

Setting Our 2019 Public Policy Course

Strategic Initiatives and Action Plan

Each year, the United Fresh Produce Association's Board of Directors, Government Relations Council, members and industry partners evaluate and determine the overarching federal government relations priorities for the upcoming year.

After the historical elections of 2018, United Fresh and our members have begun a comprehensive outreach and education effort, particularly with the 100 new members of Congress, as well as returning congressional allies who will serve in new policymaking roles with significant impact on our industry. With Democrats taking control of the House of Representatives and Republicans retaining control of the Senate, divided government has once again returned to Washington.

With this new Congressional landscape, we will have new opportunities to advance key issues, but also face new challenges. In order to ensure that our 2019 priorities reflect the interests of our members, United Fresh initiated a comprehensive survey to gain further insights into the top issues for our members. The survey has helped guide the agenda outlined below for 2019 priorities.

1. Immigration Reform/Guest Worker Program

For more than a decade the produce industry and agriculture partners have lobbied for legislation to reform our broken immigration system and help build a legal and reliable workforce. The reality of our farm labor force is that most are foreign-born and as many as 75 percent are falsely documented. In addition, this population is aging, without replenishment. The number of full-time equivalent field and crop workers in the U.S. fell by at least 146,000, or more than 20 percent, between 2002 and 2014. Additionally, new data from the Pew Research Center has found that the unauthorized immigrant population in the United States has declined between 2007 and 2016 by 1.5 million, further exacerbating the struggle for agriculture employers to find workers.

During the 115th Congress, the House of Representatives considered a series of immigration workforce reform bills. The most significant of those related to our industry was the Agriculture Guest Worker (AG) Act, legislation advanced by Judiciary Chairman Bob Goodlatte (R-VA). While it had some important provisions, this legislation was amended during the committee process resulting in a bill highly problematic for the fresh produce industry. The bill was approved on a party line vote in committee, but never advanced on the House floor due to lack of support.

One positive step in 2018 saw the Administration propose reforms to the H-2A program that required employers seeking H-2A workers to advertise in local news publications to give American workers priority. The change will enable employers to advertise electronically instead of paying for newspaper advertising.

The Opportunity Ahead

With control of the House of Representatives shifting to the Democrats, and the retirement of Chairman Goodlatte, 2019 will be a dramatically different landscape with regards to immigration policy. Incoming Chairman Jerry Nadler (D-NY) is widely expected to make immigration reform a major priority

for the committee. However, given other issues under the jurisdiction of the committee, the timing of such action remains to be determined. Longtime advocate for reform Rep. Zoe Lofgren (D-CA) is expected to play a major role in shaping any immigration reform legislation considered by the 116th Congress. Similarly, there will be a change in leadership of the Senate Judiciary Committee. While Republicans maintained control of the Senate, outgoing Chairman Chuck Grassley (R-IA) will be replaced by Senator Lindsey Graham (R-SC) who has worked closely with the agriculture industry in the past to approve bipartisan legislation in 2013. The changes in leadership on these two key committees will provide agriculture the best opportunity to achieve reform in recent years. The produce industry has made it a top priority to include our key issues to be included in any legislation considered by the respective committees. The challenge we face is whether there can be legislation approved by each body that can garner enough bipartisan votes to reach the president's desk and for him to sign it.

2019 Action Plan

- United Fresh and allied partners will work to outline our specific goals and requirements to transition our current workforce to legal status and create a new guest worker program that provides a sufficient future flow of workers.
- With these priorities outlined, we will work with Congress to ensure that agriculture reforms will be part of any legislation that might effectively carry out these reforms. Our goal is to have a proposal ready and supported by key congressional allies, rather than responding once something starts moving through Congress.
- Outside of legislation, we will continue to work with the Administration to seek greater modernization of the H2A program. Additionally, we will continue to push the White House, USDA and DOL to support a revised calculation of the Adverse Effect Wage Rate (AEWR) as well as the relaxation of burdensome administrative requirements to ensure access to a viable workforce.

