

**REPORT OF THE  
DEPARTMENT OF LABOR AND INDUSTRY  
AND  
DEPARTMENT OF AGRICULTURE AND  
CONSUMER SERVICES ON**

# **The Problems Of Obtaining Farm Labor In The Commonwealth**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



## **HOUSE DOCUMENT NO. 57**

**COMMONWEALTH OF VIRGINIA  
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**REPORT ON THE PROBLEMS OF  
OBTAINING FARM LABOR  
IN THE COMMONWEALTH**  
to  
**The General Assembly of Virginia  
Richmond, Virginia  
January, 1990**

**EXECUTIVE SUMMARY**

This report is in response to House Joint Resolution No. 300 of the 1989 General Assembly, which requested the Department of Labor and Industry and the Department of Agriculture and Consumer Services to study the problems of obtaining farm labor in the Commonwealth. (Appendix A) In consultation with the Virginia Employment Commission, Governor's Employment and Training Department, Departments of Social Services, Corrections, and Economic Development, the study examined:

1. the need for farm labor;
2. potential sources of meeting the need for supplying agriculture labor; and
3. recommendations that could assist farmers in obtaining a readily available supply of labor while providing benefits and opportunities for unemployed workers.

The study committee also sought advice and input from the Virginia Sheriffs Association and Virginia Farm Bureau.

Nationally, the demand for hand-harvested fresh fruits and vegetables has increased thereby increasing the need for larger numbers of temporary harvest employees. More than half of the jobs on farms are temporary or seasonal, dictated by the very nature of the growing season. Most jobs are in relatively isolated areas, often a considerable distance from population centers, not readily accessible to the general job market.

Agriculture, in this country, employs some 4.5 million people of which more than two million are hired workers. Of the 87,000 workers on Virginia farms in 1980, 60,000 were farmers and unpaid family members and 27,000 were hired workers and paid family members. When local labor is not available for seasonal employment, growers have relied upon migrant workers. Growers may utilize several methods: employment of a crew leader who provides the workers; participate in the federal-state Job Service System operated by the Virginia Employment Commission; or obtain certification for foreign workers through the U.S. Department of Labor and Immigration and Naturalization Service H-2A program.

The Federal Immigration and Reform Control Act causes concern over the future availability of agricultural workers in Virginia. Although actual data may not be available for the 1990 harvest season, the initial indicators do not support this premise. However, this report should provide a foundation for future action should the final results prove an agricultural labor shortage does, in fact, exist.

#### FINDINGS AND RECOMMENDATIONS

This report has attempted to identify potential sources of labor which could augment an agricultural labor shortage. It has done this by examining the various entitlement programs and used the most current statistical data as a basis for providing estimates on the supply side. On the needs side, this report analyzes survey results, current employment data, and usual manpower needs by crop and acreage. Some general findings and recommendations are:

- The use of any substantial number of Aid to Dependent Children (ADC) and Food Stamp recipients would not provide a significant pool of temporary labor considering the State's policy and efforts to assist these recipients in obtaining employment that will allow them to leave and remain off the welfare rolls. The skills training received from picking fruit and vegetables will not prepare them for obtaining full-time jobs in other occupations.
- Individuals who enroll in JTPA are interested in skill training for occupations which are stable, provide benefits and have the potential for advancement. Most participants do not have access to transportation and a majority are residents of metropolitan areas.
- Most DOC inmates are from urban areas and will return to employment in urban areas. Farm work does not provide work experience or training that will be of long term benefit to the offender. A number of the DOC inmates will not be medically able to perform farm labor. The DOC Institutions have critical labor needs in such areas as grounds upkeep, sewage and wastewater treatment plants, maintenance programs and agribusiness programs.
- Interest for an agricultural work release program has been expressed by some local sheriffs. An estimate of the potential supply, however, indicates relatively few could be available to meet growers' needs. And, many of these are not in localities in which there appears to be a need for farm workers.
- The VEC reports an increase in the requests and certification of foreign agricultural workers under the H-2A program. Additionally, in 1989, more growers have



been inquiring about the H-2A program and, although most of these growers eventually met their needs with domestic labor, this may not be possible in future years. It is anticipated that there will be an increase in H-2A activity.

At the present time, it does not appear that growers are experiencing unmet labor needs, nor are there sufficient unemployed individuals who could benefit from agricultural work. There are, however, several actions that could be taken which could be beneficial in preparing for future shortages and provide a work experience for some individuals. These include:

- Establish a pilot program in an area where specific growers' needs for local agricultural workers can be obtained from the several labor sources identified in this study.
- A study of the feasibility of a state operated system that could link Virginia's agricultural employers whose seasonal employment needs may compliment other states' agricultural employers' available workers.
- Development of a summer youth-in-agriculture program in connection with existing state youth programs to provide an optional work experience for urban and rural youth.

## CHAPTER ONE

### OBJECTIVES AND RESEARCH APPROACH

#### Purpose and Objectives of Study

The 1989 General Assembly adopted House Joint Resolution 300 which requested the Department of Labor and Industry and the Department of Agriculture and Consumer Services to study the problems of obtaining farm labor in the Commonwealth and "to report their findings and recommendations to the 1990 Session of the General Assembly...." In response to that request, this report examines (1) the need for farm labor; (2) potential sources of meeting the need for supplying agricultural labor; and (3) recommendations that could assist farmers in obtaining "a readily available supply of labor," while providing benefits and opportunities for unemployed workers.

The objectives of this study are:

- 1) To identify a pool of acceptable agricultural labor that is dependable and affordable;
- 2) To quantify the need for agricultural workers in the State in order to determine areas of labor shortages;
- 3) To analyze sources of unemployed individuals who could meet the labor needs of the farmers; and
- 4) To recommend to the General Assembly how to meet the needs for agricultural workers.

#### BACKGROUND

Agriculture is one of the major sources of employment in this country, and according to the American Farm Bureau Federation, employs some 4.5 million people of which more than two million are hired workers. The Federation also notes that the cost of labor is a major input in the cost of producing food, even before labor costs of marketing and distribution are added into the retail price paid by the consumer.

Nationally, the demand for hand-harvested fresh fruits and vegetables has increased thereby increasing the need for larger numbers of temporary harvest employees. Technological advances which mechanized other types of farm production have not financially benefited the grower of hand-harvested fruits and vegetables. Additional administrative costs and the yearly fluctuation of income from the sale of their produce also places additional burdens on the growers. A high priority for the

grower, therefore, is the need for an efficient method of supplying the demand for the produce market and providing the labor to harvest the crops.

More than half of the jobs on farms are temporary or seasonal, dictated by the very nature of the growing season. Most jobs in agriculture are in relatively isolated areas, often a considerable distance from population centers, not readily accessible to the general job market. Work on farms tends to require more than a 40-hour work week, a prospect not appealing to a great many people.

A 1980 survey conducted by the Virginia Cooperative Extension Service reported that the largest portion of farm labor in Virginia was supplied by the farmer and his/her family. Of the 87,000 workers on Virginia farms in 1980, 60,000 were farmers and unpaid family members and 27,000 were hired workers and paid family members.

When local labor is not available for seasonal employment, growers have relied upon migrant workers. Traditionally, the recruitment of migrant farm workers has been accomplished through a crew leader. A crew leader provides a grower with workers in return for an agreed remuneration or rate of pay which is distributed to the workers. The crew leader provides a highly desirable and even essential service to farmers in many areas of the country.

Under the Wagner-Peyser Act, migrant farm workers can be recruited through the Virginia Employment Commission. This cooperative system, operated by the states with federal money, is overseen by the U.S. Department of Labor. Their regulations govern employment services provided to migrant and seasonal farm workers by the federal-state public Job Service System. Through the Job Service System, migrant workers can be recruited within Virginia, in other states, or in U.S. territories. If the VEC is unable to fulfill these Job Service requests with domestic laborers, the VEC assists growers in obtaining certification for foreign workers under the H-2A program. The H-2A program, run by the U.S. Department of Labor and the Immigration and Naturalization Service, stipulates that the admission of non-migrant aliens, for temporary work, must not "adversely affect the wages or working conditions of similarly employed U.S. workers."

On Virginia's Eastern Shore, limited time for recruiting sufficient migrant workers and the economic uncertainty of the produce market have made the crew leader system desirable. Growers on the Eastern Shore hire crew leaders who recruit the migrant workers.

Growers in the Southside and Shenandoah areas have been the major users in Virginia of the Federal Job Service System. In using the System to obtain temporary foreign agricultural workers under

the H-2A Program, growers place an order with the Virginia Employment Commission specifying how many workers are needed, and agree to all conditions of employment as prescribed by federal regulations. Nationwide, however, less than four percent of all migrant farm workers are recruited through the Job Service System. In 1985, for example, less than ten percent of the migrant laborers recruited in Virginia were obtained through the Job Service System.

The Immigration Reform and Control Act (IRCA) signed into law November 6, 1986, requires employers to hire only American citizens and aliens who are authorized to work in the United States. The law requires that both agricultural and non-agricultural employers verify the eligibility of their workers. Special programs were designed under IRCA (Public Law 99-603, Section 210) to prevent potentially harmful labor shortages in agriculture. These programs are: 1) Seasonal Agricultural Workers (SAW) and; 2) Replenishment Agricultural Workers (RAW). Both programs are intended to provide a path toward eventual citizenship. All the workers who meet the basic requirements of the SAW Program and have applied for legalized status, are free to live and work in any occupation anywhere legally. Those workers receiving SAW status will attain permanent residence status December 1, 1990.

If enough SAWs or other workers leave agriculture, and there is a shortage of workers, additional workers may enter the U.S. through the Replenishment Agricultural Worker (RAW) Program. RAWs, too, can choose where they live and work, but must work in agriculture at least 90 man-days each year for three years. After three years, a RAW can be a permanent legal resident, entitled to remain in the U.S. indefinitely without performing any more farm work.

In 1988, a House subcommittee studied ways to improve Virginia's farm economy, pursuant to House Resolution 6. The subcommittee heard from several state agencies and growers that: (1) local seasonal farm labor was difficult to acquire; (2) use of migrant and H-2A workers is more costly; (3) IRCA will have a negative impact on the supply of migrant workers in the future; (4) past efforts at involving teenagers in seasonal work have been unsuccessful; and (5) prisoners in state facilities are no longer available as a potential source of seasonal farm labor. House Document No. 61, Report of the Subcommittee, recommended that "legislation be enacted establishing a joint subcommittee to study the problem of obtaining farm labor in the Commonwealth." The Senate Committee on Rules proposed an amendment in the nature of a substitute which directed the appropriate state agencies to conduct the study. Delegate McClanan, the Patron of HJR 300, subsequently appointed a special subcommittee of the House Committee on Agriculture. The special subcommittee, chaired by Delegate McClanan, included Delegates J. Paul Council, Jr. and Robert S. Bloxom, who worked with the agencies to develop this study and its recommendations.

## RESEARCH DESIGN

The results of this study are based on the responses of local sheriffs and agricultural associations, augmented by statistical data from the participating state agencies. Virginia's sheriffs were asked about their interest in participating in an agricultural work release program and the approximate number of eligible inmates who could be assigned to such a program. The State's Department of Corrections (DOC), Department of Social Services (DSS), Governor's Employment and Training Department (GETD), and the Virginia Employment Commission (VEC) provided details on their eligible clients as a potential source of agricultural workers.

To determine the labor needs of the growers/farmers, agricultural associations were requested to identify the areas of need by crop and type of job. In addition, the VEC and Department of Agriculture and Consumer Services (VDACS) furnished supplemental data to ensure that all areas of the state were included.

### RESEARCH EFFORTS TO DETERMINE NEED

#### Grower/Farmer Input

A survey questionnaire was developed to obtain information on the adequacy of farm labor and the types of labor currently used, i.e. migrants, local, H-2A, etc. The survey was mailed to approximately 50 Executive Directors of agricultural associations representing the diverse agricultural activities in the Commonwealth. In addition, the President of the Virginia Farm Bureau sent a letter to the local presidents requesting their participation. This approach was used to facilitate receipt of the needs analysis. The one-page survey contained 4 questions and was included with a cover letter explaining the purpose of the study, participating agencies and elected officials and how the survey responses would be utilized. A pre-addressed stamped envelope was included for returning the survey to the Department of Labor and Industry. Twenty-two (22%) percent of the Executive Directors responded to the survey. A comparison of the responses reveals 55% of the agricultural associations stated the supply of farm labor was not adequate to meet the needs of their growers. The majority of these were currently using local citizens and family members for the seasonal and year round work with the remaining respondents also using migrant workers.

Three (3%) percent of the local Farm Bureau presidents responded to the survey. Of the responses, most said that their labor needs were not being adequately met and these respondents indicate using mostly migrant workers.

The number of returned surveys, however, did not provide data for an acceptable sample size to base any decisions on for purposes of this study.

The structured questions included in the survey questionnaire (Appendix B) dealt with sources of current labor and the usual number of workers needed to complete the various jobs associated with each crop.

### State Government Input

Information about the need for agricultural workers was primarily obtained from data furnished by the Virginia Employment Commission (VEC) and Department of Agriculture and Consumer Services (VDACS).

The State's Job Service System, delegated by the USDOL to the VEC, requires that growers must follow prescribed recruitment procedures using the state employment service offices and must offer prescribed wage levels, working conditions, and non-wage benefits. (Appendix C) These federally mandated requirements were designed to protect the jobs, wages, and working conditions of U.S. workers. There are two surveys utilized which provide the basis for these mandates: (1) the Agricultural Labor Survey (ALS) conducted by the U.S. Department of Agriculture (USDA); and (2) the prevailing wage surveys for implementing Department of Labor (DOL) wage minimums for H-2A workers. Although DOL is ultimately responsible for the prevailing wage survey, state employment agencies actually conduct the individual surveys. Since the VEC was able to access the information supplied in these surveys, it is included in this report to determine the worker needs in Areas 1 through 7, 9, and 11 identified on the maps contained in Appendix D.

Another primary source for determining the labor needs of the farmers was furnished by VDACS. For areas 9, 10 and 11, an estimate of the numbers and types of farming operations was identified and calculations were then made on "usual" labor needs required for harvesting based on the acreage and normal crop yields. These areas are dominated by crops that are mechanically harvested and, therefore, tend to be family owners-operators with some additional labor hired from the local labor market. Hand-harvesting operations for the remaining areas are labor intensive and dependent upon large pools of local, migrant and foreign workers. Peak employment months have been included for the major crops in each of the areas.

The 11 geographical areas were developed to facilitate the agencies' research and analysis of the vast quantity of data.

## RESEARCH EFFORTS TO DETERMINE LABOR SOURCES

The variety of potential sources of labor necessitated utilization of two methods to obtain relevant data. First, state agencies participating in the study identified programs that served clients who were considered to be unemployed and the number of clients served in those programs. Subsequent data was reviewed on the characteristics of the client groups for each of the eleven geographical areas. A second method was a survey of local sheriffs to determine what portion of their inmate population is normally eligible for work release and, of that number, how many could be a potential source of labor for agriculture.

### State Agencies Input

Participating agencies furnished statistical data for each locality. In addition, certain prescribed mandates accompanying the various programs were considered in order to meet the objectives of this study. The agencies provided the following information:

- Department of Social Services (DSS)

A numerical compilation of recipients receiving benefits under the ADC and Food Stamp Programs. The total numbers were supplied for each program and for each locality. Data were then screened for the characteristics and classification of the individuals.

- Governor's Employment and Training Department (GETD)

Figures furnished by the GETD were derived from their activities for grant year 1988-89. Statistical data represented participants in the program, some of whom were also receiving benefits under the aforementioned DSS programs. Under GETD program criteria, however, specific jobs must be available and candidates' applications are processed through the local GETD service provider. In addition, jobs must be for year round employment and requires an employment-training linkage. Summer youth programs established through the existing GETD structure must be for public service jobs.

- Department of Corrections (DOC)

The DOC furnished information on several of their existing programs. Current inmate data and criteria was obtained for the Pre-Release and Work Release Programs as of April 1989. In addition, job categories were identified and statistical

data supplied on the current pool of inmates and facility location. A listing of unfilled jobs in the state's facilities were also reviewed.

The Community Diversion Incentive (CDI) Program was explored as a possible source of labor. Criteria and procedures associated with the CDI program were presented as well as the major program sites.

◦ Virginia Employment Commission (VEC)

An estimate of the total agricultural related individuals receiving unemployment compensation was furnished by the VEC. Statutory criteria associated with the process of seeking employment were reviewed as well as the impact of temporary or seasonal work upon an individual's benefits. A geographical distribution of unemployed agricultural workers was identified by the VEC.



## CHAPTER TWO

### ANALYSIS OF SURVEY RESULTS

The survey of local sheriffs was developed for the purpose of obtaining specific information on each locality's work release program. Due to the limited resources and time constraints, the questionnaire, developed by the participating agencies, consisted of six questions. Statistical data were also requested for each month in the 1988-89 fiscal year for: (1) number of prisoners committed; (2) number of prisoner days; (3) number of non-violent prisoners; and (4) number of prisoners on work release. (Appendix E)

One hundred and twenty-five local sheriffs were mailed survey questionnaires along with a letter from John Jones, Executive Director of the Virginia Sheriffs Association. The cover letter explained the background of the study, who was involved and the need for their input. A pre-addressed stamped envelope was included and returned to the Department of Labor and Industry. Several weeks after the requested due date, a follow-up reminder notice was sent to those who had not responded.

No effort was made to identify any specific legal constraints. This analysis is intended rather to provide empirical data that would indicate how many may be included in the potential supply of available labor.

As noted before, the agricultural survey response rate was too low to be considered acceptable for analysis. Therefore, no analysis is being described in this section.

### GENERAL SUMMARY OF SURVEY RESPONSES

A 78% response rate was achieved with the initial request and follow-up. The responses were tabulated and results indicate:

- 13 percent of the respondents do not have a local jail facility or share with an adjoining jurisdiction and 6 percent participate in a regional center.
- 56 percent of the respondents currently operate a work release program and two localities had previously operated a program.

Each sheriff was asked of their interest in operating a work release program to provide farm labor. These responses reveal that 26 percent are interested and, in actual numbers:

- 23 localities currently operating work release programs;

- 2 localities which are not currently operating work release programs; and
- 5 localities indicate the need for more information.

TABLE 1

Local sheriffs were asked to provide the number of prisoners in work release for the 1988-89 fiscal year. From this information, it is not possible to determine the exact number available on an annualized basis. Listed are the monthly figures for the 30 localities who indicated interest in an agriculture work release program:

LOCALITY	NUMBER OF PRISONERS ON WORK RELEASE											
	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June
Counties of:												
Albermarle/C'ville	16	15	16	16	18	18	15	12	13	13	15	11
Bland	1	1	2	2	1	1	1	1	1	1	1	1
Botetourt	6	4	3	3	3	2	2	1	0	5	7	1
Buchanan												
Charlotte	1	1	3	3	1	1	2	1	1	1	1	3
Chesterfield	24	25	29	36	28	29	26	27	31	29	29	29
Fauquier	6	5	3	3	5	4	4	4	4	5	6	5
Floyd												
Franklin*	10	10	3	2	7	7	7	5	1	1	4	3
Frederick	61	59	54	56	51	53	50	54	44	53	50	56
Giles	0	0	0	0	0	0	0	0	1	1	0	0
Halifax	5	4	4	3	3	1	3	4	4	1	3	3
Henrico	39	38	43	40	46	45	48	40	40	50	65	60
Highland	1	1	1	2	2	0	0	0	0	0	0	0
Loudoun	19	14	16	17	19	18	21	19	24	19	19	19
Mecklenburg	14	15	16	17	19	18	21	19	24	19	19	19
Northampton	5	3	4	5	5	4	3	4	4	4	3	4
Prince Wm/Manassas	39	32	40	41	41	39	37	40	36	38	25	33
Roanoke*	12	10	10	13	8	13	14	12	16	19	14	12
Russell	3	3	3	4	4	4	2	2	2	3	3	3
Scott	3	3	3	3	2	2	2	2	2	2	2	2
Shenandoah*	3	2	0	0	1	0	0	0	0	0	1	0
Southampton	0	0	1	2	2	2	2	1	1	1	1	1
Tazewell	4	2	1	2	3	1	0	4	4	2	2	5
Wythe*	4	5	3	4	5	4	3	3	3	4	4	4
Cities of:												
Bristol	6	5	5	5	5	5	6	6	6	6	4	6
Richmond	78	78	81	78	72	71	58	72	76	77	89	88
Suffolk*	35	34	34	35	32	32	31	32	32	30	31	30
Virginia Beach	14	15	19	24	21	17	19	20	22	21	27	25
Williamsbg/James City	13	16	17	14	11	11	8	12	9	12	12	13
TOTALS	422	400	414	430	415	402	385	397	401	417	437	436

\*Possible Participants

TABLE 2

The sheriffs were requested to estimate the percent of their work release inmates who would be interested in seasonal agricultural work. Listed is an average of the number of inmates on work release (from data in Table 1) and the responses:

<u>LOCALITY</u>	<u>NUMBER ON WORK RELEASE (Monthly Average)</u>	<u>% INDICATED AVAILABLE FOR AGRICULTURE</u>
Counties of:		
Albemarle/Charlottesville	15	35-45%
Bland	1	5%
Botetourt	3	unk.
Buchanan	N/A	25%
Charlotte	2	90%
Chesterfield	29	unk.
Fauquier	5	15%
Floyd	N/A	-
Franklin*	5	10%
Frederick	53	50%
Giles	less than 1	30%
Halifax	3	25%
Henrico	46	0%
Highland	less than 1	75%
Loudoun	19	20%
Mecklenburg	11	60-70%
Northampton	4	5%
Prince William/Manassas	37	1%
Roanoke*	13	25%
Russell	3	10%
Scott	2	25%
Shenandoah*	less than 1	45%
Southampton	1	25%
Tazewell	3	50%
Wythe*	4	4%
Cities of:		
Bristol	5	5%
Richmond	77	8-10%
Suffolk*	32	most
Virginia Beach	20	60%
Williamsburg/James City Co.	12	100%

\* Possible participants

Respondents were asked to indicate whether they had been contacted by local farmers regarding the use of inmates for agriculture. Fifteen (15) replied in the affirmative and these are:

Bristol	Southampton	Fauquier
Buchanan	Highland	Williamsburg
Charlotte	Giles	Chesterfield
Mecklenburg	Albemarle/Charlottesville	Suffolk
Halifax	Loudoun	Dinwiddie

The sheriffs' survey indicated as few as one contact to as many as twelve. Several sheriffs indicated they had been successful in meeting the requests while others said details could not be worked out or that inmates were not available.

#### Benefits of Work Release

The survey sought to ascertain from the sheriffs their opinion of the benefits of a work release program as well as possible benefits for agriculture work-release. Of the 39 responding to this question, 14 had indicated interest in agricultural work for inmates. Benefits to the jail/locality are summarized below:

- Releasees keep same job held before becoming an inmate. Helps employer and inmate.
- Alternative sentencing method which frees up bed space, and helps relieve overcrowding.
- Releasees' earnings help pay for court costs, fines, restitution, routine medical and dental expenses, as well as sending money to help his/her family.
- Releasees pay room and board which serves to defray cost to jail/locality.
- Helps eliminate prisoner free time.

#### Other Responses

Twenty-two (22) of the respondents currently operating work release programs offered reasons why they would not be interested in supplying inmates for agriculture. These reasons are summarized below:

- Too urban and costly to provide transportation and needed supervision to rural areas.

- Concern for liabilities.
- Insufficient staff to supervise and monitor and no funds available.
- Inadequate housing available.
- Program designed to align work releasees to full time yearly employment which will enhance the possibility of reducing recidivism.

## CHAPTER THREE

### ANALYSIS OF STATISTICAL DATA

#### Department of Social Services

The Job Opportunities and Basic Skills Training Program (JOBS), due to be implemented in October 1990, is designed to help ADC recipients obtain employment that 1) is in high demand occupations; 2) is stable not seasonal; 3) enables opportunity for promotion; and 4) provide wages that will allow recipients to get off the welfare rolls. This program will utilize a combination of intensive education and occupational skills training to enable the recipient to obtain and retain a job that will lead to self-sufficiency.

This program is in the direction that both the Governor and the General Assembly have supported over the prior years. In 1988, the General Assembly appropriated \$750,000 to the Virginia Department of Social Services and the Governor's Employment and Training Department (JTPA) to jointly operate pilot programs designed to help ADC teen mothers and long-term ADC recipients to become self-sufficient through the attainment of stable employment at wages high enough to allow them to permanently leave the welfare rolls.

The characteristics of the employable ADC population may also preclude using this group as a major source for farm laborers. According to June 1989 data, roughly 96 percent of the 25,000 ADC-ESP population were female, all with minor children, many of whom would need child care. With the onset of the JOBS program, there will be an increase in males due to the inclusion of the ADC Unemployed Parents program, but the increase is expected to be nominal.

Another issue in using the ADC-ESP population as a labor pool for farm growers is the cost of transportation. The Virginia Department of Social Services spent an estimated \$500,000 for transportation for employment-related services, generally within the locality. The issue is who will pay for the cost of transporting ADC recipients to the farms which may be several counties away. The Virginia Department of Social Services would be unable to accommodate any additional employment transportation expenses beyond what has already been allocated.

The Food Stamp Employment Training program (FSET) served 79,654 Food Stamp recipients in FY 1988-89. These are Food Stamp recipients who are defined as employable per the U.S. Department of Agriculture's regulations. In 1988, Congress passed the Hunger Prevention Act, which marked a shift in the policy direction of the FSET program. The Hunger Prevention Act (Appendix F) emphasizes that job retention is to be one of the

performance standards by which the program's success will be measured. Congress' concern is that the FSET recipients obtain jobs that will lead to self-sufficiency, i.e., jobs that will allow recipients to remain off the Food Stamp rolls. Roughly 54 percent of the FSET program recipients are female.

