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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

PESTICIDE PROGRAM DIALOGUE
COMMITTEE MEETING

DAY TWO - NOVEMBER 2, 2017

Conference Center - Lobby Level
2777 Crystal Drive
One Potomac Yard South
Arlington, VA 22202

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EPA Pesticide Program Dialogue

11/2/2017

1 P R O C E E D I N G S

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3 MR. KEIGWIN: Good morning. I hope you all
4 had a very good evening. I want to thank you all
5 again for the discussion yesterday. We found it to be
6 very helpful in advancing a number of issues. All
7 last night, I was thinking about how to kick off this
8 morning's meeting and then chatting with Leyla
9 earlier, I'm just going to steal her line, and so I'm
10 supposed to say welcome to the Kevin Keaney Show. So
11 there was another line that I said I wouldn't say, and
12 I won't say it. But today -- today is a very
13 important discussion, and that's why we are dedicating
14 the morning to it.

15 As you know, the last several years, the
16 staff in Kevin Keaney's branch, working across the
17 stakeholder community and at one time even using a
18 subgroup of this committee, worked on developing
19 proposals and draft regulations for how to improve the
20 worker protection standard and to advance the
21 certification and training program. And yeoman effort
22 by his staff and a number of people around this table,
23 and, you know, really across the stakeholder
24 community, giving us some very important input as we
25 promulgated those regulations over the last couple of

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1 years.

2 That being said, obviously whenever we
3 finalize a regulation, questions arise, ideas for
4 possible modifications to those regulations can arise.
5 And for those of you that were here at the May PPDC
6 meeting as part of the regulatory reform public
7 meeting, we heard a number of comments from, again,
8 across the stakeholder community about these two
9 rules, the importance of these rules, some ideas for
10 potential modification, some reasons why the rules
11 should remain as they are.

12 So what we wanted to spend this morning
13 doing is beginning a conversation about those two
14 rules. Kevin will walk you through the feedback that
15 we heard from the last PPDC meeting and the regulatory
16 reform public meeting. And what we really hope to get
17 is dialogue amongst all of you for, one, better
18 helping to understand the perspectives that we heard
19 and raised and presented during the regulatory reform
20 public meeting, but hopefully getting beyond that and
21 talking about solutions for perhaps some of the issues
22 that have arisen as part of those public comments and
23 finding ways that as a group you all can give us
24 advice for moving forward that reflect the input of
25 everyone around this table.

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1 So, at times, I think it will be intense
2 today. That's okay. I just ask that we all be
3 respectful of each other's positions and opinions and
4 know that our goal coming out of this is to try to
5 find or begin to find some workable solutions to
6 moving forward with both of these rules.

7 So we're going to start the morning with the
8 worker protection standard. We've got roughly -- a
9 little bit over an hour and a half, and then Arnold
10 Layne will come in and give you all an update on the
11 first meeting of the new public health workgroup under
12 the PPDC. We'll then take a break, and then we'll
13 spend about the next hour on the certification and
14 training rule. And then we've got some housekeeping
15 and preparations for our next meeting.

16 So why don't we get into the meat of today.
17 Let me -- Kevin was here yesterday. Kevin really
18 needs no introduction, but I'll just turn things over
19 to him.

20 MR. KEANEY: Well, Rick called it the Kevin
21 Keaney Show. I prefer to call it the show and tell.
22 I'll show, and you folks can tell, and to begin, to
23 begin.

24 To begin, as Rick said, there was -- there
25 was quite a bit of feedback on the reg reform session

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1 after the last meeting of PPDC, the half-day second
2 meeting, second day. And the topics that came out of
3 that are what we're going to be discussing today. And
4 relative to the agriculture worker protection
5 regulation, there's going to be a focus on discussion
6 on the applicator exclusion zone, the designated
7 representative provision, and the minimum age
8 provision.

9 And you have material giving you some basic
10 descriptions, definitions, and a comparison table of
11 the provisions of the worker protection regulation.
12 The second session would be certification, the
13 applicator certification regulation, which is
14 proposed. The ag worker protection regulation is
15 final.

16 And in that, there will be the discussion
17 of minimum age, a different perspective on minimum
18 age relative to applicators as opposed to the minimum
19 age in ag worker protection, focusing on handlers
20 entering -- entering treated fields early. And I'll
21 give you some perspective on the variety of grants
22 and cooperative agreements that we have to support
23 these -- the necessary activities related to
24 implementing and effectively bringing into reality in
25 the field, at least, of these regulations, so grants

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1 that are substantially supported by PRIA funds.

2 Any regulation that we write in Washington
3 -- and it's a great deal of communication and
4 implementation support before it becomes a reality in
5 the field. And we engaged in really -- in both
6 regulations a very extensive period of outreach and
7 communication. Rick alluded to the prior then --
8 prior to the regulation going final, exchanges we had,
9 but when worker protection did go final, we did
10 conduct pretty extensive outreach and communication
11 and training.

12 Obviously, we -- as you can see by this
13 screen, we devoted a great deal of effort to educating
14 and training the EPA staff and the state regulatory
15 staffs. We had very focused presentations and face-
16 to-face sessions and meetings and webinars with a
17 variety of stakeholder associations. And we engaged a
18 number of our grantees in focusing their activities
19 and developing materials that would help support the
20 implementation of this regulation -- of both
21 regulations, but primarily the worker protection
22 regulation.

23 And we did a lot of safety -- basic safety
24 training with our grantees and with our -- with our
25 staff and with regional staffs. So the compliance

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1 dates for the regulation have changed. And one of the
2 rationales for the change was a petition we received
3 from the National Association of State Departments of
4 Agriculture, Farm Bureau, and the third -- there was a
5 third member there. Do you recall, Rick?

6 Anyway, there were three -- there are three
7 stakeholder groups that petitioned to change the
8 implementation date. And their rationale was that EPA
9 had not allowed enough time for the states to prepare
10 their -- their folks, stakeholders, and the
11 communities for the regulation. And they asserted
12 that we had violated FIFRA provisions and -- and other
13 -- other regulatory or statutory provisions.

14 And that was received at the end of the last
15 Administration, and the response was negative, and the
16 response denied the fact that the -- the assertion
17 that we had violated FIFRA provisions and statutory
18 provisions and was silent on the time needed to
19 prepare the states to effectively implement the
20 regulation.

21 Early in the -- in the -- in this
22 Administration, as you can see on this screen, there
23 was a repeat submission by the National Association of
24 State Departments of Agriculture alone focusing alone
25 on the argument that there wasn't enough time to

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1 prepare the states and the materials. The compliance
2 assistance materials weren't -- weren't adequate. We
3 hadn't developed enough of them at that time.

4 And we granted -- we agreed with that
5 petition to extend the implementation of all the
6 revised provisions of the worker protection regulation
7 until there was guidance and training materials
8 completed and to allow the states enough time to train
9 their constituents. Officially, that requires a
10 regulatory action.

11 We mentioned that in the response to the
12 petition. And there's a need for a Federal Register
13 notice to be issued to change that compliance date
14 from 18 to something else, from January 2018 to
15 something else. That hasn't been issued yet, so the
16 initial compliance date is still two thousand --
17 January of 2018. That's the argument, that the
18 training materials and compliance materials weren't
19 adequate.

20 The next screen is some of the productions
21 -- the production of a grant -- a substantial grant we
22 have with Oregon State and California-Davis to produce
23 these materials necessary for training, necessary for
24 compliance assistance and so forth relative to the
25 regulation.

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1 This is a -- this is really a partial list.
2 If you get on this very -- it's a very deep website,
3 that if you want to get onto that and to see all
4 that's now available and see what is still being
5 worked on to be available soon, it's pretty
6 impressive. And they are instituting -- or they have
7 instituted a clearinghouse for all of this material so
8 that it's available for anyone who wants to download
9 it and use it, and a number of -- or folks obviously
10 are taking advantage of that. So it's a very rich
11 website and a very productive collaborative agreement
12 we have with the University of California-Davis and
13 Oregon State.

14 And that speaks to the argument that there
15 need to be -- there needs to be adequate material out
16 there for effective implementation. This is a time
17 line that might be useful for you. And it shows that
18 the date of the revised regulation when it became
19 final, when it was published in the Federal Register,
20 and then the compliance point for when most of the
21 requirements are in place except for any new content
22 that needs to be expressed in training materials and
23 for the safety poster to be available and for a
24 adequate understanding of the applicator exclusion
25 zone to take place.

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1 So -- and then that leads to the date for
2 full compliance in -- on January 2nd, 2018. So all
3 the new content of the safety display and the
4 responsibility for handlers to -- to acknowledge and
5 comply with the applicator exclusion zone would be in
6 place then. There is an important note there on that
7 screen that compliance with the new content and the
8 worker and handler training will be required six
9 months after EPA publishes the Federal Register notice
10 about the training materials being available. That
11 still has to occur.

12 So there are two things that have to occur
13 to change that compliance date -- the issuance in the
14 Federal Register specifying what the new compliance
15 date would be and then the issuance of a Federal
16 Register notice alerting folks that the training
17 material -- the training materials needed are
18 available and how -- how they can be gotten, where
19 they are.

20 Some of you that are -- were members last
21 spring of PPDC remember the focus of the second day of
22 that meeting on the regulatory reform agenda. There
23 is an executive order on regulatory reform focusing on
24 relooking at a variety of regulations. And comments
25 were solicited at that meeting, and there were a

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1 number of comments. It's probably the most raucous
2 PPDC meeting I've ever been at, but you don't usually
3 get hisses and boos and claps, but feel free to clap
4 after this presentation, but it didn't happen -- it
5 didn't happen in May last year.

6 So we did have this outreach and received
7 the comments and -- and sorted the comments into the
8 focus areas that we thought were appropriate and --
9 and the comments and recommendations are currently
10 being considered and, you know, the -- what we're
11 going to be discussing today is an indication of that.
12 But any substantive changes that have to be made to
13 the worker protection will require a separate
14 rulemaking process apart from -- it's quite different
15 than anything focused on the changing of the
16 compliance date.

17 Substantive changes require a different --
18 not -- it's a rulemaking, but it's a different type of
19 rulemaking we'd have to go through to do that. So
20 some of that may come out of -- we'll get guidance on
21 what that may be from this meeting, so we expect a
22 substantial engagement on these three issues --
23 minimum age, designated representative, and the
24 applicator exclusion zone.

25 You have a fact sheet on the applicator

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1 exclusion zone and you have some skimpy definitions of
2 each of those -- each of those items in the handout
3 you've got. So that's a rough outline that leads us
4 to the more substantial part of what we're here today
5 for, and that is the discussion of those -- of those
6 provisions, and the -- any guidance you might have as
7 to how they can be managed in the field or any
8 alternatives you might propose for us to try to attain
9 similar ends and through different means, that's what
10 we'd be interested in hearing.

11 All right, hold your applause.

12 (Applause.)

13 MR. KEANEY: Thank you very much.

14 MR. KEIGWIN: That might be the first time
15 there has been clapping at an EPA presentation at a
16 PPDC meeting.

17 MR. KEANEY: I'm shameless in soliciting.

18 MR. KEIGWIN: So on the one-page handout
19 that's in your packet, we have two charge questions
20 for the committee relative to the worker protection
21 standard, the first being what challenges do you
22 anticipate with implementing these requirements, and
23 then the second one being consistent with EPA's
24 mandate to protect public health and the environment,
25 what alternatives would you propose to address the

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1 concerns on which these requirements focus.

2 So we can take each charge question. So I
3 wanted to get some input from you all. Do we want to
4 walk through each of these three provisions and answer
5 each question? That might be -- and we'll kind of
6 circle back each time. Does that -- would that work
7 for folks around the table? Okay, so why don't we
8 start with the minimum age one and open it up to the
9 group. What challenges do you all anticipate with
10 implementing the minimum age provision as currently in
11 the regulations?

12 Iris? Amy? We'll start there.

13 MS. FIGUEROA: Thank you. Good morning.
14 Farmworker Justice, along with many other
15 organizations, participated in the process that led up
16 to the revision of the rule, including the three
17 provisions that we're going to be discussing today.
18 And, so, I just first of all wanted to thank the EPA
19 for all the work that went into that process. And I
20 also just want to reiterate our position about why
21 these protections, including the minimum age
22 protection, are so important.

23 So we believe that minors should not be
24 handling pesticides because their bodies are still
25 developing. It can have long-term health effects.

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1 They may have different levels of maturity, different
2 abilities to follow safety precautions. And in spite
3 of these concerns, the current rule has limits on this
4 minimum age protection. So there's exception for
5 family members, and it only applies to hired workers,
6 so we feel that some of the challenges that might be
7 discussed here may already be taken into account in
8 those exceptions that are already present in the rule.

9 MR. KEIGWIN: Amy, then Leyla, then Preston.

10 MS. LEIBMAN: Thanks, Kevin. That was a
11 good start to your show today, but I don't think that
12 either you or Rick really stressed the amount of work
13 that went into this, the amount of resources that the
14 EPA has spent and the time. So I have some gray hair
15 now, but I didn't in 2001 when I began to work on the
16 revision of the worker protection standard. That's
17 when I entered the show.

18 It was going on prior to that, the efforts
19 within the EPA, to begin to revise the worker
20 protection standard with the idea of protecting
21 farmworkers who are hired to help put food on our
22 tables. So that's been -- it's been going on a long
23 time.

24 I have been engaged in the stakeholder
25 process. I have sat across the table from industry.

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1 I have sat across the table from farmers. I have
2 sat across the table from the EPA. And I have been a
3 part of the formal workgroup. I have been involved
4 every -- every step of the way, and the EPA has worked
5 really hard to achieve their mission in protecting
6 workers.

7 It's an odd place for EPA because this is a
8 form of exceptionalism in which the agricultural
9 worker and the protection of this worker is put under
10 the responsibility of the EPA. That's not a usual
11 position for EPA. Usually the Occupational Safety &
12 Health Administration has that responsibility. We
13 tried to get it out of EPA because there's lots of
14 challenges, but it was ruled that EPA is, indeed,
15 responsible for protecting workers.

16 So in that light, the move to look at the
17 minimum age and make a minimum age part of the worker
18 protection standard and, what, 18? I think that's a
19 really important move. And, so, the challenge -- I'm
20 confused about the challenges that this would impose
21 since every other industry out there has rules that
22 they must comply with in order to protect young
23 workers.

24 So I actually have teenage boys, and, you
25 know, I had -- I can judge the time of this time frame

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1 because the one teenage boy was a baby when we started
2 this process. He's now 16. And both those boys work
3 on farms. It's a great opportunity for my two sons.
4 They learn about work ethic. They learn how to show
5 up on time. They learn about the hard work of
6 farming. And I'm so proud of them.

7 But at 16, they did not have and do not have
8 the cognitive ability to be applying pesticides or
9 understanding what it is to be working or how to
10 protect themselves properly. And I think many of us
11 have teenagers in this room or have -- are familiar
12 with teenagers, and this is what we're talking about.

13 And in light of yesterday's conversations as
14 well, when talking about all the challenges that went
15 on with one pesticide and the soybeans, I don't
16 understand why there should be any confusion that the
17 need for an 18-year-old versus a 16-year-old is
18 important.

19 So we should keep the minimum age at 18,
20 and, again, I repeat that we have come to this table.
21 It has been a consensus process. We have -- we have
22 gone back and forth on this, so to move this, to
23 challenge this idea that someone younger than 18
24 should be exposed to pesticides and who's hired -- I
25 want to repeat -- who's hired. Okay, we're not

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1 talking about if it's my decision for my own kid on a
2 farm. I'm talking about if you hire someone.

3 So I'm confused that this is -- this is an
4 issue, and I feel that given that every other industry
5 is able to comply with this idea that an 18-year-old
6 is a limit in terms of their involvement with
7 pesticides, I don't understand what the problem would
8 be here.

9 MR. KEIGWIN: Okay, Leyla, then Preston,
10 then Andrew.

11 MS. MCCURDY: Thank you. You know, from my
12 perspective and Children's Environmental Health
13 Network's perspective, it's, you know, a given that we
14 should be protecting children younger than 18, at
15 minimum. That is basically -- you know, I think as
16 responsible adults, that's the least we can do to
17 protect our children, so for me that's a no-brainer.
18 And I'm going to take it to the next level.

19 So thank you very much, Amy, for your
20 comments. And, actually, I definitely intended to
21 start by applauding EPA for their efforts, at least
22 I've been involved as far back as Amy, and I've seen
23 all the hard work that Kevin and his staff has put
24 behind this and the support that they have gotten, you
25 know, up the ranks to move this forward. So I want to

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1 applaud you for all that work, and also I want to
2 applaud the stakeholders.

3 As Amy said, many, many people participated
4 in this process, and -- and we are at a place where we
5 have made some improvements. But, again, as I said,
6 I'm going to take it to the next level, assuming that,
7 you know, this will be embraced, that, you know, hired
8 workers, you know, below the age of 18 will be
9 protected by this. I don't know what the challenges
10 may be, but let's figure it out.

11 So my next level is this -- the exclusion
12 piece. I'm not obviously suggesting -- I'm not that
13 naive -- I'm not going to suggest at this stage that
14 we should -- we should try to change the rules, but I
15 feel like, you know, EPA's mission is to protect
16 public health, and a big piece of that is, you know,
17 children. And, so, I would encourage EPA to think
18 beyond the regulation, and I know this always happens,
19 that, you know, continue doing the voluntary -- to
20 educate families, you know, farm-owner families, since
21 they are excluded, that they need to also protect
22 children.

