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THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 715

Date: October 25, 1974

Time: 11:30

FOR ACTION: Michael Duval
Geoff Shepard
Phil Buchen
Bill Timmons
✓ Paul Theis

cc (for information): Warren K. Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Today, October 25, 1974

Time: 4:00 p.m.

SUBJECT: Enrolled Bill H.R. 13342 - Farm Labor Contractor
Registration Act Amendments of 1974

PLEASE RETURN TO:
RESEARCH
ROOM 121 E. O. B.

ACTION REQUESTED:

___ For Necessary Action

XX For Your Recommendations

___ Prepare Agenda and Brief

___ Draft Reply

___ For Your Comments

___ Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

1974 OCT 25 AM 11 39



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

OCT 25 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 13342 - Farm Labor Contractor
Registration Act Amendments of 1974
Sponsor - Rep. Ford (D) Michigan and 12 others

Last Day for Action

October 29, 1974 - Tuesday

Purpose

Amends the Farm Labor Contractor Registration Act of 1963 by extending coverage, strengthening enforcement mechanisms, and establishing a Federal civil remedy for persons aggrieved by violations of the Act; contains a rider which would make claims under Labor's "black lung" program subject to the Administrative Procedure Act and upgrade all Labor Department hearing examiner positions to Administrative Law Judges at the GS-16 level.

Agency Recommendations

Office of Management and Budget	Disapproval (Veto message attached)
Civil Service Commission	Disapproval (Veto message attached)
Department of Labor	Approval (Signing statement attached)
Department of Agriculture	Approval
Department of Commerce	Defers to Labor
Department of Justice	Defers to Labor
Administrative Conference of the United States	No objection to Sec. 13
Interstate Commerce Commission	No objection
Department of Transportation	Supports Sec. 5 and 6

Discussion

The Labor Department, in testimony before the House and Senate Committees, expressed support for most of the



amendments to the Farm Labor Contractor Registration Act embodied in H.R. 13342. The rider, which is highly objectionable, was added in the Senate Committee, without opportunity for formal comment by the Executive Branch.

The Farm Labor Contractor Registration Act of 1963 sought to curb widespread abuses against migrant and seasonal farm laborers and the farmers who employ them by requiring that all crew leaders who contract with farmers to provide laborers register with the Secretary of Labor. Registration can be denied if an applicant has been convicted of certain crimes, fails to perform contracts with farm operators, or gives false or misleading information to migrant workers concerning the terms of farm employment. The Act requires all crew leaders to inform each worker at the time of recruitment of specified terms of employment, and post these terms at the worksite. If the crew leader is the paymaster, he is required to keep payroll records and follow tax withholding laws. Violation of any of the requirements can result in the revocation of the certificate or in criminal prosecution, with a fine of up to \$500.

The Act is enforced by compliance officers in the Labor Department's Wage-Hour Division, who check for a certificate of registration or make a detailed investigation when a complaint is received. Violations of the Act have been widespread. Only 2,000 of an estimated 5,000 crew leaders have registered. Enforcement is difficult because of inadequate statutory authority to deter and correct any abuses.

Provisions of the enrolled bill

H.R. 13342 would amend the Act in the following major respects:

(1) Coverage--Removes the present exemptions for crew leaders operating within one State or recruiting less than 10 workers.

(2) Enforcement--Imposes affirmative duties upon the Secretary of Labor to monitor and investigate activities of contractors, and provides him with subpoena powers.

(3) Penalties--Strengthens penalty provisions of the Act by (a) adding a possible one-year prison sentence to the present \$500 fine; (b) adding a new \$10,000 fine,

imprisonment not to exceed three years, or both, for subsequent violations of the Act, and for contractors who knowingly hire illegal aliens; (c) empowering the Secretary to assess a civil penalty for violation of regulations under the Act, subject to judicial review.

(4) Civil relief--Empowers the Secretary of Labor to seek injunctive relief in any U.S. District Court when he determines that a violation of the Act has occurred; allows persons aggrieved by violations of the Act to bring civil suits in U.S. District Courts.

(5) Registration requirements--Adds requirements that crew leaders must (1) post a minimum \$5,000 bond; (2) provide proof that vehicles and housing under the ownership or control of the applicant meet Federal and State health and safety standards.

(6) Insurance--Increases required insurance on vehicles transporting farm workers to that required for other interstate passenger vehicles by the Interstate Commerce Commission.

(7) Other Farm Labor Contractor Registration Act Amendments--The enrolled bill would impose new obligations on registered farm labor contractors, such as more detailed disclosure of employment information--including the existence of a strike--in a language in which the worker is fluent; increased reporting requirements; and the prohibition of retaliation against any migrant worker for the exercise of a right secured under the Act. A grower who uses workers supplied by a crew leader would be required to maintain payroll records, and assure that the crew leader has a valid registration certificate.

Personnel rider--H.R. 13342 would require that the provisions of the Administrative Procedure Act (APA) be followed in the adjudication of claims under the "Black Lung" program and require Labor Department employees who hear these and other claims to be GS-16's. More specifically, Section 17 of H.R. 13342 would:

(1) Require that any hearing held under the authority of the Longshore and Harbor Workers Compensation Act--including amendments or extensions thereto, such as black lung benefits--be conducted by Administrative Law Judges in accordance with the APA, rather than the informal procedures now used. The Senate Committee report on H.R. 13342 states that this amendment will bring proceedings

of the Black Lung Benefits Act of 1972 into conformance with similar proceedings under the Longshoremen's and Harbor Workers' Compensation Act, "which was the original intention of the Congress."

(2) Provide that the hearing officers who are presently employed by Labor to adjudicate claims under the current informal procedures and who are not now subject to competitive hiring, would be deemed to be qualified Administrative Law Judges (ALJ's) without having to be subject to the regular competitive, merit procedures of the civil service.

(3) Make all ALJ positions in the Department of Labor GS-16's, as well as the members of the Benefits Review Board established by the Longshore Amendments of 1972. Present ALJ's and hearing examiners who cannot qualify as GS-16's could remain in these positions at their present grades. Moreover, the Department of Labor could in the future add to its supergrade positions the number it believes necessary for any APA hearings.

Cost--Added costs resulting from approval of H.R. 13342 would be associated with increased enforcement and administration of the Act. The Labor Department estimates these to be \$405,000 for the current fiscal year, rising to \$515,000 in fiscal year 1976.

Agency recommendations

Labor, which endorsed the goals of this legislation in congressional hearings, recommends approval, citing the many areas in which the enrolled bill would strengthen the Act.

Agriculture also recommends approval, stating:

"This legislation may require some short-run adjustments in traditional labor management practices of certain labor users (farmers, processors, etc.)...But, over time the benefits from these Amendments should far outweigh any disadvantages and bring about a greater degree of rationality in agricultural labor management relations. This should ultimately increase production efficiency."

Justice, Commerce, Transportation, the Interstate Commerce Commission, and the Administrative Conference of the United States--either defer to Labor or indicate no objection to enactment.

Civil Service Commission recommends veto on the basis of strong objection to the personnel rider in Section 17 of the enrolled bill. CSC points out that this rider to the bill--which has nothing to do with farm workers--would formalize claims proceedings under an unrelated program which should be conducted in an informal, non-legalistic setting so as not to inhibit the claimant. The result of these changes, in CSC's view, would be to unduly delay decisions to the detriment of claimants who are entitled to speedy and fair resolution of their cases. Moreover, CSC believes that the feature which would classify and pay all of Labor's Administrative Law Judges at the GS-16 level, would be disruptive to the principle of equal pay for equal work by overclassifying these positions relative to hundreds of similar positions in other agencies. CSC also takes strong exception to that part of Section 17 of H.R. 13342 which would authorize Labor any additional supergrade positions (GS-16, 17 and 18) that they would deem necessary for any APA hearings.

* * * * *

We fully share the concern of CSC with regard to the personnel rider in the enrolled bill in principle and in terms of precedents it will establish for hundreds of similar positions in the Social Security Administration and other agencies. We believe the provision is sufficiently objectionable that the bill should be disapproved, despite the merits of the provisions amending the Farm Labor Contractor Registration Act.

Accordingly, we have drafted a veto message which indicates that you would approve a "clean" bill directed only toward strengthening that Act.


Director

Enclosures

We assume that the form of this message including the title and the first paragraph, will be revised to conform with the approach taken in the veto message on H.R. 11541--the National Wildlife Refuge System, dated October 22, 1974.

TO THE HOUSE OF REPRESENTATIVES

withholding
Today I am ~~returning today~~ ~~without~~ my approval of H.R. 13342, X

The Farm Labor Contractor Registration Act Amendments of 1974. This bill contains provisions designed to strengthen the protections of migrant farm workers under that Act, which I support. I cannot approve the bill, however, because it contains an unrelated rider which creates serious inequities and distortions in the Federal personnel system. X

In the decade since the enactment of the Farm Labor Contractor Registration Act of 1963, it has become apparent that the provisions of that law have not been adequate to accomplish its purpose of protecting migrant farm workers from abuses by farm labor contractors. For nearly a year, the Administration has been working with the Congress to develop legislation which would improve the Act, and there has been give and take on all sides. I am pleased with this spirit of cooperation, and endorse those provisions of H.R. 13342 which apply to migrant farm workers. X

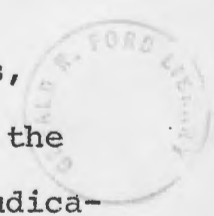
Unfortunately, the Congress has seen fit to add a rider to this bill which ^{is} ~~I cannot accept~~ ^{totally} ~~totally~~ unrelated to the needs of migrant farm workers.

Section 17 of the bill would, among other things, require that the formal judicial-type proceedings of the Administrative Procedure Act be applied to claim adjudication under the Labor Department's "black lung" benefits program. Such claimants are entitled to and should receive fair and speedy resolution of their cases rather than be inhibited and delayed by the formality inherent in the Administrative Procedure Act. On several occasions I have expressed my concern with the increasing cost of carrying

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out Government procedures and regulatory requirements. The rider to this bill is another example of how Government regulations and procedures ~~rather than~~ ^{instead of} expediting the business of the people ~~can~~ delay resolution of issues and add to costs.

and
I am also gravely disturbed by another part of Section 17 relating to the hearing officers now employed by the Labor Department to hear and decide "black lung" claims. These employees would by fiat be declared to be Administrative Law Judges without regard to their capacity to fill such positions. Since Administrative Law Judges hired in the usual manner must demonstrate such capacity, this feature would be contrary to all principles of a civil service system based upon merit and competition among candidates.

Finally, I cannot accept the feature of Section 17 which would legislatively classify and pay at the GS-16 level these newly designated Administrative Law Judges for the "black lung" program, as well as those who currently hear claims under the Longshoremen's and Harbor Workers' Compensation Act and the members of the Benefits Review Board established by the Longshore Amendments of 1972. Such a provision would arbitrarily impose a grade level without due regard for the relative complexity and difficulty of the work involved. By over-classifying certain positions, it would be disruptive of the principle of equal pay for equal work. This would create inequities within the Labor Department, and between positions of that agency and those in a number of other agencies, including ~~over~~ ^{approximately} 400 GS-15 Administrative Law Judges in the Social Security Administration.

Admin. Conf. memo

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WC
8/21/74

My concern ^{over} ~~about~~ legislating classifications and pay of special groups of employees was the basis for my disapproving H.R. 5094, which provided for an arbitrary and inequitable reclassification of deputy ^{sa} ~~sa~~ ^{United States} ~~sa~~ marshalls. X
In my first veto ^{sa} upon assuming the Presidency, I expressed my strong concern about granting preferential pay treatment by statute, and indicated that our policy must be to provide equal salaries for equal work. The rider to H.R. 13342 ^{sa} contains deficiencies similar to those in H.R. 5094.

In summary, I cannot accept a legislative provision which would disrupt sound principles of personnel administration, would create serious pay inequities by providing overly liberal salaries to employees in one agency leading to demands for similar treatment by large numbers of employees in other agencies, and would not effectively serve the public interest.

I urge the Congress, upon its return next month, to send me a bill--which I will promptly approve--without the unacceptable personnel provision I have described, a bill which is directed only toward strengthening the Farm Labor Contractor Registration Act.

THE WHITE HOUSE

October , 1974





UNITED STATES CIVIL SERVICE COMMISSION

IN REPLY PLEASE REFER TO

WASHINGTON, D.C. 20415

October 22, 1974

YOUR REFERENCE

Honorable Roy L. Ash
Director
Office of Management and Budget

Attention: Assistant Director for
Legislative Reference

Dear Mr. Ash:

This is in response to your request for the Commission's views and recommendations on Enrolled Bill H.R. 13342, an Enrolled Bill "to amend the Farm Labor Contractor Registration Act of 1963 by extending its coverage and effectuating its enforcement".

This measure, dealing generally with migrant agricultural labor, proposes to remedy deficiencies in the Farm Labor Contractor Registration Act of 1963 by including intrastate as well as interstate transactions, requiring the posting of security bonds by applicants and the issuance of certificates of registration to applicants, and it creates a Federal civil remedy for persons aggrieved by violations of the Act. In an unrelated area it also proposes to formalize the hearing of claims for certain benefits and it deals with classification of the personnel who are to preside over these proceedings. Apart from the provisions of the legislation dealing with migrant agricultural labor, the personnel provision of the measure would seriously affect the Commission's authority and responsibility under Sections 3105 and 5108 of Title 5, United States Code, in connection with the appointment of personnel and classification of positions under the Administrative Procedure Act. Because of the adverse effects of the measure on the program conducted by the Commission under the Administrative Procedure Act, the Commission opposes this measure and urges that it be disapproved. The bill:

- Would subvert competitive merit principles in the appointment of Administrative Law Judges;
- is contrary to the fundamental principles of position classification and pay administration in that it will result in significant overpayment of personnel in one agency and lead to unwarranted demands for similar overly liberal salaries by large numbers of employees in other Federal agencies;
- would thwart the concept of equal pay for equal work; and
- would over-judicialize claims proceedings and thereby unduly delay decisions to the detriment of claimants who are entitled to speedy and fair resolution of their cases.

On March 7, 1974, the Commission, after considering a request by the Department of Labor, determined that the provisions of Public Law 92-303 and Public Law 92-576 did not require the use of APA Administrative Law Judges for the adjudication of claims for Black Lung benefits. After this determination the Department of Labor appointed several attorneys as hearing officers for the resolution of these claims on an informal basis. Section 17(a) of H.R. 13342 proposes to make the adjudication of Black Lung cases subject to the provisions of the Administrative Procedure Act and further provides that the hearing officers previously appointed by the Department for these cases shall be "deemed" qualified Administrative Law Judges until such time as they vacate their positions. Neither of these proposals is in the public interest. The nature of the Black Lung claim best lends itself to resolution in an informal setting where the claimant is not inhibited by technical legal procedures or the judicialization inherent in the provisions of the Administrative Procedure Act. Further, the provision for grandfathering the hearing officers previously appointed by the Department as Administrative Law Judges for these cases would not be consonant with the provisions of Section 3105 of Title 5, United States Code, which requires the appointment of Administrative Law Judges on a competitive, merit basis.

Approximately one-half of the personnel currently occupying Administrative Law Judge positions in the Department of Labor hear and decide Longshoremen claims and are classified at the GS-15 grade level. H.R. 13342 provides GS-16 for these Administrative Law Judges and further provides that the GS-15 Administrative Law Judges unable to qualify at the higher level will continue in their positions at GS-15. This provision is wholly inconsistent with the provisions of the Administrative Procedure Act, now codified in Section 5362 of Title 5, United States Code, and is violative of the concept of equal pay for equal work. The establishment of a principle that an occupational group can be upgraded by preferential legislation with no regard for the difficulty, complexity and importance of their work is totally inconsistent with the concepts of proper pay administration, violates the concept of equal pay for equal work and it is a wedge leading to dismantling of the whole position classification system. The provisions of H.R. 13342 would place Administrative Law Judges adjudicating significantly different classes of cases in the same grade level.

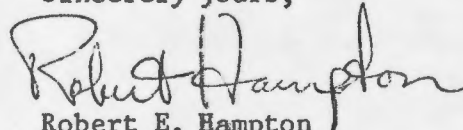
The legislation also authorizes the Department any additional supergrade positions deemed to be necessary for any Administrative Procedure Act hearings and to which its own GS-15 Administrative Law Judges who are qualified may be appointed. Furthermore, the members of its Benefits Review Board shall be placed in positions not less than grade GS-16. While the appointment by the Department of its own GS-15 Administrative Law Judges to the newly authorized GS-16 positions could be effected on

a non-competitive basis, it is not consistent with the concept of the selection of the best qualified individuals from the competitive registers maintained by the Commission on the basis of the provisions of Section 3105 of Title 5, United States Code. Furthermore, as indicated above, the legislative classification of the Board of Review positions is proposed without regard to the difficulty, responsibility and complexity of the work involved; and the legislative classification of these positions and the Administrative Law Judge positions could have a serious "domino" effect with regard to hundreds of similar positions existing in a number of other Federal agencies.

