

Fruit and Vegetable Industry Advisory Committee (FVIAC)

2018 – 2020 Recommendations Status Report

The purpose of the FVIAC is to examine the full spectrum of fruit and vegetable issues and provide recommendations and ideas to the Agriculture Secretary on how the U.S. Department of Agriculture (USDA) can tailor programs to better meet the needs of the U.S. produce industry.

The 2018-2020 FVIAC body was very active in 2019, establishing four workgroups: Food Safety Subcommittee; Labor Subcommittee; Trade Subcommittee; and the Production Subcommittee. Thus, the membership body put forth 33 recommendations pertaining to agricultural labor, trade, production and food safety.

FOOD SAFETY RECOMMENDATIONS

- We recommend the Agriculture Secretary assist producers and packers by collaborating with the Food and Drug Administration (FDA) to obtain funding for on-farm water sampling education outreach, research projects, financial assistance for small and very small operations, and development of online Produce Safety Rule (PSA) grower training programs in English and Spanish to meet FSMA requirements. Furthermore, we recommend the Secretary (a) encourage the FDA to continue to work with growers to develop science-based water microbiological testing standards in a timely manner, and (b) encourage the re-evaluation of these agricultural water testing requirements annually.

USDA Feedback

USDA can collaborate with FDA on the issue of obtaining funds for on-farm water sampling education outreach, research projects, financial assistance for small and very small operations. Such collaboration requires funding, high impact and visibility. PSA grower trainings are provided currently provided in Spanish. Example: <https://producesafetyalliance.cornell.edu/training/grower-training-courses/upcoming-grower-trainings/>. Furthermore, USDA and FDA already collaborate with growers to develop science-based water microbiological testing standards. The annual review of agricultural water testing requirements is not within USDA's control, but USDA is able to engage with other appropriate agencies on this topic.

Status: Complete. No further action.

- We recommend the Agriculture Secretary collaborate with the FDA to establish a FSMA Produce Safety Rule and Preventive Controls for Human Food (fruit and vegetable mixed-type use operations) regional grower stakeholder advisory boards for collaboration and to seek input.

USDA Feedback

An additional advisory board is not needed because the FVIAC has the ability to accomplish the objective by inviting others to FVIAC meetings to provide insights.

Status: Complete. No further action.

- We recommend the Agriculture Secretary work with FDA to develop a FSMA Produce Safety Rule, Preventive Controls for Human Food, Foreign Supplier Verification Program (FSVP) interactive decision tree to assist entities in determining which rules they must comply with and when.

USDA Feedback

The following resources are available:

1. <https://www.fda.gov/food/food-safety-modernization-act-fsma/fsma-rules-guidance-industry#Guidance>
2. <https://www.fda.gov/food/food-safety-modernization-act-fsma/fsma-compliance-dates>

Status: Complete. No further action.

- We recommend the Agriculture Secretary regularly collaborate with the FDA to share technical expertise and data so as to inform FDA's implementation plan to ensure that foreign supply is held to the same standards as domestic supply in regards to all aspects for FSMA compliance.

USDA Feedback

The Foreign Supplier Verification Program (FSVP) addresses this concern.

Status: Complete. No further action.

- We recommend the Agriculture Secretary engage with FDA regarding prioritization of Foreign Supplier Verification Program (FSVP) inspections relating to produce that have caused outbreaks in the United States.

USDA Feedback

This recommendation can be addressed by sending a request to the USDA-FDA-FSMA Produce Safety Workgroup.

Status: The FVIAC Designated Federal Officer will invite the Food Safety Liaison to address the FVIAC.

- We recommend the Agriculture Secretary work with the FDA and Centers for Disease Control and Prevention (CDC) to hold town-hall style meetings, which would provide the fruit & vegetable industry an opportunity to improve the CDC consumer advisory process by sharing information about growing, harvesting, packing and traceability processes.

USDA Feedback

The CDC and FDA have their own protocols. USDA could ask the CDC/FDA to brief the FVIAC on what those protocols involve.

Status: The FVIAC Designated Federal Officer will invite the Food Safety Liaison to address the FVIAC.

