress, House of Representatives, 1971-72, p. 244). It found that only 2,900 FLCs were registered, or about one-half of the estimated FLCs covered by the act, down from the 1968 peak of 3,129.

DOL admitted that one reason for the decline in FLC registrations was lack of enforcement. Upon finding an unregistered FLC, the practice of the field staff had been merely to register him or her. In seven years, only four cases had been referred to the Department of Justice for criminal prosecution and prosecution was declined in two of the four cases. Convictions obtained in the other two cases resulted in one \$100 fine. The number of denials or revocations of certification was minimal; together they ranged from a high of 20 in 1966 to a low of 2 in 1968 (Table 6).

The strategy of the Rural Manpower Service, had been to expect voluntary compliance with FLCRA. However, DOL concluded that whether violations of FLCRA were intentional or out of carelessness or lack of knowledge, workers appeared to suffer as a result in all cases.

At 1973 hearings virtually all witnesses agreed that there was no effective enforcement of FLCRA. The number of compliance officers for all 50 states had fallen steadily from 40 in 1965 to 17 in 1966 and then to five in 1972. In an especially egregious case where an FLC had committed many serious violations, it took over three months of negotiation for a Legal Services attorney to get the regional DOL office to submit a complaint to the DOL regional counsel for a legal opinion. It took three more months for him to submit a memorandum to the national office. Only after 14 months was a complaint finally submitted to the U.S. Attorney General's office and then no action was taken since no one could locate the contractor. In another case, a contractor had been convicted and jailed for murder, but paroled during harvest season so he could manage a crew.

A major DOL reorganization was announced in 1972. Responsibility for enforcement of FLCRA was shifted from the DOL Assistant Secretary for Manpower to the Wage and Hour Division under the DOL Assistant Secretary for Employment Standards. FLCRA enforcement was combined with that for the Fair Labor Standards Act (FLSA) by the approximately 1,100 compliance officers. However, FLCRA became just one of many labor laws enforced by the same staff.

#### 1974 Amendments to FLCRA

By 1973, complaints regarding insufficient coverage of FLCRA, ineffective enforcement procedures, and the inability of farm laborers to obtain redress, led to the introduction of amendments to FLCRA. A more comprehensive statute with additional sanctions was the result.

The general conclusion from the 1971-1974 hearings leading up to the amendments was that FLC exploitation of both farmworkers and farmers had continued unabated since the passage of FLCRA. The House Committee on Education and Labor reported that "abuse of workers by contractor/crew leaders appears more the rule rather than the exception" (1974, p. 4). The report documented that FLCs often exaggerated conditions of employment when recruiting workers, failed to inform workers of working conditions, transported workers in unsafe vehicles, failed to furnish promised housing or furnished substandard and unsanitary housing, made unitemized deductions from workers' paychecks, and paid workers in cash with no record of amounts earned and amounts withheld. There were accounts of a crew of migrants, many of them sick, being abandoned on a rural road in Georgia; a crew in California with many women and children being forced to walk for hours when the FLC's vehicle had a flat tire; FLCs who sold their crews sodas and beer, often at high prices, instead of providing adequate drinking water; a worker being paid \$4.50 for four weeks' work and then being beaten by the crew leader when he complained; and an FLC skimming one-half of what he was paid for workers and charging workers twice the price for equipment. A bus accident was reported in which 19 migrant workers were killed and 28 injured. Despite the numerous safety violations found at the time of the accident, the contractor's license was renewed soon thereafter.

Contractors also reportedly exploited the farmers who hired them by failing to show up with a crew on an agreed upon date and leaving after the first picking when the second and third pickings were less remunerative.

Enforcement of FLCRA was limited and made difficult by the provisions of the act. The exemption for



FLCs in intrastate activities and of those recruiting fewer than 10 migrant workers allowed many abusive practices to continue and created loopholes which encouraged contractors to break up their crews to escape coverage by the statute. More enforcement mechanisms were needed. FLCs had little incentive to comply with FLCRA, since there were no prison sentences, a low cap on criminal fines, and no civil penalties provided. Lack of a private right of action hindered farmworkers from pursuing violations in court. The act did not give the Secretary of Labor subpoena power, nor was there provision for joint liability between the contractor and farmer for FLCRA violations.

These and other perceived insufficiencies in FLCRA were changed by the 1974 amendments. Coverage of FLCRA was expanded by removing exemptions for FLCs operating intrastate only and for contractors recruiting fewer than 10 workers. A new exemption was created for FLCs operating within a 25-mile radius in one state for not more than 13 weeks per year. The registration exemption for farmers, processors, canners, ginners, packing shed operators, and nursery operators was removed unless they "personally" recruited migrant workers for their own operations. Supervisors who recruited workers for a grower were exempt only if they recruited solely for one grower on no more than an "incidental" basis. Coverage of the act was expanded to include all aspects of commerce in agriculture, including processing of agricultural or horticultural commodities.

Responsibilities and obligations of FLCs were increased. To obtain a certificate of registration, contractors would have to supply proof that vehicles used to transport migrant workers conformed to applicable federal and state health and safety standards. Migrant housing was required to conform to applicable health and safety standards. FLC registration could be denied, suspended, revoked, or renewal refused if the applicant was not the real party in interest when the real party was ineligible, if the applicant had used a vehicle to transport workers or had migrant housing which did not conform to applicable standards, or if he or she had been convicted of prostitution or peonage within the preceding five years. FLCs were required to report within 10 days every change of address. They were also required to inform all workers in writing in an appropriate language at the time of recruitment the area of employment, the crops, and the operations in which they might be employed; the transportation, housing, and insurance which would be provided; wage rates; the period of employment and any commissions to be received by the FLC; and the existence of a strike or other concerted activities at the place of employment.

The FLC was also required to pay promptly all

money owed, return anything of value, and provide payroll information to farm operators. An FLC was prohibited from requiring workers to purchase goods (equipment and food) exclusively from any particular person, and from knowingly recruiting or employing illegal aliens. Unregistered contractors were denied the use of employment services programs. The amount of insurance required of FLCs was made comparable to that required by the Interstate Commerce Act for interstate passenger vehicles.

Farm operators were required to determine if a FLC was registered before making a contract, to obtain payroll records of migrant workers who were paid by a FLC, and to maintain all other payroll records furnished by a FLC. Discrimination or retaliation against a migrant worker for filing a complaint under the act was prohibited and the secretary was authorized to bring an action in a U.S. district court against any person who discriminated against a worker.

Enforcement provisions were strengthened and penalties were increased by the 1974 amendments. Criminal penalties of imprisonment up to one year, a \$500 fine or both were added for a first offense. Penalties for subsequent violations rose to a maximum \$10,000 fine, three years in prison, or both. The maximum penalty could be assessed against an unregistered contractor caught hiring an undocumented worker. The secretary was given authority to impose civil money penalties, after hearing, of up to \$1,000 per violation.

The secretary was given authority to issue subpoenas and was directed to monitor and investigate FLC activities as necessary to enforce the act. The secretary was also directed to maintain a central registry of all registered FLCs. Contractors were required to consent to designation of the secretary as agent to accept summons.

Additionally, workers were given a private right of action in U.S. district courts for any violation of the act. A complainant could obtain a court-appointed attorney and be awarded up to \$500 for each violation.

During hearings preceding the 1974 amendments to FLCRA, the issue of undocumented workers was discussed several times. Witnesses testified that FLCs in California and Florida recruited undocumented workers and smuggled the workers into the country or paid to have them brought in. Union members reported that contractors used illegal aliens as strikebreakers. Other testimony revealed that some FLCs paid less to undocumented workers than to documented workers they hired.

The 1974 amendments to FLCRA specifically prohibited FLCs from knowingly recruiting, employing, or utilizing the services of an undocumented worker and required FLCs to tell employees if there was



a strike or other work stoppage. Newly-added penalties such as civil money penalties, civil injunctions, prison sentences and increased criminal fines applied to these violations. FLCs were subject to a \$400 fine for each undocumented worker employed on a first offense and a \$1,000 fine for each undocumented worker found in a subsequent investigation. The provision allowing denial, suspension, or revocation of an FLC license for hiring undocumented workers was maintained as well.

### Hearings and Amendments 1975-1982

Growers complained as soon as DOL began to enforce the 1974 FLCRA amendments. DOL's interpretation of several small changes in the act plus its stepped up enforcement led to a series of congressional hearings between 1975 and 1982. Most of the complaints centered on the extension of FLCRA to include many growers, processors, and their employees.

The 1974 amendments added the word "personally" to limit one of the FLCRA exemptions to:

any farmer, processor, canner, ginner, packing shed operator, nurserymen who *personally* engages in [recruiting, hiring, furnishing, or transporting migrant workers] for the purpose of supplying migrant workers solely for his own operation. (Emphasis added.) (FLCRA, Section 3(b)(2).)

Another amendment limited the exemption of a full-time or regular employee of a producer and processor to one who engages in recruiting, hiring, furnishing, or transporting migrant workers solely for his or her own employer on no more than an incidental basis. (FLCRA Section 3(b)(3).)

Having found no legislative history to rely on, DOL interpreted "personally" to mean "in person" and, therefore, excluded all partnerships, associations, trusts, and corporations from the exemption unless a corporation was under the control of one individual with authority equivalent to a sole proprietor (U.S. Congress, House of Representatives, 1975, p. 114). And the department interpreted "incidental basis" to mean that an employee did not recruit or hire migrant workers as a regular duty.

Farmers complained that the act was being used against them and their supervisors. Accounts were given of full-time ranch supervisors and an incorporated grower-shipper, as well as a farmer who had allowed his crew to work for a neighbor one day, all being required to register as FLCs. Texas growers complained that the insurance and book work requirements of the 1974 amendments put many Texas FLCs out of business.

Accordingly, bills were introduced to narrow the application of FLCRA by striking "personally" and "on no more than an incidental basis." Also, there were bills to exempt day-haul contractors, contractors operating within a 75-mile intrastate radius, and farmers who hired or recruited migrant labor for their own farms or on behalf of a farmer within 25 miles.

On the other side, representatives of California Rural Legal Assistance (CRLA), Migrant Legal Action Program, and other advocacy groups testified that FLCRA was still being underenforced. Their major complaint was against the policy allowing voluntary compliance before imposing sanctions on an offender. CRLA labeled such voluntary compliance a "total amnesty" for violators and a court order declared the regulation invalid.

Other complaints pertained to DOL's alleged over-concern for the registration of contractors, its failure to pursue substantive violations, and its lack of response to complaints. Of 554 FLCRA complaints filed between September 1976 and September 1977, less than half had received a response by February 1978 (U.S. Congress, House of Representatives, 1978, p. 150). Continuing abuses of workers by FLCs unabated by the amended act were also cited.

Farmworker groups opposed all the proposed amendments. Migrant Legal Action Program countered allegations of overzealous enforcement with charges of neglect. It believed that eliminating "personally" from Section 3(b)(2) would exempt agribusiness corporations who recruited through intermediaries, some of which had been accused of gross FLCRA violations, including misrepresenting the terms of employment, paying below minimum wage, and forcing workers to work 12 hours a day, seven days a week without overtime pay (*Cantu v. Owatonna Canning Co., Inc.*, D Minn, No. 3-76-CIV 374). Providing a registration exemption for all regular employees (removing limitations on Section 3(b)(3)) would allow contractors who had lost their license to carry out the same activities as an "employee" of growers. Several court cases illustrated this point.

At congressional hearings in 1978, DOL defended its enforcement record and opposed the amendments to FLCRA. In answer to allegations of enforcement against growers and supervisors, department officials emphasized that their policy was to concentrate enforcement efforts on traditional crew leaders. DOL cited its record of increased enforcement. In 1975 DOL allocated 19 person-years to FLCRA enforcement and, in its 1976 budget, requested 19 additional person-years. FLC and FLC employee (FLCE)<sup>3</sup> registrations had increased from 5,463 to 9,707 between 1975 and

<sup>3</sup>An FLCE is a crew boss or supervisor who is hired by a FLC and carries out FLC functions. The FLCE is also required to register with DOL.



1976 and were up to 11,610 in 1977, while the estimated number of migrant workers employed by registered FLCs increased to 230,077 in 1976 and to about 500,000 in calendar year 1977 (U.S. Congress, House of Representatives, 1978, p. 50). The department claimed that the effect of the amendments would be to open large loopholes and to restrict application of FLCRA to a few agricultural workers.

The result of the 1975-1978 hearings was passage of a few minor amendments. In 1976 an exemption was added for any custom combine, hay harvesting, or sheep shearing operation, and later that year custom poultry operations were exempted. In 1978 an exemption was added for contractors supplying full-time students or others not principally engaged in farm work to detassel and rogue hybrid seed corn and sorghum for seed and other such short-time incidental farm work.

While little came out of the controversy, it became clear that the major focus of FLCRA had changed from regulating FLCs to protecting agricultural workers. The effectiveness of the act, however, was still in doubt.

#### **The Migrant and Seasonal Worker Protection Act of 1982**

Farmers continued to lobby against FLCRA and in late 1979, 52 U.S. senators signed a letter to DOL expressing concern over FLCRA. Meanwhile farmworker advocates argued that conditions had actually worsened since the 1974 amendments. The Farmworker Justice Fund and Texas Rural Legal Aid prepared a paper, "Bitter Harvest: The Continuing Exploitation of Farmlabor in the United States, 1974-1982," which reported that farmworker wages remained "scandalously" low and included documentation of 103 examples of abuses of migrant workers by FLCs and employers (U.S. Congress, House of Representatives, 1982, pp. 87 et seq.): In 1970 the annual average income of an average 6.4-person Spanish-speaking migrant farmworker family was \$2,130; the average annual income of an average 5.5-person black farmworker family was \$1,558; and the average annual income for all other farmworker families was \$1,808 with an average family size of 4.2 persons. The report noted that some growers and associations routinely hired FLCs with histories of violence or peonage; that records kept by FLCs and growers were often falsified to deprive workers of wages due or promised, sometimes up to as much as several hundred thousand dollars; that misrepresentation of work was still being used to recruit workers; that workers were fired, blacklisted, and physically abused or suffered other retaliation for trying to exercise their rights or for engaging in labor organizing; and that workers were recruited and sold into bondage for up to

\$500 apiece. Large food corporations, vertically integrated corporate growers and packer-shippers as well as itinerant contractors were perpetrators of these abuses. Schemes to insulate growers from ultimate responsibility were noted, such as the incorporation of crew-leading functions within the corporate operation; the formation of new corporations, e.g., harvesting companies, associations, or cooperatives to carry out crew-leading functions; and the separation of corporate divisions.

General dissatisfaction with FLCRA, as amended, led to negotiations between representatives of the agricultural community, organized labor, migrant groups, DOL, and committees of the U.S. House and Senate. After extended negotiations a consensus bill was introduced into Congress which satisfied no group completely, but removed some of the major objections to FLCRA. The bill introduced on September 1, 1982 became known as the Migrant and Seasonal Agricultural Worker Protection Act (MSPA).

As the name implies, the new bill shifted emphasis from registering farm labor contractors to protecting agricultural workers. The bill swept away distinctions between different types of employers as far as protection of workers was concerned. The basic principles of the bill were: (1) distinguishing between traditional crew leaders and fixed-situs employers and no longer requiring fixed-situs employers to register, (2) providing protections for workers regardless of whether they were employed by a traditional crew leader or fixed-situs employer, (3) distinguishing between migrant workers and seasonal (including day-haul) workers, (4) providing exemptions for family businesses and small businesses, and (5) deleting ambiguous words and phrases which were the source of extensive litigation.

#### **Provisions of MSPA**

Definitions under MSPA contain some of the key differences from FLCRA. The term farm labor contractor is defined as excluding agricultural employers, agricultural associations, and employees of either. A migrant agricultural worker is defined as an agricultural worker who is required to be absent overnight from his or her permanent residence. A seasonal agricultural worker is one who is not required to be absent from his or her permanent residence overnight. The term employ is given the same meaning as in the Fair Labor Standards Act (FLSA, 29 U.S.C. 203(g)), thereby adopting the "joint employer" doctrine into the act.

New exemptions from the act are added and old ones revised. A family business exemption was created for an individual who engages in FLC activity exclusively for an agricultural business which he or she owns or



operates or which is owned or operated by an immediate family member, whether or not the business is incorporated.

A small business exemption from the act is created for any non-FLC. This falls under the FLSA person-day exemption for agricultural labor (presently 500 person-days). Exemptions are also provided for common carriers, labor organizations, FLCs whose activity is within a 25-mile intrastate radius of his or her permanent residence and for not more than 13 weeks a year, and the specialized exemptions created by the 1976 and 1978 amendments to FLCRA.

The remainder of MSPA is organized into four parts or titles. Title I applies to farm labor contractors and sets forth registration requirements substantially similar to those of FLCRA, however fixed-situs employers are not considered FLCs and are not required to register. Employees of FLCs must register in their own name. This title also prohibits an FLC from knowingly recruiting or hiring an undocumented worker. An FLC can rely on documentation prescribed by DOL to establish the legal status of workers.

Title II establishes protections for migrant agricultural workers. When FLCs or other agricultural employers recruit workers, they must provide a written statement of the place of employment, wages, crops and kinds of activities in which the worker may be employed, the period of employment, transportation, housing, and other benefits including charges for each, the existence of a strike or other concerted work stoppage, and the existence of any commission agreements. At the worksite the rights and protections of the act must be posted. Each FLC, agricultural employer, and association is required to make, keep, and preserve information on wages, piece-work units, hours, total pay, withholdings, and net pay for each worker and provide the information to the worker each

pay period. FLCs and employers have a duty to provide truthful information.

Additional provisions of Title II require employers or FLCs to pay all wages owed when due; prohibit employers and FLCs from requiring an employee to purchase goods or services solely from the FLC or employer; and prohibit FLCs and employers from violating the terms of an arrangement without justification.

Each person who owns or controls housing for migrant workers (except those who offer housing on a commercial basis to the general public) is responsible for ensuring that the housing complies with all federal and state standards and is so certified.

Title III sets out similar protections for seasonal agricultural workers, except that there are no housing requirements.

