

UNITED STATES DEPARTMENT OF AGRICULTURE

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FRUIT AND VEGETABLE INDUSTRY
ADVISORY COMMITTEE

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MEETING

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WEDNESDAY, AUGUST 14, 2019

The Advisory Committee met in the Fairfax Room of the Hyatt Regency Crystal City Hotel, 2799 Richmond Highway, Arlington, Virginia, at 8:30 a.m., Chalmers R. Carr, III, Chair, presiding.

PRESENT

CHALMERS R. CARR, III, Chair
KILEY HARPER-LARSEN, Vice Chair
RICHARD E. BOWMAN
JOHN CHANDLER
TINA ELLOR
K.C. ELY
BRET ERICKSON
MOLLY GLEASON
JULIE L. GORDON
JEFF HUCKABY
BRIAN KIRSCHENMANN
TOM LIPETZKY
KELLY POWELL-MCIVER
READE SIEVERT
STEVE SMITH
BRUCE TALBOTT
GREG TISON
DERRIN WHEELER
TOMMY WILKINS
CHARLES A. WINGARD
DONN ZEA

MEMBERS NOT IN ATTENDANCE

DAVID K. BELL
MICHAEL JANIS
PAUL PALMBY

STAFF PRESENT

DARRELL HUGHES, Designated Federal Official
SONIA JIMENEZ, Deputy Administrator, AMS

ALSO PRESENT

C.B. ALONSO, USDA Rural Housing Service
ROBERT GUENTHER, United Fresh Produce
Association
BRENDA FOOS, USDA Pesticide Data Program
JASON HAFEMEISTER, USDA Trade and Foreign
Agricultural Affairs
DAVID HILES, U.S. Department of Labor
AMELIA JACKSON-GHEISSARI, Bayer AG
JOHN JONES, U.S. Department of Labor
LEWIS KOSKI, Metrc
BRUCE LAMMERS, Administrator, USDA Rural
Housing Service
JODI MCDANIEL, USDA National Agricultural
Statistics Service
JENNIFER McENTIRE, United Fresh Produce
Association
ALLISON MOORE, Fresh Produce Association of the
Americas
BRIAN PASTERNAK, U.S. Department of Labor
ED ROBISON, U.S. Department of Labor
DAVID TALAN, U.S. Department of Labor

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

(8:30 a.m.)

CHAIR CARR: Well, good morning, everybody. I will call our meeting to order. I appreciate everybody traveling in and more importantly, I appreciate all the hard work that everybody's done over the summer in putting together a very good list of recommendations and discussion points for later on.

A little point of order so just so we understand how this is going to flow a little bit. Each one of the working groups is going to make a presentation on what has already been submitted in your packet. Hopefully you all had the time to read them.

So we're basically going to just read those statements, not go into discussion on those today but read those, have guest speakers who have been invited to speak on those topics.

Obviously want you to ask questions to those speakers while they're here so we're going to allow ample time for that.

1 The intention tomorrow is we will go
2 back in the working groups so we'll start
3 tomorrow morning with about an hour for each
4 working group to break up to see if there's
5 anything they want to modify or add to their
6 recommendations.

7 Then we'll bring it back to the full
8 Committee starting hopefully about 9 o'clock and
9 be able to discuss each one of them.

10 The goal is hopefully to approve those
11 as a Committee. If we don't reach a consensus or
12 if there's still work to be done, we still have
13 about 45 days roughly to go back and do those
14 over the telephone and get those done later on.
15 We can either do it by a conference call or
16 submit them around in writing.

17 So again, it would be great if we
18 could wrap things up today, or today and tomorrow
19 but it's not a requirement. We do have time
20 remaining.

21 And again and it's hopefully that
22 these speakers will be able to bring some clarity

1 to some of the topics we're talking about. So
2 again, as you look through it and you hear these
3 speakers speak, please be ready to ask them
4 questions and everything.

5 So at this point in time, I'm going to
6 turn it over to the Deputy Administrator. Sonia?

7 MS. JIMENEZ: Hi, good morning. I'm
8 very happy to see you all again. You've been
9 very busy since the last time we met. In fact, I
10 don't remember a committee that has been so busy
11 and since I, you know, since I started a long
12 time ago. I'm not going to say how many years.

13 But as you know, the purpose of this
14 Committee is to examine the full spectrum of
15 specialty crop issues and make recommendations to
16 the Secretary of Agriculture about how we better
17 tailor our programs to better meet the produce
18 industry's needs.

19 We fully understand all the details
20 involved in doing that and we welcome
21 recommendations that are applicable to all sizes
22 and all types of industry businesses.

1 So I appreciate all the work you've
2 done. I know that you've been very busy over the
3 phone and different long-distance meetings.

4 Just to recap a couple of the things
5 that we, that you've been doing since May, you
6 established four working groups. One for Food
7 Safety, one for Labor, one for Trade, and one for
8 Production.

9 I remember when we met in May, you had
10 back and forth discussions of what the committees
11 and what the more important pieces were and those
12 were the four committees that you decided to
13 establish.

14 On the Food Safety, you held three
15 conference calls, one of which included
16 coordination with about half a dozen FDA subject
17 matter experts engaged in committee issues.

18 And some of the issues that you talked
19 about ranged from the FSMA topics concerns
20 surrounding the Foreign Supplier Verification
21 Program and other Ag Water regulations. So we
22 look forward to that committee's recommendations.

1 Later we also have a stakeholder from
2 United Fresh that will provide industry
3 perspective on Ag Water later today.

4 On the Labor Committee, you members of
5 that committee explored a range of topics
6 associated with the H2-A Program which as you
7 know, allows the U.S. employers to bring foreign
8 nationals to work on our fields.

9 The work group is also very interested
10 in farm labor statistics and labor survey
11 methodologies. And we have today a person from
12 Labor to talk to you about some of those issues.

13 Trade, you put together three types of
14 recommendations to be considered. One on Buy
15 America, one on trade promotion, and one on
16 protecting U.S. growers.

17 We have someone from the U.S. Trade
18 and Foreign Agriculture Affairs expert to talk to
19 you about some of those issues today.

20 Production, last but not least. You
21 developed recommendations for consideration to,
22 pertaining to research, crop insurance, over

1 spraying and also targets chemical applications
2 and inconsistent agriculture pesticide levels.

3 We also have a speaker. Every
4 committee has a speaker, at least one today, so
5 that's great, that is going to talk to you about
6 Pesticide Data Program.

7 The last thing I wanted to mention was
8 at the May meeting, I was very surprised that
9 some of you mentioned that people were not as
10 familiar with our inspection and auditing
11 programs and that really hit hard on me because
12 I'm like, how could we not have shared that
13 information with the industry?

14 So I want to tell you that Jack Davis
15 which works for us, unfortunately he's not here
16 today, has prepared some materials and a plan on
17 how we can better communicate with the industry
18 about our services.

19 He's going to be contacting you after
20 this meeting, shortly after this meeting, so you
21 can take a look at what we've put together to get
22 your feedback about what you think, where we're

1 going, if it's the right way to go, or any
2 another recommendation you may have on that
3 because we want to make sure that people do know
4 all the services that are available.

5 I think you mentioned, Carl, that you
6 called a service and it was faster and cheaper
7 and great service. So we want to make sure that
8 people have access to our services.

9 So thank you very much. You have a
10 full agenda. I'm very excited to hear about all
11 the things that you've been working on and all
12 the recommendations you're going make.

13 I'm going to be sitting in the back
14 because that's the only plug I could find so I
15 can take notes. I couldn't find a plug from
16 here.

17 But thank you for being here and I
18 look forward to all of your recommendations
19 today.

20 CHAIR CARR: Thank you. Darrell? Has
21 he left?

22 MS. JIMENEZ: I think he walked

1 outside. What do you need?

2 CHAIR CARR: Well, I was going to say,
3 are we ready for public comment?

4 MS. JIMENEZ: Yes, I think so. Let me
5 find Darrell real quick.

6 CHAIR CARR: So now we're going to
7 move into the public comment section on -- I know
8 there are some speakers here that are going to
9 talk to us on some topics but there's also some
10 that have submitted some in writing that you're
11 going to read, is that correct?

12 MR. HUGHES: Yes, yes. All right. So
13 on, what day is this, Monday, July 22nd, we
14 received a written public comment from Jean
15 Public. Jean Public's comments were emailed
16 responses.

17 There are too many toxic chemicals
18 being used to grow these products. Growers are
19 poisoning the air, water, soil and their own
20 workers and owners.

21 The American people are dying earlier
22 than ever and at lower ages. Cancer is rampant.

1 We need cleaner organic food to go back to what
2 our ancestors ate.

3 I am against all the chemical growing
4 practices for plants and vegetables. I assume
5 that meant, that's supposed to be, I am against
6 all the chemical growing practices for plants and
7 vegetables, totally opposed to it.

8 We need organic. Also, the peaches
9 you buy at the store are totally rotten in two
10 days, totally rotten. That didn't used to
11 happen. This comment is for the public record.
12 Please receive, Jean Public.

13 And the second written comment is
14 going to be from Lance Jungmeyer from the Fresh
15 Produce Association of the Americas. However,
16 Lance has a delegate here who's going to give
17 oral remarks in person.

18 But before we have his delegate come
19 up, we're going to invite the next oral speaker
20 and it will be a representative from a company
21 called METRC to give oral remarks. And I think
22 it's METRC, right? METRC.

1 MR. KOSKI: Yeah.

2 MR. HUGHES: Yes. Go ahead and
3 introduce yourself.

4 MR. KOSKI: Thank you so much for
5 giving me the opportunity to be here with you
6 today. My name is Lewis Koski. I'm a former law
7 enforcement executive from the state of Colorado.
8 I saw that we had someone there from the state.

9 I am currently the chief operating
10 officer for a company called METRC, M-E-T-R-C.
11 You can find out website at metrc.com.

12 We are essentially an inventory
13 tracking system and we have most notably been
14 involved in the cannabis industry and we work for
15 13 state governments around the country.

16 We track inventory that is regulated
17 by, comprehensively regulated by each state
18 agency that tracks cannabis plants from the time
19 they're little baby plants to the time that
20 they're harvested and transported to other
21 licensed facilities like the store fronts for
22 smokable cannabis or to processors for conversion

1 into edible products and oils and tinctures and
2 things like that.

3 So the reason why I'm here today is
4 I'm definitely not here today to ask you guys to
5 start having some considerations about the
6 cannabis industry and those types of things, but
7 what I did want to do is just take an opportunity
8 to kind of introduce ourselves, kind of let you
9 know some of what we've been involved with and
10 how the public-private partnerships that we've
11 been involved with around the country can help to
12 inform other industry outside of the cannabis
13 sector.

14 Along those lines I'd just like to
15 take a few minutes to just kind of describe a
16 little bit more, in a little more detail what
17 we've built and kind of what we've learned from
18 the process of doing this 13 times across the
19 country.

20 So our system is somewhat unique in
21 that it's a government system. And what, but
22 it's a government system that's visible from the

1 licensee side of the equation, but it's also
2 visible from the government side of the equation.

3 And so we contact with government
4 agencies around the country and licensees report
5 into our system their inventory based on
6 regulatory requirements that each state has.

7 And so it's, sometimes those are very
8 comprehensive and sometimes they're a little less
9 so. But we collect key data points from the time
10 a cannabis plant is very small to the time it's
11 harvested until the time it's transported to
12 other licensed premises.

13 And we use that, we use radio
14 frequency ID tagging as a way to really make that
15 process efficient.

16 And one of the cornerstones to our
17 system is that we pay very close attention and
18 customize our solution based on the regulatory
19 requirement so as licensed and regulated, it's
20 the regulated community is reporting into the
21 system, their inventories, they're also meeting a
22 lot of those reporting requirements that they

1 have for the regulator as is.

2 I've been a police officer and a
3 regulator for my entire adult life and one of the
4 biggest challenges we have as a regulator is to
5 be able to efficiently get the information that
6 we need so that we're not disrupting those
7 business operations of the regulated community.

8 And what we've done is we've created
9 a system that allows the regulating community to
10 seamlessly continue on with their business
11 operations while also at the same time being able
12 to input data into our system that meets a lot of
13 the reporting requirements that a regulated
14 community faces.

15 And so we really believe strongly in
16 that public-private partnership between the
17 regulator, the regulated community and the
18 technologies that can make those processes much
19 more efficient.

20 And kind of for the sake of time
21 because I know you guys have a very packed
22 agenda, but I'd just share a little bit of what

1 we've learned in that process that might be able
2 to help you all in some of the work that you do.

3 One is that we really feel, this is
4 kind of also, kind of close to my heart because
5 it's the topic of my doctoral dissertation that
6 I'm working on in my free time, and that is that
7 the regulator is really critical at facilitating
8 what's in the public interest.

9 Not that they're really -- it's really
10 important for the, or the regulator to bring in
11 and collaborate with members of the regulated
12 community, special interest groups and those
13 types of things, to really arrive at balanced
14 public policy.

15 As I've been traveling around the
16 world talking about cannabis policy, one thing
17 that I've noticed is that it's not always how
18 comprehensive the regulating framework, that it's
19 tough for the regulated community, it's really
20 how hard it is to report in and show compliance
21 and be able to demonstrate compliance.

22 And what we've learned is that the

1 more the regulator is involved in facilitating
2 those processes that you can strike that right
3 balance.

4 The other thing too that's kind of
5 different, that was different for me because I've
6 been on the law enforcement and regulator side:
7 to a hammer, everything is a nail.

8 But I realized that the regulating
9 community, regardless of what the industry, their
10 will to comply is very strong but the tools to be
11 able to report on compliance are sometimes
12 lacking and that's why we're really focused on
13 having a system that makes it efficient for the
14 regulated community to keep stride with their
15 business practices while at the same time being
16 able to meet reporting requirements that the
17 regulator has.

18 The other thing too is we found that
19 this can be scalable. So depending upon the size
20 of the business, the actual process of tracking
21 inventory can be scalable for small companies to
22 make it really affordable while at the same time,

1 not being so cumbersome for a large organization
2 so that it ends of costing millions of dollars to
3 be able to afford.

4 And then kind of lastly, we found that
5 our system doesn't have to be, you can have a
6 centralized system that the government can look
7 into to efficiently monitor essentially from
8 their desktops in their office space, to be able
9 to take enforcement action and if necessary, have
10 evidentiary data that they can get real
11 efficiently while still making it real efficient
12 for the licensees and the regulating community,
13 input that information.

14 They can either do it manually
15 entering information or they can utilize
16 proprietary or legacy systems that they have in
17 place for ERP to be able to just seamlessly
18 transition that data over to the government
19 system for monitoring.

20 So we feel really strongly that there
21 is a lot to be learned from the cannabis use
22 case, not because we advocate one way or the

1 other for legalization of cannabis or hemp, but
2 we really believe that there's been some real
3 progress in creating efficient systems for
4 regulators, the regulated community, and
5 technologies to work together to have a
6 comprehensive regulated framework while also
7 still being able to do so without disrupting
8 commerce.

9 So with that I'm happy to take some
10 comments or some questions from the Committee.

11 CHAIR CARR: I have one. When you
12 talked about your software there at the end when
13 you have legacy systems that companies have and
14 then new technology that go in into your data
15 base and then you can, that to be able to meet
16 the U.S. requirements or the regulatory
17 requirements, do you have software that actually
18 will take their information in the company's way
19 if it's say a legacy system and will be able to
20 extract that data and put it where it's supposed
21 to? Is that what you're doing basically or?

22 MR. KOSKI: Yes, so if you have a

1 system that you use, like an ERP system, that you
2 report all of your inventory into anyway, that
3 system can integrate in with our system to throw
4 data over the wall to populate the system that
5 the government's going to look at.

6 And the government in our system also
7 has the ability to throw information over the
8 wall into that ERP.

9 So for example, if you had product
10 that was moving from a farm to a processor or a
11 farm to a distributor, when that data from our
12 system could get thrown over the wall and
13 received by another system without the -- either
14 the farm or the distributor having to actually
15 log into our system.

16 MS. HARPER LARSEN: Couple of
17 questions bouncing off of him, based on FN
18 statements --

19 MR. KOSKI: I'm sorry?

20 MS. HARPER LARSEN: So when you talk
21 about ERP transition from a legacy system into a
22 software system --

1 MR. KOSKI: Yes?

2 MS. HARPER LARSEN: Most of them are
3 based on FN statements which are highly human
4 error-prone. So does your software read it or
5 does it read and then come back? How -- because
6 we're trying to look at this as it relates to all
7 of our subgroup committee discussions.

8 MR. KOSKI: Yes. Sure, sure. So what
9 I would say and I hope if I missed the mark on
10 this just throw something at me, but so the way,
11 what we've found is double entry is the most
12 error-prone methodology of being able to report
13 to a government on.

14 So if you have to enter something into
15 your current systems and then you have to reenter
16 that into a government system, that is the most
17 likely avenue of creating errors.

18 So what we've done is we've created an
19 interface that allows those software programs to
20 take the data that is entered into an ERP system,
21 and let's say it's just like, like a manifest or
22 data that is input into a system. That manifest

1 data comes from that system and automatically
2 populates on a field by field basis.

3 So the third party integrators which
4 would be your system that integrate into our
5 system, we work together with the third party
6 integrators to make sure that the fields that
7 they use are the fields that land and are
8 important to the regulator for their monitoring
9 activities.

10 MS. HARPER LARSEN: Okay. All right.
11 You mentioned RFID technology and many of us in
12 the produce industry have been down that route
13 before. How does that relate to blockchain and
14 transparency?

15 MR. KOSKI: Well, so RFID technology
16 has proven to be very successful in the cannabis
17 industry. And the system that we've created can
18 be as granular as tagging every plant and then
19 tracking batches that are derived from that
20 plant.

21 Also, we have the ability then to
22 trace back, talk about transparency, once a

1 product makes it all the way to the end point to
2 where the consumer purchases it, if it were to be
3 a public health or is a safety concern, we can
4 actually trace back through the data that we had,
5 that we collected at key points during the stream
6 of commerce to be able to trace back to that
7 product all the way to its originations.

8 So I don't know exactly what your
9 experience has been with RFID technology, but
10 there's a little bit, my experience has shown
11 that there's a lot of conversation about how
12 granular you trace things.

13 Do you trace every potato that comes
14 out of the ground? We would say absolutely not.
15 Do you track every strawberry plant? Absolutely
16 not. There's ways for you to be able to scale
17 the tracking using RFID technology based on the
18 comprehensive nature of the regulations.

19 So if the regulations allow for it to
20 be done by an acre, we can track it by an acre.
21 But we'd still be able to trace things back to
22 the origins.

1 And one of the concerns that we, or
2 one of the problems that we see is a lot of times
3 in fruits and vegetables and in the agricultural
4 community, you'll have an outbreak.

5 And a lot of times the entire industry
6 pays the price for that outbreak because there's
7 not a system in place that allows the regulator
8 or the regulated community to go back and really
9 identify the origins of the outbreak.

10 So our system, even using like minimal
11 points throughout the stream of commerce would be
12 able to track back, well, a lot more surgically
13 than just a region of California or a region in
14 the southeast part of the country.

15 We'd be able to really narrow it down
16 to the actual farm that the products came from
17 and probably, depending upon how many RFID tags
18 you'd use, and we recommend, you know, the less
19 the better as long as you can collect the data
20 that you need, you'd be able to narrow it down to
21 that acre or two acres that produced the product
22 that was creating an outbreak.

1 So when it comes to blockchain and
2 transparency, I think what this does is the
3 system itself creates a spirit of transparency in
4 that the regulated community is like, we
5 understand these points are the ones that are
6 important to you as a regulator, we're going to
7 feed those into a system where you can monitor
8 efficiently and potentially even do inspections
9 and risk mitigation work from the desktop and
10 then when necessary you can come out and do
11 inspections and disrupt our operations.

12 And so the transparency is really
13 there but it's possible to do it in stride rather
14 than having to have a separate set of actions
15 that you have to take to report into the
16 regulator community.

17 MS. HARPER LARSEN: Thank you.

18 MR. KOSKI: And then just sort of
19 blockchain, just one quick thing on blockchain, I
20 would say that our, in the same way the
21 blockchain really helps with the transparency
22 piece, II think the way we have our system set up

1 and at the point that we collect data for tracing
2 product that can move forth within the stream of
3 commerce, that we cover a lot of what blockchain
4 technology is capable of doing.

5 CHAIR CARR: Any other questions?

6 MR. KOSKI: Thank you, again. I'm
7 going to be around all day today if you have any
8 more interest. I have business cards and some of
9 our material for you guys to have so if you want
10 to get back in touch at a later time, I'd love to
11 be able to able to talk with you more. Thanks
12 again for your time.

13 CHAIR CARR: Thank you.

14 MR. HUGHES: Now we invite Lance
15 Jungmeyer's delegate to speak. As that speaker
16 approaches the podium, just in transparency, I
17 received written comments from a member of public
18 at 8:40 this morning. I won't be able to provide
19 that to you all until after the meeting but I did
20 receive some written comments and I'll probably,
21 I'll try to forward that email to the group just
22 so that you can read them before you go into your

1 work groups tomorrow.

2 MS. MOORE: All right. Hi, everybody.
3 I'm Allison Moore with the Fresh Produce
4 Association of the Americas in Nogales.

5 A lot of you look familiar. Hi, Fred.
6 I'm going to have to report back to Lance.
7 You'll be happy to know that I am his delegate.
8 He works in an office of all females and we tell
9 him that he works for us. So he will be happy to
10 know today that I am representing him, finally.
11 You know, he doesn't get all the kudos he
12 deserves, so kudos.

13 So I'm here because we're one of the
14 many faces of the specialty crop industry. Our
15 members are U.S. importers of fresh produce from
16 Mexico.

17 A lot of them are also integrated with
18 growing operations here in the U.S. or in Canada.
19 So we are sort of the example of the integrated
20 North America in terms of supply of fresh
21 produce. And I think when you look at the last
22 20 years, we've done a good job as a produce

1 industry of increasing consumption of a lot of
2 major commodities with consumers.

3 You look at blueberries, they've
4 increased 600 percent according to ERS data.
5 Tomatoes since the 90s have increased close to 80
6 percent. You know, going from 12 pounds to 20
7 pounds is a pretty big deal and then we see that
8 across the board for a lot of commodities.

9 You know, I think that's a huge,
10 important thing we have to remember and something
11 that we need to focus on, how do we keep people
12 eating the foods that we're growing and bringing
13 to the marketplace.

14 Ag obviously accounts for a huge
15 amount of our economy. U.S. Ag actually exported
16 \$138 billion in 2017. I'm taking all this from
17 USDA, so if there's a problem you have to yell at
18 the USDA folks.

19 And that's a \$178 billion generated
20 just from that \$138 billion. So and that's a
21 huge economic gain. I mean, that's \$317 million
22 worth of exports in a year.

1 If you look at imports, we also impact
2 the U.S. economy positively. We, just looking at
3 tomatoes we had a study done by the U of A.
4 That's 33,000 U.S. jobs across the country. In
5 my county that accounts for over 20 percent of
6 total employment in a rural county that's very
7 poor and that's a huge deal.

8 We account for overall produce, 24
9 percent of total wages in our county, in our
10 little rural county.

11 So looking at our Ag industry in a
12 whole, I think you see a lot of good things that
13 are happening and also a lot of potential.

14 I think we have to keep looking at
15 programs that are going to do more to bring food
16 to consumers and to get consumers to eat the
17 foods that we grow and that we bring to the
18 marketplace instead of eating the Snickers bar or
19 the what have you. You know, that's our
20 competition, in our opinion anyway.

21 And there have been a lot of
22 successful programs with USDA. I know for

1 domestic agriculture and MAP funding for exports,
2 again, those, the \$300 billion in economic
3 activity for U.S. exports.

4 In looking at how do you leverage MAP
5 funding, how do you improve it, how do you
6 amplify that with potential state programs.

7 And we've seen a lot of really great,
8 positive movement come out of the promotion
9 programs, watermelons, avocados and mangos, that
10 not only leverages U.S. dollars but it leverages
11 all the imported produce dollars as well coming
12 into those programs.

13 And then obviously school lunches and
14 how do we work better with global partners and
15 state partners in addition to federal money to
16 improve kids wanting to eat fresh produce.

17 And I know our members support the
18 United Fresh Salad Bars in Schools Program and we
19 do that in our local community and we see that's
20 a huge positive benefit just in our area,
21 especially for kids, that a lot of their families
22 work in the produce industry and now they're

1 going to, you know, eat salads at schools.

2 So that's for us, the, we would
3 encourage the Committee to focus on programs that
4 look at how do you increase access for consumers
5 to fresh fruits and vegetables.

6 We are encouraging you all to avoid
7 programs that seek to limit supplies to consumers
8 that are going to make consumer choice
9 diminished. Measures to restrict supply harms
10 everybody. If you put protectionist measures in
11 for products coming in from other countries,
12 you're harming the companies that import, but you
13 are also harming U.S. Ag that exports because
14 what's good for the goose is going to be good for
15 the gander.

16 So if you're going to limit imports
17 into the U.S. then we're going to have
18 retaliatory measures from our trading partners as
19 well.

20 We're seeing that play out now in a
21 number of arenas in trade. I know China's the big
22 one that you can think of but, you know, also

1 looking at what's happening right now with
2 tomatoes in Mexico and, you know, the
3 negotiations are ongoing for that.

4 And it's just not, it's
5 counterproductive to increasing consumption of
6 the foods that we're all growing and that's
7 really the reason you grow it, right, to have
8 people buy and eat it.

9 Another concern that restricts
10 movement is the proposed seasonality trade
11 provisions. I know those were talked about in
12 the USMCA and they were rejected in that process
13 and we encourage this Committee to also reject
14 measures such as seasonality trade restrictions.

15 So let's focus on how do you get
16 people to eat more, how do you, when you put more
17 food in front of people, consumption increases
18 and so I would just ask that we focus on ways to
19 do that instead of ways the industry and energies
20 fighting for our little small piece of the pie,
21 let's make our pie bigger together. So that's my
22 comment.

1 CHAIR CARR: Questions?

2 MR. BOWMAN: I have a comment or a
3 question. You know, I do believe we need
4 sustainable market access but we also need fair
5 trade and House Bill 101 addresses that with a
6 seasonality deal and I think that's a very
7 important topic that we need to discuss, and, you
8 know, I think you're missing the point a little
9 bit on your comment. Thank you.

10 MS. MOORE: All right. We will have
11 to agree to disagree. I think the seasonality
12 bill takes us a step back and is going to create
13 a patchwork quilt of tit-for-tat trade fights
14 and, you know, people that look to export
15 markets, then they're going to have the seasonal
16 regional groups and those export markets putting
17 similar cases against U.S. product.

18 And it just becomes a continuous
19 battle back and forth instead of a continuous
20 movement forward for everybody.

21 MR. BOWMAN: But if you have
22 sustainable market access but you can't have

1 dumping and at times and the only way we can
2 combat that is with a seasonal clause, then
3 there'll still be seasonal business.

4 And if you have times during the year
5 where there's excess supply coming into our
6 market, you know, we need to be able to enforce
7 that and then and protect ourselves also.

8 MS. MOORE: I think seasonal change to
9 anti-dumping law is the wrong way to go.

10 MR. BOWMAN: Okay.

11 MS. MOORE: That's my opinion.

12 MR. WILKINS: You've stated that the
13 USMCA rejected the first negotiation on
14 seasonality. Do you have where that is today?

15 MS. MOORE: As far as I know,
16 seasonality is not in the implementing language
17 for USMCA. Mexico and Canada both were strongly
18 opposed to seasonality language. So in the final
19 implementing language that was passed by Mexico
20 and Canada already, it's not in the language.

21 MR. WILKINS: Is that the time frame
22 we're hearing of October '19 that that is, are

1 you aware of that date? Do you know?

2 MR. WILKINS: I believe it's come up
3 very quickly. I don't have the exact date.

4 MS. MOORE: Yes, I don't know what the
5 timeline is for when the USTR will even get the
6 final package back to Congress but I think that's
7 the next step.

8 MS. HARPER LARSEN: First of all,
9 thank you very much for coming to present to us
10 knowing the makeup of the Committee,
11 predominately, and having done business in both
12 domestic and foreign markets, I understand where
13 your commentary is at.

14 One thing that I would like to ask
15 about is we're dealing with trading partners who
16 don't have seasonality issues predominately in
17 their production patterns.

18 Mexico in particular, according to a
19 University of Florida Study, invested since 2005
20 52 times more capital in developing its grower
21 infrastructure to develop greenhouse structures.

22 We already know that Canada has the

1 capacity especially in the four eastern provinces
2 that supply in a lot of the dry veg so we're
3 dealing with two trading partners here who don't
4 have seasonality and we have the lower hand at
5 that.

6 What would the Fresh Produce of the
7 Americas Association offer to assist since you do
8 also receive domestic product into those
9 repacking operations in Nogales, to assist this
10 Committee in making a well-rounded statement?

11 MS. MOORE: So we don't really see a
12 lot of domestic product come into Nogales, into
13 repacking facilities.

14 A lot of the repacking of any kind of
15 product happens closer to the buying end. So a
16 lot of that is actually, I know just in tomatoes
17 is specifically a lot of U.S. integrated-owned
18 repacking facilities that are repacking both
19 domestic and foreign product.

20 A lot of our members for example might
21 be growers in Canada, as well as growers here in
22 the U.S., as well as growers in Mexico. We're

1 working with all of them.

2 They looked and said, what can I do to
3 bring product to consumers. What can I do to
4 access retail clients and does that involve me
5 expanding my supply chain, expanding my growing
6 window in other areas to be able to do that?

7 So a lot of people have looked at
8 different innovation like Greenhouse in Canada.
9 Greenhouse in Mexico.

10 Greenhouses here in the U.S., you're
11 seeing that pop up in around metropolitan areas.
12 You see greenhouses in Virginia. You see
13 greenhouses going in in Kentucky.

14 You know, people are finding ways to
15 adopt new technologies. I'm not a grower here in
16 the U.S. I can't say, hey, go and adopt this
17 technology.

18 What I can say is, we need to have
19 consumer access to the foods that they want to
20 eat year-round and flavors that they want, you
21 know, to enjoy. Flavorful, good, high quality
22 product. And, you know, you need to look to what

1 are the programs that can help growers across the
2 U.S. innovate and meet those demands.

3 MS. HARPER LARSEN: Thank you.

4 MR. WILKINS: I guess this is more of
5 a comment than anything but, you know, my father
6 was in this business for over 50 years in retail
7 and I've followed the past 44 and we both have
8 spent our lifetime trying to supply consumer,
9 okay.

10 You know, when I look at why I came
11 here, we all represent obviously certain entities
12 in the world. But you know, I, Bret and I happen
13 to live in an area that has the highest diabetes
14 rate in the world and one of the ways we can do
15 is increase consumption. And I think that we've
16 identified an issue here and I worry that we
17 haven't provided the solution.

18 When we walk around Texas, which is
19 where I'm from, there's a tremendous amount of
20 second- and third-generation farmers that are
21 struggling.

22 They're fighting water, they're

1 fighting urban encroachment, they're fighting
2 labor. They're also fighting global encroachment
3 as far as what they're doing.

4 You know, I challenge our Committee to
5 come up more with a solution than a statement and
6 I worry that we're just doing a statement and not
7 offering a solution.

8 You mentioned House Bill 101 and
9 dumping. You know, I worry that the vocabulary
10 that we've stated in our recommendation has been
11 left out of the conversation at this point, and
12 if I was Secretary Perdue, I'd want more of a
13 solution than just a statement and I worry that
14 we're making a statement.

15 And I've got to look growers in Texas
16 in the eye that I'm asking to grow and, you know,
17 I believe in the American farmer but I don't see
18 that we've offered a solution. Maybe some, and
19 we are all in this business and, you know, I
20 challenge us tomorrow to be a little bit more
21 definitive in a solution.

22 We need all the fresh produce

1 consumption we can muster but it can't be at the
2 sacrifice of the American farmer. I believe in
3 that. I truly do.

4 But I just, I feel like we're
5 reiterating a problem without offering a solution
6 and I challenge us to work on that solution.

7 CHAIR CARR: Any other questions or
8 comments for Allison? Allison, I have one.
9 First of all again, I appreciate your comments
10 and everything and I do think we could all agree
11 on the fact that we want to increase consumption.

12 We, you know, and you mentioned the
13 school lunch programs and the best way to start
14 people off eating healthy is to start them off
15 when they're young. And so we've all agreed and
16 bought into that.

17 But one of our big concerns in this
18 and it's something we're going to discuss
19 tomorrow, is the Buy American provisions in our
20 school lunch programs where we're using federal
21 dollars that are getting spent on foreign
22 products that are putting our producers at a

1 disadvantage here.

2 So these are concerns that we have
3 when you're taking federal dollars and going and
4 buying foreign product when there's U.S. product
5 available.

6 And as Richard said, the big thing is
7 fair trade. So if you're competing, if
8 everything is level, that's great but when you're
9 competing when it gets to subsidized industry in
10 Mexico right now that's getting federal dollars
11 from their own government to grow their
12 infrastructure, defer their cost, we're not
13 competing on a level playing field.

14 So that's where some of these
15 challenges will come in. If you put us on a
16 level playing field, we'll compete. But with all
17 the regulations, our labor costs, and the fact
18 that you got subsidized production coming in, not
19 just from Mexico, but other countries as well, it
20 is very difficult and we could see this industry
21 change and continue to change in a negative way
22 because of that.

1 Anything else? Thank you, Allison,
2 for your comments.

3 MS. MOORE: Thank you.

4 MR. HUGHES: Okay. So that's the last
5 public speaker that was registered. We are
6 turning ahead on time.

7 We do have a few members here with the
8 public. There's a representative from Bayer
9 here. It's totally up to you if you would like.
10 If you're interested in giving some quick
11 comments to the Committee, feel free to do so.
12 Pass or?

13 MS. JACKSON-GHEISSARI: Yes, I mean,
14 I haven't been trying to do this at all. This is
15 the first time I've heard about --

16 MR. HUGHES: Okay.

17 MS. JACKSON-GHEISSARI: -- this
18 meeting and really very happy to be here. One of
19 the areas that --

20 MR. HUGHES: Would you, do you mind
21 coming up here?

22 MS. JACKSON-GHEISSARI: Sure. Thank

1 you.

2 MR. HUGHES: Sorry.

3 MS. JACKSON-GHEISSARI: That's okay.

4 MR. HUGHES: I figured I'd just give
5 you the opportunity.

6 (Simultaneous speaking.)

7 MS. JACKSON-GHEISSARI: Put me on the
8 spot. So good morning. My name is Amelia
9 Jackson-Gheissari. My title is International
10 Regulatory Affairs for Bayer Crop Science in the
11 Washington D.C. office.

12 And for the last almost 30 years I've
13 been in the highly regulation industry of
14 agrochemicals, whether they're for the
15 conventional farming industry or for the organic
16 industry.

17 In the last four years, I would say
18 I've spent a lot of time working on import
19 tolerances and MRLs and I heard the Chairman say
20 that later on today I think we're going to hear
21 from the USTR or USDA FAS and I'd be happy to
22 engage in that conversation.

1 I would say that the countries that
2 we're very concerned about at the moment are
3 those countries that have their own positive list
4 system and they're moving away from Codex MRLs.

5 So for example, China, Taiwan and
6 Korea, and I know all those countries are
7 important, especially Taiwan and Korea, to our
8 fruit and vegetable exporters.

9 The EU also with its special
10 precautionary regulations and the cut-off
11 criteria that they apply to the approval system
12 for pesticides in the European Union. And that
13 is something that we are looking at, you know,
14 very closely for our products and U.S. export.

15 So I'm happy to answer questions. I
16 hadn't intended to make any statements but it's a
17 fabulous organization here and I'm glad I got to
18 know about you.

19 I'll be going out to California in
20 January to speak to some growers about this
21 issue, about particularly China, Taiwan and Korea
22 and I can maybe tell you a little bit about that

1 a little later. Thank you.

2 MR. HUGHES: Okay. And also we have
3 Robert Guenther from the United Fresh and then
4 we'll be hearing from United Fresh later on this
5 afternoon. But I'd like Robert to come up and
6 give us a little more.

7 MR. TISON: Darrell, excuse me, will
8 we be getting a printout of all these speakers
9 with their names and who they're with?

10 MR. HUGHES: Yes.

11 MR. TISON: Okay.

12 MR. GUENTHER: Well, good morning
13 again or good morning. Robert Guenther with
14 United Fresh Produce. I wasn't going to speak
15 but Darrell twisted my arm a little bit to say a
16 few words. But again, to echo other speakers,
17 welcome back for your second meeting.

18 For this session, as you know, United
19 Fresh, this is a Committee that's very near and
20 dear to our heart.

21 We worked very closely back in the
22 early 2000s with Secretary Veneman to get this

1 Fruit and Vegetable Industry Advisory Committee
2 chartered and it's, we think it's been a very
3 successful committee over the last 18-plus years.