23 And there is the third thing we should --
24 another issue, so if we can just look at this in the
25 broader sense as I know EPA always does, but let's

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1 continue to go beyond this regulation and try to
2 protect all children. Thank you.

3 MR. KEIGWIN: And we'll get to the other
4 provisions, too. I think for this conversation we
5 want to focus on the minimum age, but thank you,
6 Leyla.

7 So next I have Preston, Andrew, and then
8 Damon.

9 MR. PECK: Thank you. I am -- I have not
10 been doing this work as long as some of the others
11 that are sitting at the table. I concur with what
12 they've said thus far, but I know our organization
13 that's 31 this year has been involved in this work for
14 quite some time. And [audio glitch] input into the
15 revision and the different rules. And being educated
16 --

17 MR. KEIGWIN: Preston, can you bring your
18 mic a little bit closer.

19 MR. PECK: Being -- there you go. Being
20 educated by former employees at Toxic Free and see
21 about their experiences with these focus groups, one
22 of the shining things that came through were that
23 farmworkers, when discussing these issues and what was
24 important to them, there was disagreement among some
25 things, but they were all in agreement that children

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1 should not be handling pesticides because they're
2 inherently dangerous. So that is something that the
3 people that are most affected by these rules can all
4 agree upon and should be enforced.

5 I was privy this past summer during outreach
6 to some photo-voice projects that Toxic Free NC worked
7 on with -- in conjunction with Student Action with
8 farmworkers. And one of the interviews that we had, a
9 girl -- a young adult from Washington had grown up
10 picking apples with her father, who is also an apple
11 farmworker. And she recalled one incident when she
12 was younger that a pesticide spray was coming by, and
13 she herself got sprayed during that process.

14 But her concern was not so much about
15 herself but about the woman that was next to her that
16 was pregnant and the impact that that would have on
17 that child and any children that are exposed to
18 pesticides and how awful that is. So I think this is
19 a very real concern that things really happen, and
20 it's something that we hear about, and I think that it
21 is a responsibility of those that choose to engage in
22 agricultural production to protect their workers.

23 Just like any industry it's their
24 responsibility, and a minimum age is a very, I think,
25 small step but important step that we need to take to

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1 protect people as these pesticides -- I hear so many
2 people from industry discuss how they're a tool in a
3 farmer's toolbox. Well, tools come with
4 responsibility, and many of our tools that we use come
5 with age requirements and education requirements. So
6 I think if we are going to use these as tools then
7 they need to be thought of from a regulatory sense as
8 tools.

9 I did have one question -- I have a couple
10 questions about the time line, but I don't want to
11 detract -- distract from this conversation. So I
12 don't know if you want to deal with that later.

13 MR. KEIGWIN: We can do them real quick
14 because if you're having those questions, then others
15 around the table might.

16 MR. PECK: Okay. On the delay in the
17 Federal Register, why has there been such a delay on
18 putting this in the Federal Register as far as the
19 date change?

20 MR. KEIGWIN: So we do have to -- it's a
21 rulemaking that we have to undertake, and there's a
22 process under FIFRA for promulgating rules, even
23 changes to the date. So there's an internal process
24 that has to take place, and then there are additional
25 requirements that the statute requires before the

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1 public comment period begins.

2 MR. PECK: Okay. Is that a typical -- six
3 or seven months is typical?

4 MR. KEIGWIN: There's a process that
5 involves going to review by the Office of Management &
6 Budget, so those -- there's a number of administrative
7 steps that are involved in it.

8 MR. PECK: Okay. And I don't -- you know,
9 just one quick comment about the NASDA petition, too.
10 I heard Amy and Leyla talking about how they've been
11 working on this since 2001. I think it's a
12 responsibility of the Departments of Agriculture --
13 State Departments of Agriculture and growers, but this
14 is nothing new. This was known to be coming down the
15 pipeline, and I think it's a responsibility to adjust.

16 So I just find it a little -- I'm a little
17 skeptical about the actual -- that we weren't able to
18 prepare ourselves for implementation and effectiveness
19 of this. This is something that you should be
20 thinking about coming down the pipeline and should
21 prepare accordingly. Thank you.

22 MR. KEIGWIN: So Andrew, then Damon, then
23 Liza.

24 MR. THOSTENSON: My organization, the
25 American Association of Pesticide Safety Educators, of

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1 course, is tasked with educating people about the use
2 of pesticides. So the thing that was most important
3 in our mind was do we have the tools to be able to
4 accomplish whatever the regulatory requirement is. I
5 would have to say a year ago and probably even as late
6 as May that I would agree that we didn't have
7 everything in place that we needed to be able to
8 accomplish that task.

9 Since that time, I've seen a variety of
10 materials that have been released through the PERC
11 process and through other agencies, and I think that
12 many of my colleagues would agree that we do have the
13 necessary tools to do the training at this stage.
14 And, so, that's comforting to me.

15 My big concern, and I think my association's
16 concern, and I think I could speak for Liza, although
17 she'll speak for herself and her organization, is we
18 are about to embark on a new training season. We will
19 be engaged with thousands of applicators and farmers
20 and ranchers across this country this coming winter.
21 It would be extraordinarily useful if we could go to
22 those people and give them some sense of where are we
23 at with the regulation, what is being enforced, what
24 isn't being enforced.

25 Those sorts of questions are going to come

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1 up. Right now, I don't have any good clear answers
2 for them, other than to say that we're in some kind of
3 compliance assistance mode, which for the average,
4 normal pesticide applicator out there is not very good
5 guidance.

6 So our concern at this stage lies on clarity
7 and not necessarily on whether or not those training
8 tools are in place. I'm becoming more convinced that
9 those materials are now available and that we could
10 train.

11 A couple of other items, at least on a more
12 personal scale, my son became a certified pesticide
13 applicator in January, and when he became 18, he
14 applied pesticides for summers to help pay for college
15 for six years running. My daughter worked in the Weed
16 Science Research Program at North Dakota State
17 University for two years doing handler-related tasks
18 as well as worker tasks.

19 Of course, they're all above average, and
20 they're very smart children. That's what we say in
21 Minnesota and North Dakota. But I hate to always
22 agree with other people in the room, but I'm not so
23 certain that they were capable of understanding or
24 appreciating the level of seriousness with which they
25 needed to conduct themselves with those pesticides

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1 before they were 18 years old.

2 So, you know, my bias is towards the 18-
3 year-old limit, though I am very cognitive of people
4 in the industry who have very difficult problems with
5 sourcing labor to help them in their enterprises, but
6 when we start talking about actually handling
7 pesticides, it requires a certain level of maturity
8 that I'm not sure somebody under the age of 18 has the
9 capacity for.

10 So that's my spiel, and I'm sticking to it.

11 MR. KEIGWIN: Okay, Damon, then Liza, then
12 Cynthia.

13 MR. REABE: So in regards to the age
14 requirement, if I -- I want to make sure I understand
15 this correctly, though. The minimum age requirement
16 would not apply to family members if they're private
17 applicators. Is that correct?

18 MR. KEANEY: This is the worker protection
19 regulation. Yes, so the minimum age is for handlers
20 that -- and it does have the exception for, you know,
21 a wide range of family relationships, yeah.

22 MR. REABE: And, so, yeah, and that's where
23 my question comes. Aerial application businesses are
24 in general family-owned, but we're commercial
25 applicators. And, so, my question is does it only

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1 apply to -- the minimum age exemption, does that only
2 apply to family members in the private setting, or
3 would that apply to aerial applicators that are --

4 MR. KEANEY: You're commingling the
5 certification regulation and the worker protection
6 regulation. The worker protection regulation is
7 speaking about handlers, and ...

8 MR. REABE: It says here on the agricultural
9 worker protection final rule, you know, minimum age,
10 and it has the 18-year-old minimum age, and then it
11 goes on to say members of the owner's immediate family
12 are exempt. Does that include owners of aerial
13 application businesses?

14 MR. KEANEY: Hey, Nancy, for folks on the
15 phone, can you come up to a mic or Dea will bring you
16 a mic? Thanks.

17 MS. FITZ: Good morning. This is Nancy
18 Fitz. In WPS, the exemption is only for immediate
19 families of agricultural employers, so the farmers,
20 growers. It does not apply to commercial businesses.

21 MR. REABE: Okay. So would there be any
22 consideration for furthering that exemption to -- and
23 a little background. I grew up, of course, at an
24 aerial application company that my grandfather
25 started. I was mixing and loading at a very young

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1 age, very young age. I was a human flagger at a very
2 young age. It was a great place to grow up and learn
3 work ethic. And, so, we were -- we were properly
4 trained prior to any training being available.

5 At that time, a lot of this was upon
6 ourselves to figure out, and so we did that with a lot
7 of success. And I left the family business, was a
8 corporate pilot for 15 years, and one of the reasons
9 why I wanted to come back to the industry was to be
10 able to have my children help me out at my business
11 and give them the same opportunities that we had, and
12 I think I share that -- aerial application is a very
13 unique industry in that we are commercial applicators
14 but usually we're very, very small businesses that
15 operate much like small farms.

16 And, so, I'm just interested in possibly
17 pursuing that form of an exemption.

18 MR. KEANEY: That would be -- that would be
19 appropriate if you look at the table -- the discussion
20 on certification, the applicator certification
21 regulation and the table there that gives you the
22 spread of 18, 16 across states and so forth in various
23 categories. So you're then -- once you're certified,
24 it's then legal, is what you're saying?

25 MR. REABE: No, I'm saying you're still

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1 confusing the worker protection regulation with the
2 applicator certification regulation.

3 MR. REABE: Okay.

4 MR. KEANEY: And, so, when we get to that,
5 it would be much more appropriate to discuss --

6 MR. REABE: Okay.

7 MR. KEANEY: -- to discuss that.

8 MR. REABE: Thank you.

9 MR. KEIGWIN: Okay, Liza, then Cynthia.
10 Amy, I see your card. Okay.

11 Liza, go ahead.

12 MS. TROSSBACH: On behalf of AAPCO and the
13 state tribal and territorial pesticides control
14 officials, we do support the minimum age of 18 for
15 workers and handlers. We absolutely support enhanced
16 protections for anybody working with pesticides.

17 I will echo what Andrew had indicated, that
18 our concerns with the implementation were the
19 availability of materials, which were not available
20 when -- as early as we would have liked it. You know,
21 it took a little bit sooner, and in fact -- or the
22 fact that part of the implementation of WPS was the
23 commitment by EPA to have those materials available to
24 states were dependent upon those materials being
25 available. So, hence, that was our comments regarding

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1 the delayed implementation of that.

2 And I would also echo that the concerns of
3 state agencies is kind of the limbo we're in regarding
4 the actual implementation date of the requirement.
5 States are proceeding and doing education based on the
6 requirements that went into effect in 2017 and are
7 preparing for those that are effective January 2018,
8 but because of the limbo, we're not really sure what
9 to tell our agriculture producers and our applicators.
10 But, again, we do support the minimum age requirement.

11 MR. KEIGWIN: Okay, Cynthia, then Amy.

12 MS. PALMER: Thank you. I'd like to support
13 the others in this room who have spoken because we're
14 -- it seems like we're very close to a consensus. I
15 would like to thank Kevin and others for persevering.
16 Thanks to EPA for 20 years of hard work on this issue.
17 Children are vulnerable, their brains and their
18 reproductive systems, their nervous systems and so
19 forth. I would not want my 12- and 16-year-olds to be
20 handling pesticides.

21 I'm just a little concerned about the
22 questions that were being asked. They seem completely
23 lopsided. We're asking about challenges of
24 implementing this rule? It seems to me so basic to be
25 protecting children from chemicals. A civilized

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1 country protects its children in the 21st Century.

2 Thank you.

3 MR. KEIGWIN: Okay, Amy.

4 MS. LEIBMAN: Great. So I'm really pleased
5 to hear that some of the folks that are doing the
6 training and some of the state lead agencies are
7 getting comfortable with the materials that are
8 available, but on Slide -- on Slide 7, you talk about
9 compliance with the new content and worker and
10 handling training will be required six months after
11 EPA publishes the Federal Register notice about the
12 training materials being available.

13 I'd like to encourage you, particularly with
14 the comments that we're hearing today, to get that out
15 there and let people know that these materials are
16 available. And what are your plans for that?

17 MR. KEANEY: Yes, we'll survey what's
18 available and prepare that -- prepare that action or
19 that notice, rather.

20 MS. LEIBMAN: Do you know when?

21 MR. KEANEY: No.

22 MS. LEIBMAN: Okay, so, we're waiting on
23 you.

24 MR. KEIGWIN: Okay, Pat.

25 MS. BISHOP: You know, I'm certainly not as

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1 knowledgeable about this issue as many of the folks
2 around the table here, but I was just wondering how is
3 this going to -- this rule going to be enforced and
4 what are the penalties if it's not complied with.

5 MR. KEIGWIN: The program is delegated to
6 state regulatory agencies as you -- as you heard from
7 Liza, that they have the responsibility of
8 implementing and enforcing. And it's enforced via
9 pesticide labels. There's a provision on certain
10 labels that use of -- chemicals used in agriculture
11 that is called an agricultural use box that specifies
12 you be in compliance with -- and it specifies
13 particularly certain health and safety provisions, but
14 then alludes -- says "and other provisions of the
15 worker protection regulation." So it's a use
16 violation that would happen if they're not complying
17 with the regulation.

18 And penalties -- penalties vary from state
19 to state as to what -- what the penalty would be for a
20 use violation. And usually they're triggered --
21 inspections are triggered by tips and complaints.

22 MS. BISHOP: Okay, so, it would -- I mean,
23 so, somebody could conceivably avoid or not comply and
24 not be caught if they weren't under inspection or
25 something like that.

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1 MR. KEANEY: Yes, and Liza can speak to the
2 scarcity of resources at state levels for that type of
3 activity.

4 MS. TROSSBACH: I'll just echo what Kevin
5 indicated. Your state lead agencies do conduct
6 routine inspections and use observations, as well as
7 investigate any tips, complaints, or reports.

8 Obviously we have thousands of applicators.
9 I can use Virginia as an example. We have 7,000
10 private applicators, all of which have the potential
11 to have workers and handlers. And then there are
12 those that do not require certification, because
13 they're not using restricted-use products, but we do
14 make an attempt to do that. And we do follow up on
15 all of those tips, complaints, and reports.

16 Just like with any type of applications,
17 there is that possibility that pesticides are being
18 misused, and we will not know unless we are observing
19 them or getting a tip, complaint, or report. But
20 primacy does follow the state, and the states have
21 different enforce response policies. Some -- and
22 different authorities. Some states have civil penalty
23 action, which is a monetary action. Some states have
24 the ability to suspend or revoke or modify a
25 certification or a license. So it all depends on that

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1 specific state and their laws and regulations.

2 MR. KEIGWIN: I wanted to -- we've heard a
3 lot of perspectives. Other than Damon from the
4 applicator community side, I don't think we've heard
5 much from the user community side. And I wanted to
6 see if folks around the table who represent that side
7 of the pesticide space to offer any comments they
8 might have.

9 So, Allen?

10 MR. MCLAURIN: Thank you. I agree with
11 everything said. I cannot think of an instance in our
12 area or as a farmer where we would have anyone
13 working, unless it's a family operation, would have
14 anyone under the age of 18 (inaudible). So I think,
15 you know, as far as a private family, you know, like
16 Damon's situation, everything else, as a farmer with
17 his children working, that's the only exception I see
18 where anyone -- because we can't have them operating
19 equipment until they're at least 18 anyway or on the
20 farm.

21 No, what I was saying is as a farmer, we
22 would not have anyone under 18 working on the farm,
23 unless it's a family member, and that applies to
24 family farms. And I was a corporate farm, but very
25 unusual that we would have children working on the

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1 farm in any case. So I really think it's -- I don't
2 disagree with the 18 minimum age requirement.

3 MR. WHITTINGTON: And, yeah, my
4 understanding is we're fine with the 18 -- age 18
5 requirement with the family exemptions, the minimum
6 age of 18 for hired workers.

7 MR. KEIGWIN: Okay, Donnie and then Amy.

8 MR. TAYLOR: So I was a farmworker starting
9 at the age of seven in a tobacco field. At that time,
10 I didn't know the term "farmworker." I knew the term
11 "family." So you did what the family told you to do.
12 So this kind of turned out that way.

13 The only thing that we have from a
14 retailer's perspective is the labor pool in rural
15 America is very, very limited. And, oftentimes,
16 you're only dealing with families that have some
17 connection to agriculture. They were born and raised
18 on a farm, and sometimes connections and sometimes
19 experience on a farm level. So with private
20 businesses that are in the retail and application
21 side, we would like to have an opportunity for that
22 family extension as well, because it is a family
23 business, just like the farm is. So...

24 For the task here for handling, I assume the
25 same thing in mixer/loader because that's a similar

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1 comparison, mixer/loader/handler. That makes
2 perfectly good sense out in the marketplace, I think.
3 Would I let someone younger than that do that, yes, if
4 I trained them, I would, but I would have to be the
5 one to train them. I wouldn't depend on someone else
6 to do that.

7 And then for early entry, I think most of
8 our producer-growers try to do the no entry until the
9 deadline is over, unless in some emergency situation.
10 So we try to apply to that reentry statement as close
11 as possible.

