

# GROWERTALKS

JZ on D.C.

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## Highlights From Impact Washington 2021

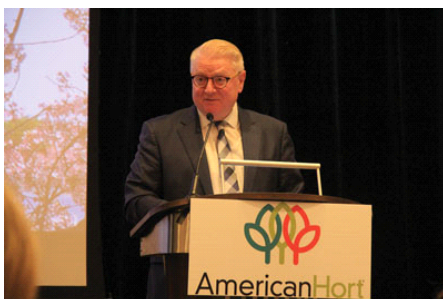
*Jennifer Zurko*

When AmericanHort started planning for its biennial advocacy event a few months ago, the hope was that COVID would be in the rearview mirror. Fast-forward through the summer and the Delta variant could have upended the Impact Washington Summit.

Fortunately, the show went on as planned in mid-September. And because COVID and other safety protocols prevented many delegations from having in-person meetings with their representatives, the event's speaker lineup was extra-robust this year.

### **The morality of immigration**

One of the most interesting parts of the event was the keynote speaker Bob Worsley. (And that's not just my opinion—I heard a few attendees say that he was definitely a highlight.)



Bob is a former Arizona state senator, author, entrepreneur and a big advocate for immigration reform. When he was elected to the Arizona state legislature, he beat then Senate President Russell Pearce, who was notorious for his anti-immigration stance and the main sponsor of the “Show Me Your Papers” bill. When he served in the state senate from 2012 -2019, he was one of the main proponents for immigrant rights.

Have you ever read the SkyMall magazine on the airplane? Bob was the original founder of SkyMall in 1989 and then sold it to Rupert Murdoch in 2002. He wrote a book titled “The Horseshow Virus” that delves into how the far right and far left work together to kill any comprehensive immigration legislation that Congress tries to pass. And he's served on numerous boards for companies and organizations that have ranged from nonprofits to technology to energy.

Bob is a conservative and views immigration through an economic and moral lens: immigration is good for the U.S. economy, and we have a moral obligation to help the people who want to come and work here find a legal pathway to do so. He acknowledged President Joe Biden and Senate Majority Leader Chuck Schumer for including immigration reform into the reconciliation bill, even though it was ultimately shot down by the senate parliamentarian as being too partisan. And he lamented how some policymakers on the right are making immigration “a wedge issue for the 2022 election.”

“They’re not negotiating in good faith right now,” he said. “The GOP spends too much time on pushing the fear of

whites being replaced. It's immoral to say immigrants are essential workers while also trying to get rid of them."

Instead, all legislators who are truly serious about fixing our immigration system should focus on the economics of having a functioning process, especially when it comes to the ag/hort workforce.

"Nativism will not grow GDP," stated Bob. "It will lead to stagnation and decline."

Bob threw out a few stats: the U.S. would need 3.5 million immigrants across all sectors to continue to be sustainable. The previous administration only wanted to let in 18,000. We need an immigration policy like Canada that provides enough workers for farms and greenhouses, but also secures the border.

Right now, the U.S./Mexico border is at its breaking point and it has been for years with no plan on how to fix it. An analogy Bob used when talking about the border is thinking of it like a dam—you want something that can handle the pressure and control the flow at the same time.

But legislation like the one Congressman Paul Gosar (AZ-4) introduced in July that stops all legal immigration for 10 years isn't helpful in having serious debates on how to handle seasonal labor and asylum seekers.

"What would that do to us [as a country]?" Bob asked, then gestured to the audience. "What would that do to you?"

Bob grew up on a farm in Idaho, where he worked picking strawberries in the field, and his wife is a master gardener, so the Worselys are no strangers to plants and their production, and understand growers' labor challenges. He serves on the board of the American Businesses for Immigration Coalition (which AmericanHort partners with) and said that since the start of the pandemic, it's been estimated that 69% of all immigrants are essential workers.

If you were to sum up Bob's talk in one phrase, it would be that immigrants keep our country going.

"Diversity is good," said Bob. "What are we afraid of?"

### **Immigration legislation: Where are we right now?**

Lynn Jacquez of CJ Lake and Laurie Flanagan of DC Legislative & Regulatory Services gave an update on current immigration reform legislation and where it stands.