4 I really didn't have any formal
5 comments but to welcome you. You know, I would
6 say, based on what I've heard already, I mean,
7 you're talking about issues we're talking about
8 every day.

9 Tommy, to your point about solutions
10 versus finger-pointing is very important to us
11 especially in this trade environment we're in at
12 this time.

13 You know, we need solutions and that's
14 a combination of things. Part of it is increased
15 consumption, part of it is better infrastructure
16 investment. The government can help that.

17 Certainly we work very closely in the
18 Farm Bill to kind of bring back hopefully to some
19 efforts through the Farm Bill efforts that we
20 spend a lot of time on and other industry
21 associations spend a lot of time on say block
22 grants, on research, pest/disease. But that's

1 not enough, obviously.

2 So we need to continue to think
3 outside the box there beyond the traditional ways
4 that USDA and other parts of the government can
5 help us. We're looking at that. There's a lot
6 of pressure on a lot of you, you know, in this,
7 you know, current trade environment.

8 But we also see positive stuff and,
9 you know, you mentioned the access to more fruits
10 and vegetables for children and for, in federal
11 nutrition programs.

12 We've seen a lot of positive movement
13 in that policy space, certainly immigration. I
14 know you have a committee working on that and
15 continues to be on the top line for everybody.

16 You know, hopefully it's something
17 that we can continue to move in the right
18 direction. Certainly when we put these --
19 administrations put together a set of proposals
20 on H-2A reforms, I think we move us in the right
21 direction, but it's not enough. There still need
22 to be Congress to act on those issues.

1 So again, a lot of things you guys can
2 help us with. A lot of things that, you know,
3 your recommendation's going to be very important
4 to the Secretary to listen to and to review, so
5 appreciate your time to volunteer for this
6 Committee. Happy to answer any questions as
7 well.

8 MR. WILKINS: Do you all have any
9 information on the USMCA Bill that you could
10 share with us as to --

11 MR. GUENTHER: Tommy, I mean it's
12 really kind of waiting for the administration and
13 the Democrats in the House to kind of come up
14 with some agreement that they can fine-tune, some
15 of the issues that the Democrats want in the
16 House. I mean, that's the key thing.

17 Senate's ready to move on it. They've
18 got bipartisan support, but there's a portion
19 which you may have read that the Speaker has put
20 together that is working with the USTR,
21 Ambassador Lighthizer, to come up with some
22 changes that they would be acceptable to them.

1 And once that's done and they're
2 working right now on this to, it could be as
3 early as September. The administration brings
4 the legislative leverage up to the Hill which
5 then triggers that time period where they have to
6 vote up or down on the bill, Congress does. It's
7 90 days.

8 MR. WILKINS: So Mr. Trump backed off
9 a little bit on the Apple and China issue
10 yesterday and curious from your input on your
11 history and work daily on some of the Hill.

12 Where do you see the collateral damage
13 to some of the things we're talking about in the
14 United States, say from the corn, the pork, the
15 beef, potatoes? Is there any insight you can
16 give us on what the collateral damage to some of
17 this conversation we're having here?

18 MR. GUENTHER: I think it's
19 significant. I think, number one, I think we're
20 in this for the long haul with China. That's my,
21 a lot of that I think is my personal, but I think
22 that's a lot of you know how to, you know, we've

1 got an ongoing fight. I think the Chinese are
2 ready to wait it out and see what happens next
3 year. This shouldn't be political so I apologize
4 to USDA for this.

5 But let's kind of see how the
6 elections work out. You know, and see where this
7 goes if -- but I think a lot of folks who are
8 very reliant on exports to China for a lot of
9 commodity groups and that's the Midwest, and some
10 of our commodity groups are very concerned that,
11 you know, these markets may, it'll be hard to get
12 them back if, when and if there's an agreement
13 for this trade war back and forth.

14 So I think we have a lot of folks in
15 the grain industry. My wife's in the grain
16 industry. I think we talk about, a lot of people
17 talk about that in that world about will they,
18 will China continue to keep them as markets or
19 reestablish those markets once this trade
20 agreement opens so there's a lot of concern and
21 where does that product go.

22 There's already a lot of movement, you

1 know, in that world to shift production to other
2 areas outside of the U.S.

3 MR. WILKINS: So how would you
4 recommend that we as a Committee look at that for
5 the word fair trade?

6 MR. GUENTHER: Well, continue to open
7 markets. We got to get away from trade aid.
8 Certainly we appreciate the administration's
9 efforts to send two amounts, two buckets of
10 funding for trade aid.

11 Some of that has gone to fruit and
12 vegetable specialty crops community in the form
13 of payments, in the form of commodity purchases.
14 But we've got to get away from that. That's just
15 not a long-standing or, you know, a sustaining
16 type of way to deal with trade battles.

17 So we've got to find and continue to
18 open up new markets best we can. You know, but I
19 think the problem is not just China. We've got a
20 lot of other battles that the administration is
21 fighting right now related to tariffs and
22 challenges. India is a good example.

1 You know, we need to get some of these
2 bilateral agreements done with Asia, like Korea
3 and Japan, for instance. I know Jason
4 Hafemeister's going to talk to you guys later and
5 shortly, I guess.

6 And I mean, I think he can fill you in
7 on kind of that view of the administration but I
8 think that we've got to look for alternative
9 markets.

10 You can't just settle on one market.
11 I think that a lot of folks in the grain industry
12 have gotten it. Once that dries up it becomes a
13 challenge.

14 CHAIR CARR: Charles?

15 MR. WINGARD: Robert, you mentioned
16 about we need solutions, not finger-pointing, I
17 think is the word you used. Does United have a
18 proposed solution for these trade issues?

19 MR. GUENTHER: You know, we're still
20 -- we don't. I think it's a challenge right now
21 to understand when the next shoe's going to drop
22 with the next fight.

1 This is a very unpredictable
2 environment, we are in trade, that we've never
3 been in in my 20-plus years here that I can
4 remember over the last two to three years.

5 So it's hard to kind of create a long-
6 term strategy when you're not sure kind of the
7 changes in negotiation strategy that are going on
8 with some of our partners.

9 So I continue to believe that, you
10 know, we've got to continue to try to open up
11 markets through trade agreements, through, I
12 mean, somebody mentioned a market access program.
13 Allison mentioned the Market Access Program,
14 expanding these programs that allow for increased
15 opportunities in trade. And I think that's our
16 best tool right now, is a new solution to that,
17 Charles.

18 But that's nothing novel that I, it's
19 hard to create a long-term strategy when you're
20 not sure how, just what the real strategy endgame
21 is for the current, you know, environment we're
22 in. We're just not sure. And I'm just not sure

1 it's by me but a lot of body groups of trade
2 agreements.

3 CHAIR CARR: Okay. Go.

4 MR. ZEA: Donn Zea with California
5 Prune Board. Robert, what was, in your opinion,
6 I mean, there's a lot of discussion about the
7 challenges we're now facing in this chaotic time
8 and we're all looking for solutions.

9 But how were we doing before this
10 chaotic time, in your opinion? I mean, how were
11 things going, what were the solutions then as
12 compared to now?

13 MR. GUENTHER: I think that things
14 were going, were doing well. I think we were
15 focusing on how do we reduce the non-tariff,
16 trade barriers. Tariffs were not an issue for
17 us. It was for the sight-unseen sanitary issues
18 that we were trying to bring down and once
19 tariffs were at a good space across the world,
20 and I think those were the areas we were focusing
21 most of our time on, was how do you bring down
22 these fundamental trade barriers, as we call

1 them?

2 And they were areas related to pest
3 and disease sometimes. Sometimes they were
4 quote-unquote, made up to try to block product
5 kind of going out from the U.S. to other
6 countries. Some of it was safety-related and you
7 had challenges there from other countries.

8 And these were things with more
9 technical challenges that we were fighting
10 basically by commodity, by commodity. The tariff
11 stuff then when it started kind of going back and
12 forth, you know, changed that dynamic that we
13 just got to get back to where we were and then
14 have those fights.

15 And a lot of that could have been
16 addressed in some of the trade agreements or new
17 trade agreements. We could be pushing for the
18 Trans-Pacific Partnership. The TPP was one area
19 that we thought was moving in the right direction
20 and then of course we pulled, the United States
21 pulled out of that agreement in 2017.

22 So but they had some really good

1 strong sanitary and phytosanitary provisions that
2 were transparent that required you to really
3 justify it scientifically why you were reducing,
4 people were blocking product coming into your
5 country and that was like around 65 different
6 countries were part of that.

7 MR. ZEA: Okay.

8 MR. GUENTHER: And it was going to,
9 you know, and we unfortunately pulled out of
10 that, so. But that, before it was really the
11 technical areas that we were facing on all trade.
12 Hopefully that answers a little bit.

13 MR. ZEA: Okay.

14 MS. HARPER LARSEN: Good morning, sir.

15 MR. GUENTHER: Good morning. Good to
16 see you.

17 MS. HARPER LARSEN: I think we can all
18 say that NAFTA has failed us as the American
19 producer and we haven't been able to actively
20 police it.

21 And with the fact that we all do need
22 to come up with solutions but we have a shortened

1 timeline. We're talking about September time
2 frame, maybe October time frame, to be able to
3 give the American producer a leg to stand on
4 because he's on his knees right now.

5 With that in play, if we allow a
6 seasonality provision in law, H.R. 101, S.B. 16,
7 we could not enter into an agreement, correct,
8 that would not have that provision, is that
9 correct?

10 MR. GUENTHER: It would be our
11 understanding that, well, during the negotiations
12 before the agreement was signed in last year, the
13 Canada and U.S., or excuse me, Canada and Mexico
14 refused to accept a seasonality provision in the
15 USMCA agreement.

16 So if that was reintroduced, it's
17 unclear, probably most likely they would push
18 hard back at that being part of it because the
19 agreements have to be pretty much simultaneously
20 agreed to or, let me back up. They must be, you
21 know, consistent between the --

22 MS. HARPER LARSEN: But currently when

1 those negotiations, when our folks went into
2 those agreements in Mexico City, they didn't have
3 any legal teeth. They said, this is what we want
4 but they didn't have any legal teeth to say this
5 is what regulation says.

6 MR. GUENTHER: Yes, I think I
7 understand that question. I think that's right.

8 MS. HARPER LARSEN: Can you give the
9 Committee a little bit, because I know United was
10 at the table and at those meetings, that was an
11 11th-hour discussion. You know, seasonality was
12 in the USMCA provision.

13 MR. GUENTHER: Mm-hmm.

14 MS. HARPER LARSEN: Can you detail to
15 them what we were exchanged for?

16 MR. GUENTHER: Well, I don't think we
17 were really at the table. I think we were
18 certainly, I mean, I certainly, so you got, some
19 of you may know, Bret and I serve on the fruit
20 and vegetable industry, excuse me, the USDA Fruit
21 and Vegetable Trade Advisory Committee.

22 So there's a different advisory

1 committee where trade is based on different
2 commodity groups. So there is a Fruit and
3 Vegetable Advisory Committee on Trade to the
4 Secretary.

5 And so as part of that group we as a
6 committee did not support; we encouraged the
7 USTR, the trade rep, the trade negotiators to not
8 include a seasonality provision but to find other
9 solutions, to Tommy's point, to address the needs
10 of the current domestic workforce, or domestic,
11 excuse me, domestic industry.

12 So that then, the negotiators for the
13 U.S. then, right, were kind of put in a position
14 where they couldn't push as hard as they were
15 initially.

16 So is that, I mean, so basically they
17 put in a new proposal --

18 MS. HARPER LARSEN: Is there a new
19 committee makeup now though?

20 MR. GUENTHER: -- Canada, U.S., Canada
21 and Mexico disagreed or said hell, no, we're not
22 going to do that.

1 MS. HARPER LARSEN: Right.

2 MR. GUENTHER: And then they pulled it
3 out of the agreement.

4 MS. HARPER LARSEN: But we were
5 exchanged for auto, correct? Automobiles?

6 MR. GUENTHER: I don't know that.

7 MS. HARPER LARSEN: Can you talk to
8 them, because a lot of people might not be --

9 MR. GUENTHER: I can, yes.

10 MS. HARPER LARSEN: -- familiar with
11 USDA's trade committee?

12 MR. GUENTHER: Mm-hmm.

13 MS. HARPER LARSEN: And what its
14 current makeup is?

15 MR. GUENTHER: Sure. So I don't know
16 how much you're aware of this, but for a long
17 time USDA and USTR had a series of technical
18 trade committees as well as a, what's called the
19 Agriculture Policy Advisory Committee on Trade,
20 which again advises both USDA and USTR on trade
21 issues.

22 And there's an overall committee and

1 then there's several groups driven by commodity
2 groups. So there's a fruit and vegetable one,
3 there's a grains, there's a dairy one, there's
4 several others, Chemical Ag retail farm inputs.

5 And those groups then break up into
6 meet two or three times a year and we're also
7 have weekly or monthly discussions with U.S.,
8 with USDA-USTR about some of the language that is
9 in the different agreements or proposed
10 agreements and we're allowed to comment on those
11 before the public does.

12 But those are all kind of private
13 conversations or secret. We're not allowed to
14 publicly share that information. So it's quite a
15 process compared to what you guys probably have
16 to go through for the Committee. You'd get on
17 the committee.

18 So anyway, that's kind of, Jason again
19 is part of that group who helps guide us. So it
20 could be, if you want to, you know, understand
21 the structure of that he might be a good person
22 to talk to about that as well, kind of tell you

1 about how that process works.

2 But it, yes, I mean it's, they're, again,
3 it's focused on trade. Some in this committee
4 are very focused on just trade and all the trade
5 things going on with the U.S. and other
6 countries.

7 MR. ERICKSON: I have a question for
8 you. This is a tough topic, the trade issue.
9 One of the things that, you know, there is a lot
10 of us that, like our company, you know, we're
11 primarily a domestic producer, a gross shipper.

12 We probably grow, pack and ship 85
13 percent of our product in the U.S. We do import
14 some product out of Mexico to sustain ourselves
15 when, you know, we move from Texas to New Mexico
16 or Georgia and then up to New Jersey.

17 And then we use Mexico as a bridge to
18 help us kind of, and then we do some work in Peru
19 to kind of complete a cycle so that we can be a
20 year round supplier to our customers.

21 We're also not, you know, our owner
22 and our company, you know, it's not to say that,

1 you know, we're not too excited when Mexican
2 product is coming in at the same time that we're
3 producing product because it, you know, it's more
4 expensive, frankly, for us to grow.

5 But my point is, you know, maybe as a
6 group and an industry I really believe we should
7 be putting more pressure on the buyers and the
8 retailers to support first domestic production
9 when possible. You know, we sell a lot of
10 product. We export a lot of product to Canada.

11 And the Canadians do a tremendous job
12 of protecting their own seasons. When stuff is,
13 when Canada is in season you can't get in. They
14 support Canada.

15 It's not by law or regulation. They
16 support Canadian. And it would be nice for us to
17 find a way to, you know, be united. It's tough
18 to, you know, you don't want to tell your buyers
19 hey, you wag your finger at your customers.

20 But, you know, as an industry it would
21 be nice if we could find a way to collectively
22 say, you know, the cost of labor is going up. A

1 lot of us are having to go into H-2A.

2 We're competing with, you know, we
3 talk about fair trade. Our buyers should be
4 recognizing that and they can say well we support
5 local. You know, we believe we support domestic.

6 But at the end of the day, you know,
7 it's about the cost and a lot of them, you know,
8 are sourcing the lowest cost option. And
9 considering the circumstances that U.S. producers
10 are in for a lot of reasons, a number of which
11 we're discussing here, it makes it really tough
12 for us to compete on those items that we're
13 growing here in the U.S. and that are coming from
14 somewhere else at the same time.

15 MR. GUENTHER: Yes, Bret. I think
16 you're spot on. This is the way we've got to as
17 an industry try to work in partnership with our
18 customers to figure out better ways of supporting
19 the domestic industry but also making sure
20 obviously that consumer demand is met.

21 Market access is important. You know,
22 the U.S. consumes I think, Allison mentioned kind

1 of the increase of consumption in certain
2 commodities. How do we address that from a
3 domestic standpoint but also make sure that
4 consumer demand is met?

5 You know, I think, you know, we do
6 have some very progressive market access in our
7 world, fruit and vegetables in terms of product
8 coming into this country. You look at the
9 increase.

10 But that also means a lot of demand is
11 put on there, in terms of demand from the
12 consumers. You know, we've got companies now in
13 the U.S. who are investing in other, as you
14 mentioned, other countries as well because of the
15 demand.

16 And a lot of that's coming from the
17 customer side, the customer base. And in terms
18 of being a one stop shop supplier of product,
19 peaches, collards, whatever you want to call it,
20 you know, and how do we meet that customer, I
21 mean consumer demand but also that customer
22 demand.

1 And you're right, that's an industry
2 discussion that we need to try and figure out
3 what's the best way to approach that because we
4 have not necessarily addressed that directly as
5 much as we've let the marketplace work it out.

6 MR. ERICKSON: Like school, you know,
7 school lunch programs it's easy to find ways to
8 incentivize them for school lunches to buy
9 American first. And believe me, I'm a fan of
10 having, my wife wants strawberries all year
11 round.

12 She wants blueberries all year round.
13 She wants tomatoes all year round. To Allison's
14 point, we are eating a lot more tomatoes than we
15 did five years ago in our household.

16 Avocados, you know, there are a lot of
17 examples. And I want options at the grocery
18 store. I want everything available to us 365
19 days a year.

20 But if we can find ways to incentivize
21 school lunch programs maybe there's ways we could
22 look at to incentivize regional and national

1 retail chains to source local or domestic
2 leaders.

3 MR. GUENTHER: I agree. And, you
4 know, one of the tools we have as far as I'm
5 concerned that we need to probably have a more
6 strategic plan on is the Specialty Crop Block
7 Grant Program.

8 That is supposed to be incentivizing,
9 supposed to be marketing, promoting fruit and
10 vegetables across the country. I know let's take
11 my state we've included a multi-state that you
12 can do more regional national approaches to it.

13 But I think it's something this
14 committee ought to spend a little bit of time on
15 with AMS as they run the Block Grant Program to
16 understand how the states are using that funding
17 to promote, to help the domestic industry because
18 that is one of our best tools in terms of
19 domestic support.

20 And, yes, I mean there are some good
21 projects going on the state by state level.
22 Colorado Department of AG is here somewhere.

1 But I think that, you know, it's
2 something I think we ought to think about,
3 especially this committee ought to think about is
4 how can we encourage states to continue to have
5 this, you know, because it is a federally funded
6 program, \$85 million a year now.

7 And it's been, you know, it's a good
8 vessel. But that really was focused on
9 increasing domestic and supporting and marketing
10 domestic product.

11 MR. WILKINS: This leads a little bit
12 into what I challenged us to work on tomorrow is
13 that, you know, 21 years I was director of
14 produce procurement for United Supermarkets in
15 Lubbock, Texas.

16 And if it was grown in the United
17 States I bought it. I didn't buy nowhere else.
18 So I'm not saying about what anybody else does.
19 But, by God, I did that, okay.

20 And I agree with it 100 percent. But
21 we are in a time where we're seeing investment
22 firms sucking up companies, all these companies

1 that are buying into what we're doing.

2 And I challenge us, you know, I did
3 what you asked, okay. But I think the solution
4 to this is prohibiting the dumping or anything
5 that is a barrier to fair trade, okay.

6 And I just, I question that
7 seasonality goes far enough or there's not a
8 solution in that. It's been balked at already.
9 We have to do something to give the American
10 farmer every chance he can.

11 You guys need to and you can do it
12 right now. But I believe that a lot of domestic
13 produce people in my position in the past
14 understand that and do that.

15 But I think from our tier we've got to
16 look at helping with more of the things that we
17 do to hurt, you know, the dumping issue is one
18 that, when the market is \$5 on anything nobody
19 makes money, nobody.

20 And the consumer, quite honestly,
21 don't even get the benefit of the deal. You
22 know, the question and I don't have all the

1 answers and I certainly have got more questions
2 and I am way too passionate about this.

3 But you put a tariff on something
4 where does that tariff money go? I know it comes
5 out of my pocket paying more for product coming
6 in on the tariff issue.

7 I don't think that's a solution. We
8 are smart enough in here to come up with more
9 solutions. But I really feel like we owe the
10 solution to be more than just agreeing that we
11 have a problem.

12 We've got a problem. How can the
13 intelligence on this committee come up with a
14 solution?

15 MR. BOWMAN: And I'm under the
16 impression that there's tax incentives to
17 retailers in Canada to buy Canadian product when
18 it's in season there. And that's one of the
19 things that promotes them and our trade
20 representative might be able to confirm that.

21 I mean, Canada protects its growers,
22 I mean, the dairy industry, the wheat industry.

1 I mean, I was visiting growers in Canada a couple
2 months ago and I don't know if everybody in this
3 room knows.

4 But the U.S. dairy industry is in
5 horrible condition right now. And to see new
6 dairy farms being built in Canada was just mind
7 boggling.

8 I do believe they have support
9 programs to get the retailers to buy Canadian
10 through tax incentives. But I'm not 100 percent
11 sure.

12 CHAIR CARR: I have a few comments.
13 There are many of us here that are members of
14 your group. And I don't know if a national
15 organization has done more to actually try to
16 expand the consumption of fresh fruits and
17 vegetables than the United States, very
18 commendable there.

19 But looking at this and the couple of
20 the issues that we obviously disagree on. So we
21 have provisions where we give federal dollars to,
22 you know, support school lunch programs and

1 everything like that.

2 And we've obviously got importers
3 being product in here. These are being used to
4 provide those. Where does United stand on the
5 Buy America provision?

6 MR. GUENTHER: We support the Buy
7 American provision. We always have. And it
8 mushroomed at some point. Certainly, you know,
9 the Child Nutrition Reauthorization policy, but
10 that bill is now up for consideration in like
11 September.

12 That's going to be another area where
13 they can strengthen the Buy American provision.
14 So your recommendations will be helpful to not
15 just the USDA but even Congress to figure out how
16 that can be strengthened in the way that makes
17 sure that schools and school districts, in
18 particular are applying that provision.

19 I know we've had a lot of challenges
20 in California. That's kind of the tip of the
21 iceberg with the Chinese peaches that were bought
22 by the Sacramento School District.

1 We can't have that happen, period. I
2 mean, you know, Steve knows this, being part of
3 the industry, you know, we just can't have that.
4 We're not going to support that.

5 But, you know, I think that's another
6 opportunity. But anyway, but that's kind of,
7 that's what we want.

8 CHAIR CARR: So we already discussed,
9 I mean we all know what NAFTA has in place in
10 certain parts of this country in particular the
11 southeast, Florida would probably be number one
12 where tomatoes, same think like the peaches.

13 Like before NAFTA there was other
14 commodities as well. But we all knew there was a
15 problem with that and so we came up with this
16 regional language.

17 And then that got removed through
18 negotiations. But United has not taken a
19 position, your position is not to support
20 regional because it could change the agreement
21 that's in place.

22 How do we then understand that, work

1 around that or work for another solution going
2 forward?

3 MR. GUENTHER: Well it goes to a
4 little bit of Tony and Richard brought this up
5 too. I think we feel and I think Allison even
6 touched on this, I think we feel, well we do feel
7 that the USMCA in its current state is a good
8 thing.

9 You mentioned the dairy industry.
10 They didn't get what they wanted in the USMCA.
11 They gave more access to Canada yet they are
12 supporting USMCA as well.

13 But in terms of the national bearing
14 organizations, there is, negotiations at that
15 point. But I think that we have got to find
16 different ways to help invest in our domestic
17 industry to help them continue to thrive.

18 And again, that's part of what we do
19 in the Farm Bill. It may not be enough. We may
20 need to think differently. We may need to
21 redirect some of the programs that we thought
22 were going to be useful.

1 You know, ten or 15 years ago when we
2 started this Farm Bill effort to help enhance the
3 Farm Bill, you know, the Farm Bill in our world
4 was there for 60, 70 years. I'm very interested
5 in, I mean obviously, you know, we have a test
6 case going on right now with tomatoes.

7 And it is going through now the
8 process of whether or not, you know, there is
9 funding. And the primary decision by IDC is
10 there was.

11 So there is a process that is going on
12 as we speak. It may not be the best process. It
13 may not be the most direct process. It took a
14 while.

15 So if this case continues and there's
16 no agreement, you know, we're going to find out
17 real quick what our customers are going to react
18 to that in terms of supply.

19 You know, how is industry going to
20 change if it does at all because of the increased
21 tariffs on tomatoes coming into the U.S.? Does
22 this go down the supply chain?

1 Do consumers and retailers and other
2 customers push back at it? But, you know, we're
3 right now, you know, this is a test case that may
4 drive us into a different, at least my view of it
5 is, if the case goes forward and there's a final
6 decision -- and it's applied to domestic
7 industry, how does the domestic industry, does
8 that help them or does that really kind of harm
9 in terms of losing their opportunity for more
10 market access domestically?

11 We'll see. I mean, to me it's, you
12 know, the process is moving forward. It's been
13 clunky. It's not as efficient as the regional.
14 It's easy to file a complaint or file a suit as
15 the seasonal perishable provision would.

16 But, you know, the tomato process
17 we're moving forward. Allison may kill me. I
18 mean, I don't know what else to say about it
19 except, you know, we're watching this. We're not
20 involved in that issue.

21 We're not taking sides on that issue.
22 We've made everybody mad every time we say

1 something about the tomato issue, whether it's
2 the domestic industry or the Mexican industry.

3 So we are staying out of that. But we
4 still believe USDA is still, to your point about
5 enforcement it does enhance enforcement. It does
6 have better sanitary -- provisions that were not
7 in the original 1994.

8 Sure that's a 30 something year old or
9 40 year old trade agreement. There are going to
10 be agreements made. We've had a lot of changes
11 in trade during that time.

12 So, yes, we were supportive of the
13 negotiation.

14 CHAIR CARR: But 25 years later we
15 knew the biggest problem of NAFTA is we didn't
16 have a regional ability to buy --

17 MR. GUENTHER: That's true.

18 CHAIR CARR: -- and the industry said
19 we need this. But unfortunately, it was traded
20 away again. And that particularly impacts about
21 five southern states more than it does everybody
22 else.

1 My last comment or question is and
2 Tommy brought it up is collateral damage to these
3 trade situations. And we're witnessing it in the
4 industry right now.

5 So cherries lost its ability to market
6 to China. Twenty five percent of domestic
7 production of sweet cherries goes to China or
8 used to.

9 USDA and the administration put
10 cherries on the trade mitigation list and farmers
11 got direct payments and such is that. The intent
12 was they would be able to go establish other
13 markets.

14 Unfortunately, what they did is they
15 then decided to market that crop back within the
16 United States. And peaches right now are
17 suffering the lowest prices we've ever seen 2004
18 because cherries had a year to prepare to market
19 their crop plus they're getting federal funds to
20 help market their crops.

21 So there is going to be a ripple
22 effect to other commodities that originally we

1 never thought were going to be impacted. But
2 there is a huge impact.

3 MR. GUENTHER: I apologize I did not,
4 I mean you're right, I mean we're seeing that in
5 these markets. Apples is another example. Some
6 of the states outside of Washington State are
7 experiencing low prices.

8 But you're right it is not, as I said
9 it's not a good solution to this trade
10 mitigation, period. It's just not. It's a band-
11 aid. It's a short term fix.

12 I don't think any of the programs, in
13 my personal opinion, are really designed to help
14 our industry and the way our industry works
15 efficiently. I know that some have been happy
16 with mitigation payments but also the purchases
17 but some are unhappy because of the way this
18 process works.

19 It just doesn't work for them. And
20 the way we are forecasting compared to some of
21 the other crops who got the bulk of the trade
22 mitigation, we do have a small group in our

1 association world that are looking at what would
2 be a better solution if we have a third round of
3 language.

4 So let's just say I think there may be
5 a third round of trade mitigation. And outside
6 of the scope of the three programs that they put
7 together and -- but we've got to come up with, to
8 your point, commerce we've got to show that USDA
9 administration saying this is just not working
10 for us, that we need some other things.

11 CHAIR CARR: That's the reason I
12 wanted to raise it with you. Tomorrow the group
13 can talk about it. But so there is going to be
14 this ripple effect.

15 Other commodities are going to be
16 affected. And we are going to start working on
17 that now to understand those impacts because it's
18 easy to say China has got a lot of the cherries
19 account so obviously they were impacted.

20 But now what is, what other things
21 have been impacted? Grapes is another one is
22 right now potentially going to go through a

1 dumping case potentially as well.

2 There's been a huge disruption due to
3 these trade wars and they're only going to get
4 worse. And again, back to the comments you made
5 we've lost some provisions to help certain parts
6 of this country to defend themselves.

7 So again just want to raise that with
8 our organization, but again, commend you for
9 everything you all have done to increase
10 consumption.

11 MS. GLEASON: I have one last
12 question. You mentioned the Child Nutrition
13 Reauthorization Act. And I'm not sure if that's
14 been discussed in any of the subcommittees.

15 But I'm just wondering if you have any
16 ideas or suggestions that this committee can use
17 to make sure that local production is
18 prioritized?

19 MR. GUENTHER: So Steve is going to
20 like this question. He knows what I'm going to
21 say. Well so just to give kind of an overlay of
22 China. So the bill was supposed to be

1 reauthorized in 2014, is that right, I think it
2 was '14 or '15. They did not get to it.

3 It's not like at the end of the day
4 like a Farm Bill and other laws. So the current
5 programs continue to move as they are for, as the
6 2010 bill was written or law was written.

7 So there is a renewed effort in this
8 new Congress, the Senate in particular. Senator
9 Roberts, the Chairman of the House Senate Act
10 Committee Ranking Member Stabenow said they want
11 to get this done.

12 Some of you probably know, Senator
13 Roberts is retiring. This is kind of one of his
14 things. He's got the Farm Bill under his belt.
15 His last one he wants to get this bill into
16 reauthorization.

17 We expect they are going to introduce
18 a bill in the September time frame when they get
19 back from the recess, the August recess. So in
20 terms of programs, so I'll start with the easy
21 ones and I'll get to the harder one at the end.

22 As you know, the last one, it

1 increased -- servings increased of vegetables in
2 all forms by a cup. So half a cup for breakfast,
3 half a cup for lunch.

4 So that was a good win overall for the
5 entire industry. Another thing we're focusing on
6 is the grants to get more money into the
7 equipment grants for schools.

8 A lot of schools are looking to, they
9 have access to more fruits and vegetables. They
10 need infrastructure. And so that's another area
11 we're focusing some time on.

12 The one that is near and dear to our
13 heart and some here and some not, one section
14 here it's in your heart, is the Fresh Fruit and
15 Vegetable Program. So Steve and I have had many
16 discussions over too long of a time.

17 And this program basically is a
18 program that provides a fresh fruit or vegetable
19 snack during, not during lunch or breakfast but
20 during the classroom environment. It is, started
21 out as a pilot for states. Now it's nationwide.

22 It has about four million kids who

1 participate in the program. But there is a push
2 to make it all forms, not just lunch.

3 You know, part of this that there is
4 a significant portion of the school feeding
5 programs that accept all forms and this program
6 is a small, little program that really should be
7 left alone and helps complement some of the
8 things that are going on in the school lunch.

9 Steve disagrees. Some of you others
10 may disagree. But that's fine. We -- and that's
11 fine. And it's been an ongoing battle. It has
12 probably been one of the stickiest battles that
13 we've had over the years.

14 When you're thinking about this
15 program it's authorized under the Farm Bill and
16 nutrition. So every basically two years we kind
17 of come up with this interesting debate on
18 Capitol Hill about how the program has been run.

19 So, you know, that's kind of the
20 biggest issue for us as United. But certainly
21 this committee, you know, if you address
22 nutrition or nutrition issues, you know, it's

1 going to come up in this space.

2 So, you know, so that's, those are
3 probably the three big things. The half cup
4 increase or the cup increase, make sure that
5 doesn't go away.

6 That helps everybody which the
7 equipping grants would be the third or second
8 area we would like to spend, you know, get that
9 permanent in the Child Nutrition Reauthorization.
10 Right now we have an annual appropriation, sort
11 of an annual funding for that program.

12 We get money each year and we have to
13 ask the appropriators. This would make it
14 mandatory money for the equipping grant program
15 schools can apply for and then the Fresh Fruit
16 and Vegetable Program.

17 MS. GLEASON: Is there anything in the
18 current, in any of the current programs that
19 prioritizes local, like American production?

20 MR. GUENTHER: So in school there is
21 the farm, well actually more through the Farm
22 Bill than it is Child Nutrition Reauthorization.

1 MS. GLEASON: Okay.

2 MR. GUENTHER: If you want to know
3 about this more I mean I could, you know, I know
4 you were speaking with Jennifer from our team
5 later. She is our nutrition policy expert.

6 She can come and talk to you about
7 that. Most of that is farm, school. There are
8 some Buy American local provisions. But it's not
9 as prevalent in Child Nutrition Reauthorization
10 as it is in the Farm Bill.

11 CHAIR CARR: We have time for maybe
12 one more question.

13 MR. ZEA: This is more of a statement
14 than anything. But it always surprises me that
15 the issue of price and elasticity does not come
16 up more often.

17 When you're seeking solutions and you
18 ignore that, we continue to try to find these
19 magic pills that are going to sort of separate us
20 from the reality that, you know, in our case our
21 prices are up to 100 percent greater in certain
22 markets than Chilean, for instance.

1 And there's only so much a consumer is
2 willing to spend, especially when the quality,
3 you know, you can differentiate all you want and
4 for good reason. But in some cases people don't
5 have the power to distinguish between what's good
6 and what's not.

7 And I tell our growers all the time I
8 have no idea how you guys succeed because the
9 amount of inputs anywhere in the U.S., certainly
10 in California the amount of input that you've got
11 to put into a product to send out in the market
12 and slug it out with a competitor that has a
13 third of them or less, it's remarkable we succeed
14 the way we do.

15 And so programs like NAP for us and an
16 export level are absolutely huge. Innovation
17 grants, all those kinds of things that make us
18 smarter and better are absolutely significant.

19 But ultimately, you're still going to
20 have to ask those developing markets, those
21 mature markets or even our domestic markets,
22 you're going to have to ask those consumers to be

1 able to raise their game, make more money, spend
2 more of their discretionary income on food.

3 And that is a big ask. And I don't
4 know that this committee is ever going to find a
5 solution to it.

6 MR. GUENTHER: I think it's, when we
7 are challenged with it all the time. I mean we
8 are in committees and boards and we have, I know
9 other groups have. I mean it's a tough, you
10 know, how do you find a solution to that?

11 It's replacing costs, you don't like
12 blueberries, buy strawberries. You know,
13 consumers just, they have a lot of, we spoil the
14 consumers on levels.

15 And, you know, we're now seeing that
16 whether it's the Chinese right now are saying
17 don't buy anything American. You know, I don't
18 think we'll ever get to that point here in the
19 U.S.

20 But you're right. I mean it's
21 something that I don't know how you, it's hard to
22 find a solution to that. It's really hard to

1 find a solution.

2 CHAIR CARR: Robert, thank you. Did
3 we have anybody else for public comment?

4 MR. HUGHES: No, additional public
5 comments. There is one statement that I want to
6 make. When Robert talked about the ATAC's, the
7 Agricultural Technical Advisory Committee.

8 That set of committees are a factor
9 just like you all. And so if the Trade Group
10 for the committee as the whole wants to
11 coordinate or collaborate with ATAC let me know
12 and I can reach out to the group federal officer
13 that officially is over that set of committees.

14 And the rules on those committees
15 occur under FAS, Foreign Agriculture Service.

16 MR. WILKINS: We need all the
17 collaboration we can. So I would love to see us
18 work with them on that.

19 MR. HUGHES: Okay. We can coordinate
20 after.

21 MR. WILKINS: You can put that on your
22 to do list, the one, two pages you have to do.

1 MR. HUGHES: Up next, we've got
2 yourself given the trade war. Just a sort of
3 formality about each of the workgroup
4 presentations that are going to be happening
5 today, there is need to look for discussion on
6 the recommendations in the approved period
7 because you guys are going to be going into your
8 workgroups tomorrow to refine, retool and make
9 recommendations that are given to them.

10 And they are good to go. But all of
11 the final authorization activity will take place
12 after presentations today.

13 CHAIR CARR: And just to be fair, all
14 the groups and all the speakers we're going to
15 adhere to the schedule as best we can. So, you
16 know, questions and answers to the speakers just
17 understand if we reach a point because we have
18 other speakers to come and may have more
19 questions, we will have to move on and come back.

20 So if we don't get questions answered
21 today then we can do that tomorrow. But we want
22 to give all the speakers an appropriate time to

1 speak and then have everybody have the same
2 chance to ask the same questions then or the same
3 amount of time.

4 MR. HUGHES: And if, Tommy, you finish
5 your presentation early the next presenter is
6 going to be Jason Hafemeister and he is on his
7 way. And so if he's a little bit late we'll move
8 to the break and start when he arrives.