Title IV enumerates further protections for both migrant and seasonal workers. Employers and FLCs are required to ensure that vehicles used to transport workers (other than farm equipment being used in agricultural operations) conform to federal and state safety standards, are driven by a licensed driver, and are covered by insurance or a liability bond unless covered by workmen's compensation.

Employers are required to take reasonable steps to determine that any FLC hired is properly registered. Farm labor contractors are prohibited from violating any agreement with an employer.

The enforcement provisions of MSPA closely parallel those of FLCRA except statutory damages in private actions (\$500 per plaintiff per violation) are limited to \$500,000 and actual damages are unlimited. MSPA, like FLCRA, prohibits retaliation or discrimination against an employee for exercising rights under the act.

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## **ENFORCEMENT AND COMPLIANCE UNDER FLCRA AND MSPA**

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Since 1965, enforcement efforts under FLCRA and now MSPA have increased greatly, but they have not affected the vast majority of protected workers (90 percent were untouched by investigations in 1983), and noncompliance is still found in more than half the investigations. This section analyzes DOL enforcement data to measure national enforcement efforts, to look at the extent of compliance and noncompliance with the act, and to compare enforcement statistics from the three major regions.

DOL figures are complete as to the total enforcement efforts of the agency. The same data, however, provide

only a sample of compliance and noncompliance (since there is no information on the total number of violations and violators), and the sample itself depends on the extent of enforcement efforts. The extent of compliance, therefore, can only be measured relatively, between years or regions.

### **National Enforcement Efforts**

Compared to 1965, all measures of FLCRA and MSPA enforcement have increased greatly, with the largest increases occurring after the 1974 amendments to FLCRA. Most measures, however, peaked in 1980



or 1981 then declined until 1983. A slight upturn in 1984 is observable. Noncompliance has been found in a majority of investigations, and the percentage of noncompliance cases increased in 1984 after several years of decline.

Enforcement efforts are measured by "compliance" or enforcement person-years. When FLCRA was enforced by the Assistant Secretary for Manpower the number of compliance (enforcement) officers could be measured directly. In 1965 there were 40 compliance officers assigned to FLCRA. The number dropped to 17 in 1966 and eventually fell to 5 in 1972.

In 1972 FLCRA enforcement was moved to the Wage and Hour Division where approximately 1,100 compliance officers enforced FLCRA, the Fair Labor Standards Act (FLSA), and 80 other statutes. After 1972, enforcement person-years are measured by enforcement hours devoted to FLCRA or MSPA.<sup>4</sup> In 1975 the department boasted 19 person-years in FLCRA enforcement. In recent years, enforcement hours peaked in 1981 with 63,799 hours or almost 32 person-years and dropped to 22 person-years in 1983 (Figure 4). Beginning in 1980, DOL used a "strike force" of about 20 "specialists" who coordinated FLCRA investigations during peak seasons. Recently, use of the specialists has been discontinued because of budget cuts.

The number of FLC registrations is an indication of the success of enforcement efforts (Figure 5). Before the 1974 amendments, FLC registration peaked in 1968 at 3,129, then declined to about 1,200 in 1972, less than one half the estimated 5,000 to 8,000 FLCs covered. One reason for the decline was lack of enforcement.

The 1974 amendments required some fixed-situs employers to register; FLC and FLCE registrations climbed to over 18,800 by 1979. Registration remained at that level until 1983 when MSPA dropped the registration requirement. Although there is no information on the number of unregistered FLCs and FLCEs, it appears that changes in the law and an increased level of enforcement resulted in more registrations.

From 1965 to 1974 the only sanctions against FLCRA violators were criminal fines up to \$500 and administrative actions to deny, suspend, revoke, or refuse reissue of an FLC certificate. During this period there was only one criminal fine (\$100) levied. In 1981, 1982, and 1983, there were two, four, and four criminal convictions, respectively. The 1982 and 1983 convictions were for peonage.

In 1965 there were 20 actions to deny, suspend, or revoke a certification, but this number decreased to less than 10 each year through 1974 (recall Table 6). After

1974, the number of administrative actions generally increased to a high of 147 in 1981, then fell off to 84 in 1983 (Figure 6). From 1980 to 1983, the number of administrative actions to deny certification closely paralleled the trend in enforcement hours (Figure 7).

More detailed enforcement figures are available since 1980. Each of the measures peaks in 1980 or 1981 then declines. Some show slight upturns in 1984. The number of FLCRA and MSPA investigations peaked in 1980 at about 3,600, then declined to about 3,100 in 1984 (Figure 8). The total number of violations discovered peaked in 1980, decreased until 1983, then increased in 1984 (Figure 9). The number of violations found generally parallels the trend in enforcement hours, indicating that additional hours result in the discovery of more violations. (Compare Figures 4 and 9.)

Section 9 of the act was amended in 1974 to empower the secretary to impose civil money penalties (CMP) up to \$1,000 for violations of the act or any regulation promulgated under the act. The department issued a set of guidelines for maximum fines for each violation (Figure 10).

CMPs are assessed by the investigator, but not all violations result in a fine. The assessment is discretionary. Compliance officers in the Dallas and San Francisco regions indicate they sometimes make no assessment if the violation is minor or if it is a first investigation of an FLC who agrees to correct the violation. When a CMP is assessed, the guideline amount is usually used, since an investigator must show good reason to deviate from it. An FLC may pay the fine in installments up to one year. For example, in the Dallas region the general policy is 25 percent down and 12 months to pay the balance. But an FLC can request a hearing on the violation and assessment. Because the backlog of hearings is so great, the request can delay payment of the fine for several years. During this time the FLC can continue working.

Figure 11 indicates amounts of CMPs assessed and amounts collected since 1980. Assessments peaked in 1980 at slightly over a million dollars, decreased to \$650,000 in 1983 then increased to almost \$900,000 in 1984. Amounts collected are much lower, ranging from 66 percent of the amount assessed in 1981 to 14 percent in 1984. By the end of 1984, about 45 percent of assessments imposed from 1980 to 1984 had not been paid.

The number of enforcement hours is overlaid on Figure 11, indicating a slight correlation between total fines assessed and hours spent in enforcement. A stronger relationship can be observed between the amount collected and enforcement hours.

<sup>4</sup>Two thousand compliance hours equal one person-year.



Figure 12 and Table 7 show the number of CMP assessments, hearings requested, and hearings completed since 1980 and the hearing backlog from 1980—not counting backlog existing before 1980. The percentage of violators who requested hearings dropped from 60 percent in 1980 to 39 percent in 1984. A higher percentage of FLC users (agricultural employers who hire FLCs) requested hearings (72 to 89 percent) than did FLCs and FLCEs (38 to 53 percent) (Table 7). At the 1984 hearing rate, it would take over 110 years to complete the 1980-84 hearing backlog.

An overall perspective of enforcement efforts can be gained by comparing the number of workers in crews of FLCs who were investigated to the number of workers hired by FLCs (Figure 13). The percentage of crew members affected by investigations was 18 percent in 1980 and had decreased to 10 percent by 1983.

#### **Noncompliance Under FLCRA and MSPA**

Noncompliance under FLCRA and MSPA remains above 50 percent, despite increased enforcement efforts and a decline in noncompliance cases through 1983. Noncompliance is measured by the number or percent of investigations that reveal violations (Figure 14).

In 1973, a spot check of over 900 FLCs revealed violations by 73 percent (U.S. Congress, House of Representatives, 1974, p. 5). Enforcement statistics from 1980 and 1983 on over 3,000 investigations annually revealed that noncompliance decreased from 65 percent to 53 percent, but 1984 showed an increase to 58 percent (Table 8).

From 1980 to 1984 there was an average number of slightly more than three violations for each noncompliance case. Some of the most frequently violated provisions are seemingly minor in that they have to do with "paperwork," such as registering; recordkeeping; posting wages, working conditions, and housing conditions. But these types of requirements are important to discover more serious violations such as minimum wage violations and misrepresentation to workers. MSPA compliance figures for 1984 show substantial violations of substantive protections as well. Almost 10 percent of all violations concerned failure to ensure that the housing supplied met safety and sanitation codes. Another 10 percent of the violations involved failure to disclose wages and working conditions to workers, and almost 10 percent were failure to provide a wage statement to workers. Another 8 percent comprised either failure to provide safe transportation or failure to obtain vehicle insurance coverage. Thus, each violator averaged three violations and more than one in three of these concerned either workers' safety or their ability to determine if they had been paid correctly.

#### **Regional Enforcement of FLCRA and MSPA**

The majority of FLCs and FLC activity is concentrated in California, Florida, and Texas, where 64 percent of FLC wages are paid. However, FLCs within these regions differ significantly. In California many FLCs are stationary and operate fairly large year-round businesses employing several hundred to a thousand workers. To some of these, a MSPA fine is considered a cost of doing business. Most FLCs in Texas, on the other hand, run much smaller operations. A Texas FLC may typically hire about 10 workers and haul them to citrus orchards in the same truck that returns with the fruit and workers. A \$1,000 MSPA fine could put such a FLC out of business.

Enforcement hours have been fairly consistently allocated among the three regions, with Atlanta receiving the most, followed by Dallas and then San Francisco (recall Figure 4). Generally, noncompliance percentages have been highest in San Francisco, reaching 79 percent in 1984 and lowest in Dallas, at 43 percent noncompliance in 1984. Atlanta, with 57 percent noncompliance was very close to the national average of 58 percent. Figure 15 shows that these rankings have been consistent since 1980, indicating that a higher proportion of FLCs and FLCEs violate the law in the San Francisco region than elsewhere, if the regional enforcement efforts are equivalent. Another factor to consider, however, is the effect of enforcement on compliance. Since a higher number of investigations increases the risk of getting caught, the level of enforcement might have a greater deterrent effect in the Dallas region than in the San Francisco region, thereby increasing compliance in the former.

The number of enforcement hours per violation is a comparative measure which incorporates both the frequency of violations in the region (percentage noncompliance cases and the number of violations per violator) and the efficiency of the regional compliance officers in processing violations. If it can be assumed that efficiency levels are equal among the regions, then this number indicates the amount of time required to find and process each violation and a lower number indicates more frequent violations. If it cannot be assumed that efficiency levels are equal, then a lower number also indicates more efficiency. In either case, the number of hours per violation (HPV) could be used as a rough productivity guide to indicate approximate marginal returns for additional compliance hours. Figure 16 indicates that, except for Atlanta in 1982, all three major regions had lower HPV than the national average from 1980 to 1982. San Francisco had the lowest HPV (and, therefore, highest marginal returns) in 1982, but this ranking has changed each year.

Dallas has the highest compliance levels, showing 50 percent compliance in 1982, 59 percent in 1983, and 57



percent in 1984. Officials there attribute their higher compliance level to a high level of enforcement relative to the number of FLCs and FLCs actually working in the region. (Many FLCs registered in Texas migrate to other states during the harvest seasons, and spend the off-seasons in Texas.) The high number of follow-up investigations in the Dallas region relative to other

regions also lends support to this hypothesis (Table 9). Notably this region has had the most consistent allocation of enforcement hours since 1981. Enforcement may also be more effective in the Dallas region, since a large fine can put most Texas FLCs out of business.

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## UNDOCUMENTED WORKERS AND FARM LABOR CONTRACTORS

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The prohibition against hiring undocumented workers is more difficult to enforce than most other provisions. DOL usually relies on the Immigration and Naturalization Service (INS) to find illegal aliens and only cites an FLC during a FLCRA or MSPA investigation if workers are "obviously" undocumented, for example, if workers admit their illegal status. In most cases, DOL investigators use apprehension records received from INS to cite FLCs listed as employers of apprehended workers or to initiate an investigation of an employer who appears to be a FLC hiring undocumented workers.

Such enforcement procedures result in DOL's finding only a small fraction of the FLCs believed to be hiring undocumented workers. In the early 1980s, an average of 173 FLCs were fined annually for hiring undocumented workers. Figure 17 shows the number of FLCs found hiring undocumented workers in the major agricultural regions from 1980 to 1983; Figure 18 shows the number of undocumented workers that DOL found employed by these FLCs. Testimony before a House committee hearing in California in 1973 indicated that FLCs are the main users of undocumented workers and asserted that FLCs could not make a profit without using undocumented workers (U.S. Congress, House of Representatives, 1973, p. 66). Yet, of the approximate 4,500 FLCs and FLCs registered in Region IX, an average of only 21 were cited each year for hiring undocumented workers.

As expected, the number of FLCs found hiring undocumented workers is closely related to the number of enforcement hours (Figure 19). In Figure 20, the number of undocumented workers found employed by FLCs annually from 1980 to 1983 is compared to the number of deportable aliens apprehended by INS. The largest number of illegal workers ever found employed by FLCs was 4,000 in 1980. Since then, the number has decreased to less than 1,100 in 1983, while the number of INS apprehensions increased to 1.2 million.

The number of illegals found employed by FLCs in

California averaged only 312 annually from 1980 to 1983. A 1975 INS estimate that 30 percent of farmworkers in California were undocumented or the Martin, Mines, and Diaz (1983) estimate that 25 percent are undocumented indicates that California FLCs hired approximately 185,000 undocumented workers each year,<sup>5</sup> almost 600 times the number found by DOL. In one five-month period, INS apprehended over 180 undocumented workers working for a single FLC in the Fresno area (U.S. Congress, House of Representatives 1975, p. 140).

The indirect enforcement through INS of the prohibition against hiring illegals limits DOL's ability to formulate an enforcement strategy and results in a bias towards particular crops. INS "raids" in agriculture tend to be concentrated in crops where it is easier to see and catch workers. For example, more undocumented workers are apprehended in low growing row crops such as peppers than in citrus, despite indications that more than half the citrus harvest work force is illegal (Martin, Mines, and Diaz, 1983). A study of the Ventura County citrus industry revealed that there were two distinct segments among the Mexican national workers. The "upper" segment consisted of former braceros who were documented workers and held stable jobs with significant fringe benefits under union contracts. The "lower" segment consisted primarily of undocumented migrants from Mexico who were recruited for growers by professional FLCs and who received much lower pay and benefits and had less job security (Cornelius et al., p. 29).

DOL's enforcement of the employer sanctions law places the agency in a conflicting position vis-a-vis undocumented workers. A major portion of DOL's work is enforcement of the minimum wage and overtime wage provisions of the Fair Labor Standards Act (FLSA). Collections under this provision amounted to over \$130 million in 1982 and were paid to over half a million workers (Table 10). DOL targets part of its minimum wage enforcement effort on industries or

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<sup>5</sup>Unemployment insurance reports indicate the number of workers that were hired by FLCs each year (see Table 11).



employers suspected of hiring illegals. In circumstances where an employer sanctions law is in effect, such as under MSPA investigations of FLCs, DOL is in a position of collecting back wages on behalf of undocumented workers, and at the same time fining their employers for hiring them. This dual role

discourages undocumented workers from complaining about FLSA violations and reduces the effectiveness of minimum wage enforcement. The conflict of interest towards workers would escalate greatly if an employer sanctions law affected all industries.

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## FLCs, FLC WORKERS AND WAGES IN CALIFORNIA

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Statistics were obtained from the California Unemployment Insurance (UI) program for the number of active FLCs, the number of FLC employees and total wages in California by region for the years 1978 to 1983. Similar information was obtained for all California agricultural employers in 1983. Virtually all California employers, including FLCs (and presumably unregistered FLCs), are required to report to UI the number of workers hired and wages paid each month.

According to UI data (Table 11), there were 776 FLCs active in 1983 who hired an average of approximately 48,000 workers each month and paid a total of \$273 million in wages throughout the year. July employment was 61,000, higher than the monthly average. (These statistics double-count workers if employed by more than one FLC in the same month.) The average number of workers hired per FLC was relatively high at 79 and the average annual wage per job slot was relatively low at \$5,600. This would be the average wage per worker if there were no turnover, but since workers move in and out of jobs the "average wage" is shared by several workers.<sup>6</sup>

Almost three-fourths of the FLCs and FLC workers are located in the San Joaquin Valley. The highest FLC wages were paid in the South Coast Region (San Luis Obispo, Santa Barbara, and Ventura counties) where the average \$8,400 wage per job slot was 65 percent greater than the lowest regional average FLC wage of \$5,100 in Southern California and 30 percent higher than the next highest wage of \$6,500 in the Central Coast.

The number of FLCs, employees and wages increased significantly between 1978 and 1983. The number of active FLCs in the state increased by 12 percent and the number of workers employed by FLCs increased almost 30 percent, resulting in the average number of employees per FLC increasing from 68 to 79. Annual wages paid by FLCs increased 76 percent, while the average annual wage increased 37 percent.

The regional distribution of FLCs and FLC employment in California has remained stable for the last eight years. The only noticeable change was a slight increase in average monthly employment in the San Joaquin Valley, from 68 to 70 percent of FLC employment, which was matched by a similar decrease in the Central Coast. The distribution of total annual wages shifted in a similar pattern.

Average wages did change significantly in the regions between 1978 and 1983. The South Coast average annual wage increased by over 54 percent, from \$5,460 to \$8,390, up from 133 percent of the statewide FLC annual average wage to 149 percent. At the other end of the scale, Sacramento Valley average wages increased less than 5 percent, from \$4,900 to \$5,100, decreasing from 119 percent to 91 percent of the state FLC average annual wage.

With equivalent UI figures from other sectors of California agriculture, we can look at the position FLCs occupy in relation to other agricultural employers. Table 12 compares employers by Standard Industrial Codes (SIC) in 1983. According to these data, there were almost 24,000 agricultural employers who together hired a monthly average of 300,000 workers and paid almost \$3.0 billion in wages in 1983. The average agricultural wage per job slot was \$9,726.

FLCs are a small percentage of agricultural employers, just 3 percent statewide. But FLC workers are a large percentage of agricultural workers, comprising over one-fourth of all agricultural employees in the San Joaquin Valley in July and almost one-fifth of the agricultural employees in the South Coast. Average monthly FLC employment is slightly lower than July employment in these regions, indicating that growers hire workers through FLCs for more of their seasonal work than their year-round work.<sup>7</sup>

The percentage of agricultural wages paid by FLCs is lower than the FLC employment percentage in all regions, indicating either that FLC workers are hired

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<sup>6</sup>For example, the average annual wage per worker at Coastal Growers' Association (CGA) in Ventura County was \$3,430 in 1978, 16 percent less than the average wage per job slot calculated here. However, CGA hourly wages were high, 75 percent above the statewide average, and CGA offered close to year-round employment.