#### Governor's Employment and Training Department

The Job Training Partnership Act (JTPA), a federally funded program, was established to prepare youth and unskilled adults for entry into the labor force. The JTPA programs provide job training to individuals who face barriers to employment and are in special need of training to obtain productive employment. The state is divided into 14 geographical areas known as Service Delivery Areas (SDAs). Within the SDA, the local elected officials appoint a Private Industry Council (PIC), which is charged with the responsibility of providing policy guidance for activities under JTPA. Through the partnership of the local elected officials and PIC, programs are planned and operated at the local level.

JTPA is a needs-based program but not an entitlement program. To be eligible for enrollment, an individual must be economically disadvantaged (defined as having a family income below the federal poverty guidelines). Services are based on an assessment of individual skills and abilities and are designed to lead to long-term, unsubsidized employment.

All individuals enrolled in JTPA receive some type of employment and training services designed to assist them in obtaining permanent employment. The services an individual receives are those which will provide the employment competencies necessary to obtain a specific job. The target occupation is determined after preliminary assessment and counseling. Services may include vocational skills training, classroom training (basic and remedial education) and on-the-job training.

During the year ending June 30, 1989, a total of 7,768 adults (those over 21) received JTPA services. Of this number, 6,337 completed or dropped out of the program and 5,736 were placed in permanent, unsubsidized employment at an average wage of \$4.79 per hour. In this same time period, 7,045 youth (ages 16-21) received services. Of this number, 75 percent were placed into employment at an average wage of \$4.39 per hour. Other outcomes included competency attainment and return to full-time school.

#### Department of Corrections

National trends and Virginia trends in inmate population characteristics show we are getting a higher percentage of longer term inmates, who are incarcerated for more violent offenses against the person. This is the main reason the pool of suitable



inmates for "A" custody outside work assignments is proportionally lessened. The bottom line is always a subjective risk assessment, which must favor public safety over fiscal and parochial concerns.

The Virginia Parole Board appropriately paroles the better inmates, who often are "A" custody, outside work eligible inmates, and does so at a faster rate than the DOC can provide justifiable replacements. The result is that DOC's own work programs, i.e. Capital Construction, Maintenance, and Farm face a labor shortage due to the 1) High percentage of violent offenders who do not meet DOC criteria for outside work; 2) High percentage of non-violent offenders who do not meet DOC criteria for outside work; and 3) Rate at which "A" custody inmates are paroled. This leaves a very small number suitable for work release.

As of September 26, 1989, there were 13,883 male, felon term inmates in Virginia correctional institutions. Of this number, approximately 4% or 523 inmates meet the work release eligibility criteria. Analysis of work release suitability of these 523 inmates reflects 238 inmates eligible and suitable for work release participation. This is approximately 1.7% of the total male, felon term inmate population in state correctional institutions.

In a recent study conducted for this report, the DOC found that of 523 who met current work release eligibility criteria, only 238 were actually found suitable. When their records were reviewed for offense history, adjustment, prior escapes, health status, and parole eligibility. This study would suggest no more than 2% of the adult DOC population will be both eligible and suitable for work release at any given time. (Appendix G - Prisoner Classification Overview.)

#### Virginia Employment Commission

The Virginia Employment Commission collects information on unemployment insurance (UI) claimants on a quarterly basis. This is done using a sample of claimants. This report, the ES-203, includes a breakout of individuals who list their occupation as farming, forestry, fishing and related employment. This data is available for the state, the planning districts, the service delivery areas of JTPA, and individual counties and cities. A key limitation to this data is that most agricultural workers do not draw UI benefits and are therefore not included in this report.

The VEC also maintains farm employment data for the state and individual counties and cities. This data is provided by the Bureau of Economic Analysis (BEA) of the U.S. Department of Commerce and is an estimate of all farm employment. According to the latest estimates provided by BEA, Virginia farm employment was 69,553 including 52,782 proprietors and 16,771 wage and

salary workers. This compared to 3,304,000 farm employment nationally. Virginia's total civilian employment, as reported by BEA, was 3,447,437.

The number of unemployment insurance claimants listed with farming, fishing, forestry and related occupations for each area identified in this report is provided below for August 1989. This totals 51 claimants or 0.3% of all claimants.

AREA	NO. OF AG. CLAIMANTS
1	10
2	8
3	0
4	3
5	0
6	0
7	3
8	3
9	24
10	0
11	0
STATE	51

## CHAPTER FOUR

### FINDINGS AND RECOMMENDATIONS

The survey results reveal a willingness on the part of some local sheriffs to utilize work release as a potential source of agricultural labor. Supplementing this labor source, however, from a pool of workers identified from the state agencies' statistical data, does not reveal an adequate source of suitable workers for farm work.

Unmet domestic agricultural labor needs are currently being met through the federal H-2A program. In crop year 1989, the area maps indicate where and how much H-2A activity occurred. Virginia farmers' needs were certified by DOL for 3,013 H-2A workers. Labor certification for the temporary foreign agricultural workers (H-2A) was granted only after extensive recruitment of domestic workers, both locally, statewide and through the job service interstate clearance system, failed to meet the needs of the growers.

This Chapter sets out the findings of the data previously discussed. The area maps show the major crops and harvest season. In addition, potential labor needs and estimated labor sources are calculated for each area.

#### Department of Social Services

The use of the ADC recipient population as a labor pool would not be appropriate, considering the State's policy/efforts to assist ADC recipients in obtaining employment that will allow them to leave and remain off the welfare rolls. At best, the types of employment envisioned under HJR 300 are seasonal, resulting in three to four months of employment. After this period of employment, recipients will undoubtedly find themselves back on the welfare rolls. We have already seen this trend in areas of high seasonal employment such as the Northern Neck area. The skills training the recipients would receive from picking fruit and vegetables will not prepare them for obtaining full-time jobs in other occupations. In addition, the time spent in picking fruit and vegetables will take away from the recipients time available for educational remediation and occupational skills training activities. The result would be a prolongation of the amount of time recipients would continue to receive ADC benefits.

As discussed earlier, the issue of who will pay for transporting this population to the farms also remains a problem. However, the main difficulty in using this population lies with the nature of the seasonal employment envisioned by HJR 300. These are seasonal, low skill, low demand, low wage jobs. The intent

behind the FSET program has been to place recipients in jobs that are full-time and have wages which will allow the recipients to eventually leave the Food Stamp rolls.

Picking fruit and vegetables will not result in the FSET recipients obtaining occupational skills that will then allow recipients to obtain stable, full-time jobs. Instead of training them or searching for jobs that will offer better wages, these recipients will be working at farm labor jobs which probably will only serve to prolong their stay on Food Stamps.

#### Governor's Employment and Training Department

Available data indicate that the total number of individuals enrolled in JTPA during the coming years will decrease slightly. The basis for national allocation of funds is unemployment and Virginia's relative economic strength translates into decreasing amounts available to the state. Changes in program directions and philosophy are also impacting the numbers served.

There are specific requirements concerning provision of training under JTPA. Training may only be provided for occupations which have been previously identified and are in demand or have a high potential for sustained growth. Additionally, the subsidized employment (the main feature of the summer work program for youth) in the private sector is prohibited.

The Federal Government has established performance standards by which the programs are judged. The system mandates that program operators achieve the standards in order to continue operations. Included in the standards are employment retention factors which stress long-term employment (currently defined as 13 weeks but potentially extended to six months) and which significantly discourage placement in seasonal occupations.

Additionally, an effort to amend JTPA is in process. Available information indicates that these amendments will place increased emphasis on vocational and remedial education and decreased emphasis on direct job placement. For youth (ages 16-21), emphasis is shifting to in-school, dropout prevention efforts.

An analysis of participants enrolled during the last program year indicates that the majority were residents of metropolitan areas and would be unlikely to accept farm labor placement. As a rule, the individuals who chose to enroll in JTPA are interested in skill training for occupations which are stable, provide benefits and have the potential for advancement. Most participants do not have access to transportation and the data indicate that the majority of participants are female. Taken together, these factors provide sufficient evidence that the JTPA program does not provide a satisfactory or readily available pool of employees for farm labor.

## Department of Corrections

While data reflect 238 inmates are eligible and suitable for the Work Release Program, it is estimated that less than half of this number would voluntarily accept a farming position as proposed.

1) Most DOC inmates are from urban areas and will return to employment in urban areas. Farm work does not provide work experience or training that will be of long term benefit to the offender. 2) A number of these inmates will not be medically able to perform farm labor. 3) DOC Institutions have critical labor needs in such areas as grounds upkeep, sewage and wastewater treatment plants, maintenance programs, and agribusiness programs such as dairy and dairy processing, beef, pork and row crop operations, all require "A" custody inmates. In addition DOC and VDOT needs for low risk inmate labor are greater than the available pool of eligible inmates at this time. This type of inmate is also most likely to be paroled and in most cases can expect to be paroled within six months. The turnover rate for parole eligible inmates would probably be every two (2) to four (4) months. Replacing a large number of the work force on such a frequent basis would certainly slow production and replacement needs would be constant.

## Virginia Employment Commission

As mentioned previously, in crop year 1989 the U.S. Department of Labor (DOL) certified a total of 3,013 H-2A workers to meet the labor needs of Virginia's farmers. This represented an increase from the 1988 crop year in both the total number of H-2A job orders submitted to the regional DOL office in Philadelphia for certification and the total number of H-2A workers certified. The majority of this increase was in the southside tobacco area where growers have come to depend on temporary foreign agricultural labor for many years.

However, one of the major fruit growers in Albemarle County, who has always been able to obtain sufficient domestic labor in the past, was forced to request emergency alien labor certification under the H-2A program when his usual domestic labor sources fell through.

The Virginia Employment Commission (VEC) received many requests from individual growers concerning information on the H-2A program during 1989. Most of these growers were able to meet their labor needs with domestic labor. Some growers, however, were in doubt up until the last minute.

At this time, it is hard to predict whether Virginia will see a substantial increase in H-2A activity during the 1990 growing season. The VEC does, however, anticipate an increase in H-2A activity over 1989.

## Virginia Department of Agriculture and Consumer Services

Fifteen percent of Virginia's \$1.9 billion in gross farm sales in 1988 have been estimated to come from labor intensive crops, which include fruits, vegetables and tobacco. About twelve percent, or \$162.4 million, of \$1.334 billion in current production expenses are attributable to farm labor.

Tobacco production and harvesting is a major user of seasonal hired farm labor, mostly H-2As, and is concentrated in southside Virginia. Tobacco is Virginia's number one cash crop with gross farm sales in 1988 estimated at \$145 million on 47,000 acres. It is also the largest of the commodities in its use of H-2A labor in 1988. Mexicans dominate in H-2A tobacco workers and are well-suited to the growers' needs.

The fruit industry is the second largest user of seasonal hired farm labor, mostly H-2As. Apple orchards in the 1987 five-year survey numbered 343, down from 599 in 1977 with the number of trees declining only slightly to 1,555,000. Apple production is concentrated in the Shenandoah Valley, Piedmont, Roanoke and Southwest. Peach production is found in the same general areas where there are 166 orchards with 209,000 trees. In recent years, Jamaican H-2As are predominant in this labor force and have adapted well to fruit picking.

Virginia's vegetable industry, primarily concentrated on the Eastern Shore, depends on seasonal hired farm labor, most of which are domestic migrants who move in the migrant stream from southern Florida to Virginia as vegetable crops mature along the way. Other major production areas include the cities of Chesapeake, Suffolk, Virginia Beach and the counties of Carroll, Wythe, James City, Hanover and the four Northern Neck counties of Richmond, Westmoreland, Lancaster and Northumberland.

Other agricultural commodities requiring seasonal hired farm labor include grapes. Commercial vineyards are located across the state from Floyd to Accomack counties with concentrations found in Fauquier, Albemarle and Madison counties. Acreage consists of an estimated 1,400 in 1988. Harvest labor is primarily local. Grapes, like apples and peaches, require some year round work in pruning and spraying, etc., which is generally done by local and family labor with help from domestic migrants needed at some of the larger vineyards and wineries.

Some other full-time labor is used on a few Virginia farms. Dairy farms, nurseries, horse farms and the larger grain producers, which are highly mechanized, generally have one or more full-time employees who supplement family labor. Most farms have seasonal needs for additional labor during peak seasons for hay making, pruning, spraying, harvesting and planting.

Farmers must obtain experienced workers who are ready, willing and able to perform the tasks needed and in the quantities necessary for their mutual economic benefit.

### Federal Activity

A recent Government Accounting Office (GAO) Report to Congressional Requesters (October, 1988) documents that in southern Virginia, the teenage farm workers still available and important in the 1970s disappeared in recent years with the growth of fast food and other job opportunities. Government-sponsored summer job programs are an attractive option for some of the rural youth who might in earlier years have chosen farm work. It is very likely, therefore, that non-farm jobs attract local workers who, without these options, might have worked in tobacco.

While some might contend that many individuals prefer certain entitlement programs to the added income which might come from part-time farm work, the GAO Report found that this was not accurate in their study. In reality, they report, few employable people are receiving assistance. The public assistance caseloads reviewed by the GAO included households whose members were chiefly the elderly, women and children. Additionally, local recipients of unemployment insurance benefits were found to be insufficient to supply the number of workers needed.

The U.S. Department of Labor has conducted a review and evaluation on immigration's effects on the U.S. economy and labor market. Its report is part of the President's first Comprehensive Triennial Report on Immigration. In accordance with the Immigration Reform and Control Act, the President's Report was submitted to Congress in May 1989. Basically, the U.S. DOL review revealed that neither U.S. workers in complementary jobs nor most minority workers appear to be adversely affected by immigration. And, according to the report, the presence of immigrants in the U.S. benefits employers, consumers and the U.S. international economic position.

A determination on the shortage of agricultural workers due to the provisions of the Immigration Reform and Control Act will be accomplished by the Secretaries of Labor and Agriculture. This determination is to be made before the beginning of each fiscal year, commencing 1990 and ending 1993. Since the numerical results will provide an indication of the replenishment agricultural workers (RAWs) needed, any anticipated shortage can be documented upon receipt of the Secretaries' determination report. Until the individual states receive this information, an accurate evaluation of any agricultural labor shortage in the Commonwealth cannot be calculated.

## RECOMMENDATIONS

At this time, a cautious approach has been taken regarding this study committee's recommendations to address a perceived labor shortage for Virginia's agricultural employers. Any program to address existing labor shortages must be developed within existing resources and implemented on a test basis to determine effectiveness and usefulness. Simultaneously, the state must monitor and respond to the federal reporting activity on agricultural labor shortages.

Accordingly, it is recommended:

1. **A pilot program be established in one of the geographical areas where specific growers' needs for local agricultural workers can be obtained from the several labor sources identified in this report.**

The use of the employable ADC population as a labor pool for farm growers would be counter to the state's efforts to get ADC recipients into long-term stable employment that will eventually result in recipients permanently leaving the welfare rolls. Likewise, use of Food Stamp recipients would disrupt efforts being made to provide remedial education and skills training that can have more long-term positive impacts. However, those individuals who are not actively involved in program activities or who are between activities can be made aware of the short-term employment opportunities in agriculture.

Some inmates from the local jails can be included in the labor pool, but concerns of the growers regarding liabilities, supervision, etc. must be resolved. Growers should not be expected to take on the additional responsibility and/or costs which, in the long term, would not be beneficial to their agricultural operations.

2. **Study the feasibility of a state operated system that could link Virginia's agricultural employers whose seasonal employment needs may compliment other states' agricultural employers' available workers.**

In some states, many farm workers are employed by a single grower for six to nine months each year. These farm workers are often those that are part of the East Coast Migrant Stream working their way to Virginia. Several Virginia farmers have been able to make arrangements with growers in Florida or Texas to employ their crews. The skills and availability of these domestic farm workers are compatible with the Virginia grower's needs and assures a reliable, dependable work force. Currently, this process is undertaken by the grower. Within state agencies, various programs exist which may serve as a basis for potential expansion and the state may, within statutory authority, be able to offer this service to Virginia growers.



3. **Develop a summer youth-in-agriculture program in connection with existing state youth programs to provide an optional work experience for urban and rural youth.**

The various regulations concerning employment of children are set out in the Virginia Child Labor Laws. Hours of employment based on age as well as type of employment and employment in jobs which may be considered hazardous must be met. Most growers are not able to employ youth because school attendance conflicts with their harvest season. In urban and many rural areas, other employment opportunities are available for youth in fast foods, recreation, and other areas. However, in those instances in which youth can be employed in agriculture, the opportunity may be attractive to youth if it provides an incentive. An incentive, such as credit earned for work applied towards tuition to attend sports camps, should be made part of the summer youth-in-agriculture program.

## CHAPTER FIVE

### CONCLUSION

Where local labor is inadequate to meet the large seasonal needs of the growers, domestic migrant workers have been recruited to fill this void. If the supply of domestic migrant workers is insufficient, growers may utilize the H-2A program to bring in foreign workers. Although occasional local agricultural labor shortages have recently been reported in some Virginia localities, the current agricultural employment practices discussed in this report are able to provide a source of qualified labor to meet these shortages.

Labor sources examined for this report will not substantially impact agricultural labor needs in all areas of the Commonwealth. Several areas in the state could benefit from a small number of additional agricultural workers. In those areas, there also appears to be a willingness on the part of local sheriffs to assist in this effort. And in other sections of the state, some unemployed individuals could be identified and made aware of agricultural employment opportunities. These activities, however, will not substantially reduce the growers' dependency on the existing processes to obtain, in large numbers, the majority of the workers needed.

**APPENDICES**

**GENERAL ASSEMBLY OF VIRGINIA -- 1989 SESSION**

**HOUSE JOINT RESOLUTION NO. 300**

*Requesting the Department of Labor and Industry and the Department of Agriculture and Consumer Services to study the problems of obtaining farm labor in the Commonwealth.*

Agreed to by the House of Delegates, February 24, 1989

Agreed to by the Senate, February 23, 1989

WHEREAS, farmers in the Commonwealth have been unable to satisfy their temporary and seasonal labor needs; and

WHEREAS, many farmers in Virginia experienced difficulty in finding labor to harvest their crops in 1988, particularly fruits and vegetables; and

WHEREAS, the temporary and seasonal labor sources currently utilized by farmers are limited to migrant workers or federal H2A foreign workers; and

WHEREAS, federal regulations regarding the housing which is required to be provided for such workers are very stringent and costly to farmers; and

WHEREAS, a legislative study conducted by the General Assembly has concluded that the Commonwealth should provide grants or low interest loans to farmers for the construction or rehabilitation of suitable housing for such workers, thereby easing the financial burden placed upon farmers; and

WHEREAS, consideration should be given to the development of a more balanced approach, whereby suitable housing, such as mobile homes, would be provided for such laborers at a lower and more reasonable cost to Virginia's farmers; and

WHEREAS, the Virginia Employment Commission estimates that approximately ninety percent of the crops in Virginia are harvested through the use of illegal immigrants; and

WHEREAS, stricter enforcement of the Federal Immigration Act, as well as other factors, will increase the difficulty of acquiring farm labor in all areas of the Commonwealth in the future; and

WHEREAS, farmers are currently prohibited from using prisoners on work release for such labor due to policies implemented by the Virginia Department of Corrections, although many inmates could benefit from this form of rehabilitation while earning money, and farmers could benefit from a plentiful and less costly form of labor; and

WHEREAS, persons who are currently unemployed could financially benefit from such seasonal and temporary labor opportunities, thereby providing farmers with a readily available supply of labor; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Department of Labor and Industry and the Department of Agriculture and Consumer Services are requested to study the problems of obtaining farm labor in the Commonwealth.

The Departments shall consult with the Department of Social Services, the Department of Corrections, the Department of Economic Development, the Virginia Employment Commission and other state agencies as necessary and appropriate.

The Departments shall complete their work in time to report their findings and recommendations to the 1990 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for processing legislative documents.

AGRICULTURAL SURVEY

FOR HJR 300

Association/Organization \_\_\_\_\_

Name of Director \_\_\_\_\_ phone: \_\_\_\_\_

Geographical Area served (list counties/cities) \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

1. Is your supply of farm labor adequate to meet the needs of your member-growers?

\_\_\_\_\_ YES

\_\_\_\_\_ NO. List types of operations affected (pruning, packing, picking, etc.). \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

2. Which source(s) of labor is/are used by the majority of your members?

SEASONAL WORKERS	MIGRANT WORKERS	YEAR-ROUND WORKERS
_____ Local	_____ H-2A	_____ Local
_____ Family	_____ Domestic SAWS (non-U.S.)	_____ Family
_____ Other (explain)	_____ Domestic-U.S. Workers	_____ Other (explain)
_____	_____ Other (explain)	_____
_____	_____	_____
_____	_____	_____

(continued)

3. For each crop below, please list in as much detail as possible the types of labor, the usual months of employment for each type, and an estimate of the numbers required.

<u>CROP</u>	<u>TYPES OF LABOR (pickers, packers, etc.)</u>	<u>MONTHS OF EMPLOYMENT</u>	<u>NUMBER OF WORKERS NEEDED</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

4. Please describe any alternative labor sources that your association or growers are exploring to meet area labor needs.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PLEASE RETURN BY SEPTEMBER 12, 1989 TO:

Marilyn Mandel, Director  
 Planning and Policy Analysis  
 Department of Labor and Industry  
 P. O. Box 12064  
 Richmond, Virginia 23241



# VIRGINIA FARM BUREAU FEDERATION

200 West Grace Street • P.O. Box 27552 • Richmond, Virginia 23261 • (804) 788-1234

August 29, 1989

Dear Farm Bureau President:

The 1989 General Assembly adopted Delegate Glenn McClanan's House Joint Resolution 300 requesting the Departments of Labor and Industry (DLI) and Agriculture and Consumer Services (VDACS) to study the problems of obtaining farm labor in the Commonwealth. Delegate McClanan also appointed a special subcommittee of the House Agriculture Committee to work with the State agencies. Delegates McClanan, Bloxom and Council serve as members on this subcommittee.

In an effort to study the problems and provide recommendations, DLI, VDACS and representatives from the Departments of Social Services, Corrections, Economic Development, Virginia Employment Commission, and Governor's Employment and Training Department are working to identify potential sources of labor that would be acceptable and affordable to Virginia's agricultural employers.

The Virginia Farm Bureau has been invited to participate in the study. A survey of the state's agricultural community on needs for and uses of labor is an essential component in the study. I hope you will take a few minutes to complete the enclosed survey and return to Marilyn Mandel at the Department of Labor and Industry. As the lead agency for HJR 300, they are coordinating all study activities and are providing periodic status reports to the subcommittee. If you have any questions, please call Ms. Mandel (804-786-2385). For your convenience, a pre-paid self-addressed envelope is enclosed.

Thank you for your assistance and cooperation.

Sincerely,

C. Wayne Ashworth  
President

C.W.A:MM/jbm

## ETA HANDBOOK NO. 398

CONTENTS OF JOB OFFERS AND ASSURANCES

655.102

1. Job Offers

The application of an employer for temporary alien agricultural labor certification must include a job offer. The job offer must include the terms and conditions of employment which will be used in the recruitment of both U.S. and alien workers. As a minimum, the job offer must comply with minimum requirements established in the general agricultural clearance order regulations at 20 CFR Part 653, Subpart F, and must include certain benefits, wages, and working conditions which are needed in order to assure no adverse effect on U.S. workers similarly employed. The job offer or the Form ETA 790 must also include an agreement to abide by the assurances specified in the regulations at 20 CFR 655.103. A short statement to this effect is sufficient.

Certain components of the job offer also must conform to what is "prevailing", "normal" or "common" practice in the area for the occupation. (See Chapter II, Section C).

- a. Equivalent Treatment of U.S. and Alien Workers. A basic premise of any labor certification determination is that the employer must offer U.S. workers at least the same opportunities, wages, benefits, and working conditions as those which the employer offers or intends to offer to nonimmigrant foreign workers. If such terms and conditions of employment for the aliens have been prearranged through a worker agreement or contract, the employer should be required to furnish a copy of such contract with the application so that the RA may make a threshold determination on the equivalent benefit criteria.

(Furnishing a copy of such contract, however, does not constitute DOL approval of the terms and conditions in the contract, which are subject to further review, and a copy of the alien worker contract should not accompany a job order into clearance.)

At the same time, the employer may not require more of U.S. workers than is being required of the alien workers. For example, if the employer allows alien workers a certain period of breaking in or training time to achieve a required production standard, U.S. workers must be offered at least the same opportunity for reaching the standard without being discouraged.

§ 655.102 Contents of job offers.

(a) *Preferential treatment of aliens prohibited.* The employer's job offer to U.S. workers shall offer the U.S. workers no less than the same benefits, wages, and working conditions which the employer is offering, intends to offer, or will provide to H-2A workers. Conversely, no job offer may impose on U.S. workers any restrictions or obligations which will not be imposed on the employer's H-2A workers. This does not relieve the employer from providing to H-2A workers at least the same level of minimum benefits, wages, and working conditions which must be offered to U.S. workers consistent with this section.



- b. Housing. Housing must be available for all non-commuting workers without charge to the workers. "Non-commuting" refers to workers who are not reasonably able to return to their residence within the same day. The job offer should provide a written description of the housing to be provided, including the location, type (dormitory, 5-room frame house, etc.), and number of workers and, where appropriate, family members who can be accommodated. The job offer shall clearly state that housing is provided at no cost to workers.

