**New Immigration Regulations to Impact Horse Industry**

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The United States Departments of Homeland Security and Commerce in September will implement new immigration measures intended to improve border security, step up enforcement of immigration laws, streamline existing guest worker programs, and address the failures of the current immigration system, according to the American Horse Council.

The new requirements, which take effect Sept. 14, have ramifications for the horse industry, AHC president Jay Hickey said.

The new regulations are designed to simplify the process of employing aliens under the H-2A and H-2B programs, which may prove beneficial to the horse industry.  But the plan to more forcefully pursue enforcement of sanctions against employers for employing alien workers with faulty documents is raising concerns among employers of low-skilled workers. Many employers in the horse industry, such as horse farms, use the H-2A and H-2B programs.

The Bush administration moved ahead with the new rules after the Senate failed to agree on comprehensive immigration reform legislation earlier this summer.

“The immigration system is kind of operating under a ‘don’t ask, don’t tell’ system,” Hickey said Aug. 15. “This is going to put more pressure on Congress--hopefully--to come up with a comprehensive immigration reform package." He urged those in the horse industry to contact members of Congress and "explain why the industry needs broad immigration reform."

The cornerstone of the new requirements is a crackdown on employers who knowingly hire undocumented workers. Under current law, when employees fill out the required Form I-9, an employer must request documents, including a Social Security card, that confirm an individual’s identity and ability to work in this country.

If an employer has more than 10 employees with inaccurate personal identity information, the Social Security Administration will send a “no-match” letter stating the information submitted doesn’t match records in its database, the Horse Council reported in an industry memo. In addition, U.S. Immigration and Customs Enforcement will send a similar letter to an employer if an audit indicates a document regarding immigration status or employment authorization presented or referenced by the employer in the Form I-9 cannot be confirmed.

Employers who receive such a letter must, within 30 days of receipt, check the information against their own records, correct any errors, and verify them with Social Security or Homeland Security. If the employer finds no errors, it must inform the worker of the discrepancy within 30 days; the worker then has 90 days after the employer received the letter to contact the appropriate agency and correct the information.

If the employee doesn’t resolve the issue during that period, he will have three days to complete new paperwork and provide acceptable documentation. If he does not do so, the employer must immediately fire him or face fines and other sanctions for “knowingly” employing an undocumented alien.

“People in the horse industry and other industries are going to be receiving these letters, and will have to go through the process,” Hickey said. “In four months, the rubber hits the road. It’s going to be a very difficult situation.”

Under the new regulations, fines imposed on employers who knowingly hire illegal immigrants will be raised 25%. (Current fines are $2,200 for the first offense and up to $10,000 for repeat offenses.) The 25% increase is the maximum allowed under current law.

The Bush administration will propose additional regulations to reduce the 29 categories of documents that employers may accept to confirm identity and work eligibility of their employees. The purpose is to eliminate documents most susceptible to fraud.

The administration has directed the Department of Labor to review existing regulations governing the H-2A program and to institute changes intended to provide agricultural employers with an orderly and timely flow of legal workers. In the H-2B program, the department will issue regulations intended to reduce the time for processing applications by moving from a government-certified system requiring the Department of Labor to issue certifications to an “employer-attested” system.  That will allow employers to attest they have followed the procedures and couldn’t find willing American workers.

Hickey said the Department of Labor review could take up to a year, which would allow it to “fine-tune and fix issues” that would impact the horse industry. The Bush administration also will explore ways to expedite background checks on alien workers so that visas may be issued more promptly.

Tragedy stirs look at illegal farmworkers

Elizabeth Ganga and Leah Rae

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WESTCHESTER, N.Y. - It's common knowledge around the horse farms of northern Westchester and Putnam that many of the workers who muck out stalls and do other hard labor in service of the horses and their well-heeled owners are illegal immigrants.