- The Farm Workforce Modernization Act (FWMA)—It passed the House in March and has yet to hit the Senate floor for a vote. There has been some negotiating going on, but it's been put on hold while the House and Senate go through budget reconciliation.
- The immigration-related provisions that were originally part of the \$3.5 trillion infrastructure package—like DACA, the FWMA, TPS and green cards—were removed by the senate parliamentarian. Lynn said it wasn't surprising and Senate Democrats have said they have backup plans to address some of these issues, but so far, none of them totally address the ag/hort workforce.
- H-2A and H-2B—The first half of the cap for H-2B was reached in November 2020; second cap reached February 2021. The Department of Homeland Security made an additional 16,000 visas available in May 2021 and unused Northern Triangle visas (workers from Guatemala, Honduras and El Salvador) were made available to returning workers from other countries in August 2021. As of September, over 26,000 visas were approved for the first half cap of FY2022. Expect some anti-visa program bills to be introduced by the far right. And the Department of Labor (DOL) is getting stricter and conducting more audits, so make sure all of your ducks with regard to your paperwork are in a row!

- Talk to your legislators! Stress that your business is complicated—it's not unskilled and not seasonal. We need to change the mindset of the DOL that most hort and CEA growers are year-round businesses. We must change the definition of "seasonal labor."

### What's with WOTUS?

Although "Waters of the United States," or WOTUS, wasn't part of our legislative asks this year, AmericanHort asked David Crow of DC Legislative & Regulatory Services for a rundown on the latest with regard to regulations.

As of now, the Democrats' position is that ALL bodies of water should be regulated and protected. The Clean Water Act passed during the Obama Administration was counteracted by the Navigable Waters of the U.S. bill during the Trump Administration, which was a total 180. However, the latter bill was never implemented and had already been blocked by a judge before President Trump lost his second term.

Two issues that have recently been interjected into the WOTUS conversation is 1) climate change and 2) racial equity. David said that President Biden won't go back completely to the original Clean Water Act, but "we're in for a big change." He expects that we're heading toward a federally regulated system for all bodies of water.

—JZ

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USDA Undersecretary Jenny Moffitt came to Impact Washington to speak about some of the key focus points for Secretary of Agriculture Tom Vilsack, which includes sustainability, food security and racial equity. Jenny grew up on a walnut farm in California, saying she knows how important research funding is and how the partnership with APHIS plays a critical role in our industry. Immigration reform addressing ag/hort labor is also top of mind for Secretary Vilsack and the Biden Administration strongly supports the Farm Workforce Modernization Act. "Because the undersecretary has roots in farming, we have a willing ear," said AmericanHort's Craig Regelbrugge.

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Congresswoman Ashley Hinson (1-IA) said the number one issue she hears from her constituents is the worker shortage. Rep. Hinson said she's been critical of the situation at the border, but acknowledges the need for ag/hort labor. She's also been working to fight the repeal of the "stepped-up basis," which prevents families from paying high taxes when a farm is passed on to other family members. "Federal bureaucrats who've never stepped foot on a family farm shouldn't be making regulations," she said, which got a round of applause.



Congresswoman Maria Elvira Salazar (27-FL) is the daughter of Cuban immigrants, a Harvard graduate and an award-winning journalist, working for every major Spanish-language broadcasting network. She's currently working to introduce the Dignity Act that focuses on agricultural immigrants, streamlining the H-2A program and providing a sustainable, year-round workforce. It would also make the visa program fees more affordable to provide a pathway to citizenship for workers who've worked in the U.S. for 10 years. "Most legal immigrants don't really want to become Americans; they want to remain citizens of their own countries, but they want to work with dignity," said the

congresswoman.

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*Pictured: The Illinois delegation! From left: Marvin Miller, Joe Hobson, Peter Orum, me, Susannah Ball, Amy Morris, Ryan Doty, Ken Doty, Dennis Molitor and Diana Molitor.*

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## OSHA to Implement New Heat Illness Measures

The Biden administration has announced new efforts the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) will take to address the threat of heat-related illness in the workplace. OSHA is expected to implement measures to better protect workers in hot environments and reduce the dangers of exposure to heat in both indoor and outdoor jobs. Heat illnesses are commonly under-reported with thousands of workers sickened each year by workplace heat exposure.