9 MR. WILKINS: So a question, Darrell.
10 I wish somebody else would have went first, but
11 here we are. Am I supposed to read this? I'm
12 just curious what --

13 CHAIR CARR: Well, our format is we're
14 going to put it up on screen, yes. But maybe
15 we're just going to read what has been, the
16 recommendation you provided.

17 Again, we're not going to dive into
18 discussions on those. That's just going to be
19 the current state of where that working group is
20 today.

21 Then each one of the working groups
22 has at least one technical speaker that will

1 speak to that topic. We will have questions and
2 answers of that speaker.

3 And then again, take all your
4 thoughts, your comments and go back to your
5 working groups tomorrow. So the only thing we're
6 doing right now is each committee is just
7 basically saying what you said or what you put in
8 print.

9 MR. HUGHES: I am asking each
10 committee, the subcommittee lead to come up to
11 the mic so that those members of the public can
12 hear you. The last time you projected and it
13 worked well.

14 This time it's difficult for folks in
15 the gallery to hear.

16 MR. WILKINS: First of all, I'm Tommy
17 Wilkins. And I'm leading the Trade Group. And
18 as you've already seen today, this is a very
19 emotional, huge topic on the plate today.

20 And I want to applaud everyone on the
21 membership of this committee. I believe their
22 heart is good and I believe we're here to form

1 some solutions.

2 And so I want to thank everyone on
3 there. I think the objective statement is around
4 the first lines. We're, the Fruit and Vegetable
5 Industry Advisory Committee recognizes the
6 importance of trade in today's economy and how
7 particularly fruit and vegetable industry.

8 And there are many ramifications to
9 exactly how that works. We're getting more and
10 more competition every day. We want to protect
11 our American industries.

12 And so, you know, our objective is the
13 implementation of these recommendations with
14 leave not only to increase production and
15 consumption of domestic, American fruits and
16 vegetables on all farms, fresh, frozen, canned,
17 dried and 100 percent used domestically and open
18 doors around the world.

19 So we're going to the recommendations.
20 The first one that we have is Buy American.

21 We've heard about Canada subsidizing
22 or giving tax incentives. I think all of this

1 is, there's many, many things that we need to do.
2 But we need to enforce the Buy American
3 requirements.

4 How we do that is a subject to, you
5 know, our finding that we're subsidizing the
6 school, for one instance the school lunch menu
7 but then they're buying foreign products. We
8 just want to reiterate that we want to buy
9 American in as many things as what we're doing.

10 A tremendous amount of information in
11 here and I'm not going to read it word for word.
12 So our recommendation is that the committee
13 supports the Buy American agreement for school
14 food purchase enhanced by Section 4207 of the
15 Agriculture Improvement Act of 2018.

16 The committee requests that the
17 Secretary consider meaningful improvements in the
18 guidance for and enforcement of provision and ask
19 the Secretary to keep the committee advised of
20 his actions.

21 Recommendation revisions include the
22 following. Strike the significant cost

1 difference differential language from the Buy
2 American exceptions provided the schools by this
3 exemption is significantly too ambiguous and does
4 not recognize the amount fruit and vegetable
5 options that are available should desired first
6 choice be cost prohibitive.

7 Require public notice when schools
8 elect to purchase foreign source food product
9 instead of domestically produced including and
10 requiring the schools maintain documentation to
11 justify foreign purchase of fruits and vegetables
12 over domestic.

13 For instance, whether alternative
14 supplier sources were considered, whether bids
15 were sought at the best time of the year to allow
16 domestic participation, whether substitutions
17 were considered. Applesauce instead of peaches,
18 pears instead of the mixed fruit, et cetera.

19 Establish financial commercial
20 restricted from supplier, penalties for food
21 distributors that misrepresent their food
22 products or boost with foreign source products

1 for contracted domestic food products.

2 So the next is our trade promotion.
3 And our recommendation coming from our committee
4 is that this workgroup recommends to the Fruit
5 and Vegetable Industry Advisory Committee that
6 issued and informed the Secretary of its concerns
7 and requests that the Secretary make our position
8 known to the President and Congress.

9 The critical importance of ensuring
10 that the export market promotion programs
11 continue to be made available to U.S. agriculture
12 to successfully compete against foreign
13 competition in U.S. and export markets and that
14 the available funding for the programs be
15 increased to offset the imbalance of trade
16 restrictions and the impacts of trade deputies.

17 The Trade Group also recommends to the
18 Fruit and Vegetable Industry Advisory Committee
19 that it should inform the Secretary of its
20 interest in developing sustained U.S. grown food
21 program that offers additional promotional
22 support for helping all agricultural cooperatives

1 compete against foreign competition within the
2 United States.

3 The USDA needs to develop trade
4 agreements with Mexico, Europe, Peru, Brazil that
5 work for U.S. farmers to give ample opportunity
6 to survive while ensuring year round supplies.
7 The recommendation statement on seasonal
8 protection on fruit and vegetable quota on the
9 imports of fruits and vegetables.

10 So in the, yes, on the recommendation
11 subject was the protecting the USDA grower. The
12 USDA needs to develop trade agreements that I
13 spoke about in the recommendation with the
14 seasonal protection on fruit, vegetable quotas on
15 imports on fruit and vegetables.

16 So is there any questions or comments
17 about what the Trade Group has looked at? That
18 is a quick version.

19 CHAIR CARR: We're going to hold the
20 questions and discussion until tomorrow.

21 MR. WILKINS: I was supposed to say
22 that.

1 CHAIR CARR: Yes.

2 MR. HUGHES: All right. So the next
3 speaker on the schedule is Jason who has not
4 arrived yet. And so we're going to go ahead and
5 break early if you want.

6 CHAIR CARR: That is perfectly fine.
7 So take a 15 minute break. If not, he could come
8 down to the next committee meeting and read that.

9 MR. HUGHES: So we'll take the 15
10 minute break and after that if Jason is not here
11 we'll move on to Production.

12 CHAIR CARR: So let's be back at
13 10:25.

14 (Whereupon, the above-entitled matter
15 went off the record at 10:10 a.m. and resumed at
16 10:25 a.m.)

17 MR. HAFEMEISTER: Great, thanks for
18 having me this morning. Welcome to our visitors,
19 so welcome to D.C.

20 My name is Jason Hafemeister. I serve
21 as the Secretary of Agriculture counselor on
22 trade. I'm originally from California so I'm

1 close to California.

2 Came out to Washington almost 30 years
3 ago. I thought I would stay for one year and
4 here I am, still here.

5 I've worked in FAS, Foreign
6 Agricultural Service over at USTR, the Trade
7 Representative's Office in the private sector and
8 now serve as the Secretary of Trade Counsel.
9 I've been involved in trade policy, trade
10 negotiations, market analysis that whole time.

11 So while my roots are in the lettuce
12 industry I've worked across all sectors of U.S.
13 agriculture in trade policy, trade negotiations.

14 And so what I thought I would provide
15 to you is sort of an overview of where our trade
16 policy is on agriculture, some of the big issues
17 we're facing, some of the hot issues of the day
18 just to give you sort of a broad perspective.

19 And then would leave up for you to
20 interrupt me if you want to focus in on a
21 particular question or issue of concern or we'll
22 leave some time at the end where we can have more

1 discussion.

2 But this is meant to be a conceptual,
3 broad based overview and I can try to handle
4 whatever specifics you guys have the best I can
5 when we get to that. So I think what I'll sort
6 of focus on is my remarks first on the agenda how
7 trade is important to agriculture.

8 And agriculture is important to trade.
9 Second, a little bit about the ongoing trade
10 issues we have right now. You know, China,
11 Japan, and Europe, USMCA so this sort of update,
12 put those in perspective.

13 And then talk a little bit about
14 things we're doing to find more customers
15 overseas for our farmers. But to step back, I
16 think one way to think about the current moment
17 we have is how are we organizing trade globally
18 because we've got farmers all over the planet who
19 want to grow.

20 Many of them are surplus producers.
21 Many of them are fine customers in other
22 countries. How are we going to organize this

1 trade so producers and consumers can most
2 efficiently and fairly get to business?

3 And so that's, I think, sort of the
4 underlying theme that's behind a lot of these
5 specifics. And I'll talk about that as we go
6 through it.

7 So next slide please. So first of all
8 just to talk a little bit of why our culture is
9 so focused on trade. What this chart here shows
10 is the source of gross cash receipts and where do
11 our farmers get their money, right?

12 Most of it comes from the market. If
13 it's in crops, if it's in livestock. This comes
14 from the sales price and the volume that they
15 sell.

16 And so we -- and you'll see in the
17 report about having a strong producer economy,
18 strong rural America, we are very interested in
19 ways to strengthen income for farmers.

20 And so really the most effective way
21 to do that is to help them get a better price
22 when they're selling in the market. Payments are

1 important.

2 The last few years, even more
3 important but they are not the difference makers.
4 It's the market income that our farmers make that
5 matters.

6 And so when we think of having to help
7 our farms get better prices one of the best ways
8 to do that is to help them access more customers,
9 to expand demand, to increase the amount of
10 people who are interested in buying their
11 product.

12 And so that's why we're so focused on
13 trade. Next slide. So the process, U.S.
14 agriculture generally we are very competitive
15 producers. Nearly all sectors of U.S.
16 agriculture are exporters.

17 That is, we're looking for customers
18 overseas. And in most of these cases, nearly all
19 cases we export more than we import which is a
20 sign of our competitiveness, we can out compete
21 other groups.

22 And even in certain areas where we are

1 net importers, where our imports are greater than
2 our exports, there's a lot of, there are other
3 factors that frequently relate to that. So we
4 import a lot of fancy wine in this country.

5 We make great wine too. But there is
6 just great demand for fancy wine. We import
7 stinky cheese. We're massive dairy producers.
8 We export a lot of dairy products.

9 But people like French cheese and that
10 stuff. We import a lot of tropical products,
11 things that we don't produce here, pineapples and
12 coconuts and coffee.

13 And some of that competes, you know,
14 sugar we're producers. Of course, there's
15 counter-seasonal trade so that in the winter we
16 import a lot of fruits and vegetables.

17 So one of the conclusions I thought
18 this slide illustrates is that one of the reasons
19 we hear so much from our farmers about trade is
20 because we are not only trade importers for farm
21 income, but we're competitive producers.

22 This agriculture is looking for

1 opportunities to compete and perform. Next
2 slide, please. And another illustration of that
3 is how for certain of our sectors exports are a
4 very large share of where the crop goes.

5 You know, half of our wheat, half of
6 our soy beans, half of our rice is exported.
7 Around 80 percent of our tree nuts are exported.
8 You know, 20, 30 percent of many fruits and
9 vegetables, dairy products, meat products they're
10 found, customers are found overseas.

11 And so losing those markets is a real,
12 it's really a problem for us and we're finding
13 that now out now because with China we're losing
14 a big market that a lot of times we don't have
15 alternative places for that product to go.

16 It sits on the domestic market, drives
17 down the price, that drives down farm income. So
18 really we have organized in many ways our
19 agriculture around the fact that we're
20 competitive surplus producers and we need to find
21 customers overseas.

22 Next slide. Now, I would like to

1 remind people that in terms of policy, what can
2 we do to help farm income, what can we do to help
3 producers? I'm very interested in things we can
4 do to help make better customers.

5 How can we have more, how can we help
6 people in other countries increase their
7 consumption of agricultural products because we
8 stand to benefit?

9 What this chart here shows is what
10 happens with a marginal dollar, what a consumer
11 does with it. So you get me here USA, you give
12 me an extra dollar, what am I going to spend it
13 on?

14 Well ten percent of it will go to
15 food. But the rest of it I'll waste on things
16 like education, housing and transportation and
17 all this.

18 You give someone in the Democratic
19 Republic of Congo an extra dollar and they'll
20 spend more than half of it on food. And so
21 that's a great thing.

22 Obviously we want people to have

1 better lives, to be eating more if they need
2 more. But we in agriculture, we are
3 beneficiaries of that. That increases demand for
4 our products.

5 This helps supply new customers, helps
6 bid out the prices we get. So underlying our
7 policies really has to be how do we activate
8 these 95 percent of the world's customers who are
9 outside of our borders to make them more
10 effective purchasers of our crops?

11 Next slide, please. So one way to
12 think about all this is how we organize trade.
13 We'll get to the policy here.

14 And in my mind, the way to think about
15 it is, so we had this really amazing change in
16 the world population and economy 75, 80 years ago
17 coming out of the World War II period.

18 Well if you look back on human history
19 you can quote Thomas Hobbes, I think his name is,
20 that most people lead lives that are short,
21 difficult and painful or something like that.
22 And that's the history of most humans, right.

1 And what this chart here shows, the
2 red area is the number of people who live below
3 the poverty line, who live in extreme poverty.
4 And for most of history that's everybody.

5 Most everybody is living in extreme
6 poverty. And it's very interesting to see here
7 is the Industrial Revolution starts and all of a
8 sudden you start having more people leading more
9 comfortable lives.

10 But then here we come coming out of
11 World War II the whole narrative of humankind has
12 flipped. Now, we have less people living in
13 extreme poverty than ever before and we have all
14 of these people here who are living outside of
15 poverty now.

16 So it's a great story of
17 accomplishment. Lives are better than they have
18 ever been and why has that been. I think a big
19 part of it has been the post-World War II
20 economic system that we set up which was founded
21 in security.

22 We have NATO. We have the United

1 States guaranteeing the peace. It was bounded in
2 open markets.

3 So we set up the GATT within the WTO
4 which said we were going to allow people to trade
5 with each other more freely and that will
6 encourage people to invest and innovate and
7 develop new technologies and increase their
8 production because they will have customers.

9 And so coming out of that we've got
10 this amazing boom of the economy and lifestyles.
11 And we as farmers have been the beneficiary
12 because we chart against that.

13 Here's U.S. ag exports, right. As we
14 have more people living longer with more money in
15 their pockets they're consuming more of our
16 agricultural products.

17 So it's a story of people doing good,
18 lives are better and farmers are doing well when
19 that happens. So I think that's really
20 fundamental to me when we talk about how we want
21 to organize trade.

22 Next slide. So one indicator of this

1 has been tariffs and taxes that go on imported
2 products. So over time if you go back here to
3 the GATT in 1945 and then the WTO formed here,
4 NAFTA comes in here we've generally seen trade
5 become more free.

6 And the reduction means that tariffs
7 is an indicator of that. That's a sign of our
8 success. Tariffs have been coming down and
9 that's helped foster this economic growth.

10 So next slide. As we look forward to
11 customers, you know, we still see a lot of
12 potential for gains overseas.

13 It's interesting, this data point,
14 September of 2018, that's when we flipped over
15 from having more people who were poor or
16 vulnerable on the planet to now there's more
17 people who live in middle class or rich economic
18 situations, right.

19 And the next slide shows that we
20 expect that trend. So we see growing middle
21 class or growing wealth globally which means more
22 market opportunities for us.

1 So as surplus producers, as people who
2 are competitive producers who are looking for
3 customers, there's a lot of opportunity. All
4 right, next slide.

5 So now we're coming back to some of
6 the more current issues. So this shows total
7 U.S. agricultural exports and billions of dollars
8 for our top five markets.

9 You know, the top six markets that we
10 sell to U.S. agricultural exports account for
11 about 60 percent of total ag exports, right. So
12 one of the lessons for us is don't screw it up
13 with the big markets because they're important.
14 They're large.

15 And the good news is that for four of
16 the five despite all of the trade conflict and
17 the uncertainty we are holding together pretty
18 well. We've increased actually sales to Canada.

19 Mexico, Japan and the EU in fact has
20 gone up slightly as well. So that is despite all
21 the threats about trade wars, those markets are
22 holding.

1 Obviously, China is a different story.
2 That's where the trade war is hot and heavy and
3 we've seen the effect on our sales.

4 But one point is that these big
5 markets matter a lot to us. We spend a lot of
6 time, how can we keep what we have or try and
7 grow them.

8 Next slide. So go back, sorry. I
9 skipped a slide. The other thing when we talk
10 about markets is that as important as those big
11 markets are we have what you would call a long
12 tail distribution if you look at our sales.

13 We sell a lot to these big countries.
14 But we sell to over 100 countries locally, all
15 right. There's over 30 markets that we sell a
16 billion dollars or more to.

17 And so there's a lot of money to be
18 made in the Philippines and Indonesia, in
19 Vietnam, in Columbia, in, you know, Morocco. So
20 by themselves they don't get up here in these big
21 double digit ten, 15, 20 billion dollar markets.

22 But that's where we have a lot of

1 sales and that's where we see a lot of growth.
2 So as we organize our thinking we want to protect
3 and grow these big markets.

4 But it's the rest of the markets out
5 there that matter a lot to us. And how can we do
6 markets in the rest of those countries?

7 Well, we need a predictable, open,
8 market based, rules oriented environment where
9 we're not relying on government intervention,
10 trade wars or threats of trade wars to solve our
11 problems.

12 We want predictability and certainty
13 in our ability to make sales happen. Okay, next
14 slide.

15 So let's go here. So let's talk a
16 little bit about some of the headwinds that we're
17 facing in terms of restrictions on U.S. ag
18 exports.

19 This chart here shows how U.S.
20 products have been affected by retaliatory
21 tariffs by other countries. All right. So
22 because of the steel tariffs we put on other

1 countries many of them have retaliated.

2 And because of the China tariffs, the
3 IPR related tariffs we've seen retaliation from
4 China. So what this shows is China is now about
5 there, so over \$100 billion of U.S. ag products.

6 Twenty-two percent of those tariffs
7 hit agriculture. Basically all the agriculture
8 we send there, \$20 billion is being faced with
9 tariffs, \$79 billion of non-ag exports are being
10 hit by tariffs.

11 Well, when we had the Mexico tariffs
12 in place for steel they targeted agriculture.
13 Seventy-two percent of the tariffs they put on ag
14 products.

15 Canada hit ag somewhat, but they've
16 gone. China has tariffs in place on steel and
17 targeted ag. So this goes through some of the
18 restrictions that we're facing.

19 Higher tariffs as a consequence of
20 these trade actions and how other countries are
21 choosing to target agriculture. Next slide.

22 So this is just a reminder, steel

1 tariffs are still in place. We removed them with
2 Canada and Mexico. But EU, India, China are
3 still imposing retaliatory duties on U.S.
4 products.

5 And I think one important thing here
6 as we talk about steel, what this chart shows is
7 going back ten, 15, 13 years relative prices of
8 steel. U.S. is the blue, all right. Red is
9 China, green is Europe.

10 So the U.S. has always been a high
11 cost steel producer, right. For various reasons,
12 we're relatively high cost producers. So our
13 prices have generally been higher than world
14 prices.

15 We maintain those prices because there
16 are anti-dumping and countervailing duties in
17 effect on some of our biggest competitors, China
18 for example. So there's very little steel in the
19 United States even before all this trade war
20 because we had anti-dumping and duties on them.

21 So that has helped keep U.S. prices
22 relatively high. But then with the trade

1 actions, the 232 tariffs we saw a spike in U.S.
2 steel prices because we were restricting supply.

3 So that is starting to come back down
4 now. And as the economy slows people are
5 figuring ways to work around it. We are seeing
6 some greater U.S. production of steel as well, as
7 you would expect, the more money you can make the
8 more production.

9 So the steel has been in effect for
10 U.S. agriculture and really behind it has been
11 this question of how do we keep U.S. prices high?
12 Next slide.

13 So this is one of the effects when we
14 try and talk about, well, how do we see the
15 effect of the trade war? So here's U.S. steel
16 prices again in blue. They went up. Now they're
17 modulating. One of the effects is that things
18 made with steel have gotten more expensive. And
19 then one of the effects is then not related to
20 steel but more to the IPR, which means prices for
21 U.S. commodities like soy beans are targeted and
22 fall. So there's a relationship here between our

1 higher tariffs and what some other countries are
2 doing. Next slide.

3 So we are -- the big story on the
4 retaliation has been China. So you can see
5 across all of the products that we export who is
6 bearing the biggest brunt. So this was last
7 year's data. And you can see China is hitting
8 everything sort of blue. But we do see some
9 pretty important effects from Mexico, Canada and
10 Europe as well, and now India is coming in. So
11 we've taken off Canada and Mexico, 232. So
12 that's good news. But the rest of these are
13 still in effect.

14 So next slide. So one thing to keep
15 an eye on is that we're looking at a similar 232
16 action on automobiles. The Department of Commerce
17 has submitted a report to the President saying --
18 evaluating the national security implications of
19 imported automobiles to U.S. national security.

20 And the President is weighing whether
21 or not to take action like we did with the steel
22 and aluminum to impose tariffs. And so that's --

1 I think he got a report in May, and he said he
2 would decide in six months. So November this will
3 be a really big trade thing.

4 What this chart here shows is U.S.
5 automobile production in blue. And then U.S.
6 automobile employees in automobile production, so
7 people making vehicles and parts. And so you see
8 the recession is here. There's a big effect.
9 People stop buying cars when the economy is in
10 recession. But you see that we bounce back over
11 time. But you also see that and what's really
12 striking here is the efficiency that we see in
13 automobile production. It takes a lot less
14 workers now to produce more output volumes than
15 ever before. And of course that's part of the
16 story here, right, is the manufacturing jobs.
17 There are jobs that support middle class
18 families.

19 There are less of them in automobiles
20 than there were before. Now a lot of that has to
21 do with productivity, right? We are more
22 automated than ever before. We are more

1 productive than ever before. But some of it has
2 to do with import competition as well. So I
3 think, I would just start to say that this, I
4 think, is one of the big factors behind that, the
5 broader issue.

6 Next slide. Same idea, next slide.

7 So what this chart here shows is our top six
8 markets here. Remember, here's our top six
9 markets. Remember, they account for 60 percent
10 of our ag exports.

11 And so Korea is 6 percent, Canada is
12 15 percent, billions of dollars. They account
13 for \$83 billion for a total of \$140 billion in ag
14 exports. They are also our top six suppliers of
15 automobiles, right. So Canada our biggest market
16 last year was our fourth biggest supplier. They
17 accounted for 16 percent of auto imports of \$53
18 billion. So we import \$332 billion of automobiles
19 and parts and export to those same six countries
20 \$83 billion. So as we move forward if there is
21 some negotiation or some trade issues with these
22 countries, there certainly is an expectation

1 given the way the countries have targeted ag in
2 the past that agriculture might be caught in the
3 middle of the fighters.

4 So I think the good news is Canada and
5 Mexico have already negotiated a sort of get out
6 of jail free card. They have negotiated quotas
7 that are substantial. So even if we do impose
8 new tariffs on autos, presumably they've already
9 got a safe harbor. So that's good.

10 We're negotiating right now with
11 Japan, where certainly their desire to keep the
12 market open for automobiles is a priority. So if
13 we get a negotiation done with Japan, hopefully
14 that will avoid any sort of trade conflict there.

15 China, of course, we're in the middle
16 of a giant negotiation. I'm not sure how this
17 will change that. We're already putting tariffs
18 on their products. They're already putting
19 tariffs on ours.

20 Korea has already in the first year of
21 the Administration in 2017, reached a trade
22 agreement with the U.S. that had auto provisions.

1 So they might be able to argue that they don't --
2 they shouldn't be subject to any further auto
3 actions.

4 And then the EU is probably in some
5 ways most exposed in that they are a big exporter
6 to us. We are supposed to be talking about a
7 trade negotiation, but right now it's hard for
8 that to get traction.

9 So auto is the big thing for us,
10 because we have big trade actions. There could be
11 some spillover on agriculture.

12 Okay, let's turn to the next issue
13 USMCA. You may have heard of NAFTA. The
14 President has called it the U.S. Mexico Canada
15 Free Trade Agreement. I'm trying to brand it as
16 USMCA. USMCA, say it softly. Say it to
17 yourself, USMCA.

18 So I put this chart up here because it
19 shows how and I came to Washington in 1991 right
20 when NAFTA was being negotiated, and it was being
21 passed, Ross Perot, the giant sucking sound and
22 all that stuff.

1 So NAFTA has like really been
2 controversial ever since I've been paying
3 attention to it, and this chart shows that. Here
4 the question is: overall do you think NAFTA is
5 good or bad for the U.S. economy?

6 And so this was kind of underwater
7 like 40 people saying, yes, we think NAFTA is
8 good. And then it's really interesting to see
9 what's happened in the last five or six or seven
10 years. All of a sudden, NAFTA got really popular,
11 right. And so part of it has to do with the
12 recession and then the recovery. People are
13 usually more pro-trade when the economy is doing
14 better.

15 Part of it, I don't know, part of that
16 had to do with the 2016 election. I think a
17 number of these Democrats now are saying they
18 support trade just to stick it to the man. I
19 don't know if they're really reliable trade
20 supporters. But if Trump is against it, they are
21 for it.

22 But anyway, NAFTA has never been more

1 popular, right? And so right now we have before
2 Congress USMCA, which has gotten most of the old
3 NAFTA in it with a few adjustments. And so it's a
4 big priority for us to get that thing approved by
5 Congress. You saw earlier Canada and Mexico are
6 our top two markets now that China has fallen, so
7 for ag products. So we want to have the ability
8 to keep those markets open. Certainty for those
9 customers is important to us. And so passing
10 USMCA, taking the threat of losing NAFTA off the
11 table, is a really big deal.

12 Next slide. Just one way to
13 illustrate that, this shows Mexican imports of ag
14 products and what the U.S. share is, all right.
15 So Mexico imports over \$1 billion of wheat every
16 year; 57 percent of that comes from the U.S.,
17 right? A lot of the rest comes from Canada, the
18 other NAFTA partner. They import \$2 billion of
19 soy beans; 94 percent come from the U.S. They
20 import \$1 billion of poultry and 79 percent.

21 So Mexico is a great market for us.
22 It's not surprising. It's right next door.

1 We've got close economic ties, business ties.
2 There's no tariffs between us. And there's to
3 some degree a lot of complementarity. You know,
4 we are land extensive producers. They are less
5 available land, more labor intense producers. We
6 send to them a lot of our row crops, a lot of
7 livestock. They send a lot of tropical products
8 and fruits and vegetables to us, and we sell
9 counter seasonal trade both ways.

10 So it's a really big thing for us to
11 launch that. So that's why getting USMCA through
12 Congress is one of top priorities. Next slide.

13 Same idea, next slide. You know, one
14 way to think about it is the Farm Foundation did,
15 they hired Commerce to say: what are the benefits
16 of USMCA?

17 And they said well if we pass USMCA,
18 we'll have some more exports. We'll grow because
19 we've got some more dairy access out of Canada,
20 basically is what that shows. So there's some
21 small positive. But what happens if we don't
22 have USMCA? What if we pull out of NAFTA? Then

1 we're going to see our exports revenue fall by \$2
2 billion.

3 So I think this illustrates there's
4 some positive things about USMCA. But really
5 it's this negative consequence that we really
6 want to avoid.

7 Okay, next slide. So let's talk a
8 little bit about China now. So this is how I
9 think about China. You go back 20 years ago and
10 you look at China and India, and they would look
11 very similar to you, right.

12 They are developing countries, a
13 billion people, large land mass, very self-
14 sufficient in agriculture production. Their
15 borders were closed. They didn't import much.
16 They didn't export a whole lot, right. So that
17 was 20 years ago. Then China joined the WTO in
18 2001. They lowered a number of their tariffs.
19 They made a number of other economic policy
20 changes. I think they decided to embrace
21 comparative advantage. They said, look, we are
22 going to be exporters of manufactured products,

1 and we're going to recognize that we've got
2 limits on the productivity of our agriculture
3 products.

4 And then the difference here is what
5 the red area shows is India's trade balance with
6 the world. India, despite having a billion
7 people, despite having huge challenges in terms
8 of available land and available water and low
9 productivity, is a net exporter of food products
10 in the world. They're the top sugar exporter.
11 They're the top wheat exporter. They're the top
12 beef exporter, a big rice exporter. Whereas
13 China is a huge net importer of food products of
14 the world, right.

15 And so to me this is a case of India
16 joined WTO in 1948, and they locked in high
17 levels of protection. The average allowed tariff
18 on agricultural products in India is 113 percent.

19 For some products it's up to 300
20 percent. China's average allowed tariff is like
21 15 percent. And so not only are the tariffs low,
22 but it just shows the policy of China has allowed

1 more imports, right. They're following a
2 different path. And it's of course been a big
3 deal for us in agriculture. China is such a big
4 market for us.

5 So next slide, getting back to how
6 making the world a better place can be to our
7 benefit, this shows over time the economic growth
8 in China, the number of people who live above \$10
9 a day is now 80 percent, I'm sorry, 25 percent of
10 Chinese people. The number of people who live
11 between \$3 and \$10 a day is the vast majority.
12 The number of people below \$1.25 has gone from
13 more than half to just a sliver, all right.

14 So China has jumped on economic
15 development. That has improved their living
16 conditions. Next slide, real GDP. Next slide is
17 child mortality. Children are surviving better.
18 And we are beneficiaries because they are eating
19 more, they're importing more. And so when we or
20 U.S. markets' ability to sell, this is really
21 about China.

22 There was a story about some English

1 textile manufacturer in the late 1800s who said,
2 you know, if you just add an extra inch to every
3 Chinaman's shirttail, we'll all be rich. And I
4 get a sense that's kind of how we look at China
5 now. If every Chinese person ate another apple.
6 If every Chinese person had an extra slice of
7 bread, just imagine. So we look at China that
8 way a lot.

9 Next slide. So this shows the index,
10 right. See how the trade war has not affected
11 our industrial exports as much as China. Like
12 what does China import from us from industrial
13 products? They import a lot of inputs. Like they
14 import a ton of semiconductors. They import a
15 lot of things that they put into machines that
16 they then export somewhere else. So they have
17 been careful not to shut off that trade. What
18 they have shut off is the ag trade, right. They
19 have found other suppliers for agriculture.

20 So the decline of U.S. exports to
21 China has really been mostly felt on the ag.

22 Next slide. So here is our total exports of ag

1 products to China over time. You know, big grain
2 price spiked, pushed this up and modulated and
3 then started here with the trade actions. Next
4 slide. This shows for different products our 10
5 year high. You always think that's normal, and
6 we should even be growing it. That's the 10 year
7 high. This was last year, 2018.

8 So for individual sectors, here's soy
9 beans, celebrated soy beans, they need their own
10 index over here. It's so much bigger than
11 everything else. So this is how this was felt on
12 an individual product. Next slide. Okay, so go
13 back, sorry. So with China, it's hard to keep up
14 with this because things happen from day to day
15 to day. You know, yesterday the President made
16 an announcement about delaying some tariffs. So
17 this thing is a very dynamic situation.

18 You know, what we've done on the ag
19 side is we said look, we're very concerned about
20 bad policy in China. China's failure to protect
21 intellectual property, China's forcing technology
22 transfer. Chinese protectionism generally is

1 bad. It's not only unfair to U.S. companies who
2 want to do business in China, but it's
3 constraining economic growth in China. And we
4 think if China had a more open economy, if they
5 had a more rules-based economy Chinese economic
6 growth would be better, and we would have better
7 access to those customers because there wouldn't
8 be those barriers, and we would have richer
9 customers in China. So do us a favor, China, make
10 the reforms to become a more modern trading
11 partner. So that's what we want.

12 On the other end of this trading
13 conflict with China right now is that if we see a
14 more open Chinese market, it's going to be great
15 news for us because we'll have better access to
16 customers who will have more money to spend. But
17 in the interim, obviously there's a lot of
18 conflict going on right now. And agriculture is
19 caught in the middle of it. So our objective is
20 then let's use this negotiation to solve some
21 discreet problems we have in agriculture.

22 China right now bans the import of

1 U.S. poultry. There's no reason for that. China
2 right now bans the import of beef that's been
3 treated with hormones. There's no reason for
4 that. You know, China right now has got a whole
5 bunch of restrictions that we would like to fix.
6 So we're trying to get that stuff on the table in
7 this negotiation. But of course, getting the
8 tariffs off and going back to normal but in a
9 better environment for China we think is going to
10 be better for us. But we're right in the middle
11 of all that.

12 Okay, next slide. So this is Japan,
13 right. So Japan is one of our top markets. It's
14 a very good market for us in ag products. It's a
15 high value market, a high price market. And for a
16 number of commodities it's like one of our top
17 markets. What's interesting is we sell lots in
18 Japan despite facing really high tariffs.

19 Japan is a country that is interested
20 in protecting its agricultural sector and uses
21 tariffs as a way to limit competition. So
22 despite relatively high tariffs, it's one of our

1 top markets and really important for a range of
2 products.

3 Next slide. So we had a problem in
4 Japan that is when negotiating trade agreements
5 with other countries in which it was lowering the
6 tariffs that it will impose on our competitors,
7 right.

8 So here's a great one. Right, \$2
9 billion market for us. We pay a 38.5 percent
10 tariff. In fact, it can be as high as 50 percent
11 because the surge of imports Japan can snap that
12 tariff up. They have committed under the CPTPP,
13 the Trans-Pacific Partnership, to lower the
14 tariff on beef down to 9 percent. It's our
15 biggest market for beef, and now we run the risk
16 that Australia and New Zealand, Canada, Europe
17 they will grow in the face of this lower tariff,
18 right. So this is a problem across the board.

19 We want a trade agreement with China
20 because less tariffs mean we'll compete better
21 with Japanese product. Less tariffs mean we'll
22 compete better with third countries.

1 Next slide. What this shows is just
2 sort of nuts and bolts. So under WTO
3 commitments, Japan said we promise never to
4 charge more than 50 percent on imported beef, 50
5 percent, right. Day to day they charge 38.5
6 because they don't want to tax their consumers
7 too heavily because they're big beef importers.
8 So that's what we pay, 38.5. This purple on here
9 shows the Free Trade Agreement Australia
10 negotiated, where the tariff on Australian beef
11 would go down to 28 immediately and then slowly
12 over time fall beneath 20 percent.

13 So we're at 38.5 tariff, they're at 20
14 percent tariff. So we went into the TPP saying
15 we're going to not only get rid of this
16 discrimination in Australia, but we're going to
17 do better than that. So the TPP deal brings that
18 tariff down to 9 percent. So as long as we're
19 outside the TPP, as long as we don't have a trade
20 agreement with Japan, we face Canada, Chile,
21 Mexico, New Zealand, Australia, this 9 percent
22 tariff, we're at 38.5. So we've got to get a

1 deal, we hope, that will bring us down. So you
2 can see that across the board that's the tariff.
3 All right. So this is a very prescient
4 negotiation.

5 You know, part of the leverage from
6 this is the 232 action on automobiles, which is
7 hanging out there. So there's a lot of pressure
8 particularly to get an agricultural deliverable,
9 to get at least an agriculture deal in the short
10 term even if it's not a full blown free trade
11 agreement across every single product.

12 So big priority for us to make sure
13 that comes about. Okay, next one. So there's a
14 lot of talk about EU. One of our top markets.

15 It's a frustrating market for me to
16 look at as an economist. I don't see the -- you
17 know, Europeans are good farmers. They make a
18 good product. But it's not a lot better than
19 ours. But somehow we are importing a lot more
20 European products than we are exporting to
21 Europe, right. So we have this trade deficit
22 which, you know, in some cases it makes sense. It

1 makes sense for us to have a trade deficit with
2 New Zealand. There's nobody in New Zealand to
3 buy our product, and they're good producers.

4 I don't know why we have a trade
5 deficit in Europe. So that's frustrating. And
6 the reason, of course, is there's a lot of trade
7 barriers -- high tariffs, unjustified health and
8 safety measures, and just a lot of restrictions.

9 Next slide. So you look at what we sell to
10 Europe. We sell quite a bit of soy beans, \$2
11 billion a year, quite a bit of almonds. But the
12 rest of the stuff, not a ton, right.

13 And my concern is that Europe needs
14 our soy beans because they need protein, so they
15 found a way to let our product in. And they need
16 our almonds, because how can you have a proper
17 almond croissant without an almond? But this
18 other stuff, you know, they are not really
19 interested in the competition. So they haven't,
20 you know, may not be direct protectionism.
21 Sometimes it is, but they're not facilitating.

22 So this is our objective. And it's

1 tricky because there's a tariff element to it,
2 would have higher tariffs on us. But also
3 there's just the regulatory environment which is
4 very difficult for us to deal with because of the
5 way that we produce products.

6 The next chart just shows what we
7 import from the EU. Again, there's fancy wine.
8 You know, a lot of sort of consumer-oriented
9 products, a lot of cheese. And so we do take in
10 a lot of products from Europe. All right. So
11 those are sort of the big countries that we're
12 working on trade issues right now, trade policy
13 issues.

14 The next slide just to me sort of
15 wraps it up as to why we focus so much on trade
16 policy on trade negotiations, and why I think
17 it's so important to agriculture. What this chart
18 here shows is all of these countries that we've
19 had trade agreements with, free trade agreements
20 plus China joined the WTO, cases where we've had
21 a chance to sit down with other countries and
22 negotiate: are you going to reduce your tariffs,

1 or are you going to reduce your barriers?

