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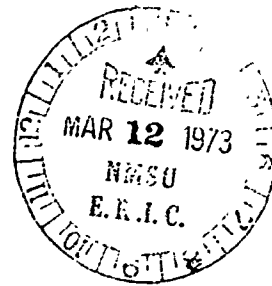
ABSTRACT

In response to a public complaint filed with the Secretary of Labor alleging discriminatory practice by the Rural Manpower Service (RMS), an investigation of the charges was conducted. The petition was filed on behalf of 16 organizations and 398 specifically named individuals, and it accused the RMS of exploiting migrant farm workers. The methodology of the review included an initial analysis of the alleged problem, the accumulation of background information, field visits, and the organization and analysis of the information gathered. The overall findings and conclusions of the review in the initial major section are divided into 2 parts, dealing with the role of the RMS and the role of worker advocacy. The findings are discussed by topic under 3 sections: (1) economic and legal condition of the farm worker, including discrimination, certification of foreign workers, social security, wages, child labor, and labor law enforcement; (2) services to workers, including referral control, job order specifications, employment services to workers, conflict of interest, farm labor contractors, statistics and staffing, and day haul; and (3) working conditions, including housing, safety and pesticides, field sanitation and drinking water, and transportation. Green card commuters and illegal aliens are discussed in the 2 appendixes.
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REVIEW
OF
THE RURAL MANPOWER SERVICE

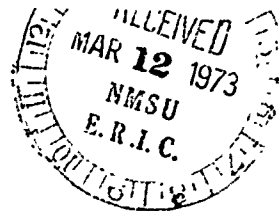
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1972

U.S. DEPARTMENT OF LABOR
Manpower Administration
Special Review Staff

Migrant Workers



Study on Migrant Farmworkers

A 10-month study of how the Rural Manpower Service (RMS) of the Labor Department works with the Nation's migrant and other farmworkers was released by Secretary of Labor J.D. Hodgson in April 1972. The study covered 18 States and 73 local offices of both the RMS and the State Employment Service (ES) offices. An eight-man Labor Department team determined 12 major findings based on complaints alleged by the Migrant Legal Action Program and lodged with the Secretary in the spring of 1971.

As a result of the findings, the Secretary directed that the following 13-point program be carried out:

1. Steps are to be taken immediately in both the RMS and the ES to begin a consolidation process which would result in integrated services at the local level.
2. Immediate action shall be taken to correct any civil rights violation found during the review. Procedures shall be implemented to insure that there is full and continuing compliance with civil rights laws.
3. Steps shall be taken to insure that all child labor laws are being followed.
4. The Employment Standards Administration shall insure that sufficient resources are allocated to enforce effectively the agricultural minimum wage where complaints are made or violative conditions are suspected. Additionally, Governors should be encouraged to provide staffs outside the State ES agency to assist farmworkers in handling their complaints and in improving their working and living conditions.
5. State ES agencies shall establish mechanisms to handle workers' complaints where job working conditions and wage specifications have not been delivered as promised.
6. The Occupational Safety and Health Administration will continue the implementation of its responsibility for the work-related problems of farm employees.
7. Responsibility for enforcement of the Farm Labor Contractor Registration Act will be transferred to the Employment Standards Administration.
8. A vigorous effort to have frequent payroll audits of foreign-worker users will be instituted to insure that the adverse effect rate is being paid to foreign workers who have been certified under the Immigration and Nationality Act.
9. Regional Office staffs will monitor the States' performance of prevailing wage surveys to insure that the piece rates are converted to hourly rates so that it may be determined that, where applicable, the established piece rates are in accordance with the Federal and State Minimum Wage Laws.
10. The Interstate Clearance System shall be improved by requiring that a farmworker be given a copy of the job order and an explanation of the job specifications.
11. The Manpower Administration (MA) shall require the State ES agencies to bring their rural day haul operations into conformity with ES policies and standards. Where such policies and standards are not being met, the MA shall consider alternative methods to provide service to workers and employers.
12. *Employment Service Manual* procedures will be published relating to such subjects as conflict of interest, taking applications on farmworkers, methods of guaranteeing that no employer is served who is not in compliance with any relevant law, and insuring compliance with Social Security procedures. Once published, performance under these procedures is to be closely monitored.
13. The MA will work to broaden State Civil Service requirements where necessary to allow individuals with general farm experience, nonagricultural experience, and nonagricultural college degrees to become eligible for positions in the RMS.

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INTRODUCTION AND SCOPE

In response to a public complaint filed with the Secretary of Labor alleging discriminatory practice by the Rural Manpower Service, Assistant Secretary Lovell assigned his Special Review Staff to conduct an investigation of the charges. The petition was filed on behalf of sixteen organizations and 398 specifically-named individuals, and it accused the Rural Manpower Service of exploiting migrant farm workers.

The methodology of the review was shaped primarily by the character of the complaint. The first few weeks were spent analyzing the petition and the 1,500 pages of exhibits submitted in its support, to get a grasp of the scope of the problem. The Migrant Legal Action Program, representing the petitioners, assured the review team that the states and abuses cited in the complaint were intended to be illustrative but not inclusive of migrant workers' problems. Various subject areas of complaint emerged from the initial analysis, and additional topics requiring attention were identified as the review progressed. The review encompassed subjects not officially within the purview of the Manpower Administration or even of the Department of Labor. The problems of the migrant farm worker are not so discretely and bureaucratically circumscribed. So while the findings are limited to subjects this Department can deal with, they were distilled from a much broader scope of inquiry. Thus, the review and this report are topical rather than geographic in their orientation. Following initial analysis of the alleged problems, the team turned to the Rural Manpower Service for information on their policies and prescribed procedures and a general picture of agriculture in the United States.

Once all this background was accumulated, field visits began. The coverage was eleven of the States cited in the petition, including all of the primary ones, and seven States not cited. Seventy-three local offices were visited. The review team's itinerary was as follows:

<u>STATE</u>	<u>DATES OF VISIT</u>	<u>NUMBER IN TEAM</u>	<u>LOCAL OFFICES VISITED</u>
North Carolina	June 15-18	2	2
Michigan	August 2-6	6	5
Illinois	August 9-13	3	2
Pennsylvania	August 9-13	2	3
Wisconsin	August 16-20	2	0
New Jersey	August 23-27	2	4
Oregon	August 23-25	3	2
Idaho	August 26-27	3	3
South Carolina	September 26-30	2	3
Colorado	September 26-30	2	3
Indiana	September 26-30	2	4
Alabama	October 4-8	2	3
Arizona	October 4-8	2	3
Ohio	October 4-8	2	5
Washington	October 11-15	1	3
Florida	October 18-29	5	6
Texas	October 18-29	3	4
California	November 8-19	10	18

In each State, the team interviewed representatives of the State's Rural Manpower Service, such related State and county agencies as Social Welfare and Public Health, migrant-advocate and grower associations, as well as migrant workers and growers themselves. In addition, visits were made to work sites and labor camps, the records maintained by RMS local offices were thoroughly reviewed, and in many places interviews were held with federal and State wage-hour officials. Following the field work, the information gathered was organized and analyzed.

The findings which follow in this report are necessarily split by topic, but the topics have been grouped in as rational a sequence as could be devised to address the breadth of the complaint. The initial major section presents the overall findings and conclusions of the review. The second major section is comprised of individual topical papers with specific findings for each subject area identified and reviewed. The sequence is as follows:

- I. Overall Findings
- II. Findings by Topic
 - A. Economic and Legal Condition of the Farm Worker
 1. Discrimination
 2. Certification of Foreign Workers
 3. Social Security
 4. Wages
 5. Child Labor
 6. Labor Law Enforcement

B. Services to Workers

1. Referral Control
2. Job Order Specifications
3. Employment Services to Workers
4. Conflict of Interest
5. Farm Labor Contractors (Crew Leaders)
6. Statistics and Staffing
7. Day Haul

C. Working Conditions

1. Housing
2. Safety and Pesticides
3. Field Sanitation and Drinking Water
4. Transportation

III. Appendix

1. Green Card Commuters
2. Illegal Aliens

OVERALL FINDINGS

A basic position of the administrative complaint is that the Rural Manpower Service should be discontinued and the funds (\$23 million) utilized for a migrant-staffed and oriented "Worker Service." This section on overall findings addresses itself essentially to this proposal. The section is divided into two parts, one dealing with the role of the Rural Manpower Service, and the other with the role of worker advocacy.

Role of the Rural Manpower Service

The History

When the mission of the Farm Labor Service was devised several decades ago, it was responsive to evident needs of the time. The primary necessity in rural agricultural areas was to insure that crops were planted and harvested on schedule. There was an overall shortage of labor during the war years of the early 1940's, and severe local shortages existed in particular areas in times of peak crop activity. The Farm Labor Service developed a variety of mechanisms for locating able and willing farm workers wherever they were and matching them with farm manpower needs all over the country. Their success made it possible for farm operations to run at top capacity with maximum production.

The very nature and procedure of this FLS system, developed primarily for time of labor shortage, assumed and necessitated a more active concern by its staff for the needs of the farmer employers than for those of the farm workers. Both the explicit and implicit incentives and rewards built into the system reinforced the orientation toward serving the growers' needs. Qualification criteria for a position in the Farm Labor

Service required a "farm background", which was almost universally interpreted to mean as a farmer rather than as a farm worker. For instance, one State's "minimum experience requirement" specifies "experience in a responsible capacity in farm management, a farmer organization, or a food processing organization." To continue getting job orders, FLS managers and staff had to work closely with the farm employers and be responsive to their requests. An extensive worker recruitment system was established so that FLS could expeditiously provide manpower from other localities, other States, or even other countries when necessary to work the fields.

The Need for Change Recognized

Several years ago, the Department developed the Rural Manpower Service concept based on the awareness that the current needs of rural areas were quite different from those that existed when the Farm Labor Service was originally established. Farm operations required many fewer people than in the past. Farms were beginning to be mechanized and more extensive mechanization was on the horizon. A trend toward large acreage units and corporate ownership had developed, which was accompanied by fewer total farm units and the displacement of small farmers. The technology of modern farm methods - in addition to mechanization, the new fertilizers, new weed control herbicides, new hybrid seed strains, new breeding methods, and others - was resulting not only in a dramatically higher productivity per worker and a need for fewer workers overall, but also in a need for workers with new and more exacting skills.

For example, where mechanical pickers are used, the need is eliminated for unskilled field harvest hands, and a few new jobs for skilled harvest machinery operators are created. Notwithstanding all the advances, farmers still found themselves economically squeezed and thus tried to keep costs down wherever possible.

Simultaneous with these changes in farming was the increased growth in some rural areas of agriculturally related employment and of other types of employment related to service, retail and distribution activities.

Unfortunately, through lack of planning and assistance, the labor supply in both quantity and quality had not changed to match the new labor needs. Long years of high demand had created a vast pool of labor, many schooled only in farm field work, and many unaccustomed to any other life or work than the migratory farm labor stream. The limited scope of available work opportunities also had a detrimental effect on the quality of local labor. The younger segment of the work force tended to migrate to urban areas, leaving behind in rural areas a generally older, though still large, work population. Thus, the traditional shortage of agricultural workers had completely reversed, leaving a serious condition of oversupply which showed little chance of abatement.

It also became evident that the social and economic condition of even those workers who could still find farm employment was less than desirable. Farm owners and operators had historically been in a position of dominance in their relations with farm workers. Farm worker

organizations or unions were rare and where they existed they had not, relatively speaking, commanded a strong position. Without the economic and political power which comes from organization and solidarity, farm workers' interests suffered accordingly. They did not have the same protection under minimum wage legislation enjoyed by other workers, and their hourly wages consequently were normally lower. Their coverage under unemployment insurance, social security, and workmen's compensation was non-existent or restricted compared to coverage of non-agricultural workers. While there were some protective labor laws, enforcement efforts on behalf of farm workers were generally weak and ineffective.

Based on an awareness of this changed rural situation, the Department concluded that a redirection of our efforts in rural areas was overdue, and the Rural Manpower Service concept was formulated. "Farm placement" alone was no longer an adequate mission. Full manpower services had become essential, together with a recognition that farm employers provided only a portion of the opportunities available to workers in rural areas. Workers themselves needed such services as counseling, training and job development. With such an oversupply of labor and with unskilled farm employment opportunities decreasing all the time, farm workers needed help in assessing the opportunities in other types of work and access to the training necessary to qualify for such jobs. A conscious plan for decreasing the supply of unskilled farm workers was the goal. The Farm Labor Service was to be redirected into a new Rural Manpower Service charged with providing in rural areas the full range of services provided in other areas by the Employment Service.

The Current Reality

After extensive visits to Rural Manpower Service offices in the past six months, the review team concludes that the role currently being performed by RMS in the field is still, for the most part, the traditional role of the Farm Labor Service. While a few offices have made some changes, the ambitious redirection envisioned has in practical effect been more cosmetic than substantive. Such a conclusion impugns no one's motives or abilities. Any system, continued for many years, will necessarily instill in its workers an habitual set of mind which is extremely difficult to overcome, even with the finest intentions. The migrant workers' petition charged that the Rural Manpower Service violates its own regulations and procedures and discriminates against farm workers. As is documented in the topical findings in the next sections of the report, the review team found violations, as one will find errors in the operation of any vast organization. No pervasive, conspiratorial pattern of errors was found throughout the system. But what was evident was that when RMS errs in following its own procedures, it errs in favor of the employer to the detriment of the worker. What was further found, and is far more crucial, is that even when the Rural Manpower Service performs perfectly according to its procedures, it is still doing a "Farm Labor Service" job which on the whole has been judged not fully relevant to the current needs of its worker constituents, and which often works to the detriment of the long term interests of the worker and the local community. This conclusion comes from weighing and assimilating the impact of all the topical findings of the ensuing or succeeding sections.

Redirection has not taken hold for several reasons. Some of these reasons are common to any redirection: the narrow mission and functional role traditionally assumed by the Farm Labor Service and the difficulty of redirecting any activity which has developed a single strong and vocal client group. There is a need for linkages in order to provide a full range of ES services and a need for sufficient resources. At present in local areas which have both RMS and ES offices, there is a duplication of staff, and also an inconvenient separation of facilities which makes obtaining comprehensive multi-occupational information and service unnecessarily difficult for a job seeker. Some ES and RMS offices are in direct competition and refuse to cooperate with one another in an area-wide approach to manpower problems.

In local areas which have only one office, RMS or ES, that office generally lacks the expertise to perform the total manpower job the community needs. The ES does not have sufficient expertise relating to agricultural activities to effectively serve farm workers and employers, and the RMS does not have sufficient expertise in the non-agricultural area or in services involved in a client-centered approach to workers.

Role of Worker Advocacy

Another basic unmet need identified during this review was that of an advocate for the rights of the farm worker. As discussed previously in this section, the farm worker is at a distinct disadvantage relative to all other workers because of his exclusion from or reduced coverage under

social legislation, the inadequate enforcement of those laws which do protect him, and his lack of organization in dealing with farm employers. Farm workers are susceptible to exploitation by careless, insensitive and even unscrupulous employers and social service workers. Yet individual workers generally are afraid to press their complaints, because of the strength of the forces working against them (language barriers, fear of losing jobs, fear of eviction from bad but scarce housing, and other problems).

The Rural Manpower Service has been the target of many complaints because of the perceived link between RMS and the employers or housing to which the workers are referred. Yet RMS - or the Manpower Administration - has neither responsibility nor authority for enforcing many of the laws allegedly violated. The only sanction we possess is to cease serving employers who are not in compliance, a sanction with minimal effect on employers when labor is in oversupply, and with no benefit to a worker who has already been harmed. It would be to the distinct advantage of both the Manpower Administration and the farm worker to see that someone plays an active advocate role for the farm worker, to bring corrective pressure on any individual or institution who has treated him in violation of law or protective procedure. The role thus outlined is one traditionally performed by unions for their members. Farm workers, however, have had no unions until quite recently, and even now the farm workers' union is an ineffective force in all but one State. In other areas, farm workers are without an advocate at a time when economic conditions are not in their favor and little legislation is on the books to protect their interests.

DISCRIMINATION

Complaint Information

The petition filed with the Secretary of Labor charged that discrimination is the basis for many other allegations made. It alleges that all failures of the Rural Manpower Service are compounded by what amounts to frequent Civil Rights violations. In addition to charging "wholesale violations of the Civil Rights of black and brown workers", the complaint makes several specific allegations of Civil Rights violations.

A general summary of the allegations is that Rural Manpower Service staff are unable to deliver equal services as a result of not being staffed by bilingual personnel. It was alleged that migrants, the vast majority of whom are minorities, are denied services readily available to whites, such as counseling, testing and job upgrading. The petition alleged that migrants are treated with indifference and discourtesy; that they are exploited; and that they are specifically recruited through the interstate system for the lowest paying jobs, with the worst working conditions, the least job security, and the shortest guaranteed work period.

Expansion of Review Beyond Specific Allegations

In States and local offices where indications of discrimination were brought to the attention of the review team through record reviews or interviews and observations, the review was extended to cover such situations, even though they were not specifically mentioned in the complaint. This resulted in more extensive studies in some States or local offices than in others. The review covered the following possibilities for discrimination: race, national origin, sex and age.

Applicable Laws

Federal Laws

The Civil Rights Act of 1964 includes eleven titles enacted to safeguard the Constitutional right to vote, provide injunctive relief against discrimination in public accommodations, protect Constitutional rights to the use of public facilities and public education, extend the Commission on Civil Rights, prevent discrimination in federally assisted programs, and establish a Commission on Equal Employment Opportunity.

The Department of Labor has a direct responsibility with regard to Title VI of the Civil Rights Act of 1964, and an indirect responsibility with regard to Title VII. State Employment Services are subject to both of these Titles.

Title VI provides the legal basis for the right of all persons to participate in and receive the benefits of any federally aided program or activity without discrimination on the basis of race, color, or national origin. The Department of Labor has the responsibility for seeing that Title VI is complied with in the programs to which it provides financial assistance, including the system of State employment offices. Title VI implementing regulations are found in Title 29, Part 31 of the Code of Federal Regulations.

Title VII contains two provisions prohibiting discrimination not contained in Title VI. These provisions are concerned with prohibiting discrimination on the basis of sex or religion. The system of State and local Employment Services receiving federal assistance is specifically mentioned as being covered by Title VII as an employment agency. Whereas the Equal Employment Opportunity Commission (EEOC) is the only federal agency with Title VII investigative authority, the Wagner-Peyser Act

charges the Department of Labor with the responsibility of issuing rules and regulations to guide the operations of all State Employment Service operations. The Department, therefore, has the responsibility of providing instructions advising the States of their legal responsibilities.

The Equal Pay Act of 1963, an amendment to the Fair Labor Standards Act, is enforced by the Wage and Hour Division of the Department of Labor. This Act provides that an employer may not discriminate on the basis of sex by paying employees of one sex at rates lower than employees of the opposite sex in the same establishment, for doing equal work on jobs requiring equal skill, effort, and responsibility, which are performed under similar working conditions. The equal pay for equal work standards set forth in the EPA for determining unlawful compensation discrimination are also applicable to Title VII of the Civil Rights Act of 1964.

The Age Discrimination in Employment Act of 1967 prohibits arbitrary age discrimination against persons between the ages of 40 and 65. Whereas the Wage and Hour Division of the Department of Labor has the primary enforcement responsibility, they have delegated to the Manpower Administration the responsibility for investigating complaints regarding age discrimination against the State Employment Service.

State Laws

Several States have Fair Employment Practice laws, some of which were in effect prior to the passing of the Civil Rights Act of 1964. Section 604.1(j) of Title 20, Chapter V of the Code of Federal Regulations, states that it is the policy of the United States Employment Service "To make no

referral to a position where the services to be performed or the terms or conditions of employment are contrary to federal, State, or local law." Therefore, it is the responsibility of the individual States to insure that their respective State laws are being adhered to prior to referrals being extended.

U. S. Department of Labor Policies on Nondiscrimination

Discrimination in employment because of race, color, national origin, sex, age and religion has been recognized for many years as a serious limitation to the full utilization of our labor supply. Prior to World War II, the majority of nonwhite workers were restricted to unskilled, semiskilled, and menial jobs which contributed to the development of a large pool of relatively untrained labor for whom our increasing technological economy could not provide jobs. The first significant efforts of the Employment Service to encourage greater utilization of nonwhite workers were made during World War II, when the manpower demands of industry and the Armed Forces made it imperative to seek workers from all possible sources. Employers were persuaded to utilize nonwhite workers, and many were placed and performed efficiently in jobs to which previously they seldom had access. In the postwar period, the U. S. Employment Service took several important steps to consolidate the wartime gains in employer acceptance and to expand and elevate job opportunities for minority group workers. It established a policy of promoting employment opportunity for all applicants on the basis of their skills, abilities, and job qualifications, and of making definite and continuous efforts to persuade employers to

base their hiring specifications exclusively on job performance factors. To help implement this policy, new procedures to promote nondiscriminatory employment practices were prepared and issued to the State agencies, and cooperative relationships were developed with the National Urban League.

In order to stimulate State agency activity in furthering equal employment opportunity, minority group representatives at the State administrative level were charged with responsibility for developing effective local office programs and for furthering and maintaining relationships with appropriate agencies and minority group committees.