<sup>7</sup>Seasonal harvest in Southern California is in the winter, so predictably the July percentage of workers hired by FLCs is lower than the average monthly employment.

for fewer hours or are paid lower wages than directly hired employees, or both. The gap is widest in the San Joaquin Valley where FLCs hired 23 percent of agricultural workers yet paid only 14 percent of agricultural wages.

A notable characteristic of FLC employers is their large average unit size—79 statewide compared to 15 for all agricultural employers. Average unit size of FLC employment increased from 68 in 1978. While averages can mask a different situation, this high figure shows no evidence of fragmentation of FLC employment and argues against the claim of some FLCs that they are being undercut and replaced by small unregistered FLCs. Other possible explanations of the high average unit size among FLCs could be a high turnover rate (since every worker who was paid during the month is counted) or the existence of several very large FLC employers who raise the mean.

FLCs in all regions pay comparatively low average wages. FLC average wages are the lowest of all agricultural employers in each region, ranging from 50 percent of the regional average in Southern California to 74 percent in the North Coast and 71 percent of the regional average in the South Coast.

Regional average wages and FLC wages are highest in the Central and South Coast areas which are also the regions with the highest number of union contracts.

The Standard Industrial Code (SIC) category of farm management services pays above average wages in each region, probably reflecting the salaries of highly paid managers. This category represents fewer workers than does the FLC category in all regions except the North Coast which had only 300 FLC employees in 1983.

Two regions dominate the FLC statistics—the San Joaquin Valley for its high numbers of FLCs and FLC employees and the South Coast for its relatively high wages. Almost three-fourths of all California FLCs and FLC employees are located in the San Joaquin Valley where the 44,500 July workers comprise over one-fourth of the work force. Since the San Joaquin Valley usually accounts for about one-half of all California agricultural labor statistics, the FLC concentration here is revealing.

The South Coast region has consistently paid higher FLC wages than other regions. This region paid an average annual wage of \$5,460 in 1978 and thereafter had the highest growth rate to a 1983 average annual wage of \$8,390. Total annual wages there increased by 113 percent, reflecting not only high growth rates in

wages but also the highest average employment growth rates (again except for the North Coast).

The high wage statistics from the South Coast region are strongly influenced by one firm, Coastal Growers Association (CGA), a registered FLC. CGA hired 1,000 workers at the peak lemon harvest in March 1978 or 44 percent of the total 2,276 FLC workers hired that month in the South Coast. CGA is a nonprofit association organized in 1961 for the purpose of harvesting lemons for its grower members. In 1965, CGA initiated wage and personnel policies to attract crews of workers in adequate numbers and to maintain long-term stability in its work force. In 1978 CGA workers voted to be represented by the United Farm Workers of America and a three-year contract was negotiated that year. Average hourly wages earned at CGA in 1978 were \$5.63 compared to a statewide average wage of \$3.21. In 1981, CGA's 1,200 workers averaged \$6.40 hourly while the average citrus wage in Santa Barbara County was \$3.93. Because of its size, this employer's wages dominate FLC wage rates in the South Coast region.

The UI data answers some questions, but raises others. The regional distribution of FLCs and their employees and their position and wages vis-a-vis other agricultural employers have been presented. UI statistics, however, differ significantly from Census of Agricultural statistics on annual wages. Census figures are 18 percent higher than the combined wages of the FLC and farm management services categories in 1978; 11 percent higher in 1982. Additionally, the number of FLCs reporting to UI is much lower than the number of FLCs holding federal certificates.

Unanswered and newly-raised questions, therefore, include the following:

- Why do the census and UI data differ so greatly?
- Why are so many more FLCs registered than those reporting to UI?
- How many FLCs do not report UI information?
- How many unregistered FLCs are operating in California who do or do not report to UI?
- What is the variance in employment size among FLC employers? Is there a fragmentation of the work force masked by the large employment of a few very large FLCs who raise the average?
- Is turnover greater among FLCs than other agricultural employers?

More research is needed to determine the magnitude of the variance behind the averages and to answer these other questions.



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## HAVE EMPLOYER SANCTIONS PREVENTED FLCs FROM HIRING UNDOCUMENTED WORKERS?

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FLCRA and state and local employer sanctions laws have not been effective in controlling employment of undocumented workers. Inadequate enforcement and the generally-accepted high number of undocumented workers in the agricultural work force tend to disprove the theory that voluntary compliance could be achieved. With an estimated 185,000 to 370,000 undocumented workers in the California agricultural work force and FLCs paying about 20 percent of agricultural wages, the number of illegals found by DOL in FLCRA/MSPA enforcement is insignificant. In the early 1980s, an average of only 23 FLCs were fined each year for hiring an average of 337 undocumented workers in California. A dozen states<sup>8</sup> and one locality<sup>9</sup> have enacted general employer sanctions laws, but the effects of these laws have been inconsequential since neither funds nor administrative mechanisms were provided to enforce them.<sup>10</sup>

The evidence tends to indicate that a general employer sanctions law would be just as ineffective. The employer sanctions provisions of recent immigration reform bills rely to a large extent on voluntary compliance, as did the original FLCRA which, after a decade of enforcement, showed over 70 percent noncompliance among FLCs investigated and two decades later showed 79 percent noncompliance in California, Arizona, and Nevada. Enforcement of a new employer sanctions law is expected to utilize the same awkward INS-DOL machinery presently used under MSPA. A large appropriations increase to both

agencies would be necessary to increase inspections and levy fines in all industries. Like the FLCRA/MSPA prohibition which has had little effect on FLC hiring of undocumented workers, it is possible that a general employer sanctions law would also be ineffective in this regard. After an initial flurry of firings of Mexican-Americans and employees from other ethnic groups, voluntary compliance would likely ebb as soon as a low enforcement capacity is perceived by employers. Increased use of forged documents could also reduce enforcement effectiveness.

Twenty years of regulation of FLCs, including the prohibition against hiring undocumented workers, has created a class of nimble employers who have increased their importance in agricultural employment as regulation and enforcement have increased. FLCs are believed to hire a higher percentage of illegals than other agricultural employers. General violations of FLCRA have been documented across the board, from small and large contractors to large national and international corporations.

A general sanctions law, with its attendant publicity, may win a degree of voluntary compliance from large and stable companies, since they are a visible target for INS. However, INS investigations<sup>11</sup> would probably be less effective among smaller employers and these could develop, as did FLCs, into a class of employers who would hire illegals while staying one step ahead of enforcement efforts.

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<sup>8</sup>California, Connecticut, Delaware, Florida, Kansas, Maine, Massachusetts, Montana, New Hampshire, New Jersey, Vermont, and Virginia.

<sup>9</sup>Las Vegas.

<sup>10</sup>California Assembly Bill 528, signed into law in 1971, prohibited the knowing employment of an undocumented worker if such employment would have an adverse effect on lawful workers. The bill provided a fine of \$200 to \$500 for each offense and allowed subsequent civil actions against the employer. A.B. 528 was found unconstitutional by the California courts on the grounds of federal preemption of immigration law and ambiguities in the statute. (*DeCanas and Canas v. Bica* (1974) 40 Cal. App. 3rd 976, 115 Cal. Rptr. 444; hg. den. Oct. 24, 1974) Two years later, the U.S. Supreme Court reversed the unconstitutional finding and remanded the case to the California courts. (*DeCanas and Canas v. Bica* (1976) 424 U.S. 351), but no further action was taken and the law has been ignored ever since. Experience in the Mexican-American community under A.B.528 was disruptive. Some U.S. citizens of Mexican ancestry lost jobs because they had no birth certificate or other adequate documentation. One plant laid-off its entire Hispanic work force rather than decide which workers were illegal. Another plant laid-off undocumented workers with high seniority and replaced them with newer and lower-wage undocumented workers. Large numbers of workers were taken off formal payrolls and paid in cash. Some companies required illegal workers to make a \$200-\$500 deposit in case the employer was fined. Other workers had their wages reduced "because of the increased risk." (California Assembly Committee on Labor Relations, 1972.)

<sup>11</sup>INS "raids" on businesses to find undocumented workers are currently limited by an U.S. district court injunction issued October 11, 1985, prohibiting INS agents from entering businesses without a warrant, consent, or exigent circumstances. (*International Molders v. Nelson*, Dist. Ct. of CA. 82-1896.)

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## ALTERNATIVES

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Given the limited effectiveness of employer sanctions against FLCs, what are the regulatory options? The answer depends upon the regulatory goal, which may be either (1) to stop FLCs from hiring undocumented workers or (2) to improve the wages and working conditions of the agricultural work force.

The means of achieving the first goal, stopping FLCs from hiring undocumented workers, fall under two broad categories—enforcement and education. Enforcement options include both increasing penalties and increasing the probability of getting caught. The most effective method of increasing penalties would be to give DOL investigators authority to increase fines for each subsequent violation and to expedite appeal procedures. This approach would penalize large FLCs who accept penalties as a cost of doing business and FLCs who continue to operate while appealing their case.<sup>12</sup>

There are several ways to increase the probability of apprehension. The most effective would be to increase the number of inspections. Another strategy would be to focus enforcement on FLCs, or on areas and crops which are known to be using illegals. This method would require coordination with INS, since DOL normally relies on INS to find undocumented workers.

The problems with these methods are administrative, financial, and philosophical. Investigators may be reluctant to impose greater fines. In order to expedite appeals procedures, more hearing officers must be appointed to eliminate the case backlog and additional attorneys may be necessary. Substantially more funds would be necessary to increase inspections to a level which would affect even 25 percent of the FLC work force. Increased cooperation with INS would con-

tradict the DOL goal of protecting workers from minimum wage violations and other abuses. That is, undocumented workers would not be likely to cooperate by reporting minimum wage and other violations to DOL if INS accompanied DOL on its inspections.

Education options for reducing the number of undocumented workers hired by FLCs include distributing information to FLCs and working with registered FLCs to find unregistered FLCs. Seminars or information distribution could educate some FLCs about the employer sanctions provision and other parts of MSPA. If FLCs' business depends on undocumented workers, however, the education approach would probably be ineffective. Some large FLCs complain that smaller unregistered FLCs who rely on undocumented workers are undercutting their business. If the complaining FLCs would assist DOL in finding the unregistered FLCs, then their competition would be regulated in the same way they are.

A second goal to consider is improving the working conditions of all agricultural employees, which is one of the reasons for reducing the number of undocumented workers. Possible means for achieving it include (1) increased enforcement and (2) increased education. Here enforcement of FLSA and other laws protecting workers must be considered in addition to MSPA. Penalties could be added to protective laws, such as minimum wage, which currently have no fines attached. DOL could increase the number of investigations in agriculture, and further investigations could be initiated through worker complaints. However, it is hard to encourage worker complaints without offering some incentive, such as immunity from deportation.

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<sup>12</sup>One DOL investigator recounted how an FLC was found in violation of FLCRA, fined \$800 and paid it. The next year when he was found violating FLCRA again and fined \$9,000, he appealed. The third year his fines totalled \$83,000 and he again appealed. His case has now been on appeal about two and a half years.



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Table 1. Percentage Distribution of U.S. Farm Employers and Wages, 1982

	Farm employers	Wages
	-----percent-----	
Field crop farms	42	32
Livestock farms	50	35
Fruit, vegetable and horticultural farms	8	33
	100.0	100.0
	868,510 farms	\$8.4 billion

Source: U.S. Bureau of the Census, Census of Agriculture, 1982.

Table 2. Percentage Distribution of U.S. FLC Employers and Wages, 1982

	Farm employers	Wages
	-----percent-----	
Field crop farms	35	24
Livestock farms	43	14
Fruit, vegetable and horticultural farms	22	62
	100.0	100.0
	139,229 farms	\$1.1 billion

Source: U.S. Bureau of the Census, Census of Agriculture, 1982.



Table 3. U.S. Farm Employment, 1974-1982

United States	1974	1982	Percentage change 1978-1982
Farm employers--direct hire	831,340	869,837	+ 4.6
Wages (\$ million)	4,652,000	8,441,000	+ 81.4
Farms hiring FLCs	119,385	139,336	+ 16.7
Wages (\$ million)	512,000	1,104,000	+115.6
FVH farms--direct hire <sup>a</sup>	56,919	57,412	+ .9
Wages (\$ million)	1,470,000	2,796,000	+ 90.2
Percentage of direct hire wages	31.6	33.1	
FVH farms hiring FLCs <sup>a</sup>	16,172	30,711	+ 89.9
Wages (\$ million)	265,000	683,000	+157.7
Percentage of contract wages	51.8	61.9	
Large farms--direct hire <sup>b</sup>	10,934	25,578	+133.9
Wages (\$ million)	1,704,000	3,865,000	+126.8
Percentage of direct hire wages	36.6	45.8	
Large farms hiring FLCs <sup>b</sup>	2,626	6,202	+136.2
Wages (\$ million)	205,000	574,000	+180.0
Percentage of contract wages	40.0	52.0	
Large employers--direct hire <sup>c</sup>	12,367	25,241	+104.1
Wages (\$ million)	NA	4,580,000	NA
Percentage of direct hire wages	NA	54.3	NA
Large employers of FLCs <sup>c</sup>	3,961	8,415	+112.4
Wages (\$ million)	NA	762,000	NA
Percentage of contract wages	NA	69.0	NA

<sup>a</sup>Fruits and nuts, vegetables and melons, and horticultural farms.

<sup>b</sup>Farms in the highest annual gross sales category (\$500,000 or more).

<sup>c</sup>Farms in the highest farm wage category. This was \$50,000 or more for direct hire employers in 1974 and 1982; \$10,000 or more for FLC employers in 1974; \$20,000 or more for FLC employers in 1982.

Source: U.S. Bureau of the Census, Census of Agriculture, 1974 and 1982.

Table 4. Number of Farms Hiring Workers and Wage Bills in the United States, California, Florida, and Texas, 1974 and 1982

	1974	1982	Percentage change
<u>United States</u>			
Farms	2,314,013	2,240,976	- 3.2
Farms hiring directly	831,340	869,837	+ 4.6
Wages (\$ million)	4,652	8,441	+ 81.4
Farms hiring FLCs	119,385	139,336	+ 16.7
Wages (\$ million)	512	1,104	+115.6
FLC wages as percentage of the total wage bill	9.9	11.6	
<u>California</u>			
Farms	67,674	82,463	+ 21.9
Farms hiring directly	31,268	40,057	+ 28.1
Wages (\$ million)	1,043	1,819	+ 74.4
Farms hiring FLCs	13,330	18,149	+ 36.2
Wages (\$ million)	186	414	+122.6
FLC wages as percentage of the total wage bill	15.1	18.5	
<u>Florida</u>			
Farms	32,466	36,352	+ 12.0
Farms hiring directly	11,115	12,987	+ 16.8
Wages (\$ million)	264	480	+ 81.8
Farms hiring FLCs	3,795	5,610	+ 47.8
Wages (\$ million)	80	201	+151.3
FLC wages as percentage of the total wage bill	23.2	29.5	
<u>Texas</u>			
Farms	174,068	185,020	+ 6.3
Farms hiring directly	62,065	63,080	+ 1.6
Wages (\$ million)	301	480	+ 59.5
Farms hiring FLCs	20,948	22,528	+ 7.5
Wages (\$ million)	46	88	+ 91.3
FLC wages as percentage of the total wage bill	13.2	15.5	

Source: U.S. Bureau of the Census, Census of Agriculture, 1974 and 1982.



Table 5. FLC Registrations, 1965-1971

	1965	1966	1967	1968	1969	1970	1971
	-----number-----						
FLC registrations	1,500a	1,857	2,194	3,129	3,034	2,842	2,900a

<sup>a</sup>Estimated.

Source: Migrant Manpower Programs, Hearings of Title III of H.R.5010, U.S. Congress, House of Representatives Subcommittee on Agricultural Labor, 2nd Cong., 2nd Sess., 30 June 1971, 24 April 1972, p. 244.

Table 6. Denials and Revocations of Certification, 1966-1970

	1966	1967	1968	1969	1970
	-----number-----				
Denials of certification	2	3	2	4	3
Revocations of certification	18	0	0	4	2

Source: Migrant Manpower Programs, Hearings of Title III of H.R.5010, U.S. Congress, House of Representatives Subcommittee on Agricultural Labor, 2nd Cong., 2nd Sess., 30 June 1971, 24 April 1972, p. 113.

Table 7. Distribution of Civil Money Penalties Among FLCs, FLCEs and Users, 1980-84

	1980	1981	1982	1983	1984
<u>Total</u>					
Assessments	894	569	301	248	293
Hearings requested	532	260	143	110	114
Percentage hearings requested	60	46	48	44	40
Hearings completed	30	50	38	28	10
<u>FLCs and FLCEs</u>					
Assessments	659	445	267	222	288
Hearings requested	351	174	123	93	111
Percentage hearings requested	53	39	46	42	38
Hearings completed	15	42	32	24	9
<u>Users</u>					
Assessments	235	124	34	26	5
Hearings requested	181	86	20	17	3
Percentage hearings requested	87	83	72	82	89

Source: U.S. DOL, Employment Standards Administration, Wage Hour Division, Civil Money Penalty Summary by Region, 1980-84.

Table 8. Percentage of FLCRA and MSPA Investigations Revealing Violations in the United States, 1980-84

	1980	1981	1982	1983	1984
Investigations covered by either act	3,641	3,603	3,235	3,181	3,139
Investigations revealing noncompliance	2,365	2,167	1,790	1,708	1,826
Percentage noncompliance	65	60	55	53	58

Source: U.S. DOL, Employment Standards Administration, Regional Summary of FLCRA/MSPA Compliance Actions, 1980-84.