The proposal to remedy specific deficiencies in the Farm Labor Contractor Registration Act would not be objected to if the personnel provisions contained in Section 17 were eliminated. However, in view of the serious adverse effects of the personnel provisions of the Enrolled Bill on merit, competitive principles, the over-judicialization of proceedings which should be conducted in an informal, non-legalistic setting and the severe distortion of the principle of equal pay for equal work, the Civil Service Commission urges that the President disapprove H.R. 13342. A proposed veto message is enclosed.

By direction of the Commission:

Sincerely yours,


Robert E. Hampton
Chairman

Enclosure



I am returning to the Congress without my approval H.R. 13342, an enactment "To amend the Farm Labor Contractor Registration Act of 1963 by extending its coverage and effectuating its enforcement".

While I am sympathetic to the underlying purposes of this bill as it relates to migrant workers, the enactment of certain personnel provisions, totally unrelated to the basic bill, would disrupt sound principles of personnel administration, would create serious pay inequities by providing overly liberal salaries to employees in one agency thereby leading to demands for similar treatment by large numbers of employees in other agencies, and would not effectively serve the interests of certain of our citizens. Provisions in the bill having nothing to do with farm workers, would over-judicialize proceedings involving claimants of another kind who are entitled to and should receive fair and speedy resolution of their cases rather than the formality and delay inherent in the Administrative Procedure Act. The unrelated provisions would also be disruptive of the principle of equal pay for equal work by over-classifying certain positions in the Executive Branch without due regard for the complexity and difficulty of the work involved in those positions, thereby creating inequities within the agency where those positions are located and between positions of that agency and positions in a number of other agencies. In addition, the special status conferred on a small group of employees by the personnel provisions in the bill would not be consistent with time-honored competitive merit principles by which scores of others have been and now are appointed to positions under the Administrative Procedure Act.

Our concerns must be directed to furthering competitive merit principles, correcting in every way possible imbalances that adversely affect our economy and eliminating the delays that we are finding in the administrative agencies.

Accordingly, I must disapprove enactment of H.R. 13342 because of the serious adverse effects of its personnel provisions.

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

OCT 22 1974

Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Ash:

This is in response to your request for our views on the enrolled enactment of H.R. 13342, the "Farm Labor Contractor Registration Act Amendments of 1974."

This Department has supported legislation to improve the Farm Labor Contractor Registration Act of 1963. On November 9, 1973 and April 8, 1974, Assistant Secretary DeLury testified before the House and Senate Subcommittees involved, respectively. In both statements, he expressed our basic support for many of the concepts embodied in this legislation. We have also provided technical assistance to the Senate Labor and Public Welfare Committee.

H.R. 13342 would strengthen the Farm Labor Contractor Registration Act in the following five major areas:

First, the Act's coverage would be extended by deleting the present limitation to contractors working interstate and recruiting 10 or more workers at any one time.

Second, H.R. 13342 imposes additional requirements on applicants for certificates of registration. Applicants would be required to obtain increased insurance equivalent to that required under regulations issued pursuant to the Interstate Commerce Act, to provide greater protection to those injured as a result of their operation of motor vehicles. This requirement may be waived by the Secretary of Labor. Applicants would also be required to certify that vehicles and housing under their ownership or control

to be used by migrant workers satisfy all relevant State and Federal health and safety standards. Applicants are further required to consent to substitute service of process on the Secretary of Labor when they are unavailable for service.

Third, the bill imposes a number of new obligations on registered contractors. Disclosure of information about employment required to be given to migrant workers by the contractor is expanded to include the existence of a strike or other work stoppage, and the existence of various special arrangements with merchants. The disclosure provision is also expanded to require written disclosure in a language in which the worker is fluent. Registered contractors must refrain from hiring illegal aliens. They are also required to notify the Secretary of any change of address and certify any new vehicles or housing acquired to be used by migrant workers within 10 days. Further, they must promptly pay to workers all moneys entrusted to the contractor for the benefit of the workers, and refrain from requiring workers to purchase goods exclusively from any person.

Fourth, the remedies for enforcement of the Act would also be expanded. The criminal penalties for violation of the Act are expanded by adding a possible 1-year prison sentence to the present \$500 fine. The bill also provides for a possible 3-year prison term and \$10,000 fine for those convicted of a subsequent violation and for unregistered contractors hiring illegal aliens. The Secretary of Labor would also be given authority to assess administrative civil money penalties against violators of regulations prescribed under the Act. He could additionally obtain injunctive relief, and is given increased investigatory powers. The bill also provides an independent private right to bring civil suits for persons aggrieved by violations of the Act and further provides remedies for those discriminated against for exercising their rights under the Act.

Fifth, growers using workers supplied by farm labor contractors are given increased responsibilities. They are required to maintain all Federal payroll records pertaining

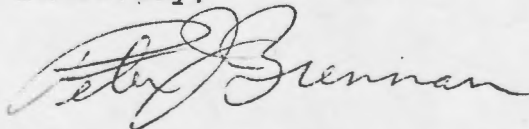
to migrant workers recruited for their benefit. Further, growers would have to observe valid certificates of registration in the possession of contractors before using the contractors. If the growers fail to do so, they would be refused the services of the Federal-State Employment Service for up to 3 years.

In addition, the bill makes certain changes in the Longshoremen's and Harbor Workers' Compensation Act to make it clear that those hearing cases under amendments or extensions of that Act, including those newly hired individuals hearing black lung benefits cases, be hearing examiners. Qualified hearing examiners under existing Department statutes will be paid at the GS-16 level, as would members of the Benefits Review Board.

Certain provisions of this bill do not reflect the views of this Department. Other provisions contain technical difficulties. However, we believe that the bill substantially improves the effectiveness of the Act and affords needed protections for the Nation's migrant workers.

Accordingly, we strongly recommend that the President sign this bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "Peter Brennan". The signature is written in dark ink and is positioned above the typed name.

Secretary of Labor

PRESIDENTIAL SIGNING STATEMENT ON H.R. 13342
THE "FARM LABOR CONTRACTOR
REGISTRATION ACT AMENDMENTS OF 1974"

In the decade since the enactment of the "Farm Labor Contractor Registration Act of 1963", it has become apparent that the provisions of the law have not been adequate to accomplish its purpose of protecting migrant farm workers from abuses by farm labor contractors and crew leaders. For nearly a year, the Administration has been working with the Congress to develop legislation to improve the Act, and there has been give and take on all sides. I am pleased that the spirit of cooperation has resulted in legislation greatly strengthening the Act. H.R. 13342, the "Farm Labor Contractor Registration Act Amendments of 1974", is before me today for my signature.

This legislation makes the following improvements in the Act:

-- The Act's coverage is expanded. Under the existing law, a crew leader had to be recruiting migrant workers on an interstate basis, and recruiting 10 or more workers at any one time before being required to register as a farm labor contractor. This bill removes these restrictions to provide protection for many more migrant workers under the Act.

-- Remedies against violators are expanded. The only penalty which could be imposed against crew leaders who violated the present law was a \$500 fine. This has proven to be a relatively ineffective deterrent against violations. This legislation adds a jail sentence of up to 1 year to the present \$500 criminal fine, and a maximum fine of \$10,000 as well as a maximum 3-year jail sentence for subsequent violations of the Act. In addition to the expanded criminal penalties, the Labor Department will now be authorized to seek injunctions and assess administrative civil money penalties. Private individuals will also have the right to bring civil suits, and remedies are provided for those discriminated against for exercising their rights under the Act. The Labor Department is also given increased investigatory authority. These provisions should go a long way toward providing the weapons needed to assure that crew leaders live up to their responsibilities toward the migrant workers they recruit.

-- Crew leaders' responsibilities are increased. Under this legislation, crew leaders will be required to obtain increased vehicle insurance coverage, and provide transportation and housing which satisfies applicable State and Federal health and safety requirements. Crew leaders will be required to make a more complete disclosure to migrant workers they recruit concerning their employment. In addition, the

disclosure will now have to be written, and in a language in which the workers are fluent. These provisions should afford workers additional needed protections and assure them greater information about the work for which they are being recruited.

-- Farmers are given increased responsibilities. Under the present Act, farmers may use unregistered crew leaders. This legislation requires them to observe a valid registration certificate before using crew leaders. This provision will make it more difficult for unregistered crew leaders to operate.

I strongly believe that these and the other amendments to the Farm Labor Contractor Registration Act should go a long way toward improving the working conditions of our Nation's migrant farm workers. I therefore am pleased today to sign into law the "Farm Labor Contractor Registration Act Amendments of 1974."



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

October 21, 1974

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Ash:

In reply to the request of your office, the following report is submitted on the enrolled enactment H. R. 13342, "To amend the Farm Labor Contractor Registration Act of 1963 by extending its coverage and effectuating its enforcement."

This Department recommends that the President approve the bill.

The overall intent of the Amendments is to increase the role and responsibility of the actual user of labor in the employment of both inter and intrastate migrant workers. At the same time it also provides specific measures designed to increase transportation safety and improve the working environment of migrant workers.

The Amendments, by more stringent licensing regulations, will have the effect of reducing the number of registered labor contractors. This bill will cover labor contractors operating completely within one state and removes the previous exclusion of labor contractors recruiting less than ten workers. This should have the greatest impact in California where much migrant labor movement is completely within state lines. The most likely impact on these newly covered contractors will be to induce a change in status from that of an independent labor recruiter and manager of labor to that of a foreman in the employ of the farmer or processor. Family crews appear to be exempt.

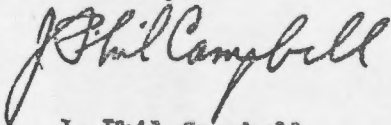
The potential for change in status is further strengthened by the requirement that payroll records be kept by the labor contractor and furnished to the final labor user. The final user is also required to maintain these records. These provisions involve the formalization of the intent of recent court decisions that place greater employment responsibility on the user rather than the procurer of labor. Failure to comply may make the user as well as the procurer subject to prosecution under the Act.

Mr. Roy L. Ash

2

This legislation may require some short-run adjustments in traditional labor management practices of certain labor users (farmers, processors, etc.). The greatest impact will be on employers in fruit and vegetable production and processing. But, over time the benefits from these Amendments should far outweigh any disadvantages and bring about a greater degree of rationality in agricultural labor management relations. This should ultimately increase production efficiency.

Sincerely,

A handwritten signature in cursive script that reads "J. Phil Campbell". The signature is written in dark ink and is positioned above the typed name.

J. Phil Campbell
Under Secretary

Department of Justice
Washington, D.C. 20530

OCT 22 1974

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D.C. 20530

Dear Mr. Ash:

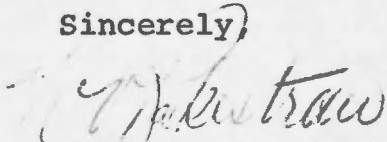
In compliance with your request, I have examined a facsimile of the enrolled bill (H.R. 13342), "To amend the Farm Labor Contractor Registration Act of 1963 by extending its coverage and effectuating its enforcement."

The enrolled bill amends the Farm Labor Contractor Registration Act of 1963, as amended, 7 U.S.C. §§2041 et seq. (the "Act"). This new legislation would extend the coverage of the Act to intrastate, as well as interstate, agricultural employment of migrant workers.

Effectuation of the Act would appear enhanced by the provision of the enrolled bill for increased criminal sanctions and the availability of civil remedies, e.g., temporary or permanent injunctive relief, for violations of the Act or its regulations. Additionally, the bill empowers the Secretary of Labor with subpoena powers to aid in investigating compliance with the Act's requirements.

The Department of Justice defers to the Department of Labor as to whether this bill should receive Executive approval.

Sincerely,


W. Vincent Rakestraw
Assistant Attorney General

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

2120 L STREET, N.W., SUITE 500
WASHINGTON, D.C. 20037

OFFICE OF
THE CHAIRMAN

October 18, 1974

Mr. W. H. Rommel
Assistant Director
for Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Rommel:

This is in response to your request for our comments on enrolled bill H.R. 13342, the Farm Labor Contractor Registration Act Amendments of 1974. In view of our unfamiliarity with the substantive aspects of this legislation, we will limit our comments to sections 13 and 17 of the bill.

Section 13 would amend the Farm Labor Contractor Registration Act of 1963 to provide authority and procedure for administrative imposition of civil penalties. The provision is consistent with Conference Recommendation 72-6, 1 C.F.R. §305.72-6, and closely follows a model civil penalty statute distributed by this office. The only question we might raise is with respect to placing judicial review in the United States District Courts. Where judicial review of agency action is based on the evidentiary record developed in the agency proceeding, it is usually preferable to place review in the United States Courts of Appeals for the reasons set forth in Polcover v. Secretary of the Treasury, 477 F.2d 1223, 1227 (D.C. Cir. 1973). However, review in the district court is by no means rare and may be the better choice in situations where there are unlikely to be many appeals beyond the first level of judicial review. At any rate we have no objection to section 13.

While we are not sure we entirely understand the effect of section 17 of the bill, it would appear to require all administrative law judges in the Department of Labor eventually to be compensated at at least the GS-16 level. This provision, aside from its own merits, may have implications for the classification of the approximately 400 administrative law judges at the Social Security Administration, who are, we understand, nearly all GS-15's. We suggest, therefore, that you consult the Civil Service Commission and the Department of Health, Education and Welfare regarding the desirability of section 17.

Sincerely yours,

Richard K. Berg

Richard K. Berg
Executive Secretary





OFFICE OF THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

OCT 18 1974

Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Ash:

You have asked for our comments on H.R. 13342, an enrolled bill

"To amend the Farm Labor Contractor Registration Act of 1963 by extending its coverage and effectuating its enforcement."

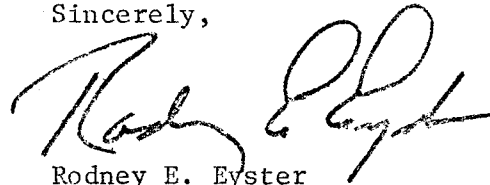
Of primary concern to this Department are Sections 5 and 6 of the bill which amend Section 5 of the Act. These sections add additional requirements for the issuance by the Secretary of Labor of a certificate of registration to a farm labor contractor applicant. Section 5 of the bill requires among other things, proof that the applicant's vehicles for the transportation of migrant workers conform to applicable Federal and state safety standards. Vehicles' failure to conform would be sufficient grounds for the Secretary to refuse to issue or renew, as well as to suspend or revoke a certificate.

Section 6 of the bill increases the present insurance minimums to require that an applicant would have to obtain insurance in the amounts currently required by the Interstate Commerce Act and regulations promulgated pursuant thereto, for vehicles used in the transportation of passengers in interstate commerce. However, the bill also provides that the Secretary of Labor would have the discretion to issue regulations requiring insurance in lesser amounts if he determines that the insurance coverage required by the Interstate Commerce Commission is not available to such applicants in the same manner and in the same amounts as it is to other common carriers.

We support the requirements imposed by Sections 5 and 6 of the enrolled bill because they will provide additional transportation safety and insurance protection to migrant workers which was not available before, and on this basis, recommend that the President sign the enrolled bill.

We note that Section 2 of the bill amends Section 3 of the Act to exclude from the definition of "farm labor contractor" any common carrier or any full-time regular employee thereof engaged solely in the transportation of migrant workers. We have no objection to this exclusion since such carriers are already subject to applicable Federal and state safety standards. As to the other provisions in the enrolled bill, we defer to the Department of Labor.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rodney E. Eyster".

Rodney E. Eyster
General Counsel



GENERAL COUNSEL OF THE
DEPARTMENT OF COMMERCE
Washington, D.C. 20230

OCT 21 1974

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Ash:

This is in reply to your request for the views of this Department concerning H. R. 13342, an enrolled enactment

"To amend the Farm Labor Contractor Registration Act of 1963 by extending its coverage and effectuating its enforcement,"

to be cited as the "Farm Labor Contractor Registration Act Amendments of 1974".

While this Department has no objection to H. R. 13342, we would defer to the views of the Department of Labor as to whether the bill should be approved by the President.

Enactment of this legislation would not involve any increase in the budgetary requirement of this Department.

Sincerely,

Karl E. Bakke

General Counsel

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE GENERAL COUNSEL

October 22, 1974

Mr. W. H. Rommel
Assistant Director
for Legislative Reference
Office of Management and Budget
Washington, DC 20503

Dear Mr. Rommel:

This is in response to your request for the Commission's comments on H.R. 13342, an enrolled bill "to amend the Farm Labor Contractor Act of 1963 by extending its coverage and effectuating its enforcement." The legislation does not effect the functions, powers, or duties of the Interstate Commerce Commission. The Commission's views on the proposal were not requested by the Congress. Because of the time constraints, this letter has not been cleared with the Commission, but I am confident that they would have no objection to Presidential signature.

I note that there is a provision in the legislation which would exempt from the requirements of the Farm Labor Contractor Registration Act a common carrier engaged solely in the transporting, and not the recruiting, soliciting, hiring, or furnishing of migrant workers. I assume that this provision is included because such carriers are already subject to the safety regulations of the Department of Transportation and the respective states. I believe that where only transportation services are involved, current safety regulations imposed on common carriers afford adequate safeguards.

If I can be of further assistance, please let me know.