In 1958, a new training unit was set up utilizing the latest information and training techniques available to promote equal employment opportunity, and to increase Employment Service staff effectiveness in serving minority group workers. The national office also emphasized merit employment in all State agencies in an effort to increase minority group employment on State agency staffs. Revised standards for merit employment, precluding consideration for employment on the basis of race, religion, political affiliation, or other factors were issued to State agencies in 1963.

During 1962 and 1963, ES Manual sections governing order taking and selection and referral were revised to provide that local offices should attempt to have employers remove discriminatory specifications. Further provisions were made in the Manual for informing State or local fair employment practice bodies of employer orders containing discriminatory specifications.

Since the passage of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act in 1967, increased emphasis has been placed on

compliance with these laws by State Employment Services in all States. The Department of Labor has issued numerous directives to the State agencies on nondiscrimination on the basis of race, color, national origin, sex, age and religion. In addition, full time compliance officers are assigned to all regional offices. They are charged with the responsibility for making complaint investigations and general compliance reviews of Employment Service operations and other Manpower programs.

As indicated, State Employment Services are subject to both Title VI and VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967.

Review Findings

Due to the extensiveness of the review covering a wide range of Rural Manpower Service activities, in-depth Civil Rights evaluations were not made of each local office visited. The findings, reflected below, represent a sampling of employment practices in several of the States included in the review, including both supply and demand States.

Minority Staffing

Several States have been successful in staffing Rural Manpower positions with minority group members and Spanish-speaking staff to better serve Spanish-speaking applicants. The Wisconsin E.S. agency hires Mexican-Americans during the harvest seasons to assist providing services to the migrants. They also have several minority group members on their regular ES staff. Although it was alleged that all offices do not have Spanish-speaking

persons available, in all of the offices visited in California, the review team found minority and Spanish-speaking staff employed. One-third of Ohio's Rural Manpower staff is bilingual, the majority of whom are of Spanish or Mexican descent. Ohio only has one black employee on its Rural Manpower staff, however.

Florida has a considerable number of Mexican-Americans who migrate into the State for farm labor. Only three of the fifteen Rural Manpower offices in Florida have bilingual staff, however, Michigan has been working to increase their bilingual capabilities and currently has four bilingual persons assigned to their heaviest agricultural area.

In Indiana and New Jersey, States which have substantial numbers of Spanish-speaking applicants, no minority members were found on either regular staff. Indiana had a seasonal bilingual Mexican-American assigned to its Information Center in the northern part of the State and New Jersey had one black assigned to its Rural Manpower Experimental and Demonstration Project.

Selective Recruiting

The majority of interstate clearance orders were cleared to specific States only. Limiting referrals to specific States appears to have racial or national origin implications. The orders cleared to Texas will generally be filled with Mexican-American workers; orders cleared to Florida, Alabama, Mississippi, and Louisiana will generally be filled with Negroes; orders cleared to Puerto Rico will be filled with Spanish-speaking Puerto Ricans; and orders cleared to Kentucky will generally be filled with white workers. Two methods are utilized. In some cases the employer desiring the workers

will specify that he only wants particular workers. In this case, he provides the name and address of the particular workers desired. In the second case, the employer may indicate that he wants his workers from a particular State.

Correspondence found in a Florida Rural Manpower Service office revealed that an employer had previously obtained labor from Mississippi, Alabama, and Louisiana and was now requesting that the orders be cleared to Texas. Correspondence from the Rural Manpower Office to the employer advised him that to clear an order to Texas may result in his obtaining Mexican-American workers. A Rural Manpower Service employee in New Jersey advised the review team that one of his employers who had been using Puerto Ricans and blacks from Florida asked that his order be cleared to Texas so that he might try some "Texas-Mexicans." The Rural Manpower Service complied with this request.

The Department of Labor Solicitor's Office has determined that under Sections 601 and 703 of the Civil Rights Act of 1964 and Title 29, Section 31.4 of the Code of Federal Regulations, covering the Title VI obligations of Employment Service programs, a State employment agency cannot use the interstate clearance process for labor recruitment to discriminate on the basis of race, color, religion, sex or national origin. Accordingly, these agencies may not limit their clearances to certain States or other areas when the effect of such limitations will be to exclude various racial and ethnic groups from job consideration.

ES Manual, Part II, Section 1293 states:

"When an employer requests that certain workers be referred

to him on any basis except occupational specifications, such as when he gives the names of certain individuals he wants referred or when he specifies all former employees, the interviewer informs him that action cannot be taken on the order. The employer, however, may be given the address of a former employee if it is available in the local office records and if the employer requests it in order to call the worker for a job."

Although other sections of the ES Manual contradict the above section, the Solicitor's office has stated that the opinion rendered above coincides with the policy stated in Section 1293.

Referrals to Employers with Segregated Housing

Situations were encountered in several States in which some employers only hired members of one race or national origin because they provided segregated housing. One employer in New Jersey hired both Negroes and Mexican-Americans but segregated his housing units by approximately 100 yards.

Rural Manpower staff in Michigan, New Jersey, and Florida admittedly

would not refer mixed groups of workers to any employer where housing was to be provided or they would offer the worker a choice as to whether he wanted to live with members of other minority groups. A job order in Florida was found to have the notation, "Has housing for 2-3 families (Black)."

The Solicitor's Office has determined that, in accordance with the requirements of the Civil Rights Act of 1964 and the Constitution, it is the policy of the United States Employment Service to make no selection or referral of applicants based on race, creed, color or national origin (20 CFR-604.8(f)). To restrict referrals or placements to persons of one race or national origin, as in the situations described above, would violate these principles.

Providing Opportunity for Applicant Discrimination

In some cases, the prospective applicants would be advised prior to referral that the crew leader was of a different race or national origin than the applicant's. Some RMS staff would only refer persons of the same race or national origin as the crew leaders.

In Florida, two review team members overheard a Rural Manpower Service employee telling a white applicant that he was not going to refer him to one of the jobs on file because the crew leader was black. After the applicant left his desk, the employee was questioned about this and responded that he felt the applicant should have a choice of refusing the job based on his own preferences. This situation was discussed with the Area Supervisor and he agreed with this practice. He stated that particularly where an applicant has to travel a considerable distance to

get to a job, he should be advised in advance whether the workers are of races or national origins other than his. He felt that to do otherwise would be an injustice to the applicant. A staff member in Michigan indicated that he would advise the applicant of the racial make-up of the workers prior to referral.

The Solicitor's Office has concluded that it would not be a violation of any law for Employment Service staff to advise prospective employees prior to referral regarding the race or national origin of the crew leader, but the Civil Rights Act of 1964 and the Constitution would preclude restricting referrals or placements to persons of one race or national origin.

Segregated Day Haul Facilities

In both Pennsylvania and Florida, day haul points were found to be segregated. In Florida, segregated day haul points were found in two cities, both of which had Rural Manpower staff assigned to pick up points to provide services. In one Florida city, the practice of the Rural Manpower Service is to refer applicants to different day haul pick up points on the basis of race. In Pennsylvania one day haul location is frequented by blacks and another by Puerto Ricans. The segregated day haul points in Pennsylvania were supervised by Employment Service staff.

In November 1969, the Solicitor's Office issued an opinion which stated: "All premises or physical facilities, through or in which employment service operations are performed, must be non-segregated...Violations occur even when the premises of facilities are not under the direct control of employment service offices."

The specific section to Title 29, Part 31 of the Code of Federal Regulations alleged to be violated is S. 31.3(b)(1)(iii).

Differences in Services

It is estimated that 95 percent of migrant workers are members of minority groups: Puerto Ricans, Negroes, and Mexican-Americans.

During the course of the review, review staff interviewed workers who alleged that when they went to a regular ES office, they were immediately assumed to be farm workers only (particularly if they were Mexican-Americans) and were referred to the office handling agricultural employment without receiving any of the benefits of that office, such as testing, counseling, training, or being given consideration for non-agricultural placement services.

In most instances, Rural Manpower Services or Farm Labor offices provided only placement services and did not provide the full range of employment services, such as testing, counseling, and upgrading, as do full-functioning Employment Service offices. In many cases, there is not a full-functioning Employment Service office in the same geographical area. Where the same geographical area contains both types of offices, the full-functioning ES office will service a majority of white workers and the Rural Manpower office will generally service minority workers.

The Solicitor's Office has advised that each State ES agency is required to maintain "effective placement services for agricultural and related industry employers and workers" (20 CFR-602.8) and to maintain "local employment office facilities of such number, size and location as may be necessary in view of the population distribution and the industrial and agricultural

and related industry employment pattern of the State and of communities within the State" (20 CFR-602.11). The operation of a separate RMS to serve the placement needs of agricultural and related industry workers is in accord with these requirements and the basic requirement of the Wagner-Peyser Act "to maintain" a "farm placement service" and does not constitute a violation of any statute. If the services provided at both offices are made available to all who choose to use them, regardless of race or national origin, no violation results as to the persons who choose to use only one office.

Through observations, interviews and review of records, the review team noted in several States that applicants using Rural Manpower Office services were offered only agricultural jobs regardless of other skills they may have had

The Solicitor's Office stated that it is a violation of Title 29, Section 31.3(b)(2) of the Code of Federal Regulations not to refer to a clerical job a minority applicant who applies at a domestic office and who is also qualified for clerical work. The example cited in the Solicitor's opinion is parallel to the finding stated above regarding the Rural Manpower Service.

Studies were made in three California offices of referrals made to job orders which indicated that the applicant "must speak English" or "must speak Spanish." Of fourteen orders containing these specifications, there was no indication as to the necessity of the applicant's speaking English or Spanish. One local office manager stated that employers frequently requested Mexican-Americans because these employers had Mexican-American foremen. The orders neither indicated this, nor did they indicate that the foreman spoke only one language. All orders from that office indicating that the applicant must speak English had had only white applicants referred to them, and all of the orders indicating that the applicant must speak

Spanish had had only referrals of applicants with Spanish surnames.

According to the Solicitor's Office, "discriminatory selection and referral occurs whenever race, color or national origin is a factor in selection and referral." The above situation would appear to be contrary to Title 29, Sections 31.3(b)(1)(iv) and 31.4(a) of the Code of Federal Regulations.

Very few orders for jobs of permanent duration or for jobs other than agricultural employment were found in most of the RMS offices visited. Where States have both Rural Manpower and Employment Service offices, the review team reviewed only Rural Manpower Services.

Referral studies were made in six California offices, four of which were servicing agricultural and non-agricultural positions. Of 266 orders reviewed, only 9 percent of all agricultural job orders were for permanent jobs. Approximately 38 percent were for jobs lasting from a couple of hours up to seven days. Only 26 percent of all referrals to seasonal or temporary positions were white applicants. This problem is further compounded when referrals to non-agricultural positions are considered. Of the four offices having non-agricultural referrals in the sample taken, approximately 67 percent of all non-agricultural referrals were white applicants. The most significant factor is that the vast majority of applicants in all of the offices included in the survey were Mexican-Americans. (See chart below).

The Solicitor's Office cited a similar example as being in violation of Title 29, Section 31.3(b)(1)(iv) and 31.4(a) of the Code of Federal Regulations: "Minority applicants are referred to temporary or term positions as sales clerks whereas white applicants are referred to permanent jobs in sales."

Table 1.--Local Job Order Review of Selected
Rural Manpower Offices in California

	<u>TOTAL ORDERS REVIEWED</u>	<u>PERCENT</u>
<u>AGRICULTURAL ORDERS</u>		
Permanent Positions	25	9
Seasonal/Temporary	241	91
Up to 7 Days	<u>(101)*</u>	<u>(38)*</u>
Total Orders	266	100
<u>AGRICULTURAL REFERRALS</u>		
Permanent Positions		
Minority	11	32
White	<u>23</u>	<u>68</u>
Total	34	100
Seasonal/Temporary		
Minority	701	74
White	<u>248</u>	<u>26</u>
Total	949	100
<u>NON-AGRICULTURAL REFERRALS</u>		
Minority	84	33
White	<u>171</u>	<u>67</u>
Total	255	100
Referrals to Permanent Positions		
Minority	29	23
White	<u>97</u>	<u>77</u>
Total	126	100

Failure to Display Non-Discriminatory Posters

The Department of Labor non-discrimination posters required to be prominently displayed were not displayed at all or were not properly displayed in several States visited. No posters were found displayed in the New Jersey offices visited. No trailer offices in Ohio had posters

* Included in figure above.

displayed. In Florida, one office had its poster displayed in the employee coffee room which is not used by applicants. The poster was located on top of a file cabinet behind a planter in another office. The offices in the southern part of Florida did not have any posters displayed. Most of the staff were not aware that these posters were to be prominently displayed.

Title 29, Section 31.7(d) of the Code of Federal Regulations, pertaining to discrimination, states: "Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the Secretary finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part." The Solicitor's Office has stated that the failure to display the Department's Title VI non-discrimination poster is in violation of this section.

Sex Discrimination

The review team indicated that in each of the States visited, orders were found to have been accepted and serviced on the basis of sex where sex was not a bona fide occupational qualification. The extent to which sex specifications were noted on local orders was determined in four States. Seven-tenths of one percent of Ohio orders reviewed, two percent of Indiana orders, four percent of California orders, and thirty-eight percent of Florida orders reviewed contained discriminatory sex specifications.

Table 2.--Sex Specification Review of Local Job Orders

<u>STATE</u>	<u>NO. LOCAL ORDERS REVIEWED</u>	<u>NO. ORDERS WITH SEX SPECIFICATIONS</u>	<u>PERCENTAGES</u>
Ohio	295	2	0.7
Indiana	84	2	2.4
California	272	11	4.0
Florida	474	178	37.6

Specific examples are illustrated by job orders for citrus pickers. In one local office, some orders indicated the employer would accept either males or females, while other orders for the same type of work specified male only. One order, after some male and female referrals had been made, indicated that additional females were needed. Several orders were noted for nursery workers that specified males only. Others specified females only. There was no indication that the work to be performed was different. No attempts were made by the order taker to note any bona fide qualification requirements which would limit referrals to either males or females.

Although statistics were not obtained on the number of clearance orders that contained sex specifications when sex was not a bona fide occupational qualification, such comments were noted on clearance orders in Indiana and Florida. Clearance orders in only one other State (Ohio) were reviewed extensively to determine whether they contained sex specifications. None were noted. Several Indiana clearance orders contained notations indicating the type of work to be performed, such as "general labor of a nature usually done by men." Most of the Indiana clearance orders containing discriminatory sex specifications were for cannery workers. One such order reads, "Male workers: Will be assigned to any

or all of the various jobs involved in tomato processing. Female workers: Will be standing at conveyer belts sorting, inspecting, and trimming tomatoes."

Certain orders to be cleared interstate specified that the employer wanted only single workers, only single male workers, or only family workers. The term "single" has several meanings. Some employers use the term to indicate that they want only unmarried male workers. Other will take either sex, but housing is separate. While the housing requirement does not exclude married couples, they are not permitted to live together. The primary excuse offered for such requests was that the employer's housing was for singles only or for family groups only.

The Department's requirements with respect to housing for workers recruited through the interstate agricultural recruitment services are set forth in 20 CFR-620. These requirements apply to housing for all workers so recruited and their families if they accompany the workers. In the opinion of the Solicitor's Office, no violation of law results if an employer specifies that he wishes only single workers or only family groups. However, an employer might be considered to be in violation of the Title VII prohibition against sex discrimination in employment if only males were recruited for work in agricultural employment. As pointed out in 29 CFR-1604.1(a)(1)(iv):

The fact that the employer may have to provide separate facilities for a person of the opposite sex will not justify discrimination under the bona fide occupational classification unless the expense would be clearly unreasonable.

Two local offices, one in California and one in Indiana, were separating their application cards by sex. When questioned why this practice was followed, the response was "to facilitate file searches when filling orders." If both men and women have the same occupational classification indicating they both have all of the skills required to perform a particular task, it is difficult to understand how separating male and female applications will facilitate selection procedures unless sex is a factor.

Orders were noted in Texas which indicated wage differentials based on sex. Only three other orders were noted containing wage differentials based on sex and these were in Indiana. As an example, one order stated that "Adult male workers will perform heavier tasks, not normally performed by female workers, such as lifting, loading, etc." It then indicated that the rate of pay would range from \$1.40 to \$1.50 per hour with the notation that the "differential is due to the requirement that some workers will handle heavy work such as lifting and loading produce." The inference is that all men, whether in fact they do work that some women cannot do, will be paid at a different rate from that paid women.

The Equal Pay Act of 1963, as an amendment to the Fair Labor Standards Act, provides that an employer may not discriminate on the basis of sex by paying employees of one sex at rates lower than he pays employees of the opposite sex in the same establishment, for doing equal work on jobs requiring equal skill, effort, and responsibility, which are performed under similar working conditions. The principles contained in the Equal Pay Act are applicable to the provisions of Title VII of the Civil Rights Act of 1964 and Department of Labor policies on sex discrimination.

Age Discrimination

Some instances of age discrimination were found in most States visited. Specific studies were made in only a few States, however. Few examples of age discrimination were noted in reviews of local job orders in Ohio and Indiana. In six offices in California, studies indicated that three percent of the sample of orders reviewed contained discriminatory age specifications. Nine percent of all job orders reviewed in Florida contained discriminatory age specifications. One Florida office stated discriminatory age ranges on 15 percent of their job orders. Age ranges in the categories 20-60, 20-30, 20-50, 18-60, 18-50, 18-40, and 30-55 are illustrative.

Table 3.--Age Specification Review of Selected Local Job Orders

<u>STATE/CITY</u>	<u>NUMBER ORDERS REVIEWED</u>	<u>NUMBER WITH DISCRIMINATORY AGE SPECIFICATIONS</u>	<u>PERCENTAGES</u>
Ohio	295	1	0.3
Indiana	84	2	2.4
California	272	7	2.6
Florida	474	45	9.4
Belle Glade	70	1	1.4
Dundee	10	0	0.0
Immokalee	16	0	0.0
Orlando	136	9	6.6
Princeton	123	18	14.6
Tampa	119	17	14.3

The Age Discrimination in Employment Act of 1967 prohibits discrimination on the basis of age against workers between the ages of 40 and 65. All of the examples cited above discriminate against some individuals within the protected age group. When questioned concerning these practices, most staff were found to have a vague knowledge of the law but could not quote the specific age group protected by its provisions.

CERTIFICATION OF FOREIGN WORKERS

While the certification of foreign workers under the Immigration and Nationality Act was not specifically cited in the complaint, inquiries during the review relating to the complaint revealed problems with the program.

Applicable Law

Under the Immigration and Nationality Act, there is presently a system for certifying foreign nationals as short-term agricultural workers for the purpose of assisting in seasonal tasks, such as harvesting or planting. Most foreign workers are recruited for work on four crops: apples, potatoes, sugar cane, and citrus. The ten States utilizing foreign workers under the program are all located on the East Coast. Regulations for the program are contained in Section 2301 of the ES Manual.

Before foreign workers are admitted to the United States for temporary agricultural employment, the Secretary of Labor, or his designated representative, must certify that qualified domestic workers are not available and that the employment of foreign workers will not adversely affect the wages and working conditions of domestic workers similarly employed. The employer must make a reasonable effort to obtain domestic workers, he must file a job order with the local office of the State Employment Service, and he must use the interstate clearance system. He must also participate in recruitment efforts such as the special youth recruitment programs. In order to insure that wages paid to foreign workers do not adversely affect wages paid to domestic workers, the employer must also meet the adverse effect wage rate set for his State. Piece rates are required to be designed to produce hourly earnings at least equivalent

to these hourly rates. Theoretically, this should ensure that unemployed domestic workers will not be denied jobs that are made available to foreign workers, and that the employment of foreign workers will not result in depressed wages for domestic workers.

Problems with this system became evident in the course of this review. In spite of the oversupply of labor and the increase in the unemployment rate over the last several years, intrastate and interstate orders for domestic workers have gone unfilled and the number of foreign workers being admitted has been moving upward. The number has increased from 13,323 in 1968, to 15,830 in 1969, to 17,474 in 1970 (see page 40). RMS expects the number of admissions to have leveled off or decreased in 1971. The reason for this is not a decrease in overall utilization, however, but a decrease in replacement turnover. According to RMS staff, use of foreign workers since 1968 increased for all crops traditionally using foreign workers with the exception of potatoes, where increased mechanization was experienced. The level of peak employment of foreign workers has been increasing for all ten of the present user States except Maine and Rhode Island, with the greatest numerical increase registered by New York (see page 40).

Wages or earnings of foreign workers have been a particular problem. While the adverse wage requirements have provided a minimum hourly earning level, they have been difficult to administer in reference to piece rates. Wage surveys normally do not translate piece rates into hourly earnings. Since most foreign workers are paid piece rates, it is difficult to determine whether the minimum hourly rate is being maintained. There is evidence that indicates that foreign workers do depress earnings.

