



## AgJOBS Legislation Is Back

In mid-May Senator Diane Feinstein and Congressman Howard Berman introduced the latest version of the Agricultural Job Opportunities, Benefits, and Security Act (AgJOBS) in the Senate and House.

The new AgJOBS bill has received tremendous support from a variety of groups across the full political spectrum, ranging from the National of Counties to the “Change to Win” union federation to the US Chamber of Commerce. Even Grover Norquist’s Americans for Tax Reform endorses the measure.

(From Feinstein testimony in the *Congressional Record*) The AgJOBS bill has two parts. The first meets the immediate needs of our farmers by creating a program that would provide an opportunity for experienced agricultural workers to earn the right to apply for legal status in this country.

The second part meets the long-term needs of farmers by reforming the H-2A program—that is the temporary worker program for the farm industry—so that if new workers are needed, farmers and growers have a legal path to bring workers in to harvest their crops.

The first step of the program requires that undocumented agricultural workers apply for a blue card if they can demonstrate they have worked in American agriculture in the United States for at least 150 workdays within the previous 2 years before December 31, 2008. The second step requires that a blue cardholder work in the U.S. agricultural industry for an additional 150 workdays per year for at least 3 years, or 100 workdays per year for 5 years. At the end of this time, a worker can obtain a green card and can continue to work in agriculture. (continued on next page)

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Workers participating in the program will be required to pay a fine of \$500, show that they are current on their taxes, and that they have not been convicted of any crime that involves bodily injury, the threat of bodily injury or harm to property. Employment is verified through employer-issued itemized statements, pay stubs, W-2 forms, employer letters, contracts or agreements, employer sponsored health care, timecards or payment of taxes. At the end of 5 years, those workers will be able to gain citizenship in this country. The blue card visa program will be capped at 1.35 million blue cards over 5 years and sunsets after 5 years. All blue cards will have encrypted, biometric identifiers, and contain other anti-counterfeiting protections. This provides, in effect, a biometric identifier for 1.35 million people who are undocumented but in the country today.

AgJOBS would also streamline the current guest worker program, known as the H-2A program, which is currently unwieldy and ineffective. Among other things, the bill will shorten the labor certification process, which now often takes 60 days, reducing the approval process to between 48 to 72 hours. Advertising and positive recruitment for U.S. workers in the local labor market is required by filing a job notification with the local office of the State employment security agency. Petitions for admission of H-2A workers must be processed and the consulate or port of entry notified within 7 days of receipt. The adverse effect wage rate would be frozen for 3 years, to be gradually replaced with a prevailing wage standard. H-2A visas will be secure and counterfeit resistant.

To read the entire statement visit

[http://web17.streamhoster.com/ddc/ACIR/200905/Feinstein\\_Full\\_Floor\\_Statement\\_May\\_14\\_2009.pdf](http://web17.streamhoster.com/ddc/ACIR/200905/Feinstein_Full_Floor_Statement_May_14_2009.pdf)

This debate will strengthen over the next several weeks as support seems to be growing with the realization that our food supply is in danger if it gets outsourced to foreign countries that have the labor available to harvest it.

## 2009 AEW and New H-2A Rules

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department) is issuing this Notice to announce:

The 2009 Adverse Effect Wage Rates (AEWRs) for employers seeking to employ temporary or seasonal nonimmigrant foreign workers to perform agricultural labor or services (H-2A workers) or logging (H-2B logging workers); the allowable charges for 2009 that employers seeking H-2A workers, and H-2B logging workers may levy upon their workers when three meals a day are provided by the employer; and the maximum travel subsistence reimbursement which a worker with receipts may claim in 2009. AEWs are the minimum wage rates the Department has determined must be offered and paid by employers of H-2A workers or H-2B logging workers to U.S. and foreign workers for a particular occupation and/or area so that the wages of similarly employed U.S. workers will not be adversely affected.

On February 13, 2008, the Department proposed significant changes to the H-2A program, including using an alternate methodology for calculating the AEWR. 73 FR 8538, February 13, 2008. The December 2008 Rule, incorporating the new AEWR methodology, became effective January 17, 2009. 73 FR 77110, Dec. 18, 2008. As a result of concerns regarding implementation, the Department has suspended the December 2008 Rule in order to provide the Department with an opportunity to review and reconsider the new requirements in light of issues that have arisen since the publication of the December 2008 Rule. The final rule suspending the December 2008 Rule is found elsewhere in this issue of the Federal Register. In order to ensure continued functioning of the H-2A program during the period of suspension, the Department has reinstated the previous regulations that were in effect prior to January 17, 2009. Id. Accordingly, the calculation of the AEWR, and the obligation to pay it, will revert to that prior regulation for applications filed after the effective date of the Final Suspension of the December 2008 H-2A Final Rule.