They've been far less visible than the men who wait for landscaping and contracting jobs on Main Street, but one deadly incident involving a farmworker has triggered the same uproar over illegal immigration that has long surrounded the area's population of day laborers. Both are simultaneously being recruited for economic reasons and resented for their presence. Some who work on the farms are skilled specialists who follow the horse-show circuit; others go from barn to barn looking for work caring for horses. "These farms are a part of, I think, New York life, and certainly a prominent part of the upper classes of New York," said the Rev. Richard Witt, executive director of the Rural and Migrant Ministry, based in Poughkeepsie. Horse farms tend to employ only a handful of workers, he said, who sometimes live in remote areas and become reliant on employers for housing and transportation. They may be hired to work at racetracks, polo grounds or in private stables. On Monday, a woman and her daughter were killed when, according to police, a drunken illegal immigrant struck them with a pickup truck. Zacaria Conses-Garcia, 35, a Guatemalan who has worked on horse farms in Florida and North Salem, was indicted Friday on two counts of aggravated vehicular homicide. Lori Donohue, 37, and her daughter, Kayla, 8, were struck as they were leaving the girl's dance class at Seven Stars School of Performing Arts in Brewster. The truck was registered in Wellington, Fla., to Valerie Renihan, a trainer and self-described "lifelong horse woman" whose Facebook page reported that she had moved her northern Westchester business to Staysail Farm in North Salem on June 1. Renihan's name is also on the lease for the house in Southeast where Conses-Garcia was living with three or four other men who, neighbors said, traveled back and forth to work each day in a white pickup truck with Florida plates. The fatal crash has broken through the carefully maintained silence about the pervasive employment of illegal immigrants as laborers on horse farms. The president of the American Horse Council has estimated that 50 percent to 75 percent of workers in the horse industry nationally are illegal immigrants. But, however necessary their labor is to the operation of farms in the area, it's a subject that people who move in those circles have tried to keep out of the public discourse. People in the horse world will rarely talk on the record about the issue for fear of bringing down immigration and tax authorities on their businesses. And the workers themselves, never very likely to talk about their status or employment conditions, are a subset within the subset of immigrant laborers. Horse farms "can be a very isolated place," said Witt, the minister. "It's a very lonely life, from what I've witnessed and heard." Every month, during the winter especially, as many as 15 immigrant workers walk up the driveway of the Blue Chip Riding Club in Patterson asking for work, said the owner, Virginia Smith. Owners sometimes hire illegal workers because they can't or don't want to do the hard physical labor of cleaning out the stalls, said Smith, who does the work herself with her daughters and cousin and hires young people who ride to help out. While many have worked on farms, few know how to properly care for the horses, she said. But still, few native-born people will do the work, she said. "These guys want to work because they need the money to support their families, wherever they are," Smith said. Brian Harner of Stonegate Farm in Bedford said he has had the same experience with workers walking up his driveway in search of work. "I've hired day laborers before in the past. I have no idea if they are legal or illegal," he said. "I imagine they're illegal." The intense reaction to the crash circulating on the Web and in e-mails has included calls to contact members of Congress, the group responsible for federal immigration policy. One e-mail urged people to call Rep. John Hall, D-Dover Plains, saying "They can ignore one or two people but they can't ignore all of us." "Our town has been taken over," the e-mail says. "Would you let your children walk through the town of Brewster? Would you yourself walk through? ... WE pay the taxes and carry the burden of our community. Now we have to bury two of our own." Hall said he wanted a comprehensive overhaul of immigration that would include border-security measures and a new worker verification system. "America's immigration policy is a complex issue," he said in a statement, adding it's "crystal clear that it must be reformed, those here illegally who are caught breaking the law need to be deported, and that businesses hiring illegals should be punished." Bart Campbell, who works in Southeast near the suspect's address, said he was wary of the familiar backlash over illegal immigration. "You have a tendency to think, 'It's a Guatemalan problem,' " he said. "It's an alcohol problem. It's a combined thing. But you know, guys like you and me, they get drunk and kill people too." Campbell said much of the tension in town would dissipate if the workers had a designated hiring spot away from Main Street, where hundreds wait at the curbs for work long into the day. He also believes that changes in the immigration system are necessary. "I think lot of these people should be able to get cards easier. Not easy, but easier," he said. "It is so expensive and so difficult to be legal that they just can't do it." The American Horse Council has put immigration reform at the top of its list of national legislative priorities in the hope that temporary worker programs will allow the industry to legalize its work force. The group supports a bill that would create a five-year pilot program to legalize agricultural workers and another to increase the amount of temporary worker visas available. "The great thing about this is it is supported by both the worker advocates and the industry," said Ben Pendergrass, the legislative director of the Horse Council. Local owners of horse farms would likely agree. "It would be better if the guy coming up your driveway was legal," Smith said, "so if you need somebody, you could hire them without getting into trouble."