Sincerely yours,



Larry T. Reida
Associate General Counsel
for Legislation
by Barbara S. Bannister

TO THE HOUSE OF REPRESENTATIVES

We assume that the form of this message including the title and the first paragraph, will be revised to conform with the approach taken in the veto message on H.R. 11541--the National Wildlife Refuge System, dated October 22, 1974.

I am returning today, without my approval, H.R. 13342, The Farm Labor Contractor Registration Act Amendments of 1974. This bill contains provisions designed to strengthen the protections of migrant farm workers under that Act, which I support. I cannot approve the bill, however, because it contains an unrelated rider which creates serious inequities and distortions in the Federal personnel system.

In the decade since the enactment of the Farm Labor Contractor Registration Act of 1963, it has become apparent that the provisions of that law have not been adequate to accomplish its purpose of protecting migrant farm workers from abuses by farm labor contractors. For nearly a year, the Administration has been working with the Congress to develop legislation which would improve the Act, and there has been give and take on all sides. I am pleased with this spirit of cooperation, and endorse those provisions of H.R. 13342 which apply to migrant farm workers.

Unfortunately, the Congress has seen fit to add a rider to this bill, which I cannot accept, totally unrelated to the needs of migrant farm workers.

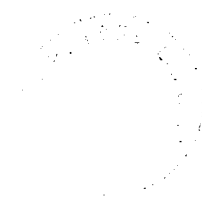
Section 17 of the bill would, among other things, require that the formal judicial-type proceedings of the Administrative Procedure Act be applied to claim adjudication under the Labor Department's "black lung" benefits program. Such claimants are entitled to and should receive fair and speedy resolution of their cases rather than be inhibited and delayed by the formality inherent in the Administrative Procedure Act. On several occasions I have expressed my concern with the increasing cost of carrying



out Government procedures and regulatory requirements. The rider to this bill is another example of how Government regulations and procedures--rather than expediting the business of the people--can delay resolution of issues and add to costs.

I am also gravely disturbed by another part of Section 17 relating to the hearing officers now employed by the Labor Department to hear and decide "black lung" claims. These employees would by fiat be declared to be Administrative Law Judges without regard to their capacity to fill such positions. Since Administrative Law Judges hired in the usual manner must demonstrate such capacity, this feature would be contrary to all principles of a civil service system based upon merit and competition among candidates.

Finally, I cannot accept the feature of Section 17 which would legislatively classify and pay at the GS-16 level these newly designated Administrative Law Judges for the "black lung" program, as well as those who currently hear claims under the Longshoremen's and Harbor Workers' Compensation Act and the members of the Benefits Review Board established by the Longshore Amendments of 1972. Such a provision would arbitrarily impose a grade level without due regard for the relative complexity and difficulty of the work involved. By over-classifying certain positions, it would be disruptive of the principle of equal pay for equal work. This would create inequities within the Labor Department, and between positions of that agency and those in a number of other agencies, including over 400 GS-15 Administrative Law Judges in the Social Security Administration.



My concern about legislating classifications and pay of special groups of employees was the basis for my disapproving H.R. 5094, which provided for an arbitrary and inequitable reclassification of deputy U.S. marshalls. In my first veto upon assuming the Presidency, I expressed my strong concern about granting preferential pay treatment by statute, and indicated that our policy must be to provide equal salaries for equal work. The rider to H.R. 13342 contains deficiencies similar to those in H.R. 5094.

In summary, I cannot accept a legislative provision which would disrupt sound principles of personnel administration, would create serious pay inequities by providing overly liberal salaries to employees in one agency leading to demands for similar treatment by large numbers of employees in other agencies, and would not effectively serve the public interest.

I urge the Congress, upon its return next month, to send me a bill--which I will promptly approve--without the unacceptable personnel provision I have described, a bill which is directed only toward strengthening the Farm Labor Contractor Registration Act.

THE WHITE HOUSE

October , 1974

TO THE HOUSE OF REPRESENTATIVES

I am returning today, without my approval, H.R. 13342, The Farm Labor Contractor Registration Act Amendments of 1974. *(Handwritten: MANN "A")* This bill contains provisions designed to strengthen the protections of migrant farm workers under that Act, which I support. I cannot approve the bill, however, because it contains an unrelated rider which creates serious inequities and distortions in the Federal personnel system.

In the decade since the enactment of the Farm Labor Contractor Registration Act of 1963, it has become apparent that the provisions of that law have not been adequate to accomplish its purpose of protecting migrant farm workers from abuses by farm labor contractors. For nearly a year, the Administration has been working with the Congress to develop legislation which would improve the Act, and there has been give and take on all sides. I am pleased with this spirit of cooperation, and endorse those provisions of H.R. 13342 which apply to migrant farm workers.

Unfortunately, the Congress has seen fit to add a rider to this bill, ^{which is} ~~which I cannot accept~~ totally unrelated to the needs of migrant farm workers. *(Handwritten: I cannot accept this rider.)*

Section 17 of the bill would arbitrarily reclassify hearing officer positions in the Department of Labor, and make existing hearing officers Administrative Law Judges regardless of their qualifications.



I am gravely disturbed by that part of Section 17 relating to the hearing officers now employed by the Labor Department to hear and decide "black lung" claims. These employees would by fiat be declared to be Administrative Law Judges without regard to their capacity to fill such positions. Since Administrative Law Judges hired in the usual manner must demonstrate such capacity, this feature would be contrary to all principles of a civil service system based upon merit and competition among candidates.

I also cannot accept the feature of Section 17 which would legislatively classify and pay at the GS-16 level these newly designated Administrative Law Judges for the "black lung" program, as well as those who currently hear claims under the Longshoremen's and Harbor Workers' Compensation Act and the members of the Benefits Review Board established by the Longshore Amendments of 1972. Such a provision would arbitrarily impose a grade level without due regard for the relative complexity and difficulty of the work involved. By over-classifying certain positions, it would be disruptive of the principle of equal pay for equal work. This would create inequities within the Labor Department, and between positions of that agency and those in a number of other agencies, including ^{approximately} over 400 GS-15 Administrative Law Judges in the Social Security Administration.

My concern about legislating classifications and pay of special groups of employees was the basis for my disapproving H.R. 5094, which provided for an arbitrary



and inequitable reclassification of deputy U.S. marshals. In my first veto upon assuming the Presidency, I expressed my strong concern about granting preferential pay treatment by statute, and indicated that our policy must be to provide equal salaries for equal work. The rider to H.R. 13342 contains deficiencies similar to those in H.R. 5094.

In summary, I cannot accept a legislative provision which would disrupt sound principles of personnel administration, would create serious pay inequities by providing overly liberal salaries to employees in one agency leading to demands for similar treatment by large numbers of employees in other agencies, and would not effectively serve the public interest.

I urge the Congress, upon its return next month, to send me a bill--which I will promptly approve--without the unacceptable personnel provision I have described, a bill which is directed only toward strengthening the Farm Labor Contractor Registration Act.

THE WHITE HOUSE

October , 1974



FOR IMMEDIATE RELEASE

OCTOBER 22, 1974

Office of the White House Press Secretary
(Cleveland, Ohio)

THE WHITE HOUSE

TO THE HOUSE OF REPRESENTATIVES

"A"
~~I am withholding my approval from H.R. 11541, a bill which would amend the National Wildlife Refuge System Administration Act of 1966.~~ I am advised by the Attorney General and I have determined that the absence of my signature from this bill prevents it from becoming law. Without in any way qualifying this determination, I am also returning it without my approval to those designated by Congress to receive messages at this time.

insert
A

FARM LABOR CONTRACTOR REGISTRATION ACT
AMENDMENTS OF 1974

MAY 2, 1974.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. PERKINS, from the Committee on Education and Labor,
submitted the following

REPORT

[To accompany H.R. 13342]



The Committee on Education and Labor, to whom was referred the bill (H.R. 13342) to amend the Farm Labor Contractor Registration Act of 1963 by extending its coverage and effectuating its enforcement, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The full committee ordered H.R. 13342 reported on April 3, 1974, by a unanimous vote.

PURPOSE AND SUMMARY OF THE LEGISLATION

The major purpose of the reported bill is to cure recognized deficiencies in the enforcement of the original legislation by extending coverage of the act by creating stronger provisions for the act's enforcement and by creating a civil remedy for persons aggrieved by violations of the act.

The bill deletes the existing exception to the act's coverage for farm labor contracting conducted intrastate by extending coverage to interstate commerce as defined in the Fair Labor Standards Act and the Internal Revenue Code.

The bill empowers the Secretary of Labor to enforce the act through investigations, the issuance of subpoenas, and the referral of probable violations to the Department of Justice. It permits a person claiming to be aggrieved by a violation of the act to file suit for damages up to \$500 or other relief in the appropriate United States District Court.

The bill increases existing amounts of insurance applicable to motor vehicles used in the transportation of migrant workers to \$10,000 for injury or death to one person, \$50,000 for injury or death to all persons on one accident, and \$10,000 for loss or damage to property.

An agricultural employer who engages a farm labor contractor is required to observe in the contractor's possession a valid certificate of registration under the Act.

Farm labor contractors at the time of recruitment are required to disclose information to each worker in written form regarding the period of employment and whether a labor dispute exists in the area of employment.

The bill increases the maximum penalty for willful and knowing violations of the Act by providing for a fine of not more than \$1,000 or imprisonment for not more than six months, or both. Discrimination against any farm worker for filing a complaint under the Act is prohibited. The Secretary is authorized to investigate and file suit on behalf of a farm worker determined to have been the object of such discrimination.

LEGISLATIVE HISTORY

The precursor of the present bill was H.R. 7597, introduced by the Chairman of the Agricultural Labor Subcommittee (Mr. Ford for himself, Mr. Thompson of New Jersey, Mr. O'Hara, Mrs. Grasso, Mr. Meeds and Mr. Lehman) on May 8, 1973. H.R. 7597 was the result of an extensive study by the subcommittee staff and an oversight hearing in Dade County, Florida, on April 6 and 7, 1973, during which numerous deficiencies in the Farm Labor Contractor Registration Act of 1963 were discovered, due to the Act's incomplete coverage of contractors and its inadequate provision for enforcement. To correct these deficiencies, H.R. 7597 extended the Act's coverage to any recruitment of workers by farm labor contractors in interstate commerce and provided a federal civil remedy to persons aggrieved by violations of the Act.

Hearings were held on H.R. 7597 on May 14 and November 9, 1973, which demonstrated some inadequacies in H.R. 7597. Thus, H.R. 12516, which incorporated the material provisions of H.R. 7597 and added other provisions extending the Act's coverage, was introduced on February 4, 1974 by Mr. Landgrebe (for himself, Mr. Quie, Mr. Erlenborn, Mr. Hansen and Mr. Towell).

At a subcommittee mark-up session on February 20, 1974, the text of H.R. 12516 was substituted for the text of H.R. 7597 and several amendments were adopted. The subcommittee ordered a clean bill favorably reported to the full Committee. H.R. 13342 was introduced on March 7, 1974, by all the members of the Subcommittee on Agricultural Labor (Mr. Ford, Mr. Landgrebe, Mrs. Grasso, Mr. Thompson of New Jersey, Mr. Hawkins, Mr. Lehman, Mr. Towell and Mr. Steiger) and by additional members of the Committee on Education and Labor (Mr. O'Hara, Mr. Meeds, Mr. Quie, Mr. Erlenborn and Mr. Hansen of Idaho).

ESTIMATE OF COST

Pursuant to the requirements of clause 7 of Rule XIII of the Rules of the House of Representatives, the Committee estimates that this legislation will result in an increased Federal cost of \$500,000 for each fiscal year following enactment. This figure is based on the estimate provided in the Committee by the Office of Budget of the Department of Labor which follows:

Estimate

Coverage extended to 13,000 additional contractors, including 4,000 interstate crew leaders, 4,000 dayhaul contractors and 5,000 miscellaneous types.

Resources for fiscal year 1975 (20 positions)-----	\$500,000
20—GS-12 compliance officers at \$17,497-----	349,940
Extra day of pay-----	1,000
10 percent lapse new positions-----	—23,000
Personnel compensation-----	344,000
Nonlabor costs-----	156,000
Total-----	500,000

Source: Department of Labor, Office of Budget.

BACKGROUND OF H.R. 13342

The men and women who harvest our fresh fruits and vegetables move with the seasons in three major migrant streams. For instance, in the east coast stream, many migrants have a home base in Florida. In the early spring, they move northward to the potato or bean fields of eastern North Carolina and then up the coast as the crops successively mature in Maryland, Delaware, New Jersey and Long Island. They may then move to upstate New York when fruits ripen in the late summer, then move southward picking apples in the Virginia Shenandoah Valley and peaches in Georgia or the Carolinas, and arrive home in Florida in time for the late fall cultivation. Their counterparts in the middle stream may maintain their home base in Texas. Traditionally, they may pick cotton in Texas in early spring, then follow the midwest stream north to the sugar beet fields of Colorado, on to the cherries of Michigan or the tomato fields of Indiana, and return to Texas for the fall cotton harvest. On the west coast, the migrants follow the harvest stream northward, perhaps from Arizona to the early lettuce in California on toward the Oregon hops or Washington apples. Also, on the west coast there are many migrants who never leave their home state of California but instead migrate from one area to another, all within the confines of the state boundaries.

Some farmworkers live in the commuting areas and "day haul" from their homes to their farm work. Others travel alone or in family groups and are "freewheelers" or "walk ons." Still others are recruited directly by large farmers, by associations of farmers, or by the large packing-houses and cannery companies that purchase the crops and do their own harvesting and processing.

Most farmworkers, however, are recruited, transported, housed, hired and directed by a single person—the farm labor contractor, known interchangeably as a "crew leader" in some areas. He is usually the single bridge between the farm operator as ultimate employer and his migrant agricultural work force.

The Farm Labor Contractor; His Power and Potential in the Lives of Migrants

In addition to "recruiting" the work force, the farm labor contractor (or "crew leader") provides many other functions. First of all, he generally owns a bus or a truck and provides (for a fee) the necessary

transportation northward. Upon arrival at the location of the temporary work, he transports the workers from their living accommodations to the fields and sometimes hauls the produce to market. Often he manages the field camp where the migrants live, collecting the rents and tending the maintenance. Crew leaders often have the "food concession" and serve meals and the "snacks" between meals—again for a price. They supervise and manage the crew in the fields and keep a tally of the individual production. They are the paymasters, paying the workers with money received by contract or by commission from the farmer.

The contractor's unchallenged bargaining position creates a constant opportunity for abuse of both the farmer and the farmworker. Patterns of such abuse emerged rather dramatically in Congressional testimony in both Houses preceding passage of the Act in 1963 and again in testimony before the Subcommittee on Agricultural Labor during the past year.

Evidence emerged of contractor exploitation of farmers. The contractor would agree to arrive with a crew on a designated date, and simply fail to show up because better opportunities presented themselves elsewhere. This would leave the farmer with no help to harvest his ripening crop. More common is the practice of leaving after the first picking, when the second and third pickings become more difficult and less profitable.

Abuse of workers by the contractor/crew leader appears more the rule than the exception. The testimony revealed that in many cases the contractor tends to exaggerate conditions of employment when he recruits workers in their home base or that he fails to inform them of their working conditions at all; tends to transport them in unsafe vehicles; fails to furnish promised housing or else furnishes substandard and unsanitary housing; often operates a company store while making unitemized deductions from workers' paychecks for purchases, and usually pays the workers in cash without records of units worked or taxes withheld.

The Farm Labor Contractor Registration Act of 1963; Its Purpose and Provisions

In 1963, Congress sought to remedy some of these abuses by enacting the Farm Labor Contractor Registration Act.

In essence, that Act requires that all contractors or "crew leaders" be registered with the Secretary of Labor, upon a showing of moral and fiscal responsibility. Registration was subject to denial to an applicant shown to have been convicted of certain crimes, or who failed to perform on contracts with farm operators, or who gave false or misleading information to migrant workers concerning the terms of farm employment. The Act required all crew leaders to inform each worker at the time of recruitment (1) the expected area of employment, (2) the crops and operations on which he would be employed, (3) the transportation facilities, (4) the types and cost of housing upon arrival at each place of work, (5) the wage rates to be paid, and (6) any charges that the crew leader expected to make for his services. In addition, the crew leader was required at each place of employment to post the terms and conditions of employment at that particular place. If he managed the housing facilities, he was required to post the terms and conditions of occupancy. If he was the pay-

master, he was required to keep payroll records and deduct from the wages all payments required under Federal law. In regard to transportation, the crew leader was required to provide insurance in an amount thought in 1963 to be adequate. Violation of any of the above requirements could result in the revocation of the certificate or in criminal prosecution, with a fine up to \$500, or both.

RECENT TESTIMONY SUPPORTING ADOPTION OF H.R. 13342

Evidence presented to the Subcommittee on Agricultural Labor during the past year indicated quite clearly that many of the abuses which were the subject of the 1963 legislation have continued unabated. But for technical exceptions, the hearings produced no substantive criticism of the proposed law other than (1) calls for strengthening the bill even further and (2) one comment that the bill might duplicate certain registration requirements under Florida law. From this testimony emerged H.R. 12516, introduced by Mr. Landgrebe, and from it emerged H.R. 13342 sponsored by the entire Subcommittee.