For example, the piece rate per box for apple pickers is as follows:

	<u>1962</u>	<u>1964</u>	<u>1969</u>
Roanoke, Va. (Non-User Area)	15¢	15¢	27¢
Winchester, Va. (User Area)	15¢	15¢	20¢
	<u>1959</u>	<u>1964</u>	<u>1969</u>
Michigan (Non-User State)	17¢	20¢	32.5¢
New York (User State)	(NA)	20¢	22¢

Evidence of foreign workers' effect on wages is provided by the trend in piece rates in the Yuma, Arizona, area, which was dominated by contract Mexican National workers until Public Law No. 78, under which the Bracero Program operated, expired on December 31, 1964.

Lettuce harvest piece rate per carton:

<u>1958</u>	<u>1964</u>	<u>1965</u>	<u>1971</u>
*20¢	*21¢	30¢	40.5¢

Cantaloupe harvest piece rate per carton:

<u>1959</u>	<u>1964</u>	<u>1965</u>	<u>1971</u>
*20¢	*22¢	40¢	50¢

(Asterisk denotes period of foreign worker employment. The increase from 1965 to 1971 is substantially accounted for by inflation. The increase from 1964 to 1965 is not.)

An example of foreign workers' employment adversely affecting domestic workers' wages, even though they are not employed in the same activity, is seen in the wage rate findings for Clinton, Essex and Washington Counties in New York. The wage finding is for general orchard work during apple harvest, and does not include any wages paid to interstate or foreign workers. The wages paid to the general orchard workers tended to be lower for those employers that were users of foreign workers for harvesting:

	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
Non-User Employer	\$1.50	\$2.00	\$2.00	\$2.25
User Employer	\$1.50	\$1.74	\$2.00	\$1.60

In addition to the wage issue, employers also do not find it necessary, according to RMS staff, to give as much attention to the supervision of foreign workers as to domestic workers. The tendency is to use the threat of repatriation as a substitute for good supervisory practices.

The effect of foreign workers on the earnings in sugar cane is difficult to ascertain because of the method of computing pay which is on a non-uniform task rate basis. The system operates as follows: A "Scratch Boss" unilaterally decides what the rate will be for cutting a particular row of sugar cane. He determines the rate by sizing up a row of cane and estimating the time it would take to complete the row based on its length, width, density and other factors. Pay is not based on a uniform rate per foot or per ton cut, and may vary between rows a short distance removed from one another. This method allows for variations in average hourly earnings. Union and other worker representatives interviewed in Florida claimed that sugar cane earnings are depressed by the fact that the work force in this crop is dominated almost exclusively by foreign workers. The earnings were so poor, they claimed, that domestic workers

would not take the jobs when offered to them. The claim concerning an adverse effect on sugar cane workers' earnings cannot be verified finally one way or the other due to lack of a standardized pay scale system that allows for comparability. Regional Office and National Office RMS staff both expressed concern over this situation in that there have been complaints about earnings in sugar cane while the present pay system does not allow for verification of the earnings on any comparable basis.

Efforts at recruiting domestic workers appear to be largely pro forma. The State farm labor director of one supply State said that interstate "criteria orders" (orders which must be filed before foreign workers can be certified) were routinely refused by his agency and were returned to the State where they originated. The reasons given for returning the orders, he said, were not the real reasons. While it might be indicated that the employment period was too short, the distance to the job was too far, wages or living conditions were unsuitable, or no workers were available, the more compelling reason was that the orders were made to satisfy criteria for certification of foreign workers, and were never intended to be filled in the first place. He indicated that in the past when such orders were filled, employers would call his agency and ask why referrals were made on the orders when obviously they were only criteria orders. He added that in some cases when workers were referred they would

be laid off or would quit because of low wages or poor working conditions, and then would return to his State where their complaints and bitterness at being referred became an embarrassment to the State agency.

In the same vein, a farm labor contractor interviewed in the same State said he was reluctant to take crews to areas where foreign workers traditionally have been employed, because he has found working conditions to be particularly bad in those areas and he has trouble keeping a crew together. It was reported to the review team that workers who have been in those areas before will not respond to recruitment efforts because they know they are not wanted.

Foreign workers can be attracted by an employer, however, in spite of wages and working conditions that are refused by domestic workers. This is true because the wages and working condition in the foreign areas where the workers come from are even less desirable by comparison than those in the U.S. The U.S. currency is desired by foreign workers because of the relatively greater purchasing power it has in the worker's home country. Hence, foreign workers, once they are here and working, tend to avoid complaining or agitating about conditions on the job, as they fear repatriation. A self-reinforcing cycle is thus created: foreign workers tend to depress wages; depressed wages discourage domestic workers from taking the jobs; and inability to recruit domestic workers is used to justify the use of foreign workers. The result is the continuation and expansion of the use of foreign workers despite an oversupply of domestic workers.

Foreign workers now account for only about one percent of the total seasonal worker employment and are restricted to very few crop activities, primarily planting and harvesting sugar cane and picking citrus fruit in Florida, harvesting potatoes in Maine, and picking apples in New England, New York, Virginia and West Virginia. The number of foreign workers used in each State for apple harvest is insignificant when compared to the total employment within the State. This crop is not dominated by foreign workers in any area. Sugar cane harvest in Florida is dominated by foreign workers, and some adjustments would be required if foreign workers were no longer available.

Nationally, the unemployment rate is 5.8 percent (September 1971) for all workers and 8.1 percent for agricultural wage and salary workers. Among the ten States in which temporary foreign agricultural workers were employed in 1971, September rates of unemployment for all workers ranged from 3.2 percent for Virginia up to 8.3 percent for Connecticut. The total unemployed in 1971 for these ten States was over one million persons, while the total number of foreign workers in 1970 was only 17,500. Florida, largest user of foreign workers under the program (approximately 9,000) is now faced with the problem of oversupply, and has discontinued any interstate recruitment to meet peak season labor needs for this year.

Table 4.--Number of Foreign Workers Admitted for Temporary Employment in U. S. Agriculture, by Nationality, 1966--1970

Year	Total	British West		
		Indian	Canadian	Mexican
1966	23,524	11,194	3,683	8,647
1967	23,603	13,578	3,900	6,125
1968	13,323	10,723	2,600	0
1969	15,830	13,530	2,300	0
1970	17,474	15,470	2,004	0

Table 5.--Unemployment in States Using Temporary Foreign Agricultural Workers in 1971 and Peak Employment of Temporary Foreign Workers in U. S. Agriculture in 1971

State	Number of Unemployed (thous.)	Rate of Unemployment (percent)	Peak Employment of Temporary Foreign Workers (Actual)
Maine	28.5	6.9	1,085
Massachusetts	168.6	6.5	454
Rhode Island	25.9	6.5	28
Connecticut	116.8	8.3	93
Vermont	10.1	5.1	304
New Hampshire	13.4	4.3	372
New York	470.0	5.7	1,121
Virginia	61.8	3.2	853
West Virginia	34.5	5.5	498
Florida	120.3	4.0	9,110

Table 6.--Peak Employment of Temporary Foreign Workers in U.S. Agriculture, by State and Nationality, 1966-71

State <u>1/</u>	Year					
	1966	1967	1968	1969	1970	1971
<u>Maine</u>						
Total	<u>2,961</u>	<u>3,170</u>	<u>2,063</u>	<u>1,294</u>	<u>1,147</u>	<u>1,085</u>
BWI <u>2/</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>14</u>	<u>40</u>
Canadian	2,961	3,170	2,063	1,294	1,133	1,045
<u>Massachusetts</u>						
Total	<u>272</u>	<u>310</u>	<u>276</u>	<u>335</u>	<u>369</u>	<u>454</u>
BWI	<u>25</u>	<u>47</u>	<u>74</u>	<u>67</u>	<u>155</u>	<u>168</u>
Canadian	247	263	202	268	214	286
<u>Rhode Island</u>						
Total	<u>58</u>	<u>39</u>	<u>28</u>	<u>22</u>	<u>14</u>	<u>18</u>
BWI	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Canadian	58	39	28	22	14	18
<u>Connecticut</u>						
Total	<u>50</u>	<u>90</u>	<u>99</u>	<u>100</u>	<u>100</u>	<u>93</u>
BWI	<u>50</u>	<u>89</u>	<u>99</u>	<u>100</u>	<u>100</u>	<u>93</u>
Canadian	0	1	0	0	0	0
<u>Vermont</u>						
Total	<u>77</u>	<u>171</u>	<u>165</u>	<u>219</u>	<u>247</u>	<u>304</u>
BWI	<u>60</u>	<u>147</u>	<u>145</u>	<u>208</u>	<u>217</u>	<u>264</u>
Canadian	17	24	20	11	30	40
<u>New Hampshire</u>						
Total	<u>258</u>	<u>355</u>	<u>321</u>	<u>202</u>	<u>286</u>	<u>372</u>
BWI	<u>17</u>	<u>63</u>	<u>55</u>	<u>60</u>	<u>88</u>	<u>211</u>
Canadian	241	292	266	142	198	161
<u>New York</u>						
Total	<u>667</u>	<u>924</u>	<u>776</u>	<u>976</u>	<u>898</u>	<u>1,121</u>
BWI	<u>647</u>	<u>917</u>	<u>776</u>	<u>966</u>	<u>895</u>	<u>1,106</u>
Canadian	20	7	0	10	3	15

1/ Includes only the 11 States in which temporary foreign workers were employed at some time during the 1966-71 period.

2/ British West Indies

Peak Employment of Temporary Foreign Workers--continued

State	Year					
	1966	1967	1968	1969	1970	1971
<u>Virginia</u>						
BWI only	515	828	494	750	673	853
<u>West Virginia</u>						
BWI only	200	395	403	736	550	498
<u>Florida</u>						
BWI only	8,835	8,972	8,890	8,366	9,097	9,110
<u>California</u>						
Mexican only	7,760	5,850	0	0	0	0

SOCIAL SECURITY

Complaint Information

The problems relating to social security payments, although not specifically mentioned in the complaint petition, were considered significant enough to merit the review team's attention.

Applicable Laws

A farm employee is covered by the federal social security law if an employer pays him \$150 or more in cash wages during the calendar year for agricultural labor. The law also covers a farm employee who performs agricultural labor for an employer on 20 or more days during the year for cash wages figured on a time basis as opposed to a piece-rate basis.

U. S. Department of Labor Policies

The Employment Security Manual, Part II, Section 1005 J states that, "It is the policy of the Employment Service to make no referrals to a position where the services to be performed or the terms or conditions of employment are contrary to Federal, State, or local law."

Part II, Section 2056 of the ES Manual provides instructions for completing Form ES 560-A, Clearance Order for Agricultural Labor.

Item 6 of Section 2056 B.5., Wages and Earnings, reads as follows:

"It is particularly essential that the description of the wages and earnings offered be an accurate and definitive one. The order-holding office must clearly:

- f. Describe deductions: OASI, workmen's compensation, etc.

Note who is responsible for making deductions."

Findings

The review team found that there were agricultural workers entitled to coverage for whom social security credits were not reported.

The review team encountered allegations in Florida and South Carolina of crew leaders having made social security deductions but not having reported these amounts to the Internal Revenue Service or returning to the workers the monies deducted. Interviews with State and Federal Wage-Hour officials disclosed a tendency for both crew leaders and growers to deny responsibility for reporting social security which often resulted in social security not being paid.

Many Rural Manpower Service staff have indicated knowledge of or a belief that social security payments are not being paid on behalf of the workers, yet their local office policies or practices do not provide for any protective mechanisms. Local job orders do not contain any specifics as to whether social security will be deducted or by whom. Many Interstate clearance orders do not contain this information. Examples were noted on Indiana clearance orders which stated, "Responsibility for social security to be arranged between the employer and crew leader." On Day Haul or mass referrals, neither the names nor social security numbers of the workers is recorded. Where families are referred on local orders, and sometimes on clearance orders, only the social security number of the family head is recorded. On Interstate orders, even where the orders indicate that the crew leader is responsible for all payroll

deductions, it is not determined whether the crew leader knows the regulations or whether he has an Employer Identification Number. To simplify Government record keeping, the law requires that every employer subject to social security taxes have an identification number. Referrals on Interstate orders generally show only the name and social security number of the crew leader.

A report issued by the American Friends Service Committee, Inc. on a Child Labor review of agriculture made in the summer of 1970 found the following information relating to social security while in California which corroborates the review team's findings.

"Industrial Welfare Commission Order (IWC) 14-68, Section 6(b) reads: 'All employers shall furnish to each minor and female worker, when he is paid, a written statement showing the payroll period covered, gross wages paid, and all deductions from his wages.' We found numerous examples of women and minors who were paid without statements of any kind in every county we visited. Often, entire families were paid by one personal check without any wage statement. Sometimes workers were unsure about the length of payroll period and deductions, and we were told that legally required deductions, like social security and workmen's disability insurance, were often not deducted. In many families, children work without social security cards. Their wages are assigned to parents or older children. This was the case for 27.5 percent of the children in our sample. A further breakdown discloses that 79.1 percent

of those under twelve, 28.1 percent of those 12-15, and 2.2 percent of minors 16 and above assigned their wages. This violates federal regulations and IWC Order 14-68, Section 6(a). In some states, those under twelve who work without a card lessen the possibility of detection by employers who seek to obey the law. It is illegal for minors under twelve to work in the state of California. Finally, working without social security cards deprives minors of possible benefits and saves the employers the expense of their share of F.I.C.A. withholding tax."

The following is a summary of the general practices employed for deducting social security.

A. Individuals are referred to growers or large processing companies who pay each worker individually. In this case, social security is generally found to be deducted and paid.

B. The grower pays the crew leader a contractual fee for work performed by the individual workers. The crew leader pays the workers, either on an hourly or piece-rate basis. In many cases the crew leader keeps only scant records to determine how much work was performed. Often these are in the form of a chit issued for the work performed. The worker is then paid on the basis of chits turned in. Crew leader records seldom reflect the full name or social security number of any of the workers, and often no deductions are made or reported.

C. If the crew includes family groups, the head of the family generally receives all income earned by his entire family. In several of these cases, the grower or crew leader only records the name and social security number of the family head. All deductions and credits, if reported, are reported under his name and number.

D. In some cases, such as in pickle harvesting where the rate of pay is generally 50 per cent of the crop's cash value, the family head is designated as employer. The family head is thus responsible for making all social security payments for himself and his family. In such cases, social security is generally not paid on anyone. The family head is not likely to know the regulations or to have a Social Security Employer Identification Number.

WAGES

The administrative petition contained numerous allegations regarding low wages paid to farm workers and their adverse effects. Included among the different types of wage allegations are situations where the issue is an economic one rather than a legal one. For example, it was alleged that because of the brief duration of farm employment and the low wages paid, an entire family must work to earn a living. Moreover, the fact that laws guarantee payment only for actual work performed and do not guarantee any specified job duration allegedly leaves the worker at the mercy of the employers and crop conditions. Specific allegations are dealt with in more detail in the findings section of this report. In each case, the Rural Manpower Service is charged with perpetuating the alleged adverse wage conditions through its role in recruiting and referring workers.

Applicable Laws

A. Federal Laws

1. Fair Labor Standards Act (FLSA). Agricultural employment was brought under the minimum wage coverage of the Fair Labor Standards Act in 1966. The Federal minimum wage is \$1.30 per hour, although there are several exemptions which make it difficult for anyone other than enforcement officials to determine whether the law is applicable to any specific employer or which employees are exempt or nonexempt. For example, any agriculture employee is exempt from the provisions of the FLSA if he is employed by an employer who did not, during any quarter during the

preceding calendar year, use more than 500 man-days of agricultural labor. Certain employees are excluded from the man-day count. Even if employed by an employer who met the man-day test, Sections 13(a)(6)(B), (C), (D), and (E) exempt employees as follows:

- (B) if such employee is the parent, spouse, child, or other member of his employer's immediate family;
- (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than 13 weeks during the preceding calendar year;
- (D) if such employee (i) is 16 years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over age 16 are paid on the same farm, or
- (E) if such employee is principally engaged in the range production of livestock."

2. The Equal Pay Act of 1963, an amendment to the Fair Labor Standards Act, provides that an employer may not discriminate on the basis of sex by paying employees of one sex at rates lower than he pays employees of the opposite sex in the same establishment, for doing equal work on jobs requiring equal skill, effort, and responsibility, which are performed under similar working conditions.

3. The Sugar Act of 1948. In order for a producer to be eligible to receive payment under the Sugar Act program, he must pay "fair and reasonable wages and meet other conditions for payment" as established by the United States Department of Agriculture, Agricultural Stabilization and Conservation Service. Failure to fully meet wage provisions means that the producer's payment may either be reduced or withheld entirely. The current sugar beet wage requirements went into effect April 12, 1971. Specific wage requirements were also set for sugar cane.

B. State Laws

Certain States have their own wage laws, some of which are more stringent than the Federal law. In situations where both the State and Federal laws are applicable, the highest rates prevail. State laws vary considerably in their application. Some specifically exclude agricultural labor. For example, Section 4111.01 of the Ohio revised code prohibits the State from establishing a minimum wage in the agricultural industry. The Texas wage law is only applicable in situations where the Federal law does not apply, and even then provides for additional exemptions and legal minimums lower than the Federal rate of \$1.30 per hour. Several State laws provide wage protection only for women and children. However, if the minimum wage for women in these States is higher than the Federal minimum wage

and the FLSA is also applicable, the FLSA provisions pertaining to equal pay require that men doing the same type of work be paid the higher women's rate. Conversely, if men are paid wage rates higher than State law requires for women, application of the Federal law would increase the wages of women to that being paid men.

U. S. Department of Labor Policies

Part II of the Employment Security Manual has several sections which contain Departmental policies relating to wages. Manual procedures require that prevailing wage surveys be made at least once every season for every agricultural area. Detailed instructions are provided for determining prevailing wages. Some of the more pertinent Manual sections are cited below.

Section 1005 states that "It is the policy of the United States Employment Service...

- J. To make no referral to a position where the services to be performed or the terms or conditions of employment are contrary to Federal, State, or local law.
- K. To recruit no workers for employment if the wages, hours, or other conditions of work offered are substantially less favorable to the individual than those prevailing for similar work in the locality."

Section 1746 provides instructions for completing the Farm Labor Order Form, ES-522. Section 1746 B.6 states in part that "In the block under "Wage", enter the wage rate offered by the employer for the type of work to be performed, and indicate whether monthly wage, daywork, piecework,

or hourly rate."

Section 2040, dealing with criteria for clearing job openings to other local offices, states that "Job openings are to be extended by the order-holding office only when all of the following responsibilities have been considered:

F. Terms and conditions of employment. Terms and conditions of employment are in conformity with the regulations of the Secretary of Labor and policies promulgated by the national office of the Bureau.*

These terms and conditions include:

1. Duration of job
2. Earning opportunities where piece work is the method of payment
3. Methods of payment prevailing in the area for the type of work or activity, including bonuses
4. Perquisites furnished over and above the regulations of the Secretary of Labor
5. Prevailing hours and days of work
6. Insurance - occupational and non-occupational
7. Employment guarantees

Section 2048 deals with "Wage Rate for Extension of Orders Into Interstate Clearance", Section 2049 pertains to the "Effect of Change in a Rate Related to a Wage Entry on an Order After Order Has Been Put Into Interstate Clearance", and Section 2050 deals with transportation arrangement, advances, and deductions from the worker's pay where advances have been made.

Section 2056 B.4 provides instructions for completing "Item 5 - Job

*Bureau refers to the old Bureau of Employment Security (BES). This function is presently performed by the United States Employment Service (U.S.E.S.) of the DOL.

Specifications" on Form ES-560A, the Clearance Order for agricultural labor. Among the types of information that the "order-holding office must clearly describe" are the following:

"e. Total hours workers must work: daily, weekly, monthly, etc.; hours in each different activity; daily, weekly, monthly, etc.

f. The climatic, market, soil, and crop conditions affecting worker production."

The instructions for completing "Item 6 - Wages and Earnings" indicate that "It is particularly essential that the description of the wages and earnings offered be an accurate and definitive one. The order-holding office must clearly:

- a. Describe the method and rate of pay for each activity (note if either method of payment or any rate is a matter of negotiation between employer and worker):
 - (1) If by time: show period--hour, week, month, etc.
 - (2) If by unit(piece rate): describe the unit--box, stub, bin, gondola, hundredweight. Describe the effect of any variables on computation of the piece rate--tree size, row width, plant spacing, pounds or boxes produced, market conditions, crew composition.

If payment is on schedule, give full information on conditions under which the scheduled rates apply or may be exceeded.
 - (3) If by production sharing: describe system and variables affecting production--selectivity, market, weather, commodity grading (i.e., is the worker paid on basis of production from field or on graded production).

- (4) A job order showing a method of wage payment different from the prevailing or applicable rate under the provisions of section 2048 is acceptable, if the employer can demonstrate that the rate paid on his basis converts to an amount equal to or greater than the rate required under the provisions of section 2048.
- b. Describe how workers are to be paid: as individuals, through sharing with crew members, through sharing with nonproduction workers (weighers, loaders, supervisors, etc.)
 - c. Show piece rate earnings for each activity--average; for competent workers; range between experienced and inexperienced worker; etc.
 - d. Describe any minimum production standards required or expected by employer.
 - e. Show pay periods; daily, semi-monthly, etc.
 - f. Describe deductions: OASI, workmen's compensation, etc. Note who is responsible for making deductions.
 - g. Describe how any advances are to be repaid.
 - h. Describe bonus arrangements in detail. Give qualifying standards such as production, length of time on job, etc.
 - i. Describe any earnings guarantees. Note if foreign labor user-employer is involved. Show when the "interstate clearance rate" includes a guarantee. Discuss period to which the guarantee applies and on which it is computed: daily production, weekly, semi-monthly, the period of employment, etc.
 - j. Describe methods and amount of pay for nonproduction workers, such as supervisors, weighers, loaders, etc. Note if these types of workers share in crew earnings.
 - k. Describe the effect on earnings of nonproductive periods such as travel from housing to field, from field to field, lunch periods, down-time due to weather, market conditions.
 - l. Describe any payment employer offers for vacations, sick leave, etc.