- We recommend the Agriculture Secretary work with FDA and CDC to coordinate a fresh fruit and vegetable stakeholder-driven workgroup focused on improving communication during the consumer advisory process and other related activities.

USDA Feedback

The FVIAC could accomplish this by coordinating with the USDA-FDA FSMA Produce Safety Workgroup.

Status: The FVIAC Designated Federal Officer will invite the Food Safety Liaison to address the FVIAC.

- We recommend the Agriculture Secretary seek adequate recurring, line-item appropriations for FSMA-related training initiatives (e.g. Produce Safety Alliance).

USDA Feedback

While this recommendation involves a budget policy decision, USDA can explore existing resources to address FSMA-related training initiatives.

Status: Complete. No further action.

- We strongly recommend the Agriculture Secretary engage the supply chain to include retailers, food service entities and consumer brands in accepting the USDA Harmonized GAP Plus audit program's technical equivalence to the Global Food Safety Initiative (GFSI).

USDA Feedback

USDA has already established a buyer engagement initiative. A dedicated staff member is actively engaging with national retailers (such as Walmart) and travels to industry trade meetings and expos to present on inspection and audit services and promote broader acceptance of USDA Harmonized GAP Plus audit program's technical equivalence to the Global Food Safety Initiative (GFSI).

Status: Complete. No further action.

LABOR RECOMMENDATIONS

- We recommend the Agriculture Secretary form a multi-agency task force including but not limited to USDA and the Labor Department (DOL) as well as a nationwide cross section of industry stakeholders with the primary charge to study the current H-2A Adverse Wage Effect Rate (AWER).

USDA Feedback

Secretary Perdue formed a working group at the White House with the departments who take part in the H-2A program (State, Homeland Security, and Labor). The forming of and participation in the working group and the DOL proposal stands to address this recommendation. Read the final rule [here](#). The final rule will publish in the Federal Register at a later date. Read Secretary Perdue's statement on DOL's H2A wage rule [here](#).

Status: Complete. No further action.

- We recommend the Agriculture Secretary work with Congress and the Administration for legislative agricultural immigration reforms. The fruit and vegetable industry has identified that access to labor is our most critical need and we recognize the Secretary's commitment to solving the agricultural labor crisis. These reforms should allow the industry to retain the current workforce in light of their ongoing critical contributions to the supply chain as well as create a new future flow of labor that makes our workforce affordable, predictable and sustainable.

USDA Feedback

It would be inappropriate for the Agriculture Secretary to lobby Congress. However, USDA shared the industry's concerns with the multi-department working group on farm labor.

Status: Complete. No further action.

- We recommend the Agriculture Secretary work with the necessary federal agencies to provide information on the rule related to 51% or more of product coming from outside the H-2A farm applicant with the understanding that the industry has undergone significant changes and that many growers also pack and ship product for other growers.

USDA Feedback

The DOL H-2A proposal sought comment on the definition of the area of employment. Read DOL's final rule [here](#). The final rule will publish in the Federal Register at a later date. Read Secretary Perdue's statement on DOL's rule [here](#).

Status: Complete. No further action.

- We recommend the Agriculture Secretary collaborate with the Labor Secretary to create meaningful impact for employers utilizing the H-2A program by developing a program to identify preferred employers who possess solid history in the program for an expedited and more streamlined application process.

USDA Feedback

While the DOL H-2A proposal doesn't create a reward/streamlining system for employers who have used the program consistently over time, it does streamline much of the paperwork – allowing it to be filed electronically. It also provides flexibility in arrival times and for adding workers and job sites. DOL has traditionally been involved in policing the program and will continue to do so. Read DOL's final rule [here](#). The final rule will publish in the Federal Register at a later date. Read Secretary Perdue's statement on DOL's rule [here](#).

Status: Complete. No further action.

- We recommend the Agriculture Secretary continue engagement in this process by encouraging stakeholders to submit comments on ag labor-related rules and ensure these new rules are published as soon as possible.

USDA Feedback

DOL had an open docket for this proposal. Employers were encouraged to comment.

Status: Complete. No further action.