2 So in each of these cases, you'll see
3 the U.S. export, the average exports for the five
4 years before we had the deal is much less than
5 the five year average after we had the deal. And
6 that's not surprising because when we do a trade
7 agreement, countries agree to reduce their
8 barriers to our products. We are competitive
9 producers. So in a free trade environment, we
10 are going to do well. And in addition, what
11 trade agreements do is they increase the overall
12 economic growth in these countries. Remember,
13 trade agreements are pro-competitive. They're
14 encouraging more play at market forces in these
15 economies and it's fostering economic growth.

16 So we have better access to more
17 wealthy customers. It's not a surprise that we
18 sell more once we do trade agreements. And so
19 for us, focused on finding customers, that's why
20 we're so interested.

21 So next chart. So when we talk about
22 where we want to see further opportunities, where

1 there's going to be more customers, it's really
2 in Asia. This is where we have growing
3 populations, we have growing economies, we have
4 real resource constraints on their ability to
5 competitively bring us ag products. We have a
6 lot of differentiation in what we produce.

7 Many of these are tropical countries.
8 We are a temperate country. And so these are the
9 kinds of things that as we go forward that if we
10 can reduce barriers, improve the environment,
11 this is where we'll really be able to move the
12 needle. So then the country here is our exports
13 in 2017, and the U.S. market share of
14 agricultural products in that region. So we sold
15 1.6 billion to India, but we're only 6 percent of
16 the import share.

17 So there's lots of room to grow there.
18 And with Japan, a little bit better, we sold them
19 11.9. We have 25 percent market share. That's
20 why we don't want to lose this as other countries
21 face lower tariffs; we've got to at least keep
22 that.

1 Okay. So that's that. Why don't I
2 just stop there and see if there's some questions
3 or comments.

4 MR. SMITH: One of the things that
5 affects the processing industry is the canned
6 steel imports on canned products. For example,
7 our canning costs, the tariff on that is 25
8 percent, but yet China can import to us with no
9 tariff on their can.

10 MR. ZEA: Yes, steel faces the tariff.

11 MR. SMITH: But their can does not face
12 the tariff. And so I just wanted to bring that
13 up that's remains a really critical point to the
14 processing industry.

15 MR. HAFEMEISTER: Yes, I'm fully aware
16 of that, yes.

17 MR. SMITH: And we've met before.

18 MR. HAFEMEISTER: Yes, I appreciate
19 that.

20 MR. WILKINS: Where do you see U.S.
21 with USMCA?

22 MR. HAFEMEISTER: Thank you for that.

1 You know, I don't have any special knowledge. I
2 mean my, the biggest insight I have is I'm really
3 impressed with the Administration and the
4 Congressional House leadership and their message,
5 discipline on this.

6 You know, whenever you hear the
7 Speaker of the House or other senior leaders in
8 the Democratic Party talking about the trade
9 agreement, it's always very positive. It's like
10 we want to find a way to get it done. We're
11 working closely with the Administration. And we
12 think there is a path to do this. We think it
13 will happen by the end of the year.

14 And then on the Administration side,
15 it's very much we're working closely with the
16 Speaker. We think we have a good process. So
17 everyone is being optimistic, optimistic,
18 optimistic. So you know, it's a real problem
19 when you start seeing the finger pointing and the
20 egg throwing, right. And so we're not there.
21 And so you know, the conventionalism, I agree
22 with, which is why votes are there in the House.

1 If you sent that up today, we would get that
2 thing across. So it's really a question I think
3 of, you know, how and when the Speaker feels like
4 she's got the terms she needs for whatever
5 internal dynamics she's working to be able to
6 bring it across. And, you know, we had a summer
7 deadline. That's slipping, but there is by all
8 accounts serious engagement. So I'm certainly
9 hopeful that we can get it done this year.

10 MR. WILKINS: Do you have any insight
11 on what she is looking for?

12 MR. HAFEMEISTER: No, I don't. They
13 talked about these four areas where the House
14 leadership has set up working groups: labor,
15 environment, pharmaceuticals and dispute
16 settlement, right.

17 And so labor and environment is a
18 longstanding issue in Washington in terms of
19 trade politics. You know, how do we get other
20 countries to make commitments on labor and
21 environment standards, and how do we use a trade
22 agreement to enforce them?

1 So letting people know the outlines of
2 how to negotiate that. Pharmaceuticals, there's
3 this question of -- it's a little trickier. I'm
4 not an expert on it.

5 You know, on the one hand are we by
6 giving longer patent protection to U.S.
7 pharmaceutical companies, are we impairing our
8 ability to have those pharmaceuticals in this
9 country, or can we somehow foster trade in
10 pharmaceuticals to Mexico and Canada to help
11 lower our prices?

12 So that's -- I think that's
13 complicated, and for me it's complicated. And
14 the last one is on dispute settlement right,
15 which is this question of: we do a trade
16 agreement, and is it going to be binding? Is it
17 going to be enforceable? And the problem within
18 NAFTA was that any individual country could say
19 once they're in a dispute where we say hey,
20 Mexico, those anti-dumping duties on high
21 fructose corn syrup, they're unjustified.
22 There's no reason for that. You do not find

1 unfairly traded product. We're going to sue you.
2 Mexico would have the ability to say, you know,
3 we're just going to pull the plug on that
4 process. We're going to block the expert panel
5 from meeting.

6 So do we want to strengthen that by
7 saying, no, just because it's inconvenient for
8 you doesn't mean you can avoid a lawsuit here, or
9 are we going to try and find some other way to
10 enforce these commitments?

11 And so that's where, you know, the
12 politics is. If we're going to get labor and
13 environment commitments, how enforceable are
14 those going to be inside an agreement, and how
15 strong is that mechanism going to be?

16 So the good news is it's discreet.
17 It's four specific issues where experts are
18 sitting down and talking. So that's a sign of
19 progress.

20 MR. ERICKSON: Question, on Slide 16
21 this triggered a question I've had for some time
22 and you happened to present a slide there that

1 reminded me. January 11, 2018, imports of steel
2 declared a national security threat. Do you know
3 if, are there triggers -- are there actual
4 triggers in place and data that is utilized to
5 determine that something has become a national
6 threat, or is it an arbitrary decision?

7 And following that, what are your
8 thoughts on when you look at the growing U.S.
9 population and the volume of product that is --
10 of food that is imported to the United States
11 versus what is produced in the United States,
12 there's a growing gap.

13 Does in your estimation, a threshold
14 exist there where at some point somebody may say
15 this is really concerning, this is approaching
16 national security threat levels?

17 MR. HAFEMEISTER: Yes. So it's
18 interesting. This law, Section 232 of the Trade
19 Act, is very general.

20 It says should the President determine
21 after having consultation from, you know, the --
22 including the input from the Secretary of Defense

1 that there is a national security threat, he may
2 take action including tariffs to restrict
3 imports. And it doesn't enumerate specific
4 triggers or standards for what that is. So
5 there's legislation right now. Congress is
6 saying we gave President Obama a lot of power
7 here, and maybe we need to define it better. So
8 there's some effort in Congress to do that. But
9 in the interim, this is authority that the
10 President has.

11 In the case of steel, the metric that
12 the Commerce Department developed was that they
13 said, you know, we need to have a strong steel
14 industry to have a strong national defense.
15 We've got to have access to U.S. steel. And how
16 are we going to determine what's a strong steel
17 industry? They said, well it's going to be based
18 on capacity and utilization. They said it was 80
19 percent. If we can get capacity and utilization,
20 all of our steel plants working up to 80 percent,
21 then that's an indicator there is a strong,
22 healthy steel industry.

1 So let's put tariffs in place which
2 will encourage domestic producers to ramp up
3 production because they will compete better
4 against imports until we can get back to this
5 threshold of capacity utilization.

6 So that's the logic behind it. We
7 don't know the auto logic. That one is still
8 being closely held. But the President has to
9 make a determination based on some fact patterns,
10 but there's quite a bit of discretion behind it.

11 So that's the first part of your
12 question. The second part was, you know, is
13 imports as a share of consumption and production,
14 as that grows what that does that mean? So let's
15 go back a couple slides here, one more. So we've
16 talked a lot about trade deficits. This is
17 related to what you're saying. Since I have a
18 slide, that's what I'm going to talk about even
19 if it's not your question. So we've talked a lot
20 about trade deficits. So what this chart here
21 shows is our trade deficit is in red, right.
22 2002 was almost \$500 billion. Now, we're around

1 here around \$800 billion in terms of a trade
2 deficit with goods, not staking out services,
3 right. This is just goods, merchandise trade.

4 But what I find interesting is look at
5 where our trade in oil and gas has been. So it
6 used to be that oil and gas imports, our deficit,
7 we were importing so much petroleum, Saudi
8 Arabia, Mexico, Venezuela, Canada and all these
9 countries sell us oil because we're big oil
10 consumers in the U.S. Half of our trade deficit
11 was because of our oil and gas deficits. All
12 right, so that's 2011. Well, what's happened
13 since then and today is the fracking boom, right.
14 Now, we're like producing more oil and gas than
15 we ever have. Look what happened to the oil and
16 gas trade deficit. It's disappearing. There is
17 some talk that we might be a net exporter of
18 natural gas and petroleum in the near future
19 because we're cranking so much out through
20 fracking.

21 So we think that well gosh, if the
22 major component of our trade deficit is oil and

1 gas, and we're no longer importing so much oil
2 and gas that would help our trade balance. Look
3 what happened to the trade balance. Right, it
4 didn't move much. So to me the point is these
5 trade balances are factors of macroeconomic
6 forces, right.

7 The United States is a great economy.
8 It's the best economy in the world. We suck in
9 investment like nowhere else, right. Countries
10 come to the United States to invest. They bring
11 foreign currency here and they say, my gosh can I
12 buy some land, can I buy some plants, can I buy
13 some stocks. We are a profligate people. We have
14 huge debt, next slide. We run a huge budget
15 deficit, right. Here's our deficit -- budget
16 deficit.

17 So we're always putting out T-Bills.
18 Oh my gosh, someone has got to finance the budget
19 deficit. How do you pay for that? China, these
20 Europeans, Japanese they bring their foreign
21 currency over here and they buy T-bills, right.

22 So we're a wash with foreign currency.

1 And we're rich. Oh my gosh, we're rich. So what
2 do we do with all of that? We don't save it. You
3 know personal savings rates in this country are
4 small, small, small. We consume. We buy stuff,
5 right. We're champion consumers. And so that --
6 let's go back to trade deficit. So that's what
7 drives this trade deficit. It's the strength of
8 the U.S. economy, the strength of the dollar.
9 It's our savings habits, our consumption. Now the
10 only time this deficit shrinks is when we have a
11 recession, then we're not buying as much.

12 And so you can see this with China,
13 right. We are restricting Chinese exports, but
14 we're buying from Vietnam instead, right, because
15 we are consumers. We want this stuff. Now there
16 are certain factors, you know, certain sectors
17 where supply will be shortened and there is some,
18 you know, increased production in the U.S. But
19 these factors I think are really, really much
20 bigger than a lot of sort of the individual
21 pricing.

22 So even though we've got lots of

1 unfair trade practices out there, you know. China
2 is a great example. There's 15 things I want to
3 fix in China, and that will help our sector if we
4 had a more fair trade agreement. But I don't
5 this is going to be an indicator of success or
6 failure.

7 CHAIR CARR: I'm going to limit it to
8 one more question.

9 MR. LIPETZKY: Jason, I appreciate the
10 focus on Japan and the fact that we're no longer
11 part of the TPP. Where are we headed after
12 Japan? Is it Taiwan? Is it other places where
13 we need to wrap up that bilateral side of it, or
14 is there any appetite at all to kind of rejoining
15 some of the TPP side or GATT?

16 MR. HAFEMEISTER: Well, I think
17 there's two sides to that equation. One will be:
18 where do we see market opportunities? Keep
19 going, keep going, keep going, keep going.
20 Sorry, you're going the wrong way. It's Asia,
21 right, that's where we see a lot of market
22 opportunity. So part of that is the TPP

1 countries. Part of that is these TPP countries.
2 So we would love to get into negotiations with
3 them. And partly we need to catch up on TPP, and
4 also these are our targets.

5 But there's, I think the other side to
6 be aware of is that there is also a lot of
7 concern about unfair trade practices from some of
8 these countries. A lot of Chinese manufacturing
9 are moving to Vietnam. The Vietnam trade deficit
10 is growing because we're importing more from
11 Vietnam. For India, a lot of complaints, unfair
12 trade practices there. And so Europe is a place
13 where we're on the verge of a trade negotiation
14 to deal with unfair trade practice. So those are
15 places where we might have some leverage to say,
16 you know, since we're unhappy with the way you
17 guys are acting, we want to fix some things.
18 These are some things in agriculture we should
19 fix. So some of that overlaps here.

20 CHAIR CARR: Jason, are you going to
21 be around for a while, or what's your schedule?

22 MR. HAFEMEISTER: Yes, I have a couple

1 of minutes. I've got to be back. But I can
2 spend maybe 5-10 minutes here.

3 CHAIR CARR: So if we have any
4 committee members that didn't get a question
5 answered in the group and want to go speak with
6 Jason now before he leaves, he's going to wrap up
7 any of our conversations, please do so and try to
8 give everybody the same chance.

9 MR. HAFEMEISTER: I went over time,
10 sorry.

11 CHAIR CARR: No problem. We know this
12 will be a challenging day. When questions get
13 started they keep going. But Jason, appreciate
14 your presentation and sharing all this with us.
15 And again, if anybody wants to meet you in the
16 back.

17 MR. HAFEMEISTER: Thank you for your
18 time.

19 MR. SMITH: Since I think I'm the one
20 in between lunch, I will try and make this quick.
21 Okay, I first of all want to start out thanking
22 the Production Workgroup. Everybody worked

1 diligently to get this done. Charles had it all
2 started for us taking good notes and putting
3 things together. And the group came together
4 really well. And we were, I think one of the
5 first groups to get things done. And so I
6 appreciate everybody's commitment and joining in
7 to get this done.

8 The objective statement of the
9 Production Workgroup just recognizes that we have
10 a lot of production challenges and that we do
11 need assistance with them. We targeted four
12 things that we wanted to talk about. Research,
13 crop insurance, over-spray and packing and
14 chemical labels. So we'll get into those
15 particular recommendations and overviews.

16 So first of all, we're on research.
17 It was our opinion that most agriculture research
18 funding goes into agronomic row crops due to just
19 the market potential for everybody to capture the
20 returns on that. And as such, the specialty crop
21 research has lagged. And we still have
22 significant production challenges that are not

1 being addressed.

2 For example, productivity on corn and
3 soy beans if you look at the chart has just gone
4 like this, straight up with the introduction of
5 GMO and a lot of the new technology that's coming
6 along.

7 That's not happening with specialty
8 crop industry because of consumer pushback on a
9 lot of these new technologies. So we're dealing
10 with old technologies and competing against a lot
11 of new technologies. The budget constraints of
12 public universities. They're still not being
13 adequately funded to support our industry.
14 Extension outreach programs are limited at the
15 universities.

16 And so the daily challenges of a lot
17 of production is not getting addressed. If you
18 get some big issue coming along, you know, you'll
19 get funding for some big issues. But everyday
20 production needs is basically going unmet by a
21 lot of the university extension. In addition
22 then, a lot of specialty crop fruit and vegetable

1 producers are smaller, don't have the access to a
2 lot of the same types of expertise that a lot of
3 the agronomic crops have.

4 Okay. Specifically our recommendations
5 on research. We noted that private commercial
6 organizations are excluded from publicly funded
7 research. And John, you had a lot to say about
8 this. And we felt it was important to open that
9 up because so many of the new technologies and
10 stuff is being done privately, and not as much by
11 the university and those types of public
12 organizations.

13 We also believe that specialty crop
14 research funding being protected from new and
15 emerging crops that are not specifically listed
16 as a specialty crop, and specifically we talked
17 about the impact on what could be our industry by
18 the decisions to define hemp as a specialty crop.
19 If that starts to take away research funding from
20 specialty crops because they'll be getting a
21 piece of the pie that's been allocated. And all
22 of a sudden those pieces get smaller for

1 everybody else.

2 So the recommendations to deal with
3 these things, we would request that the Secretary
4 support additional base funding for specialty
5 crop research. We would also recommend that the
6 Secretary review this decision including hemp,
7 looking at the potential negative impacts to
8 existing specialty crops. In particular, about
9 funds for research, SCRI grants and any ways to
10 determine that hemp will dilute the limited
11 research funds that the Fruit Industry Advisory
12 Committee recommends that they reclassify hemp or
13 limit the crop from access to SCRI funding until
14 additional money would become available.

15 All right. So on crop insurance, it
16 was noted pretty pointedly that federal crop
17 insurance is a viable tool for risk management.
18 But the coverage for fruit and vegetables
19 woefully lacks. Not just lacks, it's woefully
20 lacking for specialty crops compared to agronomic
21 crops, corn and beans.

22 As a producer myself, I can guarantee

1 myself a profit before I plant because of the
2 federal crop insurance. And the crop insurance
3 program is so poor, particularly for tomato
4 production, that as a company we had to start our
5 own insurance company to provide our growers
6 anything that was useful, and it's still not as
7 good as the crop insurance for commodity crops.

8 So that's kind of a basis for where
9 some of this came from. We certainly do
10 appreciate the NAP Program. But we need a lot
11 more parity in crop insurance than what we can
12 currently find in those programs. And you can
13 read some of the particulars about that.

14 Recommendations, we urge the Secretary
15 to make it a goal to ensure that fruit and
16 vegetable farmers have access to coverage that
17 are on par with row crops. And so I think that
18 speaks pretty pointedly to that.

19 Okay. The next section is a little
20 bit more lengthy. But it was important to
21 several on our group. That's about over spray
22 and off target chemical applications and legacy

1 materials. And we pointed out the introduction
2 of dicamba to all our crops has exposed most
3 fruit and vegetables to a risk that was not
4 previously known three years ago. So this is a
5 very new dynamic that's come into the fruit and
6 vegetable world.

7 We described this particular chemistry
8 is known and was proven to move off target by
9 several methods, could move great distances and
10 affects almost everything in the agronomic fruit
11 and vegetable world.

12 And an increase in pollinator habitats
13 are also real important to fruit and vegetable
14 pollination and production. It affects organic
15 producers at the risk of losing their organic
16 certification. But one of the biggest things
17 about this is that it does not possess residue
18 tolerance for almost all food crops. Almost
19 every other chemistry has a residue tolerance
20 that says as long as it's underneath, it's still
21 a wholesome, legal, marketable product.

22 Almost all through crops have a zero

1 residue tolerance for dicamba. And as such, it
2 would be crop destruct if a hit was taken. And
3 there is not enough insurance to compensate for
4 damages, and federal crop insurance is not even
5 covering over spray damages. So everybody is
6 real vulnerable to a high degree or risk.

7 The real acrimony that's coming from
8 this is extensive. People can't sit on school
9 boards together, church boards sitting next to
10 people in a pew because they've had off target
11 incidences that were not compensated for.

12 Okay. The recommendations about this.
13 This is that the USDA, EPA and FDA should
14 recognize that dicamba does move off target, and
15 not hide our heads in the sand about that, and
16 establish a reasonable residue tolerance. We
17 believe that buffers around sites should be a
18 minimum of a mile to the closest sensitive plant,
19 and application should be limited to more
20 desirable circumstances such as lower temperature
21 and humidity.

22 Several states have imposed an 85

1 degree limit on this in their own states, and it
2 should be limited to pre-plant, pre-season that
3 would reduce the potential for off target
4 movement.

5 Number two, due to the overwhelming
6 reports of dicamba volatilization and lack of
7 adequate due process for specialty crop growers
8 whose crops in likelihood have been affected by
9 the tendency to move off target, we strongly
10 recommend that the registrations for the new
11 products that are for soy beans and cotton over
12 the top, in crop not be renewed when the current
13 registration expires.

14 And in addition, we recommend the EPA
15 evaluate the performance of these products for
16 safety after this season and make an appropriate
17 judgment about their use in 2020 even before the
18 registration expires. We also recommend USDA
19 Pesticide Data Program work with EPA to ensure
20 that dicamba registration is not renewed until
21 such a time when research can prove with
22 certainty that specialty crop producers will not

1 be adversely affected by any form of off target
2 movement.

3 Our recommendation number three, it
4 was brought up that there are legacy materials
5 that have been used 30, 40 years ago that are
6 still showing up on residue samples. And these
7 legacy materials have long been prohibited but
8 now with better detection methods they're still
9 showing up. And we recommend that the presence
10 of one of these legacy materials that have not
11 been applied should not be considered an
12 adulterated product or subject to regulatory
13 action.

14 And then we also number four,
15 recommend that USDA require biotech developers to
16 seek necessary reviews by the USDA for genetics
17 and EPA for corresponding pesticide registration
18 simultaneously resulting in a joint approval
19 process and that the two agencies increase their
20 collaboration before these things are approved.

21 So for example, with the dicamba
22 situation the seed was approved before EPA

1 approved the chemistry. And so for about two
2 years there was a lot of dicamba being used on
3 the actual crops and seed before there was even a
4 label registration for that.

5 That caused a lot of problems. It
6 also created a real pressure point for EPA to
7 approve the use of dicamba because since the seed
8 was out, people were already using it anyway. And
9 so if these things would have been done together
10 there may not have been that same pressure to
11 approve.

12 Move on to inconsistency of labels.
13 Some chemical labels have the same active
14 ingredients, but they are extremely inconsistent
15 in how they can be used and for what crops. For
16 example, some crops will list products for fruit
17 and vegetables. Some products with the same
18 active ingredient will specifically list certain
19 crops and exclude others even though technically
20 they're still a fruit and vegetable type of
21 thing.

22 So we've looked at this and we

1 thought, okay, how can we do it? And we thought
2 that USDA should work with EPA to make sure
3 chemical manufacturers write their labels in a
4 uniform manner across all the different options,
5 particularly since so many things have gone
6 generic that a producer can easily determine the
7 correct requirements, and USDA and EPA should
8 work together to establish crop groups that are
9 consistent with each other. And so some of this
10 goes away of understanding what you can use and
11 what you can't use on certain crops. Is that
12 good?

13 MR. HUGHES: Thank you. Just one quick
14 reminder that with all the recommendations that
15 you guys draft and eventually finalize, you have
16 to keep in mind that the USDA will only have so
17 much influence over certain recommendations or
18 positions that deal with other agencies. When
19 there's a collaborative relationship that exists,
20 great. But when it comes to tracking the
21 progress of certain recommendations, it gets into
22 an unknown space.

1 So I just wanted to make sure that I
2 state again because there's a lot of EPA that's
3 involved in those recommendations. The next
4 presenter is going to be the USDA's Brenda Foos
5 who is part of the -- actually I'm sorry, she's
6 the director for the Science and Tech Monitoring
7 Division, right?

8 MS. FOOS: Actually it's the
9 Monitoring Program Division.

10 MR. HUGHES: Monitoring Programs.

11 MS. FOOS: It's the Science and
12 Technology Program.

13 MR. HUGHES: Yes, okay, all right.
14 She introduced herself.

15 MS. FOOS: I can do that.

16 MR. HUGHES: And I thought Brenda would
17 be good because the Pesticide Data Program falls
18 under her unit, so I figured it would be good for
19 her to provide an overview since that topic was
20 very, inside of your recommendations.

21 MS. FOOS: So thank you, Darrell. I'm
22 Brenda Foos. I'm the director of the Monitoring

1 Programs Division. It is also part of the
2 Agricultural Marketing Service like specialty
3 crops is at the root of the Science and
4 Technology Program.

5 And our main program in my division is
6 the Pesticide Data Program, which is incorporated
7 in one of the recommendations you just heard
8 about. So I'm going to give an overview
9 presentation and talk a little bit about the
10 dicamba information that we have.

11 But first, I really want to thank you
12 for inviting me and for your interest in our
13 program. This is actually my very first
14 presentation about the program because I've only
15 been the director for four months. So I'm glad
16 to have the opportunity.

17 MR. HUGHES: There's a tech glitch.
18 It's coming. There we go.

19 MS. FOOS: All right, there we go.
20 PDP was initiated in 1991 to collect data on
21 pesticide residues in food. Our mission today is
22 to provide high quality nationally representative

1 pesticide residue data for U.S. foods.

2 The Food Quality Protection Act of
3 1996, known as FQPA, directs the Secretary of
4 Agriculture to provide improved data collection
5 of pesticide residues, standardized analytical
6 and data recording methods, and increase sampling
7 of foods most likely to be consumed by infants
8 and children. And PDP is performing this mandate
9 under the FQPA. Additionally, PDP provides EPA
10 with data for dietary risk assessments as a part
11 of their registration review process. And we
12 provide the Food and Drug Administration
13 information to help inform better planning and
14 monitoring under their authority to enforce the
15 tolerance for maximum residue levels in the U.S.

16 The PDP data also is routinely used in
17 the marketing of U.S. food commodities, including
18 building consumer confidence and negotiating with
19 foreign trade partners. The next slide.

20 In this presentation I'm going to walk
21 you through our approach to accomplishing this
22 mission. And this is the overview slide. The

1 basis of our program is really cooperative
2 agreements with the states. Currently ten states
3 participate in PDP, and the cooperative
4 agreements between USDA are with the State
5 Departments of Agriculture. Through our program
6 plans, which are available on our website, we
7 direct states' monitoring efforts including which
8 commodities will be sampled, when and for how
9 long.

10 States conduct the sampling within
11 their states, and the samples are then shipped to
12 the specified state laboratories for residue
13 analysis. States then provide data to the USDA,
14 and it is reviewed by the chemists in the program
15 and added to our ever growing database. Each
16 calendar year the results are compiled to develop
17 our annual summary. And when the summary is
18 released, we also post all of the data for the
19 year to our website so that it is available to
20 everyone who wants to use it.

21 Next slide. The ten states shown in
22 green on this map are those that currently

1 participate in the PDP Programs or Cooperative
2 Agreement with the USDA. They are New York,
3 Maryland, North Carolina, Florida, Michigan,
4 Ohio, Texas, Colorado, California and Washington.
5 Our sampling design also draws in crops that are
6 marketed in 13 additional states, and they are
7 shown on the map in yellow.

8 Through our partnership with the
9 states, the states handle the sample collection
10 and analysis, with some states doing both
11 sampling and laboratory work and others doing
12 only the sampling. Our USDA PDP staff serve as
13 liaisons for the states for sampling lab data
14 review and assisting with other needs. And next
15 slide. Sorry, it's got animation. I thought I
16 took that out. I apologize.

17 MR. HUGHES: Do you want me to go back
18 to this one here that has all the bullets there?

19 MS. FOOS: I think we're good. We'll
20 just keep going.

21 MR. HUGHES: Okay.

22 MS. FOOS: Sorry about that. I

1 apologize. I thought I had taken that out so you
2 could see everything at once.

3 So PDP selects commodities for
4 sampling based on input from EPA regarding the
5 current risk assessment needs. The high
6 consumption commodities are rotated in and out of
7 the program because we are not able to do
8 continuous monitoring of all crops. Other
9 specific crops are added to the rotation as data
10 are needed. The selection of commodities
11 emphasizes consumption by infants and children as
12 directed by FQPA.

13 It may be of interest to you all to
14 know that fruits and vegetables most consumed by
15 kids are apples, oranges, corn and potatoes. The
16 analytes or pesticides tested in the program are
17 specific to each commodity, and we also
18 coordinate that with EPA and FDA in identifying
19 the priority compounds. I'll elaborate more on
20 the commodities and the analytes in the upcoming
21 slides.

22 So since its inception in 1991, PDP

1 has tested more than -- exactly 126 commodities.
2 And as you can see here these are primarily fruit
3 and vegetable commodities. Some commodities have
4 only been through sampling and testing one time,
5 and others have rotated through the program
6 multiple times. I want to let you know that we
7 are currently testing 14 commodities. Those are
8 cantaloupe, bell pepper, bananas, basil, garbanzo
9 beans, hot peppers, kiwi, mustard greens, oats,
10 canned peas, radish, rice, canned spinach and
11 frozen strawberries.

12 For the year, PDP will collect about
13 10,000 food samples resulting in approximately 2
14 million pesticide commodity data point pairs.
15 Cumulatively through the PDP history then that's
16 about 265,000 food samples that have been
17 analyzed and more than 34 million pesticide
18 commodity data points.

19 Next slide. You may be wondering at
20 this point how it is that we collect all of these
21 samples. What we do is we first start with our
22 colleagues at the National Agricultural

1 Statistics Service to devise the nationally
2 representative sampling plan based on the
3 populations of the ten participating states,
4 which include major fruit and vegetable
5 production states and represent all U.S. census
6 regions.

7 NASS uses the probability proportional
8 to size model to determine how many samples there
9 are collected at each of the sites in each of the
10 states. Sampling sites are selected randomly but
11 are rated to reflect the volume of product the
12 site handles. Some of these factors can include
13 pounds of produce the facility handles or the
14 square footage of the facility. The idea is
15 really that larger facilities that distribute
16 more commodities are sampled more often than
17 smaller sites.

18 The samples include foods that are
19 domestic and imported, as well as organic and
20 conventionally grown foods. So most fresh
21 commodities are sampled on a two year basis and
22 are then rotated out. This rotating commodity

1 sampling allows us to test a wide variety of
2 commodities over time. The sampling time frame
3 also allows us to capture data from different
4 times of the year when certain commodities are
5 available primarily as domestic or imported
6 product.

7 A good example is blueberries. During
8 the summer months, most of the blueberries that
9 are available for purchase are domestically grown
10 and then during the winter months, they are
11 primarily imported product.

12 In addition, this approach also
13 captures these intense pressures and growing
14 conditions. Processed foods, such as baby food,
15 that are generally available year round, have
16 shorter sampling periods.

17 A commodity will reenter the program
18 for sampling every five years if it's highly
19 consumed by children or can reenter as data are
20 needed. An example is that apples are often
21 sampled. And I, since arriving, have been
22 working to reach out to potential stakeholders

1 working in each of these commodity areas when we
2 put something into the rotation, and I'd be happy
3 to add any of you all to our list of people to
4 reach out to, or your colleagues, just let me
5 know later on.

6 So that bring us to the actual
7 sampling. The sampling approach that I just
8 described yields 59 samples per commodity per
9 month, for most foods. This equates to over 800
10 samples collected each month from across the
11 country for analysis, and over 700 samples per
12 year per commodity.

13 The sample information, including
14 foraging, and organic claim, and many other data
15 fields, are captured electronically by the state
16 employees on site before the samples are shipped
17 to the laboratory for analysis.

18 And as you can see, that is done in
19 the field in the picture here with the bananas.
20 Our sampling sites include locations that are
21 closest to the consumer and samples are collected
22 within hours of reaching a consumer.

1 This includes distribution centers,
2 terminal markets, and in some cases, retail
3 locations. This results in PDP data that are
4 consumer exposure levels, rather than the farm
5 gate levels.

6 This allows time for degradation of
7 products applied both pre and post-harvest, and
8 the consumer exposure levels at PDP monitors are
9 important factors in the pesticide dietary risk
10 assessments.

11 Collection at these locations allows
12 for representative sampling that closely
13 resembles what consumers are purchasing, and in
14 addition, these sites also have more information
15 available about commodities than retail locations
16 would have.

17 As per our nationally representative
18 sampling approach, the number of samples
19 collected from each state is proportioned
20 according to the state's population, with more
21 populated states collecting more samples per
22 commodity per month, as illustrated in the table.

1 So for example, when we are sampling
2 oranges, the sample size is 5 pounds. So
3 California will collect 13 5-pound samples per
4 month and ship them off to the laboratory.

5 The next slide is about the
6 laboratory. Once the samples arrive at the
7 laboratory, they are prepared using common
8 consumer practices and washed under gently
9 running cool water.

10 Depending on the sample size stamped
11 on the type of sample, consumer product practices
12 include preparation such as peeling the bananas,
13 and coring the apples, and removing the husks,
14 and loosening the kernel from the corn, as shown
15 here in the picture.

16 Samples are then homogenized in lab-
17 grade food processors, if needed, and separated
18 into analytical portions.

19 All of our labs now use a month by
20 catchers method for extraction. This multi-
21 residue method allows labs to perform extraction
22 of multiple pesticides in a fraction of the time

1 and the cost of older methods.

2 Previous extraction methods also
3 generated a large amount of hazardous waste,
4 thereby, increasing the costs. Our sample
5 preparation SODs are posted on our web site, if
6 you're interested in more details.

7 Following the extraction, the samples
8 are ready for laboratory analysis. PDP has
9 tested over 500 pesticides, metabolites, and
10 isomers in the multi-residue method, but not all
11 pesticides are tested on each commodity, rather,
12 the actual number tested in each sample depends
13 on the commodity, the pesticides that are
14 requested as a priority for each commodity, and
15 laboratory capabilities.

16 The compounds include many common
17 pesticides, such as carbamates, organophosphates,
18 pyrethroids, neonicotinoids, and triazoles. The
19 PDP laboratories use very good quality
20 instrumentation with gas chromatography, GC, and
21 liquid chromatography, LC, coupled in tandem with
22 mass spectrometers detection systems for

1 simultaneous identification and quantification of
2 pesticides.

3 With this instrumentation, we are able
4 to identify a large number of residues at very
5 low limits of detection, or LOD. The LODs vary
6 by commodity and residue, but are in the low
7 parts per billion range.

8 These low LODs are also very important
9 for the dietary risk assessment applications of
10 PDP data.

11 All of the resulting data from the
12 state laboratories are then reported back to
13 USDA, where they are reviewed by the staff
14 chemists in our office and incorporated into the
15 database.

16 Our laboratory approach also includes
17 a robust QA/QC program to help ensure the quality
18 of the resulting datum. Each lab runs blanks,
19 spikes, and process controls with each sample
20 set. The lab must perform matrix spikes at least
21 quarterly for each analyte and crop combination
22 it reports, and that evaluates both the analyst

1 and the instrument performance.

2 Methods are validated for each
3 commodity and pesticide and that also establishes
4 the limits of detection and quantification at
5 that time.

6 Proficiency testing takes place three
7 times a year and all labs within the PDP program
8 are ISO accredited.

9 Now to the uses of our data, because
10 we really are a data program. PDP data are used
11 in a number of applications and you heard about
12 most of these when we talked about mission.

13 When the pesticide goes through EPA's
14 registration and review process, there are times
15 that additional data are needed to assess the
16 potential dietary risk of that compound, and PDP
17 provides the high-quality nationally
18 representative data for those risk assessments,
19 which are the basis of EPA's pesticide
20 registration and cancellation decisions.

21 PDP data often replace model data and
22 there's a benefit then to understand the actual

1 consumer exposures.

2 PDP data show that over 99 percent of
3 the samples tested have pesticide residues below
4 the tolerance established by EPA. I'm going to
5 repeat that because I'd like you to really think
6 through how that's a testament to the good work
7 of the farmers of the United States that over 99
8 percent of the samples tested have pesticide
9 residues below the tolerances.

10 And knowing this, I think, helps
11 establish consumer confidence in the U.S. food
12 supply.

13 On a monthly basis, we also monitor
14 the residue levels that come in and if a
15 presumptive tolerance violation is found, we pass
16 that data along to FDA, because they have the
17 enforcement authority over residues.

18 However, they do not take enforcement
19 action on PDP data, they simply incorporate it
20 into their planning for the actions that they
21 take. They do their own monitoring that is not
22 nationally representative and not throughout the

1 course of the year, like ours is.

2 MR. SMITH: Can I ask a question?

3 MS. FOOS: Sure.

4 MR. SMITH: How does that 99 percent
5 compare to the imported products?

6 MS. FOOS: So there are some domestic
7 violations, but it is the majority are the
8 imported products. I don't have a slide on that,
9 but I mean, I could have my data analysts run a
10 query and pass the information on to Darrell if
11 the committee would like that information.

12 We have a huge amount of data, as I
13 described to you, and I was about to tell you how
14 it's all available on the Web site, but we can do
15 custom queries too. And I'm actually about to
16 show you one about dicamba, but let me finish
17 this slide, then we'll move on to dicamba.

18 So also when a trade partner has a
19 concern about the pesticide residues in U.S.
20 commodities, the Foreign Agricultural Service
21 often uses PDP data to alleviate those concerns
22 and help resolve the trade disputes.

1 So now, in addition to the daily uses
2 I just described to you, we get a lot of requests
3 for specialized queries of the database, and I
4 have a really exceptional data analyst who's so
5 good at these things.

6 I've heard that you all are interested
7 in dicamba, I saw the recommendations that you
8 just had about that, there were quite a few, and
9 so in this slide and the next one, I'm sharing a
10 summary of all of the dicamba data available in
11 the PDP database, which, frankly, is not a lot of
12 data.

13 Of the more than 250,000 samples in
14 the database, only the 12,905 that are listed
15 here have been analyzed for dicamba.