Family housing is to be made available and provided under certain circumstances. This depends upon a determination by the RA on the practices of employers in the area of employment to provide family housing for workers in the same occupation for which workers are requested. If it is the prevailing practice, as determined by a survey, then such family housing must be provided to workers with families who request such housing arrangements. (See also Chapter II, Section C)

Housing arrangements may be basically three types, as provided for in the regulations:

- o Employer Provided Housing. This is housing which is owned or leased through long term arrangements by the employer for housing temporary agricultural workers. Such housing must comply with the full set of U.S. Department of Labor (DOL) standards (Occupational Safety and Health Administration [OSHA] or Employment and Training Administration [ETA], as applicable). (Also see Chapter II, Section D of handbook). If the housing is not in full compliance with such standards at the time of application, the employer must request in writing conditional access to the clearance system with assurance that such housing will be in full compliance at least thirty (30) calendar days before it is to be occupied.

This time frame may be waived for employers whose applications are accepted under emergency or first-time user provisions. However, the requirements to provide adequate housing which meets applicable standards cannot be waived, and certification under the emergency and first-time user provisions cannot be granted for an employer who is providing non-rental housing unless that employer's housing has been inspected and has been found to meet standards.

(1) *Housing.* The employer shall provide to those workers who are not reasonably able to return to their residence within the same day housing, without charge to the worker, which may be, at the employer's option, rental or public accommodation type housing.

(i) *Standards for employer-provided housing.* Housing provided by the employer shall meet the full set of DOL Occupational Safety and Health Administration standards set forth at 29 CFR 1910.142, or the full set of standards at §§ 654.404-654.417 of this chapter, whichever are applicable, except as provided for under paragraph (b)(1)(iii) of this section. Requests by employers, whose housing does not meet the applicable standards, for conditional access to the intrastate or interstate clearance system, shall be processed under the procedures set forth at § 654.403 of this chapter.

(ii) *Standards for range housing.* Housing for workers principally engaged in the range production of livestock shall meet standards of the DOL Occupational Safety and Health Administration for such housing. In the absence of such standards, range housing for sheepherders and other workers engaged in the range production of livestock shall meet guidelines issued by ETA.

(iii) *Standards for other habitation.* Rental, public accommodation, or other substantially similar class of habitation must meet local standards for such housing. In the absence of applicable local standards, State standards shall apply. In the absence of applicable local or State standards, Occupational Safety and Health Administration standards at 29 CFR 1910.142 shall apply. Any charges for rental housing shall be paid directly by the employer to the owner or operator of the housing. When such housing is to be supplied by an employer, the employer shall document to the satisfaction of the RA that the housing complies with the local, State, or federal housing standards applicable under this paragraph (b)(1)(iii).

(iv) *Charges for public housing.* If public housing provided for migrant agricultural workers under the auspices of a local, county, or State government is secured by an employer, and use of the public housing unit normally requires charges from migrant workers, such charges shall be paid by the employer directly to the appropriate individual or entity affiliated with the housing's management.

- o Arrangements for Other Housing. Employers may make other arrangements for housing, such as rental or public accommodations, which meet standards for such housing. If there are no local or State standards, then such housing must meet the OSHA standards established in the regulations at 29 CFR 1910.142. The employer must provide documentation that such housing is in compliance with local or State standards, if this is the case. This may be in the form of a certificate from the local or State Department of Health office or a statement from the manager or owner of the housing. Local offices should check to be sure that such standards do, in fact, exist. If rental housing is obtained, the employer shall make all the arrangements and pay the rental fee directly to the owner or operator of the housing. Workers shall not be held responsible in any way for paying the rental cost of the accommodation.

Normally, rental housing would consist of a commercial, motel-type accommodation for transients. However, there is nothing to preclude an employer who does not actually own housing on his/her property from renting non-commercial housing from other individuals or entities for the purpose of housing temporary agricultural workers. When this occurs, the local or state standard principle for acceptability of the housing applies. However, SESA's and Regional Offices should examine such situations carefully to ensure that employers in an area are not attempting to circumvent DOL's housing standards by entering into reciprocal rental arrangements as a means to avoid pre-occupancy housing inspections. This is not permissible.

It is not permissible for workers to be required to make deposits for bedding, other items furnished in the accommodations, or for possible damage to accommodations. If workers are subsequently found to have been responsible for damage, the employers may require reimbursement for such damages as prescribed in the regulations. Such reimbursements, however, may not result in a worker's wages going below the Federal minimum wage, unless specifically authorized by FLSA regulations.

(v) *Deposit charges.* Charges in the form of deposits for bedding or other similar incidentals related to housing shall not be levied upon workers by employers who provide housing for their workers. However, employers may require workers to reimburse them for damage caused to housing by the individual workers found to have been responsible for damage which is not the result of normal wear and tear related to habitation.

(vi) *Family housing.* When it is the prevailing practice in the area of intended employment and the occupation to provide family housing, family housing shall be provided to workers with families who request it.

- o Range Housing. Housing for workers primarily engaged in the range production of livestock must meet applicable standards per guidelines issued by DOL. Separate guidelines for shepherd range housing are presented in FM No. 108-82, July 8, 1982. Other guidelines may be developed as appropriate.
- c. Workers' Compensation. The job offer shall include a statement that workers' compensation will be provided at no cost to all workers in the occupation for which workers are being sought. The coverage and benefits provided will be at least equal to that provided under the State workers' compensation law for comparable employment. If coverage is in effect at the time of application, the employer will set forth in the application the insurance carrier and the policy number, or, if appropriate, proof of State law coverage. If coverage is not in effect, the employer is required to provide proof of coverage before a labor certification can be granted.
- (2) *Workers' compensation.* The employer shall provide, at no cost to the worker, insurance, under a State workers' compensation law or otherwise, covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law, if any, for comparable employment. The employer shall furnish the name of the insurance carrier and the insurance policy number, or, if appropriate, proof of State law coverage, to the RA prior to the issuance of a labor certification.
- d. Employer Provided Items. The job offer shall describe all equipment which will be used by workers in performing the job opportunity. Work equipment may be picking bags, gloves, clippers, knives, files, etc. All such equipment shall be provided by the employer without charge (e.g., any deposit) except where the employer asserts that it is the common practice in the crop activity, the geographic area, and occupation for workers to provide such necessary tools and equipment. This would apply regardless of whether the employer subsequently reimbursed workers for such cost. In any event, the employer must clearly document that it is the common practice and obtain written approval in advance from the RA before this exception can be granted. Further, the costs incurred by the worker in providing his/her own tools, supplies and equipment may not bring the worker's wages below the FLSA minimum for the work week in which the cost is incurred.
- (3) *Employer-provided items.* Except as provided below, the employer shall provide, without charge including deposit charge, to the worker all tools, supplies, and equipment required to perform the duties assigned; the employer may charge the worker for reasonable costs related to the worker's refusal or negligent failure to return any property furnished by the employer or due to such worker's willful damage or destruction of such property. Where it is a common practice in the particular area, crop activity and occupation for workers to provide tools and equipment, with or without the employer reimbursing the workers for the cost of providing them, such an arrangement is permissible if approved in advance by the RA.
- e. Meals. The job offer shall specifically describe the arrangements made for feeding workers. If the employer has a centralized cooking and feeding facility, the employer must provide each worker with three meals per day. If the worker is working at the time of scheduled meal time, the job offer must describe the meal arrangement for feeding the worker; e.g., sack lunch, meal catered to field, etc.

In the absence of centralized facilities, the employer may arrange for meals to be provided to the workers by means of a catering service which will deliver meals prepared elsewhere to the employer's facility.

If centralized cooking and eating facilities are not available and catered meals are not provided, the employer must furnish at no cost to the workers convenient cooking and eating facilities of sufficient size and capacity (including utensils) which would enable workers to prepare their own meals. The job offer shall clearly describe such facilities and state that the facilities and necessary utensils are provided at no cost to the workers.

Where meals are provided, the job offer shall also state the daily charge for three meals. Such charge cannot exceed the amount permitted by the regulations at 20 CFR 655.102 or 20 CFR 655.111.

f. Transportation

- o To Place of Employment. The job offer should describe the arrangements by which the worker will travel to and from the place of employment. If it is the prevailing practice of non-H-2A employers in the area and occupation to advance transportation and subsistence costs (or provide such), the employer shall state in the job offer that transportation and subsistence cost will be advanced. Employers are also required to offer U.S. workers at least the same benefits which are provided H-2A workers; therefore, if transportation will be provided or advanced to H-2A workers, the same must be offered to U.S. workers. The amount of transportation cost will be determined to be at least that by the most economical and reasonable similar common transportation carrier.

If it is not the prevailing practice for non-H-2A employers to advance or provide transportation and subsistence, the job offer must stipulate that the worker will be paid the costs incurred by the worker for transportation and subsistence upon completion of fifty percent of the contract period.

In either case, the amount of the daily subsistence payment will be at least the amount the employer could charge the workers for meals under 20 CFR 655.102(b)(4) and for the time it would take for a worker to travel by the most economical and reasonable common transportation carrier to the job site.

[4] *Meals.* Where the employer has centralized cooking and eating facilities designed to feed workers, the employer shall provide each worker with three meals a day. When such facilities are not available, the employer either shall provide each worker with three meals a day or shall furnish free and convenient cooking and kitchen facilities to the workers which will enable the workers to prepare their own meals. Where the employer provides the meals, the job offer shall state the charge, if any, to the worker for such meals. Until a new amount is set pursuant to this paragraph (b)(4), the charge shall not be more than \$5.26 per day unless the RA has approved a higher charge pursuant to § 655.111 of this part. Each year the charge allowed by this paragraph (b)(4) will be changed by the same percentage as the 12-month percent change in the Consumer Price Index for All Urban Consumers for Food between December of the year just concluded and December of the year prior to that. The annual adjustments shall be effective on the date of their publication by the Director as a notice in the Federal Register.

(5) *Transportation: daily subsistence—(i) Transportation to place of employment.* The employer shall advance transportation and subsistence costs (or otherwise provide them) to workers when it is the prevailing practice of non-H-2A agricultural employers in the occupation in the area to do so, or when such benefits are extended to H-2A workers. The amount of the transportation payment shall be no less (and shall not be required to be more) than the most economical and reasonable similar common carrier transportation charges for the distances involved. If the employer has not previously advanced such transportation and subsistence costs to the worker or otherwise provided such transportation or subsistence directly to the worker by other means and if the worker completes 50 percent of the work contract period, the employer shall pay the worker for costs incurred by the worker for transportation and daily subsistence from the place from which the worker has come to work for the employer to the place of employment. The amount of the daily subsistence payment shall be at least as much as the employer will charge the worker for providing the worker with three meals a day during employment. If no charges will be made for meals and free and convenient cooking and kitchen facilities will be provided, the amount of the subsistence payment shall be no less than the amount permitted under paragraph (b)(4) of this section.

If an employer is subject to FLSA, the employer may not make deductions (for transportation) from the worker's pay or require the worker to incur costs that would result in the pay falling below the Federal minimum wage, unless otherwise specifically authorized by FLSA regulations.

- o From Place of Employment. The job offer should also state that transportation and subsistence benefits will be provided for workers who complete the work contract period. This means that the employer must offer to pay for (or provide) the worker's transportation home, or wherever the worker began the series of jobs culminating at the current place of employment. If the worker has obtained a subsequent job, but the subsequent employer has not offered to pay for (in advance or by reimbursement) the worker's transportation from the current place of employment to the other employer's place of employment, the current employer must offer to pay for (or provide) such transportation expenses. However, where the subsequent employer has offered to pay for (or provide), in advance or by reimbursement, the worker's transportation from the current place of employment to the subsequent employer's place of employment, the current employer is not required to pay for (or provide) such transportation.

This benefit does not apply to workers who voluntarily quit employment before the end of the contract or who are terminated for cause, providing the employer notifies the Job Service office of such action. The same deduction or cost incurred limitation described above for incoming transportation applies to return transportation.

- o Between Living Quarters and Work Site. The job offer shall clearly state that the employer will provide transportation from the place where the employer has provided housing to the actual work site and return at the end of the work day. Such transportation will be without cost to the worker, and the means of transportation shall meet all applicable safety standards.

This benefit is not applicable to local workers who are not eligible for employer-provided housing.

(ii) *Transportation from place of employment.* If the worker completes the work contract period, the employer shall provide or pay for the worker's transportation and daily subsistence from the place of employment to the place from which the worker, disregarding intervening employment, came to work for the employer, or, if the worker has contracted with a subsequent employer who has not agreed in that contract to provide or pay for the worker's transportation and daily subsistence expenses from the employer's worksite to such subsequent employer's worksite, the employer shall provide or pay for such expenses; except that, if the worker has contracted for employment with a subsequent employer who, in that contract, has agreed to pay for the worker's transportation and daily subsistence expenses from the employer's worksite to such subsequent employer's worksite, the employer is not required to provide or pay for such expenses.

(iii) *Transportation between living quarters and worksite.* The employer shall provide transportation between the worker's living quarters (*i.e.*, housing provided by the employer pursuant to paragraph (b)(1) of this section) and the employer's worksite without cost to the worker, and such transportation will be in accordance with applicable laws and regulations. This paragraph (b)(5)(iii) is applicable to the transportation of workers eligible for housing, pursuant to paragraph (b)(1) of this section.

(6) *Three-fourths guarantee—(i) Offer to worker.* The employer shall guarantee to offer the worker employment for at least three-fourths of the workdays of the total periods during which the work contract and all extensions thereof are in effect, beginning with the first workday after the arrival of the worker at the place of employment and ending on the expiration date specified in the work contract or in its extensions, if any. If the employer affords the U.S. or H-2A worker during the total work contract period less employment than that required under this paragraph (b)(6), the employer shall pay such worker the amount which the worker would have earned had the worker, in fact, worked for the guaranteed number of days. For purposes of this paragraph (b)(6), a workday shall mean the number of hours in a workday as stated in the job order and shall exclude the worker's Sabbath and federal holidays. An

- g. Three-fourths Guarantee. This provision guarantees the worker an opportunity to work for at least three-fourths of the number of hours in the work days during the period of the contract. The number of hours in the workday is that stated in the job offer. The period of the contract is from the first work day after arrival of the worker at the place of employment until the expiration date of the work contract. If the U.S. or H-2A worker is not offered the opportunity to work for three-fourths of such hours during this period, then the employer must supplement the pay of such worker as though the worker had actually worked such guaranteed employment.

If a worker is paid on a piece rate or other similar incentive system, the worker's average hourly piece rate earnings (if higher than the AEWV) will be used in determining the amount due under this guarantee.

The three-fourths guarantee will not apply to any H-2A worker who may be displaced by a U.S. worker under the fifty-percent rule.

- h. Records. The job offer shall state that the employer will keep and maintain adequate and accurate payrolls and supporting records in accordance with the provisions of 20 CFR 655.102(b)(7). It is not necessary to describe in detail on the job offer the type of records maintained. Employers also may be required to maintain additional records which may be required by FLSA or MSPA.

- i. Hours and Earnings Statement. The job offer should state that an hours and earnings statement will be given to each worker when the worker is paid. The statement must be in writing and must be given on a basis no less frequently than on pay day. The earnings records to be provided each worker may be a combination of daily records and a summary statement of earnings and deductions given at the time of actual payment. For example, a worker may be given a statement each day which would show:

- o Name and payroll identification number;
- o Work starting and ending time;
- o Hours worked, including hours offered and actually worked (Note: The reason for not working hours offered should be explained either specifically or by a readily identifiable code.);

employer shall not be considered to have met the work guarantee if the employer has merely offered work on three-fourths of the workdays if each workday did not consist of a full number of hours of work time specified in the job order. The work shall be offered for at least three-fourths of the workdays (that is,  $3/4 \times (\text{number of days}) \times (\text{specified hours})$ ). Therefore, if, for example, the contract contains 20 eight-hour workdays, the worker shall be offered employment for 120 hours during the 20 workdays. A worker may be offered more than the specified hours of work on a single workday. For purposes of meeting the guarantee, however, the worker shall not be required to work for more than the number hours specified in the job order for a workday, or on the worker's Sabbath or Federal holidays.

(ii) Guarantee for piece-rate-paid worker. If the worker will be paid on a piece rate basis, the employer shall use the worker's average hourly piece rate earnings or the AEWV, whichever is higher, to calculate the amount due under the guarantee.

(iv) Displaced H-2A worker. The employer shall not be liable for payment under this paragraph (b)(6) with respect to an H-2A worker whom the RA certifies is displaced because of the employer's compliance with § 655.103(e) of this part.

(7) Records. (i) The employer shall keep accurate and adequate records with respect to the workers' earnings including field tally records, supporting summary payroll records and records showing the nature and amount of the work performed; the number of hours of work offered each day by the employer (broken out by hours offered both in accordance with and over and above the three-fourths guarantee at paragraph (b)(6) of this section); the hours actually worked each day by the worker; the time the worker began and ended each workday; the rate of pay (both piece rate and hourly, if applicable); the worker's earnings per pay period; the worker's home address; and the amount of and reasons for any and all deductions made from the worker's wages;

(ii) If the number of hours worked by the worker is less than the number offered in accordance with the three-fourths guarantee at paragraph (b)(6) of this section, the records shall state the reason or reasons therefore.

(iii) Upon reasonable notice, the employer shall make available the records, including field tally records and supporting summary payroll records for inspection and copying by representatives of the Secretary of Labor, and by the worker and representatives designated by the worker; and

(iv) The employer shall retain the records for not less than three years after the completion of the work contract.

(8) Hours and earnings statements. The employer shall furnish to the worker on or before each payday in one or more

- o Hourly rate or piece rate;
- o If piece rate, the number of units produced; and
- o Total earnings.

At the time the worker is actually paid, a check stub or statement may be given which would show:

- o Gross wages;
  - o Itemization of all deductions for meals, Social Security, cash advances, etc. (Note: All deductions not required by law which may be made from worker's earnings must be specifically stated in the job offer.); and
  - o Net payment.
- j. Rates of Pay. The job offer should clearly state the rate of pay either by the hour and/or by a piece rate per identifiable unit of production.

If the worker is to be paid by the hour, the rate stated must be at least the highest of the following wage rates:

- o The adverse effect wage rate for the State;
- o The prevailing hourly wage rate for the occupation in the geographic area of employment as established by a SESA prevailing wage survey which is verified by the National Office; or
- o The legal federal or State minimum wage rate.

To cover situations in which the adverse effect wage rate might change during the contract period (usually March or April), the job offer should contain a statement that the employer will pay at least the adverse effect wage rate in effect at the time work is performed. An employer may state in the job offer/order that in the event DOL promulgates a new AEWR during the recruitment or work contract period which is lower than the current AEWR at the time of application, this lower AEWR will become the guaranteed minimum (unless there is a prevailing hourly rate which is higher than the AEWR). Absent this provision in the job order, the employer will not be permitted to pay a lower AEWR should one be published during the contract period.

written statements the following information:

- (i) The worker's total earnings for the pay period;
- (ii) The worker's hourly rate and/or piece rate of pay;
- (iii) The hours of employment which have been offered to the worker (broken out by offers in accordance with and over and above the guarantee);
- (iv) The hours actually worked by the worker;
- (v) An itemization of all deductions made from the worker's wages; and
- (vi) If piece rates are used, the units produced daily.

(9) Rates of pay. (i) If the worker will be paid by the hour, the employer shall pay the worker at least the adverse effect wage rate in effect at the time the work is performed, the prevailing hourly wage rate, or the legal federal or State minimum wage rate, whichever is highest, for every hour or portion thereof worked during a pay period; or

(ii)(A) If the worker will be paid on a piece rate basis and the piece rate does not result at the end of the pay period in average hourly piece rate earnings during the pay period at least equal to the amount the worker would have earned had the worker been paid at the appropriate hourly rate, the worker's pay shall be supplemented at that time so that the worker's earnings are at least as much as the worker would have earned during the pay period if the worker had been paid at the appropriate hourly wage rate for each hour worked; and the piece rate shall be no less than the piece rate prevailing for the activity in the area of intended employment; and

(B) If the employer who pays by the piece rate requires one or more minimum productivity standards of workers as a condition of job retention,

(1) Such standards shall be specified in the job offer and be no more than those required by the employer in 1977, unless the RA approves a higher minimum; or

(2) If the employer first applied for H-2 agricultural or H-2A temporary alien agricultural labor certification after 1977, such standards shall be no more than those normally required (at the time of the first application) by other employers for the activity in the area of intended employment, unless the RA approves a higher minimum.

If the worker is to be paid on a piece rate basis (price per identifiable and measurable unit of production), the job offer must state the piece rate. The unit of production must be clearly described; e.g., a field box of oranges (1-1/2 bushels), a bushel of potatoes, an Eastern apple box (1-1/2 metric bushels), a flat of strawberries (twelve quarts), etc.

The piece rate wage offer must be at least what is prevailing for the occupation and crop activity in the area of employment. For example, if a State agency survey determined that the prevailing wage rate was \$.50 for picking 1-1/2 bushels of oranges picked during the past season, the employer must offer at least this rate of pay on the job offer.

The job offer should also state that should the average hourly earnings for a pay period not equal the amount the worker would have earned if paid by the hour, the worker will be paid supplemental pay to bring earnings up to such level for each pay period. For example, an employee works forty-two hours during a one-week pay period. The worker picked three hundred and fifty field boxes of oranges @ \$.50 per box, with actual earnings of \$175.00, or \$4.16 per hour. The State AEW is \$5.00 per hour. Had he/she worked by the hour, the worker's earnings would be  $42 \times \$5.00 = \$210.00$ . Thus, the employee's pay must be supplemented by \$35.00 at the end of this pay period.

The regulations state that the worker's pay must be supplemented to increase the worker's earnings to a level ". . . if the worker has been paid at the appropriate hourly wage rate for each hour worked". The "appropriate" hourly rate in most cases will be the published AEW. However, if a SESA survey, which is verified by the National Office, results in a prevailing hourly wage rate for the occupation and the area which is higher than the published AEW, this hourly rate would be the "appropriate" rate. In the event both the published AEW and the verified prevailing hourly rate are both lower than the FLSA minimum, the FLSA minimum will be the standard that must be used.

The job offer should also specify the standards of production for job retention of a worker. If an employer filed an H-2 application in 1977, the productivity standard on the current job offer can be no



more than required by the employer in 1977 (or first year in the H-2 or H-2A program after 1977), unless the RA has approved a higher level subsequent to 1977. A new employer who files an application for labor certification for the first time after 1977 will be bound by productivity standards (existing at the time of application) normally required by other employers for the same crop activity in the same geographic area.

The RA may approve a higher minimum upon receiving substantive documentation from an employer in writing justifying a higher standard. Such documentation should show the increase is justified by technological, horticultural, or other labor saving means.

- k. Frequency of Pay. The job offer shall clearly state the length of the pay period, and the ending day of the week of the payroll period and date (day of week following payroll ending) on which workers will be paid. An example of such an entry would be: "Workers will be paid each Friday for the weekly payroll period ending on the preceding Tuesday."

The employer must pay workers at least as frequently as what is prevailing for employers of similarly employed workers in the area of intended employment, but no less than twice monthly.

1. Contract Impossibility. The provision of the regulations at 20 CFR 655.102(b)(12) allows the employer to terminate the work contract of any worker(s) whose services are no longer required for reasons beyond the control of the employer. In the event of such termination, the employer will be bound by the three-fourths guarantee from the first work day after arrival to the date of termination.

If the employer is unable to work out a transfer of the worker to other comparable employment, the employer will be required to offer to return the worker at the employer's expense to the place from which the worker came to work for the employer in accordance with the regulations at 20 CFR 655.102(b)(5)(11).

If the worker who is terminated under this provision has not been reimbursed for transportation to the job site in accordance with 20 CFR 655.102(b)(5)(1), the worker

(10) *Frequency of pay.* The employer shall state the frequency with which the worker will be paid (in accordance with the prevailing practice in the area of intended employment, or at least twice monthly whichever is more frequent).

(11) *Abandonment of employment; or termination for cause.* If the worker voluntarily abandons employment

(12) *Contract impossibility.* If, before the expiration date specified in the work contract, the services of the worker are no longer required for reasons beyond the control of the employer due to fire, hurricane, or other Act of God which makes the fulfillment of the contract impossible the employer may terminate the work contract. In the event of such termination of a contract, the employer shall fulfill the three-fourths guarantee at paragraph (b)(6) of this section for the time that has elapsed from the start of the work contract to its termination. In such cases the employer will make efforts to transfer the worker to other comparable employment acceptable to the worker. If such transfer is not effected, the employer shall:

(i) Offer to return the worker, at the employer's expense, to the place from which the worker disregarding intervening employment came to work for the employer.

(ii) Reimburse the worker the full amount of any deductions made from the worker's pay by the employer for transportation and subsistence expenses to the place of employment, and

(iii) Notwithstanding whether the employment has been terminated prior to completion of 50 percent of the work contract period originally offered by the employer, pay the worker for costs incurred by the worker for transportation and daily subsistence from the place from which the worker, without intervening employment, has come to work for the employer to the place of employment. Daily subsistence shall be computed as set forth in paragraph (b)(5)(i) of this section. The amount of the transportation payment shall be no less (and shall not be required to be more) than the most economical and reasonable similar common carrier transportation charges for the distances involved.

will be reimbursed for any transportation and subsistence due. If transportation was advanced and subsequently deductions were made from the worker's pay to cover costs, these deductions must be reimbursed to the worker and, if necessary, supplemented up to the inbound transportation level.

- m. Deductions. The job offer shall specify all deductions not required by law. An employer subject to the Fair Labor Standards Act (FLSA) will not make deductions from pay which would bring the wage below the federal minimum for the work week unless authorized by the FLSA regulations.
- n. Copy of Work Contract. If an employer develops a written contract between the employer and the worker, the contract must include the terms and conditions of employment specified in the regulations. A copy of such contract will be provided to the worker no later than the day on which the worker begins employment. In order to prevent any possible misunderstanding concerning the agreed upon contract, a sample work contract might be posted in a conspicuous location at the work site or housing facilities for workers. In the absence of a specific separate written work contract incorporating the terms and conditions of the job order, the terms and conditions of the job order (which must include the requirements in the regulations) and application shall be the work contract, and a copy of the job order must be provided to the worker.