12 MR. KEIGWIN: Okay, Amy.

13 MS. ASMUS: My background is that I do own a
14 family-owned ag retailer, and I'm the mother of three
15 healthy twenty-something-year-olds. But one thing you
16 have to understand, I have no objection to the minimum
17 age because when we work in ag retail and when we work
18 in farming, you have to understand that the workers
19 that we use are our children, are our neighbors, are
20 our community members. And we love and care for them
21 as much as you may love and care for my child just
22 because it's a child.

23 And we do train them, and we do protect them
24 because our workers, especially in rural ag, are a big
25 asset of our business, and it's very important to us

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1 that we protect them and that we train them to use the
2 products that we use, the tools that we use
3 effectively. And 18 is not an age that I would object
4 to. I think it's reasonable.

5 It's kind of a "duh" in my mind that
6 somebody like the EPA would have to set a minimum age
7 requirement because as assets of our communities and
8 assets of our business, as an ag retailer, we do
9 protect them, and we do train them, and we do handle
10 our pesticides as safely as we can.

11 MR. KEIGWIN: So is that as close to
12 consensus? I have not heard an alternative point of
13 view expressed. If there is one and you're willing to
14 speak up, now would be the time.

15 (No response.)

16 MR. KEIGWIN: Okay.

17 (Mild applause.)

18 MR. KEIGWIN: Okay, so maybe we'll have as
19 much success with the next one. Let's see. So why
20 don't we move on to the designated representative
21 provision. Kevin, do you want to just give folks a
22 brief background on what this provision is intended to
23 do?

24 MR. KEANEY: The ag employer is required to
25 provide pesticide application information and safety

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1 data sheets to be available for and accessed by
2 workers. And they're -- the worker population is
3 predominantly Hispanic and so it prevents -- it
4 presents challenges, age and, you know, concerns about
5 retaliation and so forth.

6 And, so, what the designated representative
7 provision is designed to help alleviate those
8 concerns, that someone is -- there's an educational
9 challenge, a language challenge, or just a concern for
10 jeopardizing your job by expressing interest in what
11 you may have been exposed to or you will be exposed
12 to. And that can be relieved by having a designated
13 representative gain that information for you.

14 And there is always the requirement that it
15 has to be -- that has to be provided to a medical --
16 medical personnel if the worker or handler requests it
17 because they feel they've been -- they've been exposed
18 and their health has been compromised. But general
19 accessing -- access to the information is a
20 requirement but specifically who gets that is tried to
21 be coped with and the designated representative, as I
22 said, to deal with issues of language or fear of
23 retaliation.

24 And a number of states have -- a number of
25 large -- large ag states have had similar provisions

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1 and haven't found problems with that provision.

2 MR. KEIGWIN: So same questions as last
3 time. Andy, are you in on this one? Are you -- so
4 Andy, then Iris, then Amy.

5 MR. WHITTINGTON: Yea, it says the
6 information and safety data sheets to a designated
7 representative under certain circumstances. Okay,
8 could you say what those -- what those additional
9 circumstances are?

10 MR. KEANEY: There are provisions -- there
11 are provisions in the regulation that describe, you
12 know, the information that the designated
13 representative would have to provide the employer
14 to -- to validly get that information. So there is
15 attempts to put some boundaries on what the designated
16 rep has to show to justify as getting that
17 information, and which it's --

18 MR. WHITTINGTON: And are there attempts for
19 what that information may be used for? The medical is
20 obvious, but I'm trying to understand what the other
21 circumstances would be.

22 MR. KEANEY: Well, I think what we want to
23 have discussed today is what conditions do you think
24 could be applied as constraining conditions as far as
25 what that information -- if there's concern for how

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1 that information would be used, then how can we
2 provide constraints to relieve those concerns.

3 MR. KEIGWIN: Okay, Iris, then Amy.

4 MS. FIGUEROA: So I just want to speak to
5 sort of the context of who farmworkers are and the
6 challenges they face. And hopefully this will answer
7 also some of the questions about what other
8 circumstances or what other types of representatives
9 might be involved.

10 So farmworkers are among the most
11 economically and educationally disadvantaged groups of
12 people in the country. As you mentioned, a lot of
13 them don't have English as a primary language. They
14 may be traveling. They may be in a different state or
15 even country to where they were exposed to the
16 pesticide as they're trying to deal with the impact of
17 that and what that might entail.

18 So, for example, we know, you know, just to
19 give you an example of a worker who was exposed to
20 pesticide, was sent back to his home country, which
21 was Mexico, was from a very small town, it was -- he
22 had to move heaven and earth just to get to a doctor
23 in Mexico. And then he had to try and get this
24 information for his medical treatment while being in
25 Mexico. So, you know, sort of the practical

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1 challenges that that presents.

2 So for a worker to have the opportunity to
3 designate someone that they trust, you know, to give
4 them, you know, that explicit authority and allow them
5 to help them to get crucial information, not just for
6 medical treatment but, for example, for a workers
7 compensation claim or some other situation is really
8 very important.

9 You also alluded to the fact that many
10 states and -- well, various states, including
11 California, Oregon, Washington, Texas, and Florida to
12 be specific, have similar provisions and have had them
13 for a while without any reports, you know, of abuse of
14 this provision. And that's not surprising to me
15 because working with farmworkers, what we have is
16 exactly the opposite problem, which is that workers
17 are very hesitant to report any incidents. They're
18 very hesitant to seek treatment. And, so, I think
19 it's really important that we have this provision and
20 that we make it easier for them, not harder for them,
21 to report pesticide incidents and to get the treatment
22 and other type of relief that they need.

23 MR. KEIGWIN: Amy, then Preston.

24 Andy, I don't know if you're back.

25 Oh, okay, Amy.

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1 MS. LEIBMAN: Thanks, Iris. I think that's
2 a really good start to helping us understand some of
3 the realities in this field and what farmworkers go
4 through. But I also wanted to just take a moment
5 again on this point and remind everybody about the
6 process leading up to the actual rule and that there
7 were a number of items that dealt with stronger
8 protections for the worker that were left off the
9 table in the spirit of developing a consensus-driven
10 rule that could be applied.

11 So in our opinion, the worker protection
12 standard is an important step forward, but there were
13 protections that are still needed. And, so, this
14 designated representative one is something that the
15 worker protection standard tried to look at against
16 what is happening in other industries, how are other
17 workers protected. And this is -- this is common in
18 other industry, and this is also common, as we talked
19 about, in the agricultural industry in other states.

20 But I think that's a really important
21 context for us to remember as we're thinking about
22 this provision. And then I do want to underscore just
23 even the challenges of a medical provider getting this
24 information. And, so, although that's in the rule and
25 everyone always says, oh, well, the medical provider

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1 can get it if they need it, there are plenty of
2 challenges, and it does have to do with the
3 vulnerability of the population that we're talking
4 about.

5 We're talking about, by and large, hired
6 workers that aren't from here, that largely do not
7 speak English, and they're here to work. They don't
8 want to cause any problems, but in some cases, they
9 need to know what they've been exposed to. And in
10 some cases, they may be hesitant to even seek clinical
11 care because they don't want to lose any time from
12 work. And, so, sometimes you do need a designated
13 representative to assist in getting this information.

14 So I want to just again remember sort of the
15 context that this is being put into the WPS, remember
16 what is happening in other industries, think about our
17 hired farmworker population, and this is really an
18 important step forward, and there already are
19 restrictions even within the WPS that make it less of
20 a protection for our farmworkers than for other
21 workers in other industries. And that right there is
22 really problematic.

23 So I want to make sure that we -- we keep
24 this and we keep this as strong as possible in
25 thinking about how to protect workers who are putting

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1 food on our table.

2 MR. KEIGWIN: Preston.

3 MR. PECK: Yeah, I concur with everything
4 that's been said thus far. But also I know that from
5 groups and networks and coalitions that I work with
6 that advocate with farmworkers and deal with
7 farmworkers either in organizing or medical or, you
8 know, legal aid, all of these things, this is a very
9 complicated rule and complicated process, even for
10 people that are familiar with it and even if English
11 is their first language and primary language.

12 And I think that we do have a responsibility
13 as people that eat the food that these people -- that
14 agricultural workers put on our table to protect them
15 and protect the agricultural system. And I think that
16 we all have rights in this room to hire, you know,
17 legal representation if we choose to do so. And I
18 think agricultural workers, especially given the
19 different challenges that they face, either
20 economically or communication-wise, whatever it may
21 be, should have the same right to choose someone, not
22 necessarily even legal representation, but choose
23 someone of their own volition to go about and get
24 information on what they have been exposed to because
25 these chemicals are inherently dangerous and, by

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1 definition, designed to kill.

2 So I think that that's important that they
3 have access to that information. And I think this is
4 really a matter of access. Thank you.

5 MR. KEIGWIN: Nichelle, then Liza.

6 MS. HARRIOTT: So hearing the previous
7 comments got me thinking about who appoints this
8 designated representative, and given that Kevin
9 mentioned there are concerns about retaliation, it
10 would seem that this representative needs to be
11 independent of the employer. So my question is who
12 would be the person to appoint this designated
13 official.

14 MR. KEANEY: It would be the worker, as
15 someone here mentioned, someone they trust to serve
16 their needs by getting that information. So they
17 would -- the worker would designate -- the worker
18 would pick the designee -- would designate a
19 representative.

20 MS. HARRIOTT: So the workers on this one
21 particular farm would get together and appoint this
22 person?

23 MR. KEANEY: No, no. The process is up to
24 the worker, obviously. It's an individual --
25 individual worker getting an individual.

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1 MS. HARRIOTT: Oh, it's a worker, a
2 farmworker who is also the designated representative?

3 MR. KEANEY: Not necessarily, not
4 necessarily. An individual farmworker would pick
5 someone they trust, and that person would be the
6 designated representative to get the information.

7 MS. HARRIOTT: Well, does each farmworker
8 have a designated representative?

9 MR. KEANEY: No. It's a specific -- it's
10 specific to an incident. If a person feels that
11 they've been infected by pesticides and want
12 information on that pesticide, they have a right to
13 get it. If they have constraints from language or
14 other constraints, then they can designate someone
15 that they trust to get that information for them.

16 I sense I haven't answered your question.

17 MR. KEIGWIN: Liza.

18 MS. TROSSBACH: One of the challenges that
19 pesticide regulatory officials face is language
20 barriers. While there are some states where you will
21 have a state regulatory authority which has the
22 ability to, you know, interact with individuals who
23 don't have English as a primary language, many don't.
24 Those resources aren't available, although we may try
25 to find them and we may be able to find some language

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1 line type services, you know, that can assist.

2 So I think from a regulatory perspective and
3 wanting to ensure that workers and handlers and all
4 pesticide users are receiving the protections, you
5 know, we support the designated representative. I
6 think that -- unfortunately, I think many times state
7 lead agencies don't get reports because of many issues
8 -- retaliation, et cetera -- but also because of the
9 language barrier. And while we try to meet that, we
10 want to make sure that if there are concerns and
11 instances and reports that we get them so we can do
12 our investigations and we can ensure that the
13 protections are in place and workers and handlers are
14 being protected.

15 So from that perspective, we certainly
16 support the, you know, designated representative. You
17 know, I can understand where there may be some
18 concerns or questions about how that will be
19 implemented on the actual farm, you know, for the
20 producer certainly, and those are issues that, you
21 know, they can address. But from our perspective, if
22 this will assist in us hearing these reports or us
23 being able to assist and get that medical information
24 or do that, you know, we would certainly support that.

25 MR. KEIGWIN: Jay.

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1 MR. VROOM: Thanks. So it's my
2 understanding that there have been some concerns from
3 one or more farm organizations expressed to the EPA
4 staff about how the specific implementation definition
5 of who may claim to be a designated representative and
6 whether there's any potential ill intent from that
7 individual who may not know anything about the
8 farmworkers that are placed on the farm. Have you
9 gotten those specific questions from any agricultural
10 farm organizations, and are they in writing? Is that
11 something that we could understand better?

12 MR. KEANEY: We did get comments that --
13 generally addressing what you're describing, you know,
14 putting the information to use that's to the
15 disadvantage of the farm. And as I mentioned earlier,
16 it might be useful here to just -- if you want to
17 offer things that can be applied as verification, as
18 constraints on the use of this information and so
19 forth, there are those things in the regulation, but
20 perhaps they need to be bolstered in some fashion.

21 MR. VROOM: Yeah, it was my understanding
22 that there were specific suggestions that have been
23 made, and I didn't know whether they've been provided
24 to you in writing from those farm organizations or
25 not, but it seems to me that there's close to

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1 universal consensus that you're hearing from around
2 this table that this is a good idea for the
3 advancement of safety compliance. But maybe just a
4 few little details around definition as who can
5 qualify as a designated representative could close
6 this deal and allow you to move forward.

7 MR. KEANEY: Yes, we can look into that and
8 obviously look into how the states that have worked
9 with that provision and found it not an issue manage
10 that aspect.

11 MR. VROOM: So, Liza, is that something that
12 AAPCO and NASDA could help -- you know, come to the
13 table with? Because I think you've got members that
14 have that kind of experience.

15 MS. TROSSBACH: Absolutely.

16 MR. VROOM: Maybe some definitions, yeah.

17 MS. TROSSBACH: Absolutely. I think
18 absolutely more than happy to assist with that.

19 MR. VROOM: My sense is that this has been
20 the biggest lightning rod in this at the close and,
21 you know, if it really is a matter of a few words or
22 definitions with regard to a federal regulation that
23 would define who could be deemed to be a legitimate
24 designated representative, I think this could be taken
25 off the table.

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1 MR. KEIGWIN: Iris.

2 MS. FIGUEROA: So just to follow up on that,
3 just to clarify it -- and correct me if I'm wrong,
4 there's a lot of elements of the rule, but my
5 understanding is the rule has a requirement that there
6 be an explicit authorization from the worker, first of
7 all. And, second, my understanding is that the
8 information is essentially what pesticides the worker
9 was exposed to. I mean, we're not talking about, you
10 know, trade secrets here or some sort of corporate
11 espionage or I don't know what is the scenario that
12 people are envisioning.

13 So, you know, just the language of ill
14 intent, I'm really having a hard time. Knowing
15 farmworker advocates, you know, I'm really having a
16 hard time envisioning that scenario of someone who
17 tries to get at a farmer by just requesting basic
18 information about pesticide exposure, information
19 which, you know, the employer is supposed to be
20 posting in a lot of cases anyway. So I might be
21 missing something, but I just wanted to clarify that.

22 MR. VROOM: So, you know, in addition to my
23 day job, I happen to be part of a family farming
24 operation, and I can tell you that there's a lot of
25 competition among farmers. And, so, it would not be

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1 unusual for this to be something that could be used as
2 an asset for ill intent from one farmer to another.
3 And, so, again, I'm not talking about anything that
4 would be of concern to you as I understand your role
5 or those who have -- all of us have an interest in
6 protecting farmworkers -- it is the kind of
7 information that can be attached to this sort of
8 information that could be advantageous to competing
9 farming interests.

10 So I think that has a lot to do with, again,
11 very minute details that I think could be resolved
12 here. I'm not attacking you, understand, right? I'm
13 trying to say that there's very little space left
14 between whoever's on either side of this issue that
15 can be resolved. And let's get there instead of
16 spending another hour talking around the margins of
17 this. If we could get the principals around the table
18 in a small workgroup, I don't think it would take half
19 an hour to resolve this. Thank you.

20 MR. KEIGWIN: So Donnie and then Amy.

21 MR. TAYLOR: I agree, just a definition.
22 The circumstances just need to be well-defined that we
23 can talk about. I do worry about trust. There are
24 people that will do some unethical things to gain
25 trust, and that concerns me. Make sure we protect

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1 them from that side as well.

2 And then the success of the states, I never
3 really thought about this. It's an issue that's
4 better handled at the state level.

5 MR. KEIGWIN: Amy.

6 MS. LEIBMAN: I just want to underscore
7 again we don't think any of this is personal. But I
8 do -- I am a little bit concerned about the -- I want
9 us to sort of think again about who we're talking
10 about in terms of who needs the designated
11 representative. This person has worked really hard to
12 get to this country to just work, okay? And the risks
13 and challenges that this person has gone through in
14 order to be able to work on a farm are incredible.

15 So then we have a population who is
16 desperate for work. They're economically
17 disadvantaged; often don't speak the language. They
18 want to keep their job. And they are not going to
19 want to do anything that would possibly put themselves
20 at risk for losing their job.

21 So this idea that they would get somebody
22 to, like, you know, get a pesticide trade secret and
23 then pass it on to another farmer is a little
24 farfetched given the farmworker population that we're
25 talking about that desperately, desperately wants to

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1 work. And it's our responsibility to help that worker
2 be protected. And, so, this is again -- it's in other
3 regs for other industries. It's working in other
4 states. And, so, there is -- you know, there is
5 specifics in the actual rule.

6 So I'm not -- again, I'm not really quite
7 sure what the issue is, but I really want us to
8 remember who we're talking about and who needs to work
9 and who needs our protection when we're thinking about
10 the distrust issue.

11 MR. KEIGWIN: Andrew.

12 MR. THOSTENSON: Well, you know, I work with
13 pesticide applicators. I work with farmers and
14 ranchers. They're very independent-minded. The idea
15 of somebody coming onto their property and demanding
16 some sort of records without any kind of credentials
17 or means of demonstrating whether or not they're
18 reliable or not ambulance chasers or those sorts of
19 things are -- well, it's just -- it goes contrary to
20 their way of life and thinking.

