

Setting Our 2020 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.

The 2018 elections brought divided government back to Washington and the results of the 2019 legislative session reflected that reality. While we saw progress in some areas, most legislation passed by the Democratically controlled House has not seen the light of day in the Republican controlled Senate, and vice versa. The impeachment of the President by the House of Representatives looms large over every legislative issue, but despite that we have seen progress on a number of key issues. With this political landscape, we continue to have new opportunities to advance key issues, but also face new challenges.

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.

Immigration reform efforts in the first session of the 116th Congress have yielded a great deal of progress. Beginning in the Spring of 2019, negotiations began between a bipartisan group of House members to finally address our agriculture labor challenges. Spearheaded by Congresswoman Zoe Lofgren (D-CA) and Congressman Dan Newhouse (R-WA), we saw the introduction and House passage of the Farm Workforce Modernization Act (H. R. 5038). This legislation represents the most important reforms to our agriculture labor policies since 2013, when a similarly bipartisan bill passed the Senate. As in 2013, this legislation provides legal status for the current, undocumented agricultural employees and makes important reforms to the H-2A program. Additionally, the bill also makes mandatory the E-Verify program for agricultural employers. The Farm Workforce Modernization Act passed the House with strong bipartisan support by a margin of 260-165 and now awaits consideration in the Senate. Efforts are underway to continue to move legislation forward in the Senate to be conferenced with the House passed bill, but it is likely to look very different than the House passed bill.

In addition to the legislative steps taken by the House, consideration of administrative reforms to the H-2A remain on the table. Many of the reforms proposed by the Administration were incorporated into the House passed bill, including wage disaggregation and the streamlining of applications. Despite their inclusion in H. R. 5038, the proposal remains out there setting up a potential dual-track reform to our immigration system.

The Opportunity Ahead

With passage of the Farm Workforce Modernization Act in the House of Representatives, all eyes shift to the Senate. While United Fresh strongly supported the legislation, there are many improvements that can, and should, be made to the proposed reforms. These include issues like the wage calculation and the exposure of employers to private right of action. United Fresh has already begun negotiations with Senate leaders on the issue including Senators Thom Tillis (R-NC), Dianne Feinstein (D-CA) and Judiciary Committee Chairman Lindsey Graham (R-SC). Their support is imperative to our success and replicating the bipartisan negotiations that we saw in the House are even more important in the Senate where we will need 60 votes to achieve reform.

2020 Action Plan

- United Fresh and allied partners will continue to work to transition our current workforce to legal status and create a reformed guest worker program that provides a sufficient future flow of workers.
- With these priorities outlined, we will work with Congress, specifically the Senate, to pass legislation that can be conferenced with the House passed Farm Workforce Modernization Act.
- Outside of legislation, we will continue to work with the Administration to seek greater modernization of the H2A program. 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

Data and policy released in 2019 shows there are pockets of progress as a result of our long-term advocacy. Obesity rates for 2-4 year olds enrolled in WIC have decreased as a result of updated nutrition standards in the program, including a voucher for fruit and vegetable purchases. The Healthy Eating Index Scores (how well a meal aligns with Dietary Guidelines for Americans) showed that in school meals, for the greens category, the score went from 21/100 in 2009 to 72/100 post-update. And students are eating 70% of the vegetables served as school lunch – a significant win considering many were not previously introduced to a wide variety of vegetables. United also worked with Congressional champions to introduce a bill that would help schools ensure there is adequate time to eat school meals – an important and often overlooked component to helping students eat crunchy fresh produce. 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.

2020 Action Plan

- **Improving Children’s Health Through SNAP**
 - A key priority this year will be introducing stand-alone legislation that would pilot a fruit and vegetable voucher for children enrolled in SNAP that have aged out of the Women, Infants, and Children program (WIC). The WIC program currently includes a monthly produce voucher for children through age five. This proposal would extend the concept of the voucher within the SNAP program for children over the age of five. We will work to gain congressional champions to build support to include in the next Farm Bill.

- **Child Nutrition Reauthorization:** There is a narrow opportunity in early 2020 for Congress to work on passing a Child Nutrition Reauthorization bill, which was last reauthorized in 2010 and is five years behind schedule. We have been working with Committee staff to include our priorities:
 - **Fresh Fruit and Vegetable Program.** Maintain the program as exclusively fresh. Continue to regularly meet with Members of Congress in non-fresh friendly districts to hold off an “all forms” stand-alone bill. We will work with committee staff to provide alternative forms of support for schools that might have struggles accessing or serving high-quality fresh produce.
 - **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).** Allow states to work with participations to voluntarily increase the fruit and vegetable voucher in lieu of other items in the food package.