16 Now, the likely explanation for this
17 low number is also illustrated on this slide and
18 was brought up by your workgroup chair.

19 Over on the right side, you can see
20 that most of the commodities in this table really
21 have tolerances for dicamba. And in the
22 selection of analytes, we always give priority to

1 the analytes that have tolerances for the
2 commodity.

3 So pesticides that are not priority
4 analytes are routinely reported by the
5 laboratories if they're a part of the multi-
6 residue method, as I mentioned to you earlier,
7 when we were talking about the laboratories, but
8 dicamba and the other acid herbicides require
9 additional laboratory preparation, so it's not
10 routinely done, and we currently have only one
11 state that reports it as a part of their data.

12 So as you can see on this slide, the
13 only commodity with a tolerance for dicamba is
14 milk, and of the 1875 milk samples analyzed, none
15 of them contained even detectable levels of
16 dicamba.

17 And then in the second dicamba slide,
18 you can see that the only other commodity with a
19 tolerance is corn and they wanted to know, it's a
20 typo here, and the two empty blocks, the
21 tolerances for the canned corn and canned peach
22 should be the same as the frozen ones.

1 But also on this slide, you can see
2 that dicamba has only been detected in 11 of the
3 12,905 samples, and all of those were water
4 samples.

5 So in summary, dicamba has not been
6 detected in any fruit or vegetable samples that
7 PDP has collected over the last 23 years. And
8 I'm somewhat concerned that this isn't really the
9 information that you were looking for, but we can
10 discuss that in just a few minutes because I'm
11 almost done with my slides.

12 I want to leave this presentation with
13 you all knowing that all of our data are publicly
14 available. Every year, we produce an annual
15 summary of PDP, and I'll hold it up here, I
16 brought a copy, that includes an informative
17 narrative and robust data tables for the year.

18 We are currently finalizing the 2018
19 annual summary and it should be ready in a couple
20 of months, but I'd be happy to send you the 2017
21 annual summary in hard copy, if you're
22 interested, or it's also available on our Web

1 site, and the web address is given here at the
2 bottom of the page.

3 Also on the PDP Web site, you can
4 download annual data files or you can use the web
5 app that allows public searches of PDP data where
6 you can search using a combination of commodity,
7 pesticide, and year.

8 It's a very handy tool and I encourage
9 you all to check it out if you have a need. So
10 with that, I'd like to thank you again for
11 inviting me to give the presentation. My contact
12 information is here at the bottom of the slide if
13 you have any future questions, but I'll take any
14 current questions you have right now.

15 MR. KIRSCHENMANN: So on the dicamba
16 thing, is it --

17 MR. HUGHES: Hey, Brian, can you
18 project a little bit?

19 MR. KIRSCHENMANN: Yes, so on the
20 dicamba debate on not finding the residues, is
21 there a half-life issue? Because some of the
22 herbicides that we get presented with on drift

1 issues are present in the crop in the growing
2 season, but are not present by the time they hit
3 the consumers.

4 So at what point is it adulterated and
5 not adulterated?

6 MS. FOOS: So I have to tell you, I
7 apologize, I'm not familiar with the adulterated
8 versus non-adulterated issue. That's not a part
9 of our program and maybe if one of you all could
10 explain that to me, I could answer the question
11 better.

12 But so obviously, if things are --
13 have degraded past the metabolites that we looked
14 for, we won't find them, but in particular, the
15 dicamba just doesn't work with our standard
16 methods.

17 So it requires extra preparation and
18 the laboratories don't do that unless asked. And
19 we only ask if there's a tolerance, right? If
20 there is a tolerance, it moves up in priority,
21 and so mostly, they just don't report it because
22 it's extra work. Yes.

1 MR. ZEA: To go back to follow on
2 Steve's comment, because I was going to ask the
3 same question.

4 MS. FOOS: Right.

5 MR. ZEA: It's obviously one that all
6 of us in here, probably, or many of us, assume
7 would happen.

8 MS. FOOS: Right.

9 MR. ZEA: But how compelling is that
10 to the statisticians that it's mostly imported
11 product and it's a very, very small percentage
12 overall.

13 MS. FOOS: And it's still a very small
14 percentage overall. I have not seen a
15 statistical analysis of it. At PDP, we're
16 primarily in the data collection business and we
17 don't do a lot of analysis. If you Google PDP
18 and pull up a bunch of research articles written
19 by people who don't work for me, and that really
20 is part of our mission. We make our data
21 publicly available.

22 So I can pull data and give you a

1 table of what we know, but we haven't really
2 analyzed it, I think, as you're asking. Yes?

3 MR. WINGARD: Would you go back to
4 Brian's answer? Did you say or did I -- I know
5 what your answer was, but did you mean that
6 because it's difficult to test for, the
7 government just doesn't test for dicamba very
8 much?

9 MS. FOOS: Yes, sir.

10 MR. WINGARD: So even though your data
11 looks good, that's only a small portion of that
12 100,000 you sample every year, or whatever the
13 number was.

14 MS. FOOS: That is correct. We have
15 265,000 food samples that have been analyzed
16 overall and only 12,000 that have been analyzed
17 specifically for dicamba.

18 MR. SMITH: In what year was this
19 chart done?

20 MS. FOOS: Oh, I just made that chart.
21 2017. That's our current publicly released data.
22 We're still working on the QA of the 2018 data.

1 MR. SMITH: So I'm just going to make
2 a comment that there wasn't a lot used yet in
3 2017.

4 MS. FOOS: Okay. So this is a really
5 new problem.

6 MR. SMITH: It's a new problem.

7 MR. WINGARD: So based on your
8 numbers, only 4 percent of your samples, 4.5
9 percent --

10 MS. FOOS: Right.

11 MR. WINGARD: -- to be a little more
12 accurate, of your samples are actually tested for
13 dicamba.

14 MS. FOOS: That is correct.

15 MR. WINGARD: Okay.

16 MR. SMITH: And I would comment that
17 all the stuff coming out of California wouldn't
18 have it on it anyway because it's not approved
19 there.

20 MS. FOOS: Okay. California is the
21 lab that currently reports it, probably for that
22 reason. I did not know that. I think you just

1 educated me, but yes, all of the newest data --
2 so the data table I gave you on dicamba is over
3 23 years. The newest data that we have received
4 are all from the California state laboratory.

5 MS. HARPER-LARSEN: So I will address
6 adulteration --

7 MS. FOOS: Okay.

8 MS. HARPER-LARSEN: -- in simplistic
9 of terms where it's meaningful to you. If it's
10 not legally allowed to be used, it's adulterated.

11 MS. FOOS: Okay.

12 MS. HARPER-LARSEN: Okay.

13 MR. WINGARD: Or if it's over the
14 limit.

15 MS. HARPER-LARSEN: Or if it's over
16 the limit for MRLs, okay? In terms of
17 pesticides. Now, we also deal with it being, you
18 know, inedible quality, and microbial
19 contaminates, and a lot of other additional
20 hazards, including radiological thing, okay? But
21 in your terms of that, okay?

22 MS. FOOS: Okay. So in the samples we

1 have, there's really no evidence of adulterated,
2 as you would call it. We usually call them -- if
3 there is no tolerance and we find it anyway, we
4 would describe that as just identifying a
5 residue.

6 We don't call it adulterated. If we
7 find it over the tolerance, we would call it a
8 presumed tolerance violation. We did give both
9 of those -- both types of data to FDA for their
10 evaluation, but we haven't had any on dicamba, so
11 we haven't given them the information.

12 It seems as though you all have
13 information, maybe, in California, is where
14 that's coming from, that dicamba is adulterating
15 in the way that would have a relationship with
16 pesticide residues, is that correct?

17 Maybe somebody can educate me on that
18 too, how, sort of, it's -- how you have evidence
19 of dicamba adulterating residue samples, because
20 it's not from my data. Is it from somebody
21 else's data?

22 MS. HARPER-LARSEN: Because it's

1 privately tested and required by customers. The
2 audits.

3 MS. FOOS: Okay.

4 MS. HARPER-LARSEN: And there are
5 contracts that are specific, probably quite a few
6 of us in the room have, particularly in the last
7 two years, that have provisions specific to
8 dicamba and a couple of other chemical residues
9 that we're actually prevented from having them on
10 our chemical list, even if it is permitted use.

11 MS. FOOS: Tell me that one more time.

12 MS. HARPER-LARSEN: So retailers won't
13 let us use it if we sold crops.

14 MS. FOOS: Okay. All right. They
15 don't want your crops skewing your private
16 detection or them in their private detection.

17 MS. HARPER-LARSEN: Well, they don't
18 spend money. They put it on us.

19 MS. FOOS: Okay. I don't know what to
20 say. It sounds like you're looking for things
21 that we --

22 (Simultaneous speaking.)

1 MS. FOOS: When I pulled up the
2 dicamba data, I figured it wasn't going to be
3 what you all wanted to see, but it's what we
4 have.

5 MS. HARPER-LARSEN: Well, we're glad
6 that you got some data to start with. I think it
7 gives the working group in particular, some
8 additional information to proceed with. In
9 regards to what you see here relating to,
10 particularly, the water, because that's used, I
11 mean, especially when we look at the tested and
12 finished water, even though you had part per
13 trillion --

14 MS. FOOS: Right.

15 MS. HARPER-LARSEN: -- okay, it's
16 still --

17 MS. FOOS: It's in the realm.

18 MS. HARPER-LARSEN: Right. And the
19 various ways that agriculture and the public, you
20 know, also use that in needing to, sort of, have
21 that research and it being a bit more robust
22 probably begs the question.

1 But I wanted to highlight to you that,
2 in particular, I did not see watermelons listed
3 here. And the reason why those are particularly
4 on the radar is, they cause the shot heard around
5 the world related to dicamba.

6 So everybody thinks it's a soybean and
7 a corn issue, but it wasn't. It was a customer
8 of mine.

9 MS. FOOS: It was what?

10 MS. HARPER-LARSEN: It was a customer
11 of mine that shot and killed another farmer.

12 MS. FOOS: Oh.

13 MS. HARPER-LARSEN: Oh, yes. And with
14 that being said, it was relating to a future
15 watermelon crop. It was not a commodity crop at
16 the time. And so noticeably missing from this
17 data list is watermelon.

18 MS. FOOS: All right. So I'm looking
19 in the annual summary, as I said, robust data
20 tables in the back, watermelon has rotated
21 through our program three times. The most recent
22 time ending in June of 2015.

1 MS. HARPER-LARSEN: So that's prior to
2 it.

3 MS. FOOS: Yes, I think so. I mean,
4 to get at your question about why don't we do
5 everything, we have a pretty limited budget. We
6 do these multi-residue methods so we can get the
7 most we can for -- within our -- within what we
8 can work with. We only do 14 commodities at a
9 time.

10 I would imagine around the table here
11 you represent well more than 14 commodities. And
12 so it's all we can do.

13 MR. SMITH: Could you comment, what
14 kind of relationship you have with EPA that could
15 enhance the correlation between the two agencies?

16 MS. FOOS: So I can speak to my own
17 program and the pesticide data program, and our
18 exchange of data on residues, I think -- I don't
19 know, Darrell, have they had any engagement with
20 Office of Pest Management Policy?

21 MR. SMITH: No.

22 MS. FOOS: No. Okay. So USDA also,

1 at the very high level, has an Office of Pest
2 Management Policy, and they also work with the
3 EPA on a number of issues. Much broader than
4 residue analysis.

5 I think they might have more
6 information you would be interested in, but from
7 us, from our perspective on residue analysis, our
8 program and the dietary risk assessments are both
9 mandated under the Food Quality Protection Act.

10 And so we work very closely together
11 that our data is helpful to them in conducting
12 the dietary risk assessments.

13 And as I mentioned before, it often
14 replaces the model data and in that way it's
15 advantageous because the data does show that,
16 generally, the foods are all meeting the
17 tolerances.

18 And so our relationship is really
19 about what are the current risk assessment needs,
20 which chemicals are undergoing the registration
21 review in the upcoming timeline that we might be
22 able to provide timely data, and particularly,

1 about which commodities to reenter the program,
2 focusing on those ones for infants and children.

3 MR. SMITH: So could you provide them
4 -- looking at this list of no tolerances, could
5 you provide them encouragement, in some form, to
6 help get those established? If we make this
7 recommendation, comes out of this group, to the
8 USDA, you know, it's not to EPA, can your group
9 influence EPA to do something about that?

10 MS. FOOS: We certainly can share it.
11 I think that maybe that Office of Pest Management
12 Policy does more on the bigger picture. I think
13 it's possible, after hearing what the pesticide
14 data program is about, that you all would want to
15 consider changing that recommendation, just say
16 USDA, but then you could get our influence and
17 Pest Management Policy.

18 MR. SMITH: Okay.

19 MS. GLEASON: I'm wondering, if you're
20 using these recommendations or these -- this data
21 is to make recommendations about whether
22 something should be registered or registration

1 should be cancelled?

2 MS. FOOS: We do not.

3 MS. GLEASON: Okay.

4 MS. FOOS: We just make the data
5 available. The EPA does all of the analyses.

6 MS. GLEASON: Okay.

7 MS. FOOS: FDA does --

8 MS. GLEASON: Does it have to be a
9 certain -- I mean, there's so little -- it seems
10 like there's so little data right here around
11 dicamba, does there have to be a certain, like,
12 number of samples, or a certain level of data
13 that you have to provide around --

14 MS. FOOS: So there are, and I'm
15 sorry, I don't know off the top of my head, when
16 I read to you the 800 samples per commodity per
17 year, that is based on the minimum means.

18 So what I can tell you is, I don't
19 think that EPA is using these data in the dicamba
20 assessments. I don't know off the top of my
21 head, know what assessments EPA is doing for
22 dicamba, though, because we simply share data and

1 we don't engage them in the analysis.

2 MS. HARPER-LARSEN: How about FDA, all
3 that, are they -- are you sharing any of this
4 data with the FDA?

5 MS. FOOS: We do share data with them
6 too. And I know for a fact that they do not take
7 enforcement violations actions based on PDP data.
8 They will look at what we found and what they
9 found in their non-nationally representative
10 sampling.

11 My understanding is they do more
12 targeted sampling. And maybe they would take
13 what we find and devise a targeted sampling or
14 decide that they don't need to do a targeted
15 sampling, but we just help them in planning the
16 projects.

17 MR. SMITH: Brett?

18 MR. ERICKSON: Does your agency ever
19 have discussions regarding the fact that the data
20 that you guys put out is utilized by -- or used
21 to publish this dirty dozen list and the impacts
22 that that data has and how it's twisted, or taken

1 out of context, or on relativity, you know, how
2 that impacts growers and producers in the -- in
3 this room and in the country?

4 MS. FOOS: So I have heard discussions
5 about that even in my short time here. And
6 because we make it publicly available, the public
7 is able to do with it as they want. We do not
8 issue our own analyses. We don't do the EPA
9 analyses and we don't do any other group's
10 analyses either.

11 I think you have to weigh, at least in
12 my opinion, you have to weight that some people
13 will use it in a way you don't like, with other
14 people will use it in a way that you do like.
15 And overall, the data are very supportive of the
16 food quality in the United States, and should
17 build consumer confidence overall, to encourage
18 people to eat more fruits and vegetables.

19 You look unsatisfied with that answer.

20 MR. ERICKSON: Well, I agree with you
21 on the fact that people take -- you can take a
22 piece of data and turn it into whatever you want.

1 MS. FOOS: Absolutely. And we have
2 tried to remain a data program and not a -- not
3 the policy program, which is why, maybe, the
4 Office of Pest Management Policy would be able to
5 better engage in some of the things you've been
6 discussing.

7 CHAIR CARR: Time for one last
8 question?

9 MS. FOOS: Well, everybody wants
10 lunch, so thank you very much for inviting me.
11 And I want to tell you, when I was on the way up
12 here in the elevator, a gentleman was commenting,
13 he saw the Fruit and Vegetable Industry Committee
14 on the rolling screen, he's like, wow, I want to
15 go to their lunch.

16 If you guys are having some great
17 fruit and vegetable lunch, can I be invited? I
18 suspect it's like other committees where you have
19 to go get your own lunch.

20 CHAIR CARR: That's probably a good
21 thing. Darrell, you can lead into that and talk
22 about it over the next 75 minutes.

1 MR. HUGHES: All right. Over the next
2 75 minutes, you're free to eat lunch wherever you
3 want, just be back in time.

4 CHAIR CARR: So we're meeting back
5 here at 1:30?

6 MR. HUGHES: Back here at 1:30.

7 CHAIR CARR: Is it 1:30?

8 MR. HUGHES: 1:25.

9 (Whereupon, the above-entitled matter
10 went off the record at 12:16 p.m. and resumed at
11 1:31 p.m.)

12 MR. TALAN: Good afternoon, everyone.
13 It's a pleasure to be here. I'm David Talan with
14 the Bureau of Labor Statistics. I am the program
15 manager for the Quarterly Census of Employment
16 and Wages.

17 MR. ROBISON: Ed Robison from Bureau
18 of Labor Statistics. I'm a mascot, they have a
19 group mascots, and we have not QCEW, but we have
20 Census of Employment and Wages, also have current
21 population survey, and I'm well aware over the
22 years, with other groups, that there are

1 differences in our ag data and various other ag
2 data that's out there.

3 MR. JONES: Hi. I'm John Jones, same
4 thing, BLS, but I'm in the Occupational
5 Statistics Program specifically. I'm a columnist
6 there.

7 I'm here representing, actually,
8 another colleague that wrote a paper on the ag
9 industry when we did the Green Services Job
10 Survey, and it's 2011, so it's eight years ago,
11 but apparently you guys want to hear about it, so
12 I'm here.

13 CHAIR CARR: Thank you. Your name one
14 more time.

15 MR. JONES: It's John Jones.

16 MR. HUGHES: And that's it for now.
17 Brian Pasternak is on the agenda to group
18 presentation later. He's in the back. You guys
19 will meet him later and there's one additional --
20 oh, yes, that's right. David Hines, right?

21 CHAIR CARR: David Hiles.

22 MR. HUGHES: Hiles?

1 CHAIR CARR: Hiles, H-I-L-E-S.

2 MR. HUGHES: He's on his way via bike,
3 maybe, so -- which is great exercise, being
4 healthy.

5 MR. ERICKSON: How many labor speakers
6 do we -- all these guys are going to speak after?

7 MR. HUGHES: Two.

8 MR. ERICKSON: Two.

9 MR. HUGHES: Yes.

10 MR. ERICKSON: Thank you.

11 MR. HUGHES: And we just have them on
12 deck in case you ask questions, to provide their
13 support.

14 MR. ERICKSON: Okay. I'll run through
15 our stuff really quick so our speakers can come
16 up. It's interesting that Immigration and Labor
17 are not as high of a topic as some of the other
18 stuff we've talked about today. It's
19 interesting.

20 So I'd like to thank the group, in
21 particular, Chalmers was very helpful in helping
22 put together some language for some of our

1 requests.

2 Somebody very wise told me, and you
3 may have heard this before, but we can import our
4 food, or we can import our labor, we can choose,
5 either way, foreign hands will be harvesting
6 those products.

7 It would be preferable that those
8 hands are picking that product that is grown here
9 in the U.S.

10 I'm not going to go through our
11 objective statement here, I'm just going to jump
12 into -- we read that last time, our first
13 recommendation was, we request the Secretary's
14 collaboration with other agencies to remove the
15 ten-month rule.

16 The most commonly accepted
17 interpretation by U.S. Department of Labor is
18 that temporary means employment of less than ten
19 months and we would like to remove that ten-month
20 rule to read less than one year.

21 Recommendation Number 2, we request
22 that USDA research methods to make the Farm Labor

1 Survey more robust. It is our understanding that
2 the new survey, moving forward, that some of the
3 key areas of improvement are identified,
4 employers who use H-2A labor designed to
5 determine base wages for various occupations
6 within ag by separating out base wages, overtime
7 wages, and bonuses, all things which had
8 previously been used in reporting wages.

9 The intent in separating out these
10 wage add-ons is to determine and publish the base
11 wages paid in various ag occupations which could
12 then be used DOL in its adverse wage
13 calculations.

14 So we request that the Secretary
15 monitor this process very closely and work
16 closely with the Secretary of Labor to ensure the
17 refined data that is collected is used to support
18 agricultural employers and the American farm
19 worker.

20 Recommendation Number 3, we request
21 that USDA work with other agencies to change the
22 rule related to 51 percent are more a product

1 coming from outside the H-2A farm applicant
2 because many growers also pack for others, as we
3 see consolidation in the industry and a lot of
4 labor challenges, a lot of these packing houses
5 are packing product that is not only their own,
6 and that is important to those growers who rely
7 on that person to pack and market and ship their
8 product.

9 Recommendation Number 4, we request
10 collaboration between the Secretary of Labor and
11 USDA to have -- create a meaningful impact for
12 employers utilizing the H-2A program by
13 developing a program that identifies preferred
14 employers who possess solid history in the
15 program for an expedited and more streamlined
16 application process.

17 That's pretty self-explanatory.

18 Recommendation Number 5, we can breeze through
19 because that is -- we still have some discussion
20 within our group on Recommendation Number 5, and
21 which we will be discussing tomorrow. That is my
22 report.

1 MR. HUGHES: All right. I think we
2 have Jody up now from NASS, and Jody will
3 introduce himself when he comes up.

4 MR. MCDANIEL: All right. Good
5 afternoon, everybody. I get the fun spot. You
6 guys just filled your stomachs, so I'm not
7 anticipating any questions, so we'll be good.

8 I'll forewarn you, I went a little bit
9 old school and low tech on the fact that I didn't
10 build a slide deck for today, so what I really
11 want to do is, sort of, explain what we have as
12 far as data from the National Ag Statistic
13 Service.

14 But first and foremost, who am I and
15 why I am standing here with you guys today? So
16 I'm Jody McDaniel. I'm actually the chief of our
17 Environmental, Economic, and Demographics branch.
18 So my program is split into two areas. I oversee
19 the dissemination of the census of agriculture,
20 which, of course, is a very broad program, but I
21 also oversee all of the annual program efforts,
22 such as the Farm Labor Survey, which I suspect,

1 based on Recommendation Number 2, we might talk a
2 bit about today.

3 So delving in a little bit, just an
4 overview of the farm labor statistics at NASS.
5 So for perspective, we have two funding streams
6 at NASS, so we also have two data streams, one of
7 those being the Census of Agriculture, the other
8 being the Farm Labor Survey.

9 So to give you some context, the
10 Census of Agriculture has been at NASS since
11 1997. It's actually conducted in the years
12 ending in 2 and 7, so that's every five years.
13 It targets everyone with a \$1000 of sales or
14 potential for sales.

15 So it takes a look at use, ownership,
16 production practices, income, expenditures, and
17 really, the census is the voice for all American
18 farmers and ranchers, because it's that one
19 opportunity that the USDA has to publish that
20 granular level of data all the way down to the
21 county level.

22 So now, reason we're here today, labor

1 data. So what do we get out of the Census of
2 Agriculture? We get state and county data on the
3 number of farms that employ individuals for more
4 than 150 days or less than 150 days. We get a
5 farm count.

6 We get the total number of workers.
7 We also do a more granular approach and do a
8 breakout by farms by number of workers, so
9 categories such as one worker, two workers, nine
10 or more, so you get an idea of the density, and
11 the total payroll.

12 What you don't get is a wage rate.
13 That wage rate is a function of our annual
14 program, which is the Farm Labor Survey.

15 So that, in itself, is the basis for
16 employment and wage estimates coming from the
17 USDA. One thing to remember, so my counterparts
18 from BLS and DOL here at the table, NASS focuses
19 on a producer-driven survey.

20 Our survey goes out to respondents, as
21 we refer to them, or any survey organization
22 does, but our sampling base for the farm labor

1 program are actually producers that earn \$1000 or
2 more on an annual basis.

3 We collect that data, actually, four
4 times -- or twice a year for four different
5 reference weeks, so those reference weeks are the
6 week that includes the 12th of the month in
7 January, April, July, and October.

8 We then subsequently publish that data
9 twice a year for 15 multi-state regions. This is
10 in cooperation with our partners from DOL, so we
11 do have a lot of ongoing conversations with
12 Brian, specifically.

13 Some data that you get out of that, of
14 course, are the number of workers, the average
15 hours worked, and the average hours worked per
16 worker. Quarterly, of course, is when that data
17 is published, even though it comes out twice a
18 year, and then you get hourly wage rates for
19 field workers, livestock workers, field and
20 livestock workers combined, and all hired labor.

21 From 2014 forward, we've actually been
22 publishing data at a national level for the

1 standard occupational classifications, so that
2 breaks it out a little closer. So when you -- I
3 think I heard mention picking your fruit or
4 produce here so we can bring the labor in, so
5 graders, and sorters, and pickers are some of
6 those categories.

7 So that's sort of the history of the
8 labor program and where we were 18 months ago.
9 To bring you a little more up to speed, which, I
10 noticed from your recommendation that you're well
11 aware of the fact that we are -- we've been
12 through a period of about two years of survey
13 improvements on the farm labor program.

14 At one point in time the sample size
15 was around 14,000, twice a year. The sample size
16 right now has been increased to between 34,000
17 and 39,000, twice a year.

18 That long-term goal is to be able to
19 actually, in those 15 multi-state regions, to be
20 able to publish that more granular data down to
21 the occupational level.

22 So you'll be able to see out of our

1 report, that'll come out, actually, in November
2 will be the first time we've published that, it's
3 going to be an average wage rate for graders and
4 sorters at those 15 regions.

5 It's going to be much different.

6 Another effort, which I saw in your
7 recommendation, was the base wage rate. We've
8 done a large amount of cognitive research and
9 reached out to industry, as well as producers, to
10 better understand where we can develop the
11 instrument so that respondents can actually get
12 the data back to us to set the most meaningful
13 wage rates, which is, at the end of the day, our
14 goal.

15 Those wage rates are going to still
16 continue to be set in the same fashion that they
17 always have been. So we will have an average
18 gross wage rate, which is published four times,
19 four quarters, a year, which then is weighted and
20 provide an annualized average wage rate.

21 In addition to that, we also are going
22 to be publishing a base wage rate for the first

1 time this fall. That base wage rate has been the
2 result of some research and finding out how to
3 best help producers give us that data, so that we
4 can make sure that we account for things like
5 piece rate appropriately, which is always a
6 concern.

7 It's a reporting challenge. So that
8 sort of is a quick rundown. I will be really
9 honest, I think the value is from being here with
10 you and actually taking questions before I turn
11 it over to Brian.

12 So if you have questions specifically
13 about the NASS program, I'm happy to entertain
14 any of those.

15 CHAIR CARR: Jody, I have several
16 questions. Going back to your two different
17 surveys, the census survey, there are a group of
18 employees that are not counted in that, is that
19 correct? The ones that were for farm labor
20 contractors.

21 MR. MCDANIEL: So again, our
22 population that we survey are producers of

1 agriculture, so what you're talking about is
2 actually an independent contractor who hires farm
3 labor, so that would be more of an agribusiness.

4 CHAIR CARR: Right. And the last
5 survey was about 2.4 million employees in
6 agriculture in the last Farm Labor Survey, is
7 that correct; census?

8 MR. MCDANIEL: Farm Labor Survey or
9 census?

10 CHAIR CARR: The census; 2017 census.

11 MR. MCDANIEL: So apparently, I did
12 not plan on talking about census data. I brought
13 the Farm Labor Report, but I'm going to take you
14 at your word that that is -- yes.

15 CHAIR CARR: I guess where I'm trying
16 to go with this for the group is, we have yet to
17 have been able to find any reliable data that
18 tells us how many hired farm workers there are in
19 agriculture.

20 MR. MCDANIEL: So there is -- and
21 that's the benefit of having some of our partners
22 here in the room, they do look at a different

1 universe than we do for population, so again, the
2 strength of the survey from NASS is going to be
3 based on our population, which is the producer
4 themselves, but I fully recognize that that farm
5 labor contractor component serves a lot of value
6 and I may misspeak on which labor survey, but is
7 it QCEW that captures the farm contract?

8 CHAIR CARR: Right.

9 MR. MCDANIEL: Yes. So if you have
10 more specific questions about it, I would
11 actually say, when we finish both presentations,
12 maybe more of a conversation about that at that
13 time.

14 CHAIR CARR: Well, one thing from just
15 the industry as a whole is, when we go on the
16 Hill and talk with our representatives and stuff,
17 and we talk about immigration reform, not
18 necessarily what we're talking about right now,
19 but not having a clear understanding of what our
20 labor pool really is, really -- especially when
21 you get into the discussions of caps and
22 adjustment of status for workers.

1 It would just be really great to
2 figure out where we could go to to understand
3 what our labor pool size really is.

4 MR. MCDANIEL: Agreed. Being a
5 statistical organization, we inform policy. We
6 don't enforce policy. So what I can tell you is
7 that, we survey producers and that is our world.
8 That is our population.

9 So what you're asking for is more of
10 a blended data product that would be parts from
11 each of our specific --

12 CHAIR CARR: And that may be the goal
13 for me today is just to figure out which one --
14 which survey I need to take from you and which
15 survey I need to take from them to combine and
16 blend them together.

17 So talk about your changes. And we
18 are familiarized -- I am familiar with the fact
19 that you're trying to get down to at least five
20 categories on the new survey, and livestock
21 workers, harvesters, or farm workers, and then
22 graders and sorters, I think that you're asking

1 managers.

2 MR. MCDANIEL: Yes.

3 CHAIR CARR: And then I don't know
4 what the fifth classification would be. When you
5 publish those wages at the granular level, being
6 the base, are you also going to publish them as
7 five rates there, and on your gross wages, are
8 you just going to do one or are you going to do
9 gross wages for all five categories again?

10 MR. MCDANIEL: So it's going to be on
11 the fitness for use, so again, this is the first
12 full cycle of the expanded sample, so we've
13 gotten the first two quarters in, and my staff
14 are analyzing it right now.

15 Look at the second installation of
16 that data in October. We'll compile those
17 together and what we'll look at is the
18 coefficient of variations wrapped around that
19 data.

20 And any time that that data supports
21 being published and can be used for the public
22 good, we'll make it available to the most

1 granular level.

2 If we find that there's too much
3 variance in the data and it would be misleading,
4 then that data will not be disclosed.

5 CHAIR CARR: And then, of course, if
6 your counterparts are going to speak, then it's
7 my understanding that if USDA, NASS, is not able
8 to produce a wage rate for a particular category,
9 then they would fall back, under the rule change,
10 they would fall back on their BLS data for --

11 MR. MCDANIEL: Actually, I apologize,
12 I can't speak to the rule, because even that's
13 DOL, and I would ask that you all do Brian a
14 favor, since it's in public comment, and not ask
15 him either.

16 CHAIR CARR: That's going to be
17 difficult. So you produce that survey, and that
18 survey is ongoing, and talk to the group so they
19 understand how the impact, or if you know yet,
20 the impact of gross wages.

21 Currently, when a survey is done, it's
22 basically, how many workers you have, what was

1 your total payroll for that period, doesn't take
2 into account whether they worked overtime or not,
3 it's just a straight wage rate then, correct?

4 MR. MCDANIEL: So what you get is, you
5 get -- I come out to you as a respondent and say,
6 sorry, need new glasses. Hi, Chalmers, you know,
7 today we're going to talk about labor, we're
8 going to talk about two quarters. What we're
9 going to do is split that out into the farm labor
10 types, so I'm going to assume you have some field
11 workers.

12 So the respondent's going to go
13 through the questionnaire and you're exactly
14 right, how many laborers did you have? What were
15 the total gross hours worked? What was the total
16 gross wage paid? And then we create that ratio
17 estimate for that wage rate. We don't actually
18 ask the wage rate, which is a common
19 misconception.

20 We ask the numerator and the
21 denominator.

22 CHAIR CARR: Right.

1 MR. MCDANIEL: And then it's weighted
2 and that creates your wage rate.

3 CHAIR CARR: So making the changes,
4 and I may be going way down in the weeds, in
5 making the changes, how are you going to get to
6 the granular level in terms of -- because I
7 filled out your survey many times and, you know,
8 it's the gross wages divided by the number of
9 people, and you come up with that.

10 But now you're going to try to
11 separate out piece work wages from --

12 MR. MCDANIEL: We're not. What we
13 found through research is, asking the -- so keep
14 in mind, we write a survey instrument that's good
15 for all parts of the industry. The group I'm
16 here with today, piece rate is very important.
17 It's a passionate part of the industry.

18 We don't have a specialized
19 questionnaire just to collect piece wage rate.
20 What we've done is created a one-page supplement
21 that comes with that questionnaire, when you get
22 it in the mail, to help you go into how to put

1 the data in the right column so it's the most
2 reflective wage rate.

3 CHAIR CARR: And how did you go from
4 1400 -- or excuse me, the 14,000 respondents to,
5 hopefully, the 39,000? Because obviously, a lot
6 of the challenge has been, there wasn't enough
7 respondents in the past.

8 MR. MCDANIEL: It is a mechanism of
9 funding. So again, I mentioned the NASS is
10 funded through two appropriation streams, the Ag
11 Labor Survey, or Farm Labor Survey, is part of
12 the agriculture estimates funding stream.

13 We actually redirected funds from
14 other parts of the program to amplify that. We
15 are still receiving funding from the Department
16 of Labor, so it is definitely a cooperative
17 effort, but we supplemented that funding internal
18 to the agency.

19 MS. HARPER-LARSEN: So does that mean
20 you've got more people knocking on barn doors, so
21 to speak, to get responsiveness or how are you -- I
22 mean, you're looking at a two and a half times

1 increase, which is going to dramatically increase
2 your sample pool, your data collection, your
3 variances are probably going to get thrown out --

4 MR. MCDANIEL: Well, actually, the
5 beautiful part is, your variances with an
6 increased sample size, theoretically, should
7 reduce. So that's the beauty of adding more
8 samples to it.

9 As far as the data collection effort,
10 so keep in mind, the Farm Labor Survey is
11 predominantly a mail, web, and telephone follow-
12 up survey. We have five regional data collection
13 centers across the country that seat more than
14 800 people, give or take.

15 So we engage them first and foremost.
16 If there's a specialized operation or a contact
17 arrangement, we have 3000 additional contract
18 employees who collect data that are part-time
19 employees, so they'll be out to get the data as
20 well.

21 But, yes, we're geared up. Collecting
22 data is something we -- we've got it under

1 control, as far as --

2 MS. HARPER-LARSEN: Well, I have one
3 that goes to church with me, so --

4 MR. MCDANIEL: They're lovely people.

5 MS. HARPER-LARSEN: -- he waits on us
6 after church to get out.

7 MR. MCDANIEL: They're crafty. We
8 love them, actually. Most of us start our career
9 in the field, so we work with them closely. So
10 I'm not aware of their payment structure, because
11 actually, they work for the National Association
12 of State Departments of Agriculture, not NASS.

13 MR. WINGARD: Now, my question is,
14 going all the way back to, I think, Chalmers'
15 first question, who can tell me or this group how
16 many farm workers are in the U.S.?

17 MR. MCDANIEL: So when you say, farm
18 workers, you're referring to people hired in
19 through a business, you're talking about people
20 hired in through a producer, so recognize the
21 challenge we have, that we all have different
22 authorities on the spectrum in which we collect

1 data. We are charged with collecting data from
2 the producers.

3 BLS collects it on the entire
4 workforce. What I would imagine you have to do,
5 which, some of our partners in the Economic
6 Research Service have been researching is how to
7 harmonize that data across so you get a straight
8 answer. One government data product.

9 Right now, there is not one.

10 MR. WINGARD: So nobody can tell us
11 how many farm workers are in the U.S. Is that
12 your answer?

13 MR. MCDANIEL: I can tell you the
14 amount of farm workers employed by agricultural
15 producers. I cannot tell you the amount that are
16 employed by farm labor contractors.

17 MR. WINGARD: But is that data -- does
18 somebody have that data?

19 MR. MCDANIEL: I would --

20 MR. WINGARD: I mean, because to
21 Chalmers' point, as we debate and contemplate
22 labor --

1 MR. HUGHES: In other words, it sounds
2 like one of our labor experts may be able to jump
3 in to provide some insights. David --

4 MR. MCDANIEL: Hiles.

5 MR. HUGHES: Hiles?

6 MR. MCDANIEL: Yes.

7 MR. HUGHES: Come on up for a second.

8 MR. WINGARD: I mean, you all just
9 tell me true numbers and I'll be happy.

10 MR. MCDANIEL: You're good. Come on.
11 It's a question, I'm sorry, but I can't answer.

12 MR. WINGARD: But I mean, you
13 understand the value to that data for us?

14 MR. MCDANIEL: I fully do, but it is
15 that challenge of, we all have a role to play in
16 statistics, so fortunately, our partners are
17 here.