If a written work contract will be used, the job offer should so state, and a copy should be attached to the job offer if possible. (Furnishing a copy of such contract, however, does not constitute DOL approval of the terms and conditions of the contract which are subject to further DOL review.) If there is no written contract, the job offer may include a statement such as: "In the absence of a written contract, the terms and conditions of the clearance job order and application are to be the work contract between the employer and the worker so employed."

- o. Occupational Qualifications. The Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act (IRCA) of 1986, specifically directs that the qualifications for a job offer be appropriate and not be more than the normally accepted qualifications required by non-H-2A

(13) *Deductions.* The employer shall make those deductions from the worker's paycheck which are required by law. The job offer shall specify all deductions not required by law which the employer will make from the worker's paycheck. All deductions shall be reasonable. The employer may deduct the cost of the worker's transportation and daily subsistence expenses to the place of employment which were borne directly by the employer. In such cases, the job offer shall state that the worker will be reimbursed the full amount of such deductions upon the worker's completion of 50 percent of the worker's contract period. However, an employer subject to the Fair Labor Standards Act (FLSA) may not make deductions which will result in payments to workers of less than the federal minimum wage permitted by the FLSA as determined by the Secretary at 29 CFR Part 531.

(14) *Copy of work contract.* The employer shall provide to the worker, no later than on the day the work commences, a copy of the work contract between the employer and the worker. The work contract shall contain all of the provisions required by paragraphs (a) and (b) of this section. In the absence of a separate, written work contract entered into between the employer and the worker, the required terms of the job order and application for temporary alien agricultural labor certification shall be the work contract.

(c) *Appropriateness of required qualifications.* Bona fide occupational qualifications specified by an employer in a job offer shall be consistent with the normal and accepted qualifications required by non-H-2A employers in the same or comparable occupations and crops, and shall be reviewed by the RA for their appropriateness. The RA may

employers in "the same or comparable crops". The labor certification determination is based upon a fair test of the labor market for U.S. workers who are able, willing, qualified and eligible to perform the job for which nonimmigrant workers are requested.

RAs receiving H-2A applications (and local offices receiving copies) from agricultural employers should carefully examine any unusual qualifications imposed by the employer in the job offer. An expedited survey should be made of non-H-2A employers and information obtained as to the minimal qualifications necessary to perform the occupation for which certification is being sought.

In addition to obtaining information from the local office, the RA should examine sources of occupational information such as the Dictionary of Occupational Titles. Also, the RA may consult with the State extension service and appropriate representatives of the U.S. Department of Agriculture (USDA) in determining the appropriateness of qualifications. If the RA questions the appropriateness of a required qualification, the burden for proving that the qualification requirement is, in fact, necessary, rests with the employer.

## 2. Assurances

It will not be necessary for the job offer to include a recitation of the assurances called for in this section (or those in 653.501); nor is a separate signed assurances statement necessary. However, the employer must provide a statement in the job order similar to the following: "The employer agrees to abide by the assurances specified in the conditions of 20 CFR Part 655, Subpart B, including the regulations at 20 CFR 655.103." Although this general statement is acceptable for the job offer, Regional Office and SESA staff should be acquainted with each assurance called for in this section. A brief summary of each follows.

- a. Labor Disputes. The job opportunity for which an alien worker is being sought must not be vacant because the former occupant is on strike or is being locked out in the course of a labor dispute. Nonimmigrant workers cannot be sought as a means of replacing workers who are no longer encumbering a position because they are involved in a labor dispute.

require the employer to submit documentation to substantiate the appropriateness of the qualification specified in the job offer; and shall consider information offered by and may consult with representatives of the U.S. Department of Agriculture.

655.103

### § 655.103 Assurances.

As part of the temporary alien agricultural labor certification application, the employer shall include in the job offer a statement agreeing to abide by the conditions of this subpart. By so doing, the employer makes each of the following assurances:

- (a) *Labor disputes*. The specific job opportunity for which the employer is requesting H-2A certification is not vacant because the former occupant is on strike or being locked out in the course of a labor dispute.

SESA staff should be alert as to any labor disputes which may involve agricultural employers who file, who had previously filed, or who have filed or have pending a temporary agricultural labor certification application or who have received such a certification. The facts concerning the labor dispute should be reported to the RA. As a minimum, the following facts should be reported:

- o the issue(s) involved in the labor dispute;
- o the occupation(s) directly involved, including the total number of workers involved in the dispute and the total number of workers employed in the occupation(s); and
- o the date the labor dispute began.

When the RA has information on the existence of a labor dispute which could impact directly upon a labor certification determination, the RA must ensure that an official investigation is conducted. Chapter II, Section E of this handbook addresses steps that are taken in that type of situation.

- b. Employment-Related Laws. The employer agrees to comply with all applicable federal, State, and local employment-related laws (including health and safety laws) and regulations during the period for which labor certification is granted.

*(b) Employment-related laws.* During the period for which the temporary alien agricultural labor certification is granted, the employer shall comply with applicable federal, State, and local employment-related laws and regulations, including employment-related health and safety laws.

It is not likely that a situation will arise when compliance with a local or State law or regulation will preclude compliance with a federal law or regulation, or vice versa. Normally, such statutes and regulations are constructed in a fashion which will permit at least minimal compliance with other relevant statutory and regulatory requirements. For example, some States have regulations limiting the maximum amount employers may charge workers for meals to an amount which is less than that permitted as maximum by the H-2A regulations. However, the H-2A regulations (20 CFR 655.102(b)(4)) prescribe that the maximum amount shall "not be more than . . . per day . . ."

In the highly unlikely event that SESA's or Regional Offices encounter situations where compliance with all applicable federal, State and local employment-related laws and regulations appears to be not possible, Regional Offices should consult with the National Office for advice and assistance.

If a State agency has reason to believe that the employer may be in violation of employment-related laws such as OSHA, MSPA or IRCA during a period covered by a labor certification, the facts should be reported to the RA for appropriate handling under the provisions of the regulation at 20 CFR 655.110. Such action shall not in any way impede prompt handling and resolution of any worker complaint filed pursuant to the regulations at 20 CFR 658, Subpart E.

- c. Rejection and Termination of U.S. Workers. U.S. workers cannot be rejected for or terminated from employment for other than lawful job-related reasons. Lawful job-related reasons include failure to achieve productivity levels, malingering, or serious misconduct. The employer must report each situation when U.S. workers are refused employment or are terminated, for any reason, in writing to the local office. Local offices shall maintain a record of such actions for at least two years.

- d. Recruitment of U.S. Workers. The employer agrees to engage in independent positive recruitment of U.S. workers until H-2A workers leave for the employer's establishment and to cooperate with the Employment Service (ES) System in recruiting U.S. workers.

- e. Fifty Percent Rule. (See also Chapter I, Section F, 4.) This section states that the employer must continue to provide employment to any qualified and eligible U.S. worker who applies until fifty percent of the period of the work contract has elapsed. This requirement begins on the date that foreign workers depart for the employer's place of employment, which is when the employer's obligation to engage in positive recruitment ceases. The employer is required to notify the local office, in writing, of the exact date on which the H-2A workers depart for the employer's establishment.

The employer must keep an active job order on file until the "fifty percent rule" has been met. The expiration date of the local and agricultural clearance order should also be adjusted to reflect the ending date of the fifty percent rule requirement. Of course, if the employer is willing to accept U.S. workers after this date, the local order (and the clearance order, if specifically agreed to) may remain open.

*(c) Rejections and terminations of U.S. workers.* No U.S. worker will be rejected for or terminated from employment for other than a lawful job-related reason, and notification of all rejections or terminations shall be made to the local office.

*(e) Fifty-percent rule.* From the time the foreign workers depart for the employer's place of employment, the employer, except as provided for by § 655.106(e)(1) of this part, shall provide employment to any qualified, eligible U.S. worker who applies to the employer until 50% of the period of the work contract, under which the foreign worker who is in the job was hired, has elapsed. In addition, the employer shall offer to provide housing and the other benefits, wages, and working conditions required by § 655.102 of this part to any such U.S. worker and shall not treat less favorably than H-2A workers any U.S. worker referred or transferred pursuant to this assurance.

*(d) Recruitment of U.S. workers.* The employer shall independently engage in positive recruitment until the foreign workers have departed for the employer's place of employment and shall cooperate with the ES System in the active recruitment of U.S. workers by:

(1) Assisting the ES System to prepare local, intrastate, and interstate job orders using the information supplied on the employer's job offer;

Note: This section does not apply to a "small" employer who certifies to the RA in the application that he/she did not use more than five hundred (500) man-days of agricultural labor during any calendar quarter in the preceding calendar year and is not a member of an association which has applied for labor certification on behalf of its members and has not "associated" with other H-2A employer-applicants under the regulations.

- f. Other Positive Recruitment. (See also Chapter I, Section D and Chapter II, Section C.) Upon acceptance of the certification application of an agricultural employer, the RA will specify the recruitment effort which must be undertaken by the employer. This shall include specific positive recruitment efforts which are consistent with the efforts expended by non-H-2A agricultural employers of comparable or smaller size when they recruit domestic workers in the area of employment. The RA may require the employer to make efforts which are at least at the same level as the efforts which the employer has or will make to obtain H-2A workers in another country. The RA also has the authority to require the employer to engage in independent positive recruitment out of the area when the RA has specific, reliable, and current information that there is a potential supply of U.S. workers available elsewhere who, if recruited, would likely be able and willing to fill the job opportunities. Such information would normally be considered reliable if it were supplied by another Regional Office or a SESA, although other sources of information may be used.

Positive recruitment is in addition to the circulation of a clearance order through the ES System, and can only be required during the same period that a clearance order is being circulated. The obligation to engage in such positive recruitment efforts will end on the date that H-2A workers depart for the employer's place of work.

The employer must also make an effort to secure U.S. workers through farm labor contractors (crew leaders) where it is the prevailing practice of non-H-2A agricultural employers in the area of employment for the same occupation. The level of effort must be at least equal to that made by such non-H-2A agricultural employers.

(2) Placing advertisements (in a language other than English, where the RA determines appropriate) for the job opportunities in newspapers of general circulation and/or on the radio, as required by the RA:

(i) Each such advertisement shall describe the nature and anticipated duration of the job opportunity; offer at least the adverse effect wage rate; give the  $\frac{3}{4}$  guarantee; state that work tools, supplies and equipment will be provided by the employer; state that housing will also be provided, and that transportation and subsistence expenses to the worksite will be provided or paid by the employer upon completion of 50% of the work contract, or earlier, if appropriate; and

(ii) Each such advertisement shall direct interested workers to apply for the job opportunity at a local employment service office in their area:

(3) Cooperating with the ES System and independently contacting farm labor contractors, migrant workers and other potential workers in other areas of the State and/or Nation by letter and/or telephone; and

(4) Cooperating with the ES System in contacting schools, business and labor organizations, fraternal and veterans' organizations, and nonprofit organizations and public agencies such as sponsors of programs under the Job Training Partnership Act throughout the area of intended employment and in other potential labor supply areas in order to enlist them in helping to find U.S. workers.

(f) *Other recruitment.* The employer shall perform the other specific recruitment and reporting activities specified in the notice from the RA required by § 855.105(a) of this part, and shall engage in positive recruitment of U.S. workers to an extent (with respect to both effort and location) no less than that of non-H-2A agricultural employers of comparable or smaller size in the area of employment. When it is the prevailing practice in the area of employment and for the occupation for non-H-2A agricultural employers to secure U.S. workers through farm labor contractors and to compensate farm labor contractors with an override for their services, the employer shall make the same level of effort as non-H-2A agricultural employers and shall provide an override which is no less than that being provided by non-H-2A agricultural employers. Where the employer has centralized cooking and eating facilities designed to feed workers, the employer shall not be required to provide meals through an override. The employer shall not be required to provide for housing through an override.

Most crew leaders require an override for their services. The H-2A employer must also provide an override which is at least that provided by non-H-2A employers, except that employers are not required to offer an override that includes the provision of housing by the crew leader, since the employer must provide free housing in compliance with the regulations at 20 CFR 655.102(b)(1).

Further, where the employer has centralized cooking and eating facilities, the override offer does not have to contain a provision for this service to be provided by the crew leader.

The positive recruitment requirement is one of the major changes IRCA has made to the temporary agricultural labor certification program, and an employer's failure to conduct positive recruitment specified by the RA must, by statute, result in denial of certification. However, Regional Offices must exercise discretion by taking into account historical and recent recruiting efforts which have been made and must avoid requiring employers to engage in efforts which would likely prove futile.

g. Retaliation Prohibited. This section prohibits the employer (either directly or through another person) from engaging in retaliatory action against any person who has sought redress for perceived inequities under the provisions of the H-2A program or assists another person in doing so. This would include retaliatory action against a person who takes any of the following courses of action:

- o files a complaint;
- o institutes or causes legal proceedings to be instituted;
- o testifies or is scheduled to testify in a legal proceeding;
- o consults with an employee of a legal assistance program or an attorney;
- o complains to the employer or to a farm labor contractor; or
- o otherwise exercises or asserts on behalf of himself/herself or others any right or protection afforded by law and regulations.

(g) *Retaliation prohibited.* The employer shall not intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against, and shall not cause any person to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against, any person who has with just cause:

(1) Filed a complaint under or related to § 216 of the INA (8 U.S.C. 1186), or this subpart or any other DOL regulation promulgated pursuant to § 216 of the INA;

(2) Instituted or caused to be instituted any proceeding under or related to § 216 of the INA, or this subpart or any other DOL regulation promulgated pursuant to § 216 of the INA (8 U.S.C. 1186);

(3) Testified or is about to testify in any proceeding under or related to § 216 of the INA (8 U.S.C. 1186), or this subpart or any other DOL regulation promulgated pursuant to § 216 of the INA;

(4) Consulted with an employee of a legal assistance program or an attorney on matters related to § 216 of the INA (8 U.S.C. 1186), or this subpart or any other DOL regulation promulgated pursuant to § 216 of the INA; or

(5) Exercised or asserted on behalf of himself/herself or others any right or protection afforded by § 216 of the INA (8 U.S.C. 1186), or this subpart or any other DOL regulation promulgated pursuant to § 216 of the INA.

h. Fees. (See also Chapter I, Section E.) Each employer to whom certification is granted in whole or in part must pay a fee for that certification. The fee is not required at the time of application, and fees are not charged for certification redeterminations.

When the RA or certifying officer makes the certification determination (usually twenty calendar days before the date of need), the certification notice will contain a statement indicating that the bill for the fee assessed for processing the application is attached. The fee must be paid within thirty days of the certification determination date.

(h) *Fees.* The application shall include the assurance that fees will be paid in a timely manner, as follows:

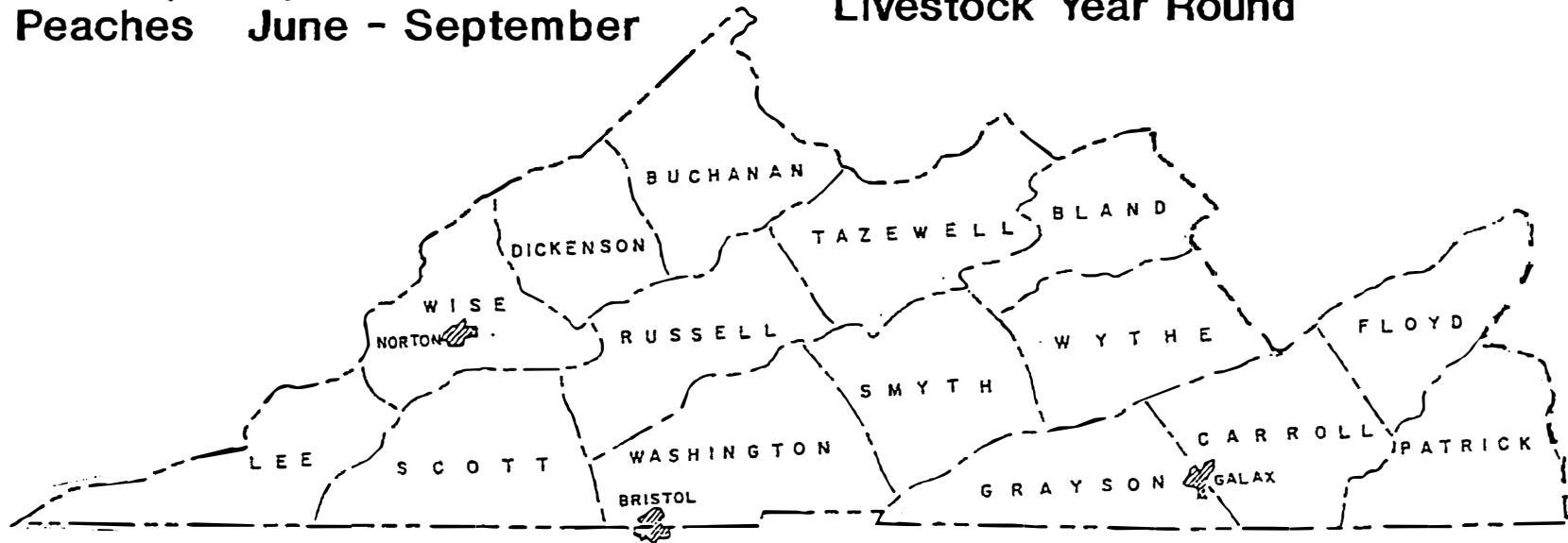
(1) *Amount.* The fee for each employer receiving a temporary alien agricultural labor certification is \$100 plus \$10 for each job opportunity for H-2A workers certified, provided that the fee for an employer for each temporary alien agricultural labor certification received shall be no greater than \$1,000. In the case of a joint employer association receiving a temporary alien agricultural labor certification, the fee for each employer-member receiving a temporary alien agricultural labor certification shall be \$100 plus \$10 for each job opportunity for H-2A workers certified, provided that the fee for an employer for each temporary alien agricultural labor certification received shall be no greater than \$1,000. The joint employer association will not be charged a separate fee. Fees shall be paid by a check or money order made payable to "Department of Labor", and are nonrefundable. In the case of employers of H-2A workers which are members of



# AREA 1

Cabbage May - October  
 Nursery Crops June  
 Peaches June - September

Apples September - November  
 Livestock Year Round



## Labor Sources

(Based on Clients Served FY 88-89)

• Local Jails	7
• ADC	2,669
• Food Stamps	19,216
• UI Claimants	10
	<hr/>
	21,902

## Labor Needs

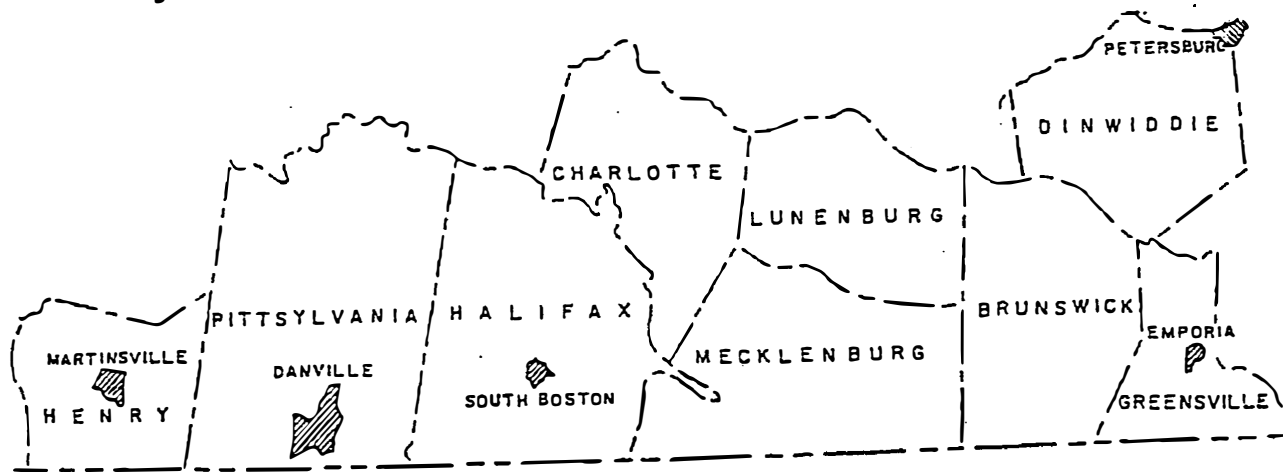
(Based on 1989 Seasonal Employment)

• Domestic - Local	91
• Foreign	53
	<hr/>
	144

# AREA 2

Tobacco April - October  
 Vegetables April - September  
 Peanuts May - October

Soybeans May - November  
 Livestock & Poultry Year Round



## Labor Sources (Based on Clients Served FY 88-89)

• Local Jails	6
• ADC	2,355
• Food Stamps	7,248
• UI Claimants	8
	9617

## Labor Needs (based on 1989 Seasonal Employment)

• Domestic - Local	455
- Migrants	517
• Foreign - H - 2A	<u>2,261</u>
	3,233

# AREA 3

Tobacco April - October  
 Peaches June - September  
 Apples September - November  
 Livestock & Poultry Year Round

## Labor Sources

(based on Clients Served FY 88-89)

• Local Jails	6
• ADC	2081
• Food Stamps	7829
• UI Claimants	0
	<hr/>
	9916

## Labor Needs

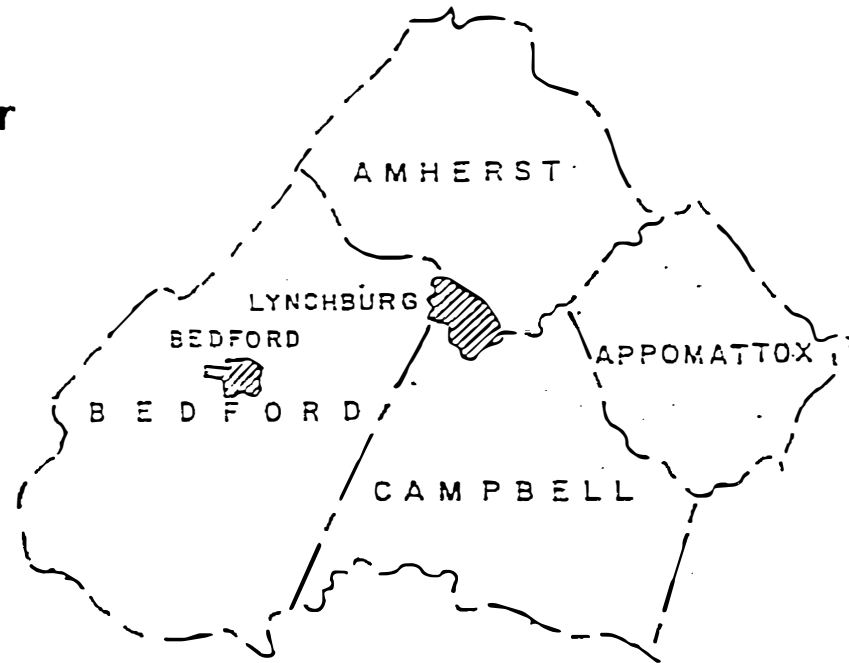
(Based on 1989 Seasonal Employment)

• Domestic - Local	571
- Migrants	220
• Foreign - H - 2A	40
	<hr/>
	831



# AREA 4

Peaches June - September  
 Apples September - November  
 Livestock & Poultry Year Round



## Labor Sources

(Based on 1989 Seasonal Employment)

• Local Jails	0
• ADC	781
• Food Stamps	3,245
• UI Claimants	3
	<hr/>
	4,029

## Labor Needs

(Based on 1989 Seasonal Employment)

• Domestic - Local	25
- Migrants	75
	<hr/>
	100

# AREA 5

Tobacco April - October  
 Corn Late April - October  
 Hay May - September

Soybeans May - November  
 Livestock & Poultry Year Round



## Labor Sources (Based on Clients Served FY 88-89)

• Local Jails	0
• ADC	426
• Food Stamps	1,708
• UI Claimants	0
	<hr/>
	2,134

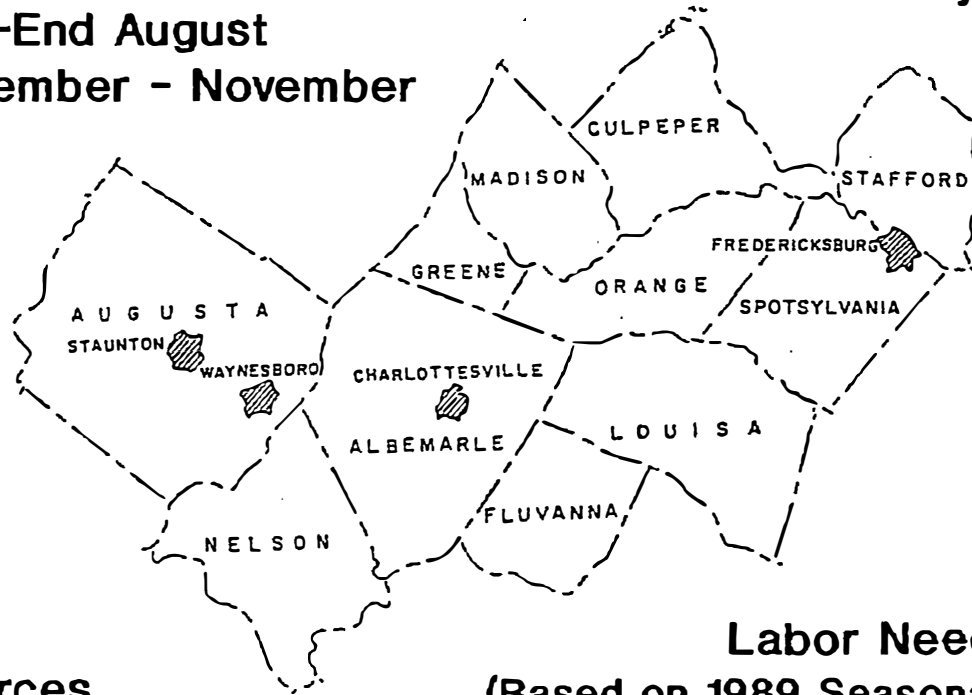
## Labor Needs (based on 1989 Seasonal Employment)