Findings

During the course of the review, the review team looked into the specific allegations stated and wage conditions generally. The overall results of the review findings follow.

Legal Wages Paid

Possibly the best evidence of the extent of wage underpayments is illustrated by the results of enforcement activities undertaken by the Wage Hour Division of the U.S. Department of Labor. Despite the fact that investigations were only made of 692 or approximately 3% of all agricultural employers, and that difficulties were reported in substantiating violations because of the transient nature of itinerant workers and inadequate records, the investigators found back wages due 9,275 farm workers in excess of one million dollars in fiscal year 1970 and back wages due 6,263 farm workers amounting to about \$914,000 in fiscal year 1971.

Table 7.--Monetary Findings in Agriculture and Agricultural Services
During Fiscal Year 1971

	No. of Establ.	Employees due Back Wages	Employees due Minimum Wages	Total Minimum Wages Due	Total Wages Due
Agriculture	692	6,263	5,487	\$730,083	\$ 913,901
Agricultural Services	719	12,760	8,924	679,813	1,325,677
Non- Agriculture	63,600	440,339	211,940	29,837,830	96,238,080

SOURCE: Wage Hour Division, U.S. Department of Labor

In addition, 29,992 employees were found due \$14,842,994 under the Equal Pay Act of 1963 and 655 employees were found due \$738,074 under the Age Discrimination in Employment Act of 1967.

Section 1005-J of the ES Manual states, "It is the policy of the United States Employment Service to make no referral to a position where services to be performed or the terms or conditions of employment are contrary to Federal, State or local law." However, with the information presently available to local office staff, it is extremely difficult to determine whether a referral is being made which is in accordance with the wage provisions of the Fair Labor Standards Act and existing State wage laws, or indeed whether such an employer is even covered by these laws. Nevertheless, under the present system local office staff are expected to make such determinations quickly, and may be held responsible for any subsequent violations found by skilled investigators. To begin to overcome this problem, it is incumbent upon the local office staff to obtain from the employer the wage rates offered. Additional information, which is obtainable from federal and State wage and hour officials and local office records, would assist the staff in making proper determinations of coverage.

In many States visited, numerous local job orders failed to reflect the wage offered. This practice was observed in Oregon, Idaho, Colorado and Texas. Specific studies of job orders were made in other States which showed wage rate omissions varying from one percent in Ohio and California to 25 percent in Indiana and 26 percent in Florida.

In each of the studies where wage omissions were noted, either no wage was shown or there were notations such as "TBA" (to be arranged), "DOE" (depending on experience), "Piece work", "Prevailing", or "To be discussed". In one Indiana office, one-third of the orders had "DOE", about eight percent had no notations, and another nine percent showed "Piece work", "TBA", or

"To be discussed". Three Florida offices had omission percentages of 32, 36 and 41 percent. Such practices clearly violate established policy stated in Section 1746 B-6, which required that the wage rate offered by the employer be entered on the ES-522 Farm Labor Order Form, and could mean that workers are being referred to employers who pay substandard or illegal wages.

Table 8.--Review Team Studies of Wage Omissions on Job Orders

STATE	NUMBER OF ORDERS REVIEWED	NUMBER OF WAGE OMISSIONS	PERCENTAGE
California	272	3	1
Ohio	295	3	1
Indiana	84	21	25
Anderson	39	20	51
Lafayette	45	1	2
Florida	474	125	26
Belle Glade	70	25	36
Dundee	10	2	20
Immokalee	16	0	0
Orlando	136	43	32
Princeton	123	2	2
Tampa	119	49	41

Where piece rates were recorded on local job orders there was no indication that the piece rates quoted would meet the applicable minimum wages. Rarely did clearance orders indicate estimated piece rate earnings. Several Indiana clearance orders read "Adult tomato pickers can earn \$20.00 or more per day under normal conditions." Another Indiana order stated "Under normal weather, crop, and working conditions, willing and qualified workers should average approximately \$75.00 or more per week, not counting bonus." However, when the average work day of 8-10 hours and the average work week of 6-6-1/2 days stated on the order is considered, workers should average from \$62.40 to \$84.50 per week at \$1.30 an hour. It is therefore, conceivable that adult piece rate workers could earn less than the federal minimum wage. Very few clearance orders stated that the grower would pay piece rate earnings which would meet the minimum wage applicable. Section 2040 F-2 of the ES Manual requires that "earning opportunities where piece work is the method of payment" is to be considered as basic criteria for clearing job openings to other States. Section 2056 B-4 requires that piece rate earnings for each activity be recorded on Form ES-560-A, Clearance Order for Agricultural Labor.

The most frequent rate stated on clearance orders for harvesting pickles was "50% of the crop value". All reviewed orders did not state whether this rate would be based on production from the field or on graded production. None of the orders reviewed gave any estimate of approximate earnings this system would yield for the worker. ES Manual instructions for completing the

agricultural clearance order form requires that if the worker is to be paid on a production sharing basis: "Describe system and variable affecting production - selectivity, market weather, commodity grading (i.e., is the worker paid on the basis of production from field or on graded production)."

Prevailing Wages

According to ES Manual instructions, the established prevailing rate does not have to be converted into earnings per hour, nor is it required to be adjusted upward if found to be less than federal or State minimum wage laws require. If a Rural Manpower Service employee has a list of prevailing piece rates when an employer calls in a job order, he can readily check the piece rate offered to determine if it is prevailing, but he would have no information to show whether the prevailing rate will produce earnings equivalent to the federal minimum hourly rate of pay.

Both Texas and Michigan make extensive surveys in accordance with State laws to determine prevailing rates that must be paid. In Texas, however, the State law does not apply where the FLSA is applicable and other exemptions are permitted where it is not applicable. Hourly rates required by Texas law are lower than federal minimums. Established State prevailing wages are the only prevailing wages available to Rural Manpower staff, yet these may not produce earnings equivalent to the federal minimum wage.

Rural Manpower officials in Florida reported to the national office that crew leaders had refused referrals on clearance orders to pick apples in Virginia and West Virginia on the basis that the wages offered were substandard. Rural Manpower staff from the national office made wage studies in

these two States which revealed, particularly in areas of these States where foreign workers are utilized, that wages offered were substantially less than the national average or less than in other areas of these same States. The majority of the clearance orders were for employers located in these lower paying areas of Virginia and West Virginia. Clearance orders are reviewed by State administrative staff and Department of Labor regional staff before being sent to supply States. Thus, this is not solely a local or State problem, but also required regional office involvement at the federal level.

Interviews with farm workers and crew leaders indicated that there may be situations where some workers, particularly older ones, would not meet the prevailing or minimum hourly rate required by law based on their production rates. Older workers are less inclined to complain of low wages for fear they will lose their jobs because they are slower workers.

Interviews with farm workers give only a general indication as to whether piece rates paid yield the applicable hourly rates. Federal wage hour officials made a time and motion study of a flower grower in Florida which found several thousand dollars was due the workers. More time and motion studies are needed to accurately determine hourly earnings based on production. Varying crop conditions make extreme accuracy difficult. The same piece rate for different crop conditions can significantly alter the earnings of the workers. Local offices seldom obtained crop condition information from employers and ordinarily do not provide information on crop conditions to workers prior to referral.

Earnings Versus Wages

Only if an employer desires to offer guarantees to workers which are not required by law is such information recorded. Instructions do not encourage Rural Manpower staff to work with employers to obtain guarantees not required by law except under certain circumstances, such as special youth programs or when obtaining information to conform to the Puerto Rican Contract Agreement. The following examples are intended to illustrate how the lack of guarantees to workers has the effect of perpetuating low earnings.

Those guarantees on clearance orders noted by the review team were for actual hours worked and did not guarantee the worker any set number of hours per day or per week. Several Ohio clearance orders stated, "Work hours will be 0 to 6 days per week and 0 to 10 hours per day depending on weather and condition of crop." The vast majority of Ohio orders reviewed gave no indication of hours to be worked.

The only guarantees noted for "down time" were such statements as, "Mr. _____ also will guarantee, in case of bad weather for a week, an advance of \$5.00 per worker, over 14 years of age, for groceries to be deducted from their wages once they start working." When such advances were offered, they were always very minimal amounts, as evidenced by the above example quoted from an Ohio clearance order. At the present time there are no laws or regulations providing guaranteed earnings to workers, with the possible exception of the Puerto Rican Contract Agreement. This means that a worker could travel thousands of miles only to work a few hours a week for a grower because of weather or crop conditions. His only guarantee is that he be paid for the number of hours actually worked. Situations were encountered where

Employment Service staff, after becoming aware of such conditions, worked with the employer and local welfare agencies to alleviate these conditions.

The Child Labor section of this report illustrates how some methods of paying workers result in compelling entire families to work to earn a subsistence income. The methods of pay can vary as a result of several factors: availability of work, weather, crop conditions, lack of guaranteed earnings for a specified period of time, the period of time farm work is available, as well as the complex and large number of federal, State and local laws, together with Department of Labor policies which the Rural Manpower staff is supposed to observe as a service organization. To the extent the Rural Manpower Service is not following established policy, it contributes to the problem.

Complaint Procedures

The administrative petition alleged that worker complaints were ignored by Rural Manpower staff. The situations described below illustrate that failure to follow through on complaints before continuing to provide service to the same employers complained against could mean that workers continue to be referred to the same adverse conditions the complaint alleged.

Several instances of workers bringing wage complaints to the attention of Rural Manpower Service personnel were noted. In these cases, the staff would refer the complaining workers to State or federal enforcement officials because they have the authority for investigating the allegations and recapturing unpaid wages. Several cases were reported to a Rural Legal Service office. However, records of complaints or follow-ups were seldom found. Thus, the opportunity existed for continued referrals to the same employer

before the allegations were resolved. In one mid-West State, Rural Manpower Service staff solicited worker complaints and even negotiated with employers on behalf of workers who indicated they had not been properly paid. They only negotiated on behalf of those who specifically complained. Thus, only those who complained were paid the amounts negotiated as underpayments, although many other workers might have been in a similar situation. Detailed records were kept in this State of all such actions taken by Rural Manpower staff. In reviewing these records it was apparent that their lack of knowledge of State and federal wage law applicability resulted in negotiation for lesser wages than were legally due. The particular State in question had a State minimum wage law for women and children only. The hourly wages due children under this law were less than the federal minimum for children. The hourly wages due women under the State law were higher than the federal minimum. Negotiation statements showed that wages were collected on the basis of the State law for women and children and the federal law for men. The Equal Pay Amendments to the Fair Labor Standards Act would have increased the amount due men at least up to the amount required to be paid women doing the same type of work. Both men and children remained partially underpaid after intervention on their behalf. The specific employers found to be underpaying workers were not reported to staff making referrals so that future compliance could be assured prior to making referrals to these employers.

Again, this situation points up the need for clear and definitive wage laws covering farm workers. A Texas worker made several allegations against an Ohio employer, including unauthorized utility deductions from his pay.

Ohio Rural Manpower officials made extensive inquiries into the allegations and recognized that the clearance order on which this worker was referred indicated that this expense would be incurred by the employer. Discussions with the employer were reported as indicating that the worker had agreed with the employer when he arrived that the worker would assume this liability.

The Solicitor's Office of the Department of Labor has determined that a "job order" is not in itself a contract, but is only an "offer" by an employer to employ workers. It may only be considered as a part of a contract for employment between the worker and the employer once the worker has "accepted" and "acted upon" the terms and conditions of employment specified in the job order. The Employment Service is not a party to any contractual agreement arrived at between the worker and the employer.

Even though the "job order" is not in itself a contract, the job order may be held legally binding on the employer as in the case cited below. The right of interstate workers to rely on the terms and conditions specified in the interstate clearance order under which they travel to accept employment has been upheld by the courts in *Gomez v. Florida State Employment Service*, 417 F .2d 569 (CA 5; 1969).

Discussions with Wage and Hour enforcement officials indicated that they had encountered complaints alleging that workers were not being paid in accordance with prearranged wage offers. Such complaints were generally reported as being outside their jurisdiction in situations where the complainants were already receiving at least the minimum required by federal law.

Response to Other Allegations

It was generally found that where whole crews are referred, wages to be paid and other working conditions are discussed only with the crew leader. Several States encouraged the crew leader system, resulting in exclusive dealings between the crew leader and the grower.

The petition also alleged that in Florida, State Employment Service officials attempted to close other DOL manpower projects in which farm workers could earn \$12.80 per day to refer them to jobs that netted less than \$6.00 per day. The petition further alleged that one of the reasons for shutting down this program was to "have a large supply of labor standing on the street corner to be picked up in case a crew leader or an employer happens to pass that corner looking for someone to do an hour's work." It was found that the Florida Rural Manpower Service was referring applicants to a day haul point with no guarantee that they would obtain work or have a full day's job. However, the temporary manpower project referred to in the complaint was a wage maintenance program established to help alleviate a major unemployment problem resulting from crop losses due to freezes. It was not intended to compete with local wages or be an alternative to job opportunities when they became available. When job opportunities began going unfilled, manpower project funds were moved to an area where they could be better utilized.

The petition alleged that Idaho Rural Manpower Service employees personally run camps coercing workers into accepting jobs for substandard wages or working conditions and would evict workers from State camps if they were involved in wage disputes or labor organizing activities. Prior to the review, Idaho

Rural Manpower staff had ceased operating labor camps. During the review, no evidence was found of Rural Manpower staff coercing workers or evicting them from labor camps.

CHILD LABOR

Complaint

The Administrative petition filed with the Secretary of Labor alleges that few migrant children work by choice and that Rural Manpower Service policies have the effect of encouraging and sometimes compelling farm workers to use their children in the field. The petition alleges that the prevalent practice in many Rural Manpower Service offices is to accept unrealistically low piece rates that deny to a worker, no matter how hard he works, an opportunity to earn the applicable minimum wage. Therefore, the Rural Manpower Service encourages child abuse because children must be used to supplement family earnings, since the adults in the family cannot earn a decent wage at a regular work pace.

Applicable Laws

Federal

The child labor provisions of the Fair Labor Standards Act apply generally to farmers whose crop or products go into interstate or foreign commerce. This law has established that a minor must be 16 years of age to work during school hours or in a hazardous agricultural occupation. No minimum age is set for work not done during school hours. These standards do not apply to minors working exclusively for their parents.

State

Where State laws exist, they vary considerably in their application. In some of the States visited, children working on farms were specifically

exempted by the State Child Labor Law. These States were Indiana, Alabama, Michigan, North Carolina, Texas and Washington. Minors in non-hazardous occupations in agriculture are exempt from Oregon's Child Labor Law. New Jersey law requires minors to be 12 years of age or older to be engaged in agricultural work, but permits them to work 10 hours a day, six days a week. Ohio law requires that all persons under 21 have a wage agreement with an employer. No person under 18 is to work more than eight hours a day or more than 48 hours a week, nor more than six days a week, according to the Ohio law.

The most comprehensive State law covering child labor was found in California. When schools are not in session, the minimum age for child agricultural labor is 12 years (except for sugar beets where the minimum age is 14 years). When schools are in session, the minimum age is 14 for working before or after school hours and 16 for full time work. All children under 18 who have not graduated from high school must obtain work permits (excluding those children who work on farms owned or operated by their parents). All children under 16 must attend school full time when schools are in session unless exempted for special reasons provided by law. Minors between the ages of 16 and 18 years who have not graduated from high school and who are employed full time must attend part-time continuation classes for at least four hours per week.

Department of Labor Policies

It is the policy of the Rural Manpower Service not to accept job orders nor to make referrals where the conditions of employment are contrary to State,

local or Federal laws. All State agencies have been provided copies of Federal laws regarding child labor in both industrial and agricultural occupations, and Manual instructions have been issued regarding the employment of youth. Part II, Section 8001 B of the Employment Service Manual states that, "It is the policy of the Employment Service to refer young workers to jobs which are not injurious to their health and welfare..."

United States Employment Service Program Letter No. 2025 was issued April 15, 1966, "to expand and accelerate the employment of youth in summer agricultural activities." It recommends specific guarantees to minors recruited for summer agricultural work, such as being given priority in filling local and intrastate job orders, having continuity of employment, and receiving wage rates which will adequately compensate the young worker. He is also guaranteed a statement of the terms and conditions of employment and provided continuous follow-up to insure that the terms and conditions of employment are met.

The Program Letter states, in part, that "The Bureau will sanction and assist the interstate movement of youth only where a statement of the terms and conditions of employment have been acknowledged by the employee or his designated representative. Such a statement may take the form of a formal contract or worker agreement, or it may be an addendum to the clearance order, clearly stating the particulars of employment as well as any legal or moral obligations applicable to either party. The contract, agreement, or statement should be acknowledged, by signature, by the youth worker or his representative, before final processing of the worker begins. Copies of such contracts, agreements, or statements should be retained on file."

"As a minimum, and where applicable, the contract, agreement, or statement will cover clearly the specifics of job continuity and duration, pay and/or earnings potential, housing, supervision, safety, insurance coverage, and transportation."

Findings

Numerous violations of State and Federal child labor laws are reported each year, indicating the severity of the problem. Review findings, however, did not reveal any intentional actions on the part of the Rural Manpower Service to refer minors in violation of laws. However, Rural Manpower staff may unknowingly refer a family or crew in violation of law by not ascertaining the ages of each worker referred. Many job orders for local and interstate workers make no reference to age minimums.

In Ohio, several clearance orders were found to have offered bonuses to minors over 14 for working beyond the opening of schools, as is described below. The Department of Labor's Wage and Hour Division investigation results show that Ohio had led the nation for several years in the number of minors found to be working in agriculture in violation of Federal law and has initiated a campaign to eliminate this problem.

Table 9.--Number of Minors Found Employed on Farms in Violation of the Child Labor Provisions of the Fair Labor Standards Act

STATE OR TERRITORY	FY 1969	FY 1970	FY 1971
Total - All States*	1,249	1,472	977
Alabama	111	118	41
Colorado	113	47	17
Michigan	30	111	25
Mississippi	105	28	0
Ohio	274	364	351
Puerto Rico	75	131	198
Texas	82	157	97

*Only those States or Territories having 100 or more minors found illegally employed in a single year are shown.

SOURCE: Wage Hour Division, U.S. Department of Labor

A cursory review of clearance orders showed several instances in which the orders indicated that all workers must be over 16 or must be over 18 years of age. Several Indiana clearance orders contained the statement: "Employment of Minors: No person under 16 years of age will be allowed to

work in the fields during school hours when schools are in session. All workers 16 years of age or younger are to have written proof of age."

One Indiana order indicated that "Arrangements will be made for children 16 years of age to attend school in the area."

Interstate orders are cleared for family workers to work away from their place of residence during summer months and continuing into the school months. Many such orders are for work up to mid-October and some orders are for workers through December. Even though some of these orders do specifically state that minors are not to work during the periods of time that school is in session, few contain this notation, and the mere fact that the entire family is away from home at that time of year places children in a situation where they may well continue to work in violation of law. One compelling reason found was the loss of bonuses if all workers do not remain throughout the harvest. Some clearance orders placed by Ohio contain such statements as "Employer will pay \$16.50 per worker for transportation expense for all workers 14 years of age or older who stay until completion of tomato harvest." Tomato harvest is estimated to end about October 10. In addition, the majority of these tomato growers pay an additional bonus of \$0.02 for each hamper picked during the season for those workers who stay until the end of the season. The families who take along 14 and 15 year old workers will stand to lose the \$16.50 transportation cost per worker over 14 as well as the bonus for all tomatoes picked. A loss of a bonus for an entire family could involve a fairly substantial part of the family income. Two young teenage sisters, for example, stated

that their shares of the family income picking tomatoes at \$0.14 per hamper amounted to from \$100 to \$125 each per week. If these youngsters left the fields only one week early, it would mean that the family earnings would be cut a minimum of \$228.00 plus the possible loss of approximately \$28 a week in bonus payments for all weeks previously worked. Since school generally starts early in September, three to four weeks could be involved which, in their case, would have resulted in losses of from \$684 to \$912, plus an additional transportation allowance loss of \$33.00 for the children. Should the family have to return home, the parents' incomes and bonuses lost could further magnify the problem. The fact that specific allowances are stated as being payable to minors over 14 for completing the season would make the Rural Manpower Service a party to the problem by accepting such orders and assisting in the recruitment of the workers.