2. Nutrition Policy

United Fresh leads the produce industry in shaping federal nutrition policy to drive increased consumption of fresh fruits and vegetables. This is accomplished through policies including the Child Nutrition Reauthorization bill, the Farm Bill, annual appropriations legislation, accurate nutrition labeling, and the Dietary Guidelines for Americans (DGA). Policy success through federal programs such as the Fresh Fruit and Vegetable Program, school lunch, school breakfast, the Supplemental Nutrition Assistance Program (SNAP), and WIC have provided millions of children and families access to fresh fruit and vegetables throughout the year. Through this investment, federal nutrition programs have been essential to enhancing the health of Americans and especially children, while at the same time supporting the growth of produce consumption for both the immediate and long-term benefit of United Fresh members.

The Opportunity Ahead

Although progress has been made in increasing fruit and vegetable offerings across federal nutrition programs that target children, Americans across all socio-economic groups significantly under-consume fruits and vegetables. And, still, while policymakers agree that Americans should be eating more produce, aligning federal policies is an ongoing challenge as policymakers face competing industry and government control interests.

2019 looks to be a year of both offense and defense in nutrition policy. Fruits and vegetables have been largely spared in regulatory efforts to roll back nutrition standards for school meals, but there has not been significant support for fresh fruits and vegetables coming from the Trump Administration, so we must remain vigilant and proactive as the Administration fulfills promises to make regulatory reform a key theme. After nearly two years into the Trump Administration, it appears unlikely that an Undersecretary of Food and Nutrition Services will be appointed at USDA. Our strongest defense must be ready to protect the many gains we've made across federal programs.

It is also now time to go on the offense to help transition the \$70 billion SNAP program into more of a health and nutrition program than simply a cash transfer to buy any foods. Our goal for 2019 is to begin laying the groundwork for an allocation of SNAP benefits to fruits and vegetables for children. While adults may make their own choices about buying healthy or not-so-healthy foods, we believe momentum can be grown for a program similar to WIC fruit and vegetable vouchers for the 20 million children now receiving SNAP benefits.

2019 Action Plan

- **Improving Children's Health Through SNAP**
 - A major part of our nutrition policy efforts this year will be on building support for a fruit and vegetable allocation for children under the SNAP program. This will be a multi-year effort, but begins with building a strong case of why low-income children need this benefit, and then garnering support from multiple stakeholders.

- **Child Nutrition Reauthorization**
 - It appears likely that Congress will once again take up Child Nutrition Reauthorization, after failing to pass legislation in the last Congress. If so, we will be ready to advance the following priorities:
 - **Fresh Fruit and Vegetable Program.** Maintain the program as exclusively fresh. Conduct site visits for Members of Congress to show success and true purpose. Several champions of "all forms" bill not returning to 116th Congress so work to reduce likelihood and co-sponsorships for reintroduction.
 - **USDA School Kitchen Equipment Grants.** Make permanent through statute, including the \$1,000 minimum threshold for grant awards. Current efforts to fund have operated through annual appropriations and policy riders.
 - **School Breakfast Commodities.** Increase reimbursement for the School Breakfast Program through cash or the establishment of a USDA Foods (commodity) entitlement.
 - **School Nutrition Standards.** Support maintenance of nutrition standards, including the half cup fruit and vegetable requirement, consistent with the DGA. Protect fruit and vegetable serving and color subgroup requirements.
 - **Women, Infants, and Children (WIC).** Highlight NASEM recommendations on increasing cash vouchers for fresh produce. Work alongside National WIC Association on nutrition priorities.

- **Congressional Appropriations**
 - **USDA School Kitchen Equipment Grants.** Fund at a minimum of \$30 million annually and continue the lower threshold for grants (\$1,000) that allow for lower dollar purchases including fresh produce preparation, serving and storing infrastructure.
 - **Oppose Riders.** Fight any riders that aim to weaken nutrition standards for school meals.

- **Dietary Guidelines for Americans (DGA).** Continue to support a process to ensure that DGA are released in 2020, as required. Advocate for science and evidence-based decision-making. Educate new Members of Congress about its importance.
- **Labels and Health Claims:** As FDA implements its Nutrition Innovation Strategy (NIS), work with the agency to protect fresh fruit and vegetables from spurious claims by processed foods with minimal fruit and vegetable content.