- We recommend the Agriculture Secretary collaborate with the Administration, in particular the Labor Secretary, to broaden the interpretation of "temporary work" to less than one year thereby allowing more agriculture companies to participate in the H2-A program – considering that Congress has been unable to pass agricultural labor reforms combined with the expedient rate at which the agriculture workforce is dwindling.

USDA Feedback

H-2A workers, by definition, perform temporary and seasonal occupations. That has been interpreted by DOL as jobs not lasting more than 10 months. For this reason, many livestock related employers (dairy) do not have access to H-2A workers. USDA does not have the legal authority to change this provision. USDA shared this recommendation with the multi-department working group on farm labor.

Status: Complete. No further action.

- We recommend the Agriculture Secretary direct research methods to make the farm labor survey more robust and to work with the Labor Secretary to ensure the refined data that is collected is utilized by DOL to support agricultural employers and workers.

USDA Feedback

The DOL proposal redefined how wages are computed using the USDA Farm Labor Survey (FLS) and the Bureau of Labor Statistic's Occupational Employment Survey (OES) to fill in gaps. Instead of a one wage rate for all workers, wage rates are assigned to specific occupations. USDA shared this recommendation with the multi-department working group on farm labor. Read DOL's final rule [here](#). The final rule will publish in the Federal Register at a later date. Read Secretary Perdue's statement on DOL's rule [here](#).

Status: Complete. No further action.

TRADE RECOMMENDATIONS

- We recommend the Agriculture Secretary consider meaningful improvements in the guidance for and enforcement of Buy American requirements for school food purchases enhanced by Sec. 4207 of the Agriculture Improvement Act of 2018 – and request the Secretary to keep the Committee advised of his actions on the following:

1. Strike the “Significant Cost Differential” language from the Buy American exceptions provided to schools. This exemption is significantly too ambiguous and does not recognize the myriad of fruits and vegetable options that are available should the desired first choice be cost prohibitive.

USDA Feedback

USDA guidance outlines the two exceptions under which School Food Authorities (SFAs) may purchase non-domestic foods. However, guidance also explicitly instructs SFAs that these exceptions are to be used “as a last resort” and instructs them first to consider whether there are domestic products that could be easily substituted. Many school districts operate on very thin margins and would struggle to absorb higher costs. Data from SY 2012-2013 shows that about a third of School Food Authorities (SFAs) were operating at a loss and another 24% were operating right at the break-even level. Given these cost constraints, and consistent with Congressional direction at the time of enactment of the Buy American requirements, FNS guidance has afforded the discretion to utilize an exception to SFAs.

Status: Complete. No further action.

2. Establish financial or commercial (restrict from supplying schools) penalties for food distributors that misrepresent their food products or who switch foreign sourced products for contracted domestic food products.

USDA Feedback

The Buy American requirements for school food purchases apply to program operators (schools, institutions, and sponsors), and State agencies. USDA's Food Nutrition Service does not have the authority to regulate private companies (i.e., distributors).

Status: Complete. No further action.

3. Require public notice when schools elect to purchase foreign sourced food products instead of domestically produced including and require that schools maintain documentation to justify foreign purchase of fruits and vegetables over domestic. For instance; whether alternate supply sources were considered, whether bids were sought at the best time of the year to allow domestic participation, whether substitutions were considered (applesauce instead of peaches, pears instead of mixed fruit cocktail, etcetera).

USDA Feedback

USDA guidance currently requires SFAs to maintain documentation to justify the purchase of any non-domestic foods and instructs SFAs to consider these exact recommended questions before utilizing an exception. State Agencies are also required to review this documentation as part of their oversight of the program. Requiring public notice would impose an additional burden on SFAs.

Status: Complete. No further action.

- We recommend the Agriculture Secretary develop a “Sustaining U.S. Grown Food” program that offers additional promotional support for helping qualified agricultural cooperators compete against foreign competition within the United States.

USDA Feedback

The proposed program must be authorized by Congress.

Status: Complete. No further action.

- We recommend the Agriculture Secretary work with other administration offices/agencies, such as the United States Trade Representative, so that within all trade agreements, remedies for domestic produce growers need to be strengthened. A resolution process should be added to take into account seasonal domestic production of horticultural products in regards to anti-dumping. This provision should not preclude fair sustainable market access to foreign suppliers.