American Horse Council

### Legislative Issues & Policies - Immigration: Temporary Worker Programs

Introduction

For some time, there has been a shortage of entry-level workers to satisfy the agricultural and non-agricultural employment needs of the horse industry.

• Horse breeders, ranchers, training facilities, horse shows, trainers and others depend on seasonal and long-term foreign workers to fill labor demands not filled by American workers.

• Many employers in the horse industry are also concerned that without comprehensive immigration/guest worker reform that will allow them to legitimize their current workforce and meet their labor demands, the industry could be put in an untenable situation economically.

For these reasons, the issue of comprehensive immigration and guest worker reform is important to the horse industry.

The U.S. Citizenship and Immigration Service, as well as State and Federal Departments of Labor, must approve the admission of any alien to the U.S. for employment. Applications are filed with both agencies. The U.S. Consulate in the alien’s country is also involved. This is a long, time-consuming and expensive process currently.

H-2A Temporary Worker Programs

To satisfy the need for workers, horse owners and breeding or training facilities use the “H-2A Agricultural Worker” program to bring aliens into the country as temporary, non-immigrant workers. This program allows agricultural workers to enter the United States to do seasonal labor in the horse industry. The current immigration laws do not completely satisfy the employment needs of the horse industry and make it very difficult and cumbersome to employ alien workers.

The drawbacks to the current H-2A Agricultural Worker program are many. The admission process is long and cumbersome. A streamlined process would be beneficial and less costly.

Another concern is the wage rate required to be paid and how it is determined. Only the H-2A agriculture worker program sets the required wage based on the “Adverse Effect Wage Rate” (AEWR). This is a flat rate that is paid across the country and is an average of all workers in a specific industry. All other temporary worker programs use the prevailing wage rate, which is determined state-by-state and region-by-region. The prevailing wage rate is also based on each individual industry and specific occupation.

The H2-A program permits a worker to stay in the United States temporarily, which is defined in the law as up to ten months. Some agricultural jobs in the horse industry are for a longer period and many would like to have alien workers for a longer period.

Finally, many in the horse industry are concerned that they could lose valuable alien workers during any transition period that allowed the legalization of undocumented workers, particularly if it required them to leave the country. This makes a workable H-2A program even more important.

**H-2B Temporary Worker Programs**

The H-2B worker program is used for lesser-skilled, non-agricultural workers employed in many industries, including the horse industry. It is for “temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country.”

In the racing industry individual trainers and horsemen’s associations have organized, on-going programs to employ and bring aliens into the country to work on the backstretch or at horse shows under H-2B visa programs.

There is a cap of 66,000 on the number of H-2B visas that can be issued annually. Each year, once it has received enough petitions to meet the year’s Congressionally-mandated cap of 66,000, the U.S. Citizenship and Immigration Services (USCIS) announces that it will not accept any more petitions for H-2B foreign workers for the Fiscal Year. This has seemed to occur earlier each year.

This affects foreign workers in many industries, including those in the horse industry who work in semi-skilled jobs at racetracks, horse shows, fairs and similar non-agricultural activities.

In 2006, Congress passed legislation amending the H-2B program to provide that foreign workers who had been admitted previously under the H-2B program would not be counted against the mandated cap of 66,000. This provision expired on September 30, 2007.  
  