Table 9. Types of Compliance Actions in the United States and by Major Regions, 1980-84

Type of enforcement action	1980	1981	1982	1983	1984
<u>Full investigation</u>					
United States	4,064	4,036	3,859	3,525	3,794
Atlanta	1,018	1,250	1,054	828	860
Dallas	886	1,038	1,119	1,100	1,296
San Francisco	640	406	456	530	476
<u>Follow-up investigation</u>					
United States	198	166	201	140 <sup>a</sup>	145
Atlanta	21	12	8	18	21
Dallas	90	97	119	64	66
San Francisco	16	15	6	4	6
<u>Other</u>					
United States	228	429	431	698 <sup>b</sup>	538
Atlanta	56	149	186	149	169
Dallas	73	127	117	164	139
San Francisco	43	69	17	108	127

<sup>a</sup>"Reinvestigation" under MSPA, beginning in 1983.

<sup>b</sup>Includes recurring violations beginning with MSPA, 1983.

Source: U.S. DOL, Employment Standards Administration, Regional Summary of FLCRA/MSPA Compliance Action, 1980-84.

Table 10. DOL Collections of Underpayment of Wages under FLSA and FLCRA/MSPA Fines, 1980-1984

	1980	1981	1982	1983
All wage underpayments (thousands)	\$110,900	127,300	130,200	114,010
Employees	623,000	687,000	578,000	440,161
Agricultural wage underpayments (thousands)	under \$4,000	3,392	2,402	NA
Employees	19,864	18,281	14,329	NA
All FLCRA/MSPA CMP Assessments (thousands)	> \$1,000	1,387	1,239	651
FLCRA/MSPA assessments for hiring undocumented workers (thousands)	241	393	587	426
Employees	3,995	2,364	1,343	1,072

Source: DOL Annual Reports, 1980-1983 and U.S. DOL, Summary of Employment Standards Administration, Wage Hour Enforcement Activities, 1980-83.

Table 11. California FLCs, FLC Employment and Wages by Region, 1978-1983

	1978	1979	1980	1981	1982	1983	Percentage change 1978-1983
<b>California</b>							
Active FLCs, 3d Qtr	690	718	723	761	780	776	12.46
FLC employment, July	47,213	52,154	51,566	59,672	62,539	61,058	29.32
Avg. employees per FLC	68	73	71	78	80	79	16.18
Annual FLC wages	154,978,905	190,318,111	209,996,976	246,974,525	263,396,546	272,576,447	75.88
Avg. monthly employment	37,697	42,293	43,446	47,261	50,064	48,457	28.54
Avg. annual wages <sup>a</sup>	\$4,111.17	\$4,499.99	\$4,833.52	\$5,225.76	\$5,261.20	\$5,625.12	36.83
<b>Southern California</b>							
Active FLCs, 3d Qtr	47	42	41	50	50	50	6.38
FLC employment, July	3,281	3,011	3,840	5,087	3,863	4,202	28.07
Avg. employees per FLC	70	72	94	102	77	84	20.00
Annual FLC wages	19,188,823	21,395,108	23,855,077	25,945,689	25,841,293	28,972,683	50.99
Avg. monthly employment	4,708	5,230	5,761	5,039	5,240	5,683	20.71
Avg. annual wages <sup>a</sup>	\$4,075.79	\$4,090.84	\$4,140.79	\$5,148.98	\$4,931.54	\$5,098.13	25.08
<b>South Coast</b>							
Active FLCs, 3d Qtr	37	38	38	40	39	47	27.03
FLC employment, July	3,107	3,406	3,576	3,997	4,271	4,572	47.15
Avg. employees per FLC	84	90	94	100	110	97	15.48
Annual FLC wages	15,026,037	18,648,352	19,602,161	25,339,599	29,814,544	31,984,060	112.86
Avg. monthly employment	2,752	3,076	2,842	3,276	3,924	3,812	38.52
Avg. annual wages <sup>a</sup>	\$5,460.04	\$6,062.53	\$6,897.31	\$7,734.92	\$7,598.00	\$8,390.36	53.67
<b>Central Coast</b>							
Active FLCs, 3d Qtr	42	42	48	45	42	45	7.14
FLC employment, July	2,978	4,588	4,602	3,349	4,581	4,041	35.70
Avg. employees per FLC	71	109	96	74	109	90	26.76
Annual FLC wages	12,835,558	17,011,645	16,637,860	16,469,889	18,050,862	19,947,054	55.40
Avg. monthly employment	2,903	3,445	3,128	2,864	2,962	3,082	6.17
Avg. annual wages <sup>a</sup>	\$4,421.48	\$4,938.07	\$5,319.01	\$5,750.66	\$6,094.15	\$6,472.11	46.38
<b>San Joaquin Valley</b>							
Active FLCs, 3d Qtr	502	526	527	558	581	560	11.55
FLC employment, July	34,421	37,369	36,042	42,904	44,392	44,449	29.13
Avg. employees per FLC	69	71	68	77	76	79	14.49
Annual FLC wages	99,096,658	121,422,359	137,126,384	166,096,233	175,550,781	180,039,044	81.68
Avg. monthly employment	25,550	28,318	29,415	33,351	35,016	33,712	31.95
Avg. annual wages <sup>a</sup>	\$3,878.54	\$4,287.82	\$4,661.78	\$4,980.25	\$5,013.44	\$5,340.50	37.69
<b>North Coast</b>							
Active FLCs, 3d Qtr	13	14	14	14	13	15	15.38
FLC employment, July	201	137	279	238	477	304	51.24
Avg. employees per FLC	15	10	20	17	37	20	33.33
Annual FLC wages	755,976	1,209,032	1,583,887	1,566,386	2,372,464	2,126,898	181.34
Avg. monthly employment	139	162	263	291	507	316	127.34
Avg. annual wages <sup>a</sup>	\$5,438.68	\$7,463.16	\$6,022.38	\$5,382.77	\$4,679.42	\$6,730.69	23.76
<b>Sacramento Valley</b>							
Active FLCs, 3d Qtr	49	56	55	54	55	59	20.41
FLC employment, July	3,225	3,643	3,227	4,097	4,955	3,490	8.22
Avg. employees per FLC	66	65	59	76	90	59	-10.61
Annual FLC wages	8,075,853	10,631,615	11,191,607	11,556,729	11,766,602	9,506,708	17.72
Avg. monthly employment	1,645	2,062	2,037	2,440	2,415	1,852	12.58
Avg. annual wages <sup>a</sup>	\$4,909.33	\$5,155.97	\$5,494.16	\$4,736.36	\$4,872.30	\$5,133.1	4.56

<sup>a</sup>Wages per job slot. Because of turnover, several workers usually share each job slot.

Source: California Employment Development Department, unemployment insurance data.

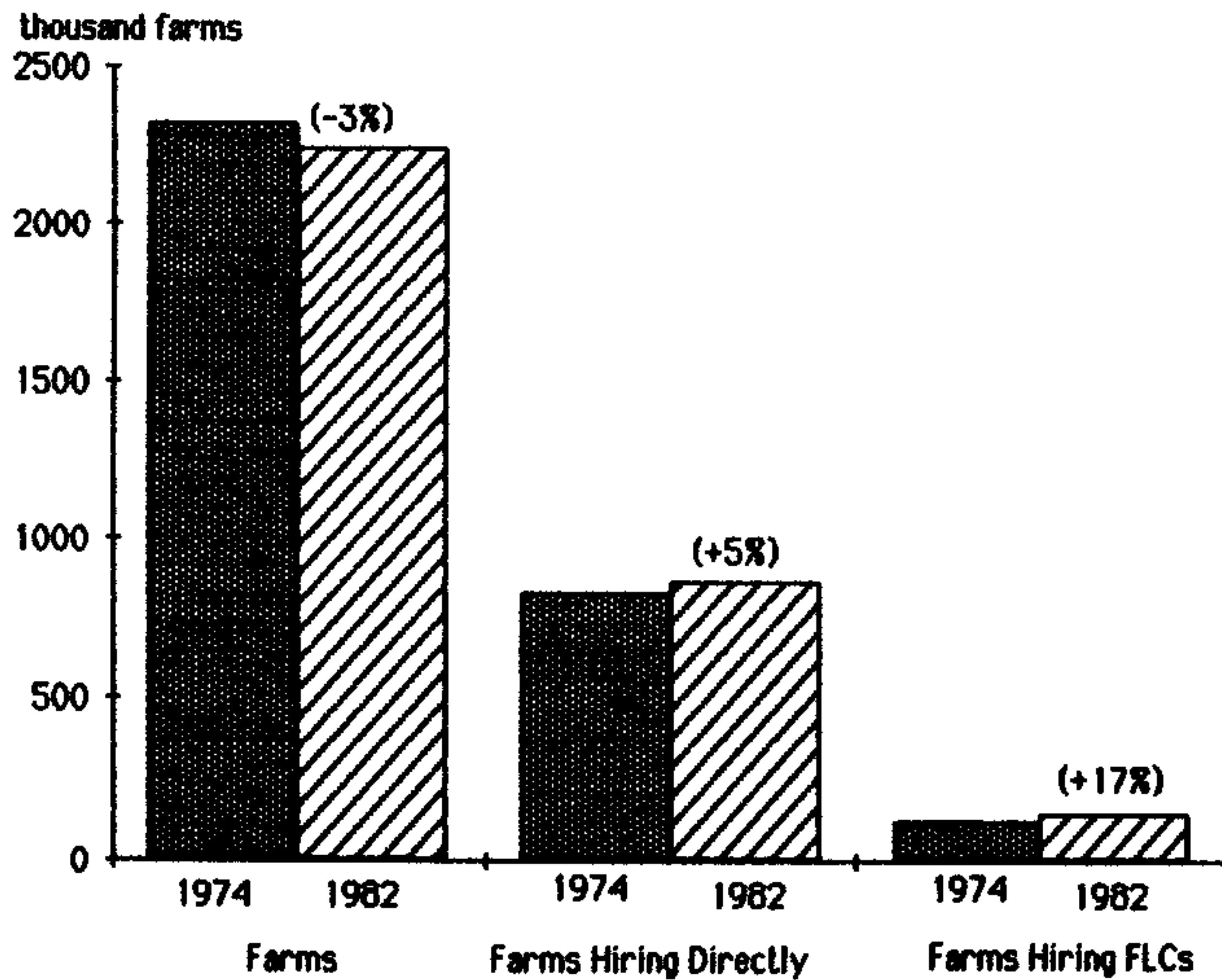


Table 12. California Agricultural Reporting Units (RUs) Wages, Employees, 1983

	Percentage RUs in region, 1983	July employment (number)	Percentage employment in region, July	Avg. employees per RUs, July	1983 wages (dollars)	Percentage wages in region, 1983	Avg. monthly employment, 1983 (number)	Percentage employment in region, 1983	Avg. annual wages, 1983 (dollars)	Regional avg. wage as a percentage of state avg. wage
<u>Southern California</u>										
Crops	3,100	100.00	66,551	21	628,613,034	100.00	61,251	100.00	\$10,262.90	100.00
Livestock	2,045	65.97	50,019	24	439,096,123	69.85	43,256	70.62	10,151.10	98.91
FLCs	923	29.77	8,918	10	130,284,056	20.73	8,974	14.65	14,517.95	141.46
Farm management companies	50	1.61	4,202	84	28,972,683	4.61	5,683	9.28	5,098.13	49.68
	82	2.65	3,412	42	30,260,172	4.81	3,338	5.45	9,065.36	88.33
<u>South Coast</u>										
Crops	1,534	100.00	26,195	17	272,847,353	100.00	23,210	100.00	11,755.59	100.00
Livestock	1,218	79.40	18,247	15	200,893,447	73.63	16,086	69.31	12,488.71	106.24
FLCs	237	15.45	1,774	7	21,847,123	8.01	1,782	7.68	12,259.89	104.29
Farm management companies	47	3.06	4,572	97	31,984,060	11.72	3,812	16.42	8,390.36	71.37
	32	2.09	1,602	50	18,122,723	6.64	1,530	6.59	11,844.92	100.76
<u>Central Coast</u>										
Crops	2,282	100.00	54,100	24	502,242,948	100.00	40,473	100.00	12,409.33	100.00
Livestock	1,922	84.22	47,702	25	454,677,477	90.53	35,212	87.00	12,912.57	104.06
FLCs	292	12.80	1,737	6	17,057,849	3.40	1,545	3.82	11,040.68	88.97
Farm management companies	45	1.97	4,041	90	19,947,054	3.97	3,082	7.61	6,472.11	52.16
	23	1.01	620	27	10,560,568	2.10	634	1.57	16,657.05	134.23
<u>San Joaquin Valley</u>										
Crops	11,897	100.00	174,497	15	1,267,141,841	100.00	149,082	100.00	8,499.63	100.00
Livestock	9,292	78.10	110,131	12	863,931,418	68.18	97,040	65.09	8,902.84	104.74
FLCs	1,936	16.27	14,375	7	169,970,746	13.41	14,007	9.40	12,134.70	142.77
Farm management companies	560	4.71	44,449	79	180,039,044	14.21	33,712	22.61	5,340.50	62.83
	109	0.92	5,542	51	53,200,633	4.20	4,323	2.90	12,306.42	144.79
<u>North Coast</u>										
Crops	1,442	100.00	8,491	6	87,051,449	100.00	9,524	100.00	9,140.22	100.00
Livestock	1,066	73.93	6,102	6	61,706,993	70.89	7,136	74.93	8,647.28	94.61
FLCs	339	23.51	1,620	5	18,155,668	20.86	1,593	16.73	11,397.16	124.69
Farm management companies	15	1.04	304	20	2,126,898	2.44	316	3.32	6,730.69	73.64
	22	1.53	465	21	5,061,890	5.81	479	5.03	10,567.62	115.62
<u>Sacramento Valley</u>										
Crops	3,729	100.00	29,327	8	221,262,758	100.00	22,765	100.00	9,719.43	100.00
Livestock	2,936	78.73	23,317	8	188,316,067	85.11	18,922	83.12	9,952.23	102.40
FLCs	717	19.23	2,398	3	21,552,009	9.74	1,837	8.07	11,732.18	120.71
Farm management companies	59	1.58	3,490	59	9,506,708	4.30	1,852	8.14	5,133.21	52.81
	17	0.46	122	7	1,887,974	0.85	154	0.68	12,259.57	126.13
California	23,984		359,161	15	2,979,159,383		306,305		9,726.12	

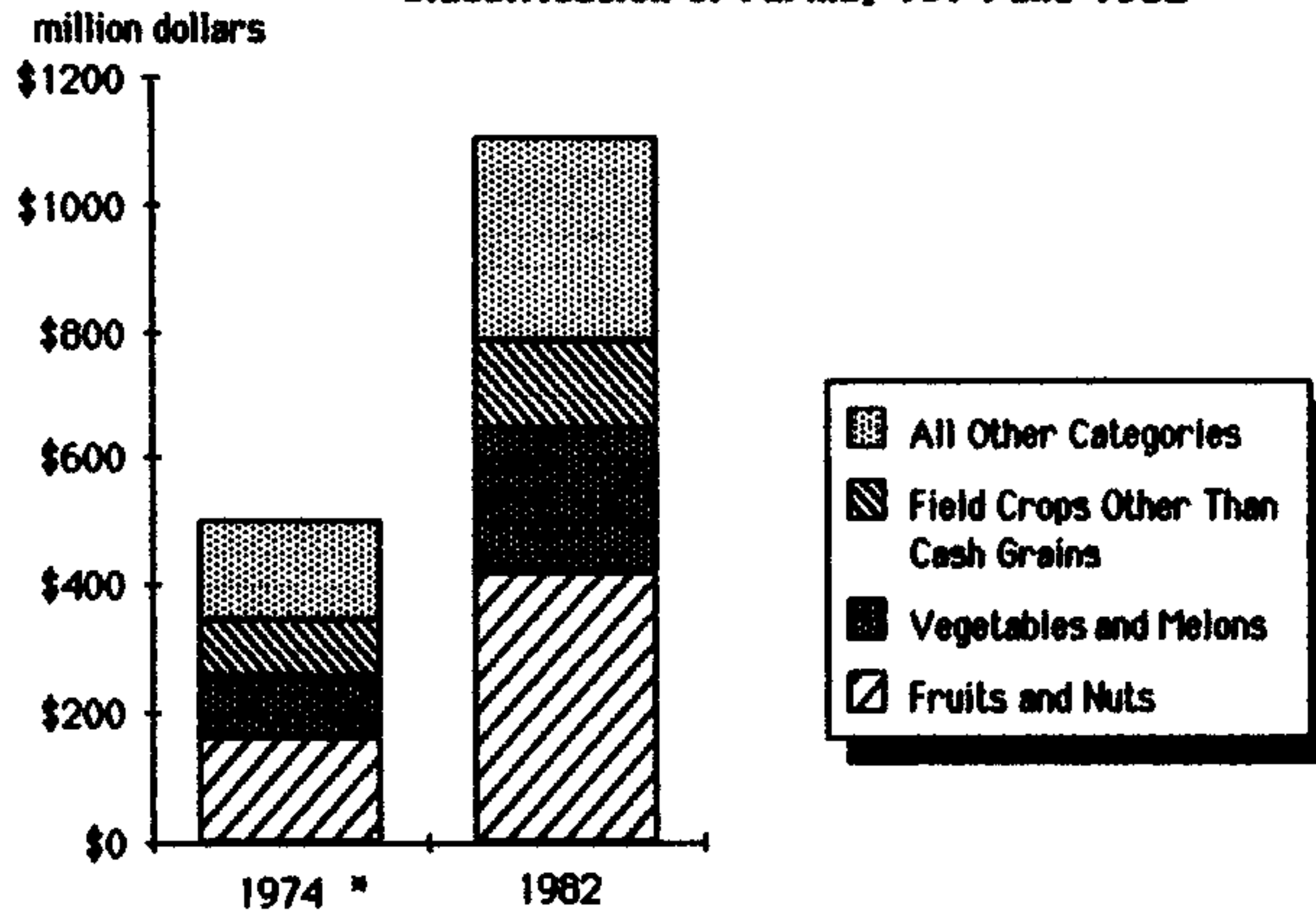
Source: California Employment Development Department, unemployment insurance statistics.