3. Food Safety

The Food Safety Modernization Act was strongly supported by the food industry and consumer advocates when passed by Congress in late 2010. As the produce industry continues to implement the rules there are still some outstanding issues to address from a regulatory standpoint. At the same time, there are occasional outbreaks and the events of the past year highlight opportunities to improve the current outbreak investigation model.

A. Protecting Public Health and Improving Consumer Confidence

The Opportunity Ahead

The outbreak investigation system is failing consumers and the industry. The reliance on consumer recollection of foods they ate weeks after becoming ill, combined with the slow and tedious process of stitching together records (if records even exist) at the point of sale and point of service, back to processors and growers, delays the identification and resolution of outbreaks. The effect of broad advisories that are issued too late to prevent illness only scare consumers away from healthful products and financially and reputationally punish an industry that produces safe, healthful products. The root cause of outbreaks is seldom found so that doubt is cast on the entirety of the industry, with no path forward to prevent recurrences.

Action Plan

Our goal in 2019 is to mitigate the public health impact and financial impact of outbreaks by:

- Pushing CDC to take rapid action as soon as an illness is reported that matches an historical outbreak strain
- Supporting research into the causes of contamination through financial support to the Center for Produce Safety, support for SCRI, and other research opportunities
- Supporting implementation of advanced food safety practices
- Urging FDA to develop a mechanism to use industry expertise and knowledge to aid in investigations, and/or establishing teams of industry experts who can rapidly investigate situations in concert with a regulatory investigation
- Exploring opportunities to use USDA risk management tools to cover losses incurred due to government advisories

B. Listeria monocytogenes Policy

Fresh produce, a ready to eat (RTE) food in some cases (e.g. tree fruit) poses a unique challenge among FDA regulated foods in that Lm is a microorganism that is routinely found in the outdoor/farming

environment. Its occasional transient detection on fresh produce in low prevalence and low numbers does not necessarily indicate poor practices or that a contamination event has occurred due to insanitary conditions or practices. Further, dose response studies indicate that these low levels do not ordinarily result in foodborne illness.

Beginning in 1996 FDA considered detection of *L. monocytogenes* in cooked, ready to eat (RTE) foods to be a violation of section 402(a)(1) of the FD&C Act, in that the food bears or contains an added poisonous or deleterious substance which may render it injurious to health. According to the FD&C Act, Sec. 342 - Adulterated food states "A food shall be deemed to be adulterated—(a) Poisonous, insanitary, etc., ingredients (1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health."

FDA recently established a regulatory definition (21 CFR 117.3) for "RTE food" in the context of the CGMP and preventive controls rule. Under 21 CFR 117.3, an RTE food means any food that is normally eaten in its raw state or any other food, including a processed food, for which it is reasonably foreseeable that the food will be eaten without further processing that would significantly minimize biological hazards. This newly established definition of RTE food would now include many fresh produce items (e.g. tree fruit) that do not have a processing step such as cooking that would eliminate *Listeria monocytogenes*. It is not possible to have a zero tolerance for *Listeria monocytogenes* on fresh produce raw agricultural commodities due to the pervasive prevalence of Lm in the open environment where most produce is grown and harvested. Fresh produce raw agricultural commodities are also used as ingredients in fresh-cut produce processing. Since fresh-cut produce processing does not have a listericidal treatment, this means that fresh-cut produce will almost invariably on occasion contain a low number and prevalence of *Listeria monocytogenes* which cannot be completely avoided or prevented and at the same time has a minimal negative impact on public health.

Action Plan

- United Fresh submitted detailed comments to FDA in response to its draft guidance on *L. monocytogenes* in RTE foods. The draft guidance reversed FDA's previous policy which acknowledged that foods with low levels of *L. monocytogenes* were not a priority for FDA enforcement. Subsequently, United Fresh updated our industry guidance, and developed a *Listeria* training document for the tree fruit packing industry that conveys the concept of risk and the impracticality of zero tolerance. These documents will be shared with FDA.
- United Fresh helps lead the Alliance for Listeriosis Prevention, a coalition of food trade associations and other stakeholders that seeks to educate members about Lm control and urge science and risk-based regulatory policies related to Lm.
- United Fresh partners with PMA to deliver *Listeria* intervention and control workshops. In just over a year, we've held five workshops, with FDA officials present at each. This has the dual benefit of providing members a chance to interact with policymakers, but also allows FDA to better appreciate the *Listeria* issues associated with our industry and the efforts being made to address this pathogen.

