

SUMMARY OF THE PROVISIONS OF THE “AGRICULTURAL JOB OPPORTUNITIES, BENEFITS, AND SECURITY ACT OF 2006” (AGJOBS) INCLUDED IN THE BILL REPORTED OUT OF THE SENATE JUDICIARY COMMITTEE ON MARCH 27, 2006

AgJobs restructures and reforms the current H-2A temporary agricultural worker program. This is accomplished by (1) substantially streamlining the program’s administrative procedures, including eliminating the labor certification process, (2) reforming the requirements for H-2A employers, including an immediate reduction and gradual elimination of the Adverse Effect Wage Rate, (3) streamlining the process for admission of H-2A aliens, and (4) eliminating, on a one-time basis, the statutory bar preventing aliens not currently in the program from acquiring H-2A status. With the exception of the new provision allowing for extended visas for shepherd, goat herder and dairy workers, the H-2A reform provisions of the *AgJobs* bill reported out of the Senate Judiciary Committee are the same as S. 359 introduced by Senator Craig this Congress.

Summary of the key H-2A Reforms. *AgJobs* --

- eliminates the labor certification process and replaces it with an expedited labor condition application
- streamlines and reduces advertising and other domestic recruitment costs
- preserves the role of grower associations in the H-2A program
- eliminates the open-ended “adverse affect” criteria
- freezes and gradually eliminates the Adverse Effect Wage Rate
- provides the option of a housing allowance, in lieu of housing, under certain circumstances
- clarifies and restricts the right to sue for a limited number of H-2A violations to federal court with a mandatory mediation trigger prior to pursuit of litigation and preempts State contract claims
- mandates expedited processing of H-2A petitions
- allows H-2A aliens employed as shepherders, goat herders or dairy workers to work on an extended 3-year non-immigrant visa without departing the U.S.
- provides immediate work authorization upon filing petitions for extension of stay
- mandates removal of aliens who abscond or otherwise violate their visas

- provides a mechanism for replacing alien workers who abscond or are terminated for cause
- provides a secure identity and work authorization document for H-2A aliens

Summary of the Earned Adjustment of Status of Agricultural Worker Provisions

AgJobs also creates a means for aliens who have made a substantial commitment to agricultural work in the United States, but do not have valid documentation, to earn adjustment to legal status by meeting specific pre- and post-enactment agricultural work requirements. The adjustment provision will provide an opportunity for agricultural employers to retain an experienced workforce while they anticipate future participation in a reformed H-2A program. The earned adjustment provisions reported out of the Senate Judiciary Committee contain several changes to S. 359 that make agricultural work qualifications somewhat more restrictive and impose a greater future agricultural work obligation as a condition of adjusting to permanent resident status. They key provisions are as follows:

- To qualify for temporary resident status (called blue card status), a worker must prove performance of agricultural employment in the U.S. for 150 work days or 863 hours during the 24-month period ending on December 31, 2005
- Blue card visas must contain an electronic identification strip unique to the alien, contain biometric identifiers and be tamper-proof
- To adjust to permanent residency, blue card holders must prove that they have performed at least 5 years of agricultural employment in the U.S. for at least 100 work days each year during the 5-year period beginning on the date of enactment or, alternatively, 3 years of agricultural employment in the U.S. for at least 150 work days each year. A work day can be no less than 5.75 hours.
- Workers failing to meet the prospective work requirement or who fail to pay taxes during the adjustment of status period are removable
- Adjusting workers must pay fines prior to obtaining blue card and permanent resident visas
- Workers convicted of specified felony or misdemeanor crimes cannot participate in the program
- Workers and employers who participate in and comply with the requirements of the earned adjustment program are not subject to legal liability
- Spouses and minor children of blue card visa holders under the program may remain legally in the U.S. while the qualifying alien maintains such status

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