

Update:

With the November election behind us, the 116th Congress has expired and the members of the new 117th Congress have been sworn in. Legislation passed in the last Congress but not signed into law has also expired including the Farm Workforce Modernization Act (FWMA) which passed the House in December 2019.

In an effort to advance certain bills passed in the last Congress, the House adopted a rule allowing such legislation to be reintroduced without amendment and swiftly considered by the full House until April 1.

USApple and the other agricultural groups that supported the FWMA believe reconsideration of the bill under this expedited process in the House provides the best path forward to advance our priorities.

Discussions have begun with the bipartisan group of House members who negotiated and advanced the legislation in the last Congress. USApple and our coalition partners are also reaching out to key leaders in the Senate to discuss priorities and areas where the legislation could be improved later in the legislative process.

Recent Background:

In December of 2019, the FWMA passed in the House with strong bipartisan support. USApple played an active role in the development and passage of that legislation.

In early 2020 focus shifted to the Senate and USApple and our partners in the Agriculture Workforce Coalition (AWC) actively engaged with Senate leaders to begin negotiating a Senate counterpart to the FWMA. This effort was the focus of the March 11, 2020 USApple fly-in.

But when COVID hit, negotiations were tabled as everyone scrambled to respond to the economic and public health crisis.

The FMWA provides work authorization and earned legal status for the current “domestic” workforce. The legislation streamlines the H-2A guestworker program and extends access to year-round industries such as dairy. Importantly, it contains costs by capping the maximum increase of the Adverse Effect Wage Rate (AEWR) to 3.25 percent or

4.25 percent if the AEW is not at least 110 percent of minimum wage. This is a significant improvement over the current trend of a 6 percent increase on average, with some states experiencing jumps of as much as ten to twenty percent.

The FMWA is an important step but further improvements, specifically to the H-2A program, are needed. USApple and the AWC have shared areas of concern with our champions in the House and Senate.

In addition to legislation, USApple continues to follow and comment on regulatory proposals impacting the H-2A program. In July of 2019, the Trump Administration proposed wide H-2A reforms. The proposal included positive reforms and some areas of concern. USApple submitted lengthy comments on the proposal in September of 2019. The regulations were not finalized and therefore have not been implemented. The Biden Administration could revisit that proposal or draft a new proposal.

USApple will continue to advocate through the regulatory rule making process both in meetings and outreach to the new Administration, and in the official comment period if new regulations are proposed.

Background:

The U.S. apple industry is heavily dependent on migrant labor, H-2A, and H-2B workers to harvest, pack, and process apples and apple products.

Participation in the H-2A program continues to grow, with the total number of visas doubling over the past five years. Much of that growth is attributable to the apple industry. Most growers in the program report a positive experience with workers, but bureaucratic and administrative delays continue.

Legislation is needed to modernize the antiquated and expensive H-2A program and provide legal status to the existing workforce.

USApple Position: USApple urges Congress to pass legislation that provides meaningful agricultural labor reform and meets the following objectives:

1. Provides a stable, adequate, able, and predictable supply of agricultural labor capable of participating legally in the U.S. workforce.
2. Addresses the high level of guestworker wage rates, simplifies the program and provides legal reform to remove unreasonable employer sanctions and regulatory burdens.
3. Provides the opportunity for current and experienced employees to continue working in agriculture.

USApple opposes enforcement-only legislation, such as E-Verify, unless it contains viable agricultural labor provisions that address both the current and future workforce.