- **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.
 - **Increase Cash Value Voucher (CVV) in WIC.** Increase the amount of the CVV in WIC for fruit and vegetable purchases in WIC through appropriations until USDA makes a regulatory change consistent with Congressionally-mandated scientific recommendations.

- **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.
- **Farm Bill Implementation**
 - **Produce Rx.** Ensure Produce Rx programs that were included in the 2018 Farm Bill are effectively implemented and monitor data collection. Further build upon this policy – working on opportunities in federal policy to allow fresh fruits and vegetables to be covered services under Medicare and Medicaid.
 - **Food Costs.** The 2018 Farm Bill requires USDA to update estimates on food costs packages that meet the Dietary Guidelines for Americans recommendations. These food estimates are integral in setting policy like SNAP and WIC benefits – and provide an opportunity to increase fresh produce access.
- **Categorial-Eligibility:** We will continue to oppose proposed rules put out by the Administration that would disenroll 500,000 low-income children from free meals, putting their nutrition and well-being at risk and increasing the administrative burden on local schools.

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 2020 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. 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.

4. International Trade Priorities

The U.S. fruit and vegetable industry and American consumers are highly dependent upon international trade. With consumers today demanding year-round availability of produce commodities regardless of geographical growing seasons, exports and imports of fresh fruits and vegetables continue to play a critical role in business viability of fresh produce providers. United Fresh has always supported free and fair trade globally, seeking to open markets to U.S. products while ensuring access for foreign products to the United States. With Congress now in the process of passing the U.S. Mexico Canada Agreement (USMCA), our attention needs to turn to how we can rebuild international trade opportunities while analyzing remedies for those in the domestic produce industry who continue to face challenges and business strains from foreign market competitors.

The Opportunity Ahead

While we continue to look for ways to build stronger trade relationships across the world and rebuild business with current trading partners, the Government Relations Council should explore the way trade policy (legislative and regulatory) can better enhance the fresh produce industry. We must consider that the current trade environment may continue for the foreseeable future and if so, how can we adapt trade policy to better serve our collective industry.

2020 Action Plan

- The United Fresh Government Relations Council will look to develop a policy paper that helps set a framework for ways trade policy can better benefit our collective industry. This will be a wide-ranging effort that looks at both legislative and regulatory remedies. A process similar to our early farm bill efforts could be an approach that is worth considering.
- 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

Despite bipartisan support to pass transportation and infrastructure reform at the beginning of 2019, those efforts have not come to fruition. The Senate did take an important step by passing the bipartisan America's Transportation Infrastructure Act of 2019 (S.2302) out of the Committee on Environment and Public Works. However, the bill which makes a number of reforms which United Fresh supports has yet to find the funding needed to make those investments and changes a reality.

On the regulatory front, United Fresh supported and commented on proposed changes to policies seeking to amend regulations regarding Electronic Logging Devices (ELDs) and Hours of Service. As we await the finalization of those regulations, we will continue to look at legislative vehicles to pass these reforms.

As you know, 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.

2020 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 Federal Motor Carrier Safety Administration (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. Organic Agriculture

Organic production has become an increasingly important part of the produce industry business. Therefore, United Fresh will continue to engage in current and ongoing organic regulatory and policy decisions.

Opportunity Ahead

In 2019, United Fresh created an organic working group which included a broad cross-section of members from the organic distribution chain. During the year, the group had several meetings and conference calls to talk about issues that are impacting the organic fresh produce industry. That has led to this working group continuing in 2020 and play a larger role in United Fresh’s volunteer leadership structure. The working group will take on a more formal role to advise the board and United Fresh members on policy, regulatory, and industry issues that need to be address as an industry related to organics.

2020 Action Plan

- **Proposed Enforcement Rule.** Provide industry comments on the proposed enforcement rule that will be published in early 2020.
- **USDA National Agricultural Statistics Service (NASS) Organic Survey.** Provide and analyze data from the organic survey that would be helpful to the industry supply chain in developing a strong fresh produce industry supply chain for organic produce
- **National Organic Standards Board (NOSB).** Play a more active role in the NOSB process with providing comments and engagement with the board.
- **Industry Tools.** Develop information and guidance materials for industry that will aid in regulatory implementation along with best practices for organic produce.

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.
- **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.