C. Farm/ Facility Definition

FDA has recognized one of the unintended effects of the FSMA legislation itself has created a conundrum in regulating identical facilities that pack or handle raw agricultural commodities sometimes under the Produce Safety Rule (PS) and sometimes under the Preventive Controls (PC)

Rule. The PC Rule imposes significantly different requirements on facilities than the PS rule, despite being identical facilities other than location or ownership. This demarcation is not risk or science-based and puts off-farm operations at a regulatory and economic disadvantage. In addition, different regulatory standards based on ownership of facilities makes no scientific sense.

This anomaly is due to FSMA's categorization of facilities that are required to register with FDA under the Bioterrorism Act as falling under the PC rule. Although identical facilities as far as food safety risks, "on-farm" facilities fall under the PS Rule while most "off-farm" facilities fall under the PC Rule. We estimate that nearly 5,000 facilities across the country fall into this latter category, requiring a vastly different regulatory structure under the PC Rule. FDA has publicly indicated that they are in the process of resolving this issue, but will require re-opening the rules and therefore be a lengthy (>1 year) process.

Action Plan

- Regulatory Relief: United Fresh and allied industry associations have effectively communicated the challenge to FDA and we are optimistic that the situation will be resolved. However, the regulatory process is not rapid, and we will continue to ensure that FDA moves forward on the issue. In the interim, FDA is exercising enforcement discretion with respect to the subpart C, Preventive Controls requirements that would otherwise apply to operations that pack or hold fresh produce RACs. While the regulatory relief is welcome in the absence of a permanent solution, it does create some risk if there is a public perception of industry absconding food safety responsibility. For this reason, we will encourage a rapid regulatory fix.

D. Agricultural Water

Water testing remains a foundational aspect of fresh produce production. The problem within the Produce Safety Rule is not that water testing is required, rather that the rule stipulated that a prescriptive test must be performed for a farm's water source (using EPA test method 1603) with frequencies and other requirements that are not based in science and have no clear link to public health.

Action Plan

- In September 2017, FDA proposed to extend the compliance date for the ag water testing requirement by at least 2 years. United Fresh supported this proposed rule. In the meantime, based on the recommendations of an expert panel including United Fresh, FDA also published eight additional test methods that can be used to quantify the amount of generic *E. coli* in agricultural water.
- The romaine-associated *E. coli* O157:H7 outbreak in Spring 2018 illustrated the shortcoming of the current rule in protecting public health, as FDA isolated the pathogen related to the outbreak in canal water that would have passed the test specified in the Produce Safety Rule. United Fresh is actively engaged in crafting risk-based regulatory requirements that balance feasibility against true public health benefit.

4. International Trade Priorities

United Fresh has always supported free and fair trade globally, seeking to open markets to U.S products while committing to reciprocal access for products to the U.S. Both exports and imports of fresh fruits and vegetables continue to play a greater role in the business viability of fresh produce providers.

The Administration has now concluded a modernized NAFTA agreement, called the U. S. Mexico Canada Agreement (USMCA). United Fresh supports this agreement, and will encourage Congress to approve the agreement in 2019.

In addition, 2018 proved to be a very busy year in the trade sphere with an escalating tariff battle with China and the beginning steps to establish agreements with Japan, the European Union and Great Britain. Throughout these trade issues, United Fresh will continue to work toward free and fair-trade for the fresh produce industry. Gaining access to export markets is critical for U.S. growers, and the U.S. needs to apply the same standards in considering imports as we expect from other countries.

2019 Action Plan

- United Fresh will continue to advocate the benefits of trade under the USMCA and offer our support for this modernization of NAFTA. In addition, we must continue to find solutions that can enhance the competitiveness of U.S. growers without having unintended consequences that impact the flow of trade in North America.
- United Fresh will continue to work with Administration as they pursue other trade agreements that can benefit the fresh produce industry. We will encourage our members to help understand and expand key market opportunities in other countries. At the same time, we will also remind and provide data to the Administration regarding the negative impact trade sanctions are having on our industry and unintended consequences they cause.
- United Fresh will also work with the Administration to help identify efficiencies and programs that can help ensure trade mitigation programs work effectively for the fresh produce industry.
- Finally, United will work with Mexican & Canadian trade associations, as well as government entities in all three countries, to find ways to harmonize similar processes and regulations such as food safety, border access and new USMCA requirements to create uniformity and understanding across the fresh produce supply chain in North America.