**Senate AgJOBS Bill**

In January 2007, Senator Dianne Feinstein (D-California) and Senator Larry Craig (R-Idaho) introduced, “The Agricultural Job Opportunity, Benefits, and Security Act of 2007”, known as the AgJOBS bill (S. 340). The bill has been referred to the Senate Judiciary Committee. Among the original cosponsors are Senator Pat Leahy (D-VT), the Chairman of the Senate Judiciary Committee, and Senator Arlen Specter (R-PA), the Ranking Member of the Senate Judiciary Committee.

The AgJOBS bill is the same bill that was passed in the last Congress by the Senate, as a part of the comprehensive immigration reform bill. This legislation is supported by a broad coalition of agricultural industries, including the AHC, worker advocates, religious, and public interest and taxpayer groups.

**House AgJOBS Bill**

Congressman Howard Berman (D-CA) and Congressman Chris Cannon (R-UT) have introduced identical AgJOBS legislation in the House, H.R. 371. H.R. 371 was referred to the House Judiciary Committee and subsequently the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law.

**AgJOBS Bill**

The AgJOBS bill will create a pilot program that will help identify agricultural workers without documentation and legalize the immigration status for those who have been working in the United States for two or more years. It will also provide key needed reforms to the current H-2A program.

Specifically, the bill creates a pilot “blue card” program for current undocumented agriculture workers. In order to qualify individuals must demonstrate having worked in American agriculture for at least 150 work days over the previous two years. With a blue card, agriculture workers would achieve a temporary legal resident status. The total number of blue cards would be capped at 1.5 million over a five-year period, and the program would sunset after five years. Blue card holders would be allowed to travel in and out of the US.

The blue card holder would be required to work in American agriculture for an additional 3 years (working at least 150 work days per year) or 5 years (working at least 100 work days per year), before becoming eligible to apply for a green card to become a permanent legal resident. Before applying for a green card, participants would be required to pay a fine of $500, show that they are current on their taxes, and show that they have not been convicted of any crime that involves bodily injury, the threat of serious bodily injury, or harm to property in excess of $500.

The second part of AgJOBS would create a more usable H-2A program to implement a realistic and effective guest worker program.

Summary of the key H-2A Reforms:

• eliminates the labor certification process and replaces it with an expedited labor condition application  
• streamlines and reduces advertising and other domestic recruitment costs  
• 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  
• mandates expedited processing of H-2A petitions  
• provides immediate work authorization upon filing petitions for extension of stay  
• provides a mechanism for replacing alien workers who leave or are terminated for cause  
• provides a secure identity and work authorization document for H-2A aliens

This bill satisfies most of the concerns of the horse industry, particularly with respect to the AEWR paid, the application process and the “regularization” of current workers, who may not have work authorization. This latter earned status adjustment program provides a transition solution to allow any undocumented workers to earn the right to legal status and avoid the need for a large importation of guest workers and a disruption in industry practices.

**Emergency Agriculture Relief Act**

On May 15, 2008 Senator Dianne Feinstein (D-CA) offered the Emergency Agriculture Relief Act (EARA) as an amendment to the Fiscal Year 2008 Supplemental Appropriations bill when the Senate Appropriations Committee considered the bill. It was adopted by a vote of 17 to 12.

EARA is a compromise bill intended to provide a temporary five-year solution for agriculture’s alien worker problems until Congress can revisit the issue of comprehensive immigration reform.

The EARA bill is basically the Senator Feinstein’s AgJOBS bill (S. 340). It would streamline the H-2A temporary and seasonal alien farm worker program and allow agriculture to stabilize its experienced workforce, some of whom may be undocumented. But EARA would not provide permanent legal status to undocumented workers now in the U.S. because it would “sunset” after five years.

If Congress did not enact AgJOBS or comparable reforms in the next five years, the H-2A reforms would lapse and any workers legalized during the five-year period would be deemed undocumented again. But passage of this legislation would provide the horse industry with some stability during this five year period.

Since this provision was added to an appropriations bill, it was subject to a point of order that it was not germane to a funding bill once the full Senate took the bill up.

On May 21, during Senate consideration, Senator Robert Menendez (D-NJ) raised a point of order with respect to the EARA and it was deleted. Had Senator Menendez not raised the point of order to strike the provision, Senator Jeff Sessions (R- AL) indicated he would have.