**Figure 1. Number of U.S. Farms, Farms Hiring Labor Directly and Farms Hiring FLCs, 1974 and 1982**



Source: U.S. Bureau of the Census, Census of Agriculture, 1974 and 1982.

**Figure 2. Value of U.S. Contract Wages By Standard Industrial Classification of Farms, 1974 and 1982**

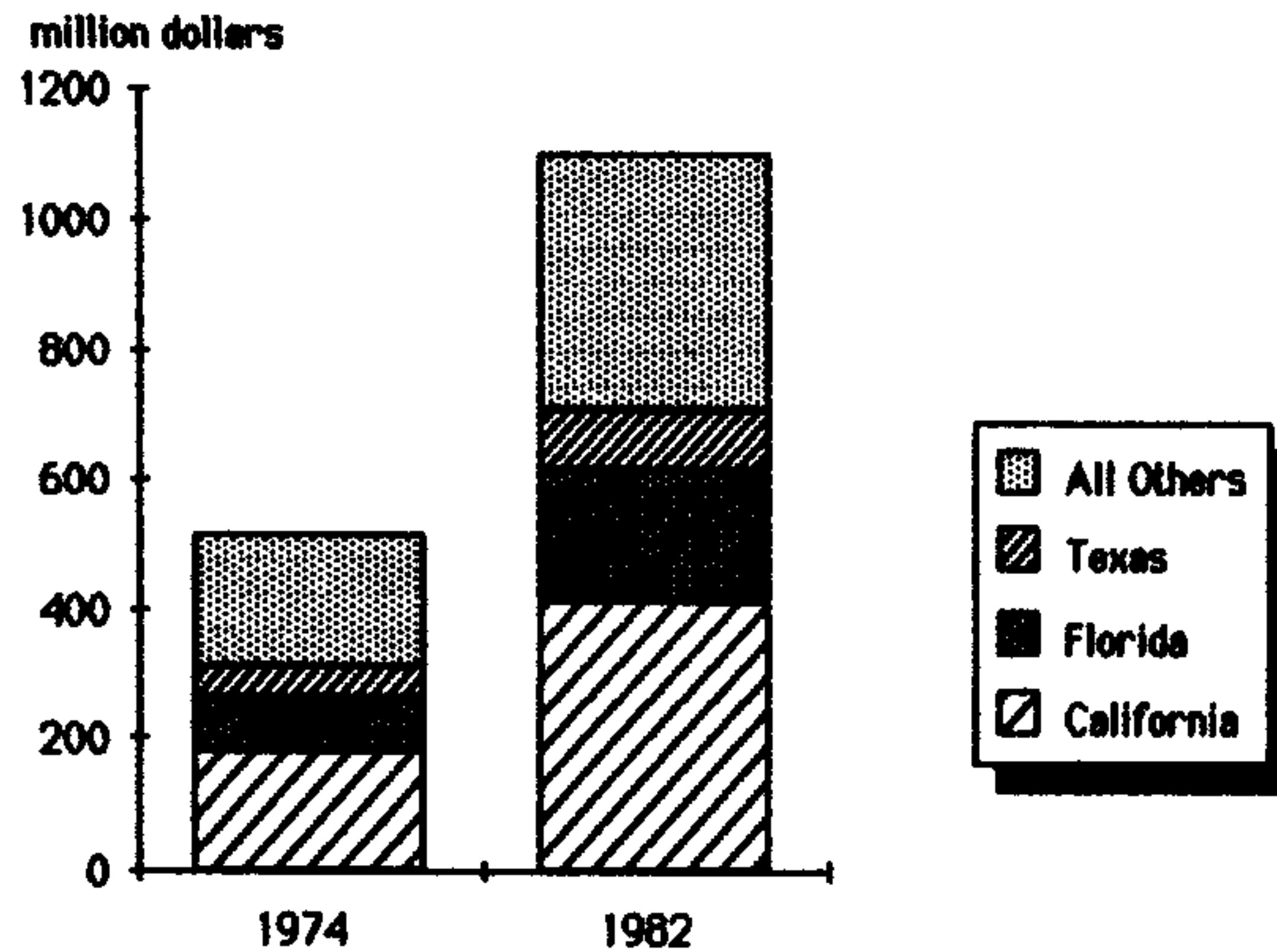


\*Refers to farms with gross sales greater than \$2500 only.

Source: U.S. Bureau of the Census, Census of Agriculture, 1974 and 1982.

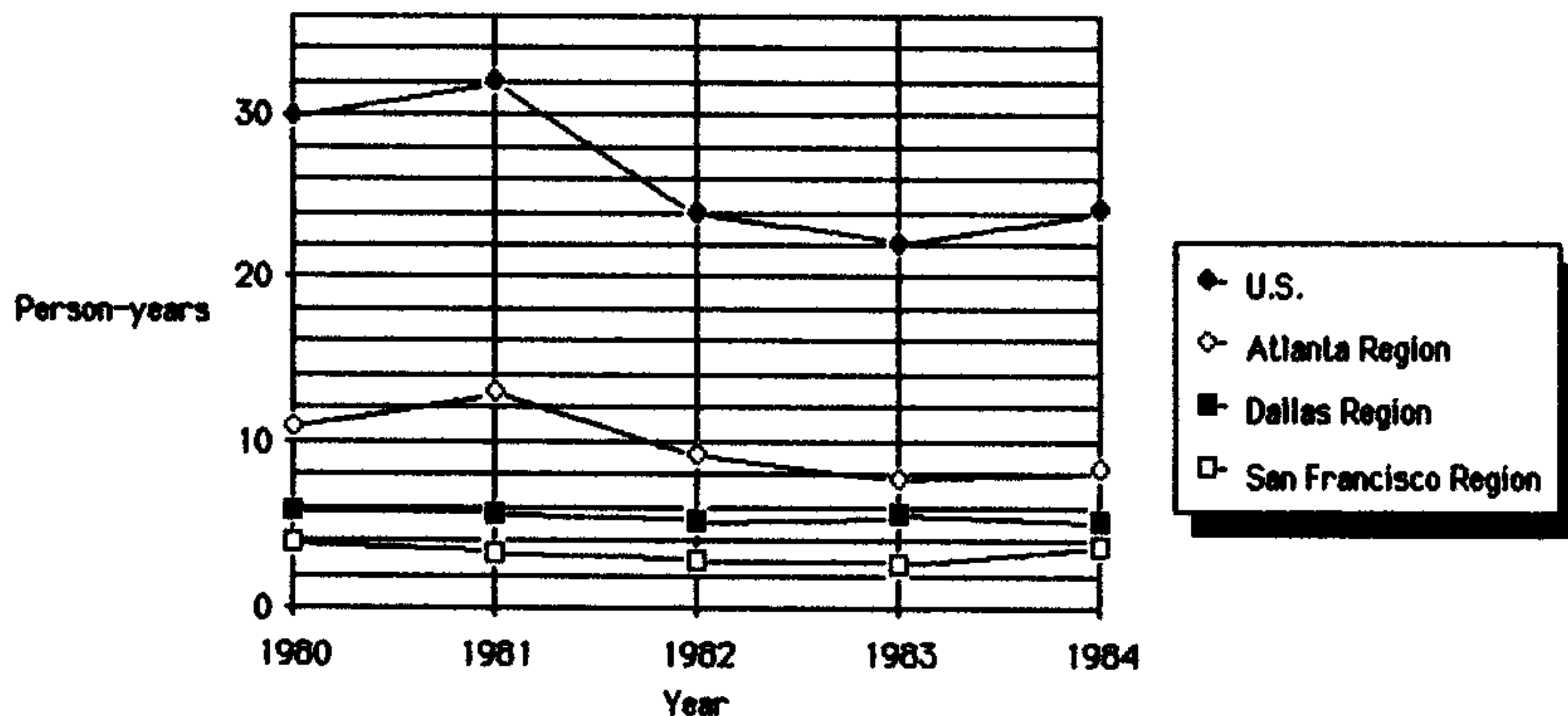


**Figure 3. Value of Contract Wages in United States, Selected States, 1974 and 1982**



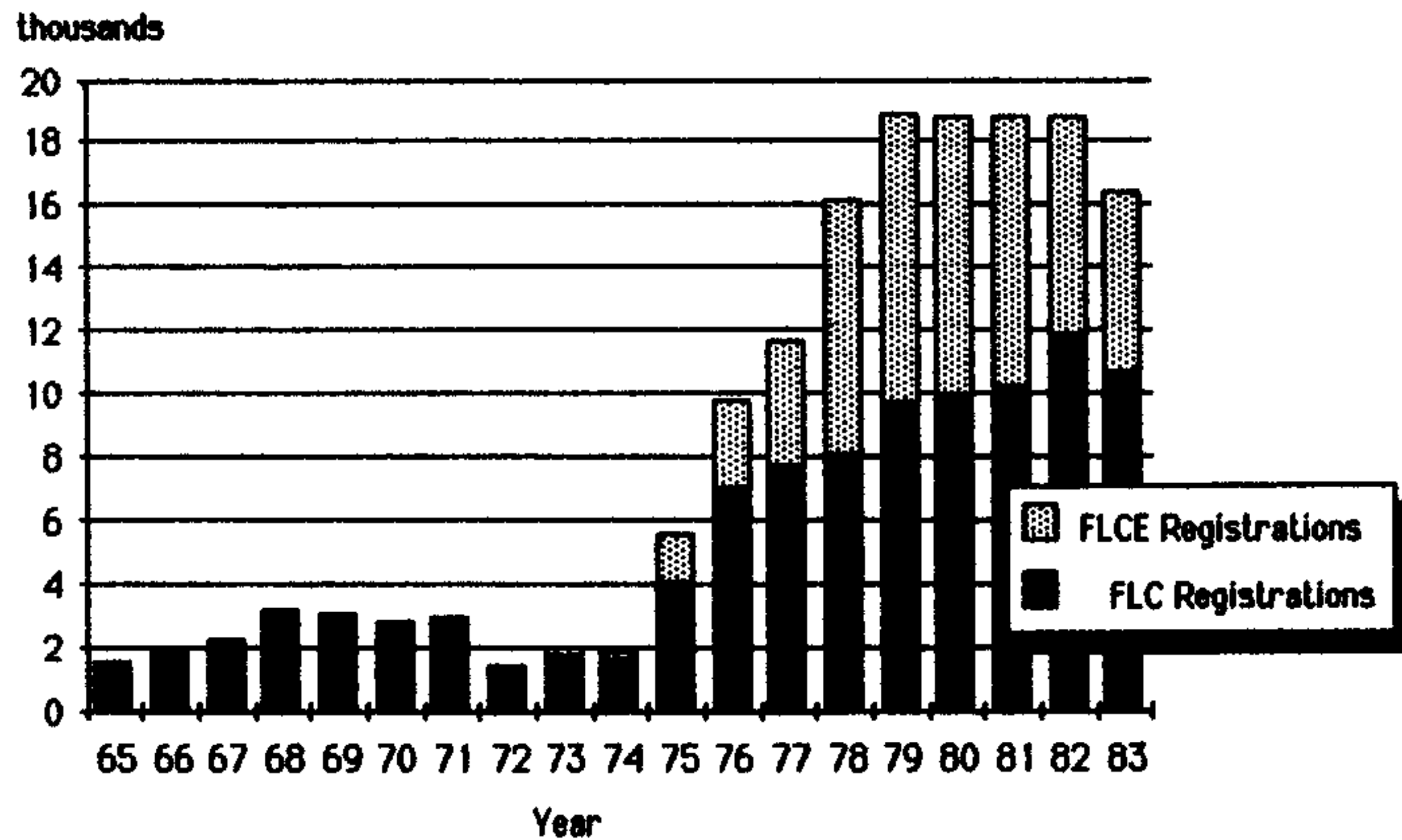
Source: U.S. Bureau of the Census, Census of Agriculture, 1974 and 1982.

**Figure 4. FLCRA and MSPA Enforcement Person-Years, United States and Major Regions, 1980 - 1984**



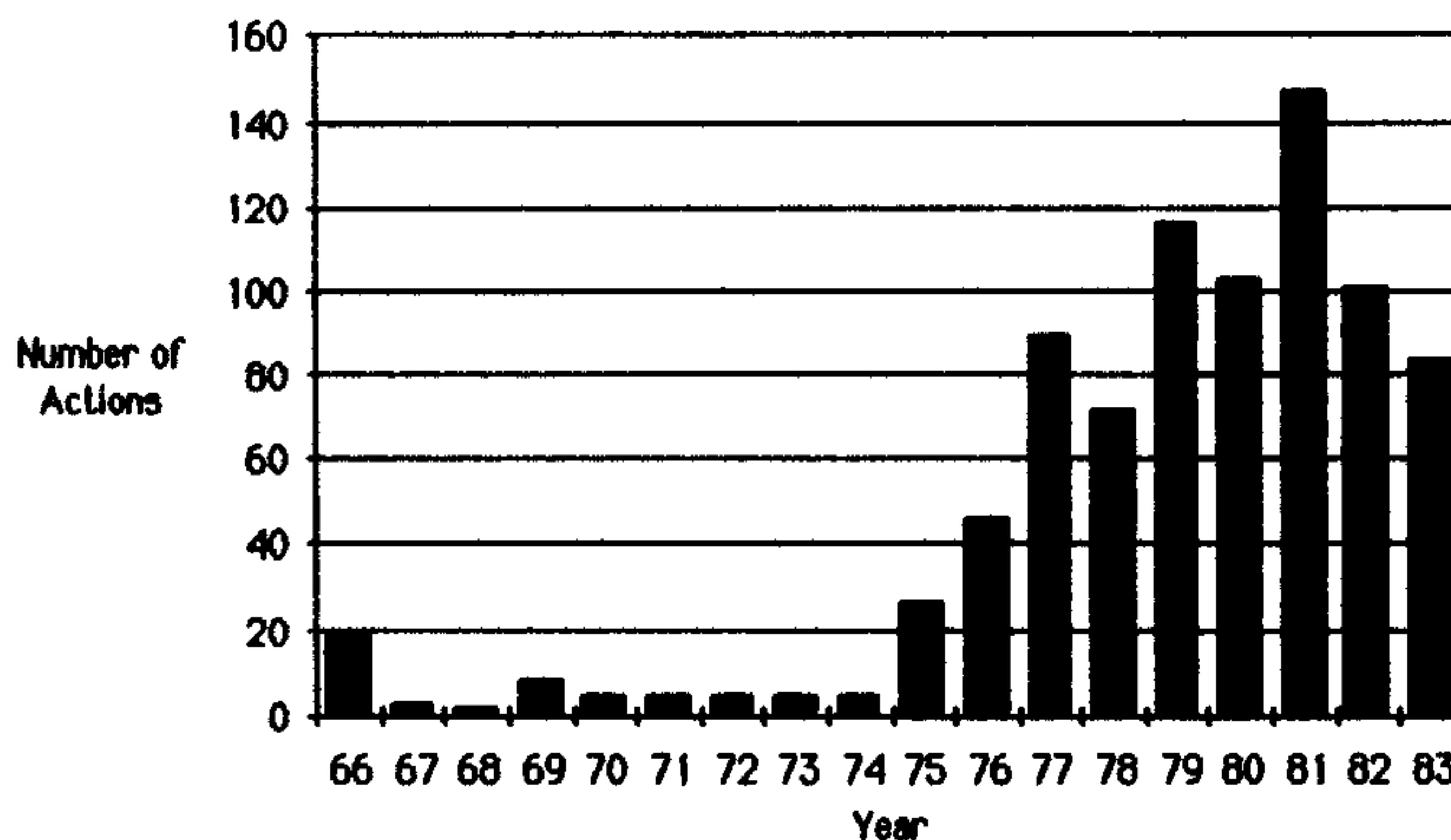
Source: Calculated from U.S. DOL ESA Regional Summary of FLCRA/MSPA Compliance Actions, 1980-1984.

**Figure 5. Number of Registered Farm Labor Contractors and Farm Labor Contractor Employees, 1965 - 1983**



Source: U.S. DOL Registration Data Under FLCRA/MSPA; U.S. Congress, House of Representatives, Farm Labor Contractor Registration Act, 95th Cong., 2nd Sess., 22 and 23 Feb. 1978, p. 244.