21 Having said that, though, they are also
22 concerned about the welfare of the people that work
23 for them. And, so, I think Jay probably has this
24 thing right. I think that if we can adequately define
25 the circumstances in which this representative would

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1 be able to get these sorts of -- this sort of
2 information then I think that this issue goes away.

3 So, you know, just wanting to add some
4 context as to why there may be sensitivity in the
5 farming and ranching community.

6 MS. LEIBMAN: Kevin, can you just clarify
7 for us, because I think this would solve the problem
8 and some of the issues that you're bringing up, is
9 that it's my understanding that in response to the
10 comments during the comment period that EPA actually
11 further constrained this particular point so that it
12 would be very clear that whoever is coming onto the
13 properties to ask for this information that it's very
14 clear. So, Kevin, please clarify that for us.

15 MR. KEANEY: Yes, I agree, and -- but it
16 still seems to be an issue of concern, so...

17 MR. KEIGWIN: Nancy may have --

18 MS. FITZ: Yeah, this is Nancy Fitz. Amy's
19 right. The proposed designated representative, there
20 were no constraints. Anybody could walk onto an
21 establishment and say I'm Kathy's designated
22 representative, please share the application
23 information and safety data sheets. We got a lot of
24 concerns and comments about that, so the final rule
25 does require that the request from the designated

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1 representative has to be in writing.

2 It can't be verbally. It has to identify
3 the worker/handler who they're representing. It has
4 to identify the specific information they're looking
5 for, so what -- when the worker was there, what they
6 were doing, and the specific information they want.
7 And it has to have a written statement from the
8 worker/handler, signed, designating that person,
9 identifying their name.

10 So I guess I'm really -- Jay and others, I'm
11 interested in what other constrains you guys think are
12 necessary to make that legit.

13 MR. KEIGWIN: Okay. Amy, then Lori Ann,
14 then Preston.

15 Andrew, were you still in, or had you not --
16 okay.

17 MS. ASMUS: I just want to point out that we
18 are not unrealizing of the plight of some farmworkers,
19 but you need to understand that the farmworker
20 population is not defined by the subset of migrant
21 workers that come into the U.S. to work. And, so,
22 while we understand that they need to have access to
23 their information and they need to have a
24 representative, if they don't -- if they have those
25 language barriers. We deal with farmworkers that are

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1 not disadvantaged migrant workers, and that may or may
2 not use this clause as an advantage to get what we've
3 talked about are growers -- and they are trade
4 secrets. Growers do weed management, insect
5 management, plant nutrition management in the best way
6 they think they are, and they are competitive with
7 their neighbor.

8 And, so, we are not asking for the
9 limitations to take away from any of those
10 farmworkers. We just want to make sure along with the
11 list that Nancy put that possibly you have the intent
12 of the designated user and what their intent to use
13 that information is, not just from the farmworker but
14 an intent of who they are and what their position is
15 and how they intend to use the information that they
16 have to benefit that worker.

17 MR. KEIGWIN: Okay, Lori Ann, then Preston,
18 then Nichelle.

19 MS. BURD: I, like many around this table,
20 echo the concerns for the workers in recognizing that
21 this is designed to protect people who don't have the
22 ability to get this information themselves after an
23 incident has occurred where they're sick and they need
24 the information. And it seems to me deeply cynical
25 and unnerving to, like, take this to the most extreme

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1 places we're talking about, that this will be
2 routinely used by farmers against their neighbors to
3 gain unfair advantages.

4 We're talking about sick people wanting
5 information for their doctors. And I just really have
6 concerns about making it harder for people who are
7 vulnerable and are sick to find someone who can help
8 them get this basic information. And I hope that in
9 developing all of this we don't take it to the most
10 cynical scenario possible.

11 MR. KEIGWIN: Okay, Preston, then Nichelle,
12 then Helen.

13 MR. PECK: I had a question, Kathy, for
14 their efforts. Kathy? When they developed the
15 specificities around it, wasn't it also -- I thought I
16 remembered some provision that caused a concern within
17 the farmworker community about being able to -- having
18 to designate which field the worker was working in at
19 the time. Is that correct?

20 MR. KEIGWIN: So, Nancy, can you clarify?

21 MR. PECK: Nancy, sorry.

22 MS. FITZ: So the ag employers are only
23 required to provide the information that had to be
24 posted when that worker was -- worker/handler was at
25 the establishment. So you do kind of have to narrow

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1 down when they were working and where they were -- or
2 at which -- if there are different establishments to
3 be able to identify the information that they have
4 access to. And it is consistent because that would be
5 -- those would have been the pesticides they might
6 have been exposed to.

7 MR. PECK: But wasn't there -- and there's a
8 time frame in which the worker could give, like a two-
9 year time frame or something like that?

10 MS. FITZ: Yeah, well, the employers are
11 only required to keep the records for two years, so
12 that's as far back as you could go.

13 MR. PECK: I think the concern that was
14 brought up was around the nature of movement with
15 farmworkers and farmworkers being, you know, the
16 migrant farmworker being in a farm -- foreign land and
17 not knowing -- I mean, I know farmworkers in North
18 Carolina that may be -- you know, they get here, the
19 growers -- they go through the growers association.
20 The growers association puts them on a bus and sends
21 them to a farm and they don't know where they are. So
22 that can cause problems, and I just want to talk --
23 you know, elevate that issue.

24 And I -- you know, I hear what Amy has
25 brought up and what Jay brought up around, you know,

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1 issues that it's a very competitive business, just
2 like any other business may be, but I just want to
3 keep harping on that these chemicals are dangerous and
4 that it's a responsibility. You enter into this
5 business knowing that you have a responsibility to
6 protect your workers.

7 And just like any other business, workers
8 have a right to know what they were exposed to, so
9 that they can provide adequate information to their
10 medical officials, so then if any problems arise, they
11 can get that, or if any legal issues happen, then
12 their attorneys can get that information. And how
13 they do that, I think we've addressed that with -- in
14 writing and making sure that the worker's properly
15 being represented, which is also a protection measure.
16 Thank you.

17 MR. KEIGWIN: Okay. Nichelle, then Allen,
18 then Andy.

19 MS. HARRIOTT: So after hearing the
20 discussion, I go back to my original question about
21 who designates this designated representative. It
22 seems to me from hearing some of the conversation
23 today that this person would need to be someone who is
24 a neutral entity.

25 This person would be -- needs to be

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1 appointed by someone who is a neutral entity. This
2 person needs to be able to talk to the farmer about
3 what is being used to have access to the information
4 that the farmer needs to provide and also needs to be
5 trusted by the farmworker. This person also needs to
6 be versed in the information that he or she is being
7 tasked with trying to make into the farmworker, so
8 this person needs to be able to explain safety data
9 sheets, for example, and be able to be available to
10 access information for medical personnel when
11 necessary.

12 So back to my original question, I know you
13 have said that this person is appointed by the
14 farmworker, but it seems to me that there needs --
15 this person needs to be someone that both the farmer
16 and farmworker could agree on to be the in-between
17 person between these two groups.

18 MR. KEIGWIN: Okay, so I'm going to take the
19 last cards that are up because in talking to Kevin I
20 think -- I think we have heard something that we want
21 to pose to all you, but I want to make sure that we
22 hear from the remaining cards up.

23 So, Allen, then Andy, then Amy.

24 MR. MCLAURIN: Amy, let me ask you a
25 question, and I'll try and -- I do not disagree at all

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1 with the representative. I think it's important that
2 farmworkers have an access to what information they
3 may need. The way we handle it, being in North
4 Carolina, and I'm sure the rest of the states, is if
5 there is a complaint that a neighbor has a complaint,
6 they report it to the pesticide board and within a
7 matter of a day or hours we'll have a call and they'll
8 come by and see us.

9 Is there any way that we can just funnel
10 this through the pesticide division of the states and
11 let them -- let the designated representative and that
12 way the farmer wouldn't even have to know who the
13 complainant was or anything. You just run it through
14 the pesticide division. It would simplify everything,
15 and we trust the pesticide people who come on our
16 farms wanting information. I just throw that out for
17 fair (inaudible).

18 MS. LEIBMAN: I think there's like -- and
19 I'm a little bit confused by your question because it
20 seems like you gave the example of, like, a neighbor
21 wanting to know what was being used.

22 MR. MCLAURIN: Well, no, if someone has the
23 complaint of something that was sprayed or they think
24 it may have harmed them or they want to know -- they
25 report us to the pesticide division and they call us

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1 and they come get the information. In other words,
2 some way we got to be able to trust these people
3 coming to us, that they're --

4 MS. LEIBMAN: So your scenario is a good one
5 as to a completely different scenario than I think
6 what we're talking about, so I think it would be good,
7 again, just to have clarity because a complaint by a
8 neighbor would be handled by -- it's just a whole
9 different set of circumstances. And, really, what
10 we're after here is about the worker.

11 And, also, guys, this is information that in
12 all other parts of the worker protection standard this
13 -- the workers actually have access to it. Like so
14 that we're not saying, like, you know, farmers are
15 giving them. So if you -- like, an unscrupulous
16 neighbor kid who is working on your farm and he wants
17 to steal that information, they can do that. So, you
18 know, maybe you want your kids to, you know, sign a
19 no-compete clause, but this is -- this is not -- this
20 is not what we're talking about.

21 This is really about -- this is information
22 that the workers -- that for safety reasons all have
23 access to it, but sometimes, you know, because there's
24 language barriers, because there's vulnerabilities, I
25 mean, these people, again, they want to work. They

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1 don't want to cause any problems.

2 And, so, in situations where they need that
3 information, just like in other industries, they
4 should have the right to be able to ask a third-party
5 representative to please ask the farmer what was used,
6 what were they exposed to. And, again, it's
7 information that, you know, with, you know, maybe a
8 higher level of education, maybe with the command of
9 the English language, all those things might be
10 easier, or maybe without fear of being fired because,
11 you know, there's an antiretaliation rule -- or
12 there's an antiretaliation language that was left out
13 of the original WPS.

14 I just want to remind everyone of that. But
15 this is -- this is something really that the worker
16 can get this information. It's just that in many
17 cases because of who this worker is, they're not going
18 to be able to. So if there are concerns about
19 information being spread to other farms or the
20 competition there, that largely isn't going to come
21 from the hired farmworker. And then that's a whole
22 other legal issue that farmers who hire educated,
23 English-speaking workers might want to look into if
24 that's something that they're scared about.

25 MR. KEANEY: Okay, Andy.

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1 MR. WHITTINGTON: Well, I think we're
2 narrowing it down and that everybody -- everybody is
3 of the opinion that the farmworker needs access to
4 this information, especially for immediate medical --
5 immediate medical conditions or conditions that he's
6 been exposed to. He could possibly need it for some
7 legal action at some point that he would need to have
8 his attorney have that information or, you know,
9 worker comp claim at some point.

10 I think the concern is outside of those
11 people who are required to hold that information
12 confidential what would be the other circumstances
13 that they would need that information and what could
14 the designated representative do with that information
15 outside of his representation of that individual
16 worker.

17 So I think if we can narrow that down or
18 eliminate that, that would be -- I think we're done
19 with this section and we can move on.

20 MR. KEIGWIN: All right. So thank you all
21 for that. I heard two recommendations on this issue
22 coming forward. And, so, I just want to see if I
23 captured it correctly. I think there seems to be
24 general, widespread support across our committee that
25 workers should be able to have access to this

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1 information.

2 What I heard were two recommended paths
3 forward. One -- and we will take these back. One
4 would be to form a very short-term workgroup to help
5 to work through some of the varied types of issues
6 that Andy and Allen from a user perspective were
7 mentioning. I'll throw Jay in, too, as being part of
8 a family farm operation, mindful of the worker needs
9 that have been expressed by many around the table as
10 well to try to see what types of further clarification
11 might be necessary.

12 And then the second thing that I heard,
13 which might -- the second one might help to inform the
14 first one -- is to enlist AAPCO in looking into those
15 circumstances in states that already have a provision
16 like this or similar to this to find out just kind of
17 operationally how this provision has been utilized and
18 what, if any, concerns have come up in workers being
19 able to avail themselves of a similar type of
20 provision.

21 Does that reflect what people heard around
22 the table?

23 (No response.)

24 MR. KEIGWIN: Okay. So we will take that
25 back. So we are at 10:05. This has been a great

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1 discussion. We still have one more aspect of the
2 worker protection standard that we were going to
3 discuss before the break. These have been very robust
4 discussions. I don't know if people want to take a
5 quick break now. I'm seeing some nods. So could we
6 come back at 10:20, no later than that, and we'll pick
7 up with AEZ at that point. All right, thanks.

8 (Brief recess.)

9 MR. KEIGWIN: Okay, so we've got one last
10 topic that we wanted to cover today regarding worker
11 protection standard that is the application exclusion
12 zone. I think I said -- I did it right this time,
13 Nancy? So, Kevin, can you help kick this one off?

14 MR. KEANEY: Well, pesticide labels have
15 basic provisions saying don't spray people. And it's
16 kind of straightforward. Perhaps the provision in the
17 worker protection, the application exclusion zone was
18 trying -- it was trying to give ways in which work
19 would not have to be stopped during application in
20 order to prevent spraying people.

21 But I think what we're concerned with here
22 is the challenge, the complexity of the application
23 exclusion zone provision or the fact that there's
24 already a provision labeling that says don't spray
25 people, or does it create challenges for enforcement

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1 since you have to be present as an inspector to
2 witness violation of the provisions of the application
3 exclusion zone? Those are all questions that I think
4 would be helpful to discuss.

5 MR. KEIGWIN: Okay. So Damon, Iris, Amy.
6 All right, Damon.

7 MR. REABE: Just a clarification, does the
8 application exclusion zone -- in aerial application,
9 we're using spotters that are trained by our -- by our
10 company. They travel to the field, and they observe
11 the application and they carry two-way radio
12 communication so that they can communicate with the
13 pilot. And they're observing where the spray is
14 landing and then communicating that back to the pilot.

15 So in an application exclusion zone as --
16 would a -- would a person that's trained and wearing
17 PPE be allowed in the application exclusion zone or
18 not?

19 MR. KEANEY: If you follow the -- if you
20 look at the fact sheet that's provided there, it's --
21 it's admittedly about ground application and then
22 having a sort of a bubble of protection around the
23 application -- applicator equipment that would allow
24 people in, as long as they weren't within that --
25 within that bubble.

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1 MR. REABE: So, but being -- is it possible
2 to be within the bubble with PPE donned?

3 MR. KEIGWIN: Nancy, do you want to clarify?

4 MS. FITZ: Yeah, I'd love to jump in. Yes,
5 the -- and a handler who is properly trained and
6 equipped and involved with the application is allowed
7 to be in the bubble.

8 MR. REABE: Thank you.

9 MR. KEIGWIN: Iris, then Amy.

10 MS. FIGUEROA: Thank you. So just generally
11 and briefly, we just want to reiterate, we think this
12 is an important protection. One of the leading causes
13 of pesticide poisoning for farmworkers is actually
14 exposure from nearby or adjacent fields, so this is,
15 as you expressed, just trying to get at preventing
16 some of that harm beyond what may be in the label an
17 insert of having explicit and practical measures that
18 can be taken to help prevent that harm, not just for
19 the workers, but also for bystanders who may be
20 affected.

21 MR. KEIGWIN: Amy, then Andy.

22 MS. LEIBMAN: Thank you. I just wanted to
23 echo some of that, and that really I think that it's
24 important to look at the intent of what the worker
25 protection standard is trying to do in terms of

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1 minimizing the exposure of the worker to pesticides.
2 And it's basically just trying to keep -- keep workers
3 away, and it might have a big word -- application
4 exclusion zone -- but in essence it's something that's
5 pretty important that's looking at how can we make
6 sure -- how can we minimize workers' exposure.

7 So in terms of, you know, the challenges, it
8 is consistent with your mission, and, you know, I have
9 lots of ideas if you want to go further than what's in
10 the WPS, if you want to strengthen this part. I'm
11 happy to chat with you about that, but in terms of
12 what you're trying to do here, it's a good first step
13 in terms of trying to keep the worker protected.

14 MR. KEIGWIN: Andy, then Sharon, then Liza.

15 MR. WHITTINGTON: So agree that we need to
16 keep this stuff off of -- nobody wants to spray
17 people. And I don't come from an area with a lot --
18 large migrant worker population, so I'm thinking of
19 this in terms of explaining it to my farmers who don't
20 have a lot of workers in any particular area, and it's
21 with the difference between the onsite obligations
22 versus the offsite -- outside of the facility
23 boundaries. And the question that I have been asked
24 is a car coming down a highway, if you're spraying the
25 end of the field, a car coming down the end of the

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1 highway, do you cease application at that point until
2 it moves out of the area. I mean, that's one.

3 Obviously, if a person is walking down the
4 highway, I would advise them to cease application
5 until that person is gone, but that was one of the
6 things when it came up about the houses that are next-
7 door, you know, not owned by the facility but a
8 neighboring house, if the people are inside, do you
9 have to cease application within the hundred feet, or
10 do you have to wait until they're not home?

11 There's -- so those are the two instances
12 that my farmers have asked me for clarification on, is
13 the automobiles on a highway and if you have to cease
14 application for people or if they're -- obviously if
15 they come outside of the house, they would cease
16 application, but if they're inside the house while
17 you're making the application, do you have to cease
18 application until they're not home.