**Save Our Small and Seasonal Businesses Act of 2007**

Senator Barbara Mikulski (D-MD) has again introduced the “Save Our Small and Seasonal Businesses Act of 2007” (S. 988) in this Congress to provide cap relief for those using the H-2B Visa program. The bill was referred to the Senate Judiciary Committee.

Representative Bart Stupak (D-MI) introduced companion legislation in the House of Representatives (H.R. 1843). H.R. 1843 was referred to the House Judiciary Committee.

Both bills would exclude from the cap limit any “returning worker” who had been admitted to the U.S. as an H-2B nonimmigrant during any one of the three years immediately preceding the year of the approved start date of the current work authorization. The Senate bill would extend the “returning worker” exclusion for five years through 2012. The House bill would make the exclusion permanent.

**Senate Action**  
  
On October 16, the Senate passed the fiscal year 2008 Commerce, Justice, Science (CJS) appropriations bill, which included the Save Our Small and Seasonal Business Act. The provision was included in the CJS appropriations bill by an amendment offered by Senator Mikulski during consideration. The provision would ease the problems caused by the enforcement of the 66,000 cap on H-2B visas for the next year by exempting from the cap any worker who has received a visa under the H-2B program in the three previous years. The provision is a one-year extension of the “returning worker” exemption through September 30, 2008.

Although the Senate CJS bill includes language extending the “returning worker” provision, the House version of the bill did not. After a conference between members of the House and Senate met to iron out the various differences between the two versions of the bill, the “returning worker” provision was struck. Like all immigration measures in this Congress, there was too much opposition to even these changes.

On May 15, 2008, Senators Barbara Mikulski (D-MD) and Judd Gregg (R-NH) offered the Save Our Small Business Act to the Fiscal Year 2008 Supplemental Appropriations bill when the Senate Appropriations Committee considered the bill. It was adopted by the Committee.

The provision would have exempted from the cap for the next three years any worker who has received a visa under the H-2B program in the three previous years. Many alien workers return to their previous employment each year and this provision would exempt these workers from the cap. The “returning worker” exemption expired on September 30, 2007. This change would have reinstated it and extended it for three years.

Since this provision was added to an appropriations bill, it was subject to a point of order that it was not germane to a funding bill once the full Senate took the bill up.

On May 22, during Senate consideration, Senator Bernie Sanders (I-VT) raised a point of order with respect to the Save Our Small Business Act and it was deleted.

**House Comprehensive Legislation - STRIVE Act**

Comprehensive immigration legislation has been introduced in the House of Representatives to reform the nation’s immigration laws. The Security Through Regularized Immigration and a Vibrant Economy Act of 2007 (H.R. 1645), called the STRIVE Act, was introduced by Representatives Luis Gutierrez (D-IL) and Jeff Flake (R-AZ).

The STRIVE Act tries to satisfy both segments of Congress on the immigration debate. To satisfy the “border-security, enforcement-first” proponents, many of the broader, reform provisions cannot be implemented until the Secretary of the Department of Homeland Security has certified that improvements in border surveillance technology are being implemented; that the systems and infrastructure necessary to carry out improvements to immigration document security are ready to use; and that the first phase of Electronic Employment Verification System requiring the participation of critical infrastructure employers has been implemented.

The bill also provides for strict enforcement provisions, like hiring more border patrol agents, the use of new technologies, tamper-proof identification cards to replace social security cards, more federal detention space, a new electronic system for employers to electronically verify a worker’s employment authorization and increased penalties on employers and workers who operate outside the system.

**New H-2C Program** - In the reform category, the STRIVE Act would initiate a new guest-worker program for “H-2Cs” that would replace many of the non-immigrant alien worker categories included in existing programs, including the current H-2B temporary workers program. These H-2Cs would be year-round workers who could be admitted for three years. This new program would include the horse industry’s non-agricultural H-2B workers, but would not include current H-2A workers. The H-2A program would continue under the AgJOBS provisions of the bill.