18 MR. WINGARD: So before David starts
19 speaking, just for the group's reference, you
20 don't know -- so there is areas in the country
21 where farm labor contractors are extremely
22 important in the fresh fruit and vegetable

1 industry, and that's the predominant labor
2 source, and then there's other parts of the
3 country where it's direct site employers, where
4 the farmer employs the labor himself.

5 So not knowing these two different
6 pools, NASS is obviously counting the producer
7 level, but again, we still, and maybe David has
8 the answer to this, we have struggled to put
9 these two numbers together to really have an
10 accurate count of hired workers.

11 MR. HILES: Hello, you all. Okay. So
12 I work for the Quarterly Census of Employment and
13 Wages. I'm in charge of the branch that does the
14 last review of the data before we put it out and
15 try to make it safe for public consumption.

16 Dave Talan is the program manager for
17 the Quarterly Census of Employment and Wages. So
18 I'll try and answer some of the questions you
19 have about how do we -- what kind of counts do we
20 have for farm labor.

21 So the Bureau of Labor Statistics,
22 most of the measures that we put out really are

1 focused on the non-farm portion of the economy.
2 You guys are probably painfully aware of that.

3 The Quarterly Census of Employment and
4 Wages actually does cover a large chunk of the
5 agricultural portion of the economy. So when we
6 say Quarterly Census of Employment and Wages,
7 we're an administrative data program and we base
8 our data on unemployment insurance, quarterly
9 reports by every employer in the United States
10 covered by the unemployment insurance system.

11 So we don't actually have people
12 knocking on those barn doors because whoever's
13 doing your bookkeeping is saying that to your
14 State Department of Workforce Affairs, the
15 Department of Labor, already.

16 So usually it's the unemployment
17 insurance tax office. So we think we capture
18 about half of employment in the agricultural
19 sector because the coverage of the unemployment
20 insurance system is based on the size of the
21 workforce at the declared enterprise.

22 So we're focused on the number of

1 workers and when we're collecting data, we're
2 interested in, what is the primary economic
3 activity of the worksite that's reporting it.

4 So if it's a labor contractor, we're
5 getting them classified into that industry. And
6 in terms of agriculture, we know there's
7 production, there's the warehousing part, you
8 know, we think about elevators and all that,
9 there's wholesale, processing, you know,
10 processing, and then wholesale and retail.

11 So we have that entire stream of
12 information, but I think you guys are sort of
13 focused -- we focus mostly on the production
14 side, or a little bit of processing, so both is
15 the answer on that.

16 So we put out data four times a year.
17 The next data we'll be putting out is for the
18 first quarter of 2019, and that'll be coming out
19 on September 4th. And the data that we're
20 collecting for agriculture, we have 106,000
21 establishments reporting to us each quarter.

22 And so we put out data at the national

1 level, we also put it out by state and by county.
2 And the QCEW program has always had -- our
3 program culture has been focused on local data.
4 So if you're interested in knowing what ag looks
5 like in a portion of your state or the county
6 that you're in, you know, we already have that
7 information.

8 So what are the data that we collect?
9 Our data items are extremely simple because it's
10 coming from this administrative data source.
11 We're taking employment for the week of the 12th,
12 as we commonly use across all statistical
13 programs, for each month of the quarter.

14 So I'm just putting out first quarter
15 2019, so that's January, February, March
16 employment, and we're taking total wages for the
17 quarter.

18 All right, so what are the total
19 wages? We have no breakout of that wages. We
20 have no data stream that tells us anything about
21 hours.

22 Now, what we do is, we create a -- so

1 you've got a total -- quarterly wage total for
2 every industry, and when we're doing it by the
3 NAICS industry classification system, you've got
4 the total wage number for anything down to the
5 six-digit NAICS level.

6 We also create an average weekly wage
7 number, and that's really a very crude measure.
8 We take the total wages and then we take the
9 average wage for that month one, month two, month
10 three employment, that average employment for the
11 quarter, and then divide average weekly wage, the
12 total wages by 13 weeks in the quarter.

13 So you guys know that the number of
14 hours that people work move up and down. It's
15 not that regular, but that's what we offer. So
16 another --

17 CHAIR CARR: If I could interrupt you
18 right there just a minute.

19 MR. HILES: Sure.

20 CHAIR CARR: So you do 13 weeks and
21 what do you assume, is it a 40-hour work week,
22 because you said you're not collecting the hours,

1 but you got a gross wage paid, or reported, and
2 you're dividing that by 13 weeks to come to a
3 weekly one, then the next step is, what do you
4 divide that wage by to get to the hourly wage
5 rate?

6 MR. HILES: All right. So you've got
7 so the total quarterly wage, you've got a wage
8 for the entire quarter, when you divide it by 13,
9 it turns it into a weekly wage total. And then
10 what we divide that by is by an average of the
11 employment over the quarter, okay?

12 So total wages divided by employment
13 gives you the average weekly wage per employee.

14 CHAIR CARR: So when somebody sees a
15 weekly wage per employee, how would they
16 determine that down to an hourly wage per
17 employee?

18 MR. HILES: Right. So if you're going
19 to do that, instead of dividing it by 13, you'd
20 divide it by the number of hours that you wanted
21 to arbitrarily assign to a quarter, because we're
22 doing -- so the thing about -- when I say,

1 arbitrarily, we pick 13, that works, and then
2 when you have a, you know, the kind of calendar
3 that we have, but people who get paid every two
4 weeks notice that some months you get paid three
5 times in a month.

6 So there's some variation in the
7 amount of pay that gets paid in the quarter, so
8 you might have seven pay periods in one quarter
9 and six in the next. Just the way the pay dates
10 hit.

11 So we don't know the pay dates of
12 those records, so we've got 106,000
13 establishments in ag, we have over 10 million
14 across the entire industry, and we don't have a
15 data item in there telling us, you know, what
16 your pay date is or whether you're paying once a
17 month or once a week.

18 So when we add everybody up, people
19 have different periods of pay. One unusual part
20 of that is Federal Government, since we all get
21 paid every two weeks, so we'll have some big
22 spikes in those quarterly wage numbers.

1 Another thing that we have is location
2 quotients, which is a measure of the intensity of
3 ag in a particular part of the country. So you
4 can see which part of the country has a greater
5 emphasis on ag, you know, at the county level or
6 at the state level.

7 So I think the other thing that I
8 think is important for this audience is, what are
9 the kind of employers that we count in the
10 administrative data of this unemployment
11 insurance data that is our base for our data
12 stream?

13 There's a federal definition that is
14 based on 20,000 wages, 20,000 of wages in any
15 quarter, in the current or prior year, or ten or
16 more workers for one day in 20 weeks in the
17 current or prior year.

18 And so if you think about the kind of
19 farms that are going to have that, you're
20 basically looking at your larger establishments.

21 But we actually -- it is actually
22 supplemented in the number of states where

1 they've taken that federal guideline and asked
2 for a more tighter definition of who's included
3 in this unemployment insurance system.

4 So for California, you're in our scope
5 and you're in the data that's reported for us, if
6 you have one employee at a time, and wages more
7 than \$1000 in a calendar quarter. So that gets
8 to pretty small establishments.

9 MR. HUGHES: David, let me jump in for
10 a second.

11 MR. HILES: Yes.

12 MR. HUGHES: So we're 15 minutes off
13 from shifting to Brian Pasternak's presentation,
14 was there any additional questions that you all
15 have for Jody?

16 CHAIR CARR: I have one more, Jody.

17 MR. MCDANIEL: Okay.

18 CHAIR CARR: Going back to your farm
19 census, back in the number that matters, 2.4
20 million employees recognized, that is actually
21 owners, operators, and employees other than these
22 employed by farm labor contractors.

1 MR. MCDANIEL: Yes, sir.

2 CHAIR CARR: But the question with
3 that is, is that a real number or if you employed
4 a worker and I employed that same worker the next
5 quarter, and then maybe somebody else employed
6 them in the third quarter, because they actually
7 moved around from farm to farm, aren't we all
8 counting that same worker and that worker will be
9 counted three times?

10 MR. MCDANIEL: For the census of
11 agriculture, there would be that potential if
12 they worked more than 150 days on multiple farms.
13 In the annual program, no, it is the cycle of how
14 the data is done.

15 CHAIR CARR: Right. That's weekly
16 capture on that, so the difference between that
17 is, and this is where the argument comes from,
18 you got a census data that says there's 2.4
19 million, but the largest pool you've had on a
20 quarterly basis has been 817,000, I think?

21 MR. MCDANIEL: Yes, sir.

22 CHAIR CARR: That's a huge difference

1 when you're reporting the number of workers. So
2 if you take the -- segue to July, August is
3 obviously the busiest time of the year, it could
4 be, for other people, not, but it's usually about
5 800,000 workers reported, based on your survey
6 data, but then you got a census data that says
7 2.4 million, doesn't make sense.

8 MR. MCDANIEL: Yes, when you connect
9 the two data streams, you hit the nail on the
10 head, you've got the potential to where, because
11 you asked about that for the year 2017.

12 CHAIR CARR: So in the fruit and
13 vegetable industry, where we have a lot of
14 seasonal work, workers do work from one operation
15 to the next, because just the sheer nature that
16 we don't have work in certain parts of the
17 season, but somebody else may. Citrus in Florida
18 versus onions in Georgia, you know, could be
19 doing some type of work in California, then they
20 go up to Washington state and pick apples.

21 MR. MCDANIEL: Yes, you're not finding
22 traditional farmhands like where I grew up in

1 Southeastern Illinois that, somebody works full-
2 time year round, and they fix fence when they're
3 not running a tractor. Yes, you find seasonal
4 work.

5 MS. HARPER-LARSEN: Do you ask about
6 that in the survey questions currently, you know,
7 how many of these workers work for you X number
8 of days? I mean, couldn't you work out an error
9 rate based on that?

10 MR. MCDANIEL: So if you go back to
11 the focus and the intent of the Census of
12 Agriculture, it's to inform the broad sense of
13 agriculture, which is the program Chandler had
14 asked -- or Chalmers had asked about.

15 So if we go to the annual program,
16 because of having that base week set on the 12th
17 of a given month, that systemically takes care of
18 itself, unless you are telling me there are
19 workers who work on five different farms in a
20 given five-day cycle.

21 MS. HARPER-LARSEN: They may work on
22 two. Maybe three.

1 MR. MCDANIEL: So when we do a sample
2 of 39,000 farms, so for instance, if you receive
3 a questionnaire, and you're representing X number
4 of other farms, so it's that perspective piece.
5 There's 2.04 million farms, roughly, and we're
6 trying to project the labor for all of those, and
7 we're doing it off of 39,000, so there's a lot of
8 underlying statistical models and things that are
9 done to account for the noise in the data.

10 MR. WINGARD: Couldn't you ask the
11 question and let the answer -- or ask the
12 question looking for the answer of full-time
13 equivalents?

14 MR. MCDANIEL: There are a lot of ways
15 we could go about looking at it, so I'll go back
16 to, again, we're drafting a questionnaire to
17 clear the Office of Management Budget, trying to
18 minimize the burden on individuals as
19 respondents, and still reach the broadest
20 audience.

21 So how we go about doing that is, we
22 collect hours and total wages, and total base

1 wages, because that's the most applicable across
2 the industry as a whole, but, yes, we could ask,
3 assuming that respondents are willing to give us
4 that data.

5 MS. HARPER-LARSEN: We have to have
6 that number in relation to full-time equivalency
7 for FSMA data to know what our compliance states
8 are.

9 MR. MCDANIEL: And I don't disagree,
10 but again, you are part of a broader industry,
11 and what we draft is a questionnaire that's
12 supposed to be workable across all parts of the
13 industry, so ranches in the west, grain farms in
14 the Midwest and upper Midwest, produce farms, so
15 it goes back to, we have to temper respondent
16 burden, provide the data that meets the needs,
17 because actually, the Farm Labor Survey informs
18 two needs.

19 Most likely the reason I'm here today
20 is because of the adverse effect wage rate and
21 its impact on production agriculture, but also
22 informs the parity priced indices, which is a

1 measure of the success of the agricultural
2 sector.

3 So it's balancing those two primary
4 data needs.

5 CHAIR CARR: The last question. You
6 had on data from January of this year, already
7 published in April of this year, already
8 published, do you know what the increases are
9 versus the same period the year before?

10 MR. MCDANIEL: As a matter of fact,
11 those I have. So if you go year to year, so for
12 the reference weeks, what you're going to find is
13 that, on average, the average wage is around
14 \$14.71 an hour during April 2019. It's about a 7
15 percent increase over April of 2018.

16 CHAIR CARR: Just so everybody knows,
17 that's generally a straight correlation to what
18 the annual increase is going to be in your area,
19 so that you gave the national one, what is the
20 highest region?

21 MR. MCDANIEL: I would love to tell
22 you I memorized all the quarterly reports we

1 release every year, so if you were to look at
2 wage rates by type of worker for January, for
3 instance, the combined wage rate for all hired
4 workers ranges from, and again, this is a quick
5 scan, slightly less than -- or a little more than
6 \$12, and that's going to be in Florida, in
7 January, to almost \$17 in Hawaii at the same time
8 window.

9 So there's a range, depending on your
10 region.

11 CHAIR CARR: But you're saying, so
12 last year, we all, under the incentive program,
13 witnessed a 6.2 percent national increase in the
14 AEW, you're already targeting a 7 percent, based
15 on your data, but there were regions, like
16 Colorado, where Bruce is from, that saw a 22
17 percent increase.

18 Is there one region right now that is
19 screaming that they've got a pretty significant
20 increase from one year to the next?

21 MR. MCDANIEL: Beyond Bruce?

22 CHAIR CARR: Well, Bruce --

1 MR. MCDANIEL: It's funny, Bruce's
2 region has been screaming. I've had a lot of
3 conversations about Bruce's region.

4 CHAIR CARR: Is that going to happen
5 again going in 2020?

6 MR. MCDANIEL: So the thing that I
7 hope I can convey today is that, because we are a
8 non-policy forming, a statistical organization,
9 our job is to collect the data, analyze the data,
10 and put out the best data product that is
11 reflective on what you all are telling us.

12 I will go to your comment about the
13 impact of the AEWB on what you're seeing on the
14 annual wage rate. We did a special tabulation,
15 we've done it over the last two years, roughly
16 less than 5 percent of the sampled respondents in
17 our Farm Labor Survey actually even employ H-2A.

18 So I think there's, not saying myth
19 busting, but there's a perception that the AEWB
20 drives what we see in our survey, with only less
21 than 5 percent on an annual basis, and I forget,
22 I don't know the special tab number that it was

1 calculated off of, it's hard to believe that that
2 is the full breadth of what's causing an increase
3 in annualized wage rates.

4 CHAIR CARR: Well, I don't disagree
5 with you at all. We got a decrease in supply of
6 labor that is driving wage rates up. Now, having
7 AEWR data out there in certain areas can't hurt
8 you, BLS data in Saluda County in South Carolina
9 versus Edgefield County, is completely different,
10 because one respondent was H-2A respondent, who's
11 put in his wage rates, and so you're talking a \$4
12 difference for the same occupation within 15
13 miles.

14 So it is, again, data size and
15 everything, but back to my question is, though,
16 we're trending -- last year, we trend nationally,
17 6 percent up, you're already saying the first two
18 quarters are indicating a 7 percent increase --

19 MR. MCDANIEL: That's 7 and 6, but
20 yes.

21 CHAIR CARR: Okay. And there was some
22 pretty big hits out, especially out in the

1 Colorado, Wyoming areas, and producers need to
2 know if they're going to see this again. I mean,
3 7 percent already is tough.

4 MR. MCDANIEL: So the one piece, and
5 to speak specifically, so to go back and look at
6 a trend line over a three-year cycle for, and,
7 Bruce, sorry to pick on you, in Bruce's area, no
8 one reached out to us in that two years out of
9 those three years, where there was actually a
10 declining wage rate on an annualized basis.

11 It's funny how data works that way.
12 When you take it over a three-year cycle, they're
13 showing the same percent increase as across the
14 country. It just so happened that they're
15 increase became very prevalent in one year's
16 data.

17 So I'm painfully intimately familiar
18 with the study. I spent the better part of my
19 last six months having conversations about it.
20 What I can tell you is, there were no anomalies
21 in that data. The data is solid. The variances
22 are tight. It is truly based on what producers

1 reported.

2 And there is a sample, so it is a
3 sample of producers, and you have to take that
4 into account, but it is very -- it is a
5 reflective wage rate for what is reported.

6 I'm waiting for Darrell to pull me off
7 the machine.

8 CHAIR CARR: David, back to Charles'
9 question again, I think you said it, but how do
10 you distinguish a farm labor contractor, is it by
11 the employer's identification number that
12 identifies him as not only as a farmer, but as a
13 farm labor contractor?

14 How can you identify that -- how could
15 I go to your data and ask you to tell me how many
16 employees worked in July the 12th for a farm
17 labor contractors in our force?

18 MR. HILES: We get that, and I'm going
19 to follow-up on one other question about what
20 happens with people who work in different
21 establishments.

22 So we would call it a multiple --

1 somebody who has multiple job offers. So say
2 somebody works in a farm and also works in town,
3 right? Our data is reported by employers, okay?
4 So if the person's working in the farm enterprise
5 and there in the scope, that's a count of one
6 employee in that.

7 And then they're working in town in a
8 department store, so we count one in that
9 department store as reported as well. So one
10 person, two jobs.

11 So how do we put employers into
12 economic categories? So when an employer enters
13 operation in the state, they have to register
14 with the state unemployment insurance agency and
15 they have to sort of self-identify, what are they
16 doing?

17 There's like a -- you know, you got to
18 a website, and there's a pulldown thing, and you
19 try and find one that sort of matches what you're
20 doing. And in many states, you'll type in a
21 narrative as well.

22 So that'll be your initial self-

1 coding, and then there'll be a quality control
2 work on that later one where we sort of see, does
3 that match up with what we're getting for that
4 employer.

5 That's the first time the person --
6 the employer shows up in our system. We also
7 have a three-year cycle where we re-contact
8 people saying, three years ago, you said you were
9 doing Department of Labor contracting in, you
10 know, in the Washington area, are you still doing
11 that?

12 And they'll say, well, I'm still doing
13 that work or I switched over to something else
14 and I'm now in a different county.

15 So we're refreshing that
16 classification every three years.

17 CHAIR CARR: My next question has --

18 MR. HILES: So it's nothing to do with
19 the EIN. We do have the EIN, but we're basing it
20 on --

21 CHAIR CARR: The occupation code that
22 they put in.

1 MR. HILES: It would be their industry
2 code, so that we don't have any occupational
3 information.

4 CHAIR CARR: So you go to these
5 multiple classes of equipment operators, versus
6 harvester, versus agriculture, how are you going
7 to --

8 MR. HILES: Those are all
9 occupational.

10 CHAIR CARR: That's all occupational,
11 so that wouldn't be covered under your survey?

12 MR. HILES: So if there's a company
13 that's providing that service, so if there's a
14 harvesting company that's coming in and running
15 people's fields, right? That company is
16 providing an agricultural support service. I
17 can't remember exactly which one it would be.

18 So if that's what that company does,
19 that's the primary job activity of that company.

20 CHAIR CARR: Well, let's take citrus
21 harvesting in Florida.

22 MR. HILES: Okay. So you have a big

1 crew that comes into an orchard?

2 CHAIR CARR: Right. And they come in
3 with --

4 MR. HILES: So if they're not employed
5 by the orchard owner, they're contracted.

6 CHAIR CARR: Right, right. And some
7 of them are harvesters, some of them are
8 equipment operators, and they could be supplying
9 the packaging down the road, packaging that
10 harvest as well, how do you determine the wages
11 for those three different classifications when
12 that employer most likely is filling out one --
13 that he's doing one service?

14 MR. HILES: Right. So this is all
15 dependent on how the employer decides to organize
16 his activity. If he wants to separately organize
17 his workforce so the people running equipment are
18 a different company than the one that's doing
19 the, I don't know what you're calling, the
20 picking or some other activity, then we would
21 say, okay, well, you've got Company A, you've got
22 Company B, and Company C, they're all actually

1 run by Enterprise Z.

2 But if they're saying, here's these
3 three things, we're saying, what is the specific
4 thing each entity is doing?

5 MR. HUGHES: Okay. Let me jump in
6 really quickly. Because of the drilling, it's
7 getting hard for Sam to transcribe and catch
8 everything. I'm going to have multiple mics come
9 up so that we can place them on the table and
10 have them amplify the volume.

11 If you're speaking, I'm going to ask
12 everyone to standup and project until the mics
13 get here so that we can get everything on the
14 record.

15 And you can go ahead and finish
16 speaking, speak directly into the mic so that it
17 captures it.

18 MR. HILES: All right.

19 MR. HUGHES: You're up next in, like,
20 two minutes to transition.

21 MR. HILES: All right. So any other
22 questions?

1 CHAIR CARR: So again, Chalmers Carr,
2 so that's still -- right now, because the H-2A
3 program doesn't require different wage rates, one
4 wage rate, no matter what, for farm workers, you
5 don't have a subset of data to use going forward.
6 That's what I'm concerned about it is, how we're
7 going to make this transition when a farm labor
8 contractor or a fixed site employer, I have
9 grader, sorters, I have equipment operators, but
10 I only report one wage.

11 MR. HILES: Right.

12 CHAIR CARR: So where's it going to be
13 a starting point for this? How are we going to
14 get started with this?

15 MR. HILES: Well, so the farm labor
16 contractor will be doing the reporting to the tax
17 group that we eventually get hold of that data.
18 And there's no industry classification that's
19 called H-2A. That's a type of worker and we're
20 looking at, what is the economic activity, not
21 the type of employee, so we don't have the
22 occupational stuff.

1 Department stores have lots of truck
2 drivers, but I just -- we just know that they're
3 a department store. They do the department
4 store, they have the retail location, they have a
5 warehouse, they have a corporate headquarters.

6 Warehousemen are classified as
7 warehouse industry, not in department stores. So
8 you had a question in the corner?

9 MR. WINGARD: I just want to know, how
10 do we tell how many farm workers are in the
11 country, because as we debate, potentially, a new
12 guest worker program, we need a number that we
13 can hang our hat on.

14 MR. HILES: All right. So we count
15 those people that are in those bigger
16 establishments, right? And so when we compare
17 our count of agricultural employment, we're
18 counting it -- we're comparing it against the
19 household survey that the BLS conducts that has a
20 national number for agricultural employees, which
21 includes people that are self-employed and also
22 people that are on -- in a wage and salary job in

1 the agricultural sector.

2 And that's the household survey, and
3 that's -- they have an estimate there, and what
4 our number coming out of our thing for the larger
5 operations, is about half that count.

6 So, you know, I'm not going to tell
7 you to multiply it by 12, by 2, but some people
8 might do that. And the thing is, like, for
9 California, I was talking earlier that some
10 states, a number of states, tighten up the
11 definition so they're getting the much smaller
12 establishments.

13 California, Washington State, one
14 employee, and then they have an exclusion for
15 labor that's working there between school terms,
16 so your summer, you know, kids from high school.
17 Florida, 5 employees in 20 weeks, Texas, 3
18 employees in 20 weeks, Minnesota, 4 in 20 weeks,
19 so those are the exceptions for that -- the much
20 looser category specified by the Federal
21 Government.

22 So I think if you wanted to get that

1 universal count, it might be that that current
2 population survey number might be a good one to
3 take a look at.

4 MR. WINGARD: Maybe NASS should ask
5 one question, how many workers worked on your
6 farm or how many contract workers do you have,
7 instead of relying on your contractor to go to a
8 different -- to reply to a different survey.

9 I know we're running out of time.

10 MR. MCDANIEL: I'll entertain the
11 question and then I'm going to transition it over
12 to Brian, which is who you all probably really
13 want to talk to.

14 So I appreciate that you think it's
15 that simple, and I'm sad that we aren't giving
16 you the data that meets your need, so what I
17 would offer is that we always have a public
18 comment period when we put out a federal register
19 notice for the program.

20 If this committee finds that there is
21 a sliver bullet that, clearly, we cannot
22 articulate from the federal sector, we are happy

1 to investigate how to best do that.

2 I appreciate your question, but in all
3 honesty, if you hire a farm labor contractor, do
4 you know how many people they have running that
5 equipment at that orchard in Florida? Do you
6 honestly care how many bodies they have on the
7 ground, because we need to know the number of
8 workers, not that the work is done.

9 I would assume, as producer, you care
10 that the work got done and how much you paid.

11 (Simultaneous speaking.)

12 CHAIR CARR: I think we do.

13 MR. MCDANIEL: When we went out to do
14 cognitive research, I appreciate that you're
15 telling me you know, but I'm also -- we were not
16 able to get that data. People were not willing.
17 Yes. Thank you, Darrell. Thank you, all.

18 MR. HUGHES: All right. So before
19 Brian talks, I was successful in convincing the
20 contractors to stop doing what they were doing
21 and move on to something else, but just in case
22 some boss tells them that they need to go back to

1 working, I'm still going to have them come in and
2 -- did they come in and put mics already?

3 CHAIR CARR: No.

4 MR. HUGHES: They haven't? Okay. So
5 if that happens, we'll just keep going with the
6 flow, but come on, Brian. If you don't mind, can
7 you self-introduce while I --

8 MR. PASTERNAK: Yes, I will. Good
9 afternoon. I'm Brian Pasternak, Deputy
10 Administrator, Office of Foreign Labor
11 Certification. I work for the U.S. Department of
12 Labor.

13 Been running the employment-based
14 immigration programs in Labor for about the last
15 15 years at the federal level. I used to work
16 for about six years with the Department of Labor
17 in the State of Maryland, involved some of these
18 programs as well, so it's a pleasure to be here.

19 I do want to say that for this H-2A
20 program, the department has two pending
21 regulatory actions designed to modernize the H-2A
22 program. This, as I understood it from the

1 request, we were -- I was to talk a little bit
2 about the current state of the program as it
3 exists.

4 If there is a need to discuss part of
5 the proposed rule, then I informed Darrell that,
6 you know, I got to do the APA requirement of
7 filling out the ex parte form, I have to get the
8 names of everyone here, and provide a summary of
9 the discussion, so my intention was not to come
10 today and talk about the proposed rule, the large
11 one, which is part of the president's initiative
12 to modernize the whole H-2A program, or big parts
13 of it, was not something I was to discuss today.

14 So if the question comes up, just be
15 aware that that's what I'll have to do.

16 Can you turn to the next one there?
17 Coming into this program is not for the faint of
18 heart. People think of it as a three-legged
19 stool, but it's actually a four-legged stool, and
20 we are the first step in the H-2A program.

21 Growers have to file applications with
22 us, that's what our office does, our customer is

1 the employer. We don't deal with foreign
2 workers. We don't get into visa status or
3 anything like that.

4 So we are looking at the employer's
5 need, we're looking at whether or not the work
6 that they need performed qualifies as
7 agriculture, and I'll talk a little bit about
8 that in a minute.

9 We help facilitate the labor market
10 test and there's no U.S. workers that have
11 applied, that the grower can lawfully reject,
12 we'll provide certifications, and then they're
13 moving on to USCIS, which also kind of deals with
14 the customer, the employer, to classify their
15 request for workers under the H-2A visa.

16 But then the immigration system shifts
17 and turns on its head, and it moves to being a
18 more worker-based system, where the foreign
19 workers are working with labor recruiters, or
20 agents abroad, and they're going to consulates to
21 get interviews, and then they got to make their
22 way to the border, cross CBP, should they get

1 issued a visa.

2 So at any point in this process, which
3 is a really fragile process, any grower could be
4 denied any part or all of the workers, even from
5 the start, once I even issue a certification.

6 Part of the reason why when you look
7 at data in the immigration system, in H-2A, from
8 where I start to where there are entries and
9 exits out of the system, the numbers don't
10 matchup because the numbers I see at the front
11 end of the system are jobs. They're not
12 associated with a person yet.

13 And in many cases, growers are
14 estimating, at the time that they're filing with
15 me, what they think they need.

16 We do have a bit of a practice in the
17 office that we don't really, you know, question
18 these numbers that you're asking for unless
19 they're kind of wildly different from prior
20 applications you're asking for. And we may ask
21 for an explanation about why you need more or
22 less in a certain year.

1 We don't tend to get too involved in
2 what the grower's actual need is, but we also
3 don't, sort of, count it against the grower if
4 they are, you know, maybe through an audit or
5 something, we find that they have employed 75 or
6 80 percent of the workers that they got certified
7 for, there may be very legitimate reasons, based
8 on climate or harvesting activities, or something
9 like that, that may have not -- haven't had a
10 need, actually, for all those workers they got
11 certified for.

12 I think I'm on my own here. All
13 right. And I didn't intend to go through all the
14 slides. I always handout a few more slides than
15 you really need, they're just good for reference
16 purposes.

17 This is a picture of the program since
18 '08. This is the fastest growing visa program
19 that I got in the office, by far. We did more
20 than 11,000 certifications last year. That's the
21 largest I have done.

22 We've actually exceeded 12,000 already

1 this year, and I still got two months left in the
2 fiscal year, so we are even heavier on volume
3 this year than we were last year, and I'm just
4 quite -- I'm not certain I'm going to be able to
5 see the -- and I don't know where the ceiling is
6 on this program just yet.

7 You know, we're up near a quarter of
8 a million, we'll probably get near about 270,000
9 this year, so that just sort of builds on the
10 double-digit increases in the program.

11 You can see from the slide here that
12 we have about a 97 percent certification rate.
13 That's kind of an approval rate. So that should
14 sort of tell you that, if you're a grower out
15 there and you want to use the program, there's
16 about a 97 percent chance you're going to get
17 certified and be able to move forward, okay?

18 So it's not a denial-based program.
19 The other is that the interesting stats that I
20 like to point out is, you know, even though we
21 issue almost 2/3 of the certs, 62 percent of the
22 decisions we issue do go to an individual farm or

1 ranch; ranching operation.

2 If you look at the proportion of the
3 labor needs that are going to farms, 42 percent
4 of them are being filled by labor contractors. I
5 think Chalmers made a comment about that and we
6 have some pretty intense areas of the country
7 that use the program and they predominantly use
8 labor contractors, which is a perfectly valid
9 business model.

10 But they are predominantly almost
11 employing one out of every two workers that we're
12 certifying, or demanding for jobs, and the trend
13 down there for the top five states kind of shows
14 you where we were about ten years ago and where
15 we're at today, or last year, and it's even
16 higher for those states today.

17 CHAIR CARR: Brian, can you speak to
18 that statistic right there, the 43 percent of
19 farm labor contractors, say, back in 2012, '13,
20 when we were down at the 60,000, what was the
21 ratio then?

22 MR. PASTERNAK: About in the low 30s.

1 CHAIR CARR: It's believed that a
2 majority of this growth that's happened in the
3 program is happening through farm labor
4 contractor employment --

5 MR. PASTERNAK: Correct.

6 CHAIR CARR: -- but not necessarily
7 farmers participating in the program.

8 MR. PASTERNAK: Correct. Yes.
9 Absolutely. We were seeing a lot more demand for
10 use of the labor contractors in the program,
11 which, quite frankly, is servicing dozens of
12 individual farms, so we totally get that.

13 This is just another snapshot of how
14 our workload looks. The last chart I showed you
15 is year-to-year demand, this is a look at how the
16 growers come to us for workload needs -- or labor
17 needs, during the course of a calendar year.

18 When you look at the blue line, which
19 is 2008, versus what we got in last year in the
20 program. So you can see one of our issues that
21 we have, because we process these applications
22 for employers -- I strayed from the mic, can you

1 go back?

2 Sorry. If you look at the top end of
3 the blue line, in January, there was one point of
4 the year where we got, you know, about 1,000
5 applications in that month. And that's a lot of
6 the early planting season, kind of, applications
7 that we get.

8 Last year, we saw at least that volume
9 for almost five months out of the year. And I
10 used to be able to staff this program and our
11 processing centers pretty equitably, where I
12 could put a lot of people on the processing line
13 in January and February, work through a big bulk
14 of applications, and then move them off to work
15 H-1B applications, or 2B applications, or green
16 cards.

17 And now that same workload is bigger
18 and lasting longer in the processing center, and
19 it comes twice a year.

20 So it's a program that is really,
21 really taking off. And I think at, sort of, last
22 estimates, we're talking about what's the total

1 size of the farm labor force, you know, when
2 you're doing 270,000 jobs and you may get 2.4
3 million, or it's probably a little bit higher
4 than that, you know, that's almost 15, 20 percent
5 of the domestic labor force in this country and
6 agriculture possesses an H-2A visa.

7 MR. ERICKSON: You're describing 2019,
8 right?

9 MR. PASTERNAK: This one is last year.

10 MR. ERICKSON: Is 2018.

11 MR. PASTERNAK: And it's even more
12 sustained this year. It's pretty close to the
13 same.

14 MR. ERICKSON: Just, like, for my
15 visual -- for my brain, could you, like, kind of,
16 like, draw a line there for what you think 2019
17 looks like?

18 MR. PASTERNAK: So taking in, again,
19 sort of, one more month, at this filing volume
20 level, right, so it's getting much bigger. And,
21 you know, driving the demand, yes, I mean, it's
22 the labor contractors, but also, I mean, the

1 domestic farm labor force, I mean, there is a
2 fairly strong demographic crisis coming in
3 agriculture.

4 And I don't care if you say the number
5 is 2.4 million or 3 million. When the average
6 age of that population is in the 40s, are
7 demonstrably not migrating much anymore, are
8 staying retained with the same employer they
9 worked for for longer, and their kids aren't
10 being trained to go into the fields, I don't care
11 what the number is, there is a demographic
12 crisis, because that's not the available labor
13 pool.

14 If you stop and think about it, the
15 big number is not the available labor pool.
16 That's not the group of people who might be
17 interested in these kinds of jobs.

18 So to think the conversation is
19 clearly more nuanced about, what does the
20 domestic farm labor force really look like from
21 the demographic standpoint? Because I see a
22 demographic crisis in agriculture is, really, the

1 farm labor.

2 I mean, my girls are in high school,
3 one going to college, they haven't been trained
4 to work in the fields. They're being asked to go
5 into STEM. So where is the labor coming from?

6 CHAIR CARR: Well, you started out
7 with saying, you don't know where the ceiling is
8 of the program, and we sat here 15 minutes before
9 that trying to figure out the labor pool, it's
10 somewhere between NASS' 812,000 on a hired week,
11 and the farm labor contractors employee base,
12 which is probably somewhere truly about 1.4
13 total.

14 MR. PASTERNAK: Mm-hmm.

15 CHAIR CARR: You take 90 percent of
16 that, that's your ceiling in ten years. You're
17 going to get to that level in ten years in this
18 program.

19 MR. PASTERNAK: That's probably pretty
20 realistic.

21 CHAIR CARR: There's nowhere else this
22 labor's coming from.

1 MR. PASTERNAK: Yes, in my comment
2 about the 270,000 divided into the 2.4, it's
3 actually 270,000 into the 1.4. It's worse. The
4 penetration rate of H-2A visa in agriculture
5 where agriculture sector is needed, is higher. A
6 lot higher.

7 CHAIR CARR: What is your percent of
8 reducing an employer -- because you have to do
9 your labor cert and make there's no labor, what
10 percent of these in the recruitment process are
11 numbers actually lower from what an employer puts
12 down based on the labor survey saying there's
13 workers available?

14 MR. PASTERNAK: Hardly any, because
15 the labor market test, and I'll get to this in a
16 second, because the processing time, which is
17 predominantly defined under statute, when you can
18 file, when I can issue an initial decision, and
19 when I have to issue a cert, is so crunched that
20 there's absolutely little actual positive
21 recruitment that a U.S. worker could affect my
22 decision.

1 That's why the program has something
2 that's called a 50 percent rule, which is a
3 method of how the program deals with allowing a
4 grower to move forward to bring in foreign
5 workers to give American workers a continued
6 opportunity to possibly see the job and apply for
7 the job.

8 So the certifications and the
9 processing these applications, on average, are
10 anywhere from 15 to 20 days. There's only one
11 visa program that I process faster than that, and
12 that's H-1B, and the whole reason it's faster is
13 because Congress said, you got seven days to get
14 rid of this case. Yes, sir.

15 MR. SMITH: Has there been any thought
16 process to allowing H-2A workers in a processing
17 plant that does fresh produce, or, like in our
18 case, we do tomatoes, fresh tomatoes, but we
19 can't use H-2A workers in the factory because
20 that's classified different, but it's a farm
21 product, and it's the same problem of
22 availability of workers that's in the fields.

1 MR. PASTERNAK: Yes, I think much
2 depends on like in particular if you own the
3 facility, is the facility located on the farm,
4 off the farm --

5 MR. SMITH: It's off the farm.

6 MR. PASTERNAK: Yes, I mean, some of
7 the issues around what, and this is what I was
8 going to get to before, or on this page was, the
9 work has to constitute agricultural labor
10 services, which are effectively defined by
11 Congress under two statutes, that are, although
12 broad in scope of the services that might be
13 incorporated, have some built-in limitations
14 around where that work is being performed and by
15 whom.