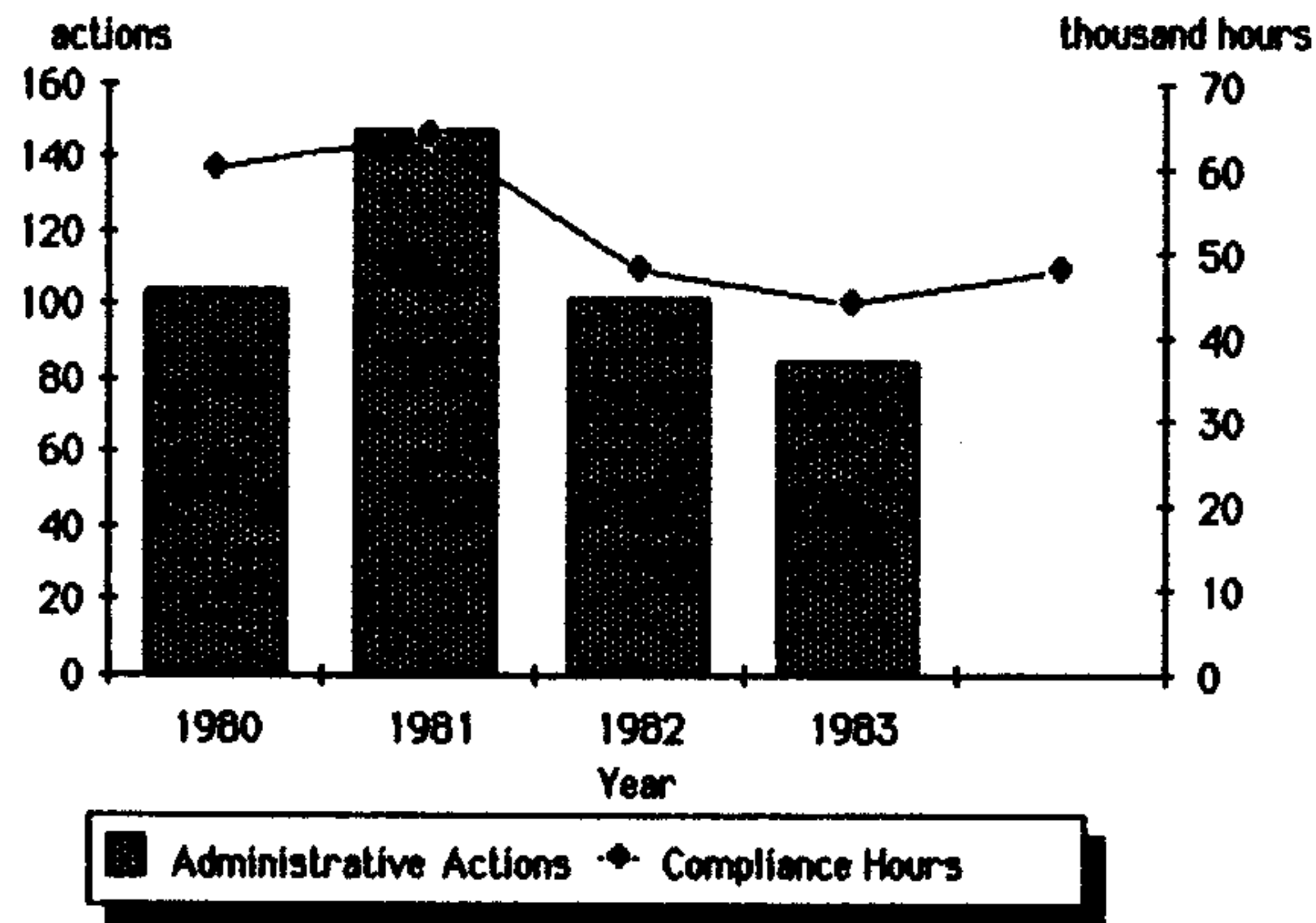
**Figure 6. Administrative Actions to Deny, Suspend or Revoke Certification, All Regions, 1966 - 1983**



Source: U.S. DOL Registration Data Under FLCRA/MSPA; U.S. Congress, House of Representatives, Migrant Manpower Programs, 92nd Cong., 2nd Sess., 30 June 1971 and 24 April 1972, p.245.

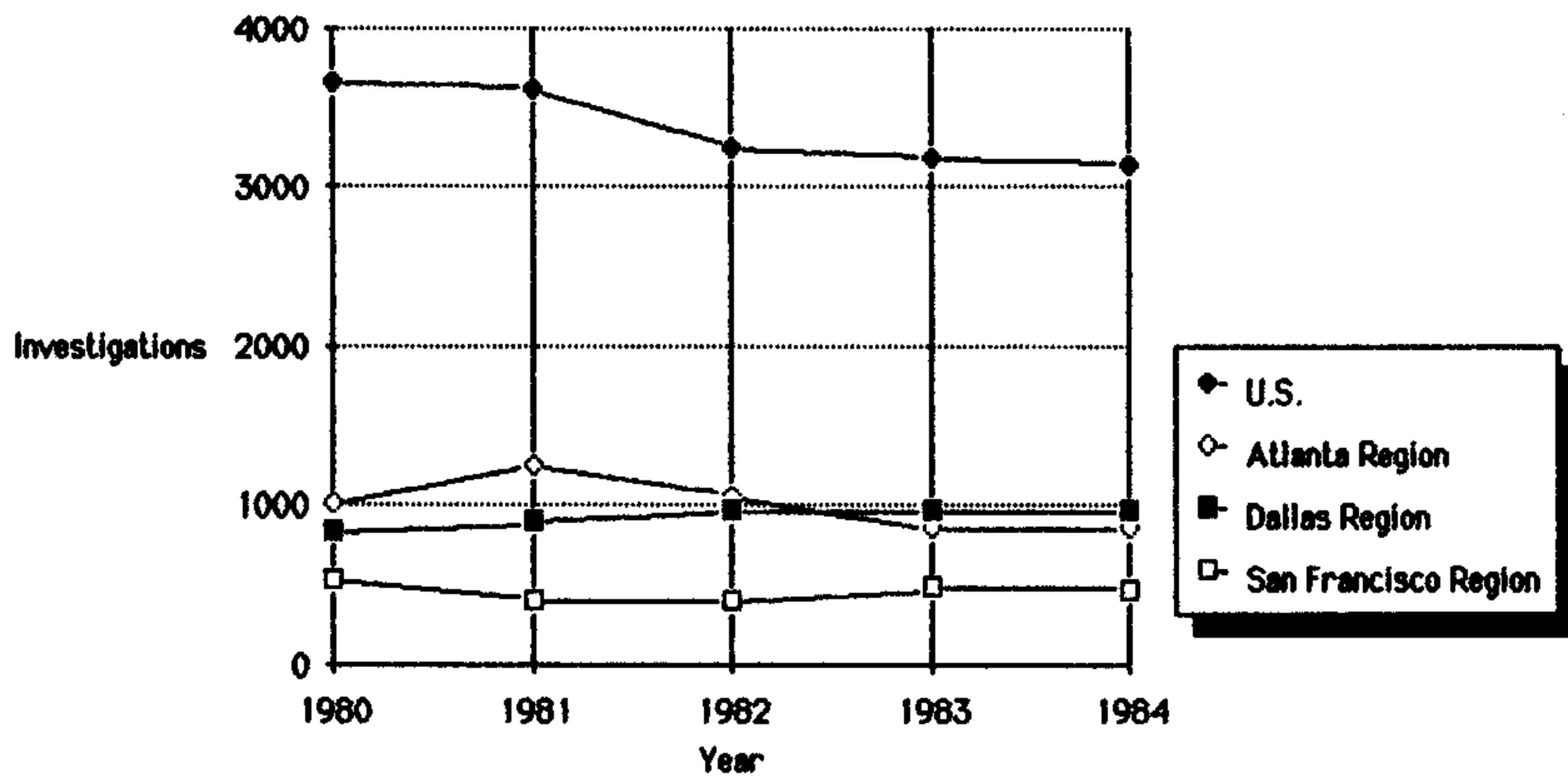


**Figure 7. Administrative Actions to Deny, Suspend or Revoke Certification, and Enforcement Hours, All Regions, 1980 - 1984**



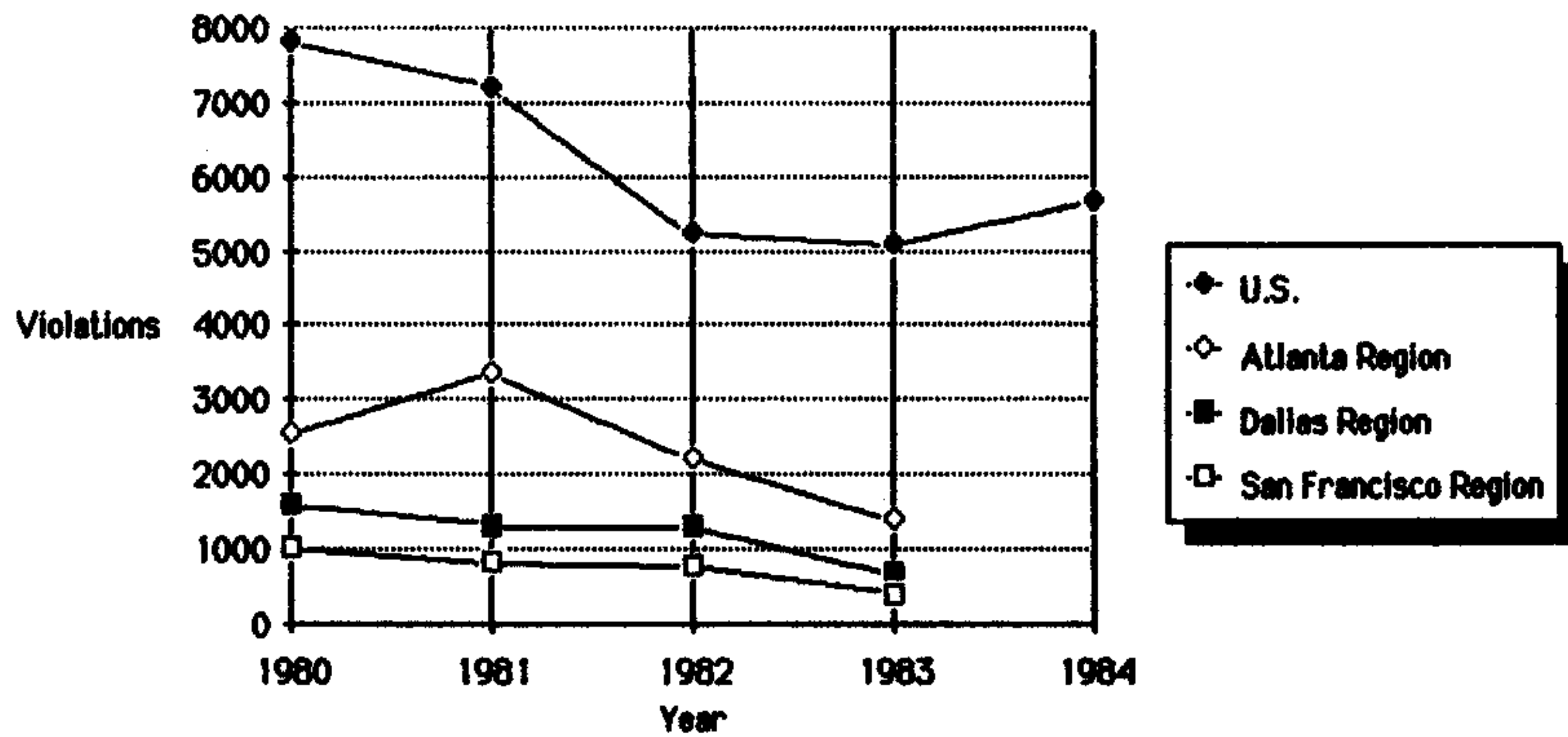
Source: U.S. DOL Summary of Wage-Hour Enforcement Activities, 1980-1983 and ESA Regional Summary of FLCRA/MSPA Compliance Actions, 1980-1983.

**Figure 8. FLCRA and MSPA Investigations in U.S. and Major Regions. 1980 - 1984**



Source: U.S. DOL ESA Regional Summary of FLCRA/MSPA Compliance Actions, 1980-1984.

**Figure 9. FLCRA and MSPA Violations in United States and Major Regions, 1980-1984.**



Source: U.S. DOL ESA Regional Summary of FLCRA/MSPA Compliance Actions, 1980-1984.



Figure 10. Guideline of Penalties for Farm Labor Contractor Violations

This form is a work sheet for the assessment of civil money penalties under the Farm Labor Contractor Registration Act. As you know, Section 9 of the Act provides that a civil money penalty of not more than \$1,000 may be assessed for each violation of the Act or any regulations promulgated under the Act. An assessment may be higher (subject to the statutory maximum) or lower than indicated in the list on the form in exercising this discretionary feature of the Act. In other words, there are no fixed amounts to be assessed as a matter of course for a particular violation. The assessment recommendations which is made is based on the nature of the violations in each particular case as discussed in detail in 29 CFR 40.65(b). These include the following factors:

- (1) Previous history of violation or violations.
- (2) The number of migrant workers affected by the violation or violations.
- (3) The gravity of the violation or violations.
- (4) Efforts made in good faith to comply with the Act.
- (5) Explanation of person charged with the violation or violations.
- (6) Assurances of future compliance, taking into account the public health, interest or safety.
- (7) Financial gain on the part of the violator or financial losses to worker or workers.

The publication of this form (copy enclosed) should include the above statement as to its use.

Sincerely,

(S) Warren D. Landis  
WARREN D. LANDIS,  
Acting Administrator.

Farm labor contractor/farm labor contractor employee violations:

	Penalty
1. Failure to register:	
(a) Certificate 4(a).....	<sup>1</sup> \$1, 000
(b) ID Card 4(b).....	<sup>1</sup> 500
2. Failure to exhibit certificate 6(a).....	50
3. Disclosure to workers 6(b).....	100
4. Posting at work site 6(c).....	50
5. Misrepresentation to workers 5(b)(2).....	400
6. Failure to keep required records 6(e).....	400
7. Record keeping incomplete or inaccurate 6(e).....	200
8. Farm labor contractor records furnished to user 6(e).....	100
9. Statement of amounts contractor received provided to worker 6(e).....	100
10. Illegal alien workers (total may exceed \$1,000) 6(f).....	<sup>2</sup> 400
11. Proper money payments 6(g).....	200
12. Worker purchases 6(h).....	200
13. Transporting without certificate authorization 5(a)(4).....	400
14. Operating vehicle used to transport workers 5(b)(8).....	200
15. Vehicle safety 5(b)(8) and 5(b)(12).....	400
16. Vehicle insurance 5(b)(5) and 5(a)(2).....	1, 000
17. Notification to Secretary of vehicle change 5(d).....	50
18. Housing workers without certificate authorization 5(a)(4).....	400
19. Housing safety and health (up to \$1,000) 5(b)(12).....	1, 000
20. Posted housing conditions 6(d).....	50
21. Notification to Secretary of housing change 5(d).....	50
22. Knowingly made misrepresentations or false statements in application for a certificate or ID card 5(b)(1).....	500
23. Certificate holder is not the real party in interest and real party has had certificate or ID card revoked, denied or does not presently qualify 5(b)(11).....	1, 000
24. Failure to abide by agreement with workers 5(b)(4).....	400
25. Breach of agreement with user 5(b)(3).....	400
26. Discrimination against workers testifying or exercising rights 13(a).....	1, 000
27. Engaging unregistered farm labor contractors 4(c).....	<sup>1 2</sup> 1, 000
28. Hiring unregistered farm labor contractor employees 5(b)(10).....	<sup>1 2</sup> 300
29. Knowingly employing in any farm labor contractor activity a person who has taken any action that could disqualify the person from holding a certificate or ID card 5(b)(9).....	<sup>2</sup> 1, 000

Total assessed penalty.....

Grower, processor, or other user violations:

30. Engaging unregistered farm labor contract 4(c).....	<sup>1</sup> 1,000
31. Failure to keep required payroll records 14.....	400
32. Failure to keep complete and accurate payroll records 14.....	200
33. Failure to obtain and maintain contractor records 14.....	400
34. Failure to obtain complete contractor records 14.....	200
35. Discrimination against workers testifying or exercising rights (13a).....	1, 000

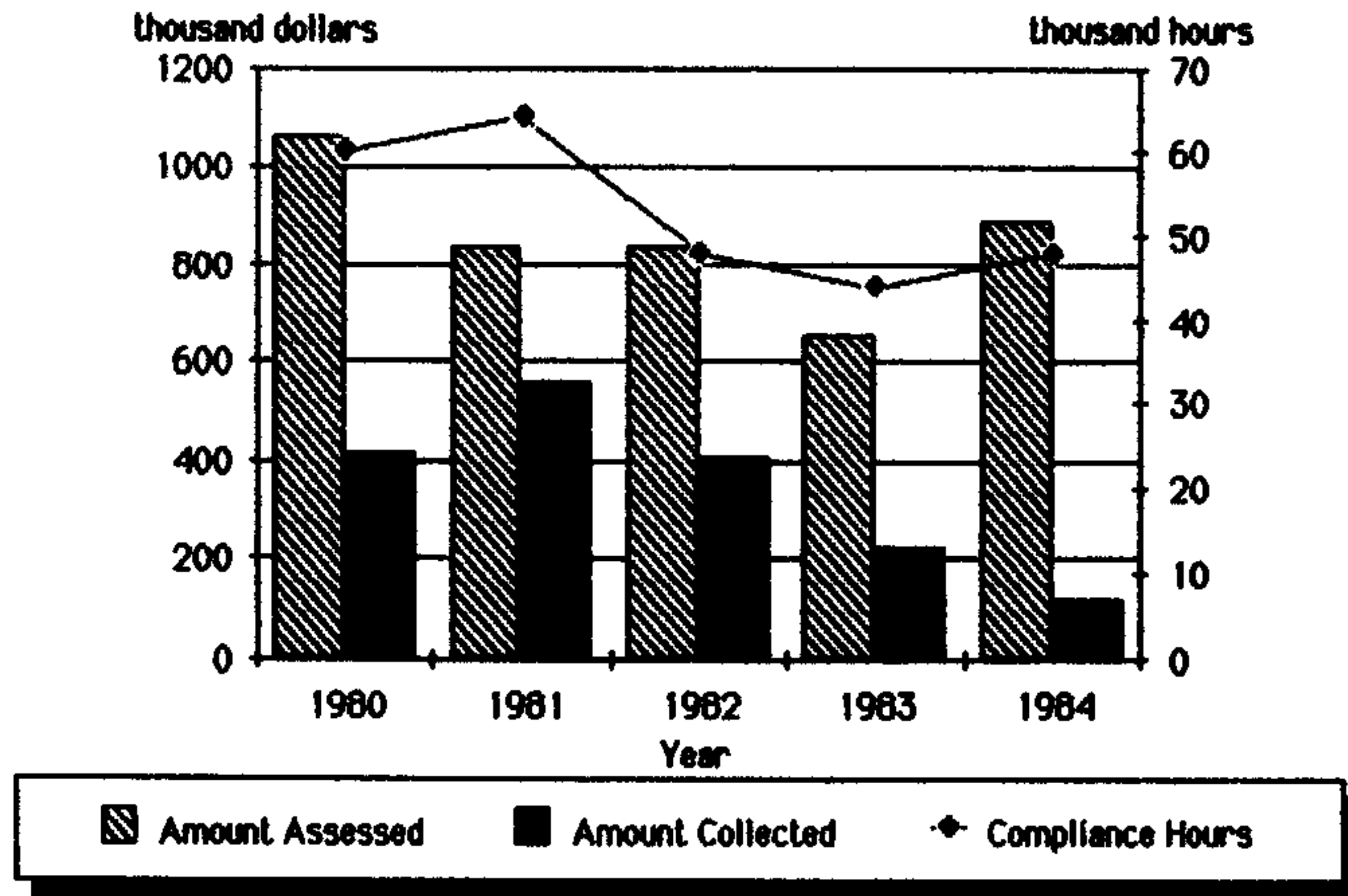
Total assessed penalty.....