The H-2C visa would be valid for three years and renewable for another three. An employer would still have to give U.S. workers the job opportunity first, document that American workers are not available and document that alien workers world not displace U.S. workers or adversely affect their wages or working conditions. Alien workers would have to complete criminal- and terrorism-related background checks, pay a $500 application fee, undergo a medical exam and show admissibility to the U.S.  
  
The H-2C visa program would have an initial cap of 400,000, which would be adjusted annually based on market fluctuations.  
  
H-2C workers would have an opportunity to apply for permanent resident status (Green Card), either through an employer or by self-petitioning, after five years of employment.

**New Employment Verification Requirements** - The bill would create a system for employers to electronically verify a worker’s employment authorization and establish criminal penalties for employers and workers who operate outside the system. It would set up strong enforcement procedures. Employers would have to verify the employment authorization of all new workers either electronically or telephonically.

**Earned Legalization for Undocumented Workers** - Once the Secretary of DHS has made the required certification mentioned earlier, the STRIVE Act would authorize the initiation of a program providing conditional nonimmigrant status for undocumented immigrants (and their spouses and children) in the U.S. This would be the mechanism to allow undocumented workers to legalize their status. This status would be valid for six years. This would allow any aliens without proper documentation to regularize their status and remain in the U.S. and continue working.

To be eligible an alien must, among other things:

• Establish continuous presence in the U.S. on or before June 1, 2006;  
• Attest to employment in the U.S. before June 1, 2006 and employment since that date (and submit related documentation);  
• Complete criminal and security background checks;   
• Pay a $500 fine plus necessary application fees (fine exemption for children).  
• Be eligible to receive a visa pursuant to the Immigration and Nationality Act;   
• Not have been convicted of a felony or three or more misdemeanors;

This provision could eventually allow such aliens able to earn U.S. citizenship. But such workers would have to satisfy other additional requirements and would have to go to the back of the line for permanent visas; the current immigrant backlogs would have to be cleared before qualified conditional nonimmigrant visa applicants (and their families) could adjust to permanent resident status.

**AgJOBS Bill Included in STRIVE**

The STRIVE Act also includes the entire AgJOBS bill (H.R. 371), introduced by Congressmen Howard Berman (D-CA) and Chris Cannon (R-UT), in January and described above.

**Senate Action on Comprehensive Bill**

The Senate debated comprehensive immigration reform for two weeks in late May, 2007 and then again in late June, but was unable to agree to final consideration. On both occasions, the debate was contentious. When it appeared that the various amendments being offered were as much to delay the final consideration of the bill as they were to improve it, Majority Leader Harry Reid (D-NV) attempted to end debate by calling for a cloture vote. This is a procedural move to cut-off debate and requires sixty votes for approval. When only 46 Senators voted for this action, Senator Reid pulled the comprehensive bill from the floor.   
  
In the end, there was just too much controversy and public opposition to the bi-partisan compromise crafted by the White House and both Democratic and Republican Senators. The Senate bill prompted a torrent of calls to Senate offices, the overwhelming of them in opposition to the bill.

**A Piece-Meal Approach**

Efforts continue in both the House and Senate to pass various bills that would deal with particular pieces of the immigration problem under our current immigration system. Such bills include the Emergency Agricultural Relief Act, the AgJOBS bill, extension of the H-2B returning worker provisions, heightened border security, increasing the number of temporary visas available annually and streamlining the application process. It remains to be seen if there is sufficient will to pass these bills individually.

**AHC Position**

The AHC supports broad, comprehensive immigration reform that will streamline the H-2A and H-2B requirements and provide a regulated way for the millions of alien workers in the U.S. to work their way to legal status. Nonetheless, given the difficulty of passing comprehensive legislation in this Congress, the AHC supports passage of EARA and/or the Save Our Small and Seasonal Business Act if at all possible.

The Horse industry does not oppose stricter enforcement or tightened border security as long as the legislation includes broader reforms making it possible to hire legal alien workers and hold on to current workers who are so valuable.

Perhaps the only possibility is a series of bills dealing with the various parts of this broad issue.