16 MR. SMITH: So is there any chance
17 that that could be changed at some point from a
18 Department of Labor standpoint?

19 MR. PASTERNAK: So again, what I'll
20 say is, Congress set the statute up to provide
21 two statutory definitions for what constitutes
22 agriculture, Fair Labor Standards Act, Internal

1 Revenue Service, I heard a comment made about, or
2 one of the recommendations about, 51 percent and
3 all this other stuff, I mean, that's not an
4 Executive Branch decision. That's actually
5 statutory by the Internal Revenue Service.

6 But the statute also permits the
7 Secretary of Labor to define agriculture, other
8 forms of agriculture, to be incorporated in H-2A,
9 and that is a regulatory issue, again, which we
10 have out on the street today.

11 MR. SMITH: Yes, because we can't use
12 H-2B because we don't start harvest until August
13 and all the H-2Bs are all gone way before that.

14 MR. PASTERNAK: Yes, exactly, you're
15 way late in the H-2B season. H-2B has its own
16 issues. For policy reasons, Congress did not
17 want, you know, an unlimited number of workers
18 coming in on H-2B, that's for sure.

19 So let me just say that, here, who's
20 using the program? We talked about H-2A labor
21 contractors, agricultural associations are, sort
22 of, set aside. Under the law, they can use the

1 program in three ways. They can file to employ
2 workers directly, they can file on behalf of one
3 of their members as an agent, or they can file as
4 joint employers with multiple manners.

5 So we have a mix in the program. We
6 have some associations using the program in
7 different ways for their members. We do tend to
8 encourage the association model because we do
9 think that you can get some economies to scale
10 with members being able to file big master
11 applications and individual members can share
12 labor and transfer labor as it's needed, so
13 there's some other built-in flexibilities.

14 MR. SMITH: I got it.

15 MR. PASTERNAK: You got it? Can you
16 go back real quick? Sorry. And then the other
17 issue that comes up in the H-2A program is --
18 well, it's not too often, but it's this last
19 bullet, this last one about the need being
20 seasonal or temporary.

21 We really, demonstrably, the work is
22 seasonal. There might be some occupational areas

1 that could cause some issues in the program
2 around whether or not you're really using the
3 program for temporary work purposes, or are you
4 really -- is it really a permanent need that you
5 have for this job.

6 Agriculture is kind of a funny area.
7 I mean, we have bread-and-butter harvesting,
8 planting, cultivating, jobs, but there are other
9 fringe jobs that are supporting the farm labor
10 operation, like, packing, on farm, or camp cooks,
11 or housekeepers taking care of housing for your
12 farm labor force.

13 They can actually get H-2A visas
14 because they're actually performing work that is
15 in conjunction with the farming operation. You
16 can do -- we certify crop dusters or farm
17 equipment mechanics that operate and repair
18 equipment in the fields, things like that, so
19 there's some areas of H-2A that most people don't
20 know about that can qualify, depends on the
21 circumstances, but there are some built-in
22 limitations.

1 I do want to talk about wages for a
2 second. There was a lot of discussion about the
3 AEWR. H-2A is very unique among any program I
4 got around wages.

5 CHAIR CARR: We got one question,
6 Brian.

7 MR. PASTERNAK: Oh, sorry. Yes, sir.
8 Yes, ma'am. Sorry.

9 MS. ELLOR: In the work that Chalmers
10 and Brad did, in the recommendations, they
11 pointed out that the ten-month inspection on
12 statutory, that's regulatory. And I work in the
13 mushroom industry, and of course, we can't
14 participate --

15 MR. PASTERNAK: Are they underground
16 mushrooms?

17 MS. ELLOR: No.

18 MR. PASTERNAK: Oh, okay, because we
19 had some underground mushroom group in
20 Pennsylvania recently.

21 MS. ELLOR: Of course. And they were
22 able to get their visas --

1 MR. PASTERNAK: No. You're going to
2 work.

3 MS. ELLOR: And of course, lots of
4 agriculture has gone to year-round work, so is
5 that something you can address --

6 MR. PASTERNAK: I didn't hear that.

7 MS. ELLOR: -- regulatorily, through
8 regulatory means, as opposed to a legislative?

9 MR. PASTERNAK: Yes. Yes, to answer
10 your question, yes.

11 MS. ELLOR: To work that into the
12 wherever the ten-month --

13 MR. PASTERNAK: Yes, I'm just -- sure,
14 I mean, I understand that the definition of what
15 constitutes work that is temporary in nature, it
16 goes back to the '70s. The Labor Department had
17 a policy back then that they denied every
18 application that lasted longer than 11 months.

19 Resulted, when the immigration law was
20 passed in '86, and that was the '70s, and the '86
21 law was passed, there was a big fight between INS
22 and Labor about what would constitute a temporary

1 job, and there was an OLC opinion, which led to
2 what you see in USCIS' regulation, that the job
3 last less than a year.

4 But they, in themselves, wouldn't
5 approve a job lasting, likely more than 10-1/2,
6 or 11 months, or 10 months, for that matter. The
7 ten-month issue came up because of, ironically, a
8 permanent green card case that was processed in
9 the mid '90s, called Vito Volpe.

10 And there we had a landscaping
11 employer trying to use the permanent green card
12 program to employ a worker for nine or ten months
13 out of the year. The judge in the case said that
14 any job that was recurring, any recurring
15 seasonal or peak-load job that lasts longer than
16 ten months is inherently permanent in nature.

17 So people talk about the ten-month
18 rule. It's a longer history of both what power
19 the Labor Department in the '70s had been
20 reviewing the concept of the temporary need in
21 conjunction with other court decisions that have
22 been issued.

1 And of course, if you read the herder
2 rule that was published 2015 in the last
3 administration, there is a ten-month rule for
4 range production of livestock that's not sheep or
5 goat herding, right?

6 So then that sort of became part of
7 the, sort of, codifying some of that. Outside of
8 that, we don't strictly deny out of ten months if
9 it's longer, but we raise -- it raises a question
10 which then you have to explain to us how the
11 nature of your need is temporary and not
12 permanent, okay?

13 So it's a threshold. The ten-month
14 issue is a threshold. It's not a regulatory
15 provision, so you're actually right about that.

16 MR. WINGARD: I want to make a comment
17 about that, and I don't mean to be smart here,
18 but perhaps the length of the contract should be
19 based on how many months we want to eat, because,
20 I mean, we talk about our food supply here.

21 MR. PASTERNAK: It's not based on how
22 much you want to eat, it's based on the need for

1 your services, and I understand what you're
2 saying, although, I know that there's a lot of
3 industries out there that can produce back-to-
4 back contracts for services.

5 So organizing your operations based on
6 strict contracts, is that what you want to do, to
7 fit into a window, isn't really a natural need.
8 It's an artificial need, particularly when this
9 is supposed to be a bit of a seasonal
10 agricultural program.

11 So I guess I'm a little skeptical
12 about that. We see this being artificially
13 driven in non-agriculture is in construction,
14 where people do exactly that, organize their
15 contracts for landscaping to fit a particular
16 window.

17 MR. WINGARD: I understand, and I just
18 want a deal that allows Americans to feed
19 Americans here, but I want to ask you about
20 deadlines. What happens if a grower or an
21 applicant misses a deadline in this process?

22 MR. PASTERNAK: Which deadline?

1 MR. WINGARD: Well, like, if I got a
2 deadline to get you something and my people don't
3 get it to you --

4 MR. PASTERNAK: Sure.

5 MR. WINGARD: -- does my application
6 get kicked out or does it just get stopped or?

7 MR. PASTERNAK: That's a good
8 question. So we have windows in which we believe
9 that growers need to be filing their
10 applications. We don't have a whole lot of non-
11 compliance around windows for filing for us.

12 If there's a piece of document that I
13 need, workers compensation documents, or farm
14 labor contractor license, or housing
15 documentation that I need, we're not denying
16 those cases. We will hold them. We'll keep them
17 in abeyance and we'll keep reminding either the
18 grower, or the state workforce agency, or whoever
19 I need to get that document from.

20 Look, we've got this application, we
21 need this document. Used to be back a while ago,
22 there was a policy to deny these cases and just

1 reject them, kick them out. But the denial at
2 our level is pretty much a death blow and you
3 have to start the whole process over again, so we
4 do hold them.

5 MR. WINGARD: Well, I appreciate that.
6 I reckon my main message here is, we had a couple
7 of situations where we were just transferring
8 workers from one state to another, because our
9 production moved based on time of the year, and
10 it took, like, 22 extra days to get the workers
11 approved to get on a bus and travel 300 miles
12 down the road.

13 So I had a lot of product in Florida,
14 and no workers, a lot of workers in Carolina, but
15 no product.

16 MR. PASTERNAK: Sure. Yes, it depends
17 on where you're at in the process, because if you
18 got certified, there's certified job
19 opportunities and all you need to do is transfer
20 status of those workers to the new covered
21 worksite from us, you're dealing directly with
22 USCIS.

1 MR. WINGARD: Well, yes, I don't know
2 which part of the government it was, but my point
3 is, when we hit all our deadlines and the
4 government can't, and we're dealing with crops
5 that grow in 25 -- well, not 25, probably 30, 35
6 days, then all of a sudden it becomes kind of
7 painful because we got crops we can't get out of
8 the field.

9 MR. PASTERNAK: Yes.

10 MR. WINGARD: And I got orders I can't
11 fill.

12 MR. PASTERNAK: Don't disagree with
13 that. That's a big problem on the government's
14 end. Part of the reason why when I was showing
15 the volume slides is, a lot of modernization and
16 a lot of electronic filing stuff that we do in
17 our -- in our -- at our level, and there's no
18 electronic filing going on at USCIS, maybe there
19 is now, I don't know, is there?

20 MR. WINGARD: Electronic filing? Yes.

21 MR. PASTERNAK: Electronic filing.
22 Okay. For all the right paperwork?

1 MR. WINGARD: Not all the right
2 paperwork.

3 MR. PASTERNAK: All right. We have no
4 recourse but to try modernizing all the proposed
5 ideas that can streamline the program, maybe to
6 even give us less workload at the front end, or
7 provide more flexibility for the grower, or us,
8 to be able to issue decisions or move -- take the
9 next step on it.

10 So a lot of what we've been doing is
11 in reaction to a lot of the volume that we've
12 seen, typically because we know we've got
13 timelines we have to try to meet.

14 MR. SMITH: And, Brian, to that point
15 and to Chalmers point, and I know you don't want
16 to talk about the new rules, but under the
17 current rules, as a fixed site employer, he has
18 to have an application for his farm in South
19 Carolina and he has to have a completely separate
20 one for his application in Florida, and he can't
21 move those workers from one to the other, he has
22 to actually transfer them.

1 But if Chalmers were to register
2 himself as a farm labor contractor, and listed
3 both of those sites on his application when he
4 did it, he would have been able to move those
5 workers from one place to the other without doing
6 any transfer.

7 MR. PASTERNAK: As long as they were
8 in the same area and same employment, which is
9 the biggest problem with the labor contractors,
10 is, they tend to stretch their worksites too far
11 and they get denied, or they get questioned and
12 they're told, you can't have that same -- those
13 same worksites on an application.

14 CHAIR CARR: I will say that the
15 delays have gotten better. They're not near as
16 bad as they were a few years ago, maybe.

17 MR. PASTERNAK: Where are you from?

18 CHAIR CARR: I don't know if I want to
19 tell you.

20 MR. PASTERNAK: The state.

21 CHAIR CARR: South Carolina.

22 MR. PASTERNAK: Oh, okay. All right.

1 CHAIR CARR: And to that point, right,
2 I do the same thing, because I'm --

3 MR. PASTERNAK: I'm like you.

4 CHAIR CARR: But, you know, we file
5 six a year and this is the last two years has
6 been better than the previous four, but even
7 then, so we've never had a contract delay from
8 DOL and in regards, even going through notice of
9 deficiencies and everything else, so I know your
10 workload has grown.

11 And I do understand things that are in
12 the proposed rule to even make that better,
13 because I'd somebody that'd benefit from some of
14 those. But, you know, you're going to have to
15 deal with this, and I know you're trying to get
16 funding and everything else, but this growth at
17 23 percent is only going to get -- it's growing
18 that fast and so we know challenges are in front
19 of you.

20 There's other challenges with the
21 Department of State with the consulate notice.

22 MR. PASTERNAK: Yes.

1 CHAIR CARR: But your team has been
2 doing a great job.

3 MR. PASTERNAK: I appreciate that
4 comment and I think one of the frustrations that
5 we have around the funding issue is that, this is
6 a public, you know, piece of information, we are
7 appropriated by the Congress. We're dependent on
8 the Congress doing its job on time and giving us
9 adequate funding.

10 And we do propose ideas for funding
11 and things like that, but, boy, I tell you, when
12 you get a shutdown, we don't work. And there was
13 a time in 2013 where we got shutdown for three
14 weeks and I thought, when I came back in the
15 office, I thought it was a hurricane had hit the
16 country, because I was hearing from Florida and I
17 was hearing from Arizona, and California, and
18 Washington, who needed all these fall harvesting
19 orders, and we couldn't work on any of them.

20 So the only fortunate thing for us
21 was, last year, remember the government shutdown
22 we just went through, they did get our budget

1 passed on time. If they hadn't of done that, and
2 we got lumped into the Homeland Security Bill
3 that went with that 40-something day government
4 shutdown, we wouldn't have been on the job.

5 Nobody would have been able to access
6 the program. There's no provision for going
7 around us.

8 MR. HUGHES: I want to jump in real
9 quick. So we're at the 15-minute break mark. We
10 could just keep going until, like, 3:15, and push
11 the break to 3:15, or go ahead and take the break
12 now and then have you come back after the break.
13 It's your call.

14 MR. PASTERNAK: Okay. So we're on
15 wages. And you guys talked -- we already talked
16 a lot about wages. H-2A is unique because we've
17 got a wide array of different wage
18 considerations. AEWR is just one of them, but
19 there is another concept called prevailing hourly
20 or piece rate wages in this program. Talk about
21 that in a second.

22 I hardly ever see collective

1 bargaining wages. And then of course, you got
2 federal and state minimum wages, but those are
3 irrelevant, because the AEWB basically dominates
4 everything, as we were just talking about. Go
5 ahead and change the slide.

6 You all know, we do work with Jody, we
7 work with the NASS staff with the farm labor
8 survey. Our role in that, and I want to be clear
9 about it, we do provide the financial, some parts
10 for financial support for that survey. I'm the
11 lead working with the NASS folks.

12 We don't get involved in our office in
13 collecting data, we don't get involved in
14 calculating anything, we don't analyze data that
15 comes in, I literally get the data when you get
16 it, when it comes out in the public publication.

17 So it's a set of numbers that we get
18 from USDA and this sort of use of the Farm Labor
19 Survey has a mass history to it with the Labor
20 Department, dating all the way back to 1986, '87,
21 when it was first used as a source for the AEWB
22 by the Reagan administration.

1 The Labor Department was sued on its
2 use, defended the use of it, and ultimately,
3 they've been using it ever since.

4 There is a very strong, I would say,
5 form the last administration, defense in our
6 current regulations for using this survey because
7 of who it does serve, not -- you know, no offense
8 to our BLS counterparts, but BLS was a data
9 source that was used for one year in the Bush
10 administration, based on the different policy
11 determination, and since then, we've been back to
12 the USDA Farm Labor Survey.

13 So we don't typically get involved at
14 all with the calculations or anything. The NASS
15 staff handle all that.

16 CHAIR CARR: So, Brian, but can you
17 speak to who owns the definition of the adverse
18 effect wage rate? Was that out of the language
19 or is that through the Department of Labor?

20 MR. PASTERNAK: That's the Labor
21 Department regulation. Yes, it is, and thank you
22 for mentioning that. So that is the weighted

1 combined field and livestock hourly rate of pay
2 that we've been using for years.

3 And it just operates as a mass wage
4 floor. So I think the -- you know, and this is a
5 factual statement, wage floors can be horribly
6 inequitable in any sort of employment situation,
7 and agriculture can be really bad, because you
8 basically, theoretically, you can pay the picker
9 \$15.03 in Washington State, and the supervisors,
10 H-2A supervisors, could be paid \$15.03.

11 We have construction laborers that can
12 qualify under H-2A to build livestock pens on
13 farms, you can get an H-2A visa to be -- as a
14 construction laborer to build livestock pens to
15 maintain livestock, well, the construction wage
16 in a local area could be at least double, you
17 know, what the AEWL might be.

18 So the disadvantage of the wage floor
19 is that it is a broad-based wage for everything,
20 everything, and it's combined. And so we don't
21 make distinctions when we're looking at an
22 application and it's a grain harvesting

1 operation, or it's an apple harvesting operation,
2 or it's a camp cook, or it's a construction
3 laborer, the same minimum wage is still looked
4 at.

5 CHAIR CARR: But out of the IRCA
6 definition in '86, which is where that was
7 derived from, it was designed to make sure that
8 foreign workers did not depress wages for
9 American workers so that producers wouldn't
10 choose to go get foreign workers over American
11 workers, correct?

12 MR. PASTERNAK: That's the intent,
13 yes. Actually, you would likely more to find
14 that in the Congressional record, as opposed to
15 the actual statute, because statute doesn't
16 actually mention the word AEWR, more the
17 Congressional record and the history that went
18 with the '86 law mentioned those things.

19 CHAIR CARR: So my question earlier
20 was, is what was the number of, you know,
21 certifications you lowered because of
22 recruitment, and you said hardly --

1 MR. PASTERNAK: Yes.

2 CHAIR CARR: And it's less than 1
3 percent.

4 MR. PASTERNAK: Yes.

5 CHAIR CARR: But more importantly,
6 then you went on to 50 percent. What does your
7 data say, out of all the H-2A employers, the
8 11,000 certifications you did last year, going
9 through to the 50 percent point, how many U.S.
10 workers actually took those jobs?

11 MR. PASTERNAK: Sure. So that's
12 difficult to answer because we don't -- growers,
13 and you know this, you're not required to give me
14 your 50 percent recruitment report.

15 CHAIR CARR: Right.

16 MR. PASTERNAK: We sort of say, we'll
17 pick it up on an audit if you get audited. Now,
18 we only audit a sample of H-2A employers to begin
19 with, but from the sample data that we've been
20 given, we have seen factually that most American
21 workers, and a lot of them tend to be the
22 returning workers, like, the people you may have

1 had in the prior season coming back because they
2 like to work with you, or things like that,
3 predominantly, those workers are coming somewhere
4 near the start date, 30 days after, but then it
5 really drops off.

6 It really drops off. And those
7 workers getting picked up by the grower, doesn't
8 mean they have to kick the H-2As out, right?
9 Your H-2As are now onboard by the time some of
10 that happens, the question is going to be whether
11 you got the housing for everybody, you have the
12 full-time work for everybody, that kind of thing,
13 so growers don't have to actually get rid of
14 their H-2A workers, but they do have to make a
15 business decision about whether they can take on
16 the American worker and also fully employ, you
17 know, the H-2As.

18 But it's still, again, it's not going
19 to be a large percentage of American workers
20 still coming, once you get past 30 or 45 days, it
21 really, really drops off. It goes next to
22 nothing.

1 Does that answer your question?

2 CHAIR CARR: I think I'll have a
3 follow-up comment.

4 MR. PASTERNAK: All right.

5 MR. TISON: How does your numbers play
6 with states that are raising their minimum wages
7 up to \$15 an hour? And how's that going to make
8 -- what kind of adjustments are you going to
9 have?

10 MR. PASTERNAK: None. None. Depends
11 on who it is.

12 MR. TISON: I know in Florida, we're
13 fixing to have a voting initiative to raise it to
14 \$15.

15 MR. PASTERNAK: Yes. I know in
16 Maryland, and I come from Maryland, and the
17 problem with the state minimum wage law is, you
18 got to be careful, you have to pay attention as
19 to whether or not certain groups of workers are
20 being excluded from the state minimum wage law.
21 That's the other thing that is kind of hard for
22 us to deal with.

1 But my home state of Maryland did pass
2 a law to try to get to 15 bucks an hour for --
3 over, like, the next five-year period, so we do
4 pay attention to the updates from the states on
5 their minimum wages, but for us, we have to do
6 one more deep dive and we got to at least look at
7 the law to see if there's any exclusions for ag
8 workers.

9 I mean, Maryland, for example, the
10 seafood processing industry has an exemption for
11 the state minimum wage law.

12 CHAIR CARR: But to answer your
13 question, Washington State has one of the highest
14 state minimum wages --

15 MR. PASTERNAK: Yes.

16 CHAIR CARR: -- and it's the second-
17 fastest H-2A growing state in the country.

18 MR. PASTERNAK: Yes, that's right.
19 Exactly.

20 CHAIR CARR: Brian, my comment was, is
21 through the data that we know, and we provide it
22 internally, but also through the organization I

1 work with, it's less than 5 percent of Americans
2 actually apply for H-2A jobs and less than 1
3 percent actually finish those contracts.

4 So my whole comment to this is going
5 back to the adverse effect wage rate, who are we
6 trying to protect? If there's no American worker
7 out there wanting these jobs, then who are we
8 trying to make sure we don't adversely impact?

9 MR. PASTERNAK: Well, just bear in
10 mind that the wage that we're trying to get at,
11 which says whether or not the importation of the
12 worker is going to adversely affect wages of
13 similarly employed workers in the area, we're
14 trying to get at, what are growers paying these
15 workers now so that we can at least have that
16 average guaranteed when the foreign workers are
17 coming in.

18 Not that the people sitting around the
19 area are going to apply for the job, but if they
20 did, then they wouldn't be adversely affected.
21 The labor market test is a different
22 consideration. There's a lot of other things

1 that go into adverse effect, you know this, that
2 make the program inherently uniquely different
3 than any other visa program we have.

4 We don't have other -- we don't have
5 Microsoft offering housing to Indian-based
6 programmers. Microsoft's not even doing a labor
7 market test in H-1B. Get an H-1B visa, you don't
8 have to do any labor market test. You can get
9 exemptions from it.

10 That's a common misunderstanding of
11 the H-1B program. Only certain groups of H-1B
12 dependent companies do labor market tests that
13 even the statute gives exemptions to doing the
14 labor market test if you pay more than \$60,000 a
15 year, or you're going to bring a foreign worker
16 that has a Master's Degree or higher.

17 So you have lots of very high skilled
18 workers coming in to this country, through the H-
19 1B visa program as an example, and I'm not
20 badmouthing the H-1B visa program, I'm just
21 giving it as a point of reference, where you
22 think there's a lot of American workers that are

1 skilled and may be doing this work, they're
2 coming in, there's still labor market tests going
3 on. They're still advertising.

4 But in H-2A, it's the most intensive
5 and expensive labor market test that's going on,
6 both before, while you're with me, and then after
7 I'm out of your hair. It's just, that's the
8 reality, and some of it is all of this history
9 that has been built up that led to the '86 law
10 and the Congressional record that goes with it.
11 It fits the program we're living with now.

12 So to Chalmers' point, you see the
13 volume of the program growing. We're still
14 having to work this in the law that was passed in
15 '86. For God sakes, it was conceived of in the
16 '70s and the early '80s, at a time when the
17 domestic farm labor force was very different and
18 American agriculture was very different.

19 Sorry. That's the answer --

20 CHAIR CARR: You're all right. You're
21 all right.

22 MR. PASTERNAK: Sorry. Can you just

1 real quick? Real quickly, the AEWL is one thing.
2 There are certain areas of the country that have
3 to also consider these prevailing wage or
4 prevailing piece rates. These wages come from
5 our state Departments of Labor. Okay.

6 So we have some money that goes to the
7 state Departments of Labor. They have the
8 authority, the independent authority as a state
9 entity, to go out and decide, you know what, we
10 want to conduct a wage survey on apple
11 harvesting, pear harvesting, cherries, whatever,
12 different types of agriculture activities.

13 Florida has a bunch of them, that sort
14 of thing. So we get those directly from our
15 state Departments of Labor. There's a really old
16 set of methodology around it, they're very
17 different than USDA, these have nothing to do
18 with USDA, but if they come into us and they're
19 valid, and they're almost 99 percent piece rates,
20 and they're valid, we post them.

21 So if a grower comes in with an order
22 to me in Washington State and says, we're going

1 to doing Gala apple harvesting, our staff look at
2 the Washington site, and our site, but the
3 Washington to see if there's any new Washington
4 wage data out there on piece rates for apple
5 harvesting for Gala, because if there is, then a
6 growers going to have offer at least that piece
7 rate.

8 Now, the piece rates are out there.
9 Growers don't have to offer piece rates, but if
10 they want to, there may be a wage out there that
11 they have to deal with.

12 It's usually states like California,
13 Washington, New York, some of the big more
14 intensive ag states do give us some wages that we
15 have to consider.

16 So I just wanted to say as a matter of
17 point of reference, that's the other thing that
18 we deal with.

19 CHAIR CARR: And, Brian, if I can just
20 share with the group, because I know where you're
21 going on that, and just, so in Washington State,
22 they did publish, and they didn't just publish it

1 for Gala apples, they published it for about
2 several different varieties, including McIntosh,
3 so they have wage rates anywhere from \$16.40 to
4 \$23 on harvesting apples.

5 Their AEWB is \$15, so not only does
6 the employer have to pay that wage rate for
7 Galas, but if they go over to that block in the
8 afternoon and pick McIntosh, they got to pay a
9 different wage rate, all because the state
10 workforce agency published these piece rates this
11 year.

12 MR. PASTERNAK: Yes. And I think we
13 got almost 60 different kinds of wage piece rates
14 for different kinds of harvesting activities by
15 crop, and in some cases, a lot of varieties of
16 that crop for that activity.

17 And that's the tension in the program
18 is, should those piece rates be more market-
19 driven as opposed to being determined by a state
20 survey that is done at a one snapshot of a
21 particular part of the year?

22 Okay. So we talked about wages.

1 That's the first step. You got to figure out
2 what wage you're going to offer. And then as
3 Chalmers mentioned, the second step is, you're
4 filing a job with the state.

5 So in Washington's case, you're filing
6 directly with the Washington Employment Security
7 Department. If everything is good, they start
8 the process of recruiting at that point. Now,
9 that's happening about 60, 70 days before the
10 start date, 75, 60, go ahead.

11 I'm going to leave this with you, but
12 this is just a summary of the things that, if
13 you're coming into this program, you have to be
14 aware of, and things that the rule requires you
15 to provide to these workers, and potentially, any
16 domestic workers who are not local, the ones that
17 can't get back home to their permanent residence.

18 I'll call them migrant farm domestic
19 farm workers. Which again, as I mentioned, is
20 getting lower and lower in this country. People
21 are migrating a lot less.

22 Housing, workers comp, tools, meals,

1 meals aren't at no cost. Meals, you actually can
2 charge some for meals. The transportation,
3 subsistence to bring workers in and out of the
4 country. A lot of these things, you go back to
5 the history of this program since 50 years ago.

6 In the '50s and the '40s, you'd see
7 these guarantees. And 3/4 guarantee. You know,
8 3/4 of the work contract.

9 Okay. Let's skip this one. That's
10 just general stuff. All right. You filed with
11 the state, then you file with us, and this is all
12 happening about, I don't know, we typically get
13 applications 50 days before you need the workers
14 to start work, but 45 days is sort of what, you
15 know, generally, the law, you're supposed to be
16 doing, and I don't require you to file earlier
17 than that, but you can.

18 These are the basic documents that you
19 send to me at the initial part of the application
20 process, we have an electronic filing system, you
21 can upload, scan documents, you don't have to
22 email us a piece of paper.

1 We have absolutely excellent
2 compliance around electronic filing in H-2A.
3 Over 90 percent are filing electronically. We
4 still get paper applications, which we have to
5 data enter, it's very annoying, but we do have a
6 very high compliance rate.

7 And the data of the mail-ins that we
8 get, people give us email addresses, so we end up
9 data entering it and communicating with them
10 electronically. Go ahead.

11 All right. Statutorily, I have to
12 issue an up or down decision on seven days.
13 Seven days after I get the application. That's
14 by law. All right. If it's a deficiency, we'll
15 give you an idea of what to correct. If it's
16 accepted, then we're going to issue an acceptance
17 letter, authorize recruitment, you'll get some
18 recruitment instructions, and then you'll be told
19 of any other documents that we might need that
20 can help issue the certification.

21 We also work with the state workforce
22 agencies because many of them have to do the

1 housing; inspecting the housing.

2 This is the basics of doing what we
3 call positive recruitment for American workers.
4 The note that I will place here is that we do
5 have a pending regulatory action that the
6 department proposed to eliminate the continued
7 use of print newspaper ads.

8 So that is sort of a pending
9 regulatory action which is active and the
10 administration is committed to finalizing that
11 regulatory action, but I'm not -- I can't comment
12 any more than that.

13 So currently, you come to me today,
14 you do have to do print newspaper ads and some
15 other things, but we do have a proposal out there
16 that would propose to eliminate it and we'll see
17 how that works.

18 And just so we're all clear, you file
19 at day 45, I have 7 days to issue up or down,
20 that takes you to about 38 days before you need
21 the workers, and if I give you the up signal,
22 under the law, I have to issue the decision, as

1 long as I've got everything in my hand, 30 days
2 before the start date.

3 And that's where some of the delays
4 may occur, because I might be waiting for a state
5 to give me a housing inspection report, the
6 workers comp document may not cover the period,
7 you may not have given me assurance you're going
8 to renew it, that sort of thing.

9 Those are issues that could cause us
10 to hold the application for a little bit longer
11 waiting for you or waiting for the state to
12 actually give us something.

13 And we have a proposal out there now
14 waiting for OMB approval to further expedite
15 moving from me to CIS, we have a proposal out
16 there to transform the issuance of our labor
17 certs to electronic decisions.

18 Currently, Chalmers knows this, we
19 print the certification on physical paper and
20 mail it to you, which you then have to use and
21 send to CIS, so we have a proposal out there
22 pretty actively, which we hope will be approved

1 in this month, that we will issue a one-page
2 electronic certification that's emailed to the
3 customer and they're able to print it out, attach
4 it to their petition, and just move on to CIS
5 very quickly.

6 For us, it's that whole issue of, how
7 do we get people from one part of the system to
8 the next, or one step to the next, as quickly as
9 we can, knowing that now we're within 30 days
10 where the workers got to come to the farm.

11 MS. HARPER-LARSEN: Before you go on,
12 are you looking at an opportunity, instead of --
13 of course they need an email copy just for their
14 records, but for your system to talk to their
15 system?

16 MR. PASTERNAK: Yes. Yes, absolutely.
17 We did a very innovative thing that we were
18 hoping to replicate in these other visa programs.
19 We had to implement a new visa program for the
20 Commonwealth of Mariana Islands, which is out in
21 the middle of the Pacific Ocean. And our
22 regulation there for the first time ever, we

1 regulated that we would issue electronic certs
2 and transfer the electronic data to USCIS on
3 behalf of the customer.

4 So obviously, our goal here with H-2A
5 and for H-2B and others is that we will give you
6 an electronic copy of everything that you can
7 print out, and you'll need to keep one for your
8 compliance file. But the one page e-
9 certification, when you take it to CIS, if they
10 want to see the full certification, they come
11 into my system and grab the data. Yes. Yes.
12 We're there.

13 CHAIR CARR: But you also have to do
14 a biannual form to make sure your forms would
15 match up with data transfer, but you've done that
16 now, I believe.

17 MR. PASTERNAK: Well, we need to have
18 approval yet, but that is -- we've already done
19 it in CW and we're doing it on 2B, so I don't
20 have any concerns that we'll be able to do it in
21 A. Yes. But that's another way that the system
22 gets a little more efficient in talking from --

1 to itself about what the customer needs.

2 MS. HARPER-LARSEN: Well, you also
3 have a validated source from a regulatory body
4 from another regular --

5 (Simultaneous speaking.)

6 MR. PASTERNAK: Yes, yes. And that's
7 exactly right. Those are the conversations we've
8 had with CIS to the point where, two weeks ago,
9 they put out a public announcement on H-2B saying
10 that, going forward, the customer only has to
11 give USCIS, on H-2B, the one-page decertification
12 that we got approved by OMB.

13 And so now the paperwork has been
14 utterly eliminated between us and CIS for the
15 employer/customer, and we're really hoping that
16 they'll do exactly the same thing for H-2A, but
17 take from you that one-page de-cert. I think
18 that'll be a big help. Yes, sir?

19 MR. WINGARD: In my experience -- and
20 I want you to comment on it briefly. So for the
21 sake of round numbers, let's just use even
22 dollars. I was paying my harvesters \$11, the

1 harvest manager \$12 an hour, and the harvest
2 supervisor \$15 an hour to incentivize those guys
3 to do a better job. I was told by our H-2A
4 consultant, or whatever, that I couldn't pay
5 above the H-2A rate.

6 MR. PASTERNAK: Now, the H-2A rate is
7 just the wage floor.

8 MR. WINGARD: Well, we were --

9 MR. PASTERNAK: It's not the wage
10 ceiling.

11 MR. WINGARD: Well, that's --

12 (Simultaneous speaking.)

13 MR. WINGARD: We were trying to
14 incentivize --

15 MR. PASTERNAK: Sure.

16 MR. WINGARD: -- you know, efficient
17 work. And it was advertised in our contracts,
18 which should incentivize higher wages, but we
19 were told we couldn't do that.

20 MR. PASTERNAK: I'm happy to send them
21 to staff and some ideas saying, you know, you can
22 put in even provisions for pay for the returning

1 ones, right? You're going to get some new ones
2 and you're going to get some returning ones, you
3 can actually offer better wages to the returning
4 ones from the new ones that may be coming in.

5 You just have to be transparent about
6 it, and you have to treat everybody equally so
7 that American worker has that kind of experience
8 that you're working for or that it actually was
9 the person that is returning, you got to make
10 sure that they're being offered exactly that same
11 benefit as the H-2A worker.

12 MR. WINGARD: Charles, what you're --
13 and I don't know who your person is, but you can
14 put supervised men there, but if you didn't
15 disclose the wage rate of \$12 an hour for that
16 line worker and \$13 for that, if the USG comes in
17 and audits you --

18 MR. PASTERNAK: Yes.

19 MR. WINGARD: -- and finds that you're
20 paying those workers that, then they're going to
21 fine you because you didn't advertise that to the
22 American worker who could've had a choice between

1 the job --

2 MR. PASTERNAK: Yes, yes.

3 MR. WINGARD: -- because they're all
4 about protecting the American worker.

5 MR. PASTERNAK: You're talking about
6 Mike?

7 CHAIR CARR: No. He's using -- well
8 --

9 (Simultaneous speaking.)

10 MR. PASTERNAK: Oh, I'm sorry --

11 (Simultaneous speaking.)

12 CHAIR CARR: But that's what's
13 happening with your enforcement side.

14 MR. PASTERNAK: Yes. That's exactly
15 right. Yes. The southeast enforcement guys
16 would probably look at it that way.

17 (Simultaneous speaking.)

18 CHAIR CARR: -- completely different
19 than the previous administration it's always what
20 people want to look at.

21 MR. HUGHES: So because we're four
22 minutes or three minutes, now, out from the

1 break, I want to see if there were any lingering
2 questions for the other deal experts because we
3 do have our next speaker, the Administrator of
4 Rural Development, that has arrived, and so I
5 want to make sure we break on time and start on
6 time so that we don't take up -- or, eat into
7 that presentation from the Administrator.

8 CHAIR CARR: I guess to be brief,
9 because there may be questions -- Brian, will you
10 be around --

11 (Simultaneous speaking.)

12 MR. PASTERNAK: I can hang around.

13 CHAIR CARR: Yes. People can swap
14 back and ask you or during break --

15 (Simultaneous speaking.)

16 MR. PASTERNAK: Yes. That's fine.

17 Yes.

18 MS. HARPER-LARSEN: Can we just make
19 sure that we get contact information for each of
20 the --

21 MR. PASTERNAK: Yes. Yes. I'll have
22 that.

1 MR. HUGHES: Send a picture so we know
2 who is who now.

3 (Laughter.)

4 MR. PASTERNAK: I'll probably --

5 MR. HUGHES: Let me grab my government
6 phone here.

7 CHAIR CARR: Is there anybody from BLS
8 that hasn't spoke that's here?

9 MR. HUGHES: There are, like, three
10 people. They brought their whole department with
11 them.

12 CHAIR CARR: Well, they introduced
13 themselves --

14 (Simultaneous speaking.)

15 MR. HUGHES: Yes. They introduced
16 themselves earlier, and the one person that
17 wasn't here, he spoke the most out of all three,
18 so you've heard from --

19 (Simultaneous speaking.)

20 CHAIR CARR: But if I understand you
21 right, we cannot ask questions about the BLS data
22 that you're proposing to use in the new rule

1 based on these new wage classifications. Is that
2 correct?

3 MR. PASTERNAK: I would advise that
4 you -- we not do that here without, you know --
5 getting into a conversation about it would not be
6 a good idea.