• Domestic - Local	315
• Foreign - H - 2A	65
	<hr/>
	380

# AREA 6

**Peaches** June - September  
**Vineyards** Mid-End August  
**Apples** September - November

**Equine Stabling** Year Round  
**Livestock & Poultry** Year Round



## Labor Sources

(Based on Clients Served FY 88-89)

• Local Jails	6
• ADC	1,164
• Food Stamps	4,525
• UI Claimants	0
	<hr/>
	5,695

## Labor Needs

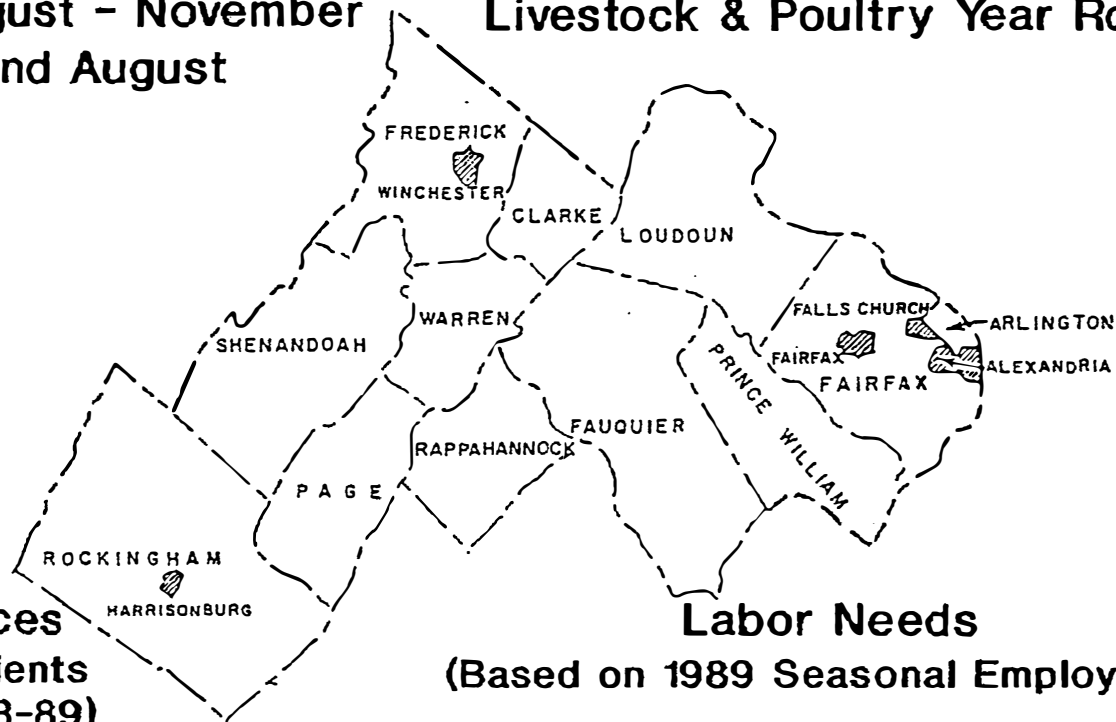
(Based on 1989 Seasonal Employment)

• Domestic - Local	50
- Migrants	150
• Foreign - H-2A	110
	<hr/>
	310

# AREA 7

Peaches June - September  
 Apples Late August - November  
 Vineyards Mid-End August

Equine Stabling Year Round  
 Livestock & Poultry Year Round



## Labor Sources (Based on Clients Served FY 88-89)

• Local Jails	35
• ADC	2,627
• Food Stamps	7,788
• UI Claimants	<u>3</u>
	10,453

## Labor Needs (Based on 1989 Seasonal Employment)

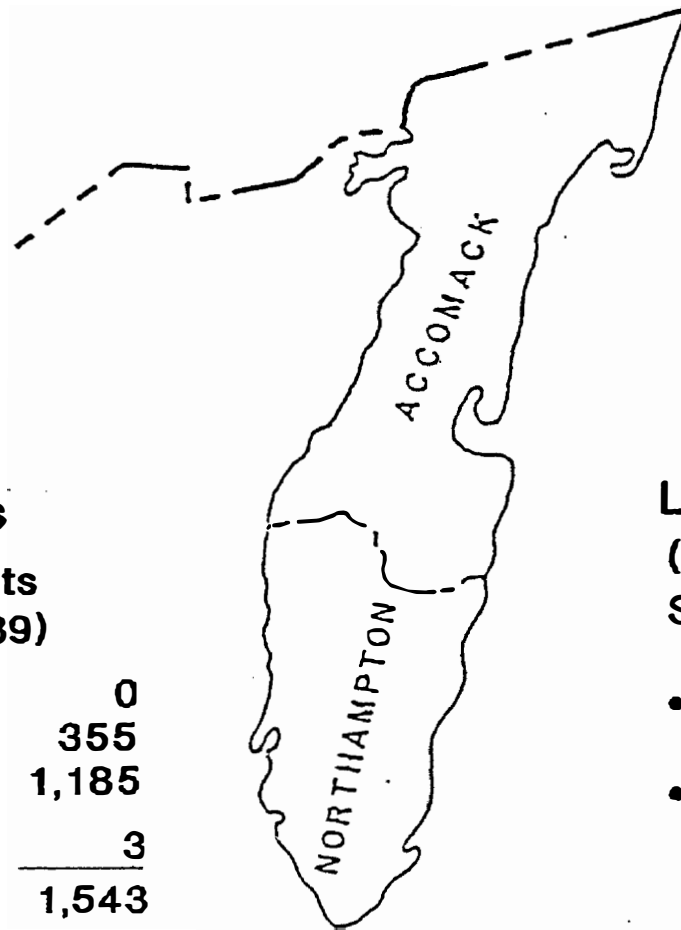
• Domestic - Local	150
- Migrants	715
• Foreign - H-2A	<u>465</u>
	1,330

# AREA 8

Nursery Crops March - October

Vegetables April - October

Poultry Year Round



## Labor Sources

(Based on Clients Served FY 88-89)

• Local Jails	0
• ADC	355
• Food Stamps	1,185
• UI Claimants	3
	<hr/>
	1,543

## Labor Needs

(Based on 1989 Seasonal Employment)

• Domestic - Local	1,300
- Migrants	1,560
• Foreign - H-2A	0
	<hr/>
	2,860

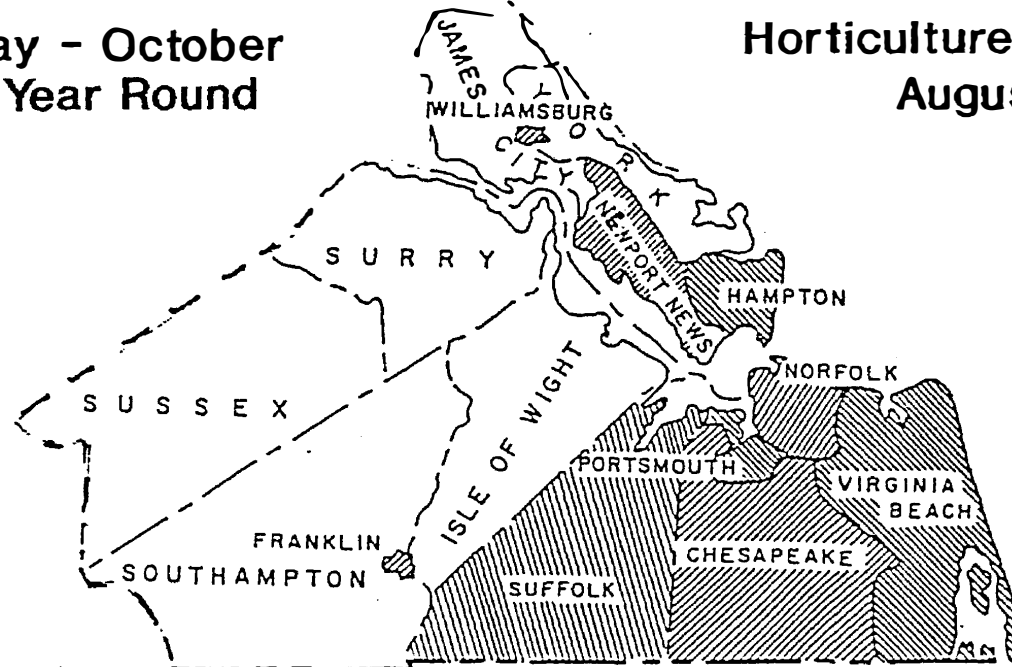


# AREA 9

Soybeans • Corn • Wheat April - November

Peanuts May - October  
Livestock Year Round

Horticulture March - April  
August - November



## Labor Sources

(Based on Clients Served FY 88-89)

• Local Jails	54
• ADC	8,326
• Food Stamps	21,799
• UI Claimants	<u>24</u>
	30,203

## Labor Needs

(Based on 1989 Seasonal Employment)

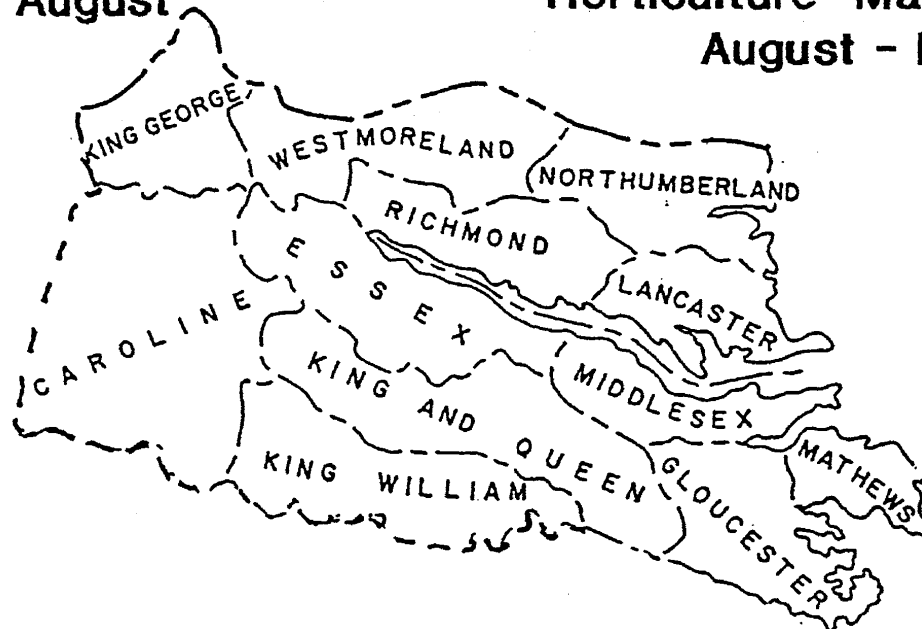
• Domestic - Local	} 1,355
- Migrants	
• Foreign - H-2A	<u>6</u>
	1,361

# AREA 10

Soybeans • Small Grains • Corn April - November

Vineyards Mid-End August

Horticulture March - April  
August - November



## Labor Sources

(Based on Clients Served FY 88-89)

• Local Jails	0
• ADC	542
• Food Stamps	2,428
• UI Claimants	0
	<hr/>
	2,970

## Labor Needs

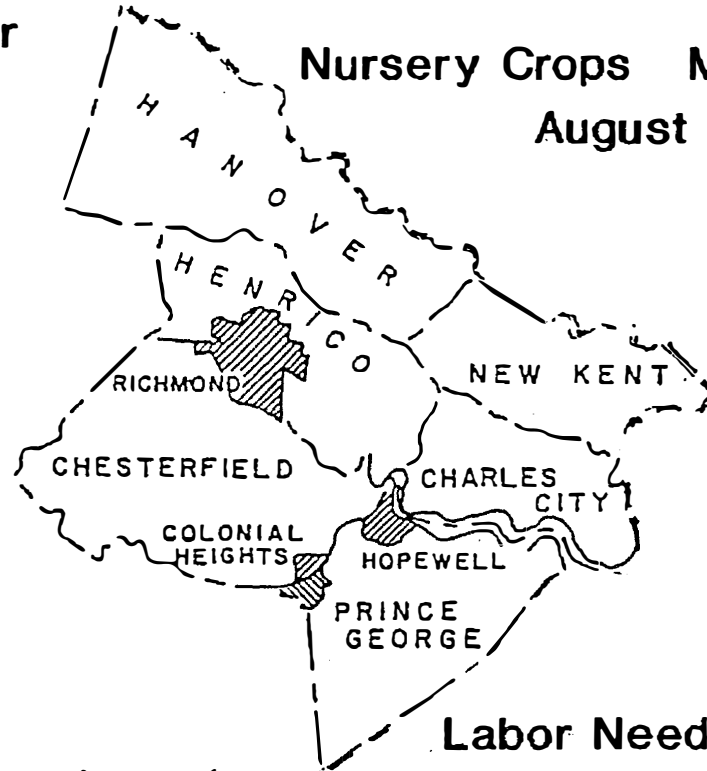
(Based on 1989 Seasonal Employment)

• Domestic - Local	} 1,397
- Migrants	

# AREA 11

Vegetables April - October

Nursery Crops March - April  
August - November



## Labor Sources

(Based on Clients Served FY 88-89)

• Local Jails	10
• ADC	3,243
• Food Stamps	10,785
• UI Claimants	0
	<hr/>
	14,038

## Labor Needs

(Based on 1989 Seasonal Employment)

• Domestic - Local	}	859
- Migrants		
• Foreign - H-2A		13
		<hr/>
		872

SURVEY OF VIRGINIA SHERIFFS  
FOR HJR 300

Sheriff \_\_\_\_\_ for County/City of \_\_\_\_\_

Location of Jail \_\_\_\_\_

1. Do you operate a work release program?

\_\_\_\_ Yes    \_\_\_\_ No    \_\_\_\_ No, but previously operated one

2. What benefits do/would your jail/locality derive from a work release program? (List or explain)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. Would you be interested in operating a work release program + provide seasonal farm labor in your locality?

\_\_\_\_ Yes    \_\_\_\_ No (Please indicate reasons) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4. What percent of your non-violent population, who may be eligible for work release, would be interested in agricultural employment?

\_\_\_\_\_ % (estimate)

5. Have you been contacted by local farmers requesting prisoners for farm work?

\_\_\_\_ Yes. How many in FY88/89? \_\_\_\_\_  
\_\_\_\_ No

Continued . . .

6. Please provide any additional suggestions or comments regarding the use of work release with your jail for farm labor.

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STATISTICAL INFORMATION FOR RY88/89

Jail Location \_\_\_\_\_

<u>Month</u>	<u>Number of Prisoners Committed</u>	<u>Number of Prisoner Days</u>	<u>Number of Non-Violent Prisoners Committed</u>	<u>Number of Prisoners on Work Release</u>
July 88	_____	_____	_____	_____
August	_____	_____	_____	_____
September	_____	_____	_____	_____
October	_____	_____	_____	_____
November	_____	_____	_____	_____
December	_____	_____	_____	_____
January 89	_____	_____	_____	_____
February	_____	_____	_____	_____
March	_____	_____	_____	_____
April	_____	_____	_____	_____
May	_____	_____	_____	_____
June	_____	_____	_____	_____

Completed by (name) \_\_\_\_\_  
 Title \_\_\_\_\_  
 Phone Number \_\_\_\_\_

RETURN BY AUGUST 18, 1989 TO:

Marilyn Mandel  
 Department of Labor and Industry  
 205 North 4th Street  
 P. O. Box 12064  
 Richmond, Va. 23241



# Virginia State Sheriffs' Association

9507 HULL STREET ROAD - SUITE D • RICHMOND, VIRGINIA 23236  
(804) 745-3720

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August 10, 1989

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**1st Vice President**

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Damon Davis

**Region VIII**

James Bowman

**Region IX**

W. C. Andrews, Jr.

**Region X**

John R. Newhart

**Executive Director**

John W. Jones

Dear Sheriff:

The 1989 General Assembly adopted Delegate Glenn McClanan's House Joint Resolution 300 requesting the Departments of Labor and Industry (DLI) and Agriculture and Consumer Services (VDACS) to study the problems of obtaining farm labor in the Commonwealth. Delegate McClanan also appointed a special subcommittee of the House Agriculture Committee to work with the state agencies. Delegates McClanan, Bloxom and Councill serve as members on this subcommittee.

In an effort to study the problems and provide recommendations, DLI, VDACS and representatives from the Departments of Social Services, Corrections, Economic Development, Virginia Employment Commission, and Governor's Employment and Training Department are working to identify potential sources of labor that would be acceptable and affordable to Virginia's agricultural employers.

The Sheriffs' Association has been invited to participate in the study. A survey of the state's sheriffs would be beneficial in supplying needed information to augment state data. I hope you will take a few minutes to complete the enclosed survey and return to Marilyn Mandel at DLI. As the lead agency for HJR 300, they are coordinating all study activities and are providing periodic status reports to the subcommittee. If you have any questions, please call Ms. Mandel (804-786-2385). For your convenience, a pre-paid self-addressed envelope is enclosed.

Thank you for your assistance and cooperation.

Sincerely,

John W. Jones  
Executive Director

# One Hundredth Congress of the United States of America

AT THE SECOND SESSION

Begin and held at the City of Washington on Monday, the twenty-fifth day of January,  
one thousand nine hundred and eighty-eight

## In Act

To amend the Temporary Emergency Food Assistance Act of 1983 to require the Secretary of Agriculture to make available additional types of commodities to improve child nutrition and food stamp programs, to provide other hunger relief, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

### SECTION 1. SHORT TITLE: TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the "Hunger Prevention Act of 1988".

(b) **TABLE OF CONTENTS.**—The table of contents is as follows:

Sec. 1 Short title; table of contents.

#### TITLE I—EMERGENCY HUNGER PREVENTION

##### Subtitle A—Temporary Emergency Food Assistance Program

- Sec. 101. Domestic use as a higher priority than foreign sales.
- Sec. 102. Supplementation of commodities.
- Sec. 103. Extension of TEFAP.
- Sec. 104. Additional commodities program.
- Sec. 105. Distribution costs and regulations.
- Sec. 106. Extension of dairy export incentive program.
- Sec. 107. Extension of export sales of dairy products.

##### Subtitle B—Soup Kitchens and Other Emergency Food Aid

- Sec. 110. Soup kitchens and food banks.
- Sec. 111. Cleaning technical assistance.

##### Subtitle C—Basic Food Stamp Benefit Levels

Sec. 120. Thrifty food plan.

##### Subtitle D—Commodity Supplemental Food Program

Sec. 130. Continuation of provision of cheese supplies.

#### TITLE II—NUTRITION IMPROVEMENTS

##### Subtitle A—Food Stamp Act of 1977

- Sec. 201. Categorical eligibility.
- Sec. 202. Reporting requirements and calculation of household income.
- Sec. 203. Benefits for households subject to prorating.
- Sec. 204. Optional food stamp information activities.
- Sec. 205. Extension of homeless amendments.

##### Subtitle B—Child Nutrition Act of 1966, and National School Lunch Act

- Sec. 210. Improvement of school breakfast program.
- Sec. 211. Addition of one snack or one meal to the Child Care Food Program.
- Sec. 212. Access of homeless women, infants, and children to the special supplemental food program.
- Sec. 213. Summer feeding program.
- Sec. 214. Department of Defense child care feeding program.

##### Subtitle C—Food Processing and Distribution

Sec. 220. Encouragement of food processing and distribution by eligible recipient agencies.

S. 2560—3

## TITLE I—EMERGENCY HUNGER PREVENTION

### Subtitle A—Temporary Emergency Food Assistance Program

#### SEC. 101. DOMESTIC USE AS A HIGHER PRIORITY THAN FOREIGN SALES.

Section 202 of the Temporary Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note) is amended by adding at the end thereof the following new subsection:

"(f) Notwithstanding any other provision of law, the programs authorized by sections 153 and 1163 of the Food Security Act of 1985 (15 U.S.C. 713a-14 and 7 U.S.C. 1731 note) shall not be operated in a manner that will, in any way, reduce the quantities of dairy products that traditionally are made available to carry out this Act or any other domestic feeding program."

#### SEC. 102. SUPPLEMENTATION OF COMMODITIES.

The Temporary Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note) is amended by adding after section 203C the following new section:

#### "SEC. 203D. STATE AND LOCAL SUPPLEMENTATION OF COMMODITIES.

"(a) **AUTHORIZATION.**—The Secretary shall establish procedures under which State and local agencies, charitable institutions, or any other persons may supplement the commodities distributed under the program authorized by this Act for use by emergency feeding organizations with nutritious and wholesome commodities that such entities or persons donate to State agencies and emergency feeding organizations for distribution, in all or part of the State, in addition to the commodities otherwise made available under this Act.

"(b) **USE OF FUNDS AND FACILITIES.**—States and emergency feeding organizations may use the funds appropriated under this Act and equipment, structures, vehicles, and all other facilities involved in the storage, handling, or distribution of commodities made available under this Act, and the personnel, both paid or volunteer, involved in such storage, handling, or distribution, to store, handle or distribute commodities donated for the use of emergency feeding organizations under subsection (a).

"(c) **VOLUNTEER WORKERS.**—State and emergency feeding organizations shall continue, to the maximum extent practicable, to use volunteer workers and commodities and other foodstuffs donated by charitable and other organizations in the operation of the program authorized by this section."

#### SEC. 103. EXTENSION OF TEFAP.

(a) **AUTHORIZATION.**—The first sentence of section 204(c)(1) of the Temporary Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note) is amended by striking out "through September 30, 1988" and inserting in lieu thereof "through September 30, 1990".

(b) **LOCAL SUPPORT.**—The first sentence of section 204(c)(2) of the Temporary Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note) is amended by striking out "20" and inserting in lieu thereof "40".

(c) **STORAGE AND PREPARATION.**—The second sentence of section 204(c)(2) of the Temporary Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note) is amended by inserting after "documentation," the following: "costs of providing information to persons receiving commodities under this Act concerning the appropriate storage and preparation of such commodities:".

(d) **NOTICE OF AVAILABILITY OF COMMODITIES.**—Section 210(c) of the Temporary Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note) is amended by striking out "the fiscal year ending September 30, 1988" and inserting "each of the fiscal years 1989 and 1990".

(e) **PROGRAM DATES.**—Section 212 of the Temporary Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note) is amended by striking out "1988" and inserting in lieu thereof "1990".

#### SEC. 104. ADDITIONAL COMMODITIES PROGRAM.

The Temporary Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note) is amended by adding at the end thereof the following new sections:

##### "SEC. 212. INCORPORATION OF ADDITIONAL COMMODITIES.

"(a) **IN GENERAL.**—The Secretary shall administer the program authorized under this Act in a manner that incorporates into the program additional commodities purchased by the Secretary under section 214 to be distributed to States for use in such States by emergency feeding organizations, as defined in section 201A(1). Such additional commodities, to the extent practicable and appropriate, shall include commodities purchased within a given State for distribution within such State.

"(b) **SUPPLEMENT COMMODITIES AVAILABLE.**—The Secretary shall supplement the commodities made available to emergency feeding organizations under sections 202 and 203D(a) with nutritious and useful commodities purchased by the Secretary under section 214.

##### "SEC. 214. REQUIRED PURCHASES OF COMMODITIES.

"(a) **PURPOSE.**—It is the purpose of this section to establish a formula so that the amount, measured by their value, of additional commodities that are to be allocated to each State can be precisely calculated for fiscal years 1989 and 1990. The share of commodities, as measured by their value, to be allocated to each State shall be based 60 percent on the number of persons in households within the State having incomes below the poverty level and 40 percent on the number of unemployed persons within the State.

"(b) **DEFINITIONS.**—As used in this section—

"(1) **ADDITIONAL COMMODITIES.**—The term 'additional commodities' means commodities purchased under this section in addition to the commodities otherwise made available under sections 202 and 203D(a).

"(2) **AVERAGE MONTHLY NUMBER OF UNEMPLOYED PERSONS.**—The term 'average monthly number of unemployed persons' refers to the average monthly number of unemployed persons within each State in the most recent fiscal year for which such information is available as determined by the Bureau of Labor Statistics of the Department of Labor.

"(3) **POVERTY LINE.**—The term 'poverty line' has the same meaning given such term in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

"(4) **TOTAL VALUE OF ADDITIONAL COMMODITIES.**—The term 'total value of additional commodities' means the actual cost (including the distribution and processing costs incurred by the Secretary), as paid by the Secretary, for all additional commodities purchased under subsection (e).

"(5) **VALUE OF ADDITIONAL COMMODITIES ALLOCATED TO EACH STATE.**—The term 'value of additional commodities allocated to each State' means the actual cost for additional commodities (including the distribution and processing costs incurred by the Secretary), as paid by the Secretary under this section and allocated to such State.

"(c) **PURCHASE OF COMMODITIES.**—The Secretary shall purchase a variety of nutritious and useful commodities of the types that the Secretary has the authority to acquire through the Commodity Credit Corporation or under section 32 of the Act entitled "An Act to amend the Agricultural Adjustment Act, and for other purposes", approved August 24, 1935 (7 U.S.C. 612c note), to supplement the commodities otherwise provided under the program authorized by this Act.

"(d) **TYPES AND VARIETIES.**—The Secretary shall, to the extent practicable and appropriate, purchase types and varieties of commodities—

"(1) with high nutrient density per calorie;

"(2) that are easily and safely stored;

"(3) that are convenient to use and consume;

"(4) that are desired by recipient agencies; and

"(5) that meet the requirement imposed by section 203C(a).