19 MR. KEANEY: Nancy, I'd like you to respond
20 to it just as a result.

21 MS. FITZ: Thanks, Kevin. So the rule
22 itself says if any person -- worker or other person --
23 other than a trained and equipped handler involved
24 with the application is in the AEZ, the handler has to
25 suspend the application. The information -- so if

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1 there's some -- so that would say if somebody's in
2 that car, if somebody's in the house, if somebody's
3 walking down, they would have to suspend.

4 What we heard from the states right when
5 this came out was, well, when can they start up again.
6 And the rules does -- does not address that. And, so,
7 the handout that Kevin provided with the AEZ
8 interpretation says if that car's coming down or they
9 think somebody's in the house, they have to suspend,
10 but then if they can assess the situation, assure that
11 they can continue the application without contacting
12 that person, then they can resume.

13 So in theory, if the wind's blowing the
14 other direction or they can be sure they're not going
15 to contact the person in the car or in the house, then
16 they can continue. You did get to some areas where we
17 do need to kind of provide some clarification in terms
18 of what exactly is contact in this -- with the car and
19 the house, and that's one of the things on our to-do
20 list yet is to provide some clarification on that.

21 MR. KEIGWIN: Sharon, then Liza.

22 MS. SELVAGGIO: I want to say that with
23 regard to this AEZ, the 100 feet already seems quite
24 minimal for aerial air-blast fumigation, smoke, mist,
25 et cetera. We know that drift, especially for those

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1 kinds of applications, can extend far beyond that. So
2 we definitely are not in favor of weakening the size
3 of the AEZ at all.

4 The other thing that concerns us is that
5 we've become aware that some -- some producers are
6 apparently interested in interpreting this provision
7 to allow sheltering in place for migrant housing,
8 labor housing that is onsite or adjacent to some of
9 the agricultural areas. And we're very concerned
10 about that. We don't think that that is a fair
11 interpretation of what this rule was meant to address.

12 We do recognize the difficulties in
13 implementing this when there is housing especially and
14 when night applications might take place, but we
15 believe that, you know, the intent of this particular
16 provision really needs to be upheld because we're not
17 just talking workers now, but we're talking the
18 workers' children, the workers' family, and other
19 people who, you know, could potentially be affected
20 that are -- the intent of this provision is to protect
21 those other people who might be quite vulnerable,
22 untrained, young, sick, you know. So we don't want to
23 see any weakening of this particular provision.

24 MR. KEIGWIN: Okay, Liza, then Dominic, then
25 Tim.

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1 MS. TROSSBACH: Again, as I had mentioned in
2 our previous discussion, pesticide regulatory
3 officials certainly support protections of
4 workers/handlers/bystanders, you know, any persons
5 involved. I think with the application exclusion
6 zone, I think it is for some kind of a difficult
7 concept because it's a moving target as the
8 application moves, but I think that's a matter of
9 outreach and education, so applicators understand
10 that, and I think the guidance that's been provided by
11 the EPA will assist and that there may be further
12 guidance needed, just so we can make sure, you know,
13 that individuals, you know, do particularly understand
14 that.

15 I think that there was a question or a
16 comment about the enforceability of this and does a
17 state lead agency or a regulatory official need to be
18 onsite. As I had mentioned earlier, we do routine
19 inspections and use observations, so there may be the
20 opportunities that we're actually onsite during these
21 applications, but if we were to get a tip, some kind
22 of report, we would handle it like we do any
23 investigation at that time, which would include, you
24 know, interviewing the complainant, interviewing the
25 respondent, which may be the agriculture producer, you

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1 know, applicator, you know, handlers, you know,
2 workers to gather as much information, looking at
3 records, et cetera, to try to determine if, in fact,
4 those provisions were met. So we would handle that as
5 we do any other type of tip, complaint, or report
6 regarding a potential pesticide misuse.

7 So it's having your regulators educated,
8 having your industry regulated, and then -- or excuse
9 me, educated, and then being able to go out and do
10 those investigations if needed.

11 MR. KEIGWIN: Dominic, then Tim, then
12 Andrew.

13 MR. LAJOIE: Thank you. I just want to
14 share one of the challenges on my farm. I do all of
15 the applications on our crops, and it's actually ATV
16 riders or all-terrain vehicles that have access to the
17 public roads around our farms, and all these public
18 roads are dirt roads, but it's access to the public.
19 And a lot of times, I don't see them before they show
20 up into my exclusion zone.

21 So whether they show up behind me, and so I
22 immediately stop application, but a lot of times I'm
23 probably in violation with this rule. Some of these
24 ATV riders are educated enough to know that if they
25 see me, they'll stop and wait. A lot of these are

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1 young kids riding around on the trails. You know,
2 they're just -- they don't understand.

3 But I guess it's going to be a challenge for
4 me to really keep that exclusion zone without knowing
5 when somebody's going to pop up behind me. That's
6 just one challenge of people in that zone.

7 MR. KEIGWIN: Tim, then Andrew.

8 MR. TUCKER: I don't see anything in the
9 notes regarding this, about the considerations of the
10 different materials that might be being applied, you
11 know, whether it's a pesticide or herbicide. And
12 anything that's stating, you know, maybe a time limit
13 for this AEZ, you know, because it seems to me, having
14 been in the pest control industry for 18 years, that
15 we're not only trying to keep it off people when we
16 spray but trying to minimize their exposure maybe even
17 for a certain amount of time.

18 So I think my questions would be -- and I
19 have a concern, too, like Sharon does for the hundred-
20 foot limitation seems very, very minor and very small.
21 But what is the time -- was there any consideration
22 given to the difference in materials or time, and then
23 is there any kind of communication that goes on
24 between the applicators and the harvesters and growers
25 much like we have drift watch where the pickers or

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1 growers, harvesters are notifying aerial applicators
2 of where they would be harvesting, you know, on
3 certain days to minimize exposure.

4 So are there any -- are there any guidelines
5 for communication as well as these time
6 considerations, how long you should be out of the
7 area?

8 MR. KEANEY: There are the -- excuse me.
9 There are things that are product-specific, obviously,
10 as far as the -- that requires notice of workers, and
11 then there are also the product-specific restrictions
12 on entry based on toxicity of the product, obviously,
13 after application.

14 MR. KEIGWIN: Andrew?

15 MR. THOSTENSON: I believe the AEZ -- and
16 Nancy can help me with this -- the AEZ -- the buffer
17 expires as soon as the application is completed. It
18 goes along -- you know, when you're -- you have to
19 think of it as an invisible bubble around you. When
20 you're going down the field and you're spraying, you
21 know, I'm not going to have people in that area. But
22 as soon as I get further down the field, then that
23 area that I just sprayed is different. It's no longer
24 in an AEZ. It may be under an REI, which is a
25 different animal in general, restricted entry period.

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1 Does that help you with that?

2 Nancy, am I correct on that? Okay. Boy,
3 scary.

4 You know, I've been training pesticide
5 applicators for 21 years. And the first time I saw
6 this AEZ thing, I thought it was some kind of weird
7 construct that only EPA could come up with. And I
8 thought that it would be very difficult to explain to
9 my applicators. And one applicator explained it all
10 to me in a very short sentence: we don't spray
11 people, okay? So if that's the prime directive, then
12 this whole AEZ thing is not really that big of a deal.

13 We don't spray people. We spray pests.
14 And, so, the AEZ thing seems to me in my experience
15 with my applicators to be a tool to reinforce that
16 notion that we don't spray people. And, so, you know,
17 my early reservations to this particular rule have
18 kind of melted away. As long as it's properly
19 explained, and when the farmer or an applicator
20 explains to me in response we don't spray people, and
21 that's the answer to the AEZ, then it all makes sense.

22 So that's my spiel.

23 MR. KEIGWIN: Okay, Richard.

24 MR. GRAGG: Okay, so the -- I'm just
25 thinking about the discussion about the drift and then

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1 the minimum age discussion as well. And I'm not clear
2 -- I get what you just said, you don't spray people,
3 but I don't -- I'm not clear how this 100 feet -- what
4 it's really accomplishing. I'm thinking, okay, you're
5 in a plane and you're putting out the pesticide,
6 where's the AEZ on that?

7 MS. FITZ: So the AEZ is basically
8 assistance around the application equipment that moves
9 with the application equipment. So in addition to
10 don't spray people, what it says is if someone's near
11 the application equipment, stop and then the ag
12 employers have to make sure workers are not near the
13 application equipment. So if I'm -- the application
14 equipment, I'm going to stick my arms out, this is the
15 AEZ, as soon as I'm past it's gone. We're trying to
16 keep people out of this area right there.

17 MR. GRAGG: So this only applies to certain
18 types of applications or equipment?

19 MS. FITZ: It applies to different -- it
20 applies to most kinds of application equipment. The
21 distance may be different. It's 100 feet for aerial,
22 air-blast, fumigants, although fumigants tends to be
23 superceded by labels. And if it's a fine or smaller
24 droplet size. Otherwise, they're ground applications,
25 medium droplet-sized, unless you're really, really

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1 close to the ground, it's 25 feet.

2 MR. GRAGG: So I --

3 MS. FITZ: And it only applies -- it only
4 exists during the application itself.

5 MR. GRAGG: So I just want to go back to his
6 point. Mine's a little different. If you have
7 different types of material that you're applying, then
8 how does one uniform distance apply to all these
9 different types of chemicals that may react with the
10 air or whatever. They're different, so they're going
11 to have different reactions or dispersion, whatever
12 you want to call it.

13 MS. FITZ: So the dispersion really is
14 probably related more to droplet size than anything,
15 as opposed to what -- what the chemistry is, so that's
16 why we accounted for the droplet size. We did think
17 about toxicity, but, frankly, it's confusing enough.
18 Adding toxicity would make it even more difficult to
19 explain and understand.

20 And let's keep in mind, we're not saying
21 there's any pesticide actually being applied in the
22 application exclusion zone. This is -- if this is my
23 target area, we're just saying not every single drop
24 lands exactly where you want it. And if it doesn't,
25 it's probably going to be in this area closest to the

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1 application equipment. So it's an extra precaution to
2 help people make sure they comply with the do-not-
3 contact requirement.

4 MR. KEIGWIN: Andrew, then Damon.

5 MR. THOSTENSON: Yeah, the -- you know, my
6 friend over here, this aerial applicator, he knows
7 that on a windy day he's going to spray so that that
8 pesticide drifts down into the location that he wants.
9 So he's going to offset that particular spray
10 application. He knows or she knows roughly where that
11 spray droplet's going to go. And you also know that
12 if there's a person in that area, you're going to hit
13 them and you know that you're going to be held liable
14 with the state lead agency if you hit that person.

15 So I do understand the notion that this AEZ
16 thing may be a much bigger deal than it really is, but
17 we already hold aerial applicators or any other
18 applicator responsible for an exposure event,
19 regardless. So, again, it seems to me it's mostly a
20 tool. I'm not sure it's a rule that's a gotcha rule.

21 MR. KEIGWIN: Damon, then Liza.

22 MR. REABE: I think just to answer your
23 question, Richard, the spray drift task force, when
24 they did all the work to develop the ag drift model,
25 what they found was that the chemistries that were

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1 getting mixed with the water, there was no significant
2 -- there was no difference in the properties as far as
3 downwind dispersion. So when you asked the question
4 about -- I think, if I understand your question
5 correctly, you were asking about one product might
6 drift more than another, and that's not the case.

7 And really to kind of echo what Andrew's
8 saying and when we looked at this, this is -- this
9 is putting in writing a best-management practice.
10 When -- as -- whether you're an aerial applicator or a
11 ground applicator, when there are people downwind, we
12 suspend the application, and there's a lot of
13 variables that are associated with how far they're
14 downwind, what is the wind speed, you know, what is
15 the application hype going to be at that time.

16 There's just a very large number of
17 variables that we're taking into consideration while
18 making these applications. And suspending an
19 application because there's people present downwind is
20 -- I spend more time circling than spraying. I mean,
21 that's a true statement. I'm not saying that to be
22 smart about it. That's what we do. We -- and, so, I
23 hope that provides a little bit of comfort for those
24 that are wondering how this works. It's easy for an
25 applicator to understand the concept, and it's easy

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1 for an applicator to comply with.

2 MR. KEIGWIN: Liza.

3 MS. TROSSBACH: From a pesticide regulatory
4 perspective, obviously when -- if -- when we're doing
5 any type of inspections or investigations to ensure
6 compliance with the label requirements, we'll look at
7 the compliance at the AEZ, but that does not preclude
8 any other part of the label from being enforceable and
9 having to meet that. So while an applicator may meet
10 an AEZ requirement, if there is drift, that's a
11 completely different issue and it will be looked at
12 separately. So the totality of the application, so
13 the concerns about drift, you're right, certain
14 products, you know, may be apt to drift more, certain
15 types of applications may be more subject to drift.
16 We would still look at the drift component, along with
17 the AEZ.

18 So that kind of takes into account some of
19 those concerns about it's only specific to AEZ is
20 based on the type of application and the droplet size,
21 but other parts of the label focus on the chemistry of
22 that product, and that's why there may be -- you know,
23 the language about drift or buffer zones or other
24 things. So we have to look at it as one part of a
25 label and what has to be done to apply it correctly

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1 and labeling.

2 MR. KEIGWIN: So I think what Kevin and I
3 have heard from this discussion is that some
4 additional guidance could be useful and that there may
5 be some additional scenarios that -- in the guidance
6 that we've developed to date could be further enhanced
7 and that there's a role that education programs can
8 play in helping to better explain what this provision
9 is meant to be. And does that reflect what -- did
10 this end of the table hear what was happening around
11 the rest of table?

12 Damon?

13 MR. REABE: When you're talking about
14 additional guidance, you know, this is ultimately
15 labeling, which is guidance for the applicator,
16 correct?

17 MR. KEIGWIN: It could be label language.
18 It could also be interpretive guidance that we provide
19 to state agencies to -- up on our website to be
20 included in continuing education programs for
21 certification.

22 MR. REABE: Sure. Okay, well, from -- as a
23 -- from the aerial application community, it's -- it
24 is very clear for whatever that's worth.

25 MR. KEIGWIN: Any other comments before we

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1 close this one out?

2 (No response.)

3 MR. KEIGWIN: Okay. Thank you all very
4 much. So I'm going to invite Arnold Layne, the Deputy
5 Director for OPP for Management, as well as Susan
6 Jennings, who is our Public Health Officer for the
7 Office of Pesticide Programs, to come up and give us a
8 brief update on the first meeting of the new public
9 health workgroup.

10 MR. LAYNE: Good morning, everyone. I'm
11 Arnold Layne. I'm Deputy Office Director, the Office
12 of Pesticide Programs. So at the last PPDC meeting,
13 there was a lot of talk about forming a public health
14 workgroup under the auspices of the pesticide program
15 dialogue committee. And the impetus for doing such
16 was the fact that we were in the height of the Zika
17 crisis, national crisis, and then the growing public
18 health crises, whether they're natural or manmade,
19 including hurricanes and emergent pathogens.

20 And many PPDC members suggested and
21 requested that we form a public health workgroup to
22 deal with some of the issues related to public health.
23 And, so, on Tuesday, October 31st, Halloween, we held
24 our first kickoff meeting, which was an organizing
25 meeting. And it was open to the members of the

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1 workgroup only because of the fact it was an
2 organizational meeting.

3 And our goal was to define the mission and
4 determine the goals of the workgroup. So just to give
5 you a sense of the diversity of the workgroup, there
6 are 21 members representing registrants, both
7 conventional, biological and antimicrobial pesticides,
8 public health groups, academicians, NGOs and other
9 associations, as well as federal partners, including
10 CDC and NIOSH, the Armed Forces Pest Management Board,
11 as well as our own EPA regional offices.

12 And, so, we were, in the short time that we
13 had, quite ambitious and -- but successful in
14 hammering out a mission statement, and that mission
15 statement should appear on the slides in one second.
16 Oh, I have the clicker. Thank you.

17 So you probably can't read it, but I will
18 read it to you. The workgroup -- the mission
19 statement is intentionally broad, and it reads as
20 follows: The public health workgroup formed under the
21 auspices of the EPA Pesticide Program Dialogue
22 Committee will focus on policy, advice, information,
23 and recommendations regarding pest management methods
24 that control public health pests. The workgroup will
25 provide recommendations to the PPDC for consideration

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1 and sharing with the U.S. Environmental Protection
2 Agency.

3 The group then, once we codified our
4 mission, we then delved into the most difficult area,
5 and that was coming up with areas of focus. And at
6 first we had a plethora of just a long list of
7 suggestions of topic areas. And, so, one of the
8 workgroup members was successful in seeing major
9 headlines and some of the topics could meld together.
10 And, so, we decided to go with three focus areas or
11 three headline areas.

12 The first one, which is pretty overarching,
13 is communications. So in that regard, the
14 discussions focused around how might the agency
15 better communicate the risks and values of public
16 health pest interventions, what should the agency be
17 communicating, how and to whom, how can we improve
18 communications, particularly around technical topics,
19 focus on communicating the role that pesticides play
20 in maintaining and ensuring the high standards of
21 public health enjoyed in the United States.

22 The next focus area was national emergency
23 response plan. So the objective there would be to
24 develop an action plan or a standard operating
25 procedure. Likely you've heard the terminology SOP,

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1 standard operating procedure, to help respond to
2 natural or manmade disasters. And in that vein, what
3 can the agency do to prepare for emergency public
4 health tests and diseases and to public health
5 emergencies that are a result of natural or manmade
6 disasters?