<sup>1</sup> If the farm labor contractor or farm labor contractor employee has made application prior to beginning this investigation, subtract 50 percent.

<sup>2</sup> Each.

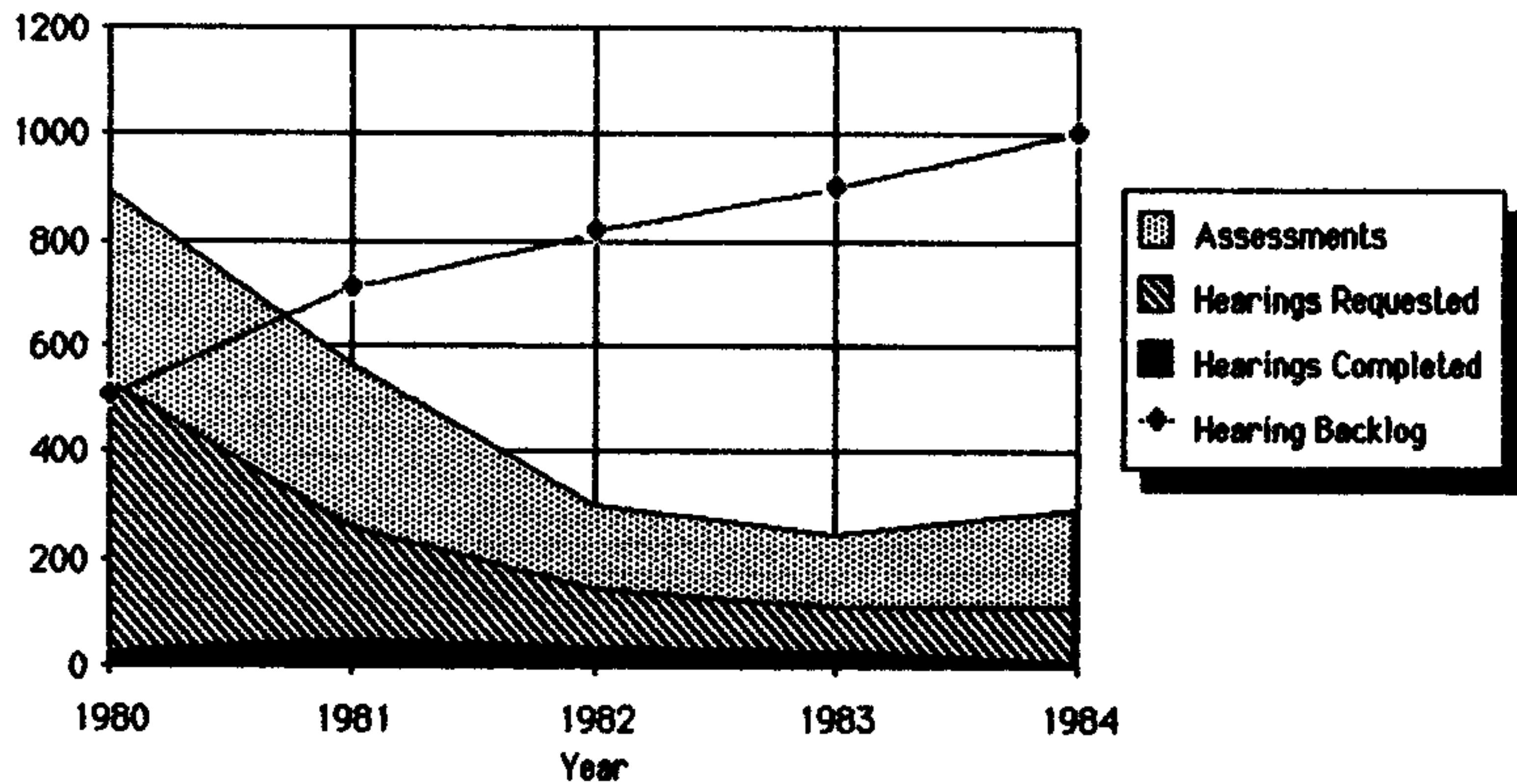
Source: FLCRA: Hearing before the subcommittee on Economic Opportunity of the Committee on Education and Labor, House of Representatives, 1978, pp. 76-77.

**Figure 11. Amount of Civil Money Penalties Assessed and Collected, Enforcement Hours, 1980-1984**



Source: U.S. DOL ESA Civil Money Penalty by Region, 1980-1984.

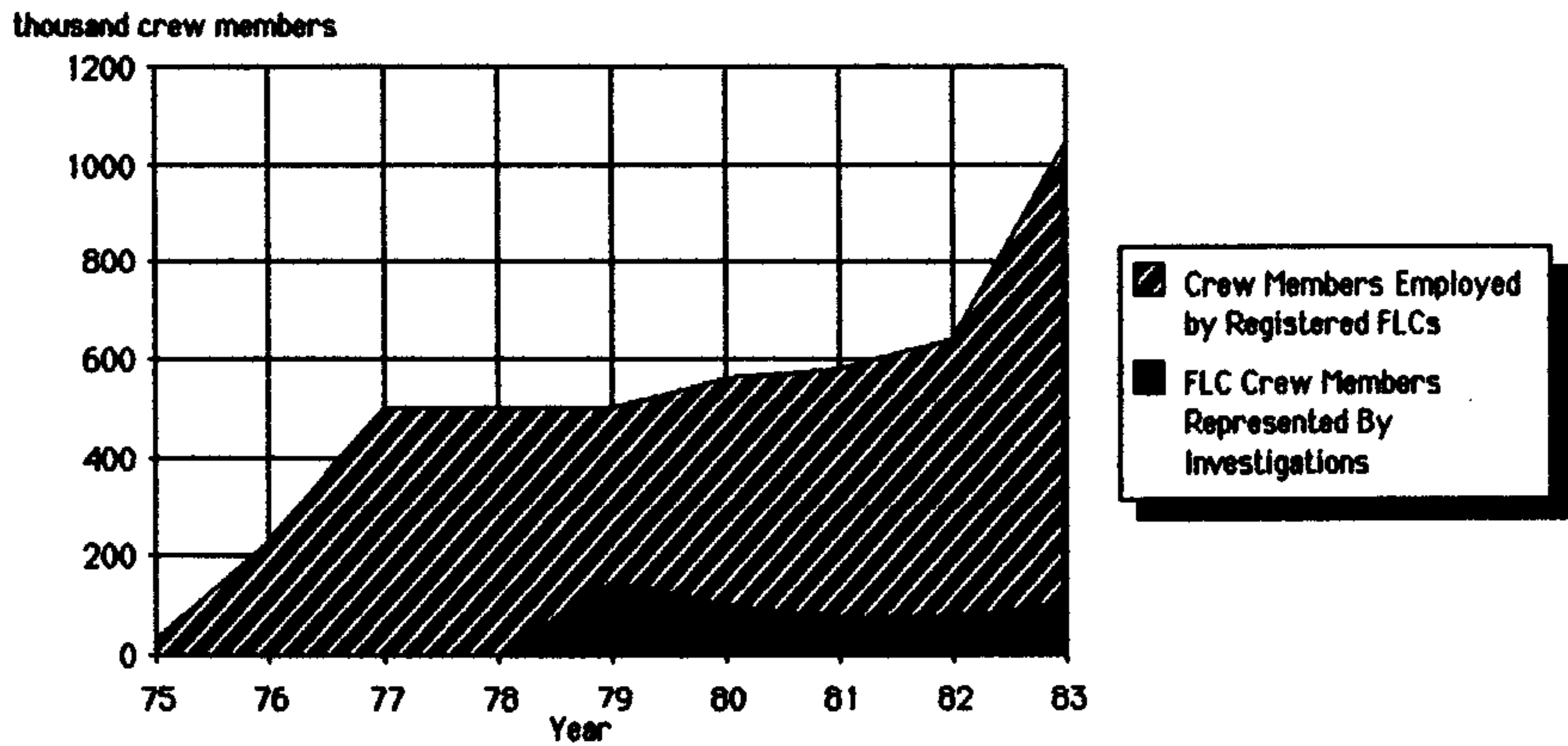
**Figure 12. CMP Assessments, Hearings Requested, Hearings Completed and Hearing Backlog, All Regions, 1980 - 1984**



Source: U.S. DOL ESA Civil Money Penalty Summary by Region, 1980-1984.

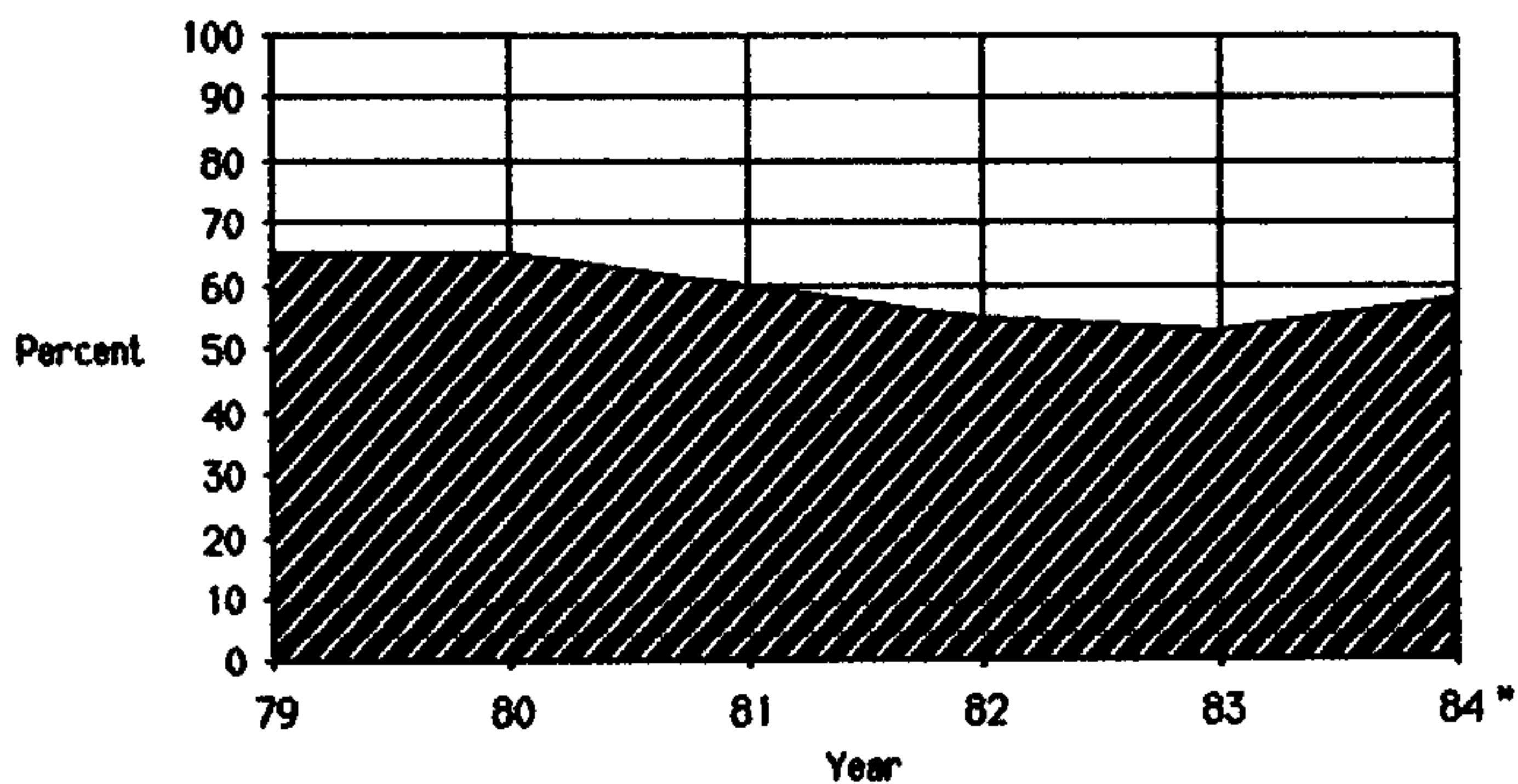


**Figure 13. Number of Crew Members Employed By Registered FLCs and Number of Crew Members Represented By FLCRA/MSPA Investigations, 1975 - 1983**



Source: U.S. DOL ESA Regional Summary of FLCRA/MSPA Compliance Actions, 1975-1983.

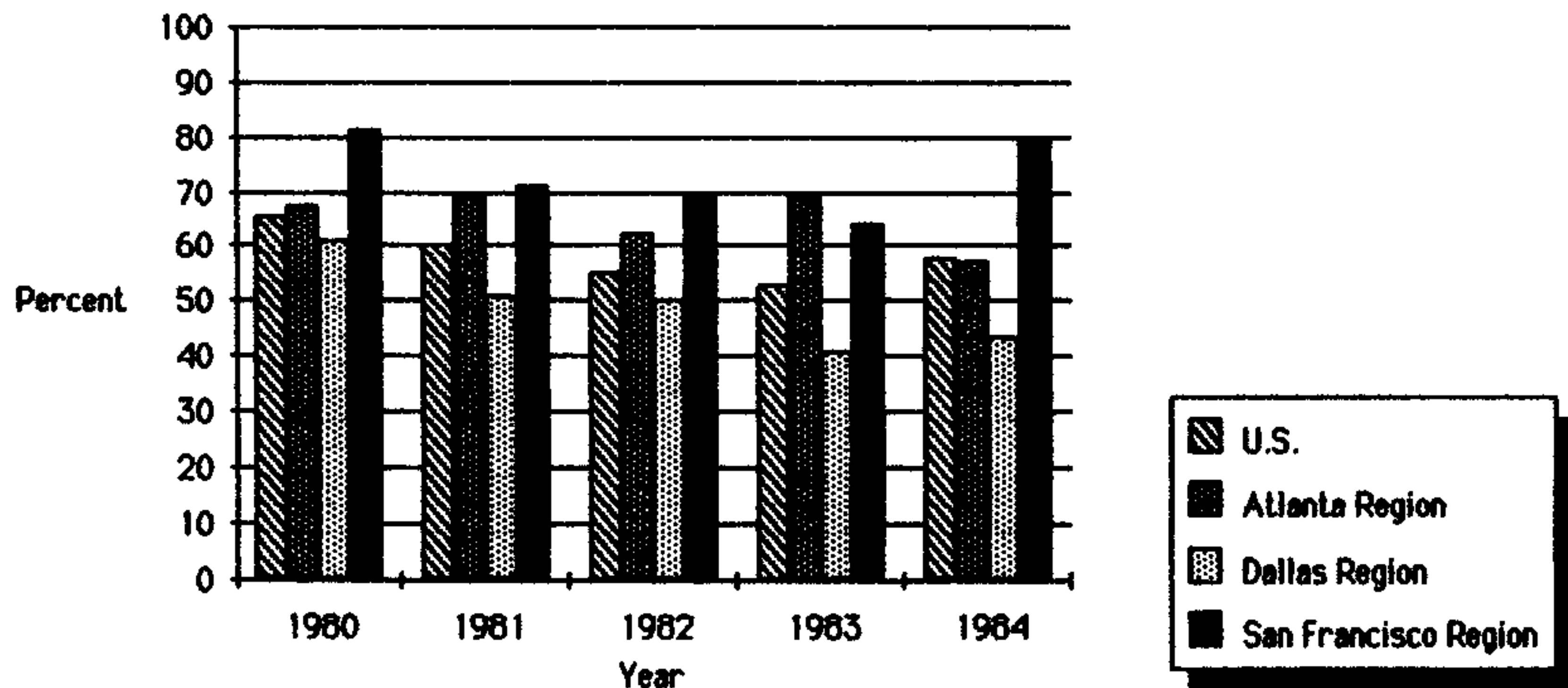
**Figure 14. Investigations Revealing Violations As Percent Of FLCRA and MSPA Investigations, 1979-1984**



\*Covers 10/1/83 - 9/30/84.

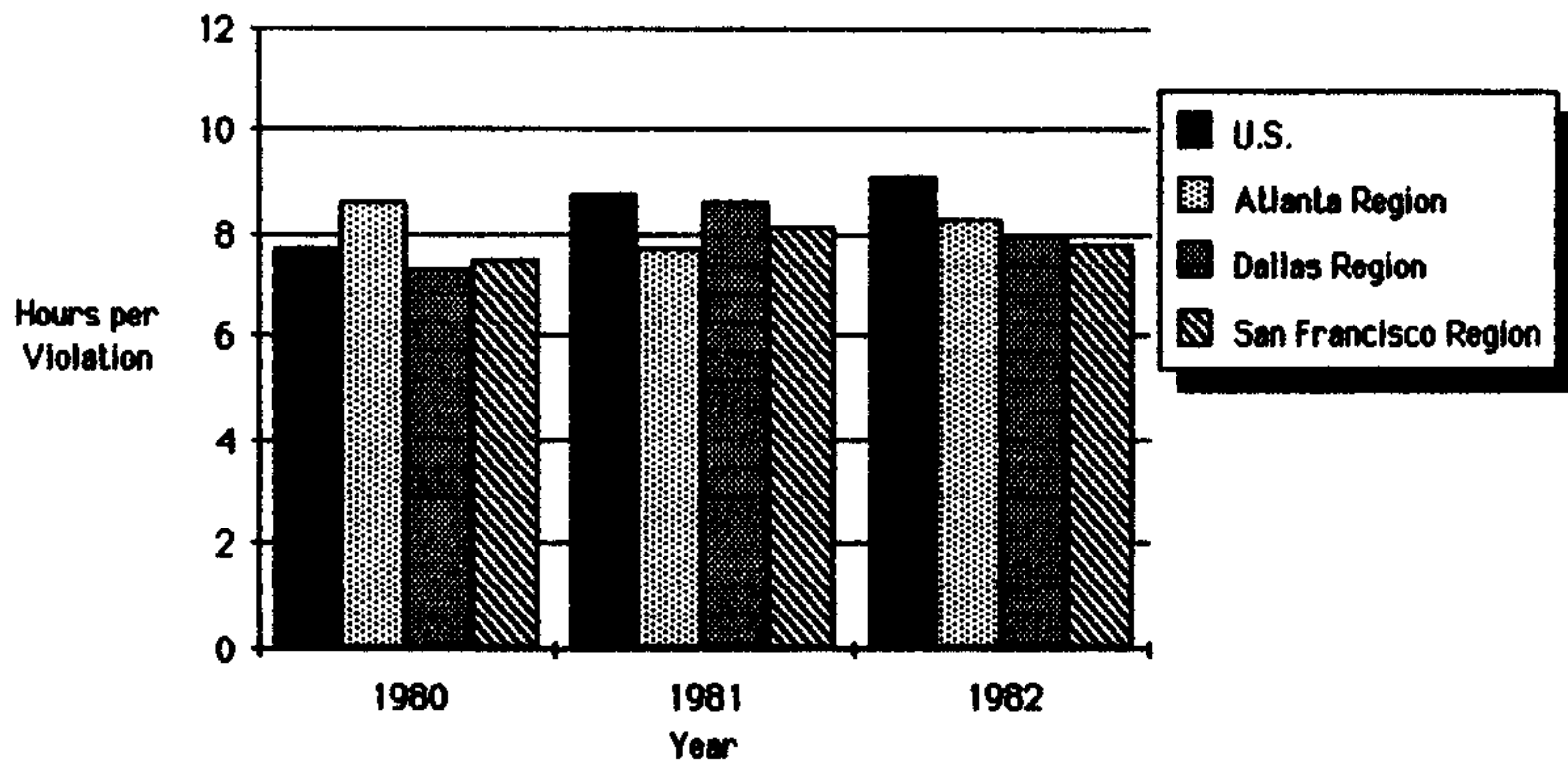
Source: U.S. DOL Summary of ESA-Wage Hour Enforcement Activities, 1980-1983, and Regional Summary of MSPA Compliance Actions, 1984.