"(e) **AMOUNTS.**—During each of the fiscal years 1989 and 1990, the Secretary shall spend \$120,000,000 to purchase, process, and distribute additional commodities under this section.

"(f) **MANDATORY ALLOTMENTS.**—In each fiscal year, the Secretary shall allot—

"(1) 60 percent of the total value of additional commodities provided to States in a manner such that the value of additional commodities allocated to each State bears the same ratio to 60 percent of the total value of additional commodities as the number of persons in households within the State having incomes below the poverty line bears to the total number of persons in households within all States having incomes below such poverty line, and each State shall be entitled to receive such value of additional commodities; and

"(2) 40 percent of the total value of additional commodities provided to States in a manner such that the value of additional commodities allocated to each State bears the same ratio to 40 percent of the total value of additional commodities as the average monthly number of unemployed persons within the State bears to the average monthly number of unemployed persons within all States during the same fiscal year, and each State shall be entitled to receive such value of additional commodities.

"(g) **REALLOCATION.**—The Secretary shall notify each State of the amount of the additional commodities that such State is allotted to receive under subsection (f) or subsection (j) if applicable, and each State shall promptly notify the Secretary if such State determines that it will not accept any or all of the commodities made available under such allocation. On such a notification by a State, the Secretary shall reallocate and distribute the amount the State was



allocated to receive under the formula prescribed in subsection (f) but declined to accept. The Secretary shall further establish procedures to permit States to decline to receive portions of such allocation during each fiscal year as the State determines is appropriate and the Secretary shall reallocate and distribute such allocation. In the event of any drought, flood, hurricane, or other natural disaster affecting substantial numbers of persons in a State, county or parish, the Secretary may request that States unaffected by such a disaster consider assisting affected States by allowing the Secretary to reallocate commodities to which each such unaffected State is entitled to States containing areas adversely affected by the disaster.

"(h) ADMINISTRATION.—Subject to subsections (e) and (f), or subsection (j) if applicable, purchases under this section shall be made by the Secretary at such times and under such conditions as the Secretary determines appropriate within each fiscal year. All such commodities purchased for each such fiscal year shall be delivered at reasonable intervals to States based on the allotments calculated under subsection (f), or reallocated under subsection (g), or calculated under subsection (j) if applicable, before the end of such fiscal year. Each State shall be entitled to receive that value of additional commodities that results from the application of the formula set forth in this section to the total value of additional commodities.

"(i) MAINTENANCE OF EFFORT.—If a State uses its own funds to provide commodities or services to organizations receiving funds or services under this section, such State shall not diminish the level of support it provides to such organizations or reduce the amount of funds available for other nutrition programs in the State in each fiscal year.

"(j) NEW FORMULA.—Notwithstanding the provisions of this section that set forth the specific formula for allocating additional commodities to each State, the Secretary is authorized to promulgate a different precise formula, after prior notice and comment as required by section 553 of title 5, United States Code, only to the extent that—

"(1) any such formula is effective at the outset of, and throughout any given fiscal year;

"(2) any such formula can be used to precisely calculate the amount of commodities to be made available to each State by the Secretary for each fiscal year; and

"(3) such formula provides that each State is entitled to receive that value of additional commodities which results from the application of such formula to the total value of additional commodities.

"(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section."

#### SEC. 105. DISTRIBUTION COSTS AND REGULATIONS.

(a) DISTRIBUTION COSTS.—Section 204(c)(1) of the Temporary Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note) is amended by adding at the end thereof the following new sentence: "States may also use funds provided under this paragraph to pay for the costs associated with the distribution of commodities under the program authorized under section 110 of the Hunger Prevention Act of 1988,

and to pay for the costs associated with the distribution of additional commodities provided pursuant to section 214."

(b) REGULATIONS.—Section 210 of the Temporary Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note) is amended by adding at the end thereof the following new subsection:

"(e) The Secretary is authorized to issue final regulations without first issuing proposed regulations (except as otherwise provided for in section 214(j)) for public comment in order to carry out the provisions of sections 213 and 214. If final regulations are issued without such prior public comment the Secretary shall permit public comment on such regulations, consider pertinent comments, and make modifications of such regulations as appropriate not later than 1 year after the date of enactment of this subsection. Such final and modified regulations shall be accompanied by a statement of the basis and purpose for such regulations."

(c) STATE OPTIONAL PRIORITY.—Section 203B(a) of the Temporary Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note) is amended by adding at the end thereof the following new sentence: "Notwithstanding any other provision of this Act, in the distribution of commodities under this Act, each State agency shall have the option to give priority to existing food bank networks and other organizations whose ongoing primary function is to facilitate the distribution of food to low-income households, including food from sources other than the Department of Agriculture."

#### SEC. 106. EXTENSION OF DAIRY EXPORT INCENTIVE PROGRAM.

Section 153(a) of the Food Security Act of 1985 (15 U.S.C. 713a-14(a)) is amended by striking out "1989" and inserting in lieu thereof "1990".

#### SEC. 107. EXTENSION OF EXPORT SALES OF DAIRY PRODUCTS.

Section 1163 of the Food Security Act of 1985 (7 U.S.C. 1731 note) is amended—

(1) in subsection (a), by striking out "fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988" and inserting in lieu thereof "fiscal years 1986 through 1990"; and

(2) in subsection (c), by striking out "1988" and inserting in lieu thereof "1990".

## Subtitle B—Soup Kitchens and Other Emergency Food Aid

#### SEC. 110. SOUP KITCHENS AND FOOD BANKS

(a) PURPOSE.—It is the purpose of this section to establish a formula so that the amount, measured by their value, of additional commodities that are to be provided to each State for redistribution to soup kitchens and food banks can be precisely calculated for fiscal years 1989 through 1991. The share of commodities, as measured by their value, to be provided to each State shall be based 60 percent on the number of persons in households within the State having incomes below the poverty level and 40 percent on the number of unemployed persons within the State.

(b) DEFINITIONS.—As used in this section—

(1) **ADDITIONAL COMMODITIES.**—The term "additional commodities" means commodities purchased under this section in addition to the commodities otherwise made available to soup kitchens and food banks providing nutrition assistance to relieve situations of emergency and distress.

(2) **AVERAGE MONTHLY NUMBER OF UNEMPLOYED PERSONS.**—The term "average monthly number of unemployed persons" refers to the average monthly number of unemployed persons within each State in the most recent fiscal year for which such information is available as determined by the Bureau of Labor Statistics of the Department of Labor.

(3) **FOOD BANKS.**—The term "food bank" refers to public and charitable institutions that maintain an established operation involving the provision of food or edible commodities, or the products thereof, to food pantries, soup kitchens, hunger relief centers, or other food or feeding centers that provide meals or food to needy persons on a regular basis as an integral part of their normal activities.

(4) **POVERTY LINE.**—The term "poverty line" has the same meaning given such term in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

(5) **SECRETARY.**—The term "Secretary" means the Secretary of Agriculture.

(6) **SOUP KITCHENS.**—The term "soup kitchens" refers to public and charitable institutions that maintain an established feeding operation to provide food to needy homeless persons on a regular basis as an integral part of their normal activities.

(7) **TOTAL VALUE OF ADDITIONAL COMMODITIES.**—The term "total value of additional commodities" means the actual cost (including the processing and distribution costs of the Secretary) as paid by the Secretary, for all additional commodities purchased under subsection (c).

(8) **VALUE OF ADDITIONAL COMMODITIES ALLOCATED TO A STATE.**—The term "value of additional commodities allocated to a State" means the actual cost for additional commodities (including the processing and distribution costs of the Secretary) as paid by the Secretary for commodities purchased under this section and allocated to such State.

(c) **AMOUNTS.**—During each of the fiscal years 1989 and 1990, the Secretary shall spend \$40,000,000, and in fiscal year 1991, the Secretary shall spend \$32,000,000, to purchase, process, and distribute additional commodities to States for distribution to soup kitchens and food banks within a given State that provide nutrition assistance to relieve situations of emergency and distress through the provision of food and meals to needy persons.

(d) **MANDATORY ALLOTMENTS.**—In each fiscal year, the Secretary shall allot—

(1) 60 percent of the total value of additional commodities provided to States in a manner such that the value of additional commodities allocated to each State bears the same ratio to 60 percent of the total value of additional commodities as the number of persons in households within the State having incomes below the poverty line bears to the total number of persons in households within all States having incomes below such poverty line, and each State shall be entitled to receive such value of additional commodities; and

(2) 40 percent of the total value of additional commodities provided to States in a manner such that the value of additional commodities allocated to each State bears the same ratio to 40 percent of the total value of additional commodities as the average monthly number of unemployed persons within the State bears to the average monthly number of unemployed persons within all States during the same fiscal year, and each State shall be entitled to receive such value of additional commodities.

(e) **ALLOCATION AND REALLOCATION.**—

(1) **NOTIFICATION BY SECRETARY.**—The Secretary shall notify each State of the amount of the allocation that the State is entitled to receive under subsection (d).

(2) **NOTIFICATION BY STATE.**—

(A) **ACCEPTANCE AMOUNT.**—A State shall promptly notify the Secretary of the amount of commodities that will be accepted by soup kitchens or food banks. In determining such amount, the State shall give priority to institutions that provide meals to homeless individuals.

(B) **LESS THAN FULL AMOUNT ACCEPTED.**—A State shall promptly notify the Secretary if the State determines that it will not accept the full amount of the allocation under subsection (d) (or a portion thereof).

(3) **REALLOCATION.**—Whenever the Secretary receives a notification under paragraph (2)(B), the Secretary shall reallocate and distribute the amount of such allocation (or any portion thereof) not accepted, in a fair and equitable manner among the States that accept the full amount of their respective allocations under subsection (d) and that have requested receipt of additional allocations.

(f) **ADMINISTRATION.**—Subject to subsection (c), purchases under this section shall be made by the Secretary at such times and under such conditions as the Secretary determines to be appropriate within each fiscal year. All commodities purchased under subsection (c) within each fiscal year shall be provided to States prior to the end of each such fiscal year.

(g) **MAINTENANCE OF EFFORT.**—If a State uses its own funds to provide commodities or services under this section, such State funds shall not be obtained from existing Federal or State programs.

(h) **INCREASED COMMODITY LEVELS AND MAINTENANCE OF EFFORT.**—

(1) **INCREASED COMMODITY LEVELS.**—Commodities provided under the amendments made by section 104 and under this section shall be in addition to the commodities otherwise provided (through commodity donations traditionally provided by the Secretary or the Commodity Credit Corporation) to emergency feeding organizations. The value of the commodity donations traditionally provided to such organizations shall not be diminished as a result of the purchases required by the amendments made by section 104 and this section.

(2) **FEDERAL MAINTENANCE.**—The purchase of commodities required under the amendments made by section 104 and under this section, shall not be made in such a manner as to cause any reduction in the value of the bonus commodities that would otherwise be distributed, in the absence of section 104 and this section, to charitable institutions, or to any other domestic food assistance program, such as the programs authorized under the National School Lunch Act, the Child Nutrition Act of 1966, the

Food Stamp Act of 1977, or sections 4 and 5 of the Agriculture and Consumer Protection Act of 1973.

(3) **OTHER MAINTENANCE.**—Local agencies receiving commodities purchased under this section shall provide an assurance to the State that donations of foodstuffs from other sources shall not be diminished as a result of the receipt of commodities under this section.

(i) **NEW FORMULA.**—Notwithstanding the provisions of this section that set forth the specific formula for allocating additional commodities to each State, the Secretary is authorized to establish a different precise formula, after prior notice and comment as required by section 553 of title 5, United States Code, only to the extent that—

(1) any such formula is effective at the outset of, and throughout any given fiscal year;

(2) any such formula can be used to precisely calculate the amount of commodities to be made available to each State by the Secretary for each fiscal year; and

(3) such formula provides that each State is entitled to receive that value of additional commodities which results from the application of such formula to the total value of additional commodities.

(j) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as may be necessary to carry out this section.

#### SEC. 111. GLEANING TECHNICAL ASSISTANCE.

(a) **GLEANING DEFINED.**—As used in this section, the term "gleaning" means—

(1) obtaining harvested or unharvested agricultural products from farmers, processors, or retailers; or

(2) obtaining food or meals donated by public or private entities (where State and local health and food safety regulations permit such donations);

in order to facilitate the distribution of such products or such food or meals to needy individuals, but only if such products or such food or meals, and the access to such, are obtained with the permission of the owner and without charge therefor.

(b) **DUTIES.**—The Secretary of Agriculture shall provide technical assistance to State and local agencies to—

(1) assist such agencies in encouraging public and private nonprofit organizations to initiate and carry out gleaning activities and in providing technical assistance to organizations and individuals involved in gleaning; and

(2) assist such agencies in collecting information on the kinds, amounts, and geographical location of agricultural products and food or meals available for gleaning.

(c) **ADMINISTRATION.**—The Secretary of Agriculture may use Department of Agriculture employees and volunteers, as may be necessary, to carry out this section.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—To carry out this section, there are authorized to be appropriated \$500,000 for each of fiscal years 1989 and 1990.

## Subtitle C—Basic Food Stamp Benefit Levels

### SEC. 129. THRIFTY FOOD PLAN.

Section 3(a) of the Food Stamp Act of 1977 (7 U.S.C. 2012(a)) is amended—

(1) in clause (7), by striking out "and" at the end thereof;

(2) in clause (8), by inserting "through October 1, 1987" after "thereafter"; and

(3) by striking out the colon and all that follows through the period at the end thereof and inserting in lieu thereof the following: "(9) on October 1, 1988, adjust the cost of such diet to reflect 100.65 percent of the cost of the thrifty food plan in the preceding June, and round the result to the nearest lower dollar increment for each household size, (10) on October 1, 1989, adjust the cost of such diet to reflect 102.05 percent of the cost, in the preceding June (without regard to the adjustment made under clause (9)), of the then most recent thrifty food plan as determined by the Secretary or the cost of the thrifty food plan in effect on the date of enactment of the Hunger Prevention Act of 1988, whichever is greater, and round the result to the nearest lower dollar increment for each household size, and (11) on October 1, 1990, and each October 1 thereafter, adjust the cost of such diet to reflect 103 percent of the cost, in the preceding June (without regard to any previous adjustment made under clause (9), (10), or this clause), of the then most recent thrifty food plan as determined by the Secretary or the cost of the thrifty food plan in effect on the date of enactment of the Hunger Prevention Act of 1988, whichever is greater, and round the result to the nearest lower dollar increment for each household size."

## Subtitle D—Commodity Supplemental Food Program

### SEC. 130. CONTINUATION OF PROVISION OF CHEESE SUPPLIES.

Notwithstanding any other provision of law, the Commodity Credit Corporation shall, to the extent that the Commodity Credit Corporation's inventory levels permit, provide 7,000,000 pounds of cheese in each of the fiscal years 1989 and 1990 to the Secretary of Agriculture and the Secretary shall provide such amounts of cheese to the Commodity Supplemental Food Program authorized under section 4(a) of the Agriculture and Consumer Protection Act of 1973 (Public Law 93-86; 7 U.S.C. 612c note) before the end of each fiscal year.

## TITLE II—NUTRITION IMPROVEMENTS

### Subtitle A—Food Stamp Act of 1977

#### SEC. 301. CATEGORICAL ELIGIBILITY.

The second sentence of section 5(a) of the Food Stamp Act of 1977 (7 U.S.C. 2014(a)) is amended—

(1) by striking out "during the period"; and

(2) by striking out "and ending on September 30, 1989".

**SEC. 202. REPORTING REQUIREMENTS AND CALCULATION OF HOUSEHOLD INCOME.**

(a) **CALCULATION OF HOUSEHOLD INCOME.**—Section 5(f) of the Food Stamp Act of 1977 (7 U.S.C. 2014(f)) is amended by striking out paragraph (2) and inserting in lieu thereof the following new paragraph:

"(2)(A) Households not required to submit monthly reports of their income and household circumstances under section 6(c)(1) shall have their income calculated on a prospective basis, as provided in paragraph (3)(A).

"(B) Households required to submit monthly reports of their income and household circumstances under section 6(c)(1) shall have their income calculated on a retrospective basis, as provided in paragraph (3)(B), except that in the case of the first month, or at the option of the State the first and second months, in a continuous period in which a household is certified, the State agency shall determine the amount of benefits on the basis of the household's income and other relevant circumstances in such first or second month."

(b) **OPTIONAL MONTHLY REPORTING.**—Section 6(c) of such Act (7 U.S.C. 2015(c)) is amended by striking out paragraph (1) and inserting in lieu thereof the following new paragraph:

"(1)(A) A State agency may require certain categories of households to file periodic reports of income and household circumstances in accordance with standards prescribed by the Secretary, except that a State agency may not require periodic reporting by—

"(i) migrant or seasonal farmworker households;

"(ii) households in which all members are homeless individuals; or

"(iii) households that have no earned income and in which all adult members are elderly or disabled.

"(B) Each household that is not required to file such periodic reports on a monthly basis shall be required to report or cause to be reported to the State agency changes in income or household circumstances that the Secretary considers necessary to assure accurate eligibility and benefit determinations."

(c) **MONTHLY NOTICE.**—Section 6(c)(2) of such Act (7 U.S.C. 2015(c)(2)) is amended—

(1) by striking out "and (D)" and inserting "(D)"; and

(2) by inserting before the period the following: ", and (E) be provided each month (or other applicable period) with an appropriate, simple form for making the required reports of the household together with clear instructions explaining how to complete the form and the rights and responsibilities of the household under any periodic reporting system".

**SEC. 203. BENEFITS FOR HOUSEHOLDS SUBJECT TO PRORATING.**

(a) **IN GENERAL.**—Section 8(c) of the Food Stamp Act of 1977 (7 U.S.C. 2017(c)) is amended—

(1) by designating the first and second sentences as paragraphs (1) and (2), respectively;

(2) in paragraph (2) (as so redesignated), by redesignating clauses (1), (2), and (3) as subparagraphs (A), (B), and (C) respectively; and

(3) by adding at the end thereof the following new paragraph: "(3) An eligible household applying after the 15th day of the month shall receive, in lieu of its initial allotment and its regular allotment for the following month, an allotment that is the aggregate of the initial allotment and the first regular allotment, which shall be provided in accordance with paragraphs (3) and (9) of section 11(e)."

(b) **CONFORMING AMENDMENT.**—Section 7(h) is amended—

(1) by striking out "(1)"; and

(2) by repealing paragraph (2).

**SEC. 204. OPTIONAL FOOD STAMP INFORMATION ACTIVITIES.**

(a) **OPTIONAL INFORMATION ACTIVITIES.**—Subparagraph (A) of section 11(e)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2020(e)(1)(A)) is amended to read as follows: "(A) at the option of the State agency, inform low-income households about the availability, eligibility requirements, application procedures, and benefits of the food stamp program; and".

(b) **ADMINISTRATIVE COSTS.**—Section 16(a)(4) of such Act (7 U.S.C. 2025(a)(4)) is amended by striking out "permitted" and inserting in lieu thereof ", including those undertaken".

**SEC. 205. EXTENSION OF HOMELESS AMENDMENTS.**

Section 11002(f)(3) of the Homeless Eligibility Clarification Act (7 U.S.C. 2012 note) is amended by inserting ", except those amendments made by subsection (b)," after "this section".

## Subtitle B—Child Nutrition Act of 1966, and National School Lunch Act

**SEC. 210. IMPROVEMENT OF SCHOOL BREAKFAST PROGRAM.**

The first sentence of section 4(b)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)(3)) is amended by striking out "3 cents" and inserting in lieu thereof "6 cents".

**SEC. 211. ADDITION OF ONE SNACK OR ONE MEAL TO THE CHILD CARE FOOD PROGRAM.**

Section 17(f)(2)(B) of the National School Lunch Act (42 U.S.C. 1766(f)(2)(B)) is amended by inserting before the period the following: ", or in the case of an institution (but not in the case of a family or group day care home sponsoring organization), two meals and two supplements or three meals and one supplement per day per child, for children that are maintained in a child care setting for eight or more hours per day."

**SEC. 212. ACCESS OF HOMELESS WOMEN, INFANTS, AND CHILDREN TO THE SPECIAL SUPPLEMENTAL FOOD PROGRAM.**

(a) **DEFINITIONS.**—Section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)) is amended by adding at the end thereof the following new paragraph:

"(15) 'Homeless individual' means—

"(A) an individual who lacks a fixed and regular nighttime residence; or

"(B) an individual whose primary nighttime residence is—

"(ii) a supervised publicly or privately operated shelter (including a welfare hotel or congregate shelter) designed to provide temporary living accommodations;

"(iii) an institution that provides a temporary residence for individuals intended to be institutionalized;

"(iv) a temporary accommodation in the residence of another individual; or

"(v) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings."

(b) GENERAL AUTHORITY.—The last sentence of section 17(c)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(c)(1)) is amended to read as follows: "The program shall be supplementary to—

"(A) the food stamp program;

"(B) any program under which foods are distributed to needy families in lieu of food stamps; and

"(C) receipt of food or meals from soup kitchens, or shelters, or other forms of emergency food assistance."

(c) STATE ADMINISTRATION.—Section 17(d) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)) is amended—

(1) in paragraph (1)(C)(iv), by striking out "migrants" and inserting in lieu thereof "migrants, homeless individuals,";

(2) in paragraph (E)(A), by inserting "organizations and agencies serving homeless individuals and shelters for victims of domestic violence," after "Indian tribal organizations,";

(3) in paragraph (13), by striking out "cultural eating patterns," and inserting in lieu thereof the following: "cultural eating patterns, and, in the case of homeless individuals, the special needs and problems of such individuals,"; and

(4) by adding at the end thereof the following new paragraph: "(17) The State agency may adopt methods of delivering benefits to accommodate the special needs and problems of homeless individuals."

#### SEC. 212. SUMMER FEEDING PROGRAM.

(a) ELIGIBLE SERVICE INSTITUTIONS.—Section 13(a)(1) of the National School Lunch Act (42 U.S.C. 1761(a)(1)) is amended in subparagraph (B), by inserting ", public or private nonprofit higher education institutions participating in the National Youth Sports Program," after "county governments".

(b) ELIGIBLE PRIVATE NONPROFIT ORGANIZATIONS.—Section 13(a) of the Act is amended by adding at the end thereof the following new paragraph:

"(7)(A) Not later than May 1, 1989, the Secretary shall institute Statewide demonstration projects in five States in which private nonprofit organizations, as defined in subparagraph (B) (other than organizations already eligible under section 13(a)(1)), shall be eligible for the program under the same terms and conditions as other service institutions.

"(B) As used in this paragraph, the term 'private nonprofit organizations' means those organizations that—

"(i) serve no more than 2,500 children per day and operate at not more than 5 sites;

"(ii) use self-preparation facilities to prepare meals, or obtain meals from a public facility (such as a school district, public hospital, or State university);

"(iii) operate in areas where a school food authority or the local, municipal, or county government has not indicated by March 1 of any year that such authority or unit of local government will operate a program under this section in such year;

"(iv) exercise full control and authority over the operation of the program at all sites under their sponsorship;

"(v) provide ongoing year-around activities for children;

"(vi) demonstrate that such organizations have adequate management and the fiscal capacity to operate a program under this section; and

"(vii) meet applicable State and local health, safety, and sanitation standards."

#### SEC. 214. DEPARTMENT OF DEFENSE CHILD CARE FEEDING PROGRAM.

Section 17(h) of the National School Lunch Act (42 U.S.C. 1766(h)) is amended—

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end thereof the following new paragraph:

"(2) The Secretary is authorized to provide agricultural commodities obtained by the Secretary under the provisions of the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) and donated under the provisions of section 416 of such Act, to the Department of Defense for use by its institutions providing child care services, when such commodities are in excess of the quantities needed to meet the needs of all other child nutrition programs, domestic and foreign food assistance and export enhancement programs. The Secretary shall require reimbursement from the Department of Defense for the costs, or some portion thereof, of delivering such commodities to overseas locations, unless the Secretary determines that it is in the best interest of the program that the Department of Agriculture shall assume such costs."

### Subtitle C—Food Processing and Distribution

#### SEC. 220. ENCOURAGEMENT OF FOOD PROCESSING AND DISTRIBUTION BY ELIGIBLE RECIPIENT AGENCIES.

##### (a) SOLICITATION OF APPLICATIONS.—

(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary of Agriculture shall, to the extent that the Commodity Credit Corporation's inventory levels permit, solicit applications, in accordance with paragraph (2), for surplus commodities available for distribution under section 202 of the Temporary Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note).

(2) REQUIREMENTS.—The solicitation by the Secretary of Agriculture under paragraph (1) shall be in the form of a request that any eligible recipient agency (as defined in section 201A of the Temporary Emergency Food Assistance Act of 1983) submit an application to the Secretary that shall include an assurance that such agency will—

(A) process any agricultural commodity received in response to such application into end-use products suitable for distribution through the Temporary Emergency Food Assistance Program;

(B) package such products for use by individual households; and

(C) distribute such products to State agencies responsible for the administration of the Temporary Emergency Food Assistance Program, at no cost to the State agency, for distribution through the Temporary Emergency Food Assistance Program.

(3) PROHIBITION ON PAYMENT OF PROCESSING COSTS.—Funds made available under section 204 of the Temporary Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note) or funds of the Commodity Credit Corporation shall not be used to pay any costs incurred for the processing, storage, transportation or distribution of the commodities or end-use products prior to their delivery to the State agency.

(b) REVIEW OF APPLICATIONS.—

(1) TIME OF REVIEW.—Not later than 60 days after the Secretary of Agriculture receives an application solicited under subsection (a), the Secretary shall approve or disapprove such application.

(2) NOTICE OF DISAPPROVAL.—If the Secretary disapproves the application submitted under subsection (a), the Secretary shall inform the applicant of the reasons for such disapproval.