OSHA will be carrying out an enforcement initiative on heat-related hazards, developing a National Emphasis Program on heat inspections and launching a rulemaking process to develop a workplace heat standard. The agency will also form a National Advisory Committee on Occupational Safety and Health Heat Injury and Illness Prevention Work Group to help understand and identify the challenges faced by workers.

This newly established initiative prioritizes heat-related interventions and inspections on days when the heat index exceeds 80 degrees F and focuses on worksites in general industry, construction, agriculture and maritime. OSHA Area Directors will institute the following:

- Expand the scope of routine inspections to address heat-related hazards where worksite conditions or other evidence indicate these hazards may be present
- Prioritize inspections of heat-related complaints, referrals and employer-reported illnesses, and initiate an onsite investigation where possible
- Instruct compliance safety and health officers, during their travels to job sites, to conduct an intervention (providing the agency's heat poster/wallet card, discuss the importance of easy access to cool water, cooling areas and acclimatization) or opening an inspection when they observe employees performing strenuous work in hot conditions

As of press time, OSHA planned on issuing an Advance Notice of Proposed Rulemaking on heat injury and illness prevention in which a comment period will be initiated to allow OSHA to gather different perspectives and expertise. The agency is also working on establishing a "national emphasis program" on heat hazard cases, which will focus on high-risk industries.

—Laurie Flanagan, Chair of the H-2B Workforce Coalition, and Craig Regelbrugge, VP of Government Relations & Research, AmericanHort

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## Biden Details Plan to Mandate Vaccines or Testing for Millions of Workers

On September 9, President Biden unveiled a series of executive actions developed to combat the COVID Delta variant, including forthcoming action from the Department of Labor (DOL) requiring all businesses with 100 or more employees to establish a mandatory vaccination standard or a weekly testing standard for all workers. OSHA is currently developing the Emergency Temporary Standard (ETS) to reflect this announcement.

In addition to mandatory vaccination or the alternative of weekly testing, the standard will also require employers to provide paid time off to receive or recover from the vaccine. Precisely when this ETS will be issued is still unknown

as of press time, but OSHA indicated on a recent briefing call that it will be published “in the coming weeks.”

This guidance provides some insight into the potential content of the OSHA ETS governing approved vaccinations and how the 100-employee threshold will be determined. Under the guidance, vaccines that are currently approved or authorized for emergency use by the U.S. Food and Drug Administration or that have been listed for emergency use by the World Health Organization, or vaccines that are being used in clinical trials are acceptable vaccines to meet the vaccine requirement. OSHA is likely to use similar language in the development of the ETS.

Further, it's clear through the guidance that the Administration seeks expansive application of the requirements. Thus, we could see a standard that counts full- and part-time workers the same for purposes of the 100-employee threshold. Additionally, OSHA will likely use a broad retrospective temporal reference to determine the threshold as well, ensuring that employees who are no longer employed will still be calculated into the determination and an employer cannot circumvent the ETS by laying off workers.

Once issued, the ETS will have an immediate effect in the 29 states where federal OSHA has jurisdiction. Everywhere else, state agencies will have to adopt the ETS or "just-as-effective measures" within 15 to 30 days. An ETS can remain in effect for up to six months, after which OSHA must issue a permanent standard that's subject to a formal rulemaking process.

According to OSHA sources, the ETS will address what evidence of vaccination, if any, is required. It was also mentioned that the ETS will have protections for employees who are unable to be vaccinated due to medical or religious reasons. Also, the ETS may allow employers to have employees use their allocated paid (or personal) time off (PTO) for vaccinations and recovery from vaccinations, but this point is not yet clear.

It hasn't been indicated whether the definition of vaccinated will include only having received one dose of a two-dose regimen, nor if employers will have to pay for testing. Stay tuned for more.

—Lynn Jacquez, CJ Lake, Laurie Flanagan, and Craig Regelbrugge

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