SUMMARY OF THE PROVISIONS OF THE "AGRICULTURAL JOB OPPORTUNITY, BENEFITS, AND SECURITY ACT OF 2009" (AgJOBS)

The provisions of the Agricultural Job Opportunity, Benefits, and Security Act of 2009 (AgJOBS) are equivalent to the agricultural provisions of S.2611 that passed the U.S. Senate on May 25, 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 cumbersome labor certification process, (2) reforming the H-2A program wage and labor protections, (3) streamlining the process for admission of H-2A aliens, and (4) allowing aliens not currently in the program to acquire H-2A status.

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

- eliminates the labor certification process and replaces it with an expedited labor condition application
- streamlines advertising and other domestic recruitment procedures while maintaining the obligation to seek and hire domestic workers
- preserves the role of grower associations in the H-2A program
- freezes the so-called "adverse effect wage rate" and eventually replaces it with a more market-based wage formula
- provides the option of a housing allowance, in lieu of housing, under certain circumstances
- clarifies and limits 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 sheepherders, 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 requires aliens who have made a substantial commitment to agricultural work in the United States, but do not have valid documentation, to earn legal status in order to remain working in agriculture. This provision allows agricultural employers to retain a legal and experienced workforce while they anticipate and prepare for future participation in the reformed H-2A program. The 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, 2008
- Blue card visas must contain an electronic identification strip unique to the alien, contain biometric identifiers and be tamper-proof

- To eventually apply for 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 undergo a background check and pay a fine prior to obtaining blue card and permanent resident visas
- Workers convicted of felony or specified 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 who are present may under the program remain legally in the U.S. while the qualifying alien maintains such status

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