### TITLE III—ADMINISTRATIVE IMPROVEMENTS AND SIMPLIFICATION

#### SEC. 301. REFERENCES TO THE FOOD STAMP ACT OF 1977.

Except as otherwise specifically provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

#### Subtitle A—Reducing Unnecessary Paperwork

##### SEC. 310. SIMPLIFIED APPLICATION FORMS.

Section 11(e)(2) (7 U.S.C. 2020(e)(2)), is amended by inserting after "exigencies as determined by the Secretary" the following: ", and in approving such deviation, the Secretary takes into account whether such State forms are easy to use, brief and readable. In consultation with the Secretary of Health and Human Services, the Secretary shall develop a program to provide assistance to States that request assistance in the development of brief, simply-written and readable application forms including application forms that cover the food stamp program, the aid to families with dependent children program under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), and medical assistance programs administered by the Secretary of Health and Human Services under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.). Each food stamp application form shall contain, in plain and prominent language on its front cover, a place where applicants can write their names, addresses, and signatures, and instructions in understandable terms informing households of their right to file the application without immediately completing additional sections, describing the expe-

ditioned processing requirements of section 11(e)(9) and informing households that benefits are provided only from the date of application."

##### SEC. 311. STATEMENT OF REQUIRED VERIFICATION.

Section 11(e)(3) (7 U.S.C. 2020(e)(3)) is amended by inserting before the semicolon at the end thereof the following: ", and that the State agency shall—

"(A) provide each applicant household, at the time of application, a clear written statement explaining what acts the household must perform to cooperate in obtaining verification and otherwise completing the application process;

"(B) assist each applicant household in obtaining appropriate verification and completing the application process;

"(C) not require any household to submit additional proof of a matter on which the State agency already has current verification as determined under regulations issued by the Secretary, unless the State agency has reason to believe that the information possessed by the agency is inaccurate, incomplete, or inconsistent;

"(D) subject to subparagraph (E), not deny any application for participation under this program solely because of the failure of a person outside the household to cooperate (other than an individual failing to cooperate who would otherwise be a household member but for the operation of any of the individual disqualification provisions of subsections (b), (d), (e), (f), and (g) of section 6; and

"(E) process applications if a household complies with the requirements of the first sentence of section 6(c), by taking appropriate steps to verify information otherwise required to be verified under this Act."

#### Subtitle B—Assuring Accurate Issuance of Benefits

##### SEC. 320. CORRECTING IMPROPER DENIALS AND UNDERISSUANCES.

Section 11 (7 U.S.C. 2020) is amended by adding at the end thereof the following new subsection:

"(p) When a State agency learns, through its own reviews under section 16 or other reviews, or through other sources, that it has improperly denied, terminated, or underissued benefits to an eligible household, the State agency shall promptly restore any improperly denied benefits to the extent required by sections 11(e)(11) and 14(b), and shall take other steps to prevent a recurrence of such errors where such error was caused by the application of State agency practices, rules or procedures inconsistent with the requirements of this Act or with regulations or policies of the Secretary issued under the authority of this Act."

##### SEC. 321. SPECIAL TRAINING OF STATE PERSONNEL INVOLVED IN CERTIFYING FARM HOUSEHOLDS.

(a) TRAINING.—Section 11(e)(6) (7 U.S.C. 2020(e)(6)) is amended—  
(1) by striking out "and (C)" at the end of subparagraph (B) and inserting in lieu thereof "(C)"; and

(2) by inserting at the end thereof the following: "(D) the State agency, at its option, may undertake intensive training to ensure that State agency personnel who undertake the certification of households that include a member who engages in farming are qualified to perform such certification."

(b) TRAINING MATERIALS.—Section 16 (7 U.S.C. 2025) is amended by adding at the end thereof the following new subsection:

"(k) Not later than 180 days after the date of the enactment of the Hunger Prevention Act of 1988, and annually thereafter, the Secretary shall publish instructional materials specifically designed to be used by the State agency to provide intensive training to State agency personnel who undertake the certification of households that include a member who engages in farming."

(c) TECHNICAL CORRECTIONS.—Section 16 (7 U.S.C. 2025) is amended by redesignating subsection (h), as added by section 121(b)(5) of the Immigration Reform and Control Act of 1986, as subsection (j).

#### SEC. 322. TRAINING OF CERTIFICATION WORKERS AND COMMUNITY RESOURCES.

(a) TRAINING CERTIFICATION WORKERS.—Section 11(e)(6)(C) (7 U.S.C. 2020(e)(6)(C)) is amended—

(1) by striking out "undertake to"; and

(2) by inserting "so that eligible households are promptly and accurately certified to receive the allotments for which they are eligible under this Act" after "such certification".

(b) COMMUNITY RESOURCES.—Section 11(e)(6) (7 U.S.C. 2020(e)(6)) (as amended by section 321(a) and subsection (a)) is further amended by adding at the end thereof the following new subparagraph: "and (E) at its option, the State agency may provide, or contract for the provision of, training and assistance to persons working with volunteer or nonprofit organizations that provide program information activities or eligibility screening to persons potentially eligible for food stamps."

#### SEC. 323. PREVENTING INCORRECT ISSUANCES.

Section 11(e) (7 U.S.C. 2020(e)) (as amended by section 311) is further amended by inserting before the semicolon at the end of paragraph (3), the following: ", and that the State agency shall provide the household, at the time of each certification and recertification, with a statement describing the reporting responsibilities of the household under this Act, and provide a toll-free or local telephone number, or a telephone number, at which collect calls will be accepted by the State agency, at which the household may reach an appropriate representative of the State agency".

### Subtitle C—Reducing Barriers in Rural America

#### SEC. 330. TRANSPORTATION DIFFICULTIES IN RURAL AREAS.

Section 11(e)(2) (7 U.S.C. 2020(e)(2)) (as amended by section 310), is further amended by striking out "The State Agency shall comply" and all that follows through "certified properly," and inserting in lieu thereof the following new sentences: "The State agency shall waive in-office interviews, on a household's request, if a household is unable to appoint an authorized representative pursuant to para-

graph (7) and has no adult household members able to come to the appropriate State agency office because such members are elderly, are mentally or physically handicapped, live in a location not served by a certification office, or have transportation difficulties or similar hardships as determined by the State agency (including hardships due to residing in a rural area, illness, care of a household member, prolonged severe weather, or work or training hours). If an in-office interview is waived, the State agency may conduct a telephone interview or a home visit. The State agency shall provide for telephone contact by, mail delivery of forms to, and mail return of forms by, households that have transportation difficulties or similar hardships."

### Subtitle D—Eliminating Inequities for Farmers and Others

#### SEC. 339. CONTINUATION OF FOOD STAMPS TO PARTICIPANTS IN CASH-OUTS OF OTHER BENEFIT PROGRAMS.

Section 5(d)(1) (7 U.S.C. 2014(d)(1)) is amended—

(1) by striking out "and except as provided in subsection (k)," and

(2) by inserting after "to a household" the following: "(notwithstanding its conversion in whole or in part to direct payments to households pursuant to any demonstration project carried out or authorized under Federal law including demonstration projects created by the waiver of provisions of Federal law)".

#### SEC. 341. ANNUALIZING SELF-EMPLOYMENT INCOME AND EXPENSES FROM FARMING.

Section 5(f)(1)(A) (7 U.S.C. 2014(f)(1)(A)) is amended—

(1) in the second sentence by striking out "preceding" and inserting in lieu thereof "first"; and

(2) by inserting after the first sentence the following new sentence: "Notwithstanding the preceding sentence, household income resulting from the self-employment of a member in a farming operation, who derives income from such farming operation and who has irregular expenses to produce such income, may, at the option of the household, be calculated by averaging such income and expenses over a 12-month period."

#### SEC. 342. HOUSEHOLDS IN TRANSITION.

Section 5(g) (7 U.S.C. 2014(g)) is amended by adding at the end thereof the following new sentence: "In the case of farm property (including land, equipment, and supplies) that is essential to the self-employment of a household member in a farming operation, the Secretary shall exclude from financial resources the value of such property until the expiration of the 1-year period beginning on the date such member ceases to be self-employed in farming."

#### SEC. 343. TECHNICAL CORRECTION TO EXCLUSION OF ENERGY ASSISTANCE FROM FOOD STAMP INCOME.

Section 5(d)(1) (7 U.S.C. 2014(d)(1)) is amended—

(1) in the matter preceding subparagraph (A), by striking out "under" and inserting in lieu thereof "for the purpose of providing energy assistance";

(2) in subparagraph (A), to read as follows: "(A) under any Federal law, or"; and

(3) in subparagraph (B)—

(A) by striking out "any" and inserting in lieu thereof "under any"; and

(B) by striking out "for the purpose of providing energy assistance".

**SEC. 344. CIVIL MONEY PENALTIES AND DISQUALIFICATION OF RETAIL FOOD STORES AND WHOLESALE FOOD CONCERNS.**

Section 12(b)(3) (7 U.S.C. 2021(b)(3)) is amended to read as follows:

"(3) permanent upon—

"(A) the third occasion of disqualification; or

"(B) the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern, except that the Secretary shall have the discretion to impose a civil money penalty of up to \$20,000 in lieu of disqualification under this subparagraph, for such purchase of coupons or trafficking in coupons or cards that constitutes a violation of the provisions of this Act or the regulations issued pursuant to this Act, if the Secretary determines that there is substantial evidence that such store or food concern had an effective policy and program in effect to prevent violations of the Act and the regulations."

**Subtitle E—Reducing Barriers for the Elderly and Disabled**

**SEC. 350. DISABLED PERSONS RECEIVING BENEFITS UNDER STANDARDS AT LEAST AS STRINGENT AS THOSE IN THE SOCIAL SECURITY ACT.**

Paragraph (2) of section 3(r) (7 U.S.C. 2012(r)) is amended to read as follows:

"(2)(A) receives supplemental security income benefits under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.), or Federally or State administered supplemental benefits of the type described in section 212(a) of Public Law 93-66 (42 U.S.C. 1382 note), or

"(B) receives Federally or State administered supplemental assistance of the type described in section 1616(a) of the Social Security Act (42 U.S.C. 1382(a)), interim assistance pending receipt of supplemental security income, disability-related medical assistance under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), or disability-based State general assistance benefits, if the Secretary determines that such benefits are conditioned on meeting disability or blindness criteria at least as stringent as those used under title XVI of the Social Security Act;"

**SEC. 351. SIMPLIFIED PROCEDURE FOR CLAIMING EXCESS MEDICAL DEDUCTION.**

Section 5(e) (7 U.S.C. 2014(e)) is amended by adding at the end thereof the following new sentences: "State agencies shall offer

eligible households a method of claiming a deduction for recurring medical expenses that are initially verified under the excess medical expense deduction provided for in subparagraph (A), in lieu of submitting information or verification on actual expenses on a monthly basis. The method described in the preceding sentence shall be designed to minimize the administrative burden for eligible elderly and disabled household members choosing to deduct their recurrent medical expenses pursuant to such method."

**SEC. 352. COORDINATED APPLICATION.**

The second sentence of section 11(i) (7 U.S.C. 2020(i)) is amended to read as follows: "In addition to implementing paragraphs (1) through (4), the State agency shall inform applicants for benefits under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that such applicants may file, along with their application for such benefits, an application for benefits under this Act, and that if such applicants file, they shall have a single interview for food stamps and for benefits under part A of title IV of the Social Security Act."

**TITLE IV—FAMILY SELF-SUFFICIENCY**

**SEC. 401. REFERENCES TO THE FOOD STAMP ACT OF 1977.**

Except as otherwise specifically provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

**SEC. 402. EXCLUSION FOR ADVANCE PAYMENT OF EARNED INCOME CREDIT.**

Section 5(d) (7 U.S.C. 2014(d)) is amended—

(1) by striking out "and (13)" and inserting in lieu thereof "(13)"; and

(2) by inserting before the period at the end thereof the following: ", (14) any payment made to the household under section 3507 of the Internal Revenue Code of 1986 (relating to advance payment of earned income credit)".

**SEC. 403. DEDUCTION FOR DEPENDENT CARE.**

(a) **IN GENERAL.**—Section 5(d) (7 U.S.C. 2014(d)) (as amended by section 402) is further amended by inserting before the period at the end thereof the following: ", and (15) any payment made to the household under section 6(d)(4)(I) for work-related expenses or for dependent care".

(b) **DEDUCTION.**—Section 5(e) (7 U.S.C. 2014(e)) is amended—

(1) in the matter preceding paragraph (1) of the fourth sentence by inserting "and expenses that are paid under section 6(d)(4)(I) for dependent care" after "third party"; and

(2) in paragraph (1) of the fourth sentence, by inserting after "\$100 a month" the following: "for each dependent".

**SEC. 404. EMPLOYMENT AND TRAINING.**

(a) **COMPONENTS OF EMPLOYMENT AND TRAINING PROGRAMS.**—Section 6(d)(4)(B) (7 U.S.C. 2015(d)(4)(B)) is amended—



(1) in clause (i), by striking out "have no obligation" through "State agency shall";

(2) in clause (v)—

(A) by inserting "or the State under regulations issued by the Secretary," after "the Secretary"; and

(B) by inserting "employment, educational and training" after "other";

(3) by redesignating clause (v) (as amended by paragraph (2)) as clause (vi); and

(4) by inserting after clause (iv), the following new clause:

"(v) Educational programs or activities to improve basic skills or otherwise improve employability, including educational programs determined by the State agency to expand the job search abilities or employability of those subject to the program under this paragraph."

(b) EMPLOYMENT ASSIGNMENTS AND CONCILIATION.—Section 6(d)(4) (7 U.S.C. 2015(d)(4)) is amended—

(1) by redesignating subparagraphs (H), (I), (J), (K), and (L) as subparagraphs (I), (J), (K), (M) and (N), respectively; and

(2) by inserting after subparagraph (G), the following new subparagraph:

"(H)(i) The Secretary shall issue regulations under which each State agency shall establish a conciliation procedure for the resolution of disputes involving the participation of an individual in the program.

"(ii) Federal funds made available to a State agency for purposes of the component authorized under subparagraph (B)(v) shall not be used to supplant non-Federal funds used for existing services and activities that promote the purposes of this component."

(c) PARTICIPANTS' EXPENSES.—Section 6(d)(4)(I) (as redesignated by subsection (b) of this section), is amended to read as follows:

"(i) The State agency shall provide payments or reimbursements to participants in programs carried out under this paragraph, including individuals participating under subparagraph (G), for—

"(I) the actual costs of transportation and other actual costs (other than dependent care costs), that are reasonably necessary and directly related to participation in the program, except that the State agency may limit such reimbursement to each participant to \$25 per month; and

"(II) the actual costs of such dependent care expenses that are determined by the State agency to be necessary for the participation of an individual in the program (other than an individual who is the caretaker relative of a dependent in a family receiving benefits under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)) in a local area where an employment, training, or education program under title IV of such Act is in operation or was in operation, on the date of enactment of the Hunger Prevention Act of 1988, but in no event shall such payment or reimbursements exceed \$160 per dependent per month. Individuals subject to the program under this paragraph may not be required to participate if dependent care costs exceed \$160 per dependent per month.

"(iii) In lieu of providing reimbursements or payments for dependent care expenses under clause (i), a State agency may, at its option, arrange for dependent care through providers by the use of purchase of service contracts or vouchers or by providing vouchers to the household.

"(iii) The value of any dependent care services provided for or arranged under clause (ii), or any amount received as a payment or reimbursement under clause (i), shall—

"(I) not be treated as income for the purposes of any other Federal or federally assisted program that bases eligibility for, or the amount of benefits on, need; and

"(II) not be claimed as an employment-related expense for the purposes of the credit provided under section 21 of the Internal Revenue Code of 1986."

(d) PERFORMANCE STANDARDS AND PARTICIPATION STANDARDS.—Section 6(d)(4) (7 U.S.C. 2015(d)(4)) is amended by inserting after subparagraph (K) (as redesignated by subsection (b)) the following new subparagraph:

"(L) The Secretary shall establish, in accordance with this subparagraph, performance standards that are applicable to employment and training programs carried out under this paragraph.

"(i) The performance standards referred to in clause (i) shall be developed by the Secretary after consultation with the Office of Technology Assessment, the Secretary of Labor, the Secretary of Health and Human Services, appropriate State officials designated for purposes of this clause by the chief executive officers of the States, other appropriate experts, and representatives of households participating in the food stamp program. Such performance standards (which shall be coordinated with the corresponding performance standards under the Job Training Partnership Act (29 U.S.C. 1501 et seq.) and the performance standards under title IV of the Social Security Act (42 U.S.C. 601 et seq.), taking into consideration the differing characteristics of such households)—

"(I) shall be measured by employment outcomes and shall be based on the degree of success that may reasonably be expected of States (in carrying out employment and training programs) in helping individuals to achieve self-sufficiency;

"(II) shall take into account the extent to which persons have elected to participate in employment and training programs under this paragraph, job placement rates, wage rates, job retention rates, households ceasing to need benefits under this Act, and improvements in household members' educational levels;

"(III) shall encourage States to serve those individuals who have greater barriers to employment and thus have greater difficulties in achieving self-sufficiency; and

"(IV) shall include guidelines permitting appropriate variations that take into account the differing conditions (including unemployment rates and rates of elective participation under subparagraph (G) in employment and training programs under this paragraph) that may exist in different States.

"(iii) Final measures for the performance standards referred to in clause (i) shall be published by the Secretary, after the consideration of public comments concerning the proposed measures for such performance standards, and implemented by the States not later than April 1, 1991.

"(iv) The performance standards developed and issued under clause (i) shall be varied in any State, to the extent permitted under clause (ix)(IV), to the extent necessary to take into account specific economic, geographic, and demographic factors in the State, the characteristics of the population to be served, and the types of services to be provided.

"(v) The performance standards in effect under subparagraph (K) shall remain in effect during the period beginning on October 1, 1988, and ending on the date the Secretary implements the performance standards required to be issued under this subparagraph on which date the authority to issue such standards shall expire.

"(vi) Not later than 180 days after the Secretary publishes the proposed measures for the performance standards under this subparagraph, the Office of Technology Assessment shall—

"(I) develop model performance standards suitable for application to employment and training programs carried out under this subsection and that satisfy the criteria specified in this subparagraph;

"(II) compare the standards developed under subclause (I) with the performance standards established under this subparagraph by the Secretary, and

"(III) submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, and the Secretary of Agriculture a report describing the results of the comparison required under subclause (I)."

(e) INCENTIVE PAYMENTS.—Section 16(h) (7 U.S.C. 2025(h)) is amended by adding at the end thereof the following new paragraph:

"(6) The Secretary shall develop, and transmit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a proposal for modifying the rate of Federal payments under this subsection so as to reflect the relative effectiveness of the various States in carrying out employment and training programs under section 6(d)(4)."

(f) HOUSEHOLDS.—Section 5(d)(5) (7 U.S.C. 2014(d)(5)) is amended by inserting after "child care expenses" the following: "(except for payments or reimbursements for such expenses made under an employment, education, or training program initiated under such title after the date of enactment of the Hunger Prevention Act of 1984)".

(g) REIMBURSABLE COSTS.—Section 16(h)(3) (7 U.S.C. 2025) is amended by inserting after "month" the following: "for costs of transportation and other actual costs (other than dependent care costs) and an amount representing \$160 per month per dependent".

## TITLE V—DEMONSTRATION PROJECTS

### SEC. 501. FARMERS' MARKET COUPONS DEMONSTRATION PROJECT.

(a) PURPOSE.—The purpose of this section is to authorize the establishment of a grant program to encourage State demonstration projects designed to—

(1) provide resources to persons who are nutritionally at risk in the form of fresh nutritious unprepared foods (such as fruits and vegetables), from farmers' markets; and

(2) expand the awareness and use of farmers' markets and increase sales at such markets.

(b) GENERAL AUTHORITY.—Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) is amended by adding at the end thereof the following new subsection:

"(m)(1) Subject to the availability of funds appropriated for purposes of this subsection, the Secretary shall award a 3-year grant to up to 10 States that submit applications that are approved for the establishment of demonstration projects designed to provide recipi-

ents of assistance under subsection (c) with coupons that may be exchanged for foods at farmers' markets.

"(2) A grant provided to any State under this subsection shall be provided to the chief executive officer of the State, who shall—

"(A) designate the appropriate State agency or agencies to administer the program in conjunction with the appropriate nonprofit organizations; and

"(B) assure coordination of the program among the appropriate agencies and organizations.

"(3) The Secretary shall not make a grant to any State under this subsection unless such State agrees to provide State funds for the demonstration project in an amount that is equal to not less than 30 percent of the total cost of the demonstration project which may be satisfied from State contributions that are made for similar projects.

"(4)(A) The Secretary shall establish a formula for determining the amount of the grant to be awarded under this subsection to each State for which an application is approved under paragraph (6), according to the number of recipients proposed to participate as specified in the application of the State.

"(B) If the sums appropriated for any fiscal year pursuant to the authorization contained in paragraph (10) for grants under this subsection are not sufficient to pay to each State for which an application is approved under paragraph (6) the amount which the Secretary determines each such State is entitled to under this subsection, each State's grant shall be ratably reduced.

"(5) Each State that receives a grant under this subsection shall ensure that the demonstration project for which the grant is received complies with the following requirements:

"(A) Persons who are eligible to receive Federal benefits under the project shall only be persons who are receiving assistance under subsection (c).

"(B) Construction or operation of a farmers' market may not be carried out using funds—

"(i) provided under the grant; or

"(ii) required to be provided by the State under paragraph (3).

"(C) The value of the Federal share of the benefit received by any recipient under the project may not be—

"(i) less than \$10 per year; or

"(ii) more than \$20 per year.

"(D) The coupon issuance process under the project shall be designed to ensure that coupons target areas with—

"(i) the highest concentration of eligible persons;

"(ii) the greatest access to farmers' markets; and

"(iii) certain characteristics, in addition to those described in clauses (i) and (ii), that are determined to be relevant by the Secretary that maximize the availability of benefits to eligible persons.

"(E) The coupon redemption process under the project shall be designed to ensure that coupons may be—

"(i) redeemed only by producers authorized by the State to participate in the project; and

"(ii) redeemed only to purchase unprepared food for human consumption.

"(F)(1) Except as provided in clauses (ii) and (iii), the State may not use for administration of such project for any fiscal year more than 10 percent of the total amount of project funds.

"(ii) On the showing by the State of substantial need, the Secretary may permit a State to use up to an additional two percent of the total project funds for administration of such project for any fiscal year.

"(iii) The provisions of clauses (i) and (ii) with respect to the use of project funds for the administration of the project shall not apply to any funds that a State may contribute in excess of the funds used by the State to meet the requirements under subparagraph (B).

"(G) The State shall ensure that no State or local taxes are collected within the State on purchases of food with coupons distributed under the project.

"(6)(A) A State that desires to receive a grant under this subsection shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require.

"(B)(i) Each application submitted under this paragraph shall contain—

"(I) the estimated cost of the program and the estimated number of individuals to be served by such program;

"(II) a description of the State plan for complying with the requirements established in paragraph (5); and

"(III) criteria developed by the State with respect to authorization of producers to participate in the program.

"(ii) The criteria developed by the State as required by clause (iii) shall require any authorized producer to sell fresh nutritious unprepared foods (such as fruits and vegetables) to recipients, in exchange for coupons distributed under the project.

"(C) The Secretary shall establish objective criteria for the approval of applications submitted under this paragraph.

"(D) In approving applications submitted under this paragraph, the Secretary shall—

"(i) favorably consider a State's prior experiences with programs in existence as of the date of enactment of the Hunger Prevention Act of 1988;

"(ii) favorably consider a State's operation of a similar project with State or local funds that can present data concerning the value of such project, and such data can be of assistance to other States interested in developing such farmers' market coupons projects;

"(iii) award a grant to at least one applicant that proposes to operate the program on a Statewide basis;

"(iv) give preference to applications from States that propose projects that are determined by the Secretary to—

"(I) have possible national significance; or

"(II) show unusual promise in promoting similar projects;

"(v) give preference to applications that show promise of continued operation of the project for which the grant is requested after the grant expires;

"(vi) require that if a State receives a grant under this section and that State is operating a similar project with State or local funds, that State shall not reduce in any fiscal year the amount of State and local funds available to the project in the preceding fiscal year after receiving funds for the project under this subsection; and

"(vii) give preference to applications for projects that would serve areas in the State that have—

"(I) the highest concentration of eligible persons;

"(II) the greatest access to farmers' markets;

"(III) broad geographical area;

"(IV) the greatest number of participants in the broadest geographical area within the State; and

"(V) any other characteristics, as determined appropriate by the Secretary, that maximize the availability of benefits to eligible persons.

"(7)(A) The value of the benefit received by any recipient under any project for which a grant is received under this subsection may not affect the eligibility or benefit levels for assistance under any other State or Federal program.

"(B) Any projects for which a grant is received under this subsection shall be supplementary to the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) and to any other Federal or State program under which foods are distributed to needy families in lieu of food stamps.

"(8) Each State that receives a grant under this subsection shall submit a report to the Secretary for each year of the grant period. Each such report shall include—

"(A) the number of recipients served under the project for which the grant is received;

"(B) the rate of redemption of coupons distributed under the project;

"(C) the types of foods purchased with the coupons;

"(D) the average amount distributed in coupons to each recipient;

"(E) any change in the amount of food purchased at farmers' markets after the establishment of the project;

"(F) any change in the number of farmers participating in farmers' markets after the establishment of the project;

"(G) a description of how coupons were distributed to and redeemed by recipients in the State project; and

"(H) any other information determined to be necessary by the Secretary.

"(9)(A) The Secretary shall evaluate the projects for which grants are received under this subsection and submit to the Committee on Agriculture of the House of Representatives, the Committee on Education and Labor of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report on such evaluations.

"(B) Such report shall be submitted before the end of the 2-year period beginning on the date that the last grant is awarded under this subsection.