USDA Feedback

USDA will take the committee’s recommendation under consideration. USDA recognizes the importance of ensuring U.S. agricultural industries are not subjected to trade distorting practices by trading partners. The inclusion of provisions that account for the seasonal domestic production of horticultural products in trade agreements has proven challenging due to varying views of its benefits within the U.S. agricultural industry.

Status: Complete. No further action.

- We recommend the Agriculture Secretary make the following Committee position known to the President and Congress:
The critical importance of ensuring that Export Market Promotion programs continue to be made available to U.S. agriculture to successfully compete against foreign competition in export markets and that the available funding for these programs be increased to offset the imbalance of trade restrictions and impacts of trade disputes

USDA Feedback

This is a position statement. Feedback is not applicable.

Status: Complete. No further action.

PRODUCTION RECOMMENDATIONS

- We recommend the Agriculture Secretary review the decision to include hemp as a specialty crop – looking at the potential negative impacts to the existing specialty crops. In particular, the impacts on federal funds for research, Specialty Crop Research Initiative (SCRI) grants. If in any way it is determined that hemp will dilute the limited research funds – the FVIAC recommends the Agriculture Secretary reclassify hemp and/or limit the crop from access to SCRI funds until additional money is appropriated.

USDA Feedback

Hemp projects are only eligible under the Federal-State Marketing Improvement Program (FSMIP), but recent legislative changes to the Farmers Market Promotion Program (FMPP) and Local Food Promotion Program (LFPP) may make this program an option for hemp marketing projects. If hemp is redefined as a specialty crop by other USDA program offices, it could impact a number of grant programs. Regarding Specialty Crop Block Grant Program (SCBGP) grants, states determine their own topic-area prioritization, such as food safety.

The Agriculture Improvement Act of 2018 contains the authorization for a competitive grant program for hemp research and extension. Should Congress appropriate funding for this program, NIFA will begin implementation. The demands on the Specialty Crop Research Initiative continue to exceed available resources. It is also notable that NIFA currently supports hemp related competitive and capacity research projects are through non-SCRI (Specialty Crop Research Initiative) funding lines. This work includes numerous Hatch and Evans Allen capacity projects, as well as three 2019 competitive awards from the following

NIFA budget lines (one each): Organic Research and Extension Initiative, Crop Protection and Pest Management program, and 2019 Supplemental and Alternative Crops program.

Status: Complete. No further action.

- We recommend the Agriculture Secretary review research grant eligibility criteria and process with a goal of increasing the opportunity for private organization lead project funding and public/private projects. Increase outreach and involvement of potential industry applicants to determine how future grants can be available for emerging technology development in Agriculture.

USDA Feedback

USDA grant eligibility and project type are defined by each grant program's statute. The same goes for private organization and public/private entity eligibility. For the Specialty Crop Block Grant Program, the States conduct their own process of project funding selection and can set priorities under the legally allowed definitions. Moreover, eligibility for USDA competitive programs administered by NIFA is determined by the authorizing legislation. USDA cannot legally modify the authorized eligibility requirements. For SCRI, eligibility is quite broad and private research entities are eligible to apply for funding.

Status: Complete. No further action.

- We recommend the Agriculture Secretary make it a goal of the U.S. Department of Agriculture's Risk Management Agency (RMA) to ensure that fruit and vegetable farmers have access to coverage options that are on par with row crop farmers for whom crop insurance generally works well, both in terms of effectiveness in addressing the perils unique to the crop and at affordable premiums.

USDA Feedback

RMA's goal has always been to provide effective risk management coverage for all crops – including fruits and vegetables. RMA's primary performance goal in its Strategic Plan is to “increase the availability and effectiveness of Federal Crop Insurance RMA”. The Federal crop insurance program already covers 60% of fruit and 63% of vegetable crops – a respectable level of participation. RMA would caution that options available to row crops are not necessarily appropriate or even wanted by fruit and vegetable farmers. A one-size-fits-all approach is not necessarily the best strategy. RMA would welcome the opportunity to discuss what options are currently available to fruit and vegetable growers and how the program can build on current progress.