Cumulative testimony from public officials, growers, former farm labor contractors, unions and concerned citizens shows an undisputed pattern of continuing abuse in the activities of many contractors.

(1) *The abuses sought to be curbed by the 1963 law continue unabated.*—A Pennsylvania public official reported complaints from farmers of crew leaders leaving a job before the completion of a harvest, thus allowing a large tomato crop to spoil. He reported also of complaints from migrants who alleged that they were being cheated out of their wages, overcharged for the food furnished, and physically assaulted—all by the contractor who had recruited them.

A former farm labor contractor testified that he was unaware of any contractor who did *not* give false or misleading information to migrants in recruiting; that such contractors commonly receive a certain amount from the farmer, but "skim" and pay a lesser amount to the worker; that they overcharge on rent, food, liquor and cigarettes, and that very often they carry guns to maintain authority.

Several witnesses testified about misleading recruitment practices, where workers were hired allegedly as tractor drivers, but later were employed as stoop laborers; where workers are promised adequate living facilities but were actually housed in cramped and substandard rooms, and where workers were recruited unaware of the fact that they were to be used as strikebreakers.

(2) *The present law is largely ignored and is not adequately enforced.*—Officials of the United States Department of Labor estimated that, of over 6,000 crew leaders operating across state lines, fewer than 2,000 are registered as required by law. A spot check of over 900 farm labor contractors last year revealed violation of the Act by 73 per cent of those checked. Despite widespread violations, no contractor registrations were revoked or suspended last year; only one person has ever been convicted under the Act in its entire history of almost 10 years.

Several explanations occur for the Act's ineffective enforcement to date. One is the difficulty of proving that the contractor is engaged in recruitment across state lines; another is the relatively light penalty upon conviction, with no provision for jail sentence even for serious

or repeated violations. Perhaps most important of all, however, is the Department's shortage of adequate manpower to police the Act.

(3) *The proposed legislation would correct deficiencies in existing laws.*—H.R. 13342 would facilitate enforcement of the Farm Labor Contractors Registration Act by extending its coverage to recruitment which may occur entirely within a state by broadly defining "interstate" activity as set forth in either Title 29 U.S.C. Sec. 203(f) or Title 26 U.S.C. Sec. 3121(g). The original bill (H.R. 7597) was premised on the belief that extension of coverage would dilute the limited enforcement resources within the Department of Labor and proposed instead to limit coverage by eliminating jurisdiction over the "day haul" operations. However, testimony strongly indicated the need to extend jurisdiction. Department of Labor officials assured the Subcommittee that, under its new staff reorganization, it could police the crew leader in the "day haul" operations, in the extended operations across state lines, and in the more limited intrastate operations within the large agricultural states such as California and Florida. The Department, as well as virtually all other witnesses who addressed this issue, strongly favored extending rather than decreasing jurisdiction in order to eliminate the intrastate loophole currently utilized by many contractors.

The bill further effectuates enforcement of the Act (a) by creating an unfettered federal civil remedy for persons aggrieved by a contractor's violation of the Act; (b) by empowering the Secretary of Labor with positive duties of investigation and action upon discovery of violations; (c) by requiring the grower to assure that the contractor with whom he deals is registered under the Act; and (d) by authorizing the Secretary of Labor to seek injunctive relief against violations in addition to administrative and criminal sanctions.

H.R. 13342 increases the amount of vehicle liability insurance required of contractors engaged in the transportation of workers. The Committee emphasizes that the amounts set forth in the bill are merely a minimum and reasonably could be set at higher amounts. Evidence indicates that any responsible contractor can well afford the premium attendant to the increased rates.

CONCLUSION

The Committee believes the Farm Labor Contractor Registration Act must be expanded to provide the broadest feasible coverage and to include intrastate recruitment, transportation or hire of workers by farm labor contractors for agriculture as defined under either the Fair Labor Standards Act or the Internal Revenue Code. In addition, the bill's provisions of an unfettered civil remedy for aggrieved persons, a sharing of responsibility with growers for enforcement, and placing explicit powers and affirmative duties on the Secretary of Labor are additions all of which are crucial to the effective enforcement of existing law.

SECTION-BY-SECTION EXPLANATION AND RAMSEYER RULE PRINT

Following is an explanation of the provisions of H.R. 13342, as approved and reported by the Committee on Education and Labor on April 3, 1974.

SHORT TITLE

The first section of this legislation provides that it may be cited as the "Farm Labor Contractor Registration Act Amendments of 1974".

EXTENSION OF COVERAGE

Section 2 amends section 3(d) of the Farm Labor Contractor Registration Act of 1963 (referred to in this explanation as the "Act") to extend the coverage of the Act to all aspects of commerce as defined either in the Fair Labor Standards Act, Title 29 U.S.C. 203(f) or the Internal Revenue Code, 26 U.S.C. 3121(g), applicable to transactions which may occur entirely within a state.

COVERAGE OF CONTRACTORS ACTING THROUGH AGENTS

Section 3 amends section 3(b) of the Act to provide that the prohibitions established by the Act apply to contractors who are not registered but direct the activities of a farm labor contractor, as well as to both the direct and indirect actions of farm labor contractors. The intent of the amendment made by section 3 is to apply such prohibitions to acts which any such contractor commits through agents acting on his own behalf.

APPLICATION FOR CERTIFICATE OF REGISTRATION

Section 4 amends section 5(a) (1) of the Act to eliminate the requirement that written applications shall be sworn to by the applicant.

INSURANCE COVERAGE

Section 5 amends section 5(a) (2) of the Act to provide that registration applicants shall carry motor vehicle insurance in the following amounts: (1) \$10,000 for bodily injuries to or death of one person (increased from \$5,000 required by the Act); (2) \$50,000 for bodily injuries to or death of all persons injured or killed in any one accident (increased from \$20,000 required by the Act); and (3) \$10,000 for the loss or damage in any one accident to property of others (increased from \$5,000 required by the Act).

OBLIGATIONS OF FARM LABOR CONTRACTORS

Denial of certain facilities and services

Subsection (a) of section 6 amends section 6(a) of the Act to provide that a farm labor contractor shall be denied the facilities and services authorized by the Wagner-Peyser Act (48 Stat. 113; 29 U.S.C. 49 et seq.) if such contractor refuses or fails to exhibit his certificate of registration.

Disclosure of certain information

Subsection (b) of section 6 amends section 6(b) of the Act to provide that a farm labor contractor shall disclose to each worker at the time such worker is recruited (1) the period of employment of such worker; and (2) whether a labor dispute exists in the area of contracted employment. The amendment made by subsection (b) of sec-

tion 6 further provides that such information, together with certain other information required to be disclosed by section 6(b) of the Act, shall be disclosed in written form, and that the Secretary of Labor may prescribe appropriate forms for recording such information. It should be noted, however, that this section is not intended to preclude or discourage the farm labor contractor from providing the required information orally as well as in written form, and that the intent of this section is to emphasize that the law demands that the farm labor contractor make every effort to convey to a potential worker all relevant information relating to the job for which the worker is being recruited, to the best of the farm labor contractor's knowledge at the time of recruitment.

AUTHORITY TO OBTAIN INFORMATION

Section 7 amends section 7 of the Act to provide that the Secretary of Labor shall have an affirmative duty to monitor and investigate and gather data with respect to matters which may aid in carrying out the Act. The amendment made by section 7 further provides that if a complaint is filed with the Secretary of Labor or he has reason to believe that a farm labor contractor has committed a violation of the Act, then the Secretary of Labor may issue subpoenas in connection with fulfilling his enforcement obligations. It is the intention of the Committee with respect to this amendment to place a mandatory duty on the Secretary of Labor both to monitor the Act in a manner adequate to its enforcement and to refer immediately any probable violations of the Act to the United States Department of Justice.

PENALTY PROVISIONS

Extension of coverage

Subsection (a), of section 8 amends section 9 of the Act to provide that the penalty provisions shall apply not only to farm labor contractors and their employees but also to any person directing the activities of any such contractor and to any person engaging the services of any such contractor to supply farm laborers. The amendment made by subsection (a) of section 8 also eliminates any penalty for a violation of any regulation prescribed under the Act, thus leaving the penalty provisions of section 9 applicable only to persons who willfully and knowingly violate the provisions of the Act.

Increase in penalties; injunctions

Subsection (b) of section 8 amends section 9 of the Act to provide that the maximum fine for violation of any provision of the Act shall be \$1,000 (increased from \$500 provided by the Act), and to provide that any person who violates any provision of the Act may be imprisoned not more than 6 months. The amendment made by subsection (b) of section 8 further provides that the Secretary of Labor may petition the appropriate district court of the United States for injunctive relief with respect to the violation of any provision of the Act.

CERTIFICATES OF REGISTRATION

Section 9 amends section 4 of the Act to provide that any person who engages the services of any farm labor contractor to supply farm laborers shall be required to observe in the possession of such contractor a certificate of registration from the Secretary of Labor which is in full force and effect. The amendment made by section 9 further provides that any person who fails to meet such requirement may be denied the facilities and services authorized by the Wagner-Peyser Act (48 Stat. 113, 29 U.S.C. 49 et seq.) for a period of not more than 3 years. Failure to observe a certificate of registration in the possession of a farm labor contractor at the time any person engages the farm labor contractor's services also subjects that person to the penalty provisions of the Act.

PROHIBITION OF DISCRIMINATION; CIVIL ACTIONS

Section 10 amends the Act by adding at the end thereof two new sections. Section 16(a) of the Act (added by section 10) makes it unlawful for any person to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any farmworker because such farmworker has, with just cause, filed any complaint or instituted any proceeding under the Act or has testified or is about to testify in any such proceeding.

Section 16(b) of the Act (added by section 10) provides that any person who believes he has been discriminated against may seek an investigation by the Secretary of Labor. If such investigation reveals any violation of the provisions of section 16, the Secretary shall bring an action for relief in the appropriate district court of the United States. Such relief may include injunctive relief, rehiring or reinstatement of the worker, or damages of not more than \$1,000 for each violation.

Section 17 of the Act (added by section 10) provides that any person who claims to be aggrieved by the violation of any provision of the Act may file suit in the appropriate district court of the United States without regard to the amount in controversy or to the citizenship of the parties. This provision is free of any requirement that such a person first exhaust any administrative remedies otherwise available, like that created under section 16(b), prior to filing suit. Section 17 of the Act further provides that such court may appoint an attorney for such person, may render declaratory and injunctive relief for any violation, and may award damages of not more than \$500 for each violation. Section 17 of the Act further provides that any civil action brought under such section shall be subject to appeal as provided by section 1291 and section 1292 of title 28, United States Code.

CHANGES IN EXISTING LAW MADE BY H.R. 13342

For the information of the members of the House of Representatives, changes in existing law made by H.R. 13342, as approved and

reported by the Committee on Education and Labor on April 3, 1974, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

THE FARM LABOR CONTRACTOR REGISTRATION ACT OF 1963

DEFINITIONS

SEC. 3. As used in this Act—

(a) * * *

(b) The term "farm labor contractor" means any person, who *directly or indirectly*, 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 calendar year for interstate agricultural employment. Such term shall not include (1) any nonprofit charitable organization, public or nonprofit private educational institution, or similar organization; (2) any farmer, processor, canner, ginner, packing shed operator, or nurseryman who engages in any such activity for the purpose of supplying migrant workers solely for his own operation; (3) any full-time or regular employee of any entity referred to in (1) or (2) above; or (4) any person who engages in any such activity for the purpose of obtaining migrant workers of any foreign nation for employment in the United States, if the employment of such workers is subject to (A) an agreement between the United States and such foreign nation, or (B) an arrangement with the government of any foreign nation under which written contracts for the employment of such workers are provided for and the enforcement thereof is provided for the United States by an instrumentality of such foreign nation.

* * * * *

(d) The term "interstate agricultural employment" means employment in any service or activity included within the provisions of section 3(f) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 203(f)), or section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)) [*when such service or activity is performed by an individual worker who has been transported from one State to another or from any place outside of a State to any place within a State*].

CERTIFICATE OF REGISTRATION REQUIRED

SEC. 4. (a) No person shall engage in activities as a farm labor contractor unless he first obtains a certificate of registration from the Secretary, and unless such certificate is in full force and effect and is in such person's immediate possession.

(b) A full-time or regular employee of any person holding a valid certificate of registration under the provisions of this Act shall not, for the purpose of engaging in activities as a farm labor contractor solely on behalf of such person, be required to obtain a certificate of registration hereunder in his own name. Any such employee shall be required to have in his immediate personal possession when engag-

ing in such activities such identification as the Secretary may require showing such employee to be an employee of, and duly authorized to engage in activities as a farm labor contractor for, a person holding a valid certificate of registration under the provisions of this Act. Except as provided in the foregoing provisions of this subsection, any such employee shall be subject to the provisions of this Act and regulations prescribed hereunder to the same extent as if he were required to obtain a certificate of registration in his own name.

(c) *No person shall engage the services of any farm labor contractor to supply farm laborers unless he first observes in the immediate possession of the farm labor contractor a certificate from the Secretary that is in full force and effect at the time he contracts with the farm labor contractor.*

(d) *Upon determination by the Secretary that any person knowingly has engaged the services of any farm labor contractor who does not possess such certificate as required by subsection (c) of this section, the Secretary is authorized to deny such person the facilities and services authorized by the Act of June 6, 1933 (48 Stat. 113; 20 U.S.C. 49 et seq.), commonly referred to as the Wagner-Peyser Act, for a period of up to three years.*

ISSUANCE OF CERTIFICATE OF REGISTRATION

SEC. 5. (a) The Secretary shall, after appropriate investigation, issue a certificate of registration under this Act to any person who—

(1) has executed and filed with the Secretary a written application subscribed [and sworn] to by the applicant containing such information (to the best of his knowledge and belief) concerning his conduct and method of operation as a farm labor contractor as the Secretary may require in order effectively to carry out the provisions of this Act;

(2) has filed, within such time as the Secretary may prescribe, proof satisfactory to the Secretary of the financial responsibility of the applicant or proof satisfactory to the Secretary of the existence of a policy of insurance which insures such applicant against liability for damages to persons or property arising out of the applicant's ownership of, operation of, or his causing to be operated any vehicle for the transportation of migrant workers in connection with his business, activities, or operations as a farm labor contractor. The amount of any such policy of insurance shall be not less than the amount required under the law or regulation of any State in which such applicant operates a vehicle in connection with his business, activities, or operations as a farm labor contractor; but in no event shall the amount of such insurance be less than [\$5,000] \$10,000 for bodily injuries to or death of one person; [\$20,000] \$50,000 for bodily injuries to or death of all persons injured *in* or killed in any one accident; [\$5,000] \$10,000 for the loss or damage in any one accident to property of others; and

(3) has filed, within such time as the Secretary may prescribe, a set of his fingerprints.

* * * * *

OBLIGATIONS AND PROHIBITIONS

SEC. 6. Every farm labor contractor shall—

(a) carry his certificate of registration with him at all times while engaging in activities as a farm labor contractor and exhibit the same to all persons with whom he intends to deal in his capacity as a farm labor contractor prior to so dealing and shall be denied the facilities and services authorized by the Act of June 6, 1933 (48 Stat. 113; 29 U.S.C. 49 et seq.), commonly referred to as the Wagner-Peyser Act, upon refusal or failure to exhibit the same;

(b) ascertain and disclose to each worker at the time the worker is recruited the following information in written form to the best of his knowledge and belief: (1) the periods of employment, (2) the [area] areas of employment, [(2)] (3) the crops and operations on which he may be employed, [(3)] (4) the transportation, housing, and insurance to be provided him, [(4)] (5) the wage rates to be paid him, [and (5)] (6) the charges to be made by the contractor for his services[;], and (7) whether or not a labor dispute exists in the area of contracted employment; the Secretary may prescribe an appropriate form for recording such information;

AUTHORITY TO OBTAIN INFORMATION

SEC. 7. (a) The Secretary or his designated representative [may] affirmatively shall monitor and investigate and gather data with respect to matters which may aid in carrying out the provisions of this Act. In any case in which a complaint has been filed with the Secretary regarding a violation of this Act or with respect to which the Secretary has reasonable grounds to believe that a farm labor contractor has violated any provisions of this Act, the Secretary or his designated representative [may] shall investigate and gather data respecting such case, and may, in connection therewith, enter and inspect such places and such records (and make such transcriptions thereof), question such persons, and investigate such facts, conditions, practices, or matters as may be necessary or appropriate to determine whether a violation of this Act has been committed.

(b) The Secretary or his designated representative may issue subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in connection with such investigations. The Secretary, or any agent designated by him for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. In case of contumacy or refusal to obey a subpoena, any district court of the United States within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Secretary or his designated representative, shall have jurisdiction to issue to such person an order requiring such person to appear before the Secretary or his designated representative, to produce evidence if so ordered, to give testimony touching the mat-

ter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(c) The Secretary shall report and refer all information concerning any probable violations to the appropriate office of the United States Department of Justice.