"(10) There are authorized to be appropriated to carry out this subsection \$2,000,000 for fiscal year 1989, \$2,800,000 for fiscal year 1990, and \$3,500,000 for fiscal year 1991.

"(11) For purposes of this subsection:

"(A) The term 'recipient' means a person who is chosen by a State to receive benefits under a project.

"(B) The term 'State agency' has the meaning provided in subsection (b)(13), except that such term also includes the agriculture department of each State."

#### SEC. 502. FOOD BANK DEMONSTRATION PROJECTS.

(a) IN GENERAL.—The Secretary of Agriculture may carry out demonstration projects to provide and redistribute to needy individ

uals and families through community food banks and other charitable food banks—

(1) agricultural commodities or the products thereof made available under section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431); and

(2) to the extent practicable, agricultural commodities or the products thereof made available under section 32 of the Act entitled "An Act to amend the Agricultural Adjustment Act, and for other purposes", approved August 24, 1935 (7 U.S.C. 612c).

(b) **FOOD TYPES.**—The Secretary shall determine the quantities, varieties, and types of agricultural commodities and products thereof to be made available to community food banks under this section.

(c) **REPORT.**—Not later than July 1, 1990, the Secretary shall submit, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report describing any demonstration projects carried out under this section. The report shall include an analysis and evaluation of the distribution and redistribution of food under the demonstration projects and the feasibility of expanding the projects to other community food banks.

(d) **TERMINATION.**—The authority provided under this section shall terminate on September 30, 1990.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this section, \$400,000 for each of the fiscal years 1989 through 1990.

#### SEC. 503. FAMILY OR GROUP DAY CARE HOME DEMONSTRATION PROJECT.

(a) **IN GENERAL.**—The Secretary of Agriculture shall conduct a demonstration project to begin 30 days after enactment of this Act, but in no event earlier than October 1, 1988, in one State regarding the Child Care Food Program authorized under section 17 of the National School Lunch Act (42 U.S.C. 1766) in which day care institutions and family or group day care sponsoring organizations shall receive a reimbursement (in addition to that received under subsections (d) and (f) of section 17 for providing one additional meal or supplement for children that are maintained in a day care institution or in a family or group day care home setting for eight or more hours per day.

(b) **LOCATION.**—The Secretary of Agriculture shall select one State in which to conduct the demonstration project established under subsection (a). The State shall have a large number of children served by family or group day care homes and shall have a large proportion of its Child Care Food Program meals served under such program in homes rather than in day care centers.

(c) **PURPOSE OF DEMONSTRATION.**—The demonstration project established under subsection (a) shall be structured in a manner that will enable the Secretary of Agriculture to determine—

(1) if the additional meal or supplement for children staying in day care homes longer than eight hours would increase participation in the Child Care Food Program by family and group day care homes;

(2) the extent to which meal service increases at such homes; and

(3) the nutritional impact of the additional meal or supplement.

(d) **REPORT.**—Not later than August 1, 1989, the Secretary of Agriculture shall prepare and submit, to the Committee on Agriculture of the House of Representatives and the Senate Committee on Agriculture, Nutrition, and Forestry, a preliminary report that describes the results of the project conducted under this section. As expeditiously as possible after the conclusion of such project, the Secretary shall prepare and submit to such Committees a final report concerning the project.

(e) **TERMINATION.**—The demonstration project required by this section shall terminate not later than 12 months after the date on which the project was fully initiated.

#### SEC. 504. DEMONSTRATION PROJECTS FOR DEVELOPMENT AND USE OF INTELLIGENT COMPUTER BENEFIT CARDS TO PAY FOOD STAMP BENEFITS.

Section 17 of the Food Stamp Act of 1977 (7 U.S.C. 2026) is amended by adding at the end thereof the following new subsection:

"(f)(1) In order to encourage States to plan, design, develop, and implement a system for making food stamp benefits available through the use of intelligent benefit cards or other automated or electronic benefit delivery systems, the Secretary may conduct one or more pilot or experimental projects, subject to the restrictions imposed by subsection (b)(1) and section 7(g)(2), designed to test whether the use of such cards or systems can enhance the efficiency and effectiveness of program operations while ensuring that individuals receive correct benefit amounts on a timely basis. Intelligent benefit cards developed under such a demonstration project shall contain information, encoded on a computer chip embedded in a credit card medium, including the eligibility of the individual and the amount of benefits to which such individual is entitled. Any other automated or electronic benefit delivery system developed under such a demonstration project shall be able to use a plastic card to access such information from a data file."

#### SEC. 505. STUDY OF THE EFFECTIVENESS OF THE FOOD STAMP EMPLOYMENT AND TRAINING PROGRAM.

Section 17 of the Food Stamp Act of 1977 (7 U.S.C. 2026) (as amended by section 504), is further amended by adding at the end thereof the following new subsection:

"(g) In order to assess the effectiveness of the employment and training programs established under section 6(d) in placing individuals into the work force and withdrawing such individuals from the food stamp program, the Secretary is authorized to carry out studies comparing the pre- and post-program labor force participation, wage rates, family income, level of receipt of food stamp and other transfer payments, and other relevant information, for samples of participants in such employment and training programs as compared to the appropriate control or comparison groups that did not participate in such programs. Such studies shall, to the maximum extent possible—

"(1) collect such data for up to 3 years after the individual has completed the employment and training program; and

"(2) yield results that can be generalized to the national program as a whole.

The results of such studies and reports shall be considered in developing or updating the performance standards required under section 6.

## TITLE VI—IMPROVING PAYMENT ACCURACY

### SEC. 601. REVIEW OF STATE PROGRAM INVESTMENT WHEN SETTLING CLAIMS.

Section 13(a)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2022(a)(1)) is amended by inserting at the end thereof the following new sentence: "In determining whether to settle, adjust, compromise, or waive a claim arising against a State agency pursuant to section 16(c), the Secretary shall review a State agency's plans for new dollar investment in activities to improve program administration in order to reduce payment error, and shall take the State agency's plans for new dollar investment in such activities into consideration as the Secretary considers appropriate."

### SEC. 602. INTEREST ON CLAIMS AGAINST STATE AGENCIES.

Section 13(a)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2022(a)(1)), as amended by section 601, is further amended by adding at the end thereof the following new sentences: "To the extent that a State agency does not pay a claim established under section 16(c)(1)(C), including an agreement to have all or part of the claim paid through a reduction in Federal administrative funding, within 30 days from the date on which the bill for collection (after a determination on any request for a waiver for good cause related to the claim has been made by the Secretary) is received by the State agency, the State agency shall be liable for interest on any unpaid portion of such claim accruing from the date on which the bill for collection was received by the State agency, unless the State agency appeals the claim under section 16(c)(7). If the State agency appeals such claim (in whole or in part), the interest on any unpaid portion of the claim shall accrue from the date of the decision on the administrative appeal, or from a date that is 2 years after the date the bill is received, whichever is earlier, until the date the unpaid portion of the payment is received. If the State agency pays such claim (in whole or in part, including an agreement to have all or part of the claim paid through a reduction in Federal administrative funding) and the claim is subsequently overturned through administrative or judicial appeal, any amounts paid by the State agency shall be promptly returned with interest, accruing from the date the payment is received until the date the payment is returned. Any interest assessed under this paragraph shall be computed at a rate determined by the Secretary based on the average of the bond equivalent of the weekly 90-day Treasury bill auction rates during the period such interest accrues."

### SEC. 603. ADMINISTRATIVE AND JUDICIAL REVIEW.

Section 14(a) of the Food Stamp Act of 1977 (7 U.S.C. 2023(a)) is amended—

(1) by inserting immediately after the fifth sentence the following new sentences: "Determinations regarding claims made pursuant to section 16(c) shall be made on the record after

opportunity for an agency hearing in accordance with section 556 and 557 of title 5, United States Code, in which one or more administrative law judges appointed pursuant to section 3105 of such title shall preside over the taking of evidence. Such judges shall have authority to issue and enforce subpoenas in the manner prescribed in sections 13 (c) and (d) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499m (c) and (d)) and to appoint expert witnesses under the provisions of Rule 706 of the Federal Rules of Evidence. The Secretary may not limit the authority of such judges presiding over determinations regarding claims made pursuant to section 16(c). The Secretary shall provide a summary procedure for determinations regarding claims made pursuant to section 16(c) in amounts less than \$50,000. Such summary procedure need not include an oral hearing. On a petition by the State agency or sua sponte, the Secretary may permit the full administrative review procedure to be used in lieu of such summary review procedure for a claim of less than \$50,000. Subject to the right of judicial review hereinafter provided, a determination made by an administrative law judge regarding a claim made pursuant to section 16(c) shall be final and shall take effect thirty days after the date of the delivery or service of final notice of such determination."

(2) by inserting before the period at the end of the eighth sentence (as it existed before the amendment made by paragraph (1)) " , except that judicial review of determinations regarding claims made pursuant to section 16(c) shall be a review on the administrative record"; and

(3) by adding at the end thereof the following new sentence: "Notwithstanding the administrative or judicial review procedures set forth in this subsection, determinations by the Secretary concerning whether a State agency had good cause for its failure to meet error, rate tolerance levels established under section 16(c) are final."

### SEC. 604. PAYMENT ACCURACY IMPROVEMENT SYSTEM.

Section 16 of the Food Stamp Act of 1977 (7 U.S.C. 2025) is amended—

(1) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c)(1) The program authorized under this Act shall include a system that enhances payment accuracy by establishing fiscal incentives that require State agencies with high error rates to share in the cost of payment error and provide enhanced administrative funding to States with the lowest error rates. Under such system—

"(A) the Secretary shall adjust a State agency's federally funded share of administrative costs pursuant to subsection (a), other than the costs already shared in excess of 50 percent under the proviso in the first sentence of subsection (a) or under subsection (g), by increasing such share of all such administrative costs by one percentage point to a maximum of 60 percent of all such administrative costs for each full one-tenth of a percentage point by which the payment error rate is less than 6 percent, except that only States whose rate of invalid decisions in denying eligibility is less than a nationwide percentage that the Secretary determines to be reasonable shall be entitled to the adjustment prescribed in this subsection.

"(B) the Secretary shall foster management improvements by the States pursuant to subsection (b) by requiring State agencies other than those receiving adjustments under subparagraph (A) to develop and implement corrective action plans to reduce payment errors; and

"(C) for any fiscal year in which a State agency's payment error rate exceeds the payment error tolerance level for payment error rates announced under paragraph (6), other than for good cause shown, the State agency shall pay to the Secretary an amount equal to its payment error rate less such tolerance level times the total value of allotments issued in such a fiscal year by such State agency. The amount of liability shall not be affected by corrective action under subparagraph (B).

"(2) As used in this section—

"(A) the term 'payment error rate' means the sum of the point estimates of an overpayment error rate and an underpayment error rate determined by the Secretary from data collected in a probability sample of participating households;

"(B) the term 'overpayment error rate' means the percentage of the value of all allotments issued in a fiscal year by a State agency that are either—

"(i) issued to households that fail to meet basic program eligibility requirements; or

"(ii) overissued to eligible households; and

"(C) the term 'underpayment error rate' means the ratio of the value of allotments underissued to recipient households to the total value of allotments issued in a fiscal year by a State agency.

"(3) The following errors may be measured for management purposes but shall not be included in the payment error rate:

"(A) Any errors resulting in the application of new regulations promulgated under this Act during the first 60 days (or 90 days at the discretion of the Secretary) from the required implementation date for such regulations.

"(B) Errors resulting from the use by a State agency of correctly processed information concerning households or individuals received from Federal agencies or from actions based on policy information approved or disseminated, in writing, by the Secretary or the Secretary's designee.

"(4) The Secretary may require a State agency to report any factors that the Secretary considers necessary to determine a State agency's payment error rate, enhanced administrative funding, or claim for payment error, under this subsection. If a State agency fails to meet the reporting requirements established by the Secretary, the Secretary shall base the determination on all pertinent information available to the Secretary.

"(5) To facilitate the implementation of this subsection each State agency shall submit to the Secretary expeditiously data regarding its operations in each fiscal year sufficient for the Secretary to establish the payment error rate for the State agency for such fiscal year and determine the amount of either incentive payments under paragraph (1XA) or claims under paragraph (1XC). The Secretary shall make a determination for a fiscal year, and notify the State agency of such determination, within nine months following the end of each fiscal year. The Secretary shall initiate efforts to collect the amount owed by the State agency as a claim established under

paragraph (1XC) for a fiscal year, subject to the conclusion of any formal or informal appeal procedure and administrative or judicial review under section 14 (as provided for in paragraph (7)), before the end of the fiscal year following such fiscal year.

"(6) At the time the Secretary makes the notification to State agencies of their error rates and incentive payments or claims pursuant to paragraphs (1XA) and (1XC), the Secretary shall also announce a national performance measure that shall be the sum of the products of each State agency's error rate as developed for the notifications under paragraph (5) times that State agency's proportion of the total value of national allotments issued for the fiscal year using the most recent issuance data available at the time of the notifications issued pursuant to paragraph (5). Where a State fails to meet reporting requirements pursuant to paragraph (4), the Secretary may use another measure of a State's error developed pursuant to paragraph (5), to develop the national performance measure. The announced national performance measure shall be used to establish a payment-error tolerance level. Such tolerance level for any fiscal year will be one percentage point added to the lowest national performance measure ever announced up to and including such fiscal year under this section. The payment-error tolerance level shall be used in determining the State share of the cost of payment error under paragraph (1XC) for the fiscal year whose error rates are being announced under paragraph (5).

"(7) If the Secretary asserts a financial claim against a State agency under paragraph (1XC), the State may seek administrative and judicial review of the action pursuant to section 14,"

(2) by striking out subsection (d) and inserting in lieu thereof the following new subsection:

"(d) The Secretary shall undertake the following studies of the payment error improvement system established under subsection (c):

"(1) An assessment of the feasibility of measuring payment errors due to improper denials and terminations of benefits or otherwise developing performance standards with financial consequences for improper denials and terminations, including incorporation in subsection (c). The Secretary shall report the results of such study and the recommendations of the Secretary to the Congress by July 1, 1990.

"(2) An evaluation of the effectiveness of the system of program improvement initiated under this section that shall be reported to the Congress along with the Secretary's recommendations no later than 3 years from the date of enactment of this section."

## TITLE VII—IMPLEMENTATION

### SEC. 101. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided for in section 503 and in subsection (b) of this section, this Act and the amendments made by this Act shall become effective and be implemented on October 1, 1988.

(b) SPECIAL RULES.—

(1) The amendments made by sections 101, 103, 301, 321(c), 343, and 401 shall become effective and be implemented on the date of enactment of this Act.

(2) The amendments made by section 402 shall become effective and be implemented on January 1, 1989.

(3) (A) The amendments made by section 203(a) shall become effective on January 1, 1989, and the States shall implement such section by January 1, 1990.

(B) The amendments made by section 203(b) shall become effective on January 1, 1989, except with regards to those States not implementing section 203(a).

(4) The amendments made by sections 204, 210, 211, subsections (a)(1), (c), and (e) of section 404, and sections 310 through 352 shall become effective and implemented on July 1, 1989.

(5) The amendments made by title VI shall be effective as follows:

(A) Except as provided in subparagraph (D), the provisions of section 16(c) of the Food Stamp Act of 1977, as amended by section 604, shall become effective on October 1, 1985, with respect to claims under section 16(c) for quality control review periods after such date, except that—

(i) the provisions of section 16(c)(1)(A), as amended, shall become effective on October 1, 1988, with respect to payment error rates for quality control review periods after such date; and

(ii) the provisions of section 16(c)(3), as amended, shall become effective on October 1, 1988, with respect to payment error rates for quality control review periods after such date.

(B) The amendments made by sections 601 and 602 shall become effective on October 1, 1985, with respect to claims under section 16(c) for quality control review periods after such date.

(C) Except as provided in subparagraph (D), the amendments made to section 14 of the Food Stamp Act of 1977 by section 603 shall become effective on October 1, 1985, with respect to claims under section 16(c) for quality control review periods after such date.

(D)(i) The provisions of sections 13, 14, and 16 of the Food Stamp Act of 1977 that relate to claims against State agencies and that were in effect for any quality control review period or periods through fiscal year 1985 shall remain in effect for claims arising with respect to such period or periods.

(ii) The provisions of sections 14 and 16(c) of the Food Stamp Act of 1977 that relate to enhanced administrative funding for State agencies and that were in effect for any quality control review period or periods through fiscal year 1988 shall remain in effect for such funding with respect to such period or periods.

**(c) SEQUESTRATION.—**

(1) **IN GENERAL.**—Notwithstanding any other provision of law, if a final order is issued for fiscal year 1989 under section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902(b)), the amount made available to carry out the food stamp program under section 18 of the Food Stamp Act of 1977 (7 U.S.C. 2027) shall be reduced by an amount equal to \$110,000,000 multiplied by the amount of the percentage reduction for domestic programs required under such order. The reduction required by the preceding sentence shall be achieved

by reducing the amount of the adjustment to the cost of the thrifty food plan for fiscal year 1989 under section 3(a)(9) of the Food Stamp Act of 1977 (as added by section 120 of this Act).

(2) **EFFECTIVE DATES IF SEQUESTRATION OCCURS.**—Notwithstanding subsections (a) and (b), if a final order is issued under section 252(b) of the Emergency Deficit Control Act of 1985 (2 U.S.C. 902(b)) for fiscal year 1989 to make reductions and sequestrations specified in the report required under section 251(a)(3)(A) of such Act, sections 111, 201, 204, 310, 311, 321, 322, 323, 341, 342, 350, 351, 352, 402, 403, 404, 502, 504, and 505 shall become effective and be implemented on October 1, 1989.

*Speaker of the House of Representatives.*

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

## **PRISONER CLASSIFICATION OVERVIEW**

### **CLASSIFICATION DEFINED:**

Prisoner classification is an ongoing process, which provides an organized framework for directing the behavioral and therapeutic management of offenders.

### **OBJECTIVES:**

- **Collect and pool all relevant information about the prisoner's social, education, employment, medical, mental and criminal background.**
- **Assess prisoner custody and institutional security needs and assign appropriate levels of confinement control.**
- **Assess prisoner physical and mental health and identify continuing care needs.**
- **Assess prisoner behavioral therapeutic needs and prescribe appropriate counseling and program interventions.**
- **Assess prisoner work and educational capabilities, interests and needs and determine appropriate program objectives and assignments.**
- **Appraise prisoner behavioral adjustment and assign appropriate levels of good time earning.**



## **PRISONER CLASSIFICATION OVERVIEW**

**PURPOSE OF CLASSIFICATION:** Classification controls the management of offenders and bed resources. It is recognized by the courts and prison administrators as the most important vehicle for maintaining a safe and well-managed correctional system.

### **FUNCTIONS:**

- **INTAKE MANAGEMENT**

Directs the reception of approximately 5,000 offenders annually from jails into the State prison system

- **PRISONER SENTENCE COMPUTATION MANAGEMENT**

Performs approximately 85,000 prisoner sentence computations per year to determine eligibility for discretionary and mandatory parole release.

- **PRISONER INFORMATION MANAGEMENT**

Collects and updates all relevant information about prisoner social, educational, employment, medical, mental and criminal backgrounds. Maintains correctional records on approximately 20,000 prisoners in active confinement and on parole.

- **PRISONER POPULATION DISTRIBUTION MANAGEMENT**

Directs the distribution of over 12,000 prisoners throughout the prison system according to prisoner needs and system resources.

- **PRISONER MANAGEMENT**

- Determines prisoner custody and institutional security needs and appropriate assignments
- Identifies physical and mental health continuing care needs
- Determines prisoner correctional treatment needs, prescribes appropriate counseling, and assigns offenders to programs
- Determines educational vocational training needs and makes appropriate program assignments
- Determines appropriate work assignments
- Determines appropriate prisoner good time earning levels
- Determines prisoner suitability and placements in community release programs (furloughs, work release, pre-release)

## **INITIAL CLASSIFICATION**

### **A. FELONS WITH FOUR (4) YEAR TERMS OR LESS:**

- Occurs in the local jail
- Involves identification work, personal interview, records development, and decision making regarding custody assignment, good time earning level, state institutional placement and program recommendation.

### **B. FELONS WITH OVER FOUR (4) YEAR TERMS:**

- Occurs at a state reception and classification center
- Involves Identification work, testing (medical, I.Q., personality, educational), personal interviews, orientation, behavioral observation, records development, and decision making regarding custody assignment, institutional placement, good time earning level and program recommendations.

## **RECLASSIFICATION:**

- Occurs in state institutions and local jails every six (6) months or more frequently as needed.
- Involves retesting (where necessary) and assessment of behavioral adjustment and progress in work, programs and counseling. Involves adjusting (when appropriate) inmate custody and institutional assignments, good time earning level, and work, educational and therapeutic program assignments.

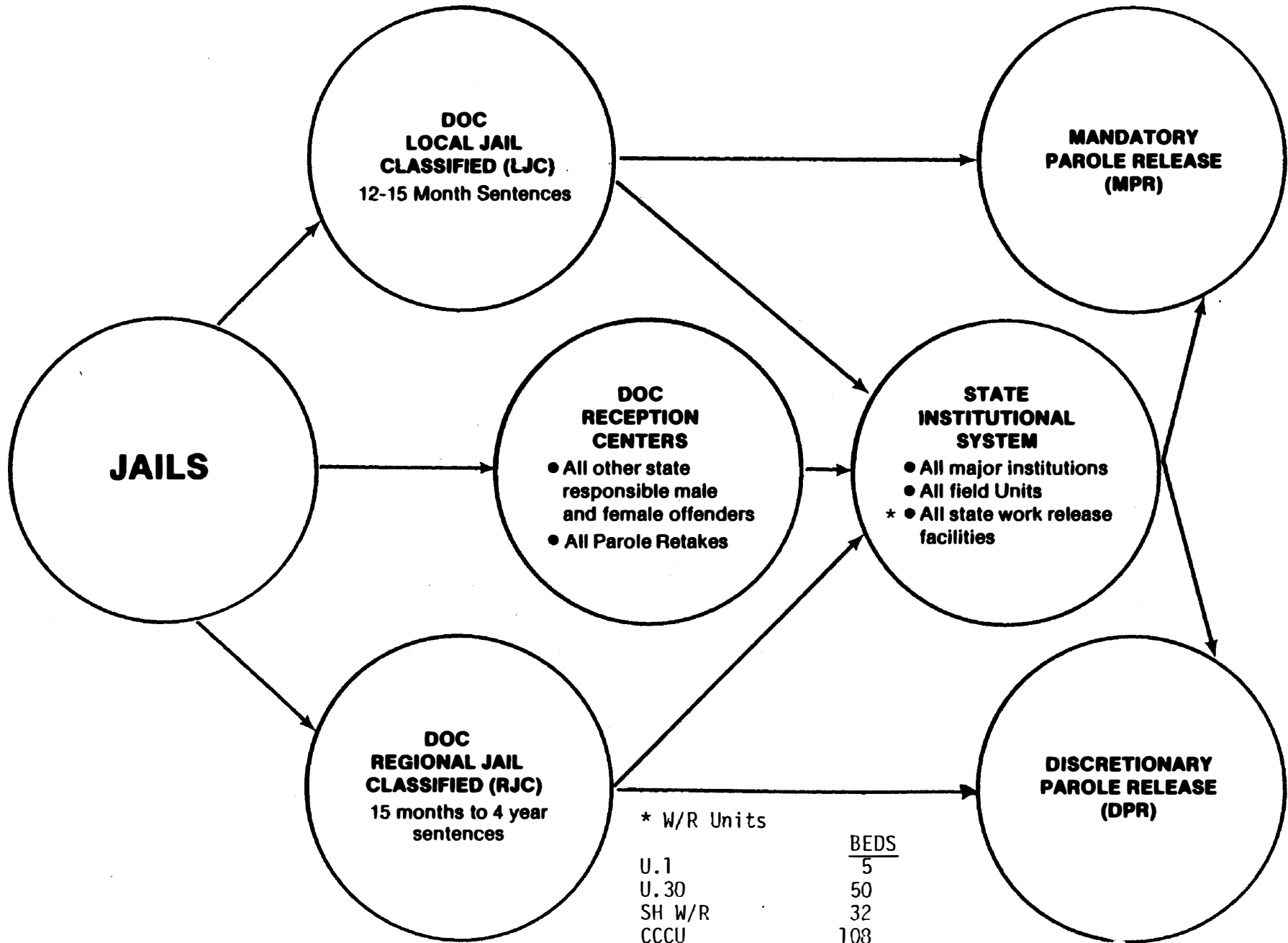
# Adult State Prisoner Classification Process Flow

**DOC JAIL INITIAL CLASSIFICATION**

**C STATE INITIAL CLASSIFICATION**

**DOC RECLASSIFICATION**

**REL** ☰



\* W/R Units

	<u>BEDS</u>
U.1	5
U.30	50
SH W/R	32
CCCU	108

## APPENDIX H

### Members of the Study Committee

#### Department of Agriculture and Consumer Services

James R. Kee, Director of Agricultural Finance and Credit

#### Department of Corrections

William Gillette, Agribusiness Manager, Division of Adult Institutions

Gene Johnson, Chief of Operations, Support Services, Division of Adult Institutions

#### Department of Economic Development

Robert G. Lawson, Deputy Director

#### Virginia Employment Commission

Harold Kretzer, Rural Services Supervisor

#### Governor's Employment and Training Department

Louise Armstrong, Policy Analyst

#### Department of Labor and Industry

Marilyn Mandel, Director, Office of Planning and Policy Analysis

#### Department of Social Services

Fay Lohr, Director, Community Services Block Grants

#### Virginia Farm Bureau

Kay Nichols, Assistant Director of Public Affairs

#### Virginia Sheriffs Association

John Jones, Executive Director