

GROWERTALKS

JZ on D.C.

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Additional H-2B Visa Authorizations Released

Jennifer Zurko

The Department of Homeland Security (DHS) and the Department of Labor (DOL) announced at the end of March the publication of a joint temporary final rule to make available an additional 35,000 H-2B temporary nonagricultural worker visas for the second half of fiscal year (FY) 2022. These visas will be set aside for U.S. employers seeking to employ additional workers on or after April 1, 2022, through September 30, 2022.

“Informed by current demand in the labor market ... we are announcing the availability of an additional 35,000 H-2B visas that will help to support American businesses and expand legal pathways for workers seeking to come to the United States,” said Secretary Alejandro N. Mayorkas during the announcement. “Recognizing the importance of strong worker protections, we will apply greater scrutiny to those employers who have a record of violating obligations to their workers and the H-2B program.”

The supplemental H-2B visa allocation consists of 23,500 visas available to returning workers who received an H-2B visa or were otherwise granted H-2B status, during one of the last three fiscal years. The remaining 11,500 visas, which are exempt from the returning worker requirement, are reserved for nationals of Haiti, Honduras, Guatemala and El Salvador.

The H-2B program permits employers to temporarily hire noncitizens to perform nonagricultural labor or services in the United States. The employment must be for a limited period of time, such as a one-time occurrence, seasonal or intermittent need. Employers seeking to hire H-2B workers must take a series of steps to test the U.S. labor market. They must provide certification from the DOL that proves there aren't enough U.S. workers who are able, willing, qualified and available to do the temporary work for which they seek a prospective foreign worker, and that employing the H-2B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers.

AmericanHort welcomed the announcement by the DHS with a statement that said that while the number of additional visas released will not be enough to meet the total demand, as evidenced by DOL-approved applications for temporary labor certification, the number will certainly help to alleviate severe and ongoing shortages in industries like landscape installation.

“Such shortages are hurting the entire horticulture industry market chain at a time when consumer demand for our products and services remains strong,” read the statement.

“We thank the Secretaries of Homeland Security and Labor for recognizing the need to act and urge swift publication of the temporary final rule and release of these urgently needed H-2B visas,” said Craig Regelbrugge, AmericanHort’s Executive VP for Advocacy, Research & Industry Relations. “We call on Congress to do its part and to act on permanent reform legislation such as H.R. 3897, the Returning Worker Exception Act.”

—JZ

Smooth Sailing for Shipping Reform

The Senate Commerce Committee on March 22 approved the Ocean Shipping Reform Act, advancing to the Senate Floor what could become the first major regulatory reform in ocean shipping in over two decades. This matters to horticulture because ocean shipping delivers myriad production, landscape management, and retail inputs and products for our industry.

Senators John Thune (R-SD) and Amy Klobuchar (D-MN) introduced the Senate bill, which gives the Federal Maritime Committee more power against anti-competitive shipping practices. Companion legislation sponsored by Rep. John Garamendi (D-CA-03) passed the House by a whopping 364-60 votes in December.

The Biden Administration is separately looking at antitrust actions against shippers. The world’s largest container shipping companies all belong to one of three shipping alliances: 2M, Ocean Alliance or THE Alliance.

What’s driving the rare alignment between Congress and the Biden Administration? This incredible statistic from The New York Times’s Ana Swanson sheds some light: “The price to transport a container from China to the West Coast of the United States costs 12 times as much as it did two years ago, while the time it takes a container to make that journey has nearly doubled.”

—Evan Lee, *Director of Policy and Government Relations, AmericanHort*

Dignity Act Debuts

All who attended AmericanHort’s Impact Washington advocacy summit last September will recall the passionate speech by freshman Rep. Maria Salazar (R-FL), who pledged to develop a complete immigration reform package based on the principles of her “Dignity Plan.”

She has followed through, introducing her Dignity Act recently, along with original co-sponsors Dan Newhouse (WA), John Curtis (UT), Pete Sessions (TX), Jenniffer Gonzalez-Colon (PR), Tom Reed (NY) and Peter Meijer (MI).