PENALTY PROVISIONS

SEC. 9. Any farm labor contractor or employee thereof, any person directing the activities of a farm labor contractor, or any person engaging the services of any farm labor contractor to supply farm laborers, who willfully and knowingly violates any provision of this Act [or any regulation prescribed hereunder shall be fined not more than \$500] may be fined not more than \$1,000, imprisoned for not more than six months, or both. In addition, the Secretary or his designated representative shall have power to petition any district court of the United States within any district where any violations of any provision of this Act or any regulation prescribed hereunder is alleged to have occurred or wherein such person resides or transacts business, for appropriate injunctive relief. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Secretary or his designated representative such temporary or permanent relief or restraining order as it deems just and proper.

EFFECTIVE DATE

SEC. 15. The provisions of this Act shall become effective on January 1, 1965.

DISCRIMINATION PROHIBITED

SEC. 16. (a) No person shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any farmworker because such worker has, with just cause, filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceedings or because of the exercise, with just cause, by such worker on behalf of himself or others of any right or protection afforded by this Act.

(b) Any worker who believes, with just cause, that he has been discriminated against by any person in violation of this section may, within thirty days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall cause such investigation to be made as he deems appropriate. If upon such investigation, the Secretary determines that the provisions of this section have been violated, he shall bring an action in any appropriate United States district court against such person. In any such action the United States district courts shall have jurisdiction, for cause shown to restrain violation of subsection (a) and order all appropriate relief including rehiring or reinstatement of the worker or damages up to and including \$1,000 for each and every violation.

CIVIL ACTIONS BY PRIVATE PARTIES

SEC. 17. Any person claiming to be aggrieved by the violation of any provision of this Act or any regulation prescribed hereunder may on behalf of himself file suit in any district court of the United States having jurisdiction of the parties without respect to the amount in controversy or without regard to the citizenship of the parties. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action. If the court finds that the respondent or respondents have intentionally violated any provision of this Act or any regulation prescribed hereunder, it may render declaratory and injunctive relief, and may award damages up to and including \$500 for each and every violation. Any civil action brought under this section shall be subject to appeal as provided in sections 1291 and 1292 of title 28, United States Code.

FARM LABOR CONTRACTOR REGISTRATION ACT AMENDMENTS OF 1974

OCTOBER 1, 1974.—Ordered to be printed

Mr. NELSON, from the Committee on Labor and Public Welfare,
submitted the following

REPORT

[To accompany H.R. 13342]

The Committee on Labor and Public Welfare, to which was referred the bill (H.R. 13342) to amend the Farm Labor Contractor Registration Act of 1963 extending its coverage and effectuating its enforcement, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

BACKGROUND AND NEED FOR THE LEGISLATION

Migrant agricultural labor has been used extensively in this country since the latter part of the nineteenth century. Typically the migrant labor force has been composed of large ethnic blocks. During the early part of this century, Chinese, Japanese, and Filipinos constituted the majority of those who worked the West Coast fields, while their East Coast counterparts included many Irish, Italian, and Scandinavian workers. Today, the bulk of the migrant workforce is made up of Mexican-Americans, Puerto Ricans, West Indians, and native born black Americans.

Migrant and seasonal farm workers have long been among the most exploited groups in the American labor force. Despite their hard toil and valuable contribution to our nation's economy, their lot has historically been characterized by low wages, protracted hours, and horrid working conditions. The families, and particularly the children, of these workers have also suffered from the typical symptoms of chronic poverty—being undereducated, ill-fed, poorly housed, and lacking even the most rudimentary health and sanitary facilities. The tragedy is further compounded when it is realized that the victims of

this poverty are in fact the working poor, those who offer an honest day's labor, but are denied the full benefits such work should provide, which are so desperately needed to provide the most basic necessities of life.

Exploitation of migrant and seasonal farm labor has continued despite, or perhaps even because of, the startling transformation in American agriculture that has taken place since World War I.

The small family farm, though still many in number, has been effectively replaced because of productivity by large commercial operations. Indeed, it is "agribusiness" which is now the mainstay of modern American farming. Although the impact of mechanization and crop specialization has diminished the overall demand for farm workers generally, the periodic need for such seasonal labor remains acute.

Basically, there are two types of seasonal farm laborers: the migrants who travel from state-to-state along fairly established patterns and those who live permanently in the agricultural area where they work. In both cases, the primary users of such labor—farmers growers, and packing shed operators, have experienced great difficulty in obtaining a sufficient supply of agricultural labor either directly or through the offices of the United States Employment Service.

The result has been the emergence and evolution of the farm labor contractor to a position of prominence as the primary supplier of agricultural labor. Although the specific functions of the farm labor contractor, often called a "crew leader" or "crew pusher", might vary from job to job, his role essentially remains the same—a bridge between the operator and the worker. In many instances, the contractor is not only the recruiter, hirer, and transporter, but acts as the supervisor, foreman, and paymaster as well. In addition, the contractor frequently controls housing and other vital aspects of the workers' everyday needs. In the vast majority of cases, the crew leader is not only the link between the worker and the grower, but also acts as an intermediary with the non-farming community as well. In the latter role, the crew leader functions as a sort of cultural broker, mediating between the worker and the outside, often alien, community.

Because of these factors, the contractor has been permitted to exercise an inordinate amount of leverage over the workplace situation. The contractor's unchallenged bargaining position is clearly one of detriment to both the farmworker and operator. Patterns of abuse have been well documented in Congressional hearings over the years.

It is unfortunately an all too common experience for workers to be abused by farm labor contractors. Testimony revealed that in many cases the contractor: exaggerates conditions of employment when he recruits workers in their home base, or that he fails to inform them of their working conditions at all; transports them in unsafe vehicles; fails to furnish promised housing, or else furnishes substandard and unsanitary housing; operates a company store while making unitemized deductions from workers' paychecks for purchases, and pays the workers in cash without records of units worked or taxes withheld.

Evidence has also emerged of contractor exploitation of farmers. The contractor would agree to arrive with a crew on a designated date, and simply fail to show up because better opportunities presented themselves elsewhere. This would leave the farmer with no help to harvest

his ripening crop. More common is the practice of leaving after the first picking when the second and third pickings become more difficult, and consequently less profitable.

In 1963, Congress sought to remedy some of these abuses by enacting the Farm Labor Contractor Registration Act. In essence, that Act requires that all contractors or "crew leaders" be registered with the Secretary of Labor, upon a showing of moral and fiscal responsibility. Registration is subject to denial if an applicant has been convicted of certain crimes, fails to perform contracts with farm operators, or gives false or misleading information to migrant workers concerning the terms of farm employment. The Act requires all crew leaders to inform each worker at the time of recruitment of (1) the expected area of employment, (2) the crops and operations on which he will be employed, (3) the transportation facilities, (4) the types and cost of housing upon arrival at each place of work, (5) the wage rates to be paid, and (6) any charges that the crew leader expects to make for his services. In addition, the crew leader is required at each place of employment to post the terms and conditions of employment at that particular place. If he manages the housing facilities, he is required to post the terms and conditions of occupancy. If he is the paymaster, he is required to keep payroll records and deduct from the wages all payments required under Federal law. In regard to transportation, the crew leader is required to provide vehicle insurance. Violation of any of the above requirements can result in the revocation of the certificate or in criminal prosecution, with a fine up to \$500, or both.

However, testimony before the Congress has shown that the Act of 1963 has failed to achieve its original objectives. It has become clear that the provisions of the Act cannot be effectively enforced. Non-compliance by those whose activities the Act were intended to regulate has become the rule rather than the exception.

Officials of the United States Department of Labor report that of an estimated 6,000 crew leaders operating across state lines, fewer than 2,000 are registered as required by the present law. Department of Labor investigation of over 1,100 farm labor contractors last year revealed violation of the Act by more than 70% of those checked. While those found in violation were brought into compliance with the Act, including getting those unregistered to register, the Department was unable to locate thousands of unregistered crew leaders.

It is quite evident that the Act in its present form provides no real deterrent to violations. Since the Act's inception, only four persons have been referred to the Department of Justice for criminal prosecution; and only one person has ever been convicted and sentenced.

There are several causes for the Act's ineffective enforcement to date. These include the difficulty of proving that the contractor is engaged in recruitment across state lines; the absence of any requirement that those who benefit from the work of migrant laborers assume responsibility for engaging only registered farm labor contractors; the relatively mild penalties provided by the Act; and the lack of a private remedy for aggrieved workers. The Committee is deeply concerned about this situation, and seeks to provide the Department with a more realistic arsenal of remedies in order to deter and correct the widespread violations that now exist.

The lack of adequate statutory authority with which to deter and correct the abuses of migrant workers by farm labor contractors has been compounded by the relatively meager resources available to the Department for enforcement and administration of the Act. The Committee urges the Department to reallocate its resources to the maximum extent possible in order to assure a more effective enforcement effort.

The additional enforcement authority provided by the amendments should enable the Labor Department to select and apply corrective action as needed for the differing types of violations it discovers in its enforcement program. At present, the Department is basically limited to a choice between referral for prosecution, which carries a nominal penalty of \$500, or suspension or revocation of a certificate of registration, in cases where the contractor has one. Such suspension under the applicable provisions of the Administrative Procedure Act cannot be accomplished in the ordinary case without first giving the contractor the opportunity, over a period of time, "to demonstrate or achieve compliance with all lawful requirements."

It is the intent of the amendments that the Labor Department should no longer have to seek voluntary compliance with the law from a violator who has plainly disregarded it. The Department should clearly be able to institute proceedings to impose appropriate statutory sanctions without unnecessary delay where there is clear evidence of aggravated, serious, or repeated violations of the Act. In such instances, the public interest requires that the contractor be subject to immediate proceedings for suspension or withdrawal of his certificate unless he can show cause to the contrary. Such violators should not be permitted to obtain postponement or avoidance of this sanction on the unrealistic assumption that they will comply voluntarily in the future.

The Committee is aware that illegal aliens have become an increasingly large source of farm labor in this country, and that the services of a contractor are often utilized to procure this clandestine workforce. Although the existing Act generally prohibits such activities by making it grounds for revoking or suspending the contractor's registration, such sanction in itself is ineffective since the majority of contractors have in the past ignored the Act's registration requirement. Thus, if this tide of illegal immigration is to be stemmed, stricter enforcement and stronger penalties must be applied against those who violate the Act. These additional steps are necessary in light of the adverse effect such importation of illegal aliens has had on the wages and job security of native Americans and lawfully admitted aliens, especially in times of high unemployment.

The Committee has been informed by the Commissioner of Immigration and Naturalization Service that some government agencies have permitted the employment of illegal aliens as tree planters, thinners and other forest laborers by awarding contracts to forestry contractors who regularly employ aliens who have illegally entered the United States. The provisions of this bill and its penalties are intended to apply to such contractors. The Committee urges the appropriate authorities to investigate this matter and to take all steps necessary to assure that such contracts are not awarded to these contractors.

HISTORY OF THE LEGISLATION

S. 2070, on which S. 3202 was based, was introduced on June 26, 1973 by the Chairman of the Subcommittee on Employment, Poverty and Migratory Labor (Mr. Nelson). Hearings were held on February 8, 1974 in Fresno, California and on April 8 and 9 in Washington, D.C. Testimony was offered by representatives of growers, farm labor contractors and migratory and seasonal farm workers.

Numerous organizations presented favorable views including the United States Department of Justice, the International Brotherhood of Teamsters, the United Farm Workers of America, AFL-CIO, the California Department of Industrial Relations, and the Colorado Department of Labor and Employment. The Department of Labor has strongly endorsed the enactment of legislation to broaden and strengthen the provisions of the Farm Labor Contractor Registration Act, and during the Subcommittee's hearings expressed its support for the provisions of S. 3202.

Legislation seeking to remedy many of the same deficiencies has already been passed by the House of Representatives this session (H.R. 13342).

S. 3202 was reported out of Subcommittee, and after amendment by the Full Committee, its language was substituted for that passed by the House. H.R. 13342 as amended was then ordered reported by unanimous voice vote from the Full Labor and Public Welfare Committee on August 15, 1974.

There were no rollcall votes in Committee.

SUMMARY OF THE LEGISLATION

The purpose of H.R. 13342 (as reported) is to remedy the deficiencies of the Farm Labor Contractor Registration Act of 1963. The bill extends the Act's coverage, and strengthens its enforcement mechanisms.

H.R. 13342 deletes the Act's limitation of coverage by including intrastate as well as interstate transactions, although dealings of a purely local and casual nature continue to be exempted. The bill also adds coverage for employment involving the processing of agricultural commodities in an unmanufactured state.

The Secretary of Labor is authorized to issue a certificate of registration to applicants who fully describe their activities, who show proof of having vehicle insurance, and who have not been convicted of certain specified crimes. All registered contractors are required to carry and disclose such certificates of registration at designated times. The bill broadens the information requirement that the farm labor contractor must provide migrant workers with regard to the nature of the worker's prospective employment. All such information must be in writing, in a language in which the worker is fluent, and be in a form prescribed by the Secretary of Labor.

The bill requires proof of posting of a security bond at the time of application; requires farm labor contractors to establish proof that their vehicles and property comply with federal and state health and safety standards; and establishes amounts of vehicle insurance comparable to amounts applicable to vehicles operating under the Interstate Commerce Act.

H.R. 13342 also places responsibility for payroll recordkeeping on the person to whom workers are furnished by a contractor. However, contractors would still be required to provide migrant workers with specified payroll information.

In addition, H.R. 13342 creates a federal civil remedy for persons aggrieved by violations of the Act. It also empowers the Secretary of Labor to enforce the Act through investigations, by the issuance of subpoenas, and by the imposition of civil penalties for designated serious violations of the Act, subject to administrative and judicial review. The bill raises the maximum criminal penalties, and prohibits discrimination against persons who exercise their rights under the Act.

The bill redefines the Act's existing prohibition on contractors regarding illegal aliens, and establishes a criminal penalty, in addition to the current sanction of registration revocation, for certain violators. Any farm labor contractor who has not registered under the Act, or whose registration has been revoked or suspended, will be subject to a criminal penalty of up to a \$10,000 fine or a prison sentence of up to 3 years (or both), if such contractor has knowingly engaged the services of an illegal alien. Illegal alien has been redefined to mean any person who is an alien not lawfully admitted for permanent residence, or who has not been authorized by the Attorney General to accept employment.

ESTIMATE OF COST

The Committee has determined the basis of the increased number of persons who would be defined as farm labor contractors under this legislation that it will be necessary to assign at least an additional 30 positions to the Department's Employment Standards Administration. The Committee therefore estimates the additional cost associated with the legislation to be \$525,000 for fiscal year 1975, and \$750,000 in each fiscal year through 1979.

SECTION-BY-SECTION ANALYSIS

The following is an explanation of the provisions of S. 3202, as reported by the Committee on Labor and Public Welfare.

SHORT TITLE

The first section of this legislation provides that it may be cited as the "Farm Labor Contractor Registration Act Amendments of 1974."

COVERAGE

Section 2 amends certain definitions contained in section 3 of the Farm Labor Contractor Registration Act of 1963 (the "Act") as follows:

The limitation on coverage to those contractors who transport ten or more migrant workers at any one time is removed. The bill creates a new exemption for persons engaging in farm labor contracting within a 25 mile intrastate radius for not more than 13 weeks each year.

A farmer, processor, canner, ginner, packing shed operator, or nurseryman is exempt if he personally recruits migrant workers for his own operation. He is also exempt from coverage if he recruits

workers indirectly through a contractor, provided that he meets the new requirement of determining in advance that the contractor has complied with the registration requirements of the Act. In addition, there is a new exemption for his full-time or regular employees if their recruitment activity constitutes only an incidental duty of employment and is performed solely for him.

The bill continues the Act's present exemption for charities, non-profit educational institutions, employees of registered farm labor contractors, and the recruitment of non-resident workers under agreements with foreign governments. It creates a new exemption for any common carrier or employee thereof engaged solely in the transportation of migrant workers.

Section 3 amends section 3(d) of the Act providing coverage to all aspects of commerce in agriculture, including that defined in either the Fair Labor Standards Act, Title 29 U.S.C. section 203(f) or the Internal Revenue Code, 26 U.S.C. section 3121(g), and other processing of agricultural or horticultural commodities in an unmanufactured state. This section, and others making conforming changes to additional sections of the Act, deletes the existing limitation of coverage to interstate activity, and thus extend coverage to farm labor contractor activities which may occur entirely within one state.

REGISTRATION REQUIREMENTS

Section 4 amends section 5(a) of the Act by extending the present standards for issuance of a certificate of registration to require (1) proof of posting of a bond of not less than \$5,000, as security to employers, employees or persons solicited for work for damages arising from wrongful acts of the applicant; and (2) proof that an applicant's vehicles for the transportation of migrant workers, and real property for the housing of migrant workers, conform to applicable federal and state health and safety standards; and (3) the applicant's consent to the substitute service of legal process on the Secretary on behalf of the applicant where he has made himself unavailable to accept such service, under terms a court may set.

INSURANCE COVERAGE

Section 5 further amends section 5(a) of the Act to require that the Act's current requirements of vehicle insurance coverage be comparable to amounts applicable to vehicles used for the transportation of passengers in interstate commerce under the Interstate Commerce Act and regulations promulgated thereunder.