A. Adverse Effect Wage Rates for 2009

Table--2009 Adverse Effect Wage Rates

State	2009 AEWRs
Alabama.....	\$8.77
Arizona.....	9.82
Arkansas.....	8.92
California.....	10.16
Colorado.....	9.88
Connecticut.....	10.20
Delaware.....	9.50
Florida.....	9.08
Georgia.....	8.77
Hawaii.....	11.06
Idaho.....	9.64
Illinois.....	10.45
Indiana.....	10.45
Iowa.....	10.77
Kansas.....	10.39
Kentucky.....	9.41
Louisiana.....	8.92
Maine.....	10.20
Maryland.....	9.50
Massachusetts.....	10.20
Michigan.....	10.63
Minnesota.....	10.63
Mississippi.....	8.92
Missouri.....	10.77
Montana.....	9.64
Nebraska.....	10.39
Nevada.....	9.88
New Hampshire.....	10.20
New Jersey.....	9.50
New Mexico.....	9.82
New York.....	10.20
North Carolina.....	9.34
North Dakota.....	10.39
Ohio.....	10.45

Oklahoma.....	9.27
Oregon.....	10.12
Pennsylvania.....	9.50
Rhode Island.....	10.20
South Carolina.....	8.77
South Dakota.....	10.39
Tennessee.....	9.41
Texas.....	9.27
Utah.....	9.88
Vermont.....	10.20
Virginia.....	9.34
Washington.....	10.12
West Virginia.....	9.41
Wisconsin.....	10.63
Wyoming.....	9.64

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### B. Allowable Meal Charges

Among the minimum benefits and working conditions which the Department requires employers to offer their U.S., H-2A, and H-2B logging workers are three meals a day or free and convenient cooking and kitchen facilities. 20 CFR 655.102(b)(4); 655.202(b)(4). When the employer provides meals, the job offer must state the charge, if any, to the worker for meals.

The 2008 rates were published in the Federal Register at 73 FR 10288, Feb. 26, 2008. The Department has determined the percentage change between December of 2007 and December of 2008 for the CPI-U for Food was 5.6 percent. Accordingly, the maximum allowable charges under 20 CFR 655.102(b)(4), 655.202(b)(4), 655.111, and 655.211 were adjusted using this percentage change, and the new permissible charges for 2009, are as follows: (1) Charges under 20 CFR 655.102(b)(4) and 655.202(b)(4) shall be no more than \$10.45 per day, unless OFLC has approved a higher charge pursuant to 20 CFR 655.111 or 655.211; (2) charges under 20 CFR 655.111 and 655.211 shall be no more than \$12.96 per day, if the employer justifies the charge and submits to OFLC the documentation required to support the higher charge.

### C. Maximum Travel Subsistence Expense

The regulations at 20 CFR 655.102(b)(5) establish that the minimum daily travel subsistence expense, for which a worker is entitled to reimbursement, is equivalent to the employer's daily charge for three meals or, if the employer makes no charge, the amount permitted under 20 CFR 655.102(b)(4). The regulation is silent about the maximum amount to which a qualifying worker is entitled.

The Department established the maximum meals component of the standard Continental United States (CONUS) per diem rate established by the General Services Administration (GSA) and published at 41 CFR Part.301, Appendix A. The CONUS meal component is now \$39.00 per day. Workers who qualify for travel reimbursement are entitled to reimbursement up to the CONUS meal rate for related subsistence when they provide receipts. In determining the appropriate amount of subsistence reimbursement, the employer may use the GSA system under which a traveler qualifies for meal expense reimbursement per 41 CFR 301-11.101(a). Thus, a worker whose travel occurred during two quarters of a day is entitled, with receipts, to a maximum reimbursement of \$19.50. If a

worker has no receipts, the employer is not obligated to reimburse above the minimum stated at 20 CFR 655.102(b)(4) as specified above.

Signed in Washington, DC this 20th day of May, 2009.  
Douglas F. Small,  
Deputy Assistant Secretary, Employment and Training Administration.

(This release was edited to fit the space available)

## Harvest Ending and Beginning

Citrus and vegetable harvesting is winding down in Florida. It has been a short season hampered by freezing temperatures and reduced production. The only bright spot would be that since there wasn't as much work, there were fewer claims. Harvest season is just starting for grain harvesters. The crop is poor to very poor in Texas and Oklahoma. Much of the work is being done to satisfy government crop insurance program adjusters. Wheat averaging 7 to 15 bushels per acre is being cut. Everyone is hopeful that good fortune will shine on all of us as harvesting reaches the Kansas border and production improves.

## Employment Opportunity

If you are a Florida harvester with a CDL and truck driving experience looking for seasonal employment, there are jobs available with grain harvesters. Grain harvesters are looking for truck drivers to operate company trucks to haul grain from the field to storage facilities. Employment opportunities are also available for persons who are able to operate company combines, tractors and grain carts. The season runs through early November. Meals and lodging are provided by the employer. For additional information including employer contact numbers, visit the US Custom Harvesters, Inc. website at [www.USCHI.com](http://www.USCHI.com) and click on the employment opportunities option.

## Last Word

Be safe. You are harvesting the food that feeds the world. You are doing critically important work. Respect your job. Work safely.