7 Public health emergencies sometimes test the
8 agency's ability to respond quickly and easily. By
9 anticipating some frequent needs during emergencies,
10 EPA could be a more effective partner for recovery
11 such as creating an SOP or action plan tailored to
12 different scenarios or environments after being
13 impacted by a natural or a manmade disaster, defining
14 suitable tactics for insect disease vector control.
15 An example of a manmade disaster was actually in 2001,
16 which was the Anthrax attacks. EPA supported this
17 incident, but there may be a need to improve our
18 ability to respond to bio attacks in general. So that
19 was the second focus area or headline area.

20 And the last one is resistance management.
21 And the objective there is to further define and
22 elevate the agency's role in public health pest
23 resistance prevention and response. And along those
24 lines, the agency -- or the workgroup, with the
25 support of the PPDC, could do a number of things --

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1 develop a plan to understand and prevent resistance to
2 treatments such as using predictive modeling and data
3 analytics and proper use of pesticides, evaluate
4 resistance impacts on emergency response.

5 The group would like to focus on resistance
6 management for public health pests, similar to what's
7 been done for herbicides. We want to educate efforts
8 supporting the need to prevent and minimize further
9 development of resistance in pest populations; and,
10 lastly, evaluate expeditious means to clear or approve
11 new pesticides to encounter or counter resistant pest
12 threats when public health risks arise.

13 So our next meeting, which we have not
14 scheduled yet, but will very shortly, will allow us to
15 narrow our focus and add more specificity to these
16 three headlines. Before I end, I do want to thank the
17 workgroup members for their productive meeting. We
18 didn't have a lot of time, but we got a lot
19 accomplished in that short span of time.

20 I also want to thank them for their time,
21 talent, and their commitment to this extremely
22 important topic. And with that, I think I covered
23 this in five minutes.

24 MR. KEIGWIN: You did. Thank you.

25 MR. LAYNE: The agenda called for it.

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1 MR. KEIGWIN: So are there any quick
2 questions or comments for Arnold? Aaron and then
3 Liza.

4 MR. HOBBS: Thank you. So I have a couple
5 of questions about process and membership. So being
6 new to the PPDC in an official capacity at this
7 meeting, not right now probably, but if we could get
8 some more clarity about how this workgroup was spun
9 up. As I heard it right now, it sounds like let's
10 create a workgroup, and then we'll decide what we're
11 going to do later. It seems a little backwards to me,
12 but, again, I'm new. Maybe that's normal to bring
13 clarity to the mission after the workgroup is created.
14 So I'd like just some more clarity around process for
15 -- so that as we move forward together we understand
16 exactly how to be engaged and what the proper order
17 for that is.

18 But then also membership, given that there
19 are a significant number of new members, myself
20 included, that are extremely interested in anything
21 that relates to public health pesticides, I would call
22 that that membership be reopened and that especially
23 those that are new to the table have the opportunity
24 to serve on the workgroup.

25 MR. LAYNE: Okay, so, as I mentioned, the

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1 impetus for going forward with the workgroup was the
2 fact that we were dealing with a national crisis of
3 Zika. And then came the hurricanes and such. And the
4 PPDC at that time felt that it was important for us to
5 have a side workgroup to focus on public health issues
6 and bring -- as I mentioned, the role of the workgroup
7 is to bring issues to the PPDC for consideration. So
8 the fact that you're on the PPDC will mean that
9 anything that we discuss any recommendations that we
10 bring forward, this entire body will have an
11 opportunity to weigh in on it.

12 And, so, we did open up a call for
13 membership. We got overwhelming response, and as you
14 may know, in order for a workgroup to be successful --
15 and we have a time limit -- we have a year in which to
16 work. In order for any workgroup to be really
17 successful, the membership needs to be as tight as
18 possible. And, so, I would -- I take your
19 recommendation to reopen, but we went through an
20 exhaustive process to get the workgroup where we are.

21 We have now formed and gelled. We went
22 through the storming phase on Halloween, and we're in
23 the process of moving forward. I'm not certain
24 opening up membership -- we had to turn away some
25 folks, and that will cause a lot of angst, and I don't

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1 think that's a productive approach to take in
2 reopening membership.

3 Again, as this body, we are reporting to
4 you, and you will have an opportunity to weigh in on
5 anything that we bring forward for your consideration.

6 MR. KEIGWIN: Okay, I'm just going to take
7 the remaining cards up, plus Jim Fredericks before
8 I -- you just got in.

9 MR. LAYNE: I'm sorry, Rick.

10 MR. KEIGWIN: Yeah.

11 MR. LAYNE: I just want to add one thing.
12 Going forward, as I mentioned, the workgroup meetings
13 are open. And, so, if you would like to attend those
14 meetings, you're more than welcome to attend those
15 meetings. But there will be open meetings, but the
16 workgroup will -- the Public Health Workgroup will be
17 setting the agenda, will be having the dialogue, and
18 depending upon the workgroup's recommendations, we
19 will determine how we will deal with people who attend
20 from the public.

21 MR. KEIGWIN: Okay, Liza, then Jay, then
22 Cynthia.

23 MS. TROSSBACH: Thank you. I want to just
24 say that -- I have a comment and question. The
25 comment is I think it's absolutely appropriate to have

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1 -- that the Public Health Workgroup, I think, the
2 experience that state lead agencies, tribes and
3 territories experience and are experiencing with Zika
4 and, of course, the most recent, you know, national
5 disasters. I think it's absolutely appropriate, and I
6 think there are a lot of issues to be addressed.

7 I particularly am happy with the -- you
8 know, with the national emergency response plan. I
9 think that will help states and tribes and territories
10 to understand what their role is. Obviously as we
11 regulate pesticides, we are brought into a number of
12 those situations, so it would be very helpful to us to
13 understand or to get some guidance on what our roles
14 may be, particularly the role of pesticides in public
15 health situations. You know, I think that's fantastic
16 and, of course, the resistance management.

17 I do have just one question. When we're
18 talking about public health pests, because the group
19 is -- you know, it's broad -- the mission is broad,
20 does that include only those pests that are identified
21 as public health pests, or could it be, you know,
22 anything beyond that? You know, that may come up.
23 And, so, I just want to make sure that it could be,
24 you know, that it is broad or is it just specific to
25 those listed.

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1 MR. LAYNE: Well, we actually -- thank you,
2 first of all. We got into a conversation about some
3 of the nuisance pests. And remind me where we ended
4 up on those. I think there are -- we will consider
5 those as we move forward, if I'm -- if I remember
6 correctly. And in particular, we were talking about
7 biting mosquitoes that may not vector disease. So --
8 but, yes, I think it will include all kinds of pests.

9 MR. KEIGWIN: Jay, then Cynthia, then Lori
10 Ann.

11 MR. VROOM: So I've talked with a couple of
12 representatives in the workgroup and am impressed with
13 the quality of the work that you've done so far and
14 the agenda that you put together, so congratulations.

15 I think resistance management is important,
16 and I'm glad to see that that's a highlight and focal
17 point and would ask you to keep in mind that quite
18 often agricultural resistance management concerns very
19 much overlap with those in the public health
20 application sector, and I'm sure that the staff of the
21 agency will help connect those dots.

22 MR. LAYNE: Thank you, Jay. Duly noted, and
23 we did talk about that in the first workgroup meeting.
24 Thank you, sir.

25 And I will say also, just to your point,

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1 nuisance pests can easily become public health pests.

2 MR. KEIGWIN: Cynthia, then Lori Ann, then
3 Kim.

4 MS. PALMER: I appreciate that you've got
5 this workgroup, given the horrors of Zika and the
6 hurricanes. I just had a question regarding that last
7 bullet under Communications. You said that part of
8 the role would be to delineate -- I may be getting
9 this slightly misquoted, but the important role of
10 pesticides in maintaining the high standards of life
11 in the United States, something like that. And I just
12 wanted to acknowledge that sometimes pesticides are a
13 problem and sometimes they're a solution. And, so, if
14 we change the wording to pest -- the importance of
15 pest control, I think we would be good with that.
16 Thank you.

17 MR. LAYNE: Thank you.

18 MR. KEIGWIN: Lori Ann, then Jim.

19 MS. BURD: Thanks. So if human-caused
20 climate change leads to more hurricanes and natural
21 disasters, I think -- I'm curious to hear from you all
22 more about what is an emergency. And, you know,
23 you've just talked very briefly about what, you know,
24 regular sort of pest mosquitoes versus carrying
25 mosquitoes might mean. And, so, I'm -- you know, I'm

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1 hoping you guys will really work on articulating that
2 as an issue.

3 In Houston, there were just 6 million acres
4 of Naled sprayed. And there wasn't a disease risk
5 raised. It was a -- that they were really bothering
6 people on the ground. It was an adulticiding and, you
7 know, I wasn't on the ground. I don't know exactly
8 what was going on there. I wonder if larviciding
9 might have been a better choice for right then, you
10 know, and I just urge a very cautious and thoughtful
11 response to this, you know, measuring is there a human
12 health threat, is there not a human health threat, are
13 we anticipating a huge hatch, or is it happening right
14 now, is it getting in the way of relief efforts.

15 And it's just a really robust conversation
16 about what an emergency is. And from the endangered
17 species perspective, there are a lot of species
18 getting really hammered by these hurricanes right now,
19 and to withstand an aerial application of Naled,
20 especially over such large acreage, could really be
21 the end of some species. So some thoughts for your
22 workgroup.

23 MR. LAYNE: Thank you. We appreciate that
24 and we will take that to the workgroup. We did --
25 just so that you know, we had quite a bit of

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1 conversation on IPM and the role that IPM plays, not
2 just pesticides. And we also talked about the fact
3 that with some of the workgroup members, like
4 Nichelle, for example, how it's so important to get
5 children and educate children.

6 Having served the agency in the lead role
7 for Zika, and it was in the midst of that crisis, I
8 can assure you that when children are taught about
9 public health issues or any issues that you can liken
10 it to recycling, for example. They go home, and they
11 tell the parents, no, don't put that plastic bottle in
12 the garbage, it can be recycled. So we talked a great
13 deal about IPM.

14 It's just not -- I mean, there's a long list
15 of things that fall under those three major headlines
16 that we just don't have the time to talk to you about
17 today. And we want to go back and further refine
18 those three major headlines. But we certainly take
19 into consideration IPM, and we promote IPM quite a
20 bit, as we did with Zika.

21 MR. KEIGWIN: Jim.

22 MR. FREDERICKS: Well, thanks. And I wanted
23 to first of all just commend EPA for putting together
24 this workgroup and also to commend you on noting the
25 importance of pesticides and pest control and IPM in

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1 ensuring public health as we know it in the United
2 States. With regard to the comment about nuisance
3 pests, I think nuisance pests we often think of or we
4 perceive nuisance pests as being simply a nuisance,
5 but oftentimes these nuisance pests are also important
6 tests of public health.

7 And, so, when we think about maintaining
8 that quality of public health, it's important to also
9 consider things that we might consider, you know,
10 thinking about things we might consider a nuisance,
11 like cockroaches and remembering that they're
12 important -- important public health pests because of
13 the fact that they can -- you know, they can -- they
14 can vector foodborne illness. Stinging insects send
15 people to the hospital every year. This is important.
16 And, so, I commend you on that.

17 My caution for the workgroup -- and as part
18 of the workgroup I know that I -- I brought it up, but
19 I think it's important that we maintain a focus within
20 that public health workgroup on the impact areas that
21 EPA has -- has purview over. So specifically the
22 pesticide areas.

23 So, thanks, and appreciate the time.

24 MR. LAYNE: Thank you, and we appreciate
25 that. We actually joked around with staying in our

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1 lane, in the L A Y N E lane at the meeting, so thank
2 you, Jim.

3 MR. KEIGWIN: Okay, I think Leyla had a
4 quick --

5 MS. MCCURDY: Yeah, thank you so much. I'm
6 sorry, we're running late, but I need a little
7 clarification about the process. This is functioning
8 -- our health group is functioning a little bit
9 different than the other FACA committees that I have
10 served on. So what is the process -- what is the time
11 line before reporting to us? You said you are
12 reporting to us, and when are we going to see what,
13 and how can we chime in? You said a year time frame.
14 So are there going to be documents shared with us by
15 email, and can you just explain quickly what the
16 process is?

17 MR. LAYNE: Yeah, so, the workgroup is going
18 to deal with that, your very issue. We began talking
19 about that, but, again, this is the body that we
20 report to, so I'm imagining that there will be a
21 number of venues and opportunities to engage the group
22 either by email, when the PPDC gets together. It gets
23 together, I think, just twice a year. So -- and we
24 think that we will have some output sooner than that,
25 and we will find ways in which to communicate upward

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1 and do it the right way. And Dea will help us with
2 that to make sure that we are within the rules of
3 FACA.

4 The year time line or time frame is given to
5 us, and we want to be able to do what we can within a
6 year. There are some opportunities to go a little
7 beyond that, but the whole idea of a side work group
8 under the auspices of the PPDC is to be focused, as
9 Jim said, and get it done within a year. We've talked
10 about there may be things that we just present to the
11 PPDC and ask the PPDC the workgroup can't resolve
12 this, but can we make a recommendation to the PPDC
13 that the agency take up a specific issue and perhaps
14 even form a subworkgroup and another group of people
15 to go work on that particular issue, emanating from
16 the public health workgroup itself and a
17 recommendation coming from that workgroup.

18 So I can't tell you this because just the
19 vast number of topics that fall under the purview of
20 public health, and we would be foolish that in a year
21 that we could take on all of them. And, so, our
22 objective is to narrow the scope of this and do some
23 meaningful work within the year and to provide the
24 PPDC with perhaps other recommendations that can go on
25 beyond the year, or to the agency, for that matter,

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1 that the agency come -- I imagine that the agency come
2 -- I imagine the SOP, having worked with Zika, and
3 having worked with a number of entities with Zika,
4 including the White House and, you know, a number of
5 other federal agencies and so forth and so on, state
6 lead agencies, et cetera, that we're talking about a
7 collaboration here in some of these topic areas.

8 The Armed Forces Pest Management Board, for
9 example, we talked about this having a lot of
10 tentacles and bringing those -- resistance management,
11 for example, has a lot of tentacles, and trying to
12 bring that together in some kind of way. Our
13 workgroup may not be able to do that successfully, but
14 we would urge the PPDC to find a way to coordinate
15 across the board with everybody dealing with
16 resistance management in some form or fashion so that
17 we're all moving in the same direction.

18 MR. KEIGWIN: Okay, thanks, Arnold and
19 Susan.

20 So our last major topic of the day, back to
21 the Kevin Keaney Show, is to discuss one issue
22 relative to the certification and training rule. So,
23 Kevin's coming back up.

24 MR. KEANEY: Just a reminder of the -- of
25 the provisions in the revised applicator certification

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1 rule. And to comment on the process we went through,
2 we had extensive stakeholder involvement, and we
3 significantly changed the positions we had in the
4 proposal as a result of the stakeholder involvement.
5 So we engaged with the state regulatory agencies.
6 AAPCO had a group that we worked with. And we
7 received some very telling and useful comments from
8 the group. And it did move us away from a number of
9 our proposed positions to what we ended up with in the
10 final.

11 And if you would characterize -- if you
12 wanted to characterize the movement that we took, we
13 took -- we became much more flexible in what we were
14 proposing and far less prescriptive in what we were
15 ending up with in our final regulation. But some of
16 the key provisions in the areas we had in the final
17 there is there are new exams and administration
18 standards. There's competency gauge for private
19 applicators, where it didn't exist before. There are
20 some application methods, specific categories we
21 established that weren't in the earlier version. And
22 there were no standards for applicator
23 recertification, so we established some of those --
24 something in that area.

25 There's a key area that plays into the

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1 discussion of age, and that's there was no provision
2 in the existing regulation for gauging the competency
3 of noncertified applicators under the direct
4 supervision of a certified applicator. So we
5 established competencies for noncertified applicators,
6 and then there was very vague, vague descriptions or
7 definition of supervision of noncertified applicators.
8 So we tried to become a little more specific in the
9 definition of what constitutes good supervision of
10 noncertified applicators.

11 And then there was the minimum age, which is
12 a minimum age requirements for all certified and
13 noncertified applicators. Noncertified applicators,
14 on the whole, we're talking about the handlers under
15 the work -- the category of workers, with the term
16 handlers under the worker protection regulation. If
17 they are brought in to mixing, loading, or applying
18 under a certified -- the supervision of a certified
19 applicator. And this regulation is focused on
20 restricted-use pesticides, not general-use pesticides.

21 So the dates -- the effective dates have
22 changed. The original effective date was March 4th,
23 2017, and it's been moved for the reasons stated in
24 the slide here. The most recent Federal Register
25 notice changed the effective date to the 22nd of May,

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1 2018. The new administration hadn't had time to
2 adequately review the certification rule, and the --
3 as you'll see in the next slide, there's a long period
4 leading to full implementation to go through. So we
5 intend to adjust other implementation dates to
6 maintain the implementation schedule, which is
7 essentially three years to submit plans for new
8 certification programs at the state level, to submit
9 those plans to EPA for review.

10 There was a lawsuit challenging the rule's
11 change to the effective date, and there was a
12 coalition of advocacy groups that sued the agency.
13 That's currently in the process of the agency
14 challenging the standing of the suers, so that's where
15 that -- that stands at the moment.