DENIAL OR REVOCATION OF REGISTRATION

Section 6 amends section 5(b) of the Act by permitting the Secretary to deny a certificate of registration to any applicant found by the Secretary to be a stand-in for another person not eligible for a certificate of registration, or where the Secretary determines that an applicant has used a vehicle for the transportation of migrant workers, or has used real property for the housing of migrant workers, which does not conform with applicable federal and state health and safety standards, and which is within the applicant's ownership or control.

The Secretary's current discretion to deny a certificate of registra-

tion to persons convicted of offenses designated in § 5(b)(7) of the Act is limited by the bill to those convictions occurring within five years preceeding an application.

REPORTING REQUIREMENTS

Section 7 adds a new subsection 5(d) to the Act requiring registered farm labor contractors to report each change of address to the Secretary within ten days. The section also requires each registrant to provide the Secretary with the documentation required in § 5(a)(5) pertaining to health and safety standards of vehicles and real property acquired by the registrant during the year for which registration was previously issued.

DENIAL OF CERTAIN FACILITIES AND SERVICES

Section 8 amends section 6(a) of the Act to provide that a farm labor contractor shall be denied the facilities and services of the United States Employment Service authorized by the Wagner-Peyser Act (48 Stat. 113; 29 U.S.C. 49) if the contractor refuses or fails to exhibit his certificate of registration.

OBLIGATIONS OF FARM LABOR CONTRACTORS

Section 9 amends section 6(b) of the Act to require a farm labor contractor to provide each worker a written statement of the nature of employment at the time of recruitment, in a language in which the worker is fluent, and in a form prescribed by the Secretary, which will include in addition to the information already specified in the present Act: the period of employment of such worker; whether a labor dispute exists in the area of contracted employment; and the existence of any kick-back arrangements between the contractor and third parties in the area of employment.

Section 10 amend, section 6 of the Act by: requiring each farm labor contractor to pay over promptly all money or things or value entrusted to him by a farm operator; prohibiting the contractor from requiring workers to purchase goods exclusively from himself or another; prohibiting him from recruiting persons he knows are in violation of the immigration and nationality laws; and requiring him to provide full payroll information to those from whom he furnishes migrant workers.

INVESTIGATION BY SECRETARY

Section 11 amends section 7 of the Act to provide the Secretary with powers of subpoena and examination similar to that provided under the Fair Labor Standards Act. This Section imposes affirmative duties upon the Secretary to monitor and investigate activities of contractors to the full extent necessary to enforce the Act.

PENALTY PROVISIONS

Subsection (a) of section 12 amends section 9 of the Act to add a criminal penalty of imprisonment not to exceed one year, or both, for a first offense. Maximum penalties for conviction of a subsequent violation of the Act are a fine not to exceed \$10,000, imprison-

ment not to exceed three years, or both. The Secretary is required to report on enforcement in his annual report to the Congress.

Subsection (b) of section 12 amends section 9 of the Act to provide that a grower or similar agricultural employer who engages an unregistered farm labor contractor in violation of the Act will be liable for damages arising from the contractor's acts or omissions in any action brought under the Act.

Subsection (c) of section 12 empowers the Secretary to impose a civil money penalty for a violation of subsections 5(d), section 6 or section 14 of the Act. The civil penalty procedure is subject to the rights of agency review and judicial review by the person against whom a penalty is assessed.

Subsection (d) of section 12 of the bill provides that any farm labor contractor who has not registered under the Act, or whose registration has been revoked or suspended will be subject to a criminal penalty of up to a \$10,000 fine or a prison sentence of up to 3 years (or both), if such contractor has knowingly engaged the services of an illegal alien. It is the intention of the Committee that all contractors must evidence some affirmative showing by making a bona fide inquiry of whether a prospective employee is a United States citizen, a lawfully-admitted permanent resident, or a non-immigrant authorized to work in the United States. This, of course, should not be construed as a means for discriminating against foreign born, or non-English speaking citizens, who are entitled to all protected rights of employment regardless of ethnic background. It is also the intention of the Committee that the Secretary shall promulgate all regulations necessary for the enforcement of the Act's prohibition against the utilization of illegal aliens in employment. All such regulations, to the extent permitted by this Act, are to be consistent with those of the Attorney General promulgated under the Immigration and Nationality Act.

CIVIL RELIEF

Subsections (a) and (b) of section 13 create a new section 12 of the Act and provide that any person who claims to be aggrieved by the violation of any provision of the Act may file suit in the appropriate district court of the United States without regard to the amount in controversy, or to the citizenship of the parties. The exhaustion of any alternative administrative remedies is unnecessary. The court may appoint an attorney for such person, may award treble damages, and may render equitable relief. Any civil action brought under such section is subject to appeal as provided by chapter 83 of title 28, U.S.C.

Subsection (c) of section 13 empowers the Secretary to seek injunctive relief in any United States District Court when a violation of the Act is determined by him to have occurred. Subsection (d) authorizes the Solicitor of Labor to represent the Secretary subject to the direction of the Attorney General.

However it is the intention of the Committee that, in the normal course, the Secretary will be represented in civil litigation by the Solicitor of Labor and his attorneys, with appropriate arrangements being made between the Secretary of Labor and the Attorney General with respect to the active involvement of the Justice Department.

in cases where two or more agencies of the Federal government have varying positions, or where the constitutionality of Federal laws is in question.

RETALIATION PROHIBITED

Section 13 creates a new section 13 of the Act prohibiting retaliation against any migrant worker for the exercise of a right secured under the Act. A presumption that an employment action adverse to a migrant worker is retaliatory arises where such an action occurs within 180 days following an exercise by a migrant worker of a right secured under the Act. A complaint alleging retaliation may be filed with, and prosecuted by, the Secretary, as an alternative remedy for an aggrieved worker.

RECORDKEEPING

Section 13 creates a new section 14 of the Act which places responsibility on the person to whom workers are furnished by a farm labor contractor for the keeping of records, and to obtain and keep information to be furnished to him by the farm labor contractor under section 6(e) of the Act as amended.

WAIVER OF RIGHTS

Section 14 creates a new section 18 of the Act rendering void a purported waiver by an employee of rights under the Act, except where waiver occurs in favor of the Secretary for purposes of enforcing the Act.

AUTHORIZATION

Section 14 creates a new section 19 of the Act authorizing the appropriation of such sums as are necessary to the enforcement of the Act for fiscal year 1975 and each fiscal year thereafter.

EFFECTIVE DATE—BOND REQUIREMENT

Section 14 also creates a new section 20 of the Act providing that §5(a)(4) as amended (bond posting requirement) shall become effective 180 days after enactment. It is intended by the Committee that all other amendments to the Act shall become effective upon enactment.

PROMULGATION OF RULES AND REGULATIONS

Section 15 amends section 14 of the Act to authorize the Secretary to promulgate rules and regulations under any section of the Act.

ADMINISTRATIVE HEARINGS AND PROCEEDINGS

Section 16(a) of the bill amends the Longshoremen and Harbor Workers' Compensation Act to provide that all hearings held under its aegis, including any amendments or extensions of that Act, such as those involving black lung benefits, shall be conducted in accordance with the Administrative Procedure Act by duly appointed hearing examiners. This amendment will bring proceedings of the Black Lung Benefits Act of 1972 (P.L. 92-303) into conformance with similar proceedings under the Longshoremen and Harbor Workers' Compensation Act, which was the original intention of the Congress.

Section 16(b) permits persons appointed by the Department of Labor to conduct hearings under the Black Lung program, prior to the enactment of these amendments to act in their present positions, and continue to conduct hearings under that program notwithstanding the amendments made by section 16(a). The provisions of section 16(c) of the Act do not apply to these individuals.

Section 16(c) specifies that all positions within the Department of Labor for hearing examiners conducting proceedings in accordance with the Administrative Procedure Act, and with respect to the Farm Labor Contractor Registration Act and all laws in effect on the date of enactment of the Farm Labor Contractor Registration Act Amendments of 1974, shall be compensated at least at the rate prescribed for a GS-16. This amendment will eliminate the anomaly of having the Department's administrative hearings conducted by personnel who occupy positions which vary in both classification and grade.

Section (d) adjusts the grade levels of the members of the Benefits Review Board of the Longshoremen and Harbor Workers' Compensation Act so that each will be compensated at a rate prescribed not less than that for a GS-16. This amendment would apply to such Board the established and accepted procedure of having decisions reviewed by persons of at least equal grade to those making the initial administrative determinations.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FARM LABOR CONTRACTOR REGISTRATION ACT OF 1963

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Farm Labor Contractor Registration Act of 1963".

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

SEC. 2. (a) The Congress hereby finds that the channels and instrumentalities of interstate commerce are being used by certain irresponsible contractors for the services of the migrant agricultural laborers, and the public generally, and that, as a result of the use of the channels and instrumentalities of interstate commerce by such irresponsible contractors, the flow of interstate commerce has been impeded, obstructed, and restrained.

(b) It is therefore the policy of this Act to remove the impediments, obstructions, and restraints occasioned to the flow of interstate commerce by the activities of such irresponsible contractors by requiring that all persons engaged in the activity of contracting for the services of workers for [interstate] agricultural employment comply with the provisions of this Act and all regulations prescribed hereunder by the Secretary of Labor.

DEFINITIONS

SEC. 3. As used in this Act—

(a) The term "person" includes any individual, partnership, association, joint stock company, trust, or corporation.

(b) The term "farm labor contractor" means 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 calendar year] for [interstate] agricultural employment. Such term shall not include (1) any nonprofit charitable organization, public or nonprofit private educational institution, or similar organization; (2) any farmer, processor, canner, ginner, packing shed operator, or nurseryman (A) who *personally* engages in any such activity for the purpose of supplying migrant workers solely for his own operation; or (B) who *indirectly* engages in any such activity through an agent or by contract, where he first determines that the person so engaged possesses a certificate from the Secretary that is in full force and effect at the time he contracts with such person so engaged; (3) any full-time or regular employee of any entity referred to in (1) or (2) above who engages in such activity solely for his employer on no more than an incidental basis; (4) any person who engages in any such activity (A) solely within a 25 mile intrastate radius of his permanent place of residence, and (B) for not more than 13 weeks per year; (5) any person who engaged in any such activity for the purpose of obtaining migrant workers of any foreign nation for employment in the United States, if the employment of such workers is subject to—(A) an agreement between the United States and such foreign nation, or (B) an arrangement with the government of any foreign nation under which written contracts for the employment of such workers are provided for and the enforcement thereof is provided for in the United States by an instrumentality of such foreign nation; (6) any full-time or regular employee of any person holding a certificate of registration under this Act; or (7) any common carrier or any full-time regular employee thereof engaged solely in the transportation of migrant workers.

(c) The term "fee" includes any money or other valuable consideration paid or promised to be paid to a person for services as a farm labor contractor.

(d) The term ["interstate] agricultural employment" means employment in any service or activity included within the provisions of section 3(f) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 203(f)), or section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)) [when such service or activity is performed by an individual worker who has been transported from one State to another or from any place outside of a State to any place within a State.] and the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state.

(e) The Term "Secretary" means the Secretary of the United States Department of Labor or his duly authorized representative.

(f) The term "State" means any of the States of the United States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, and Guam.

(g) The term "migrant worker" means an individual whose primary employment is in agriculture, as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), or who performs agricultural labor, as defined in section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)), on a seasonal or other temporary basis.

CERTIFICATE OF REGISTRATION REQUIRED

SEC. 4. (a) No person shall engage in activities as a farm labor contractor unless he first obtains a certificate of registration from the Secretary, and unless such certificate is in full force and effect and is in such person's immediate possession.

(b) A full-time or regular employee of any person holding a valid certificate of registration under the provisions of this Act shall not, for the purpose of engaging in activities as a farm labor contractor solely on behalf of such person, be required to obtain a certificate of registration hereunder in his own name. Any such employee shall be required to have in his immediate personal possession when engaging in such activities such identification as the Secretary may require showing such employee to be an employee of, and duly authorized to engage in activities as a farm labor contractor for, a person holding a valid certificate of registration under the provisions of this Act. Except as provided in the foregoing provisions of this subsection, any such employee shall be subject to the provisions of this Act and regulations prescribed hereunder to the same extent as if he were required to obtain a certificate of registration in his own name.

ISSUANCE OF CERTIFICATE OF REGISTRATION

SEC. 5. (a) The Secretary shall, after appropriate investigation, issue a certificate of registration under this Act to any person who—

(1) has executed and filed with the Secretary a written application subscribed and sworn to by the applicant containing such information (to the best of his knowledge and belief) concerning his conduct and method of operation as a farm labor contractor as the Secretary may require in order effectively to carry out the provisions of this Act;

(2) has filed, within such time as the Secretary may prescribe, proof satisfactory to the Secretary of the financial responsibility of the applicant or proof satisfactory to the Secretary of the existence of a policy of insurance which insures such applicant against liability for damages to persons or property arising out of the applicant's ownership of, operation of, or his causing to be operated any vehicle for the transportation of migrant workers in connection with his business, activities, or operations as a farm labor contractor. [The amount of any such policy of insurance shall be not less than the amount required under the law or regulation of any State in which such applicant operates a vehicle in connection with his business, activities, or operations as a farm labor contractor; but in no event shall the amount of such insurance be less than \$5,000 for bodily injuries to or death of one person; \$20,000 for bodily injuries to or death of all persons injured or killed in any one accident; \$5,000 for the loss or damage

in any one accident to property of others; and.] *In no event shall the amount of such insurance be less than the amounts currently applicable to vehicles used in the transportation of passengers in interstate commerce under the Interstate Commerce Act and regulations promulgated pursuant thereto, or amounts offering comparable protection to persons or property from damages arising out of the applicant's ownership of, operation of, or his causing to be operated any vehicle as provided herewith;*

(3) has filed, within such time as the Secretary may prescribe, a set of his fingerprints;

(4) has filed proof of posting a bond in such manner and in such amount (but not less than the sum of \$5,000), as the Secretary may from time to time prescribe, which bond shall provide security against liability in such farm labor contractor to any third person, including any employer, employee or person recruited, solicited, or transported by him while engaging in activities as a farm labor contractor;

(5) has filed, under such terms as the Secretary may prescribe, a statement identifying each vehicle to be used by the applicant for the transportation of migrant workers, and all real property to be used by the applicant for the housing of migrant workers, during the period for which registration is sought, along with proof that every such vehicle and all such housing currently conform to all applicable Federal and State safety and health standards to the extent that such vehicle and all such housing are under the applicant's ownership or control; and

(6) has consented to designation of the Secretary as the agent available to accept service of summons in any action against such farm labor contractor at any and all times during which such farm labor contractor has departed from the jurisdiction in which such action is commenced or otherwise has become unavailable to accept service, under such terms and conditions as are set by the court in which such action has been commenced.

(b) Upon notice and hearing in accordance with regulations prescribed by him, the Secretary may refuse to issue, and may suspend, revoke, or refuse to renew a certificate of registration to any farm labor contractor if he finds that such contractor—

(1) knowingly has made any misrepresentations or false statements in his application for a certificate of registration or any renewal thereof;

(2) knowingly has given false or misleading information to migrant workers concerning the terms, conditions, or existence of agricultural employment;

(3) has failed, without justification, to perform agreements entered into or arrangements with farm operators;

(4) has failed, without justification, to comply with the terms of any working arrangements he has made with migrant workers;

(5) has failed to show financial responsibility satisfactory to the Secretary required by subsection (a)(2) of this section or has failed to keep in effect a policy of insurance required by subsection (a)(2) of this section;

(6) has recruited, employed, or utilized, *with knowledge*, the services of [a person with knowledge that such person is violating the provisions of the immigration and nationality laws of the

United States;] *any person, who is an alien not lawfully admitted for permanent residence, or who has not been authorized by the Attorney General to accept employment;*

(7) has been convicted of any crime under State or Federal law relating to gambling or to the sale, distribution, or possession of alcoholic liquors in connection with or incident to his activities as a farm labor contractor; or has been convicted of any crime under State or Federal law involving robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, prostitution, or peonage; where the date of the judgment of conviction of any crime as specified herein has been entered within a period of five years preceding the action of the Secretary under this subsection;

(8) has failed to comply with rules and regulations promulgated by the Interstate Commerce Commission that are applicable to his activities and operations in interstate commerce;

(9) knowingly employs or continues to employ any person to whom subsection (b) of section 4 of this Act applies who has taken any action, except for that listed in paragraph (5) of this subsection, which could be used by the Secretary under this subsection to refuse to issue a certificate of registration; [or]

(10) has failed to comply with any of the provisions of this Act or any regulations issued [hereunder.] *hereunder;* or

(11) *is not in fact the real party in interest in any such application or certificate of registration and that the real party in interest is a person, firm, partnership association, or corporation who previously has been denied a certificate of registration, has had a certificate of registration suspended or revoked, or who does not presently qualify for a certificate of registration;* or

(12) *has used a vehicle for the transportation of migrant workers, or has used real property for the housing of migrant workers, while such vehicle or real property failed to conform to all applicable Federal and State safety and health standards, to the extent of any such vehicle or real property coming within the ownership or control of such farm labor contractor.*

(c) A certificate of registration, once issued, may not be transferred or assigned and shall be effective for the remainder of the calendar year during which it is issued, unless suspended or revoked by the Secretary as provided in this Act. A certificate of registration may be renewed each calendar year upon approval by the Secretary of an application for its renewal.