**Figure 15. Percent of FLCRA and MSPA Investigations Revealing Violations in U.S. and Major Regions, 1980 - 1984**



Source: U.S. DOL ESA Regional Summary of FLCRA/MSPA Compliance Actions, 1980-1984.

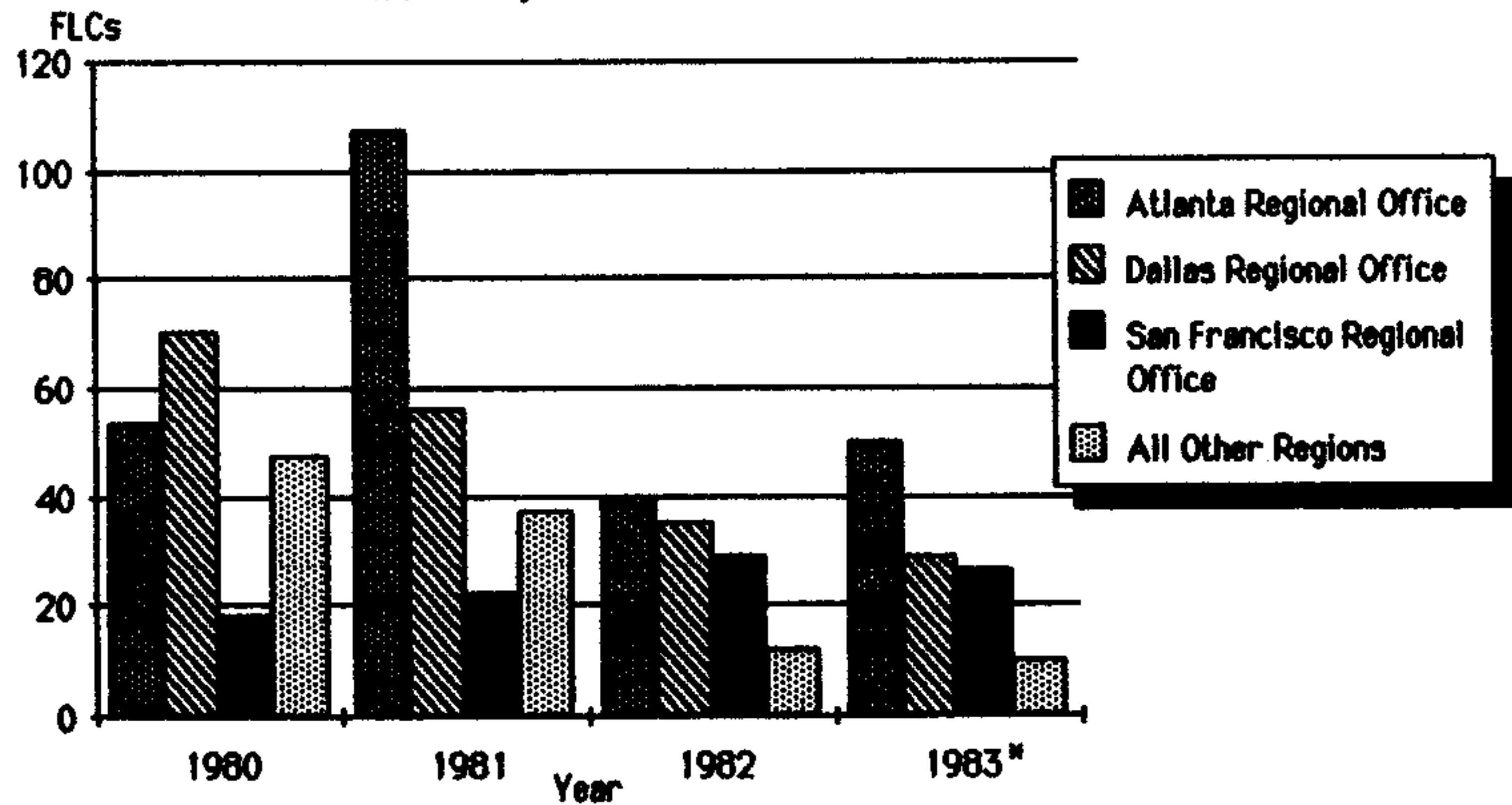
**Figure 16. Average Number of Enforcement Hours Per Violation, U.S. and Major Regions, 1980 - 1982**



Source: Calculated from U.S. DOL ESA Regional Summary of FLCRA/MSPA Compliance Actions, 1980-1982.



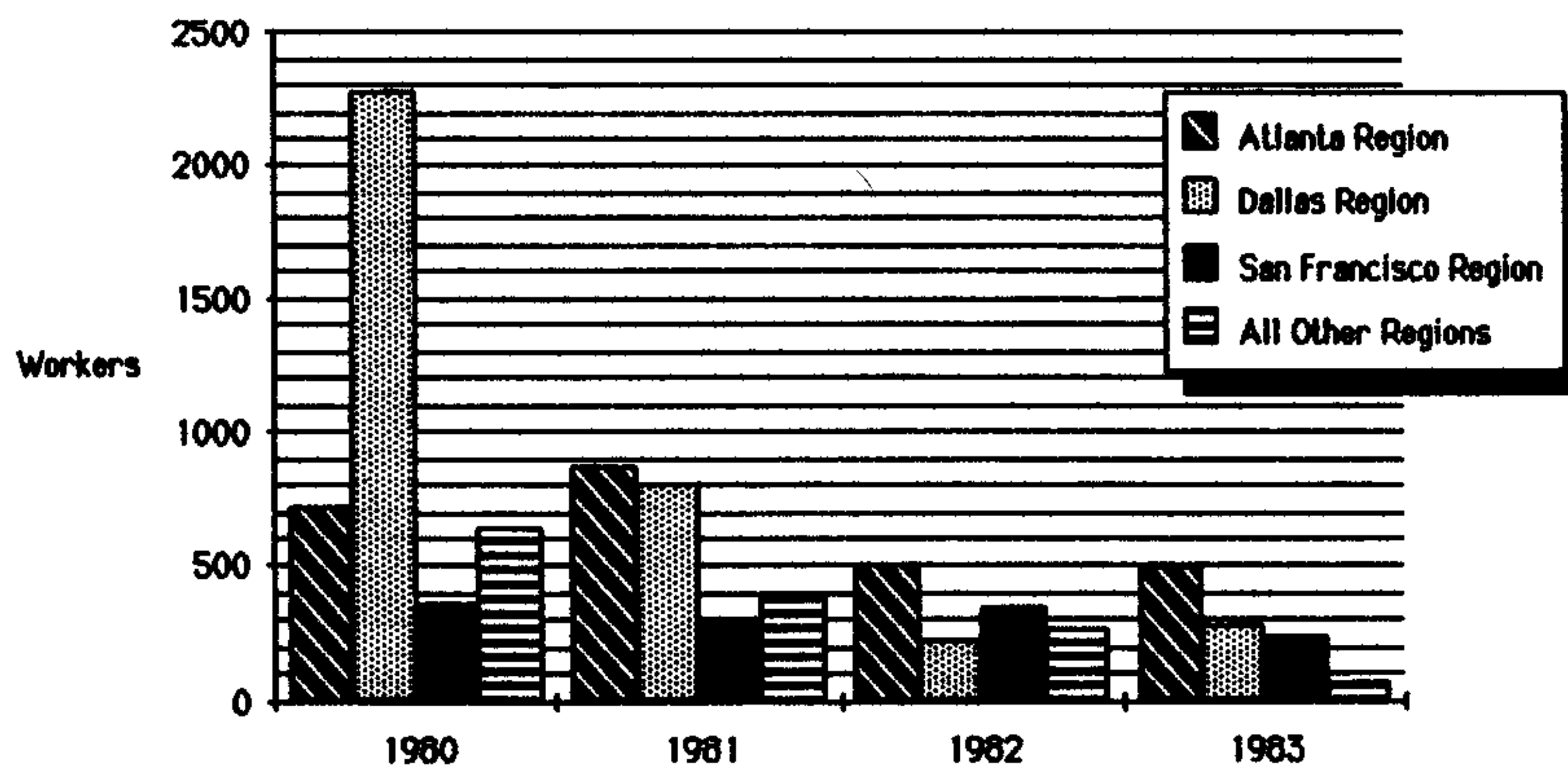
**Figure 17. Number of FLCs Found Hiring Undocumented Workers, 1980 to 1983**



\*FLCRA enforcement only. Add 55 to national total for MSPA enforcement.

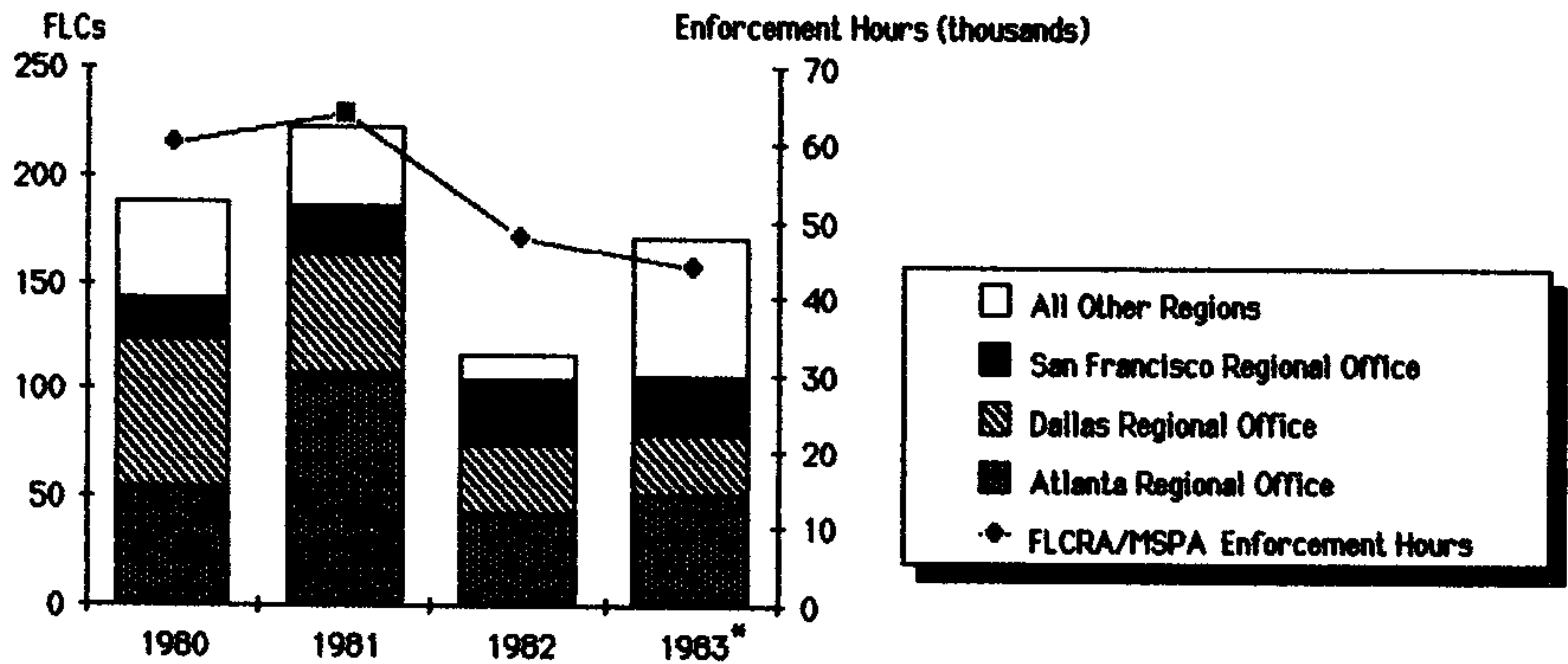
Source: U.S. DOL ESA Regional Summary of FLCRA/MSPA Compliance Actions 1980-1983.

**Figure 18. Number of Undocumented Workers Found Employed By FLCs, 1980 to 1983**



Source: U.S. DOL ESA Regional Summary of FLCRA/MSPA Compliance Actions, 1980-1983.

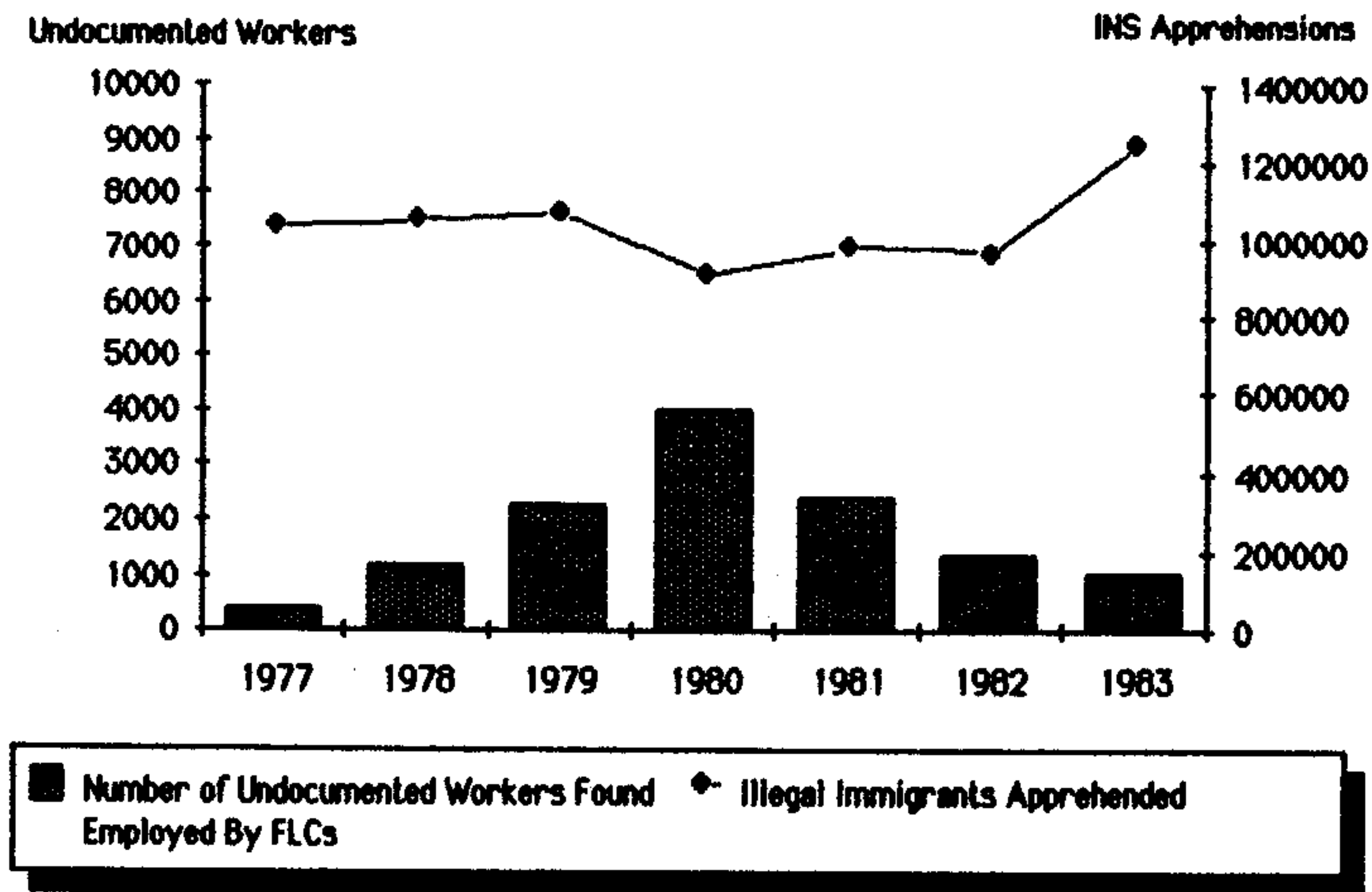
**Figure 19. Number of FLCs Found Hiring Undocumented Workers, 1980 - 1983**



\*Includes 55 in "All Other Regions" for total MSPA enforcement.

Source: U.S. DOL ESA Regional Summary of FLCRA/MSPA Compliance Actions, 1980-1983.

**Figure 20. Number of Undocumented Workers Found Employed By FLCs & Number of Illegal Immigrants Apprehended by INS, 1977 to 1983**



Source: U.S. DOL ESA Regional Summary of FLCRA/MSPA Compliance Actions, 1977-1983, and INS Annual Reports, 1977-1983.