16 In this screen, you can see the time line
17 and the activity that has taken place and will take
18 place. So the revised rule, absent any changes, would
19 be in effect in May 22nd, 2018. The states have until
20 2021 to submit their plans to EPA. And EPA will work
21 with the headquarters, and we are -- have a process
22 we're going to follow using headquarters personnel and
23 regional personnel and state agency personnel in
24 dealing with the submissions of state plans for their
25 -- how to comply with the revised regulation.

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1 And the -- there are time lines for states
2 to submit their plans, and then there are time lines
3 for EPA to complete the review process for these
4 plans. And until there is an official approval of a
5 revised state plan, the existing regulation stays in
6 place.

7 Here's a graphic which explains the various
8 dates, and then the next screen just gives you a text
9 explanation of the process of movement towards an
10 implementation date. As you -- some of you heard in
11 the last PPDC meeting, during the second day, the
12 regulatory reform focus day, the -- there were
13 comments submitted, and a number of comments relative
14 to this regulation focused on minimum age.

15 And, so, we would like to have you give us
16 some advice there and discussion there. The minimum
17 age requires all persons using restricted-use
18 pesticides to be at least 18; private applicators and
19 commercial applicators, noncertified applicators, are
20 those functioning under the supervision. The
21 exception for the minimum age of -- there is an
22 exception for the minimum age of 16 years old for
23 noncertified applicators on a farm under the
24 supervision of a private applicator who is a member of
25 the noncertified applicator's immediate family.

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1 And if you look at the -- one of the
2 handouts you've got in your packets there, there's a
3 table of the status of various states relative to
4 having no minimum age, a minimum age of 18, or a
5 minimum age of 16. And it relates those to commercial
6 applicator, private applicator, and noncertified
7 applicators under the supervision of a commercial
8 applicator and noncertified applicators under the
9 supervision of a private applicator.

10 So the discussion -- as we said in the early
11 discussion, we're seeking to understand the challenges
12 that this would pose for the stakeholders and we'd
13 like to understand and reconcile any information about
14 the states that we already -- that already have
15 minimum age requirements with some of the comments we
16 got in the regulatory reform activity. So we have a
17 set of questions there that might guide our -- guide
18 our discussion, and perhaps we can -- you can respond
19 to any of them, or we can work our way through them
20 for a general response in the sequence they're in in
21 the handout.

22 MR. KEIGWIN: So why don't we open it up,
23 and whoever wants to speak can address any or all or
24 additional questions from what we have posed on the
25 one-pager.

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1 So Preston.

2 MR. PECK: I just have a quick question
3 about the noncertified applicator with commercial --
4 under supervision of commercial applicators and
5 private applicators. The states that do require
6 minimum age, can you give, like, a general idea of
7 which states those are, just so I can understand kind
8 of scope?

9 MR. KEANEY: Which specific states?

10 MR. PECK: Yeah, if you can recall.

11 MR. KEANEY: No, I can't recall offhand.

12 MR. PECK: Okay. Well, I'll look it up,
13 then. Thank you.

14 MR. KEANEY: We can get that to you,
15 obviously.

16 MR. PECK: Okay.

17 MR. KEIGWIN: Iris, Amy, Jim.

18 MS. FIGUEROA: So just a comment on the
19 minimum age. We all had a -- I think a very fruitful
20 discussion earlier today about minimum age in the
21 context of the WPS. And there seemed to be a pretty
22 broad consensus on that, and I would hope that in the
23 context of restricted-use pesticides, which are some
24 of the most toxic pesticides, that, you know, we would
25 have a similar consensus on that.

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1 And then I also had a question on -- I think
2 it was Slide 11 on the delay in the state
3 certification plan. Is the agency taking any steps
4 right now to help states to sort of move along that
5 process of developing their new certification plans
6 while the delay is in place?

7 MR. KEANEY: No, outside of a lot of
8 education and outreach that we've undertaken. There's
9 purposefully a long time line for actually grappling
10 with revised state plans and approval of state plans.
11 All states will have to revise their plans, obviously,
12 but there are provisions that affect every state, no
13 matter what program they have.

14 Many programs are exceeding the federal
15 standard, but there -- there will have to be revision
16 of all state plans. So we -- we are, as I said,
17 conducting outreach and communication on what exists
18 in the revisions, and that's the extent of engagement
19 we have.

20 MR. KEIGWIN: Amy, then Jim, then Andrew.

21 MS. LEIBMAN: Thanks. So it does seem,
22 given our conversation that we had earlier regarding
23 the worker protection standard, that there seems to be
24 some general consensus about the importance of
25 maintaining 18 years of age as a minimum age. And,

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1 so, I think we've talked about a lot of really good
2 reasons for that. We talked about a lot of really
3 good reasons for this for 20 years. We talked about
4 it this morning.

5 And, so, it does -- I'm not sure what the
6 challenge would be, but it seems like this would be in
7 everybody's best interest, both, you know, the worker,
8 the surrounding communities, the farmer, so that we
9 can ensure that if it is going to be applied that you
10 want it applied most -- as, you know, applied well and
11 correctly.

12 And, again, I just want to take us back to
13 yesterday and the Dicamba discussion and all of the
14 challenges that we faced in terms of that particular
15 pesticide and the need for education and what that
16 took. And, you know, relying on someone under 18 to
17 sort of be able to carry out what's on the label, I
18 think puts everybody, including the worker, at risk.

19 MR. KEIGWIN: Jim, then Andrew, then Damon.

20 MR. FREDERICKS: So thanks again. I just
21 want to call out that I think this particular
22 rulemaking was an example of the process working, so
23 we appreciate the agency taking into consideration all
24 of the comments that have been submitted and the
25 advice from the different stakeholders to get to a

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1 place that I think is a good place. I think there's
2 obviously some issues with implementation, and there
3 are some challenges for states, and I think that those
4 have been taken into consideration as well.

5 Naturally, the National Pest Management
6 Association and structural pest control industry is
7 supportive of certification and training in any form
8 to ensure that pesticide applications are made in a
9 safe way and in a professional way.

10 With regard to age, the age restrictions, I
11 think that -- and one of your questions was, you know,
12 is -- are commercial applicators affected differently.
13 And the answer to that, at least from the structural
14 pest control point of view is that for the most part,
15 the 18-year-old restriction does not have a huge
16 impact. There are specific examples not so different
17 from what Damon mentioned earlier. The vast majority
18 of the structural pest control industry is made up of
19 family-owned businesses, small family-owned
20 businesses.

21 And I think that, you know, they're, you
22 know, passed on generation to generation and sons and
23 daughters are working with fathers and mothers. And
24 some of those folks probably are perfectly well
25 trained and able to make decisions regarding even

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1 restricted-use pesticides. Not all are. I think it's
2 always in the -- naturally in the interest of the
3 business to make sure that those people, whoever they
4 are, are making good decisions and are trained
5 properly. And, so, although I think, you know, I
6 think that that would be the one kind of the -- this
7 kind of family exemption would be the one piece that
8 still isn't quite right, but overall I think it's been
9 a good process.

10 I also would encourage EPA to continue to
11 work with the states, with AAPCO and ASPCRO to make
12 sure that these last pieces in terms of the challenges
13 that states have can continue to be worked out.

14 MR. KEIGWIN: Andrew, then Damon, then Liza.

15 MR. THOSTENSON: Well, in North Dakota,
16 we've had a 18-year-old for privates and commercial
17 since the inception of our program in the early 1980s.
18 Along the way, I can't think of any specific issue
19 that has arisen where somebody has made any kind of
20 argument about the advisability or reducing that age.
21 It just -- it just has never come up.

22 We have had 16 and 17-year-olds that do, in
23 fact, participate in some of my training programs, and
24 we do allow them to be participants in those
25 trainings. We just don't issue them a certification

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1 until they reach that 18-year-old barrier, or
2 threshold, I should say. From a state perspective, at
3 least in North Dakota, we just don't think this is a
4 big deal, I mean, you know, barrier to implementation.

5 With respect to how states are moving along
6 in this time line, for purposes of coming together and
7 putting a plan in place, this past spring, EPA
8 convened a pesticide regulatory education program
9 workshop where they brought in about 50, I think,
10 folks, Nancy? Around 50 folks from around the country
11 that were with cooperative extension and state
12 regulatory people to really grapple with and to
13 appreciate and understand what was contemplated in
14 this new rule and how to go about putting together a
15 new plan.

16 And, so, I think at least from a -- you
17 know, I'm satisfied. I'll let Liza talk about from my
18 state lead agency partners, but I think as a pesticide
19 safety educator, I'm comfortable that we have had
20 adequate discussion about the implementation of this
21 particular regulation.

22 One other point I would like to make, I can
23 tell you that when the rule was originally proposed in
24 2015 there were a number of people who were suggesting
25 suicide or getting out of the business of being

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1 involved in training because they thought it would be
2 insane. Some people actually wrote that in their
3 comments to EPA, and obviously they did hear those
4 comments and acted upon them, and we are enormously
5 pleased that that occurred.

6 MR. KEIGWIN: Damon, then Liza. Sharon, is
7 that your card up? Okay, it's hard to see it from
8 this side.

9 MR. REABE: First, I'd like to apologize,
10 Kevin, that it took three tries to get me into the
11 right session. So thanks for your help. I did
12 actually read this, believe it or not, but at any
13 rate, all joking aside, so now we're in the right
14 session to have the discussion. And I do want to
15 clarify something.

16 Aerial application is very unique, and what
17 we're talking about here is the potential for somebody
18 under the age of 18 to get set up who's an immediate
19 family member of an owner of a business to get set up
20 as a certified -- certified applicator. But I think
21 it's important to remember that there won't be any
22 applicators under the age of 18. So I think it would
23 be more accurately stated we're maybe looking to have
24 the ability for them to be certified to be mixers and
25 loaders.

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1 The Federal Aviation Administration will not
2 allow a pilot to get a commercial pilot certificate
3 under the age of 18. So kind of separate the two.
4 And it's a unique circumstance. This isn't something
5 I want to use up a lot of credibility, but I want to
6 make sure that the agency understands the nature of
7 our businesses and the amount of supervision that's
8 taking place at our businesses and how that this would
9 be helpful to us.

10 MR. KEIGWIN: Okay. Liza, then Sharon, then
11 Jay.

12 MS. TROSSBACH: As I had mentioned
13 previously, pesticide regulatory officials certainly
14 support any enhancement to competencies for pesticide
15 applicators, both, you know, commercial and private.
16 We understand the importance of proper pesticide use
17 and the inherent dangers that are with pesticides. So
18 we certainly support that.

19 And I would say in general we certainly
20 support, again, you know, the minimum age of 18 for
21 pesticide applicators. Obviously, family farms are a
22 little bit, you know, different, and while in some
23 areas, some states may have 18 as a minimum age,
24 others don't, and I'll leave that to, you know, the
25 diplomats to figure that out. But in general,

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1 particularly for commercial applicators, we certainly
2 support the minimum age of 18.

3 I think the conversation about the amount of
4 time it will take for states to revise their state
5 certification plans and to get them in just for a
6 little bit of background information, and Andrew had
7 alluded to, in North Dakota, they've had their
8 certification program plan for, you know, well, over
9 30 years or 40 years, and most states are like that.
10 And, so, while EPA has always provided this kind of
11 base requirement, states over the -- you know, since
12 their inception have had programs, had very robust
13 programs, have specified requirements.

14 So for some states, these changes to the
15 federal law will take changes to their statutes and
16 their regulations. And I'm sure everybody here's been
17 involved in that or is aware that that can take years
18 because of the public process that we have in place as
19 government officials. So while in Virginia, I won't
20 have to make many changes, just because of where our
21 certification program is. There are other states that
22 will have to make a lot of changes, and that has to go
23 through that state's political process.

24 And you have some states in which there has
25 been an edict that there will be no new regulations

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1 and no new requirements put on small businesses. So
2 there's a lot of issues there. So that explains some
3 of the time that three years, which may seem like a
4 long time, but really in a regulatory arena it's not a
5 long period of time.

6 So just to make people, you know, aware of
7 that. I think states that will -- are and will, you
8 know, move forward with amending their certification
9 plan, part of it is waiting for that actual effective
10 date to make sure we know what's in that final
11 effective rule, should there be any changes, because
12 that could impact the changes we need to make and how
13 we need to make it.

14 There are also, you know, resource issues,
15 et cetera, you know, which there always are. So I
16 just wanted to, you know, make that clear. I think in
17 certain states, the minimum age will be more of an
18 issue than others, you know, because of their
19 industry, because of the type of -- whether it's
20 agriculture or, you know, commercial industries. And
21 in others, it won't be, but, again, in general, I
22 think 18 is good.

23 And I just want to make a comment and just
24 echo what other folks have said. I want to commend
25 and applaud the EPA for their willingness to listen to

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1 all the various, you know, comments and concerns and
2 at the end of the day to recognize the longstanding
3 programs that states have had and their success and
4 allowing that flexibility, because one thing is for
5 sure, if you know how one state works, you know how
6 one state works.

7 And, so, there has to be some flexibility
8 for -- you know, for states, and I just want to thank
9 that. And as Jim had indicated, AAPCO and ASPCRO and,
10 of course, all your state regulatory officials are
11 more than happy to continue to work on, you know, this
12 with the EPA, as they did, and to have it fully
13 implemented.

14 MR. KEIGWIN: Thanks. Sharon, then Jay,
15 then Donnie.

16 MS. SELVAGGIO: Just one question, and it's
17 probably a shortcut that was taken on the table here,
18 but on the minimum age section for the final rule,
19 page 2 of 2, it says "except for the minimum age that
20 we have 16 years old for the noncertified applicator
21 on a farm under the supervision of a private
22 applicator who is a member of the noncertified
23 applicator's immediate family." Just in the actual
24 rule language, does it say "private certified
25 applicator"? I mean, I'm assuming that that private

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1 applicator does need to be certified themselves if
2 they're supervising. I'm just wondering if that's in
3 the rule.

4 MR. KEIGWIN: Nancy?

5 MS. FITZ: By definition, in the rule, a
6 private applicator is certified.

7 MS. SELVAGGIO: Okay.

8 MS. FITZ: So it is a private certified
9 applicator, yeah.

10 MS. SELVAGGIO: Okay. And I just have one
11 followup kind of question for this whole discussion
12 that we've had this morning, and that is that it
13 appears that the choices of, you know, the topics that
14 we've discussed today have come out of the May 4th
15 discussion that we had about the regulatory reform
16 order. And I'm just wondering is there -- are there
17 other rules that received comments? Are there other
18 initiatives in -- under way internally in the EPA to
19 discuss other potential rule changes or guidance
20 changes or anything like that that we have not heard
21 about today?

22 MR. KEIGWIN: So the agency received lots of
23 comments in response to the regulatory reform
24 executive order. I don't have the exact number, but
25 it was many, people took advantage of the opportunity.

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1 For the Office of Pesticide Programs, these were the
2 two issues for which we received the most feedback.
3 We're still working our way through the comments, but
4 given the depth of the comments and the number of
5 comments and the -- you know, the upcoming
6 implementation and effective dates, we thought it was
7 important for -- to take advantage of you all's time
8 while you were here with us this day and a half to
9 focus on these two particular issues. And then moving
10 forward, if there are other issues that we identify as
11 we go through the regulatory reform comments, we would
12 likely bring some of those issues back here as well.

13 So Jay, then Donnie, then Charlotte.

14 MR. VROOM: So I think Amy raised a question
15 earlier in the worker protection discussion why should
16 it take so long, and so hopefully, Amy, the answer
17 that Liza gave about the differences in state laws and
18 implementation explains part of the need for a change
19 in the deadline to get to implementation. And it
20 seems to me that we've heard a lot of consensus about
21 the fact that at least everyone who is at the table or
22 is representing someone else's interests at the table
23 that there's a lot of goodwill and sincere intent to
24 ensure that this system that the Federal Government,
25 through EPA's pesticide program, is putting in place

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1 is intended to improve things for all workers and give
2 more clarity to -- and responsibility clarity for
3 those employers that are employing those workers that
4 have these kinds of exposure.

5 So I would hope that we're at a point where
6 we're getting closer to consensus around the knowledge
7 of what the intent is and that we will get to closure
8 and accomplish the things that we all want to
9 accomplish, but particularly the difficulties with the
10 states, and I think, Amy, you had said, you know, the
11 states all saw this coming. You're right, they saw it
12 coming, but they saw it coming 15 years ago, and at
13 some point, people, you know, pivot to do other things
14 that, you know, do happen, and it took a very long
15 time for this rule and the worker protection rule to
16 get finalized.

17 And, so, you know, I'm not making excuses
18 for the states, but I think there are a lot of reasons
19 why the little extra time is reasonable to expect.
20 Thanks.

21 MR. KEIGWIN: Okay, Donnie, then Charlotte.

22 MR. TAYLOR: So first of all, thanks for
23 working with the states. I think when this came out,
24 I think you probably got an earful of phone calls
25 coming in, so thanks for working those guys.

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1 Do we have any idea how many states would
2 require a legislative action, and do we see those as
3 being difficult or easy?