Status: Complete. RMA has expressed interest in engaging the FVIAC. The FVIAC DFO will extend an invitation for RMA to present before FVIAC 2020-2022 member representatives.

- We recommend the Agriculture Secretary work with FDA and the Environmental Protection Agency (EPA) to recognize that dicamba will move off target and therefore a reasonable residue tolerance should be established. Buffers around the application site should be a minimum of one (1) mile to the closest sensitive, non-target plant. Applications should be limited to more desirable circumstances such as lower temperature and humidity, pre-plant and preseason, and other factors that would reduce the potential for moving off target.

USDA Feedback

EPA has sole authority to establish tolerances and approve final label restrictions for pesticide products in accordance with established statutory obligations. USDA supports EPA's science-based registration decisions and encourages the following: USDA recommends that all users apply the product registered for their crop and situation, carefully follow the label instructions, attend pesticide applicator training, and adhere to best practices set forth by industry and university weed science experts to reduce off-site drift. USDA also urges all users to be aware of surrounding vegetation and crops as well as weather conditions when making decisions about when and where to spray.

Status: The USDA Office of Pest Management Policy will continue to engage with EPA on this subject matter. Read Secretary Perdue's statement on the Ninth Circuit dicamba decision [here](#).

- We recommend the Agriculture Secretary work with EPA to evaluate the performance of the products identified below for safety after the 2019 season and make an appropriate judgment about their use in 2020 even before the registration expires. Due to the overwhelming reports of dicamba volatilization, we strongly recommend the registration for Xtendi Max, Engenia, Fexipan and Tavium or any other new formulations for in-crop use in soybeans and cotton not be renewed when the current registration expires. We also recommend the Agriculture Secretary work EPA to ensure dicamba registration is not renewed until such time

when research can prove with certainty that specialty crop producers will not be adversely affected by any form of off-target movement, including by volatility.

USDA Feedback

EPA is the sole federal agency responsible for registering pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), evaluating not only potential risks associated with pesticide use, but balancing those risks with benefits derived from that pesticide's use in agriculture, public health, residential, structural, and landscape settings. The EPA carefully evaluates numerous exposure scenarios and develops risk assessments to evaluate the potential for harm to humans, wildlife, fish, and plants, including endangered species and non-target organisms, and contamination of surface water or ground water. EPA conducted evaluations prior to registration and, as required by FIFRA, and continues to evaluate the performance and safety of these pesticides, particularly in areas where use patterns and non-target incidents have been challenging.

Status: The USDA Office of Pest Management Policy will continue to engage with EPA on this subject matter. Read Secretary Perdue's statement on the Ninth Circuit dicamba decision [here](#).

- We recommend the Agriculture Secretary work with EPA and FDA to recognize that legacy materials that have been long prohibited and have not been applied to a fruit and vegetable crop, are now being detected at very small levels. The presence of a legacy material should not be considered an adulterated product, nor should the producer be subject to regulatory actions.

USDA Feedback

It is important to note that there are differences between 'trace detections' of legacy/persistent active ingredients vs. detections that are indicative of illegal uses. To USDA's knowledge, the detection associated with trace amounts of legacy materials, which often persist for years in the environment, would not typically trigger enforcement actions against growers. USDA's Pesticide Data Program (PDP) reports all pesticide detections associated with established market-basket or targeted sampling programs. USDA defers to EPA and FDA on whether specific detections trigger actionable enforcement under established regulatory statutes. It is the USDA Office of Pest Management Policy's understanding that such actions would be decided on a case-by-case basis, based upon the weight of available evidence.

Status: Complete. No further action.

- We recommend the Agriculture Secretary work with EPA to require biotech developers seek the necessary reviews by USDA for seed genetics and EPA for the corresponding pesticide registration simultaneously, resulting in a joint approval process, and that the two agencies increase collaboration before seed genetics and corresponding pesticides are approved. We hope that a simultaneous and joint approval process will serve to facilitate discussion between the two agencies and prevent confusion among farmers.