Table 10.--Findings From Investigations by
the Wage and Hour Division in Fiscal Year 1970

Farms in violation	498
Children under 16 illegally employed	1,472
In non-hazardous jobs during school hours	1,380
In hazardous farm jobs at any time	92

Ages of the children:	<u>Age</u>	<u>Number</u>	<u>Percent</u>
	14-15	564	38.3
	10-13	690	47.0
	9 and under	213	14.7

Migrant status:	<u>Local children</u>	<u>Migrant children</u>
	699	773

Table 11.--School Grade Achievement Among
Children Found Illegally Employed

<u>All children reporting</u>	<u>Number</u> ^{1/}	<u>Enrolled in grades below normal for their age</u>	
		<u>Number</u>	<u>Percent</u>
All ages	1,401	799	57
Age 14	256	181	71
Age 15	268	205	76

<u>Migrant children</u>	<u>Number</u>	<u>Enrolled in grades below normal for their age</u>	
		<u>Number</u>	<u>Percent</u>
All ages	720	491	68
Age 14	120	103	86
Age 15	114	104	91

^{1/} Does not total 1,472 as specific information not available for 71 minors.

The Labor Department statistics cited above indicate the harmful effects on the educational attainment of young workers. Over half of the 1,472 minors found illegally employed on farms during fiscal year 1970 were in school grades below normal for their ages. At ages 14 and 15 about four out of five were behind in school grade level.

In addition, Wage-Hour officials found that 92 or about 6% of all children illegally employed were working in hazardous farm occupations. The majority of hazardous occupation violations found were those of barring minors from operating heavy tractors and handling dangerous chemical insecticides.

Several Rural Manpower personnel had a limited knowledge of either State or Federal child labor laws. For example, when State child labor laws were requested of State Rural Manpower officials in Ohio, they first indicated that there were no such laws, and after checking further provided the review team with a copy.

A State enforcement agent in California stated that he finds numerous minors in the field during the summers who are under 12 or are working without permits. He feels that most violations concern out-of-State migrants, and that it is more difficult for them to obtain work permits. He stated that he overlooks many summer violations because he feels there is no real harm in children working, and that extensive enforcement would cause political ramifications because of the extensiveness of the problem. He said he is more likely to enforce in-school regulations, but that even there difficulty in enforcement exists. For example, in California, a minor under 18 who drops out of school must attend class for four hours on Saturday. Since 16 and 17 year olds know this, if they are caught in the field they all say they attend Saturday classes. He suspects they all do not, but "obviously" cannot check out each one so, in the interest of time, he takes their word.

In testimony before a Senate subcommittee, Dr. Charles Hendee Smith, professor of clinical disease of children at Columbia University, stated that children who engage in arduous labor become undernourished, undersized, chronically fatigued and susceptible to infections. A Department of Labor News Release stated that "based on national findings, farm work is classified as the third most dangerous occupation." Another release stated that, "we all too often see that these minors, particularly the migrant ones, are the victims of low wages, long hours, poor working conditions, and accidents."

Despite the large number of minors found to be illegally employed in agricultural employment each year by both Federal and State enforcement

officials, Department of Labor estimates indicate that officials only scratch the surface in terms of the total number of youth illegally employed. Few States set a minimum age for children employed in agricultural work outside school hours and those that do are sometimes lax about enforcement or are grossly understaffed. Several Federal enforcement officials interviewed indicated that enforcement activity was limited as a result of: difficulty in locating specific farms where children may be illegally employed, lack of specific complaints, time involved in relation to their total responsibilities, and split school sessions. Because of overcrowding, schools are teaching two and even three sessions per day in some States. Enforcement officials in these areas, to actively enforce the law, would have an almost impossible task of trying to determine which youngsters should be in school and which ones can legally be in the fields.

In a speech before a Committee on Migrant Labor in Ohio, a Department of Labor, Wage and Hour Division official indicated that "many State compulsory school attendance laws are not enforced because migrants do not meet residency requirements."

LABOR LAW ENFORCEMENT

As discussed in the section on Farm Labor Contractors, Public Law 88-582 (Farm Labor Contractor Registration Act) is not being enforced. This is true not only of registration under the Act, but is also true in terms of compliance to its other provisions, such as disclosing information on crops, housing, insurance, transportation, and wages to workers at the time of recruitment, or keeping payroll records which show earnings, withholdings, number of hours worked, and hourly rate.

In addition, other laws such as those relating to social security minimum wages, immigration, child labor, equal employment opportunity, housing standards, field sanitation, pesticides, and others get little compliance support from Rural Manpower offices. The primary responsibility for enforcement is lodged with other agencies and Rural Manpower offices are reluctant to take the initiative in actions supportive of enforcement agencies, such as checking for compliance, supplying information to be used in building a case, or appearing in court voluntarily. Complaints were received by the review team from workers and worker group representatives, and from enforcement agency staff concerning the lack of assistance in enforcement. For instance, one staff labor law enforcement official stated that Rural Manpower offices will refer individual workers who have complaints, but will not help in building a case for prosecution by providing records, appearing at hearings, or preparing written reports on problems or letters stating facts of non-compliance known to Rural Manpower staff. This official

felt that Rural Manpower office staff has a great deal of information that could be used in preparing cases and in bringing about better compliance, but that the system is too grower oriented to be interested in getting involved. "We have been told," he said, "that we are not helpful to them in their job when we are seen in or around their offices and it makes it difficult to get job orders from growers."

Rural Manpower office staff does little to support the enforcement of immigration laws, according to both Rural Manpower staff and immigration staff. One reason given is that RMS staffs are sympathetic to the needs of the aliens for income. In interviews with review team members, Rural Manpower staff disavowed any responsibility for enforcement and stated they will not take initiative in informing immigration officials of employers suspected of having illegal aliens on their payroll. One Rural Manpower office manager stated flatly that he "washed his hands" of any involvement in assisting in immigration law compliance efforts. A senior immigration officer said in an interview that he felt the Rural Manpower office could be more cooperative by providing such information.

Some agencies with direct responsibility for enforcement were found to be rather nonchalant about their own activities. For instance, a Rural Manpower district manager attempted to notify local immigration officials that an illegal alien was in his office to turn himself in. The local immigration authorities would not accept his notification and the district manager was told to call the immigration office in a city about 75 miles away. By the time the officer arrived from the second

office on the following day, the illegal alien was gone. In another case, a sanitarian informed the review team that the field toilets were no longer inspected because they had been inspected several years ago, and that too many inspections constituted "harrassment of the farmer."

REFERRAL CONTROL

The allegation charges that the referral practices of the Rural Manpower Service have resulted in inequities to the migrant workers. Such inequities cited were over-referral to jobs which depressed wages, referral to jobs which pay less than the minimum wage and referral to employers who violate housing, sanitation, and transportation laws.

For the purposes of this report, referral control is separated into interstate and local referral control.

Interstate Referral Control

The subject of interstate referral control encompasses more than the Rural Manpower Service's performance of this function. It must include those migrant workers (free-wheelers) who do not use the RMS to obtain their jobs and who are therefore not subject to any referral control by the RMS.

The problem of the "free wheelers" was brought to the attention of the review team in the States visited. A "free wheeler" is a worker who migrates for farm work, but does not use the ES agencies to obtain jobs. They migrate with or without definite job commitments. State and County agencies responsible for providing services to migrant workers explained that it is difficult for them to plan and provide such services when they do not know the number of migrant workers, the composition of the work crews, the locations of the crew, and the arrival time of the migrant workers. These problems became apparent while the review team was in Michigan. The Michigan ES agency knew that there would be an

over-supply of farm workers in 1971. By doing crop and labor surveys, they realized that the need for workers would not be as great as in previous years. Accordingly, the Michigan ES agency, in cooperation with the Chicago Regional Manpower Administration (RMA) office, decided to take action which they hoped would prevent this situation. Since most of Michigan's migrant workers came from Texas, the strategy was to inform Texas migrant workers not to come to Michigan unless they had a definite job commitment. In cooperation with the Texas Employment Commission (TEC), the job situation was advertised by radio, newspapers and flyers in the home areas of the migrant workers.

However, Michigan, as predicted, did experience an over-supply of workers this year which caused many hardships. One example was observed in a local office by the review team. The office was filled with workers seeking jobs but none were available. The ES staff advised them to return home and in some instances gave them money to return. These workers who had incurred expenses seeking work had to return home without any wages.

Although the review team is not aware of any studies on the problems caused by "free wheelers," it can be assumed that lack of control over "free wheelers" could lead to problems such as depressed wages and poor housing conditions. For example, review team members talked with migrant workers returning home from Michigan because no jobs were available. These workers appeared desperate and were willing to accept any work regardless of the wages. In addition, they would have welcomed almost any housing since they had slept in their cars the past several nights.

The lack of referral control caused by "free wheelers" has increased in the past several years. One reason for this is the failure of crew leaders to register in accordance with the Farm Labor Contractor Registration Act. Briefly, crew leaders must be registered to use the ES Clearance System. Thus, if the crew leaders cannot use the ES Clearance System, it is assumed they "free-wheel" resulting in the ES agencies not having any referral control over them. It can be assumed, therefore, that the more crew leaders registered the more likely a greater number will use the ES Clearance System resulting in an increase in referral control by the ES agencies. The RMS national office staff estimates there are 5,000 to 8,000 crew leaders. However, the registration of crew leaders has decreased from 1968 to 1970. It is estimated that there would be a slight increase in 1971, as shown below:

<u>1965</u>	<u>1966</u>	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
1500 (est.)	1857	2194	3129	3034	2842	2900

The lack of referral control by ES agencies is also indicated by the decrease in interstate clearance activities since 1967:

		<u>National Totals</u>		
	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>
Orders.....	6,581	5,688	3,445	2,771
Openings.....	333,970	291,667	210,599	172,177
Orders Filled.....	4,570	3,676	2,381	2,034
Openings Filled...	166,306	145,112	121,529	93,127

Although the decrease in openings can be attributed in part to mechanization of farm jobs, it is also an indication that free-wheeling is on the increase.

The RMS national and regional staff and the ES agency staff attribute the increase in free-wheeling to the need for more enforcement of the Farm Labor Contractor Registration Act and to the establishment of housing regulations by the Secretary of Labor. The crew leaders do not register because it is unlikely they will be caught and, if so the only action taken will be to register them. Therefore, it is to their benefit not to register, because they can avoid the cost of liability

insurance and approved transportation and still obtain jobs by free-wheeling. The employers know they can meet their needs by hiring free-wheelers even though their housing does not meet DOL regulations, which would be required if the employer hired the workers through the Employment Service. Therefore, rather than incur the additional expense to bring their housing up to the DOL regulations, they do not use the Employment Service to obtain workers.

A report in 1970 prepared by an inter-agency task force on migrant labor submitted to Governor Preston Smith of Texas reported that poor enforcement of the Farm Labor Contractor Registration Act caused a decrease in use of the Texas Employment Commission (TEC). The report noted that although migrant traffic through the Migrant Center in Hope, Arkansas, has been relatively steady, crews using the TEC have dropped 30 percent in each of the past two years. The report also stated the DOL regulations on housing were another reason for the decrease in crew leaders using the TEC for job referral.

In 1970, the State of Illinois enacted a law which can be helpful in providing some kind of referral control to migrant workers who do not use the ES agency. The law requires that private employment agencies recruiting out-of-State workers must file orders with the Illinois Department of Labor and the State Employment Service stating the terms

and conditions of employment. If this information is complete and submitted in a timely fashion, it can be a valuable tool for the State and County agencies by providing a specific number of workers upon which they can plan the services needed. The law further requires that a recruited employee must receive a summary of laws pertaining to his employment in English, Spanish, or the language with which the person is most familiar.

Applicable Law or Regulation

The system and regulations pertaining to interstate referral of agricultural workers are contained in the ES Manual, Part II, Sections 2000-2120. Briefly, the interstate referral system is as follows. The employer places an order with the local ES agency for a specified number of workers to do specific seasonal agricultural work. The ES local office then determines if there is sufficient local labor available to meet the request of the employer. If not, the ES agency will place a Clearance Order for Agricultural Workers (Form ES-560A) with States that supply migrant workers. The ES-560A must provide the number of workers needed, the job specifications, wages and earnings, housing and perquisites, and transportation allowances. Upon receipt of the 560A, the supply State will attempt to fill the order. Communication between the demand and supply States is maintained to note any changes in the order, to determine if the order will be filled and to exchange any additional information. The supply State is to notify the demand State when the workers have left. The demand State is to contact the grower to determine if the workers have arrived. In addition, the EMS local office is to

contact the workers to ascertain if they have any problems, to insure that the conditions of employment as stated on the 560A are being met, and to arrange, if possible, for further jobs after completion of the present one if the workers do not have any further job commitments.

The RMS office receives copies of the interstate clearance orders, reviews them for conformity to the DOL regulations, and corrects any deficiencies in the orders.

The system is designed to provide the employer with workers at the needed time, to provide the workers with jobs, and to safeguard their conditions of employment. If the system functions effectively, it can assure an orderly labor force control, which works to the benefit of both employer and worker. However, if the system fails to maintain proper control, it can have an adverse affect on both the employer and the farm worker. The employer is dependent upon a labor force at a specified time and the workers, who are away from home, have little recourse if the wages, working conditions, and living conditions are not as advertised.

A survey was made of 125 interstate clearance orders in two local offices that supply migrant workers. Although most of the interstate orders had sufficient information and referral action was proper, several instances were found where the orders extended by the supply State and accepted by the demand State did not conform to the Secretary's Regulations. However, the supply State made referrals on these orders.

The ES Manual, Sections 2000-2071, contains regulations and information required for housing on an interstate clearance order (560A) before the order can be accepted and referrals of workers can be made. Of the 125 orders reviewed, several orders not in compliance with the housing regulations were found. Six orders representing five States did not have the required certification that housing at the work site conformed to DOL regulations. On three other orders which represented three different States, more workers were referred than there was housing approved to accommodate them. Another order was accepted which requested 75 adults in family groups. Housing was approved for 75 adults. Since family groups were requested, it is obvious that approved housing capacity could not accommodate the number of adults as well as their children. Another violation of the regulations is the lack of required wording on the order concerning approved housing. The ES Manual requires the following statement: "Housing meets 20 CFR-620 standards and is approved for occupancy by ___ adults." The most important word in the statement is "adults", because a formula based on the number of adults is used for determining the housing capacity when children are involved. The ES Manual, Section 2031, states that "for children under 12 years of age, space requirements are one half that required for adults in quarters used for combined working, eating and sleeping purposes." Several instances were noted on the orders which stated that occupancy was approved for ___ people. On these orders, the space approved could possibly include the formula for children. If only adults were referred, the approved space could not accommodate them. The Farm Placement Supervisor in one local office was not aware of the formula.

Lack of referral control was evident in other instances. Section 2110 of the ES Manual states in part that the responsibilities of the demand local office include "checking to see that scheduled workers arrive on time, and if they fail to do so, making necessary adjustments or obtaining needed replacements."

One grower stated that he forwarded \$400 to a supply State for transportation of a crew. The check was cashed, but the crew had not arrived two weeks after the appointed date. He then phoned the supply State and was informed that the crew was not coming. The grower also stated that the supply State refused to attempt to get his transportation advance returned to him.

In another State, the lack of referral control of one of the five interstate clearance orders held by the ES agency caused workers to report to jobs that were no longer available. The employer had placed a job order for workers, but had hired "free wheelers" before the scheduled workers arrived. This resulted in a smaller number of workers needed than stated on the interstate order. Unfortunately, the scheduled workers apparently were not notified and arrived for work as scheduled, only to be told they were not needed. The DOL does not have any policy which covers this situation.

The above actions taken by the ES agencies technically do not violate the regulations as stated in the ES Manual because timing is not mentioned in the instructions. For example, the regulations just state that the local demand office should check to see if the scheduled workers arrived

on time. There apparently is no written policy on an acceptable date workers should arrive prior to the anticipated period of work. An example of this is a supply State which accepted an order which required the migrant worker to arrive 25 days before the anticipated period of work.

Interstate clearance orders are filled in several ways. One is the predesignated order which identifies the crew leader and workers desired. The ES office then notifies the crew leader of the order. Secondly, the local office will refer workers to crew leaders who have job commitments but need to fill up their crew. Thirdly, the local office will refer workers to labor recruiters who are either employees of or retained by large companies to fill their job orders. These recruiters are scheduled, as allowed in the ES Manual, Section 2044, by the local office, and are often given office space in the local office so that they may interview and recruit workers. In discussions with ES staff and labor recruiters, it was acknowledged that this procedure occasionally does not allow the local office to know what agreements regarding wages, transportation costs and other conditions have been reached between the crew leader, the labor recruiter and the worker. This places the Employment Service in a precarious position because they are responsible for referring the individuals, but do not know the conditions of employment. If for any reason a job commitment is not met by the employer, the Employment Service is held legally responsible or criticized and the worker does not receive the benefits stated in the job order.

One of the main problems in the interstate clearance system which is acknowledged by the ES agencies, workers, and growers is that the orders are generally submitted in the January-March period. This is too early for the employer to know the condition of the crop and that is what determines the number of workers needed, when they should arrive and how long they will be needed. This has led to migrant workers arriving at the designated date with no work to be done because weather conditions delayed the crops. The workers then incur living costs with little or no income. This situation was noted in Illinois where crews had arrived but the crops were not yet ready for harvesting. The ES agency did find some interim jobs for the migrant workers, but these jobs were not equivalent to the employment they were anticipating. One ES agency has prevailed upon the employer to agree to guarantee 80 hours of work in the event the specified job activity as stated on the order is not available at the designated time.

Local Referral Control

A review of local job orders indicated that the ES offices are generally following procedures to insure referral control. However in some instances, referral procedures were not followed. The ES Manual, Section 1640, states, "The interviewer, if he does not already know, checks with the employer before referring the applicant selected in order to make sure that the job is open. . ." This procedure was not followed in a case where 171 individuals were referred on a job order for 50 workers, resulting

in 140 being hired. Another job order showed 98 referrals to a job order for 20 openings resulting in 81 hires. The ES office had not verified if more workers were required when it made the referrals. This situation could lead to over-referral and wage depression.

A situation did occur in Texas which could possibly have violated the policy of the Department of Labor. The Secretary's Regulations contained in Title 20, Chapter V 604.1 state, in part, that the ES should make no referrals to a position where the services to be performed or the terms or conditions of employment are contrary to federal, State, or local law. Texas enacted a minimum wage law in 1970. The law stipulated, in part, that after February 1971, any person employed as a piece rate agricultural worker to hand harvest a commodity for which a piece rate is established shall be entitled to receive not less than the established piece rate for harvesting the particular commodity involved. The established piece rates as determined by the Texas Department of Agriculture were dated December 31, 1970. At the time of the review, which was in October 1971, the piece rate schedule had just been received at the State ES office, and had not yet been distributed to the local ES offices. Since the ES local offices did not know the minimum wages set for piece rate work, it is possible they could have referred people to jobs which violated the Texas State law. No attempt was made by the review team to ascertain whether such a violation occurred because the law also has criteria for determining which employers are covered by the law. To establish which employers were covered by the law would have consumed more time than was available to the review team. However, the problem has been referred to the Dallas Regional Office and the Texas Employment Commission for study.

One State agency accepts and refers individuals on orders which stipulate that the worker must live in the labor camp. These orders were from labor contractors who owned the labor camps and charged the workers room and board. An interview with one labor contractor verified that the workers were charged \$4 a day for room and board. The labor contractor also ran a commissary in the camp from which the workers could purchase items and the contractor extended credit to the workers. At this time, there apparently is no policy as to whether the "worker must live in camp" criteria constitutes a valid employment condition, but the above situation could lead to the abuse of farm workers.

In another instance in the same State, the ES local office refers people directly to a labor camp contractor. This order also stated that the worker must live in camp. The order did not indicate any job openings with growers, only the need for workers by the labor contractor. This situation apparently is a violation of DOL policy concerning bona fide job orders. The ES Manual, Section 1299, states in part that "names of applicants are not to be given to an employer for the purpose of building up lists for possible future use, and applicants should not be referred unless a job opening exists for which a valid job order has been placed with the local office."

JOB ORDER SPECIFICATIONS

The allegation charges that job order specifications and working conditions submitted by growers are not being honored when RMS-referred workers report for duty. It also charges that the RMS employs none of the available means of follow-up when non-compliance is reported to them.

Applicable Law or Regulation

The two forms used for the taking of job orders for agricultural employment are ES-522 (Local Office Order) and ES-560A (Inter- and Intrastate Clearance Order). The ES-522 is used in lieu of the regular ES-514 (Local Order Form). Instructions for the completion of these forms are found in Part II, Sections 1746 and 2056 of the ES Manual, respectively. The guidelines describe the above forms as the instruments used for the recruitment of workers. The forms are to include the particulars of a requested job, such as wages, length of employment, working and living conditions. The interviewer obtaining the information from the employer must identify the job and the significant aspects of the tasks, and the requirements for each task, including equipment and material to be used. Generally, information on the job descriptions varies according to the crop to be harvested. Therefore, the order has to be complete in order for applicants to be selected per the employer's request.

An analysis of the information gathered during the review revealed the following: (1) Interstate job orders are completed according to ES instructions; (2) local order forms used in some States are different from the one listed in the ES Manual; (3) Instructions for the completion of the ES-522 are not followed in States using the form; and (4) RMS offices have follow-up procedures.

Interstate orders are being completed per instructions.