As Rep. Salazar describes it, the bill’s provisions would stop illegal immigration, provide a dignified solution for immigrants living in America, and strengthen the American workforce and economy. The workforce and economy features are especially attractive; the bill features many of the earned-legalization and H-2A reforms of the Farm Workforce Modernization Act (FWMA), though the H-2A provisions are much more employer-friendly. The bill also would make permanent an H-2B returning worker exemption.

Is there a path forward? The House isn’t going to take up another immigration bill this year, so for now, our best shot at relief remains a bipartisan Senate bill that includes a version of the House-passed FWMA. Still, the bill is a worthy proposal that shows there are Republicans willing to be for a constructive approach on immigration. These days, that in and of itself is useful, and depending on how this Congress ends, the bill may in the future provide a basis for negotiation.

—Tal Coley, *Florida Nursery, Growers & Landscape Association*

AmericanHort Leadership Role in Next Farm Bill

AmericanHort will take a leading role in the Specialty Crop Farm Bill Alliance, the national coalition of more than 120 organizations representing growers of fruits, vegetables, tree nuts, nursery plants, floriculture and other products. AmericanHort is again joining the Alliance's Steering Committee, which develops and directs policy priorities for the next Farm Bill on behalf of Alliance partner organizations.

The strength of the Alliance on Capitol Hill is due to the diversity of specialty crop growers represented, and the deliberative process of vetting and consensus-building behind each Farm Bill policy recommendation. As a steering committee member, AmericanHort will help guide development of the coalition's policy recommendations, incorporating nursery and floriculture industry priorities in areas such as research, risk management, disaster relief and conservation. Further, through our leadership role within the coalition, we will help guide the specialty crop sector at-large as it educates Congress about how the Farm Bill can better support farm communities.

Although more than a year away from expiration, development of the next Farm Bill is well underway, as noted during a presentation by Jeremy Witte, Professional Staff at the Senate Agriculture Committee (Minority), at AmericanHort's Congressional Kickoff in March. As Jeremy noted, many sectors across agriculture are seeing strong revenues as prices climb, but inflationary factors such as the cost of inputs and labor shortages continue to put pressure on the bottom line. A key challenge for advocates over the next year will be helping Congress see this broader perspective of challenges facing growers now, and in the future, and write a Farm Bill that continues to support the productivity and competitiveness of American farmers who grow our food, flora, fiber and fuel.

We look forward to sharing more in the coming months regarding our collaboration with the Specialty Crop Farm Bill Alliance.

—Evan Lee

Pesticide Regulation Explanation

Congress expects the U.S. Environmental Protection Agency to explain its new pesticide registration process.

Reps. Dan Newhouse (R-WA-4) and Glenn Thompson (R-PA-15) led 46 GOP House Members in a letter in March, which calls on the agency to defend its plan to enhance Endangered Species Act reviews for new pesticide active ingredients.

In January 2022, EPA pledged to reverse what it called “decades” of inconsistently assessing how new pesticides affect endangered species, as is required under the Endangered Species Act (ESA). The recent policy attempts to resolve ESA concerns during the registration review process by subjecting more pesticides to thorough, but time-consuming, ecological reviews by the National Marine Fisheries Service and the U.S. Fish and Wildlife Services. The EPA argues its enhanced ESA reviews will reduce litigation risks during pesticide registrations and result in “up-front” steps that users can take to protect endangered species.

The congressional oversight letter expresses concern that the new policy strikes the wrong balance between addressing ESA issues and providing a registration process that leads to “timely availability and effectiveness of critical pesticide products.” The letter called on the EPA to seek out perspectives from agriculture in implementing the new process, including growers, the U.S. Department of Agriculture and state regulators.

This is a long-standing problem. The Biden Administration is not the first to attempt more legally defensible pesticide registrations, yet may become the most recent to fail. EPA has always maintained that it complied with the ESA in pesticide registrations, but as we've seen in recent years, courts rarely agree. The concern for grower organizations

is whether this new policy, however legally futile, will significantly increase the time and data required to bring new plant protection tools to market or unnecessarily restrict their allowable use.

AmericanHort looks forward to reviewing EPA's response to the lawmakers and will continue sharing updates regarding our engagement with EPA and Congress on this issue.

—Evan Lee

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