(d) *Persons issued a certificate of registration under this section shall provide to the Secretary a notice of each and every address change within 10 days after such change. The Secretary shall maintain a public central registry of all persons issued certificates of registration under this section. Persons issued a certificate of registration under this section shall provide to the Secretary documentation required under section 5(a)(5) of the Act applicable to any vehicle which the applicant obtains for use in the transportation of migrant workers and any real property which the applicant obtains or learns will be used for the housing of migrant workers during the period for which the certificate of registration is issued, within ten days after he obtains or learns of the intended use of such vehicle or real*

property, to the extent that such vehicle or such real property is under the ownership or control of such persons who have been issued certificates of registration.

OBLIGATIONS AND PROHIBITIONS

SEC. 6. Every farm labor contractor shall—

(a) carry his certificate of registration with him at all times while engaging in activities as a farm labor contractor and exhibit the same to all persons with whom he intends to deal in his capacity as a farm labor contractor prior to so dealing and shall be denied the facilities and services authorized by the Act of June 6, 1933 (29 U.S.C. 49), upon refusal or failure to exhibit the same;

(b) ascertain and disclose to each worker at the time the worker is recruited the following information to the best of his knowledge and belief: (1) the area of employment, (2) the crops and operations on which he may be employed, (3) the transportation, housing, and insurance to be provided him, (4) the wage rates to be paid him, (5) the charges to be made by the contractor for his services, (6) the period of employment, (7) the existence of a strike or other concerted stoppage, slowdown, or interruption of operations by employees at the place of contracted employment, and (8) the existence of any arrangements with any owner, proprietor, or agent of any commercial or retail establishment in the area of employment under which he is to receive a commission or any other benefit resulting from any sales provided to such commercial or retail establishment from the migrant workers whom he recruits. The disclosure required under this subsection shall be in writing in a language in which the worker is fluent and written in a manner understandable by such workers, on such forms and under such terms and conditions as the Secretary shall prescribe.

(c) upon arrival at a given place of employment, post in a conspicuous place a written statement of the terms and conditions of that employment;

(d) in the event he manages, supervises, or otherwise controls the housing facilities, post in a conspicuous place the terms and conditions of occupancy; [and]

(e) in the event he pays migrant workers engaged in [interstate] agricultural employment, either on his own behalf or on behalf of another person, keep payroll records which shall show for each worker total earnings in each payroll period, all withholdings from wages, and net earnings. In addition, for workers employed on a time basis, the number of units of time employed and the rate per unit of time shall be recorded on the payroll records, and for workers employed on a piece rate basis, the number of units of work performed and the rate per unit shall be recorded on such records. In addition he shall provide to each migrant worker engaged in [interstate] agricultural employment with whom he deals in a capacity as a farm labor contractor a statement of all sums paid to him (including sums received on behalf of such migrant worker) on account of the labor of such migrant worker. He shall also provide each such worker with an itemized statement showing all sums withheld by him from the amount he received on account of the labor of such worker, and the purpose for which withheld. [The Secretary may prescribe an appropriate form for recording such information.] He shall additionally provide to the person to whom any migrant worker is furnished all information and

records required to be kept by such contractor under this subsection, and all information required to be provided to any migrant worker under this subsection. The Secretary may prescribe appropriate forms for the recording of information required by this subsection;

(f) refrain from recruiting, employing, or utilizing, with knowledge, the services of any person, who is an alien not lawfully admitted for permanent residence, or who has not been authorized by Attorney General to accept employment;

(g) promptly pay or contribute when due to the individuals entitled thereto all moneys or other things of value entrusted to the farm labor contractor by any farm operator for such purposes; and

(h) refrain from requiring any worker to purchase any goods solely from such farm labor contractor or any other person.

AUTHORITY TO OBTAIN INFORMATION

SEC. 7. The Secretary or his designated representative may investigate and gather data with respect to matters which may aid in carrying out the provisions of this Act. In any case in which a complaint has been filed with the Secretary regarding a violation of this Act or with respect to which the Secretary has reasonable grounds to believe that a farm labor contractor has violated any provisions of this Act, the Secretary or his designated representative may investigate and gather data respecting such case, and may, in connection therewith, enter and inspect such places and such records (and make such transcriptions thereof), question such persons, and investigate such facts, conditions, practices, or matters as may be necessary or appropriate to determine whether a violation of this Act has been committed. The Secretary may issue subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in connection with such investigations. The Secretary may administer oaths and affirmations, examine witnesses, and receive evidence. For the purpose of any hearing or investigation provided for in this chapter, the provisions of sections 9 and 10 of the Federal Trade Commission Act of September 16, 1914 (15 U.S.C. 49, 50) (relating to the attendance of witnesses and the production of books, papers, and documents), are made applicable to the jurisdiction, powers, and duties of the Secretary. The Secretary shall conduct investigations in a manner which protects the confidentiality of any complainant or other party who provides information to the Secretary with respect to which the Secretary commences an investigation. The Secretary shall monitor and investigate activities of farm labor contractors in such manner as is necessary to enforce the provisions of this Act.

AGREEMENTS WITH FEDERAL AND STATE AGENCIES

SEC. 8. The Secretary is authorized to enter into agreements with Federal and State agencies, to utilize (pursuant to such agreements) the facilities and services of the agencies, and to delegate to the agencies such authority, other than rulemaking, as he deems necessary in carrying out the provisions of this Act, and to allocate or transfer funds or otherwise to pay or to reimburse such agencies for expenses in connection therewith.

PENALTY PROVISIONS

SEC. 9. (a) Any farm labor contractor or employee thereof who willfully and knowingly violates any provision of this Act or any regulation prescribed hereunder shall be fined not more than \$500, sentenced to a prison term not to exceed one year, or both, and, upon conviction for any subsequent violation of this Act, shall be punishable by a fine not to exceed \$10,000 or sentenced to a prison term not to exceed three years, or both. The Secretary shall report on enforcement of the provisions of this Act in the annual report of the Secretary required pursuant to section 9, of the Act entitled An Act to Create a Department of Labor, approved March 4, 1913 (37 Stat. 738, 29 U.S.C. 560). The reporting hereunder shall include, but shall not be limited to, a description of efforts to monitor and investigate the activities of farm labor contractors, the number of persons to whom certificates of registration have been issued, the number of complaints of violations received by the Secretary and their disposition and the number and nature of any sanctions imposed.

(b) Any farmer, processor, canner, ginner, packing shed operator, or nurseryman who indirectly engages in activity as a farm labor contractor either through an agent or by contract, and who fails to satisfy the requirements of section 3(b)(2)(B) of this Act shall be liable for any damages arising from the acts or omissions of anyone engaging on his behalf in activities as a farm labor contractor without a certificate of registration as required herein, in any action brought under the Act, regardless of whether the farm labor contractor is an independent contractor or an agent of such person.

(c)(1) Any person who commits a violation of: (A) the notice or documentation provisions of subsection 5(d); (B) section 6; (C) or section 14 of the Act; or any regulations promulgated thereunder, may be assessed a civil money penalty of not more than \$1,000 for each violation. The penalty shall be assessed by the Secretary upon written notice, under the procedures set forth herein.

(2) In determining the amount of the penalty the Secretary shall take into account the gravity of the violation, degree of culpability, any history of prior offenses, ability to pay, size of the business entity, effect upon ability to continue in business, and such other matters as justice may require.

(3) The person assessed shall be afforded an opportunity for agency hearing, upon request made within thirty days after issuance of the notice of assessment. In such hearing, all issues shall be determined on the record pursuant to section 554 of title 5. The agency determination shall be made by final order subject to review only as provided in paragraph (4). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(4) Any person against whom an order imposing a civil money penalty has been entered after an agency hearing under this section may obtain review by the United States district court for any district in which he is located or the United States District Court for the District of Columbia by filing a notice of appeal in such court within 30 days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Secretary. The Secretary shall promptly certify and file in such court the record upon which the penalty was imposed. The findings of the Secretary shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5.

(5) If any person fails to pay an assessment after it has become a final and unappealable order, or after the court has entered final judgment in favor of the agency, the Secretary shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(6) All penalties collected under authority of this section shall be paid into the Treasury of the United States.

(d) Notwithstanding subsection (a) of this section, any farm labor contractor who commits a violation of subsection 6(f) of the Act or any regulations promulgated thereunder shall upon conviction be fined not to exceed \$10,000 or sentenced to a prison term not to exceed three years, or both, if the person committing such violation has failed to obtain a certificate of registration pursuant to this Act or is one whose certificate has been suspended or revoked by the Secretary.

APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT

SEC. 10. The provisions of the Administrative Procedure Act (5 U.S.C. 1001 and the following) shall apply to all administrative proceedings conducted pursuant to the authority contained in this Act.

JUDICIAL REVIEW

SEC. 11. Any person aggrieved by any order of the Secretary in refusing to issue or renew, or in suspending or revoking, a certificate of registration may obtain a review of any such order by filing in the district court of the United States for the district wherein such person resides or has his principal place of business, or in the United States District Court for the District of Columbia, and serving upon the Secretary, within thirty days after the entry of such order, a written petition praying that the order of the Secretary be modified or set aside in whole or in part. Upon receipt of any such petition, the Secretary shall file in such court a full, true, and correct copy of the transcript of the proceedings upon which the order complained of was entered. Upon the filing of such petition and receipt of such transcript, such court shall have jurisdiction to affirm, set aside, modify, or enforce such order, in whole or in part. In any such review, the finding of fact of the Secretary shall not be set aside if supported by substantial evidence. The judgment and decree of the court shall be final, subject to review as provided in sections 1254 and 1291 of title 28, United States Code.

CIVIL RELIEF

SEC. 12. (a) Any person claiming to be aggrieved by the violation of any provision of this Act or any regulation prescribed hereunder may file suit in any district court of the United States having jurisdiction of the parties without respect to the amount in controversy or without regard to the citizenship of the parties and without regard to exhaustion of any alternative administrative remedies provided herein.

(b) Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. If the court finds that the respondent

has violated any provision of this Act or any regulation prescribed hereunder, it may award damages up to and including an amount equal to three times the amount of actual damages, reinstatement or other equitable relief, and a reasonable sum for attorney's fees and court costs to the prevailing party. Any civil action brought under this section shall be subject to appeal as provided in chapter 83 of title 28, United States Code.

(c) If upon investigation the Secretary determines that the provisions of this Act have been violated, he may petition any appropriate district court of the United States within the jurisdiction of which violations of this Act are alleged to have occurred for temporary or permanent injunctive relief.

(d) Except as provided in section 518(a) of Title 28 relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under this chapter but all such litigation shall be subject to the direction and control of the Attorney General.

PROHIBITED ACTIONS

SEC. 13. (a) It shall be unlawful for any person to terminate, suspend, demote, transfer, or take adverse action against any migrant worker in retaliation for the exercise of any rights secured under this Act.

(b) A presumption that an action is retaliatory shall arise from any action described in subsection (a) of this section which occurs within a period of 180 days following an action by a migrant worker which constitutes an exercise of a right secured under this Act.

(c) Any person who believes that he has been subjected to retaliation as defined in subsection (a) may, within 180 days after such violation occurs, file a complaint with the Secretary alleging such retaliation. Upon receipt of such complaint, the Secretary shall cause such investigation to be made as he deems appropriate. If upon such investigation the Secretary determines that the provisions of this section have been violated, he shall bring an action in any appropriate United States district court against such person. In any such action, the United States district courts shall have jurisdiction, for cause shown, to restrain violations of this section and order all appropriate relief including rehiring or reinstatement of the migrant worker to his former position with back pay. Within ninety days after receipt of a complaint filed under this section, the Secretary shall notify the complainant of his determination under this subsection.

RECORDKEEPING

SEC. 14. Any person who is furnished any migrant worker by a farm labor contractor shall maintain all payroll records required to be kept by such person under Federal law, and with respect to migrant workers paid by a farm labor contractor such person shall also obtain from the contractor and maintain records containing the information required to be provided to him by the contractor under section 6(e) of the Act.

STATE LAWS AND REGULATIONS

Sec. [12] 15. This Act and the provisions contained herein are intended to supplement State action and compliance with this Act shall not excuse anyone from compliance with appropriate State law and regulation.

SEVERABILITY

Sec. [13] 16. If any provision of this Act, or the application thereof to any person or circumstance, shall be held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

RULES AND REGULATIONS

Sec. [14] 17. The Secretary is authorized to issue such rules and regulations as he determines necessary for the purpose of carrying out the provisions [of sections 4, 5, 6, and 8] of this Act.

WAIVER OF RIGHTS

NONWAIVER PROVISIONS

SEC. 18. Any agreement by an employee purporting to waive or to modify his rights hereunder shall be void as contrary to public policy, except a waiver or modification of rights or obligations hereunder in favor of the Secretary shall be valid for purposes of enforcement of the provisions of the Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 19. There are authorized to be appropriated to carry out the purposes of this Act, such sums as may be necessary for the effective enforcement of this Act for the fiscal year ending June 30, 1975, and for each fiscal year thereafter.

EFFECTIVE DATE

SEC. 20. Section 5(a)(4) of the Act as amended herein shall become effective on the one hundred and eightieth day following the date of enactment.

LONGSHOREMEN AND HARBOR WORKERS' COMPENSATION ACT

SEC. 19. (d) Notwithstanding any other provisions of this Act any hearing held under this Act "including any amendment of extension thereto," shall be conducted in accordance with the provisions of section 554 of title 5 of the United States Code. Any such hearing shall be conducted by a hearing examiner qualified under section 3105 of that title. All powers, duties, and responsibilities vested by this Act, on the date of enactment of the Longshoremen's and Harbor Workers' Compensation Act Amendments of 1972 in the deputy commissioners with respect to such hearings shall be vested in such hearing examiners.

* * * * *



Ninety-third Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the twenty-first day of January,
one thousand nine hundred and seventy-four*

An Act

To amend the Farm Labor Contractor Registration Act of 1963 by extending its coverage and effectuating its enforcement.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Farm Labor Contractor Registration Act Amendments of 1974".

(b) Unless the context otherwise requires, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision the reference shall be considered to be made to a section or other provision of the Farm Labor Contractor Registration Act of 1963 (7 U.S.C. 2041).

SEC. 2. Section 3 of the Act is amended by striking out the word "interstate" each place where it appears therein. The first sentence of section 3(b) is amended to delete therefrom the phrase "ten or more" and the phrase "at any one time in any calendar year". The second sentence of section 3(b) is amended to read as follows: "Such term shall not include—

"(1) any nonprofit charitable organization, public or nonprofit private educational institution, or similar organization;

"(2) any farmer, processor, canner, ginner, packing shed operator, or nurseryman who personally engages in any such activity for the purpose of supplying migrant workers solely for his own operation;

"(3) any full-time or regular employee of any entity referred to in (1) or (2) above who engages in such activity solely for his employer on no more than an incidental basis;

"(4) any person who engages in any such activity for the purpose of obtaining migrant workers of any foreign nation for employment in the United States if the employment is subject to—

"(A) an agreement between the United States and such foreign nation; or

"(B) an arrangement with the government of any foreign nation under which written contracts for the employment of such workers are provided for and the enforcement thereof is provided for through the United States by an instrumentality of such foreign nation;

"(5) any full-time or regular employee of any person holding a certificate of registration under this Act; or

"(6) any common carrier or any full-time regular employee thereof engaged solely in the transportation of migrant workers."

SEC. 3. Section 3(d) of the Act is amended to read as follows:

"(d) The term 'agricultural employment' means employment in any service or activity included within the provisions of section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), or section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)) and the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state."

SEC. 4. Section 4 of the Act is amended by adding at the end thereof the following new subsections:

"(c) No person shall engage the services of any farm labor contractor to supply farm laborers unless he first observes in the immediate possession of the farm labor contractor a certificate from the Secretary that is in full force and effect at the time he contracts with the farm labor contractor.

H. R. 13342—2

“(d) Upon determination by the Secretary that any person knowingly has engaged the services of any farm labor contractor who does not possess such certificate as required by subsection (c) of this section, the Secretary is authorized to deny such person the facilities and services authorized by the Act of June 6, 1933 (48 Stat. 113; 29 U.S.C. 49 et seq.), commonly referred to as the Wagner-Peyser Act, for a period of up to three years.”

SEC. 5. Section 5 (a) is amended by—

- (1) striking the word “and” after paragraph (2),
- (2) striking the period at the end of paragraph (3) and inserting in lieu thereof a semicolon, and
- (3) adding the following new paragraphs:

“(4) has filed, under such terms as the Secretary may prescribe, a statement identifying each vehicle to be used by the applicant for the transportation of migrant workers, and all real property to be used by the applicant for the housing of migrant workers, during the period for which registration is sought, along with proof that every such vehicle and all such housing currently conform to all applicable Federal and State safety and health standards to the extent that such vehicle and all such housing are under the applicant’s ownership or control; and

“(5) has consented to designation of the Secretary as the agent available to accept service of summons in any action against such farm labor contractor at any and all times during which such farm labor contractor has departed from the jurisdiction in which such action is commenced or otherwise has become unavailable to accept service, under such terms and conditions as are set by the court in which such action has been commenced.”