Instructions for the completion of ES-560A are found in Section II, Part 2056 of the ES Manual. In order for the form to be complete, information pertaining to the following categories must be provided: Occupational Title and Code, Employer Information, Number of Workers Needed, Job Specifications, Wages and Earnings, Housing and Perquisites, and Transportation and Advances.

A random sample of interstate job orders in South Carolina, Florida, Alabama, and Texas indicated that the orders were completed with some exceptions according to instructions in the ES Manual. The system employed to check the order is a factor which cannot be overlooked. An interstate order has to go from the local office to the State and finally to the region to be processed. If the orders are not complete, they are sent back to the point of origin. In discussing this process with RMS representatives in the States mentioned above, it was determined that when interstate orders are processed, emphasis is placed on the areas of adequate housing, minimum wages, and working conditions.

ES-522's are not used by all States.

Part II, Section 1746 of the ES Manual provides instructions for the completion of ES-522 (Local Order Form). Included in the items to be completed prior to referral are wages and duration of the job. The review of the records in the sample local offices included showed that, in most instances, these items were not being completed. In two local offices in Idaho, the review team found local job orders with no wage specified. They were noted "TBA", meaning "To Be Arranged". In Pennsylvania, at a major day haul pick-up point, the RMS representatives were not aware of the wages the selected workers would receive.

However, based on on-site observations, the crew leaders quoted the wages to potential employees as a part of the selection process.

The duration of the job, as indicated in Part II, Section 1746 of the ES Manual, consists of the beginning date and the ending date of employment. According to farm workers interviewed by the review team, this information is just as important as the amount of money to be paid. In reference to this item, the review team found two practices being employed by the majority of visited RMS offices. The item is either left blank or is completed with the number of days the job will be available rather than the actual dates of employment. In Oregon, the review team checked the local farm orders in an office and found that, out of 60 orders involving farm occupations, 45 did not include any information on job duration. A review of local order forms in four local offices in Alabama showed the number of days the person can expect to work, rather than specific dates. This was also found to be in true in South Carolina. Follow-up procedures are being employed.

The methods of follow-up on complaints registered by farm workers varied from State to State. Despite the variations, each State included in the review has an operating system.

In New Jersey, the function is handled by the State's Bureau of Migrant Labor, which is separate from but works in cooperation with the Bureau of Farm Placement to insure that both Federal and State rules and regulations to protect farm workers are implemented.

The RMS in California, in conjunction with the Los Angeles County Agricultural Labor, Health and Safety Committee, publishes an informative hand-out which consists of rules and regulations pertaining to farm workers as well as the agency responsible for their enforcement.

Some State Governors have established committees on Migratory Labor to improve the well-being of farm workers. Handling complaints registered by employers and employees is one area in which these committees are involved.

EMPLOYMENT SERVICES TO WORKERS

One of the charges in the migrants' petition was that farm workers were not provided with counseling, testing, or job upgrading, despite specific regulations mandating these services.

Background

The Manpower Administration was aware that all employment services available to urban areas were not extended to rural areas, for numerous reasons. In order to correct this situation, a Rural Manpower Service program was implemented in 1970 which would improve the employment services to rural residents regardless of whether they were agricultural or non-agricultural workers. The Rural Manpower Service is exploring a number of methods to achieve its mission, some of which are:

Area Concept Expansion Program The Area Concept Expansion Program was developed as a result of the experience from an Experimental and Demonstration Project in Ottumwa, Iowa. This program, now operating in 12 States, provides for an area office with complete manpower service capability, including job development, placement, counseling, and training. "Satellite" offices, on part-time or full-time basis depending upon the need, are established in remote rural areas. These offices can call upon the area office for specialized services, such as counseling or training, whenever it is determined that they are needed for residents in the "Satellite" office areas. The objective is to make available to rural residents the same quality of services rendered residents of more densely populated areas.

National Migrant Worker Program The ultimate goal of this program is to assist migrants and their families to settle out of the migrant stream. By providing basic education, vocational training, and supportive services, this program will enable migrant workers to develop marketable job skills that will equip them for stable, year-round employment.

Hitchhike Program This is a method of overlaying manpower programs on existing compatible institutions successfully functioning in rural areas. Cooperative Extension Service county offices, community colleges, farmer groups, and State and local welfare agencies are examples of facilities with potential delivery capability.

Smaller Communities Program This program provides for mobile teams of trained State Employment Service specialists who travel from an established local office to remote rural areas in order to provide these residents with the full range of manpower and supportive services which would be found at a full-functioning local office. Staff members are trained and equipped to provide assistance in outreach, interviewing, counseling, job development, placement, and referral of applicants to other agencies for supportive services. The teams set up office facilities provided by the community, and usually remain in the area for a period averaging three months, after which time they move to another county or area. The job-skill information developed by the team remains for use by local and State organizations in attempting to attract new or expanding job-creating industries to the area.

Comprehensive Manpower Model (COMO) Experimental comprehensive manpower models (COMO) have been implemented in one rural area. The COMO concept is based on the premise that services should be geared to the needs of clientele and that these needs differ. Three service areas were established experimentally: Service Area I, the Job Information Service, is a streamlined self-help service; Service Area II provides job development and direction in developing a personal job search plan; Service Area III provides intensive employability development and supportive services. Elements essential to COMO are strong employer services programs, extensive occupational labor market information, and an automated Job Bank.

Rural Concentrated Employment Program (CEP) This is a coordinated system of interrelated and interdependent components functioning as a unit to accomplish a particular job; combining individual manpower programs in a given area into a single united effort, under a single contract, with a single sponsor to meet the individual needs of the target area residents. The sponsor plans, administers, coordinates, and evaluates the operation, and receives and disburses funds. CEP provides training and supportive services to disadvantaged, unemployed, and underemployed persons so that their specific needs can be met and they can become self-supporting and productive members of society with permanent employment. Manpower services, in most cases delivered by the State Employment Security Agency, include outreach, intake, orientation, assessment and counseling,

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coaching, referral to employability development services (formed into teams to help each CEP enrollee) referral to supportive services and training, job development, placement, and intensive follow-up. Job Bank is used where feasible. There were 13 Rural CEPs funded in 1971.

Statewide Job Bank Program Through the use of computer technology, Job Banks facilitate timely and widescale distribution of job information in both urban and rural areas. Statewide Job Banks make all job orders available to all local offices. With a portable viewer for assessing the day's Job Bank order listing and an available public telephone for contacting central referral control, an Employment Service interviewer or other trained individual can deliver quality manpower services to residents of rural areas. Job order information provided rural residents through Job Bank is identical in all respects to that available to urban applicants requesting service from metropolitan Employment Service offices.

Findings

The review team purpose was to ascertain on a sample basis those services which were provided to farm workers. It neither attempted to evaluate a local office nor to evaluate the specialized programs' performance in providing services to farm workers. The review consisted of checking local office records, interviewing ES staff and workers, and general observations of ES local office operations or a combination of all three methods.

A survey of 1,588 agricultural applications in 21 rural manpower offices ascertained that 186 applications did not have a complete work history on the applicant. The application showed that 14 applicants were referred to testing and 30 to counseling, and 48 were referred to training. The application showed that 467 individuals were referred to agricultural jobs, while 152 were referred to non-agricultural jobs resulting in 226 individual hires.

In eleven offices which only provided farm placements, applications were not taken. In one farm placement office where applications were taken, a review of 30 agricultural applications indicated that the work history was complete on all the applications. The applications showed that no referrals were made to counseling, testing or training. The applications indicated that 11 and 19 people were referred to agricultural and non-agricultural jobs, respectively, resulting in 23 hires.

It should be noted that the only reference in the ES Manual to agricultural application taking is found in Section 1767 which states, "Generally complete applications need be prepared for only group leaders or day haul group supervisors. In case of adult day haul workers, a listing of the name, address, social security number, phone number, age, and height of the worker normally will suffice." The only other guidance found for taking agricultural applications was in USis Program Letter No. 1700 issued September 14, 1964. It suggested that State ES agencies use Form ES-511A for registering agricultural workers. This form records work history, educational, military and skill background, work preferences, information on worker and family needs, such as housing and

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transportation, the need for counseling and training, and includes a Plan of Action for the worker. However, this Program Letter was cancelled in August 1971 by TESPL 2665. Since the RMS has no guidelines on application taking for farm workers, this can place these workers at a disadvantage compared with non-farm applicants whose needs and eligibility for supportive services are covered by specific instructions.

In several of the States visited, the rural manpower concept was observed. In Michigan, for example, the State on its own initiative devised in 1970 a plan to provide more extensive employment services to rural areas. This plan was called Rural Areas Manpower Program (RAMP). The plan called for offices previously involved only in farm placements to be changed into offices that provide all services to workers and agricultural and non-agricultural employees. The plan also called for the use of job bank books. These offices were to be notified of all training opportunities as well as developing training opportunities themselves. In addition, the offices were to act as a referral agency for those supportive services provided by other State and County agencies. It should be noted that the RAMP plan was predicated on the basis that additional staff would not be available and that the RAMP program must be accomplished by existing farm labor staff. Three RAMP offices were visited by the review team. The impression of the team was that the staff was enthusiastic about its new role and had changed from a farm placement office to an office providing a full range of services to workers and employers, and showed concern about the needs of the worker. For example, one RAMP office manager is

president of the County Migrant Council, which was established to ascertain the needs of the workers and to provide those services to meet their needs. In one office only two agricultural orders were taken at the time of the visit, primarily due to the reduced number of farm workers needed. In this instance, only 300 workers were needed in cherry harvesting while in the past 3,000 workers were needed.

Three farm placement offices were also visited in Michigan. The review team observed that no applications were taken and no job development was done. In one office, which was extremely busy, the ES staff informed the workers that there was an oversupply of farm workers and advised them to go home. The ES staff provided them with funds to return home and advised them of an emergency rest stop at Fort Campbell, Kentucky, where food and lodging was available. However, due to the lack of knowledge of available job orders in the area or in Michigan, these offices could not refer workers to jobs.

California is another State visited where the Rural Manpower Services concept is being implemented. The Rural Manpower Service is a separate organization from the regular ES agency. Both organizations have independent and unrelated operating budgets and operational guidelines. The RMS in California is attempting to bring services into those rural areas which were not covered by them or the regular ES service in the past. To this end, the RMS and the ES agency have agreed to some and are negotiating with other geographical areas for which a particular agency will have responsibility. Presently, the California RMS has manpower service responsibility which encompasses 90% of the State's land area

which represents 15% of the State's population and 34% of its unemployed. The RMS operation now has manpower services responsibility in 23 local offices where the non-agricultural job placement activity was formerly the responsibility of the regular ES agency. In those areas, where there are two offices, areas of responsibilities and procedures have been agreed upon as to services to be provided and as to the clientele each office should serve. In one city where there was an RMS and an ES office, the review team observed the coordination of these two offices. The formal procedure under which these two offices operated was that individuals coming to the respective offices and who were deemed appropriate for the other office's services would be referred to that office. The agreement included anticipated referrals for counseling and testing from the Rural Manpower office, which could not provide this service, to the ES office. An interview with the counselors in the ES office ascertained that they did not know that the agreement between the two offices existed, nor did they know any formal procedures for referral to counseling. To their knowledge, no one had been referred by the Rural Manpower office to them for counseling. In addition, the separation of these two offices has caused a competitive atmosphere which served to adversely affect the applicant. The two offices are in competition for the clientele; thus, job orders, for example, are retained by each office, thereby requiring an applicant to go to both offices in order to obtain information on all available jobs. Another incident indicates how separate facilities hamper full services being provided the applicant. The local ES manager stated that one guideline

he must follow for an individual to be selected for an individual MDTA referral is that the individual must meet the disadvantaged criteria as set forth by the DOL. The Rural Manpower office does not have such a restriction. The ES local office manager related an incident where an applicant came to his office requesting such training, but had to be turned down because he did not meet the disadvantaged criteria. The manager found out later that the individual went to the Rural Manpower office and was referred to training. However, the individual was not informed by the ES local office of the availability of training in the Rural Manpower office, or referred to that office. Regional staff who have been evaluating the RMS offices indicate that the lack of coordination and cooperation as evidenced by these two offices is also experienced in other RMS and ES offices in the State. However, the regional office is encouraged by the efforts of the California RMS to provide services to rural areas which in the past had not been served adequately.

Conversations with farm workers, farm placement staff, and observations of the review team have indicated that the primary purpose of the separate farm office is to place individuals in farm jobs. This is understood by both the farm workers and the ES staff. Therefore, efforts are made to place the individual in a farm job, regardless of the type of job order available in terms of types of jobs, conditions of work, duration of jobs, wages, and earnings expected. If there are no jobs or if the individual does not choose to be referred to the job, RMS involvement ceases at that particular time. Almost every farm office does have administrative arrangements by which other services can be made available, but sometimes they are not followed. For example, in one farm office the administrative

procedure was for the farm office to refer applicants in need of supportive services to a full-functioning ES office approximately a half mile away. A review of the records indicated that the office had not referred anyone to counseling or testing in a year. This was substantiated by the personnel in the full-functioning ES office.

A visit was made to one of the urban Comprehensive Manpower Model (COMO) ES offices, which included a farm placement office. The farm workers coming to this farm office availed themselves of the self-help Area I service. They only looked for agricultural orders and were referred to those farm jobs listed in the farm placement office. Generally, no applications were taken on them and they were not referred to the other offices in the COMO that had non-agricultural job openings. Because many farmworkers have handicaps such as lack of education and skill training, and language problems, they could in many cases be better served in Area III where they would receive intensive employability development and supportive services. Also, since no application on job ready applicants is taken, there is no way the ES office can contact them if a higher-paying or longer-lasting job is available unless, of course, the applicants come to the office.

In January, 1972, the above mentioned COMO will begin to take applications. In addition, the applications will be reviewed and if an individual has been referred to farm work of temporary duration or other temporary work more than three times, the individual will be contacted by ES staff for an interview to ascertain his needs and desires.

One service provided to the migrant workers is the Annual Worker Plan (Form ES-369). The guidelines for implementing the Annual Worker Plan are contained in Section 2100 of the ES Manual. Briefly, the plan was instituted to ensure that the employer's labor needs would be met. It also assists the worker by scheduling successive jobs for the worker and referring him

to those jobs in an expeditious and orderly manner. The plan was also designed so that information on the needs of the worker could be brought to the attention of appropriate community groups. In accordance with instructions, in all States visited the ES agency filled out the Form ES-369 regardless of whether the workers were processed on an interstate clearance order or were non-scheduled. With the exception of two States, however, the Form ES-369 was filled out only if the workers contacted the local office. The ES Manual states that "In a demand area, the in-season action to be taken by local office will include...contacting non-scheduled migrant workers; referring them to specific jobs, when possible; directing them to local offices in demand areas upon their request and when specific job openings are not known; preparing and submitting to the State administrative office an informational Form ES-369 for those crews and families which give information on their work plans." There were two reasons given for not contacting the unscheduled workers. The first was that there was not enough staff available to contact the individuals. Second, the staff thought that since the employer did not use the Employment Service to obtain their workers, the Employment Service did not have any responsibility to the employer or to the workers. In the two States that did contact the workers, it was an intensive outreach effort to contact the worker to ascertain their needs and to provide services to them. In conversation with National and Regional RMS staff and State ES agencies staff, it appeared the Annual Worker Plan was not effective. The reason given was that the reduced number of interstate clearance orders prevent ES agencies from scheduling workers to successive

jobs. Texas Governor Smith's interagency task force reported that in 1968 the Texas Employment Commission averaged 1.5 job referrals for each migrating crew. By 1969, this average had dropped to 1.1 job referrals per crew.

Throughout the review, the team encountered derogatory statements against the State ES agencies by workers, action groups representing workers, various members appointed to Governors' committees for migrant workers, and by other State agencies also involved with migrant workers. The statements generally were that the Employment Service was not doing its job, or that it was grower-oriented. Some statements by ES staff might lend credence to the allegations. For example, one ES staff member stated that he would not even consider referring a farm worker to other than agricultural work without checking with the grower to assure that the worker's commitment to the grower was fulfilled, and that the grower agreed to such a referral. Conversely, the review team ascertained instances where the ES staff was actively involved in helping the migrant worker. For example, two ES members served on the executive board of an OEO-funded migrant action committee. The North Carolina agency has been attempting to have a stricter housing law legislated.

The Wisconsin ES State agency has a job category called "migrant specialists". These migrant specialists are Mexican-American school teachers in Texas who are temporarily hired by the Wisconsin ES agency during the season when migrants are working in the State. Their job is to contact the

migrant workers, regardless of whether or not they were recruited and referred by the ES agency, to determine if the workers have any problems, regardless of whether or not such problems are the responsibility of the Employment Service. They are, in fact, a "one-stop service center." To assist these specialists in their job, they are deputized, which allows them access to the growers' premises and to the workers. In addition, the Governor has a migrant task force composed of representatives of all State agencies which have responsibility for serving migrants. The mandate of the task force is to investigate every complaint immediately and to take corrective action if warranted.

It is important, of course, to establish the validity of the example of such an accusation against the Employment Service given above. However, the review determined, more importantly, that regardless of whether the criticisms are justified, the criticism has created a bad image among the farm workers in the States visited.

CONFLICT OF INTEREST

The complaint charged that most of the local offices are staffed by "local growers who frequently refer migrants to their own ranches at the worst wages."

No regulation or ES Manual procedure covers the conflict of interest issue that is involved in this charge.

Numerous instances were found of Rural Manpower Service staff persons owning or being related to the owner of a farm. No specific instance could be documented of a staff person referring workers to a farm in which the staff person had an interest. Such a case is quite within the realm of possibility, however. With no conflict of interest regulations and guidelines, the staff member is put at a disadvantage with regard to understanding clearly how he is to conduct himself in relationship to such possible situations. The Department is also in the position of having no protection against poor judgment of an indiscreet staff person.

While no significant indication of the type of conflict of interest cited in the complaint was uncovered by this review, isolated instances of a somewhat different nature were found. For instance, one Rural Manpower office manager had an interest in a marina while his office was operating a work experience project that was developing public recreational facilities within close boating distance. These recreational facilities included boat landings and picnic facilities that would be available to persons renting boats from his marina. In another Rural Manpower Service office a staff person had a second job as a rent collector in areas where blacks had to pay high rentals for rundown dwellings, some of which were owned by growers.

FARM LABOR CONTRACTORS (CREW LEADERS)

Although farm labor contractors (often called "crew leaders") were not singled out specifically in the complaint as a problem area, they were implicated in that some of the problems cited involved farm labor contractors either directly or indirectly. Complaints concerning farm labor contractors were received from farm workers who were being interviewed concerning services at the Farm Labor offices. Since the Farm Labor Contractor Registration Act is administered by the FMS and workers are referred by FMS offices to fill job orders involving farm labor contractors, the report includes reference to the problems encountered during the review that relate to these areas.

A. Farm Labor Contractor Registration

1. Applicable Law

Public Law 88-582 requires that a person obtain a certification of registration in order to engage in the activities of a farm labor contractor. A farm labor contractor is defined as any person who, for a fee either for himself or on behalf of another person, recruits, solicits, hires, furnishes, or transports ten or more migrant workers (excluding members of his immediate family) at any one time in any one calendar year for interstate agricultural employment.

In order to be registered as a farm labor contractor, a person must: (1) file a written application; (2) prove satisfactory financial responsibility or the existence of a liability insurance policy covering any motor vehicle used to transport migrant workers; and (3) file a set of his fingerprints.

The law includes requirements governing the activities of farm labor contractors which are designed to protect the workers. Each farm labor contractor is required by the law to (1) carry his certificate of registration

with him while engaged in activities as a farm labor contractor; (2) disclose to each worker, at the time he is recruited, information concerning the area of employment, the crops and operations on which he may be employed, the transportation, housing and insurance to be provided to him, the wage rates to be paid to him, and the charges to be made by the contractor for his services; (3) upon arrival at the place of employment, post the terms and conditions of employment; (4) when housing is involved, to post the terms and conditions of occupancy; and (5) to keep a payroll record which shows total earnings, amounts withheld and purpose of withholding, and the number of hours worked and the hourly rate, or the number of units of work performed and the piece rate per unit.

Registration may be revoked under conditions such as (1) giving false statements on the written application, (2) knowingly giving false information to migrant workers concerning the terms, conditions or existence of work, (3) failing without justification to perform agreements entered into with farm operators or to comply with working arrangements made with migrant workers, (4) knowingly recruiting or employing an illegal alien, (5) having been convicted of certain crimes, (6) failing to show financial responsibility, or (7) failing to keep a liability insurance policy in force.

2. Findings

At the present time, according to RMS, about 2,900 farm labor contractors are registered, roughly half of the estimated 5,000 to 8,000 farm labor contractors who are covered by the Act. Registration increased from 1965 to 1968, but has declined since that time:

1965	1966	1967	1968	1969	1970	1971
1500*	1857	2194	3129	3034	2842	2900*

There are several reasons for this decline, according to RMS staff. One is the general decline in the economy which has put additional persons into the job market who fill seasonal jobs and has decreased the need for migrant workers brought in by farm labor contractors. Another is the use of mechanized harvest equipment which also reduces the need for migrant labor and crew leaders.

A third reason is that the present law lacks sufficient enforcement provisions.