5. Infrastructure Investment

With a Democratic majority in the House, a new transportation bill may be taken up in 2019 by Congress. While it is uncertain where the money will come from for such a program, it is essential that the produce industry has a seat at the table with clear priorities to enhance our industry.

The produce industry is highly dependent upon an efficient transportation system, one that promotes every part of the supply chain. New funding of transportation infrastructure could provide meaningful support to the industry in increased efficiency and lower costs. In addition, the industry may be able to define other capital investments in the public interest deserving financial assistance of the federal government, including renovation of wholesale markets and port facilities.

Action Plan

- **Electronic Logging Devices** – Since the mandate to use Electronic Logging Devices (ELDs) went into effect, the Department of Labor has issued two separate 90-day waivers for agriculture commodities, delaying the ELD mandate. Currently, the Hours of Service Rule regulations do not apply to the transportation of agricultural commodities operating completely within the 150 air-mile radius meaning work and driving hours are not limited and the driver is also not required to an ELD or keep paper logs. We will continue to push legislation that would enforce relief for transporters that provide exemptions for agricultural commodities and produce shipments.
- **Hours of Service** – the fresh produce industry supports the proposed changes by FMCSA that would provide additional flexibility to the Hours of Service Rule impacting agriculture:
 - Source/Multi-Source Definition –the definition of source was expanded to include intermediate storage facilities, cooling facilities and packing houses, provided the product maintains its original form.
 - 150-Mile Radius –work with FMCSA to get the definition of a source of a commodity to coincide with have fresh-cut facilities included in that definition as “minimally processed”, and also work to get the 150 air-mile radius from a source on multi-pick up loads to start at the final pickup point, or once the truck is actually fully loaded and heading to destination, as opposed to the current status which begins at the first load point.
 - Unladen Vehicles – drivers operating unladen vehicles traveling either to pick up an agricultural commodity or returning from a delivery are exempt from Hours of Service while operating within 150 air-mile radius of a qualifying source of the commodity.

6. Farm Bill Implementation

At last, we can all rejoice in final passage of the 2018 Farm Bill. The vast majority of program goals and funding pursued by the Specialty Crop Farm Bill Alliance (SCFBA) were adopted in the final bill. Since 2002, Congress has supported significant investments in targeted research, export expansion, programs designed to eliminate pests and diseases, access to fresh fruits and vegetables and block grants to support the fruit and vegetable sector in each state. United continues to lead the SCFBA as Secretariat for the 140 specialty crop organization alliance.

With a new Farm Bill in place, we now turn to implementation. As the bill is implemented, we will work review any challenges the produce industry may have with regards to programs and future regulations.

2018 Action Plan

- United Fresh and the Specialty Crop Farm Bill Alliance will continue to lead the strategic direction to best enhance our policy objectives for the implementation of the 2018 Farm Bill.

7. Additional Industry Priorities

- **Crop Protection Tools** – United Fresh will continue to work with stakeholders to ensure the availability of crop protection tools regulated by sound science. We will work with crop protection companies and their trade associations to ensure that specialty crops are a priority in their research and development.

- Waters of the United States (WOTUS) – As the courts continue to look at how “waters of the United States” should be defined, we will work with EPA, Army Corp of Engineers, state and local officials along with industry leaders to address a common-sense approach to defining WOTUS.
- GMO/Gene-Editing – United Fresh recognizes that modern technology in plant breeding is a critically important tool to combat pests and disease, improve health and nutrition, and enhance sustainability through reduced need for water and other agricultural inputs, and similar benefits. Modern technology in plant breeding provides multiple options for breeders in specifically targeting enhanced traits and carefully controlling plant attributes, with and without genetic engineering. We will support science-based regulation in this area.
- Organic Production – Organic production has become an increasingly important part of the produce industry business. Therefore, United Fresh will engage more deeply in current and ongoing organic regulatory and policy decisions.