SEC. 6. (a) Section 5(a)(2) is amended by striking the second sentence and inserting in lieu thereof the following: “In no event shall the amount of such insurance be less than the amounts currently applicable to vehicles used in the transportation of passengers in interstate commerce under the Interstate Commerce Act and regulations promulgated pursuant thereto, or amounts offering comparable protection to persons or property from damages arising out of the applicant’s ownership of, operation of, or his causing to be operated any vehicle as provided herewith: *Provided*, That the Secretary shall have the discretion to issue regulations requiring insurance in the highest amounts feasible which are less than the amounts currently applicable to vehicles used in the transportation of passengers in interstate commerce under the Interstate Commerce Act and regulations promulgated pursuant thereto, if the Secretary, after due and careful consideration, determines that the insurance coverage in such amounts is not available to farm labor contractors in the same manner and in the same amounts as such coverage is available to other carriers used to transport passengers in interstate commerce;”

SEC. 7. Section 5 (b) is amended by—

- (1) striking “or” at the end of paragraph (9);
- (2) striking the period at the end of paragraph (10) and inserting a semicolon in lieu thereof; and
- (3) adding after paragraph (10) the following new paragraphs:

“(11) is not in fact the real party in interest in any such application or certificate of registration and that the real party in interest is a person, firm, partnership, association, or corporation who previously has been denied a certificate of registration, has had a certificate of registration suspended or revoked, or who does not presently qualify for a certificate of registration; or



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“(12) has used a vehicle for the transportation of migrant workers, or has used real property for the housing of migrant workers, while such vehicle or real property failed to conform to all applicable Federal and State safety and health standards, to the extent of any such vehicle or real property coming within the ownership or control of such farm labor contractor.”

(4) adding at the end of paragraph (7) the following: “prostitution or peonage; where the date of the judgment of conviction of any crime as specified herein has been entered within a period of five years preceding the action of the Secretary under this subsection;”

(5) striking all after the word “of” in paragraph (6) and inserting in lieu thereof the following: “any person, who is an alien not lawfully admitted for permanent residence, or who has not been authorized by the Attorney General to accept employment;”

SEC. 8. Section 5 is amended by adding at the end thereof the following new subsection:

“(d) Persons issued a certificate of registration under this section shall provide to the Secretary a notice of each and every address change within 10 days after such change. The Secretary shall maintain a public central registry of all persons issued certificates of registration under this section. Persons issued a certificate of registration under this section shall provide to the Secretary documentation required under section 5(a)(5) of the Act applicable to any vehicle which the applicant obtains for use in the transportation of migrant workers and any real property which the applicant obtains or learns will be used for the housing of migrant workers during the period for which the certificate of registration is issued, within ten days after he obtains or learns of the intended use of such vehicle or real property, to the extent that such vehicle or such real property is under the ownership or control of such persons who have been issued certificates of registration.”

SEC. 9. Section 6(a) of the Act is amended by inserting immediately before the semicolon at the end thereof the following: “and shall be denied the facilities and services authorized by the Act of June 6, 1933 (29 U.S.C. 49), upon refusal or failure to exhibit the same;”

SEC. 10. Section 6(b) of the Act is amended by striking the word “and” before paragraph (5), and by striking the semicolon at the end of paragraph (5) and adding at the end thereof the following: “(6) the period of employment, (7) the existence of a strike or other concerted stoppage, slowdown, or interruption of operations by employees at a place of contracted employment, and (8) the existence of any arrangements with any owner, proprietor, or agent of any commercial or retail establishment in the area of employment under which he is to receive a commission or any other benefit resulting from any sales provided to such commercial or retail establishment from the migrant workers whom he recruits. The disclosure required under this subsection shall be in writing in a language in which the worker is fluent, and written in a manner understandable by such workers on such forms and under such terms and conditions as the Secretary shall prescribe.”

SEC. 11. (a) Section 6 is amended by—

- (1) striking “and” after paragraph (d),
- (2) striking the period at the end of paragraph (e) and inserting in lieu thereof a semicolon, and
- (3) adding at the end thereof the following new paragraphs:
 - “(f) refrain from recruiting, employing, or utilizing, with knowledge, the services of any person, who is an alien not law-

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fully admitted for permanent residence or who has not been authorized by the Attorney General to accept employment;

“(g) promptly pay or contribute when due to the individuals entitled thereto all moneys or other things of value entrusted to the farm labor contractor by any farm operator for such purposes; and

“(h) refrain from requiring any worker to purchase any goods solely from such farm labor contractor or any other person.”

(b) Section 6(e) of the Act is amended by striking “interstate” each time it appears.

(c) Section 6(e) of the Act is further amended by striking the last sentence and substituting the following: “He shall additionally provide to the person to whom any migrant worker is furnished all information and records required to be kept by such contractor under this subsection, and all information required to be provided to any migrant worker under this subsection. The Secretary may prescribe appropriate forms for the recording of information required by this subsection;”.

(d) Section 2(b) of the Act is amended by striking the word “interstate” the second time it appears.

SEC. 12. Section 7 is amended by adding at the end thereof the following: “The Secretary may issue subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in connection with such investigations. The Secretary may administer oaths and affirmations, examine witnesses, and receive evidence. For the purpose of any hearing or investigation provided for in this chapter, the provisions of sections 9 and 10 of the Federal Trade Commission Act of September 16, 1914 (15 U.S.C. 49, 50) (relating to the attendance of witnesses and the production of books, papers, and documents), are made applicable to the jurisdiction, powers, and duties of the Secretary. The Secretary shall conduct investigations in a manner which protects the confidentiality of any complainant or other party who provides information to the Secretary with respect to which the Secretary commences an investigation. The Secretary shall monitor and investigate activities of farm labor contractors in such manner as is necessary to enforce the provisions of this Act.”.

SEC. 13. Section 9 of the Act is amended by inserting the subsection designation “(a)” at the beginning thereof; by striking out “or any regulation prescribed hereunder”; and by striking the period at the end thereof and adding the following: “, sentenced to a prison term not to exceed one year, or both, and, upon conviction for any subsequent violation of this Act, shall be punishable by a fine not to exceed \$10,000 or sentenced to a prison term not to exceed three years, or both. The Secretary shall report on enforcement of the provisions of this Act in the annual report of the Secretary required pursuant to section 9 of the Act entitled “An Act to create a Department of Labor”, approved March 4, 1913 (37 Stat. 738, 29 U.S.C.). The reporting hereunder shall include, but shall not be limited to, a description of efforts to monitor and investigate the activities of farm labor contractors, the number of persons to whom certificates of registration have been issued, the number of complaints of violations received by the Secretary and their disposition, and the number and nature of any sanctions imposed.

“(b)(1) Any person who commits a violation of any regulations promulgated under this Act, may be assessed a civil money penalty of not more than \$1,000 for each violation. The penalty shall be assessed by the Secretary upon written notice, under the procedures set forth herein.

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“(2) The person assessed shall be afforded an opportunity for agency hearing, upon request made within thirty days after issuance of the notice of assessment. In such hearing, all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The agency determination shall be made by final order subject to review only as provided in paragraph (3). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

“(3) Any person against whom an order imposing a civil money penalty has been entered after an agency hearing under this section may obtain review by the United States district court for any district in which he is located or the United States District Court for the District of Columbia by filing a notice of appeal in such court within 30 days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Secretary. The Secretary shall promptly certify and file in such court the record upon which the penalty was imposed. The findings of the Secretary shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5, United States Code.

“(4) If any person fails to pay an assessment after it has become a final and unappealable order, or after the court has entered final judgment in favor of the agency, the Secretary shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

“(5) All penalties collected under authority of this section shall be paid into the Treasury of the United States.

“(c) Notwithstanding subsection (a) of this section, any farm labor contractor who commits a violation of subsection 6(f) of the Act or any regulations promulgated thereunder shall upon conviction be fined not to exceed \$10,000 or sentenced to a prison term not to exceed three years, or both, if the person committing such violation has failed to obtain a certificate of registration pursuant to this Act or is one whose certificate has been suspended or revoked by the Secretary.”

SEC. 14. (a) The Farm Labor Contractor Registration Act of 1963 is amended by redesignating sections 12, 13, and 14 thereof as sections 15, 16, and 17, respectively, and by inserting after section 11 the following:

“CIVIL RELIEF

“SEC. 12. (a) Any person claiming to be aggrieved by the violation of any provision of this Act or any regulation prescribed hereunder may file suit in any district court of the United States having jurisdiction of the parties without respect to the amount in controversy or without regard to citizenship of the parties and without regard to exhaustion of any alternative administrative remedies provided herein.

“(b) Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action. If the court finds that the respondent has intentionally violated any provision of this Act or any regulation prescribed hereunder, it may award damages up to and including an amount equal to the amount of actual damages, or \$500 for each violation, or other equitable relief. Any civil action brought under this section shall be subject to appeal as provided in chapter 83 of title 28, United States Code.

“(c) If upon investigation the Secretary determines that the pro-

H. R. 13342—6

visions of this Act have been violated, he may petition any appropriate district court of the United States for temporary or permanent injunctive relief.

“(d) Except as provided in section 518(a) of title 28 relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under this chapter but all such litigation shall be subject to the direction and control of the Attorney General.

“DISCRIMINATION PROHIBITED

“SEC. 13. (a) No person shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any farmworker because such worker has, with just cause, filed any complaint or instituted or cause to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceedings or because of the exercise, with just cause, by such worker on behalf of himself or others of any right or protection afforded by this Act.

“(b) Any worker who believes, with just cause, that he has been discriminated against by any person in violation of this section may, within thirty days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall cause such investigation to be made as he deems appropriate. If upon such investigation, the Secretary determines that the provisions of this section have been violated, he shall bring an action in any appropriate United States district court against such person. In any such action the United States district courts shall have jurisdiction, for cause shown, to restrain violation of paragraph (a) and order all appropriate relief including rehiring or reinstatement of the worker or damages up to and including \$1,000 for each and every violation.

“SEC. 14. Any person who is furnished any migrant worker by a farm labor contractor shall maintain all payroll records required to be kept by such person under Federal law, and with respect to migrant workers paid by a farm labor contractor such person shall also obtain from the contractor and maintain records containing the information required to be provided to him by the contractor under section 6(e) of the Act.”

SEC. 15. The Act is amended by addition at the end thereof of the following new sections:

“WAIVER OF RIGHTS

“SEC. 18. Any agreement by an employee purporting to waive or modify his rights hereunder shall be void as contrary to public policy, except a waiver or modification of rights or obligations hereunder in favor of the Secretary shall be valid for purposes of enforcement of the provisions of the Act.

“AUTHORIZATION OF APPROPRIATIONS

“SEC. 19. There are authorized to be appropriated to carry out the purposes of this Act, such sums as may be necessary for the effective enforcement of this Act for the fiscal year ending June 30, 1975, and for each fiscal year thereafter.”

SEC. 16. Section 17 of the Act (as redesignated by this Act) is amended by striking “of sections 4, 5, 6, and 8”.

SEC. 17. (a) Section 19(d) of the Longshoremen and Harbor Worker's Compensation Act (33 U.S.C. 901) as amended, is further amended by adding after the words “under the Act” the following: “including any amendment or extension thereto.”



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(b) Persons appointed by the Secretary of Labor after December 30, 1969, and before September 1, 1974, for the purposes of conducting hearings under title IV of the Act of December 30, 1969 (Public Law 91-173), shall for such purposes only, and not for the purposes of subsection (c) of this section and until they vacate their position, be deemed qualified hearing examiners within the meaning of section 19(d) of the Longshoremen and Harbor Worker's Compensation Act.

(c) All positions, within the Department of Labor, for hearing examiners qualified under section 3105 of title 5, United States Code, and appointed by the Secretary for the purposes of conducting hearings in accordance with section 554 of that title with respect to this Act and any law in effect on the date of enactment of this Act, shall be compensated at not less than the rate prescribed for GS-16 under section 5332 of title 5, United States Code. This subsection shall not require any individual who holds such a position at less than a grade GS-16 within the Department of Labor on the date of enactment of this Act and who does not qualify for a grade GS-16 under applicable law to be compensated at the rate prescribed under this subsection, nor shall it affect the eligibility of such persons to continue to exercise the duties of the position which they hold on the date of enactment of this Act, nor does it require such individuals who do not qualify for grade GS-16 to be removed or vacate the positions which they hold on the date of enactment. Notwithstanding any other law, the Secretary, in addition to positions within grades GS-16, GS-17, and GS-18 allotted or assigned to the Department of Labor in accordance with law, is authorized such additional positions within grade GS-16 as may be necessary to effectuate the purposes of this subsection and subsection (d) of this section. The Secretary may appoint to such positions only hearing examiners qualified under section 3105 of title 5, United States Code, and employed by the Department of Labor at grade GS-15 on the date of enactment of this Act, and who have been appointed for the purposes of conducting hearings in accordance with section 554 of title 5, United States Code, with respect to any law in effect on the date of enactment of this Act.

(d) Notwithstanding any other law, the members of the Benefits Review Board established under the Longshoremen and Harbor Worker's Compensation Act shall be placed in positions not less than grade GS-16.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

TO THE HOUSE OF REPRESENTATIVES:

I am returning today, without my approval, H.R. 13342, The Farm Labor Contractor Registration Act Amendments of 1974. I am advised by the Attorney General and I have determined that the absence of my signature from this bill prevents it from becoming law. Without in any way qualifying this determination, I am also returning it without my approval to those designated by Congress to receive messages at this time.

This bill contains provisions designed to strengthen the protections of migrant farm workers under that Act, which I support. I cannot approve the bill, however, because it contains an unrelated rider which creates serious inequities and distortions in the Federal personnel system.

In the decade since the enactment of the Farm Labor Contractor Registration Act of 1963, it has become apparent that the provisions of that law have not been adequate to accomplish its purpose of protecting migrant farm workers from abuses by farm labor contractors. For nearly a year, the Administration has been working with the Congress to develop legislation which would improve the Act, and there has been give and take on all sides. I am pleased with this spirit of cooperation, and endorse those provisions of H.R. 13342 which apply to migrant farm workers.

Unfortunately, the Congress has seen fit to add a rider to this bill which is totally unrelated to the needs of migrant farm workers.

Section 17 of the bill would arbitrarily reclassify hearing officer positions in the Department of Labor, and make existing hearing officers Administrative Law Judges regardless of their qualifications.



Delivered to Clerk of House: 10/29/74 (5:25pm)

(Stencilled)

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JMM*

I am gravely disturbed by that part of Section 17 relating to the hearing officers now employed by the Labor Department to hear and decide "black lung" claims. These employees would by fiat be declared to be Administrative Law Judges without regard to their capacity to fill such positions. Since Administrative Law Judges hired in the usual manner must demonstrate such capacity, this feature would be contrary to all principles of a civil service system based upon merit and competition among candidates.

I also cannot accept the feature of Section 17 which would legislatively classify and pay at the GS-16 level these newly designated Administrative Law Judges for the "black lung" program, as well as those who currently hear claims under the Longshoremen's and Harbor Workers' Compensation Act and the members of the Benefits Review Board established by the Longshore Amendments of 1972. Such a provision would arbitrarily impose a grade level without due regard for the relative complexity and difficulty of the work involved. By over-classifying certain positions, it would be disruptive of the principle of equal pay for equal work. This would create inequities within the Labor Department, and between positions of that agency and those in a number of other agencies, including approximately 400 GS-15 Administrative Law Judges in the Social Security Administration.

My concern about legislating classifications and pay of special groups of employees was the basis for my disapproving H.R. 5094, which provided for an arbitrary



and inequitable reclassification of deputy U.S. marshals. In my first veto upon assuming the Presidency, I expressed my strong concern about granting preferential pay treatment by statute, and indicated that our policy must be to provide equal salaries for equal work. The rider to H.R. 13342 contains deficiencies similar to those in H.R. 5094.

In summary, I cannot accept a legislative provision which would disrupt sound principles of personnel administration, would create serious pay inequities by providing overly liberal salaries to employees in one agency leading to demands for similar treatment by large numbers of employees in other agencies, and would not effectively serve the public interest.

I urge the Congress, upon its return next month, to send me a bill--which I will promptly approve--without the unacceptable personnel provision I have described, a bill which is directed only toward strengthening the Farm Labor Contractor Registration Act.



THE WHITE HOUSE,

October 29, 1974.

October 29, 1974

Received from the White House a sealed envelope said to contain H. R. 13342, An Act to amend the Farm Labor Contractor Registration Act of 1963 by extending its coverage and effectuating its enforcement, and a veto message thereon.

W. Pat Jennings
Clerk of the House of Representatives

5:25
Time received

October 29, 1974

Office of the White House Press Secretary

THE WHITE HOUSE

TO THE HOUSE OF REPRESENTATIVES:

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GERALD R. FORD

THE WHITE HOUSE,
October 29, 1974

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October 17, 1974

Dear Mr. Director:

The following bills were received at the White House on October 17th:

H.J. Res. 1167 ✓
H.R. 13157 ✓
H.R. 13342 ✓
H.R. 14217 ✓
H.R. 15736 ✓

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C.