Farm labor contractors interviewed in Florida and elsewhere indicated that they were aware of other farm labor contractors who were registered at one time, but no longer registered because they had learned that nothing happened to them if they failed to do so. Interviews with RMS field staff responsible for Farm Labor Contractor Registration Act compliance in the field indicated that if a farm labor contractor is discovered to be operating without being registered, normally he is registered on the spot, and no action is taken against him.

According to RMS national office staff, two cases of non-compliance with the Farm Labor Contractor Registration Act have been prosecuted, both of which led to convictions. A total of four cases were referred to the Department of Justice, but in two of these prosecution was declined.

*Estimate

Denials of certification under the Act, according to RMS, have averaged about three a year:

1966	1967	1968	1969	1970
<u>2</u>	<u>3</u>	<u>2</u>	<u>4</u>	<u>3</u>

Revocation of certifications have been less consistent:

1966	1967	1968	1969	1970
<u>18</u>	<u>0</u>	<u>0</u>	<u>4</u>	<u>2</u>

The 18 revocations in 1966 had to do with the failure to provide adequate insurance, while the revocations in 1969 and 1970 had to do with providing false information and other violations of the Act.

Until recently the RMS strategy has been to seek voluntary compliance with the Act. The emphasis is now being shifted more toward federal initiative in enforcement efforts. The RMS is currently working with the Solicitor's Office on procedures for proper preparation of a case for presentation to the Justice Department.

Some contractors are not registered because of the coverage restriction within the law itself. The law excludes those who do not transport workers across State lines and who transport under ten persons at any one time. This has created a double standard that complicates administration of the Act. It also allows for the possibility of splitting crews into groups of under ten and transporting them by passenger cars rather than by larger vehicles in order to circumvent the provisions of the Act.

Complaints about farm labor contractors were heard or learned of during the course of this review with regard to such shortcomings as failure to deduct or report social security; representing wages at time of recruitment as higher than those actually paid; failure to keep adequate records of hours

worked, pay rate, gross pay, deductions, and net pay, and failure to provide statements of earnings and deductions. Some of these shortcomings appeared to be deliberate acts, others seemed to be careless short cuts, and still others to be omissions arising out of a lack of knowledge. In any case, the worker appeared to suffer as a result, and the Farm Labor Contractor Registration Act seemed to be ineffective in these instances.

Several States have crew leader registration laws or regulations. The California law provides for an examination as a requirement for licensing. The examination insures that crew leaders have an acceptable knowledge of the labor laws that cover their operations. According to an official of California's Division of Labor Law Enforcement, the examination has assisted in efforts to insure understanding of and compliance with the State's laws and regulations.

In 1967, North Carolina began a Crew Leader Training School project, funded under Manpower Development and Training Act (MDTA). The project was undertaken in response to the need for developing and training local crew leaders as the supply of interstate migrants had been declining. Training included basic education, simple record keeping, vehicle and camp maintenance, highway safety, regulations covering transportation of farm workers, field and home sanitation, child care and homemaking, first aid and medical self-help, agricultural practices, and basics of supervision. Twenty-four governmental agencies and private organizations contributed toward meeting the objectives of the courses. Forty students have been enrolled per year with approximately a 90% average retention rate. The North Carolina ES agency has rated the class successful both in terms of popularity with crew leader students, and in terms of improved conditions for workers.

B. Filling of Mass Orders for Crew Leaders

Under the present system, a farm labor contractor may place a mass order with a Rural Manpower Office and receive assistance in recruiting a crew. The Rural Manpower Office does not have an individual relationship with each of the persons recruited for the crew. Recruitment may be made at any pick-up area where workers congregate looking for work, or recruitment may be by word of mouth; that is, by passing on information as to where to assemble to be picked up to go to the job.

Individual applications are not taken on workers. The individual relationship of the Rural Manpower Office is with the crew leader. In mass orders, the service is directed essentially to the crew leader who, as a contractor middle man, may receive a percentage or flat rate from the grower for providing labor to service the crop. The Rural Manpower Office is in a very poor position to know how any given referral affects the interests of the individual worker involved. The grower's relationship is likewise primarily with the crew leader, not with individual workers. The worker's relationship is primarily with the crew leader. Crew leaders are very often poorly equipped and poorly motivated to act as spokesmen for the interests of the workers. The workers in turn are often poorly educated and unsophisticated, and thus easy prey for exploitation. Growers have no commitment to individual workers, and crew leaders cannot be depended upon to be committed to their welfare. This system, combined with the lack of legal protection under Social Security, Minimum Wage and Unemployment Insurance laws, makes the farm laborer vulnerable for being used as a commodity when needed, with little concern for what happens to him as an individual.

There have been efforts to set up farm workers' labor cooperatives, with the goal of ultimately doing away with the crew leader system. One project,

which is being sponsored by the Community Action Migrant Program at Belle Glade, Florida, seeks to replace crew leaders with a labor manager from the farm workers' cooperative group. The cooperative would provide a base for record keeping and general organization around the worker's interest, which is not the rule under the day-to-day pay basis of the crew leader system. The project has met with some difficulties, notably the difficulty some migrants have of looking past short term interests to long term progress; but it is still looked upon as having promise.

STATISTICS AND STAFFING

One of the charges made in the migrant workers' petition is that the State Rural Manpower Services purposely inflate their placement statistics to qualify for more staff allocations from the federal government. Specifically, the complaint states "The Farm Labor Services across the nation compete for \$23 million in federal funds on the basis of the statistics they submit, not the quality of the jobs they develop or the assistance they provide to the worker." The petition then lists two pages of examples of how placement statistic reporting methods work to distort the true picture of the activity level of RMS offices around the country.

Applicable Policy

Official definitions of "placement" are found only in Chapter II of the ESARS Handbook. According to policy, a placement is as follows:

"The hiring by an employer of an individual referred by the employment office for a job or an interview, providing that the employment office completed all of the following steps:

- (a) Made prior arrangements with the employer for the referral of an individual or individuals;
- (b) Referred an individual who had not been specifically designated by the employer;
- (c) Verified from a reliable source, preferably the employer, that the individual had entered on a job; and
- (d) Recorded the transaction on an employer order form and other appropriate ES forms."

This definition applies to both agricultural and non-agricultural jobs. Agricultural placements, once defined, are divided in duration into two categories: "regular", which are jobs of 150 or more days, and "seasonal", which are jobs of less than 150 days. In contrast, the duration for a regular (called "permanent") non-agricultural placement is one to a job of more than 3 days. This distinction causes some difficulty and probably some distortion, as is discussed below.

Findings

As will be discussed in detail in the Day Haul topical section, virtually none of the claimed day haul placements qualify as placements under the prescribed four-criterion definition above. In addition, other, non-day haul statistics are occasionally of questionable quality, because the actions claimed as placements do not qualify as such under the definition. Specifically, findings detailed in the Job Order Specifications section show that criterion (d) is frequently not satisfied, and findings in the Discrimination section show that criterion (b) is not complied with at times.

The petitioners' very general explanation of what constitutes a "placement" is correct - each person referred and hired for whatever duration of employment. However, within the total, distinctions are made between day haul and other very short term and more permanent placements. Where placement figures are enormous and apparently out of all proportion to population and activity level, the total figure is being used and day haul or other very short term placements are the bulk of that total. For example, the petition cites California, where placements leaped from 134,000 in 1966 to 1,400,000 in 1968. The simple explanation for the enormous increase is that only after 1966 did California begin reporting day haul activity as placements. At least 900,000 of the cited 1968 figure were day haul placements.

The "seasonal" placement definition is placement to a job of less than 150 days' duration. Practice suggests that those placements are more likely to be for one day than for 149. The great leap in the California placement figure when day haul was the only addition to the process bears this suspicion out. Furthermore, even within the "regular" placement statistic, there is

most likely a significant distortion of real services rendered. The review team found that numerous offices in a number of States were mistakenly using the non-agricultural placement definition, rather than the agricultural placement definition, for "permanent" (or "regular") - one to a job of more than 3 (rather than 150) days' duration. Thus, in places where this incorrect procedure is followed, a statistic of 500,000 "regular" placements might in fact have been made to jobs of perhaps no more than a week's duration.

Though granting the tendency of RMS placement statistics to misinform, the review team does not grant the petitioners' corollary contention that such methods are employed for the purpose of justifying enlarged staffs. The presumption of the charge is that the allocation of positions and funds to a State is based on placement criteria. The reality, despite "plan of service" theory and the inclusion of placement projections in such plans, is that allocations are almost universally based on the staffing level of the previous year. Variations from one year to the next are generally small and frequently applied across-the-board (i.e., the same amount to each agency) rather than tied to each agency's performance. Until recently in the Rural Manpower Service, allocation changes were up, not down.

Analysis of allocation figures compared to placement statistics confirms the conclusion reached above and even suggests a more paradoxical charge than that brought in the complaint: staff allocations remain stable or increase while placement figures decline. Such a conclusion, of course, recognizes the fact that a bare statistic has no relationship to quality, and thus the fewer placements may be of greater benefit to the clientele. Fiscal years 1954-1962 were peak years for placements, which varied from year to year within a narrow range of 8.8 million to 9.6 million. During those peak years, nation-

wide staffing was stable between 1500 and 1600 positions. Then in 1963 and 1964, placements began their steady decline which continues to date, having fallen to 3.3 million in fiscal year 1971. At the same time, staff allocations began creeping upward - 1700 to 2000, eventually leveling at 1900 - in a reaction clearly unrelated to placements. In other words, there were 20% more staff positions and 66% fewer placements. It must be remembered, however, that those were the years in which the whole Employment Service (and hence RMS) concept shifted from pure placements to dealing substantially with the disadvantaged. Such a program requires more, better trained staff and naturally results in fewer placement outputs. Statistical reporting was appropriately broadened to accommodate the shift in program emphasis. Thus, the placement measure is no longer the reasonable yardstick of performance that it once was.

The review team concludes from the findings above that claimed placement statistics do present a less than candid assessment of services rendered, but that such statistics are not in fact the basis for staff and fund allocations.

DAY HAUL

Day haul is a system by which workers assemble at a designated pickup point, are transported to a job site and are paid on a daily basis. The petition complains that ES procedures for order taking and referral are not being followed, that consequently the only role of the RMS in day haul is to gather placement statistics, and finally that RMS is not using its day haul exposure to provide additional employment alternatives to the workers who frequent day haul pickup points.

Applicable Policy

The official rationale and procedures governing RMS' involvement in agricultural day hauls are found in the ES Manual, Part II, Section 1767. The section envisions two types of day haul programs: operated (supervised) and established (unsupervised). In the operated day haul program, RMS is responsible for setting up and maintaining a pickup point facility, supervising its operation, taking job orders from employers, referring interested workers to the site to fill those orders, and each morning ensuring that the workers referred fill the orders taken. In the established (unsupervised) day haul, RMS is supposed to make all the arrangements for bringing employers and workers together at a pre-designated assembly point, but not to participate further in the process except to recruit more workers if demand outstrips supply. No RMS staff member is to be on-site at the assembly point. Presumably, placement statistics in an unsupervised day haul are to come from verifying hires of the specific workers referred to specific job openings.

Section 1767 further details prescribed job order and application procedures for day haul operations. Placement criteria are given in Chapter II of the ESARS Handbook. Each of these prescriptions is discussed below with the appropriate findings of the review.

Findings

In most States, the RMS is either not involved in day haul operations or is involved only minimally. The review team observed agricultural day hauls in Pennsylvania, New Jersey, Florida, and California, a sampling which encompassed the major RMS day hauls in the country. Except for one "unsupervised" day haul in New Jersey, all those seen were of the "supervised" variety. Each operation reviewed varied in some degree from either the letter or the spirit of the prescribed ES Manual and ESARS Handbook procedures.

The review team believes from the findings summarized below that the thrust of the petitioners' complaint about day haul operations is correct:

1. Some Manual procedures are not being followed.
2. The primary role of RMS in day haul is in fact gathering placement statistics, whereas in policy and theory it is to provide services.
3. RMS is not presently providing additional employment alternatives to workers who frequent day haul pick-up points.

Manual Section 1767B prescribes that day haul job order procedures are "the same as for other farm job openings" and specifies that such orders should include "the exact number of workers needed, work to be performed, transportation arrangements, wages, and time and place of morning assembly and return in the evening". TESPL No. 2577, dated July 20, 1970, added job duration to the existing list of necessary job specifications. At every day haul operation observed, the review team found that despite the policy above, job orders were not usually taken. When job orders were taken, they appeared to have inadequate information to permit a worker to make a rational decision

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on whether the job was a desirable one. Specifically, wages and working conditions were left open, to be negotiated with the employer or crew leader. When such negotiation occurs at the field, following a 20-mile ride from the assembly point with no return ride until evening, the worker has little leverage in the bargaining.

Manual Section 1767D prescribes that workers referred to day haul jobs should be identified by "name, address, social security number, phone number, age, and height." The section also dictates that "In the interest of selecting qualified workers for those jobs requiring higher skills..., local office representatives should interview all day haul applicants whose qualifications are unknown to them."

Chapter II of the ESARS Handbook gives the official definition of a valid "placement":

"The hiring by an employer of an individual referred by the employment office for a job or an interview, providing that the employment office completed all of the following steps:

- (a) Made prior arrangements with the employer for the referral of an individual or individuals;
- (b) Referred an individual who had not been specifically designated by the employer;
- (c) Verified from a reliable source, preferably the employer, that the individual had entered on a job; and
- (d) Recorded the transaction on an employer order form and other appropriate ES forms."

The review team found that in day haul activities Section 1707D is not usually observed, in that no application is taken or other record kept on workers "placed" through the day haul. They are merely counted as placement statistics, with several variations in the method of counting:

- (a) As defined by one RMS pickup point supervisor: "When the crew leader puts a person on the bus."
- (b) Counting the filled seats on a bus as it leaves the assembly point regardless of whether RMS was involved in matching worker with employer.
- (c) Counting the empty seats on a bus and subtracting them from total capacity.
- (d) Going to the fields of an employer known to have come to the assembly point that morning to fill an official job order and counting the number of persons in the fields.

The review team further found that in each case, even when job order and worker referral procedures are followed, the RMS plays no active role at the assembly point in matching the specific workers referred with the specific job orders taken. The matching occurs helter-skelter around the assembly point, and so long as there is no gross undersupply or oversupply of workers, everyone is presumed to be properly matched according to skills and interests, and placement credit is taken. No professional employment counseling or placement skills of the RMS man in charge are utilized or appear to be needed during such a process. Furthermore, there was no evidence that it is standard procedure anywhere for the RMS person to encourage workers to come to the RMS or ES office for full-range employment services - interviewing, testing,

counseling, or referral - when they are left unchosen on the lot after the buses have gone. Rather, the workers drift away and reappear for the same process the next morning.

It is evident from the practices described above that day haul activities do not resemble "placements", as officially defined. Little attention is paid to Manual procedures relating to order taking, application taking, and interviewing of unknown day haulers. Placement credit is taken for an operation which does not justify such credit. In almost all cases, the threshold step of hiring an individual specifically referred by the employment office is missing. At least three of the four specified criteria are also missing. Those missing criteria are (1) making prior arrangements with an employer to refer people, (2) maintaining an adequate job order, and (3) verifying that the person hired was the person referred.

Other findings about day haul operations were less universal than those above, but nevertheless widespread. In all day hauls observed except for two in California, the assembly point is an unimproved street corner, which usually had served as a day haul pick-up point prior to RMS involvement. Both of the California exceptions to this rule provide excellent facilities. One of these operations and its impact on local day haul activity was studied in depth. The pick-up point is a fenced, lighted parking lot with overhead cover, radiant heat fixtures, rest rooms, an announcement chalk board, and a public address system. Nevertheless, other assembly points in town which existed prior to the RMS facility are still operative. According to local RMS statistics, these non-RMS facilities still account for the great majority of day haul activity in the town (i.e., 150,000 or 65 per cent of the day haul placements resulting from job orders and an estimated 214,000 or 99 per cent of the non-job-order day haul

match-ups from November 1970 through October 1971 resulted from activities at these non-RMS facilities). Thus, even in that community where much has been done to provide a measure of comfort in the day haul process, most day haulers continue to operate outside the RMS system and without its facilities. Even those crew leaders and employers who do use the RMS facility frequently have no other connection with RMS. They have neither placed an order nor requested referrals. Such employers merely use the parking lot. The terms and conditions of the employment they offer might be below RMS standards. Thus, the RMS may be providing a hiring facility for employers who would be refused service if they tried to place a substandard job order. Yet if the employment office were to require compliance with ES procedures as a prerequisite to using the RMS lot, the employers could easily leave the lot and pick up workers elsewhere in town.

The RMS in Florida, like that in California, has made some attempt to follow procedures, but this attempt has had little effect on the operation of the system. Job orders are taken and workers are referred to the assembly point where they are given an ES-508 card to show they have come through the RMS system. However, at the site there is no guarantee that RMS-referred workers will be given any preference by the crew leaders who are there with a formal job order or by the many other crew leaders there who have had no connection with the RMS. Placement credits are taken if a crew leader takes his workers to a farm for which a job order existed, regardless of whether the RMS played any role in recruiting the workers he takes to the job. This, however, is more credible than the practice of taking placement credit where the RMS may have had no active role in either the job order or the worker referral.

HOUSING

The complaint alleges that State RMS persons are referring interstate farm workers to growers with substandard housing, despite the presence of a Federal regulation prohibiting the same.

Applicable Law or Regulation

The regulation referred to in the complaint is the Secretary of Labor's Regulation of 1967, No. 20 CFR-620. It specifies that State Employment Security agencies shall not provide assistance to the interstate recruitment of agricultural, woods and related workers when housing furnished by an employer fails to meet the minimum standards. These regulations further indicate that where local or State housing standards are more stringent than the minimum standards specified, they must be complied with before the State agency facilities may be used for the interstate recruitment of the workers covered.

The implementation of the regulations requires the inspection of housing to be used by covered workers before the State ES agency can assist the potential employer in the recruitment of interstate workers. However, as a facilitating procedure, the State agency may submit to the inspection of housing by an appointed body (i.e., the State Health Department) or utilize the existing housing inspection unit available. Even when the alternative procedure is followed, the responsibility for adherence to the Secretary's Regulations remains with the State ES agency.

As a part of the inspection process, each State ES agency is to submit to its regional office a detailed plan for the administration of the program within the State. When this is submitted, the regional office is responsible for evaluating the adequacy and comprehensiveness of the plan. Such

evaluations are to include all elements of the housing inspection program, including the adequacy of the inspection and the efficiency and effectiveness of related operational procedures.

Although the plans may vary from State to State, all are to include the following: (1) method of implementing the regulations, (2) method of notifying the employer of the inspection results, (3) method of reinspection when and if necessary, and (4) method used to review submitted complaints.

When the State or local office has declared that the potential employer has complied with the Secretary's Regulations, ES Form No. 560A (Interstate Clearance Order) is submitted to the region for approval. In placing an order into interstate clearance, the State agency is certifying that housing and facilities are available and conform to the requirements of No. 20 CFR-620.

The review has shown that, since the enactment of the Secretary's Regulations of 1967, the demand States have taken measures to implement the order. This was accomplished by the passage of new laws or the amendment of old laws governing the housing of interstate farm workers. At this point, there are 15 States with housing codes which equal or exceed those specified in 20 CFR-620. These State laws, which also pertain to intrastate farm workers, provide for additional protection. The States included in this count and the number of intra- and interstate farm workers engaged in 1969 are shown on the following charts. An analysis of the information indicated that in 1969, 66.5% of interstate farm workers and 71% of intrastate farm workers were used by the States which have adequate housing laws or codes. This indicates that the enactment of 20 CFR-620 has brought about an improvement in the type of housing provided for farm workers and has served as a force for States to enact laws and provide for enforcement of them.

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Table 12.--Intrastate Farm Workers, 1969

Total States	57,102
California	34,980
Michigan	685
Ohio	284
Washington	2,217
Maryland	0
Connecticut	0
New Jersey	0
Pennsylvania	575
Oregon	905
Wisconsin	0
Massachusetts	0
Illinois	342
Iowa	336
New Hampshire	0
Minnesota	<u>25</u>
TOTAL, selected States	40,349

Table 13.--Interstate Farm Workers, 1969

Total States	132,048
California	25,980
Michigan	13,532
Ohio	14,822
Washington	6,087
Maryland	1,063
Connecticut	2,110
New Jersey	6,670
Pennsylvania	5,295
Oregon	5,160
Wisconsin	1,236
Massachusetts	1,721
Illinois	3,655
Iowa	156
New Hampshire	167
Minnesota	<u>91</u>
TOTAL, selected States	87,745

In the States with laws with requirements less than those contained in 20 CFR-620, the Federal standards are being applied. Further, the review showed that RMS personnel are taking the lead in improving State standards which are not equal to 20 CFR-620. For instance, in North Carolina, the Director of RMS and his staff designed regulations to strengthen the State

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standards. They presented their bill to the State legislature and lobbied for the enactment of the bill. The bill, which was defeated twice, is now being readied for another presentation.

The variation in State laws places the employees of State agencies in a dilemma, in that even though the selected housing is inspected and certified by the responsible body, the ES agency cannot submit an Interstate Clearance Order because the inspected camp may still not meet the requirements of 20 CFR-620.