USDA Feedback

The USDA Animal and Plant Health Inspection Service (APHIS) notifies EPA when a petition involving a pest incorporated protectant is received and keeps EPA informed of the status of our review, while EPA provides USDA with information on where they are in the registration process. Each agency has their own timeframe requirements. APHIS does not condition a deregulation on EPA's issuance of a registration, and APHIS does not withhold deregulation until EPA issues a registration. USDA and EPA share information and may collaborate regarding publication timing of decisions on herbicide tolerant crops and their corresponding pesticide herbicide. This collaboration is entirely voluntary because the agencies' regulatory processes originate from two very different statutory authorities – the Federal Insecticide, Fungicide, and Rodenticide Act for EPA and the Plant Protection Act for USDA.

Status: Complete. No further action.

- We recommend the Agriculture Secretary work with EPA to require chemical manufacturers to write their chemical labels in a uniform manner so that producers can easily determine the correct requirements of applying materials.

USDA Feedback

USDA agrees that uniform pesticide labels are desirable and critical for producers. USDA works closely with EPA during the registration review process to provide input on making labels more consistent, practical, and clear to minimize liability on the part of users.

Status: Complete. No further action.

- We recommend the Agriculture Secretary work with EPA to establish crop groups that are consistent with each other and with industry standards, terminology, and other accepted practices.

USDA Feedback

USDA agrees the establishment of crop grouping provides growers pesticide tolerances for multiple-related crops that allows the registration of pesticides utilizing representative set of crops, thus easing regulatory burdens, reducing pesticide residue testing costs, and expanding opportunities for specialty/minor crop producers. In May 2016, EPA and IR-4 (funded by NIFA) established the Crop Grouping Project. In October 2019, EPA issued a proposed rule that separated and defined two new crop groups – Crop Group 25: Herb Group, and Crop Group 26: Spice Group. EPA’s crop group revision effort is ongoing and endeavors to reflect industry terminology. However, occasional conflicts in verbiage are sometimes inevitable, given the conflicting statutory needs of pesticide residue chemistry requirements and risk assessment against the needs for marketing and colloquial understanding.

Status: Complete. No further action.

- We recommend the Agriculture Secretary support additional base funding for applied specialty crop agricultural research at land grant Universities (Agricultural Experiment Stations and Cooperative Extension) that can be used to address regional and local priorities driven by producer needs.

USDA Feedback

AMS Transportation & Marketing Program (AMS/TM) understands this recommendation to relate to NIFA Specialty Crop Research Initiative (SCRI) grants which support research and extension for food and agricultural challenges in 5 key areas focused more on production. AMS/TM grants are generally more focused on marketing challenges.

According to NIFA, this recommendation would involve a policy decision; which is beyond the FVIAC’s primary objective to improve programmatic services to the fruit and vegetable industry. While the FVIAC may prefer the USDA request additional funding for Hatch and Smith-Lever and Evans-Allen and 1890 Extension programs, such requests would be accomplished through the Department’s budgetary process and would ultimately require congressional appropriation to be effective.

Status: Complete. No further action.

- We recommend the Agriculture Secretary prioritize grant funding available dedicated to the development of new labor-saving technology and equipment development with the goal of improving agriculture labor efficiency and demand.

USDA Feedback

AMS grants are primarily focused on marketing. However, the Specialty Crop Block Grant Program can be used to fund a project that is technology based – as long as it enhances the competitiveness of specialty crops. This type of project under this program would be competing for state allotted grant funding priorities. AMS/TM grants would not be responsive to the “goal of improving agriculture labor efficiency and demand.

At NIFA, there are five legislative priority areas for SCRI. One of these involves the development of sensors, automation and mechanization and other modern technologies to improve the efficiency, profitability and demand for agricultural labor. In fiscal year 2019, NIFA funded 20 SCRI projects. Eleven of those contained elements relating to technology development. The amount of funding relevant to technology development was \$4,197,493, or about 6% of total funds awarded. The National Robotics Initiative (NRI) and Cyber-Physical Systems (CPS) are primary programs for funding labor-saving technologies and equipment. The programs were funded at \$5,000,000 each in fiscal year 2019, out of which \$3,600,000 had direct application to labor saving technologies from NRI (72% of the total); \$1,500,000 from CPS (30% of the total).

Status: Complete. No further action.