4 MR. KEANEY: I think, Liza, was that in the
5 survey you did, Liza? Yeah.

6 MS. TROSSBACH: Yes. AAPCO had -- did a
7 survey of states to try to determine how many states
8 would require some type of regulatory change, whether
9 laws or regulations. And I don't remember the exact
10 percentage off the top of my head, but it is on the
11 AAPCO's website. But there was a good number of
12 states that would have to have one or both, so either
13 their statute or their regulations.

14 And, of course, both of those have their own
15 challenges and time lines involved. But that is on
16 the AAPCO's website, and I would be happy to forward
17 that to Dea, that actual survey, if she wants to send
18 it out to the PPDC to see those responses. I just
19 don't remember off the top of my head.

20 MR. KEIGWIN: Andrew, you might have a
21 clarification.

22 MR. THOSTENSON: Yeah, just to add to Liza,
23 the -- you know, most people, most states, at a
24 minimum are going to have to engage in some sort of
25 regulatory, administrative rule change that maybe

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1 doesn't require going to a legislature, but many
2 states will also have to do the legislative piece.

3 The other thing is is that we won't move on
4 any of those items until we know that this law is
5 hard-baked because it's too expensive from a political
6 capital as well as just the time associated with
7 getting the rule in place. So you're not going to see
8 any state trying to get ahead of the ball game on
9 that. I will say, though, that doesn't mean that we
10 aren't talking about it and that we are looking at it
11 and we are grappling with it right now and
12 strategizing how we will go about it once the rule
13 actually does come into force. So that's kind of --
14 that's kind of what I see happening out there.

15 MR. TAYLOR: Well, it was my understanding
16 that some of the states already have educational
17 programs in place that exceed these requirements, so
18 it's not like this is not being done. They may not be
19 scripted the way they're scripted here, but education
20 is being provided.

21 MR. THOSTENSON: Yeah, I agree with that. I
22 mean, Liza mentioned this earlier. I mean, we have a
23 number of states that well exceed these sorts of
24 things. Having said that, though, I don't know any
25 state that is going to be exempted from an overhaul of

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1 their plan. I mean, because all of our plans have
2 different strengths and weaknesses, and this tries to
3 get everybody to a certain level. And, so, we're all
4 going to have to do certain things.

5 MR. KEIGWIN: Charlotte.

6 MS. SANSON: Yeah, thank you. And some of
7 my questions were just answered with Donnie's
8 questions, so I appreciate that.

9 I also just had a technical question, and it
10 has to do with the family exemption on the age
11 requirement. And I was wondering if you could clarify
12 that the family exemption under WPS would apply to the
13 40 CFR Part 171 supervised applicators, just for
14 consistency.

15 MR. KEANEY: The definition will extend --
16 the extended family and worker you're talking about?

17 MS. SANSON: Right, because Part 171
18 addresses supervised applicators, and then (inaudible)
19 that the supervised situations for families, family
20 workers.

21 MR. KEANEY: I guess I don't understand your
22 question. Are you asking is the definition of
23 immediate family the same in both?

24 MS. SANSON: Right.

25 MR. KEANEY: Do we have that spec- -- Nancy?

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1 MS. FITZ: Yeah, it's the same definition of
2 immediate family.

3 MS. SANSON: Okay, thank you.

4 MR. KEANEY: Yeah.

5 MS. FITZ: But if -- you would have to
6 comply with both rules, so you would have to comply
7 with the more stringent age that applies, if that's
8 what your question is.

9 MS. SANSON: Yes. I want to see how they're
10 connected, right?

11 MS. FITZ: It's a really complicated table.

12 MS. SANSON: Yeah.

13 MS. FITZ: Depending on whether it's ag or
14 not and what the activity is and whether -- and WPS
15 only applies to growing crops; it doesn't apply to
16 animals. So it's -- we're working on a table to
17 explain that because we've gotten that question quite
18 a bit.

19 MS. SANSON: Okay, great. Thank you.

20 MR. KEIGWIN: Okay. So I just conferred
21 with Kevin, and so I think what we heard was that
22 there's general consensus around 18, that there could
23 be some -- it might need to be some clarification
24 perhaps and guidance around how the family exemption
25 piece works, and that there's an acknowledgment that

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1 because of the processes that virtually every state
2 will need to go through that there may need to be some
3 additional time on the implementation side because of
4 processes that, as I heard, really can't begin until
5 states have certainty about when this rule goes into
6 effect and when things are due for submission to work
7 with stakeholders in their states to develop a revised
8 plan that virtually everyone will have to do, and then
9 subsequently work through any administrative,
10 regulatory, or perhaps even statutory process that
11 would have to ensue based upon local law.

12 Does that reflect the discussion?

13 (No response.)

14 MR. KEIGWIN: Okay. So just quickly recap
15 the day. So what -- on the WPS side, what we heard
16 was general consensus around minimum age. On the
17 designated rep provision, the recommendation was to
18 form a very short-term workgroup to work through some
19 of these issues, develop, perhaps, some clarification
20 or some additional options for consideration and that
21 AAPCO has also volunteered to look at the situations
22 in states that have this provision or a similar type
23 of provision to help inform those discussions.

24 And then on the application exclusion zone,
25 what we largely talked about was the need to develop

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1 some additional and enhanced guidance around certain
2 scenarios, then some of which were discussed today.

3 And then on certification and training, what
4 we heard is, again, a general consensus around the
5 minimum age, but the need for some additional
6 clarifications surrounding the family exemption.

7 And I'll just double check that that
8 reflects the discussion from today.

9 Okay, so I have been remiss all day in
10 checking with the two PPDC members that are
11 participating remotely to see if they had any
12 comments, Gina Shultz or Dan Kunkel, was there
13 anything you had meant to chime in that I didn't give
14 you the opportunity to do so earlier?

15 MS. SHULZ: Hey, Rick. This is Gina. I
16 have nothing to add. Thank you for checking.

17 MR. KEIGWIN: Thanks for checking in. Hope
18 you feel better.

19 Okay, we have two public commenters. So the
20 first person is our former colleague, Bill Jordan.

21 (Teleconference interruption.)

22 MR. JORDAN: -- you know, and as Rick
23 indicated, I used to work here at EPA and retired in
24 2016 after 40 wonderful years working on pesticide
25 issues. I'm now an independent environmental

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1 consultant working with advocacy organizations,
2 industry, trade associations, law firms, pesticide
3 registrants, but today I'm not representing or
4 speaking on behalf of any client. Rather, I am
5 interested in sensible regulatory efforts that protect
6 human health and the environment because I may be
7 affected by use of pesticides.

8 And, so, I want to thank you for the
9 opportunity to offer comments. I think seeking
10 meaningful public engagement has long been a hallmark
11 of OPP's work, and I'm really pleased that Dr. Beck
12 yesterday expressed EPA's support for continuing that
13 practice. I agree with her wholeheartedly that
14 dialogue leads to better decisions and is a
15 fundamental component of good government.

16 And with that backdrop, I want to offer
17 comments on four different points. First, I'm pleased
18 that the apparently controversial provisions in the
19 worker protection standard, the application exclusion
20 zone, the designated representative, minimum age, and
21 the one in the certification amendment rulemaking
22 minimum age all seem to be ones that can be addressed
23 through additional guidance or at most some relatively
24 small tweaks to very discrete portions of the rule.

25 Before EPA undertakes any rulemaking,

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1 however, I think this morning's conversation has
2 illustrated how useful dialogue can be to focus and
3 clarify the concerns that arise around these
4 regulations or have arisen around these regulations.
5 And I know from experience working on notice and
6 comment rulemaking that that's not really the best way
7 to figure out how to sort through complex, nuanced
8 issues like these.

9 So I strongly encourage EPA to continue to
10 use the PPDC process to gather input and develop
11 reasonable approaches to address legitimate concerns.
12 In keeping with the FACA guidance yesterday, I would
13 request that any PPDC efforts be a subcommittee rather
14 than a workgroup. That will ensure transparency,
15 committee balance, and opportunities for public
16 engagement. Who knows, maybe I'll come out of
17 retirement and raise a hand to play in that.

18 But I encourage PPDC members if you agree
19 with me to let EPA know that you also would support
20 subcommittees to work on these issues.

21 Second, it's notable how little in the
22 worker protection standard and the certification rule
23 actually appears to be the subject of continued
24 debate. That's an indication that as many of you have
25 said that the lengthy process of stakeholder

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1 engagement has actually worked and led EPA to do
2 something that's fundamentally reasonable in its
3 approach. And I join the rest of you in commending
4 them for their work.

5 Given that there's a broad consensus that
6 the overwhelming majority of these different rules and
7 provisions are workable and needed, I think there's no
8 reason for delaying the compliance dates of the entire
9 rule. If there is a rulemaking, and I'm not convinced
10 that there necessarily needs to be one, but if there
11 is a rulemaking to introduce these small changes that
12 have been suggested, and to change the compliance
13 date, the changes in the compliance date should apply
14 only to the portion of the rules that might be
15 amended. The rest of the rules should take effect
16 because we need them.

17 Third, I want to point out that it's not
18 possible for EPA to change the compliance dates on the
19 worker protection standard rule before they take
20 effect in January of next year. The statutory
21 procedures for rulemaking are such that you just can't
22 do that legally. So given that the worker protection
23 amendments are going to be fully effective in January
24 and the scope of the rule changes, if any, coming out
25 of this PPDC discussion are going to be pretty small,

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1 I strongly encourage EPA to tell the state lead
2 agencies to move ahead with training and compliance
3 assistance on the full rule.

4 Fourth and last, as for the certification
5 amendments, those rule amendments, the rule contains,
6 I think, a very thoughtful, deliberate program for
7 state lead agencies to come into compliance with the
8 new requirements. I don't think that you should alter
9 that compliance schedule absent a showing that the
10 state lead agencies absolutely need more time.

11 Given under the current rule that state lead
12 agencies have six and a half years to figure out what
13 to change and then to make those changes, it seems to
14 me like that ought to be enough. Don't change the
15 time line now. Instead, you should wait until the
16 states have tried to implement this, gone through
17 their legislative process, if they need to, and the
18 rulemaking process, and see if they are, in fact,
19 encountering real problems.

20 If EPA even indicates that it might change
21 the time lines for compliance, I know full well from
22 years of watching this process that states will wait
23 and postpone their efforts to start work on the
24 necessary changes. And if that happens, then you'll
25 be facing this issue again and you will have lost the

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1 benefits that a stronger state certification could
2 bring.

3 Thank you.

4 MR. KEIGWIN: Thanks, Bill.

5 The final person that signed up for public
6 comment is Julie Spagnoli from JM Specialty
7 Consultants.

8 MS. SPAGNOLI: And I'm sort of speaking as a
9 member of the public health workgroup and then kind of
10 with a nexus with the discussion we had yesterday on
11 PRIA 4. One of the set-asides in PRIA 4 is for the
12 development of efficacy guidelines for some specified
13 pests and pests requiring the submission of efficacy
14 data, which includes public health pests.

15 And the need for these guidelines and
16 standardization of these efficacy testing is so that
17 we can guarantee the effectiveness of these products,
18 which is the benefit to registrants to know how to
19 test their products and to know that their studies
20 will be accepted. And it also provides confidence to
21 the applicators that the products that they use will
22 be effective.

23 So as to both the -- by standardizing these
24 requirements and the guidelines, it provides a benefit
25 and especially to public health. And I'm especially

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1 interested in the guideline on fire ants because they
2 are probably my biggest nemesis when it comes to
3 pests. So I look forward to that guideline. Thank
4 you.

5 MR. KEIGWIN: Thanks, Julie.

6 Kevin had one more remark to make before we
7 close -- did a couple of closing things.

8 MR. KEANEY: In the PowerPoint presentation,
9 there are a couple of slides that deal with the
10 cooperative agreements that we have, the grant
11 cooperative agreements we have to support these
12 programs. I urge you to go to those websites and go
13 to the websites of those organizations and see the
14 depth of activities that go on there to help support
15 the programs and provide educational materials,
16 provide science-based information through the
17 Pesticide Information Center, provide training through
18 the app -- AFOP network.

19 We are very indebted to the PRIA funds that
20 support much of -- much of those activities, so it's a
21 combination of common grant monies and PRIA set-aside
22 monies that support those things that are quite
23 essential to making things real in the field for these
24 -- for these programs.

25 MR. KEIGWIN: Thanks, Kevin. I'm mindful of

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1 the time, but I wanted to just quickly see if there
2 are any public commenters from those participating
3 remotely.

4 Anyone remote that would like to make a
5 brief public comment, please identify yourself.

6 MR. KUNSTMAN: Rick, this is Jim Kunstman,
7 PBI Gordon.

8 MR. KEIGWIN: Go ahead.

9 MR. KUNSTMAN: Can you hear me?

10 MR. KEIGWIN: We can hear you. Go ahead.

11 MR. KUNSTMAN: A quick question -- or a
12 quick comment and a question. Definitely appreciate
13 being able to participate by phone. It's been great.
14 I just want to echo what Cindy said yesterday at the
15 end of the session, that oftentimes the EPA and their
16 scientists don't stand up and say that they've
17 actually done some good science and made some good
18 decisions. And I do believe after 30 years in
19 regulatory that I can agree with that.

20 One comment -- question. A news headline
21 that I saw this morning said that the U.S.
22 Environmental Protection Agency head Scott Pruitt said
23 his recent decision to prohibit members of the agency
24 scientific advisory committees from receiving EPA
25 grants will reduce conflicts of interest but experts

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1 say that the move could exclude many of the nation's
2 best environmental scientists and damage the agency's
3 scientific integrity. And I wonder if that includes
4 PPDC volunteers.

5 MR. KEIGWIN: Thanks, Jim. I believe we're
6 -- I believe it only applies to the scientific
7 advisory committees, but we will get confirmation of
8 that from the office that oversees all of the FACA
9 groups at EPA.

10 Are there any other public commenters on the
11 phone?

12 MS. BLACK: Yeah, Rick, this is Carol Black
13 with Washington State University.

14 MR. KEIGWIN: Go ahead, Carol.

15 MS. BLACK: What I would like to just add to
16 the discussion on Dicamba is that when one looks at
17 where the incidents have occurred with damage, I think
18 it's critical that that overlay of the USDA 2016
19 soybean acreages is included in that same schematic.
20 Thank you.

21 MR. KEIGWIN: Thank you, Carol.

22 Any final public commenters on the phone?

23 (No response.)

24 MR. KEIGWIN: Okay. So a couple of quick
25 things. We are looking at meeting dates. What I'm

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1 going to do for time purposes is if you --

2 (Teleconference interruption.)

3 MR. KEIGWIN: -- next meeting, you could
4 email them to Dea, and then we'll circulate them to
5 the group to kind of get some consensus around topics
6 moving forward. We really, from the agency side, want
7 to be bringing you issues for which you can provide us
8 with input and consensus to help advance the program.

9 In terms of meeting dates for 2018, for the
10 spring meeting, we are currently looking at May 2nd
11 and May 3rd. So if you could let Dea know if those
12 present any major conflicts, and I know there will be
13 groans for the fall meeting, but we are currently
14 looking at October 31st and November 1st. So part of
15 this is due to meeting room availability, but if that
16 presents major conflicts for people for the fall
17 meeting, also please let Dea know.

18 So let me just say in closing thank you to
19 all of you. We covered a lot of ground in a day and a
20 half. I personally appreciate all of the candor and
21 the efforts to move things forward. For the new
22 members of the group, thank you all for participating
23 because sometimes in sessions like this we kind of
24 wait to kind of feel your way through, and I don't
25 think any of you did that, so thank you very much. I

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1 really appreciate that.

2 I want to appreciate -- I also want to thank
3 Dozina Taylor who manages this room. This may be the
4 first meeting that I can think of in a long time where
5 all the equipment worked, and it worked well. And,
6 so, Dozina did a number of checks with the tech
7 support folks. I know Dea did another with the tech
8 team as well. So I really want to thank them.

9 And then I want to thank Dea and her team
10 and, see, these meetings don't happen as well as they
11 do, and all the coaching that I've gotten for the past
12 couple of days, if Dea's not constantly feeding me
13 stuff and keeping us all in line. And, so, Dea and
14 Emily and I know there were others, Lance, and there
15 were others from FEAD that were also instrumental in
16 helping move those forward and I wanted to thank them
17 as well.

18 And I think Jay may have one closing
19 comment.

20 MR. VROOM: Yeah, thanks, Rick. So I didn't
21 realize that you were actually going to skip some
22 things and go to closing. So I just wanted to
23 acknowledge that Jonathan who works for Senator Udall
24 has been here much of the morning. I've been a member
25 of this PPDC except for last few years for many, many

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1 years, and it's very rare that a staffer from Capitol
2 Hill will make the time to come and listen to the
3 dialogue of this group. And it's particularly germane
4 because of the three issues that Senator Udall has
5 expressed concern about with regard to reauthorization
6 of PRIA we've been talking about, and so hopefully
7 Jonathan's had a chance to hear a little bit of some
8 of the consensus-building that's gone on around those
9 topics and also has heard what Kevin just talked
10 about, which is that PRIA and the reauthorization of
11 PRIA will enable fees to go to some of those
12 farmworker programs, matching grant money from the
13 appropriations side that are critical as well.

14 So I just think it's important for us to
15 take note of the fact the Hill does care about what's
16 going on. This isn't lobbying, so we're not stepping
17 over the line, right, with regard to our DFO
18 oversight, but thank you.

19 MR. KEIGWIN: Thanks, Jay. And, again,
20 thanks to all of you and safe travels home.

21 (Whereupon, the committee meeting was
22 concluded.)

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