While all of the 18 States included in the review did not have comparable housing regulations, the mechanism for the inspection and certification of housing under 20 CFR-620 was available to them. The methods for compliance, though different, achieve the same goal. Some of the methods used by States are:

Alabama, which serves as a supply and demand State during harvest season, has an agreement between the ES and the State Health Department, whereby the services of county sanitarians are used in the inspection process. The system allows for initial and occupancy inspections. During 1970, the two State agencies met with growers and grower associations to emphasize the requirements for adequate housing. As a result of their efforts, 40 of the 42 units used to house farm workers were improved to meet the standards set in the Secretary's Regulations. In Slocomb, a grower association secured a loan from the Farmer's Home Administration to erect a camp to accommodate 100 workers. Prior to the start of construction, NMS and the State Health Department met with the association to spell out the provisions of the Secretary's Regulations.

In Michigan, the inspection report prepared by the Department of Public Health is accepted as prima facie evidence of the condition of housing facilities. This process was adopted because it was determined that the staff of the agency consisted of persons with environmental health backgrounds. The process requires the grower to submit an application indicating his intention to use the camp during the coming year. The application triggers the inspection process, which ends with the Department of Public Health issuing certification if the housing is adequate. A copy of the inspection results is forwarded to RMS prior to submittal of the Interstate Clearance Order. In addition, the same procedure is followed for intrastate orders. The review team checked the records of referrals in a local office in the State and found that all orders requiring housing had an inspection certificate attached.

In Pennsylvania, the Bureau of Occupational and Industrial Safety, a subdivision of the Department of Labor and Industry, is charged with the responsibility of inspecting migrant labor living quarters and enforcing the Federal and State safety and housing regulations. A program of vigorous enforcement was practiced in 1970. This was made possible in part by increasing the staff from four to eight inspectors and instituting a thorough training program.

The review team determined that one of the problems involving substandard housing was brought about by over-referral on the interstate job order. For example, the demand State may request the recruitment of 100 workers for which it has approved housing and has fulfilled its responsibility. However, when the supply State receives the order, it will recruit 150 workers, even though the order specifies the number for which housing can be provided. When the workers arrive at the housing provided, they are placed in overcrowded

conditions, and the housing does not then meet Federal standards. Specific indications of this are contained in the section of the report on job referral.

The information obtained up to this point indicates that the number of Interstate Clearance Orders has declined substantially over the last five years. When questioned as to the reasons for this decline, several are given by the State employees. The most frequently cited reason was the Secretary's Housing Regulations. This does not mean to imply that the number of workers used from other States is declining. It means that the employer whose housing does not meet those standards specified in the regulations is recruiting on his own. It appears that the growers have built up a list of contacts through the years and no longer have to use the services of the ES agency for recruitment. Therefore, when the services of the agency are not requested, the employer need not comply with the regulations.

Despite the efforts by the States, it was determined that a large number of interstate workers do live in substandard housing while in the migrant stream. However, they were not recruited by the State RMS offices through the interstate referral system. In pursuing this further, the review team found that the workers are placed in substandard housing by one of the following methods:

(a) Free-wheeling: Individuals or groups of workers come to an area on their own, based on past experience. They know how to contact the growers and are familiar with the harvest activities.

(b) Growers make direct contact: In States where the housing standards are less than CFR-620, the grower will recruit directly from the supply State and make the necessary arrangements on his own.

(c) Crew Leaders: Registered crew leaders operating independently or in conjunction with the grower recruit the interstate workers.

When the methods cited above are employed, the responsibility for placing workers in adequate housing and enforcing the Secretary's Regulations is removed from RMS. However, the office is subjected to criticism because the persons employed are engaged in farm work and are from out of State.

The findings of our review in this area indicate that State agencies are complying with 20 CFR-620. The problem is that the regulations cover those persons recruited by the agency from other States, but do not cover farm workers moving within the State on their own or workers recruited from out of State without the assistance of the ES.

One of the major problems in the area of housing is one of overcrowding after the site has been approved. All indications are that the problem is intensified by over-recruitment on the part of the crew leader. The following is an example of the chain of events which lead to approved housing becoming substandard at the point when occupancy occurs.

The demand State, in sending the Interstate Order to the supply State, specifies the number of workers needed, (for example, thirty) and attaches a certificate of approved housing for the same number of workers. The crew leader, upon receipt of the order, agrees with the needed number; however, in the recruitment of his crew, he may go as high as 40 workers plus 5 children. Obviously, the housing approved for 30 is then inadequate for the 45 persons in the crew when they arrive at the demand State.

Equally important is the dilemma the RMS representative is faced with at the time of arrival. The housing is not large enough to adequately accommodate all of the people. However, they are several hundred miles away from home. The RMS representative is faced with the decision of turning the crew away because the house is inadequate, or letting the

workers remain. In discussing this situation with crew leaders, workers and RMS representatives, the review team was told that regardless of the RMS representative's decision the crew would remain in the area and harvest the crops.

During the course of the review, it was determined that some growers and/or grower associations are improving and building new housing with federal assistance. Financial help for the repair and new construction of farm labor housing is available through several governmental agencies: Farmers Home Administration, Department of Housing and Urban Development, Office of Economic Opportunity, the Economic Development Administration, and the USDA Rural Community Development Service.

Loans and grants may be applied for by individual farmers, associations, private nonprofit groups, public agencies, and the agricultural worker.

One State, Michigan, set aside \$500,000 to be used by farmers on a cost-sharing basis to improve agricultural labor housing.

The recent enactment of the Occupational Safety and Health Act provides the "needed" mechanism to insure that all transient farm workers will have adequate housing. Section 1910.267 of 29 CFR, which applies to agricultural operations, incorporates the standards for all temporary labor camps.

The question at this point is whether the standards included in 20 CFR, which pertains to only interstate farm workers recruited by the State ES offices, or those in 29 CFR, which applies to all farm workers living in temporary labor camps, regardless of the method of recruitment or permanent place of residence will govern the adequacy of temporary labor camps.

Having recognized that the housing standards are different in the two regulations, the Department of Labor has taken action. It has been determined that all labor temporary camps have to meet the requirements of either 20 CFR 620 or 29 CFR. The agricultural housing, inspected and passed by either an OSHA compliance officer or ES representative or its agent, shall be considered as meeting the necessary requirements so that employer job orders can be placed in the Employment Service Inter-State System.

Conclusions

Findings from the review did not show that ES offices were recruiting interstate workers for growers with inadequate housing. They did show that methods employed by crew leaders tend to cause overcrowding, making the previously certified housing unacceptable under 20 CFR-620. The findings also pointed out two weaknesses in 20 CFR-620:

1. The Regulation refers to interstate workers recruited by ES offices, which means that interstate workers who are not recruited by ES are not guaranteed adequate housing unless the State has a comparable regulation.
2. The Regulation does not provide coverage for intrastate workers who may be in need of housing.

SAFETY AND PESTICIDES

Complaint Information

The administrative petition charged that the Rural Manpower offices do not require or even ask growers to provide any pesticide information. The petition alleges that women, particularly pregnant women, are denied protection from pesticides dangerous to the unborn.

Applicable Laws

A. Federal Laws

1. The Occupational Safety and Health Act of 1970, administered by the U. S. Department of Labor, Occupational Safety and Health Administration, contains provisions which would assist in eliminating many of the safety and pesticide problems which continue to exist. The purpose of the law is to assure "so far as possible every man and woman in the nation safe and healthful working conditions and to preserve our human resources." The law encourages the promulgation of new and revised safety instructions, including provision for standards which may require:

a. That no employee dealing with toxic materials or harmful physical agents will suffer material impairment of health or functional capacity, even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.

b. Development and prescription of labels or other appropriate forms of warning so that employees are made aware of all hazards to which they are exposed.

c. Prescription of suitable protective equipment.

d. Monitoring or measuring employee exposure to hazards at such locations and intervals and in such manner as may be necessary for the protection of employees.

e. Prescription of the type and frequency of medical examinations or other tests for employees exposed to health hazards. At the request of any employee, the examination or test results shall be furnished to his physician.

The only standards thus far released by OSHA concerning agricultural workers pertain to labor camps. They have also issued record keeping requirements which include extensive provisions for recording and reporting industrial accidents.

2. The Federal Insecticide, Fungicide and Rodenticide Act, administered by the U. S. Department of Agriculture, regulates the marketing of economic poisons and devices. This Act makes it unlawful for any person to distribute, sell or offer for sale economic poisons not registered or properly labeled. Economic poisons that contain substances in quantities highly toxic to man are required to contain labels pointing out the dangers, the antidote, and safe usage requirements.

B. State Laws

Very few States have pesticide laws that are designed to protect the worker. According to the Department of Agriculture, all but two States have pesticide registration laws which are similar to the Federal law. Some States have use and application laws which primarily require the examination and licensing of persons in the business of applying pesticides. Such laws

may also regulate persons in professions concerned with the use and application of pesticides, prohibit or restrict the use of certain pesticides, or require purchases to obtain permits and dealers to be licensed.

California is one of the few States which has a pesticide law designed to protect the workers.

U. S. Department of Labor Policies

Part II, Section 1005J of the Employment Security Manual states that "It is the policy of the Employment Service to make no referral to a position where the services to be performed or the terms or conditions of employment are contrary to Federal, State, or local laws."

Training and Employment Service Program Letter No. 2577, dated July 20, 1970, which was issued to all State Employment Security agencies states that, "Before complying with an employer's request for referrals to agricultural work, local offices shall obtain written or oral assurance from employers... that the employers' use of pesticides has not been prohibited by law."

"State and local offices shall maintain close coordination with other public agencies to aid in assuring compliance with all existing regulations pertaining to the prohibited and permitted use of pesticides and chemicals by growers."

"Workers shall not be referred to jobs where the working conditions have been determined to be harmful to their health by appropriate authorities, as a result of the use of pesticide and other chemicals."

Findings

Incidents of rashes and boils among farm workers were noted in several States by the review team. They were attributed to working in fields where the pesticide Difolitan had been used. Although the rash is easily cured, it will break out again if the worker goes back to the field. Members of the review team witnessed an airplane in California spraying Parathion in a field in which people were working. According to county agricultural officials, the law states that workers should not work in the fields for three days after the spraying of Parathion. One grower interviewed stated he does not allow his workers to go into the field for five days after the spraying of Parathion to ensure that there will be no harmful effects. In another instance, a worker interviewed indicated that he and members of his family had been sprayed while working in the fields or had gone into a field immediately after it had been sprayed. None of these persons indicated any adverse reactions as a result.

Rural Manpower Service staff in California were found to be making inquiries of growers placing job orders with them about the use of pesticides. California Rural Manpower Service policy states that, "Staff members will ask employers placing orders if they are in compliance with worker safety regulations involving pesticides....Unless the employer indicates that he is in compliance, make no referral." A review of California job orders indicated that this practice was being followed in nearly all instances.

In none of the States visited were workers advised by Rural Manpower Service staff of the types of pesticides used on the crops they were to harvest. They were not warned of any possible dangers to them, nor were they advised of safety precautions to use to minimize the risk that might result from their working near pesticides.

FIELD SANITATION AND DRINKING WATER

The petition alleges that in some States virtually no growers provide toilets or drinking water in the fields for workers; and that even where State law or regulation requires such facilities, RMS staff refer workers to growers who are in violation of the requirement.

Applicable Policy

The only RMS policy on this matter is found in the ES Manual, Part II, Section 1005J, which states: "It is the policy of the Employment Service... to make no referral to a position where the...terms or conditions of employment are contrary to federal, State, or local law." There is no federal law or regulation which requires provision of toilet and drinking water facilities in the fields. The RMS has no policy to encourage voluntary provision of such facilities. Thus, only in those States which have pertinent laws are RMS employees currently required to take any interest in the issue.

Findings

Most States do not have any law requiring growers to provide toilet and water facilities in the fields for their workers. From their extensive field visits and interviews, the review team found that in those States with no such law, voluntary provision by the employers of such facilities is rare. The workers themselves or, in some places, the crew leaders provide drinking water. Privies are nearly non-existent. One State RMS Director interviewed indicated that having such facilities in the fields was unnecessary, that they would not be used, that he would prefer going to the bushes, and that he thought most of the workers would prefer doing so as well.

Some State legislatures have recognized the serious health hazard involved when field crop workers have no sanitary facilities available to

them, and they have passed relevant laws. For the most part, however, such laws are geared to the benefit of the consumer and not the worker. They require facilities only in food crop fields, where unsanitary conditions have been known to result in typhoid fever and infectious hepatitis epidemics, but do not require facilities in non-food-crop fields where the comfort and dignity of the worker is at issue.

In the three States visited which had statutes requiring field sanitation and drinking water, compliance appeared to be the rule. In each State the law was enforced by an agency other than RMS. To comply with Manual procedures, the RMS must be able to communicate readily with the enforcement agency to ensure that no grower who is in violation of the law receives RMS services. Such procedures were found in two of the three States and were non-existent in the third. The procedures used in the two States provided for RMS's notifying a grower who requests their services of the legal requirements; attaining his assurance that he is in compliance; and maintaining frequent contact with the enforcing agency to exchange information and complaints about alleged violators. In one of these States the review team did come across an incident of non-compliance in which the RMS nonetheless continued to serve the grower. However, all indications were that the lapse was an isolated occurrence and not one of a pattern. In the third State, in which there was little provision for communication between RMS and the enforcement agency, visual checks of the fields indicated that facilities were provided far more often than not. Thus, the findings may be summarized:

1. Most States lack relevant laws.
2. Where there are no field sanitation laws, there are usually no facilities.
3. Where there are field sanitation laws, the great majority of fields are equipped.
4. RMS needs, but does not always have, good procedures for exchange of information with enforcement agencies.
5. Field conditions in States having laws, even if enforcement is not complete, are better than in States having no laws.

TRANSPORTATION

The complaint alleges that the transportation provided by the growers and crew leaders (farm labor contractors) is unsafe. It is also alleged that transportation plans do not provide for rest stops and the opportunity for meals.

Applicable Law

Public Law No. 88-582, the Farm Labor Contractor Registration Act of 1963, brought about the issuance of the Interstate Commerce Commission's regulation governing the transportation of interstate migratory workers. The established regulations pertain to the comfort of passengers, qualifications of operators of the vehicles, and safety and operation of equipment used in the vehicle. Specifically, the law and regulations apply to any person who recruits, solicits, hires, furnishes, or transports for a fee, ten or more migratory workers (exclusive of his immediate family) for employment across State lines.

For drivers, the regulations require certain minimum physical standards, a minimum age of 21, at least one year of driving experience, and a knowledge of traffic rules and regulations. Driving is restricted to ten hours at a time, with eight hours of rest following. Among the requirements for the safety and comfort of passengers are the limitation of passengers to those who can be seated, meal stops of not less than 30 minutes at least every six hours and reasonable rest stops with at least one stop between meals, and restrictions on methods used for protection against cold weather. Mechanical standards for the vehicles include requirements for parts and accessories

necessary for safe operation and provisions for systematic inspection and maintenance of the vehicle. The Farm Labor Contractor Registration Act includes a section on the transportation of workers which lists the requirements for the driver and provisions for insurance, safety, and comfort of passengers.

RMS's involvement in transportation is restricted to working with other State and Federal agencies responsible for the inspection of vehicles and the maintenance of safety regulations. In taking a job order, the RMS representative questions the employer about the transportation to be used in the operation. If vehicle inspections are required by the State, the employer is advised that the provisions must be met before the order can be accepted. When a crew leader seeks registration under the FLCRA, emphasis is placed on the safety of vehicles to be used and insurance requirements and he is provided with a copy of ICC regulations pertaining to the transportation of workers. If upon submission of his application it is found that the crew leader does not meet the requirements necessary to transport workers, his certificate is stamped to indicate that he is not authorized to transport workers. If all requirements are met, an indication of authorization is included on his certificate.

In the absence of Federal regulations covering the intrastate transportation of farm workers, several States have adopted their own regulations to insure the safe transportation of workers.

New Jersey has a law stating that no person may use any motor vehicle, bus, truck, or semi-trailer for the purpose of transporting migrant workers

to or from the place of employment, either from a migratory labor camp or on a day haul basis, unless the vehicle so used has proper insurance. The amount of required insurance is determined by the number of persons being transported.

The enforcement of the law is the cooperative responsibility of the New Jersey State Highway Patrol and Bureau of Migrant Labor. In discussing the enforcement procedures with representatives of these agencies, it was determined that unannounced checks are made at least once every two weeks to insure compliance with the law. When crew leaders not in compliance are caught, their vehicles and farm contractor licenses may be revoked and/or they may be fined up to \$200.

The role of New Jersey's RMS is tied in with the State's Farm Labor Contractor Registration Act, which requires applicants to furnish the certifying agent with proof of vehicle regulation compliance as part of the registration process.

South Carolina has a Highway Motor Fuel Tax Act which requires the registration of any passenger vehicle having seats for more than seven passengers in addition to the driver. The inspection of vehicles and the enforcement of the gas tax provision are the joint responsibility of the Highway Patrol and the State RMS. The State RMS is responsible in that each application for the transportation of farm workers must be certified by its office before the vehicle can be registered.

The provision of adequate transportation for interstate workers is the responsibility of the crew leader. In order to retain his certification, the crew leader is required to have his vehicles insured and meet all of

the other requirements established by the ICC. When this was discussed with State RMS representatives in Florida, South Carolina, Pennsylvania and North Carolina, they indicated that crew leaders are circumventing the requirement by using these methods:

1. They pay the drivers of family-owned vehicles transportation money to meet the crew leader at a certain point.
2. They buy several small vehicles and pay drivers to transport the persons, placing the vehicle in the name of the driver.
3. They go to the supply State and recruit persons with the understanding that they will be reimbursed for the cost of transportation to the demand State.

One crew leader in Pennsylvania whose vehicle bore inspection stickers from Florida, North Carolina, South Carolina and Pennsylvania indicated that he was aware of crew leaders who never followed the procedure, and continued to work through local RMS offices in various States through local agreement.

One of the exhibits in the complaint cited a situation involving the mechanical failure of a vehicle in Virginia which was from Georgia on its way to New Jersey. It was cited in the complaint that the mechanical condition of the bus made it unsafe for the transportation of the workers it was carrying. However, authorities reviewing this situation found the bus had been inspected and certified as being safe at the original point (Georgia) while Virginia authorities indicated that the vehicle did not pass that State's standards. This illustration is typical of the difference in the inspection laws around the country. In addition, several States do not have vehicle inspection laws, thereby providing no protection for intrastate worker being transported.

APPENDIXES

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APPENDIX A - GREEN CARD COMMUTERS

The petition charged that "foreign workers are recruited to replace domestic workers and/or to depress domestic workers wages and working conditons." The petition is referring to the use of foreign workers in the S. W. portion of the U.S. where alien commuters ("Green Carders") are a significant factor in the labor picture.

The so-called "Green Card" is a laminated alien registration receipt carrying the individual's photograph, issued by the Immigration and Naturalization Service to permanent resident aliens, which serves as a useful identification document for border crossing. Even though many green carders live in Mexico and commute to the U.S., they have the right to live in the U.S. and are thus regarded as "resident" aliens.

An ES manager in Southern California felt that green carders should be eliminated from the labor force. They commute from Mexico across the border to fill good jobs while California citizens are on welfare and need jobs, he asserted.

A Southern California RMS office manager was concerned by the influx of green card Mexican workers. The entire lettuce crop in his area is harvested by Mexican workers, either by harvest crews that move from place to place in the State, or by those who come by day haul from the border. Mexican workers who come in at the time of the lettuce harvest take the good paying jobs at a time when seasonal unemployment is on the rise. He has been trying to get growers to set aside some of the lettuce harvesting jobs for local citizens, but so far has been unsuccessful.

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A survey by the Immigration and Naturalization Service of alien commuters on two days in January, 1966, indicated that almost 18,000 agricultural workers were crossing the boarder daily at that time. Regular statistics are not kept on alien commuters, however, and it is difficult to determine what proportions the problem has attained since that time.

APPENDIX B - ILLEGAL ALIENS

The presence of illegal aliens in the U.S. workforce was not cited in the complaint and, therefore, was not a major emphasis of this review. However, during the course of the review in Texas and California, the problem of illegal aliens was brought to the attention of the review team, and it was recognized that the overall problem of oversupply was intensified by this factor, especially in areas along the border.

The allegation that illegals were in the area and working was made many times by growers, union officials, community action staff, farm workers, ES staff, health agency staff, and others. For example, an ES staff person indicated that he knew where approximately 300 illegal aliens were working. Two border patrolmen indicated that many businessmen in the area were employing illegals and that "if they doubled the force it would not solve the problem." A Mexican-American sanitarian in California stated that approximately 45% of the farm workers employed in the area were illegals. A labor camp owner in the same area of California, also a Mexican-American, stated that close to half the farm workers in the area were illegal aliens. A union organizer in California stated that some of the big growers or processors had crews of up to 300 workers who were illegals. In Colorado, a food processing plant was accused of employing illegals, thereby depriving farm workers of jobs recruited by the ES local office. Most persons or agencies concerned either did not know or were unwilling to estimate the number of illegal aliens in their area.