7 MR. HUGHES: Yes

8 MR. PASTERNAK: Yes.

9 CHAIR CARR: Thank you for all you've
10 given us here today and --

11 (Simultaneous speaking.)

12 MR. PASTERNAK: Sure. Absolutely. If
13 there's any follow-up question, run them through
14 staff, and I'll be happy to answer them and give
15 you more information about them.

16 CHAIR CARR: All right. Thank you,
17 Brian.

18 MR. PASTERNAK: Thank you.

19 CHAIR CARR: So we're going to take a
20 break for 15 minutes. Be back at 3:30, staying
21 on schedule.

22 (Whereupon, the above-entitled matter

1 went off the record at 3:13 p.m. and resumed at
2 3:31 p.m.)

3 MS. HARPER-LARSEN: All right,
4 everybody. If you could go ahead and take your
5 seats. I'm going to turn the meeting over to
6 Darrell and we're going to have an overview of
7 the Farm Labor Housing Direct Loans & Grants
8 Program from the Administrator, Bruce Lammers.

9 MR. HUGHES: So I'll just invite Bruce
10 Lammers up to the podium. And just for
11 clarification of the record, Bruce Lammers is the
12 Administrator of Rural Development.

13 MR. LAMMERS: Rural Housing.

14 MR. HUGHES: Rural Housing?

15 MR. LAMMERS: Rural Housing Service,

16 MR. HUGHES: Oh, Rural Housing
17 Service. That's under RD. All right. There we
18 go. Yes.

19 MR. LAMMERS: Would you like to invite
20 somebody else?

21 MR. HUGHES: Sure. No, no. Go ahead
22 and take over. Go to the next slide, just let me

1 know, and I'll go ahead and --

2 MR. LAMMERS: I've got some highlights
3 here, so you can follow me this way, if you don't
4 mind. Good afternoon.

5 All right. So everybody's here and
6 it's not -- we're not between cocktails -- or,
7 lunch and cocktails yet, but pretty -- closer to
8 cocktails than we are to lunch.

9 As was said, I'm the Administrator of
10 the Rural Housing Program. Rural Housing
11 includes multifamily housing, single family
12 housing in rural America as well as community
13 facilities. So we like to -- I like to see it as
14 a large bank. And I came from banking. I had a
15 career of quite a few years of -- in banking, and
16 I bought a small bank in '06 that sold in 2016,
17 and made it through the recession; the Great
18 Recession. And was able to sell the institution.
19 I worked for my -- the people that acquired me,
20 and decided that this is something that I wanted
21 to do to give back to the industry.

22 So I'm a political appointee that has

1 banking experience, and we like to think -- or,
2 we believe that this is a large bank that we're
3 running. We make loans and grants, but that's a
4 little bit of background. I grew up in a small
5 town in Wisconsin, so I understand a little bit
6 about agricultural production. Very little.
7 What I understand is that I went to school with
8 kids that came home -- came to school in the
9 morning and smelled like they'd been in the barn,
10 working.

11 Then I also got the opportunity to
12 bale hay, and lived in a community where we had a
13 packing plant that packed vegetables. And I was
14 just saying to one of my folks that's here from
15 the agency, I said, when I was a kid, I lived
16 near the canning factory and there were all these
17 people that were really migrants, and they came
18 in, and there was housing there, so we had farm
19 labor housing. So all of a sudden I'm trying to
20 -- from 40, 50 years ago, I'm connecting the
21 dots, so I see that.

22 So if you have any questions or any

1 suggestions as we go, I've got an associate, C.B.
2 Alonso, who's with me, and he's the one that's
3 either going to take the tough questions or write
4 down your suggestions if you have them.

5 So I don't know what you know about
6 Farm Labor Housing, but we provide financing for
7 on-farm and off-farm housing for year-round and
8 seasonal labor. If it's off-farm, means it's not
9 collocated with the farm. If it's on-farm, it
10 tends to be located with the farm.

11 Borrowers may apply. If they're not
12 able to obtain commercial credit at a rate that's
13 acceptable to provide lower-income tenants
14 competitive rent, borrowers have to have
15 experience managing similar housing properties,
16 or control the deductibility. Borrowers include
17 farmers associations, farm workers and
18 nonprofits, state and local government entities,
19 as well as federally recognized tribes.

20 Funds that are available, given the
21 current yield curve, we still have a positive
22 interest rate. But given the yield curve the way

1 it is right now in the capital markets, it may
2 not look like as much of a deal, but we've got
3 low interest rates. We also issue grants that
4 are up to 90 percent of the project cost.

5 Payback is 33 years, 1 percent
6 interest rate fixed for the life of the loan,
7 which is still competitive with traditional
8 financing, although it's getting there. The off-
9 farm labor housing is available through --
10 annually through a Notice of Solicitation
11 Application. That occurs annually and it's
12 published in the federal register. The
13 government lingo is we file a NOSA and that's
14 when people know that they can apply.

15 On-farm labor housing is a year-round
16 opportunity for credit. Preference is given to
17 applications of off-farm that leverage other
18 sources of funding. So those projects -- and
19 I'll give you some -- a little bit of data in a
20 little bit -- little while, but the off-farm tend
21 to be larger projects. The on-farm tend to be
22 really two to four units, maybe even one unit

1 that are housing on the farm.

2 Our program is generally appropriated
3 \$30 to \$40 million a year for the program. And
4 again, the loans are generally a 75 percent loan
5 and 25 percent grant for not-for-profits. Off-
6 farm, again, the limit for the award is \$3
7 million, which could be all loan or a grant
8 combination. And as I said before, the off-farm
9 -- or, on-farm is smaller units. So the --
10 basically, the funds are used for construction or
11 improvement or repair of housing for domestic
12 farm laborers.

13 So the irony -- or, the difference in
14 the Farm Labor Housing Section 514 Program is
15 that it's not -- the larger projects of off-farm
16 labor aren't limited by the population density of
17 the MSMA of the area that you're applying in. So
18 generally you'd not be eligible if you're 35,000
19 people or above on a normal USDA housing.

20 I think it's 35, right? The 35
21 population requirement is generally for
22 multifamily, and for farm it's not a requirement,

1 so you could actually -- as long as you're
2 serving farm labor or retired farm labor, it can
3 be a -- more of an urban area, although likely
4 rural in character.

5 So the people that can occupy are
6 laborers and -- including fish and oyster farms
7 as well as on-farm processing plants like packing
8 plants for pea farms. And then retired or
9 disabled farm laborers, you must be a U.S.
10 citizen, permanent resident or a H-2A visa
11 holder. And it's generally for the low-to-
12 moderate income households.

13 So for off-farm, the borrower must be
14 a nonprofit. And for on-farm, the borrower must
15 be a family farmer or family-owned operation. In
16 the on-farm, the borrower is not to generate a
17 profit from this, but to provide reasonably
18 priced rental housing. And again, for off-farm,
19 it's going to be nonprofits that generally
20 operate these.

21 So it could be a farm group could get
22 together, put together a nonprofit in their

1 community to be able to finance the housing for
2 them. And the goal isn't for the group to make
3 money. It's to build a nest egg to provide
4 maintenance for the properties and reasonable
5 housing for the tenants.

6 There's an application process, and,
7 again, the off-farm is an annual appropriation,
8 the -- or, on-farm is -- you can apply year-
9 round. We offer no-cost assistance to the
10 application process and we do technical
11 assistance.

12 At this point, I'm going to give you
13 a couple -- given the fact that I came from
14 banking, I like numbers. The projects that we
15 have in our portfolio right now, off-farm are 310
16 projects, on-farm 214. But live-in units, or
17 total units, 16,467, or an average of 53 units in
18 each loan for the off-farm. And you can see the
19 on-farm are -- average units are two with 432
20 properties that we've financed. So really is --
21 off-farm tends to take the day.

22 Being from Wisconsin, it's -- I want

1 to point out that we have six on-farm properties
2 and three off-farm properties that have been
3 financed for a total of 69 properties. But the
4 leader in the nation is California, followed by
5 Arkansas, and Florida next. And again, you can
6 kind of see the big push, or the big benefit, is
7 that the nonprofits that access the off-farm
8 labor housing.

9 And that's kind of our portfolio in a
10 nutshell. Got suggestions, desirements or
11 questions, I'd be happy to handle them. And I'll
12 turn to C.B. once you ask a question because I
13 only -- having been here for two and a half
14 months, I've learned a lot, but there's a lot of
15 knowledge that I haven't gained and I probably
16 won't.

17 CHAIR CARR: Is a unit a bed?

18 MR. LAMMERS: It's a rental unit.

19 CHAIR CARR: How many -- okay. Is it
20 -- sometimes we talk about beds and units?

21 MR. LAMMERS: Yes. These are
22 apartments.

1 MR. BROWN: And how many people can
2 stay in a unit?

3 MR. LAMMERS: I'm going to turn to --

4 MR. ALONSO: A unit can be both. An
5 actual live-in unit can be multi-room or a bed
6 depending on the type of housing that you build.

7 MR. BROWN: And what are the number of
8 beds in a room?

9 MR. ALONSO: There are specifications
10 in our regulations on what you can build and what
11 you cannot build. Our regulation is called --
12 the development regulation, it's 1924(a) and
13 that's got all the stipulations of building --
14 for building farm labor housing in there. It's a
15 good regulation for architects.

16 MR. LAMMERS: But what was off-farm,
17 are apartment-type units that are -- families are
18 living there.

19 MR. BROWN: Okay.

20 CHAIR CARR: So for clarity, and I had
21 asked for this speaker to be here.

22 MR. ALONSO: Thank you.

1 CHAIR CARR: So I think we're going to
2 see a lot of activity in your apartment because
3 of the simple fact up until 18 months ago, H-2A
4 workers were not allowed to use 514 housing. So
5 it got put in through Congress that now H-2A
6 workers are able to use 514 housing. And as we
7 all know, housing is the second biggest barrier
8 to entering the H-2A program.

9 So there's a lot of industries that
10 never had to supply housing or there's areas in
11 the country where you can't build. Florida's in
12 a major housing deficit right now. So there's a
13 model for nonprofits that could be -- it could be
14 a nonprofit, but it could be a revenue generator.
15 For farmers, people you all represent, this is
16 going to become a major source for doing -- as we
17 just talked about earlier with Brian being here,
18 the growth in H-2A is exponential, but you still
19 have to have housing. And so having farmers
20 having access to build housing where you can get
21 low-interest loans and do this outside of your
22 farm operating funds and stuff, there's going to

1 be a lot of demand on this.

2 And I really advise anybody that you
3 all are targeting to look at it because that's --
4 because it's relatively been an unused or an
5 unknown about program because, again, most of the
6 labor growth has been in the H-2A program and
7 they weren't accessible to these funds.

8 (Simultaneous speaking.)

9 MR. LAMMERS: So if you can find a
10 nonprofit, like a housing authority, and partner
11 with them, it's a prefect avenue for you not to
12 have to build or manage the housing, but to be
13 able to sponsor the desire to get it.

14 MS. HARPER-LARSEN: I'm currently
15 curious about the monies that are available for
16 refurbishing because we have a large amount of,
17 what we call, older camps that are not currently
18 being used that could and are already permitted
19 to a point, but could be refurbished, expanded
20 upon, facilities added to make this 1924(a)
21 requirement. Can you explain if there are any
22 differentials for funding for remodeling versus

1 new builds?

2 MR. LAMMERS: You can use the funds to
3 be able to remodel or maintain or improve the
4 property, yes.

5 MS. HARPER-LARSEN: Are there --

6 MR. LAMMERS: Any deeper and I'm going
7 to have C.B. answer the question.

8 MS. HARPER-LARSEN: This is going to
9 be deeper because we've got farmers --

10 (Simultaneous speaking.)

11 MR. LAMMERS: Get ready, C.B.

12 MR. ALONSO: All right.

13 MS. HARPER-LARSEN: All right. Do you
14 give a funding bonus --

15 MR. ALONSO: No.

16 MS. HARPER-LARSEN: -- differential,
17 whatever you want to call it, for a farmer versus
18 a random nonprofit?

19 MR. ALONSO: Well --

20 MS. HARPER-LARSEN: Okay. We'll
21 expect that that will come from one of our
22 committees.

1 MR. LAMMERS: I would say that, no,
2 but the nonprofit is probably where the -- for
3 the \$3 million limit, that's where you're going
4 to find the opportunity. I mean, on-farm housing
5 is sort of a one, two, three, four. And if you
6 want any volume like you're talking about, you're
7 going to need to team up with a nonprofit to be
8 able to get it done.

9 CHAIR CARR: I would disagree with
10 that statement.

11 MS. HARPER-LARSEN: I would too.

12 CHAIR CARR: I mean, we've built 150
13 beds, which has been five units in the last five
14 years. So, I mean, as far as the H-2A program,
15 you're going to be looking at farmers that are
16 going to put in 30 to 60 beds, and these will be
17 units for people to room and built to the codes
18 and everything like that.

19 MR. LAMMERS: But they can't be for
20 profit.

21 CHAIR CARR: No. Not for profit, no.
22 No.

1 MR. LAMMERS: Okay. That's --

2 CHAIR CARR: In fact, a lot of this
3 farm -- if you're in the H-2A program, you have
4 to provide it for free.

5 MS. HARPER-LARSEN: Yes.

6 CHAIR CARR: That's the challenge. So
7 like I said, a lot of -- question would be, in
8 the last five years, have you always used your
9 annual allotment of money, or has there been
10 money left over every year?

11 MR. ALONSO: We've used it

12 CHAIR CARR: You've used it? So you
13 have enough applications to -- in the past to use
14 all that monies?

15 MR. ALONSO: Yes, sir. Like the
16 administrator said, it's between \$30 and \$40
17 million and we get applications through the
18 nation. However, California is the most prolific
19 one, and that's for, typically, new on-farm
20 labor. The NOSA allows acquisition of none RD
21 projects for rehab, okay? You own an RD project
22 you want it rehabbed, then you come through an

1 internal process.

2 CHAIR CARR: And I think I kind of
3 asked that question. Is there a difference
4 between -- is there a preference over the farmer,
5 which is what USDA is supposed to be servicing
6 versus the -- a nonprofit. So when you go into
7 that application process, are we weighted
8 equally? And then what is the -- what's then
9 deciding who gets to go and who doesn't get to
10 go? Is it the amount of money I'm requesting?
11 If I'm already requesting 40 percent cost share
12 versus 75 cost share?

13 MR. ALONSO: Let me answer it this
14 way. I'm going to say off-farm versus on-farm.
15 Formally, the on-farm will be the farmer versus
16 the off-farm will be the nonprofit. They're two
17 different processes. Our focus has been on a
18 farm so that the preponderance of the funds that
19 we get we put into a farm housing; however, we
20 are funding every application that comes through
21 for on-farm housing.

22 Now, if you guys decide to increase

1 the volume of applications coming in, then we may
2 get, you know -- that in the future, we'll need
3 to reallocate. But right now, we're satisfying
4 that demand from both sides, on-farm and off-
5 farm.

6 So for the group to understand that,
7 you already mentioned California. There's
8 several farmer labor contractors, but there's
9 pretty big ones out there that are using off-site
10 because they got to provide housing, too. And
11 they're using these funds to build in areas of
12 California where you can build still within
13 driving distance of where they're servicing
14 farmers, and so that's where -- so not
15 necessarily nonprofit because they're finding
16 somebody else to build it.

17 But that's what they're building it
18 for so that farm labor contractor can have
19 housing to put his H-2A workers there to farm.
20 But farmers are going to have that same
21 challenge, so I just want everybody to understand
22 that. But that's where the -- we talk about the

1 growth of farm member contractors and they've
2 already figured out this pool of money's there
3 too.

4 And farmers catch on really quick as
5 well; otherwise, you know, we're all going to be
6 guys that -- but you're looking at a paradigm
7 change as you have this transition to the H-2A
8 program -- or, my believe you'll have to, is then
9 now you got to provide housing. If you didn't
10 provide housing, you better start figuring out
11 how you're going to build it. And it's not
12 cheap. It's \$5,000 to \$10,000 a day. And cheap
13 as you can go is \$5,000 and most of the time it's
14 going to be 8 to 10. So if you got to fill that
15 many beds, you know what the cost is.

16 MR. WINGARD: Suppose I have an
17 opportunity as a farmer to buy a small apartment
18 complex and it's in need of some repair. Not a
19 lot. Maybe a roof and, you know, some other odd
20 and end stuff. Would that qualify?

21 MR. ALONSO: Yes.

22 MR. WINGARD: Thank you.

1 (Simultaneous speaking.)

2 MR. ALONSO: Let me expand on that.

3 (Simultaneous speaking.)

4 MR. ALONSO: I would say, yes, of
5 course. However, it all depends on how you're
6 going to set up the ownership. If it's going to
7 be housing for your farm only --

8 MR. WINGARD: Yes.

9 MR. ALONSO: -- then we have to go
10 through the on-farm and there are some
11 limitations as to whether it come from your
12 ability to find similar -- well, conventional
13 plans externally. See, what we're trying to
14 target here are folks that cannot obtain this --
15 reasonable financing to provide housing for their
16 workers.

17 If we look at your financial statement
18 and we say, well, you know, you have ample
19 ability to get financing elsewhere, you may not
20 qualify.

21 MR. BROWN: Is on-farm physically --
22 let's say you have local farm sites. Does it

1 have to be on one of those farm sites or can on-
2 farm be a separate piece of property as long as
3 the workers are working just for you on that
4 property?

5 MR. ALONSO: Exactly. As long as the
6 worker that resides on that project works for
7 you, your on-farm project can be anywhere.

8 MR. BROWN: Okay.

9 CHAIR CARR: You had a question?

10 MR. ZEA: Yes. Just curious because
11 your admission that it's coming in -- later
12 contractors are already onto it. Have you seen
13 any evidence of pushback from local communities,
14 particularly with planning agencies and
15 permitting and all of that? I would think
16 California you would've seen it --

17 (Simultaneous speaking.)

18 MR. LAMMERS: I don't -- I'm going to
19 say, I don't think so. But the -- I think the
20 NOSA closes -- I mean, the applications are going
21 to close the end of this September, so there may
22 be projects out there that hadn't gotten the

1 community's ire yet.

2 MR. ZEA: Right.

3 MR. LAMMERS: That's a reasonable
4 thing, but I --

5 CHAIR CARR: That was my -- part of my
6 question was, because farm labor contractors are
7 working in multiple farms and stuff, there's
8 rules about how far away they can be from the
9 farm, but they're able to pick their sites where
10 there may not be the right -- they may be able to
11 do it in a part of the county that doesn't have
12 it. But where if you're a farmer and you're in
13 that county and you want to have that housing as
14 close to you as you want, you may be -- by county
15 ordinance, you may not be able to build. And I
16 think, you know, the person will. So that's just
17 kind of, like, the landscape that people
18 understand.

19 MS. HARPER-LARSEN: Quick question,
20 maybe for the both of you. Are we putting
21 farmers at a -- being at a disadvantage here if
22 we have a good year versus five previous bad

1 years, and you have a farm labor contractor who
2 keeps reporting he didn't make any money?

3 MR. LAMMERS: Most farmers can't make
4 any money anyhow, right? Every year's a tough
5 year, even if you make money. But I will tell
6 you, where Congress is right now is that if we're
7 using -- and this goes from my experience in SBA
8 lending to discussions at USDA. If you're
9 providing favorable financing for people that can
10 get financing elsewhere, we shouldn't be doing
11 that.

12 And the SBA's gone through making all
13 sorts of rules that banks have to certify that
14 the borrower wouldn't get the money elsewhere if
15 they weren't -- if they -- that they weren't
16 qualified to get it elsewhere. So you got to be
17 the lender of last resort and a prudent lender at
18 the same time under the SBA program. So there is
19 not as much noise on that in the USDA program,
20 but it's a consideration that, if you can go to
21 your bank and get reasonable money or, you know,
22 you can find other sources of financing, by all

1 means, it's going to be hard -- once we get -- as
2 you say, if the avalanche is coming here. If
3 there's competition for the money, it's going to
4 end up being looked at even harder above what
5 we're using the money for.

6 (Simultaneous speaking.)

7 CHAIR CARR: And the farm labor
8 contractors aren't going out and getting these
9 loans. They're partnering with a nonprofit.
10 They're going to then have a different set of
11 standards to prove financial eligibility --

12 MR. LAMMERS: Much cleaner.

13 (Simultaneous speaking.)

14 CHAIR CARR: Much cleaner.

15 MR. LAMMERS: Much cleaner is what,
16 you know -- and there's all sort of
17 considerations. Are we competing with the
18 private sector and the money that we're giving
19 out as well? You know, we're here to help the
20 tenants as much as we are to help the farmers,
21 so.

22 MR. TALBOTT: We had worked with Child

1 & Migrant services put in a lot of this housing
2 over the last 20, 25 years. And all we were --
3 it was a nonprofit that put on-farm housing in a
4 rental agreement with the farmer, and that system
5 worked pretty well. We tried to go to
6 centralized housing and there was too much
7 community kickback. Like, we don't want
8 centralized migrant housing, so you will run into
9 it --

10 (Simultaneous speaking.)

11 MR. LAMMERS: And you don't want to
12 build housing projects tomorrow.

13 MR. TALBOTT: Right.

14 MR. LAMMERS: And that's the concern
15 that you're going to see. Yes. And I'm coming
16 from that as a -- from a practical, private
17 industry standard rather than administrator of
18 the USDA. Thank you for your time and interest,
19 and I think I've got C.B.'s name in the
20 attachment that's in here. Feel free to take a
21 look. Thank you.

22 CHAIR CARR: So the group -- where's

1 he at? I'm just going to make a comment and say
2 they handcuffed us by not letting us talk about
3 the proposed rule that's out and, you know, as
4 released. But in that proposed rule, if you
5 notice -- if you understand the growth in the H2-
6 A and there's a housing shortage, a lot of people
7 have used public housing, meaning hotels or
8 apartments, to put H-2A workers in.

9 And the rule currently says, if it's
10 not on-site farming housing, then it must meet
11 state or local standards. So a hotel room has
12 two queen beds in it, you put four people in it.
13 But that same hotel room doesn't have enough
14 window square footage to the floor square footage
15 to justify four people. Under the proposed rule,
16 they're going to make all public housing has to
17 meet federal standards.

18 So if you've been using a farm labor
19 contractor or you, yourself, has been using a
20 hotel, and by state and local standards you can
21 put four people in there, there's a very good
22 chance that next year -- if this rule ever gets

1 passed and gets adopted, you would lose that or
2 reduce your ability to only put two people in
3 there because you have to meet federal standards,
4 right? It's going to be a huge change for all
5 the growth that's happened.

6 You saw that growth. And a lot of
7 that growth was, as we determined, farm labor
8 contractors who have been using public housing.
9 And farm labor contractors maybe actually put six
10 people in this room instead of four. But now,
11 you, as a joint, employer, you would be subject
12 to those same rules. So, again, I think this
13 whole housing thing is only going to get worse,
14 and that's why I wanted you all to hear about it.

15 MR. HUGHES: So inside of the briefing
16 book, there is web printout of housing program
17 101 that just talks about a lot of some of the
18 stuff that's on the PowerPoint, but in more
19 detail. And some other, just, additional
20 information about, like, where they're coming in
21 from, so.

22 MS. HARPER-LARSEN: And I just shared

1 with Darrell -- and felt that that was a very
2 important thing because I was already drafting an
3 email back there saying, where's all this at so
4 that we can share it? So we're almost to the end
5 of the day, okay? Food safety has been wanting
6 to get to know each other and also get to know
7 quite a few people from the USDA and the FDA.

8 And I would remiss if I didn't thank
9 the members of our subcommittee, in particular,
10 Molly Gleason, for stepping in a couple of times
11 when I was driving down the road and she was
12 taking active notes, and also Leanne Skeleton,
13 for being present and offering to collaborate
14 amongst the different associations and agencies
15 to really come together for things to help us.

16 You guys will see that we have an
17 objective statement that's pretty broad. And
18 what I want to point out to you is that we see
19 the role of the American producer, packer, and
20 processor brands that we have a responsibility
21 for the safety and security in our great nation.
22 And we wholeheartedly support holding foreign

1 producers, packers, processors, and their
2 importers immediately accountable to all Food
3 Safety Modernization Act requirements.

4 Moving onto the next slide, you'll see
5 that we have recommendation subjects. These are
6 drafted a little bit differently than what many
7 of your other subcommittee have had. And the
8 reason for that is, our subcommittee is focused
9 on, primarily, collaborating with the FDA in its
10 capacity and then also the CDC in its capacity.
11 So we're looking to make recommendations for more
12 effort.

13 We encourage the FDA to continue to
14 work with growers to develop science-based water,
15 microbiological testing standards in a timely
16 manner, so we're going to have Dr. Jennifer
17 McEntire from United Fresh join us after my
18 comments to explain to many of you the technical
19 requirements that we're currently facing and what
20 the climate is there.

21 We wish to protect producers and
22 packers from undue economic burden related to

1 increased microbiological testing requirements.
2 Within that capacity, we want increased funding
3 for on-farm water sampling. We want more
4 research projects, financial assistance for small
5 and very small operations that have to comply as
6 well, and the development of an online produce
7 safety rule grower training available in English
8 and Spanish.

9 For many of you who have not had the
10 opportunity to sit in a chair for seven full
11 hours and go through a certification program
12 unlike any other that has been developed, it's
13 not currently available online and it's not
14 available in Spanish for anyone who has employees
15 in Spanish that are involved in your process.

16 We encourage the re-evaluation of ag
17 water testing requirements annually; so that will
18 be important as Jennifer addresses things. And
19 we also are looking to potentially establish a
20 grower stakeholder advisory group in relation to
21 the Produce Safety Rule and Preventive Controls
22 for Human Food. The important thing to

1 understand there is that Preventive Controls for
2 Human Food extends well beyond fruit and
3 vegetables. It extends to all other human foods
4 that are not currently regulated, okay?

5 Moving onto the next slide, we
6 encourage development of FSMA Procure Safety
7 Rule, Preventive Controls for Human Foods, and
8 Foreign Supplier Verification Program interactive
9 decision trees to assist entities in determining
10 which rules they must comply with and when. If
11 you guys will remember the dialogue that we had
12 of, well, it's currently under enforcement
13 discretion. I don't know how comfortable you
14 guys feel about that. Wouldn't it be nice to
15 have something that was more definitive and a
16 resource to have in your file?

17 We encourage FSMA Foreign Supplier
18 Verification Program modules focused on helping
19 distributors, wholesalers, and cross-stocking
20 facilities, and aggregation facilities to fully
21 comply. We're not going to keep the safety of
22 our American public at a priority if we don't

1 help these folks comply.

2 You guys have also remembered that we
3 spent quite a bit of time hearing from Ken
4 Petersen from the USDA Auditing Office and he
5 spoke with us about the USDA GAP Plus+ Program.
6 We invited him to speak with us on one of our
7 additional calls, and based on that additional
8 call, we decided to include more support for
9 funding and personnel, marketing, and education
10 outreach so that we can have the USDA GAP Plus+
11 Audit Program, which is GFSI technically
12 equivalent and FSMA recognized, to be more
13 readily available.

14 Let me give you an instance right now.
15 Currently, Wal-Mart will not permit, unless it's
16 its own discretion, anyone who sells more than \$2
17 million annually of any produce item the ability
18 to be USDA GAP Plus+ audited. Why? Well, it
19 says, in quote, it's not a GFSI benchmarked
20 audit, end quote.

21 And what did we learn from Ken
22 Peterson? USDA cannot be GFSI benchmarked

1 because they are not funded multi-year. So let's
2 help them get more traction and we will help
3 ourselves have a cheaper audit process that meets
4 our standards. We encourage the FDA to perform
5 more sampling, inspection, and documentation
6 review of foreign grown, packed, and processed
7 fruits and vegetables.

8 Moving onto the last slide, we
9 encourage the FDA to perform more targeted
10 Foreign Supplier Verification Program inspections
11 on produce items that have caused outbreaks in
12 the United States. Currently, according to FDA,
13 unless we're dealing with an active outbreak or
14 recall, they have to have the produce inside the
15 United States before they can to an inspection.

16 The last two are incredibly important
17 to several members of our committee. We
18 encourage the USDA to work with the FDA and the
19 CDC to hold town hall-style meetings to improve
20 understanding of growing, harvesting, packing,
21 and traceability processes prior to issuing
22 additional fruit and vegetable consumer

1 advisories.

2 As you guys will well know, we had
3 much discussion at our last meeting about the
4 millions of dollars and potential, at least,
5 terminal market disruption, and sometimes we have
6 seen long-term market disruption for entire
7 commodities, which have detrimentally affected
8 the American farmer.

9 We encourage the USDA to work with FDA
10 and CDC to develop a fresh fruit and vegetable
11 regional food safety technical expert and
12 regional growth stakeholder advisory committee
13 focused on improving and advising during the
14 consumer advisory process. As we have seen from
15 the previous consumer advisories that have been
16 issues, we have had days, weeks, and sometimes
17 months where we didn't have critical information
18 that all of us could've shared in five minutes
19 because we know the practices and we can offer
20 that advise. So I submit these for your review
21 and we're going to review them in our work brief.

22 MR. HUGHES: Perfect timing. You can

1 introduce yourself. This Jennifer from United
2 Fresh, but I'm sure she'll tell you all about
3 herself and what she does.

4 MS. MCENTIRE: Hi. Good afternoon,
5 everyone. I'm Jennifer McEntire with United
6 Fresh Produce Association. I am the VP of Food
7 Safety at United Fresh. I've been with United
8 for about three years. By way of background, I
9 am a food microbiologist. By background, I've
10 always worked in the D.C. area for almost 20
11 years for science societies, trade associations,
12 always working in the food safety states. And
13 United, obviously, are focused on fresh produce.

14 So I was asked to come here and talk
15 a little bit about water specifically. But I'll
16 say based on Kiley's comments and the
17 recommendations she just shared, I'm happy to
18 tackle really any subject. It's pretty fun for
19 me to talk about food safety regulations. This
20 is my forward button? No? You got it.

21 (Simultaneous speaking.)

22 MS. MCENTIRE: All right. So a few

1 key points that I want to lead off with. The
2 first is, there's no -- I think there's no
3 dispute that water needs to be appropriate for
4 its use when we're talking about the produce of
5 fresh produce, whether we're talking about
6 irrigation water, frost protection, through
7 packing, processing, even washing your hands,
8 it's clear that water needs to be of adequate
9 quality.

10 The regulatory requirements are on
11 pause, so this is a part of the Produce Safety
12 Rule, and I'll go into that a little bit more
13 what the current requirements on the books are,
14 and the reasons, in my opinion, why they're
15 appropriately on pause right now and why they do
16 need to be reconsidered.

17 From my perspective in working with
18 our membership, I see -- I've observed a shift in
19 mindset around how do we manage water. And I
20 know Kiley mentioned in a couple of her bullets
21 around testing of water. Well, maybe we just
22 need to take a step back and re-evaluate if

1 testing is even the answer. So this was started
2 -- I would say an initial conversation within the
3 Leafy Greens industry, especially in California
4 and Arizona, based on a couple of outbreaks that
5 clearly had something to do with water. When you
6 find that exact packaging in the water, you can't
7 just ignore that.

8 So we've seen movement within
9 California, specifically through the California
10 Leafy Greens Marketing Association, a way that
11 they're taking a different approach to water.
12 And the rest of our membership are looking at
13 other commodities. They're paying attention and
14 wondering, how is this going to impact them
15 knowing that buyers hear that California romaine
16 producers are doing one thing. Is everyone going
17 to expect that now apples and citrus and other
18 commodities should also follow suit.

19 And in some ways, I think maybe some
20 aspects are appropriate. Others are not. And so
21 I think as we talk to FDA, as we think about what
22 should be a regulatory requirement, we need to be

1 pretty cautious in our evaluation of what's going
2 on and the scientific support for these actions.

3 So what's in the rule right now? So
4 I pulled down just a little snippet. The obvious
5 one that all ag water must be safe and it's
6 adequate sanitary quality for its intended use.
7 But what does that mean and how do you verify
8 that? How do you prove that? Especially, when
9 we're considering that it's not just production
10 of fresh produce here in the United States, but
11 the production of fresh produce in other parts of
12 the world that's going to be important. So how
13 can we make sure that it's clear what this means?
14 And that's where this rub.

15 So within the rule right now, there
16 are very, I'd say, pretty detailed requirements.
17 Very specific requirements around the microbial
18 limits for generic E. coli that's used as a core
19 indicator organism. So it gets pretty
20 complicated. There's this microbial water
21 quality profile that's four years' worth of data
22 that kind of keeps on building upon itself.

1 There's a geometric mean and a number established
2 there of 126. Where'd you come up with -- that
3 seems awfully specific; 126. And then a
4 statistical threshold value recognizing that
5 there's going to be some flux from time to time.

6 There's also something called a die-
7 off provision that if your water doesn't meet
8 these microbial limits that there is kind of an
9 option to us time as a factor, up to a few days,
10 to get where -- assumed that those limits are
11 going to go down just to due to natural die-off.

12 That is on the pre-harvest side, when
13 we're talking about water that's going to be used
14 during harvest and then following harvest for
15 washing produce, processing. That water needs to
16 have a different level where there's no E. colis
17 detected, so cleaner level, basically.

18 So the challenge is with the rule as
19 written, really, one is around math, so how do we
20 get this geometric mean and how do we find this
21 statistical threshold value. And there are
22 little calculators that a couple of academics

1 have developed to help people input their test
2 numbers and make sure that they're within the
3 range.

4 There's also the logistics, so you
5 have to do this testing for each water source.
6 Well, what does that mean? And what -- you're
7 using a water source that somebody else is also
8 using, do you both have to test it? And what if
9 you get different numbers? So, you know, there's
10 some logistical challenges. Initially, when the
11 rule was put out, the method was pretty
12 prescribed. We were successful in working with
13 FDA to allow some additional methods, additional
14 options to develop these numbers.

15 But to me, as a microbiologist, the
16 question really needs to be, is this even the
17 right standard. So even if growers could do
18 these tests, understood what one water source
19 meant, had the math down, had the method down,
20 are we even asking the right question here? Is
21 this the right standard?

22 I'm not convinced that it is because

1 we know that generic E. coli is not a very good
2 indicator. We also know that in the Yuma growing
3 region that, when the canal water was tested,
4 that water met the FDA requirements with --
5 passed with flying colors. And yet, the outbreak
6 strain was found there.

7 So FDA recognizes this, too. I think
8 they've been beat up a good bit over ag water.
9 And that's -- these are the reasons why this part
10 of the rule, Subpart E, is now on pause. So FDA
11 needs time to compile and interpret the science.
12 I would suggest that we can keep developing the
13 science. I'm not sure that we'll get any closer
14 to a single answer that works for all commodities
15 in all growing regions and considers all
16 different types of growing operations and all
17 different types of water uses.

18 Again, this part of the rule is pretty
19 prescriptive and I wouldn't be surprised if rule
20 making is required. But rule making takes a lot
21 of time and we're already kind of behind. And I
22 feel like I'm feeling the criticism when the

1 press calls me and says, oh, there's yet another
2 outbreak and yet again we can point to water. So
3 why is the industry pushing back on this part of
4 the rule? And it becomes difficult to explain,
5 so I think we'd all like to see -- I know I would
6 like to see this part of the rule finalized, but
7 in a way that makes good sense and is
8 appropriate.

9 So the Produce Safety Alliance, with
10 support from the FDA, about a year and a half ago
11 convened a water summit. It was quite an
12 experience with a lot of people there in
13 Cincinnati, as well as online at different
14 satellite locations. So it was very robust
15 discussion where many of these issues were
16 brought to light, went into some detail.

17 I don't know that -- again, that
18 anybody had, like, some solution that would work
19 in all circumstances. So it was a great start to
20 the conversation. If you're interested, there is
21 a link there that you can read the full report.

22 So now fast forward a little bit to

1 this outbreak in Yuma, Arizona, and the filing of
2 that shiga toxin-producing E. coli in the canal
3 water, and the leafy greens industry then, you
4 know, just a few months later around
5 Thanksgiving, sort of a similar thing happened in
6 California where the outbreak -- that outbreak
7 strain, a different one, was found in sediment of
8 a reservoir -- a water reservoir.

9 So what to do? And the leafy greens
10 industry maybe, in some ways, threw in the white
11 towel a little bit and said, we just have to
12 assume that surface water is contaminated. Maybe
13 testing is not the answer. Maybe we can't test
14 our way to safety. Maybe we just need to flip it
15 and recognize that there are some types of water
16 sources that are inherently riskier. Other types
17 of water sources that aren't, but the other
18 factors come into play. So it's not just the
19 source, but how is that water going to be stored,
20 how is that water going to be conveyed, and then
21 what, ultimately, is the use of that water.

22 So if we're talking about overhead

1 irrigation, that's very different from drip
2 irrigation. And then furrow irrigation is
3 arguably maybe a little somewhere in between.
4 But is the water touching the crop? Is the crop
5 getting saturated with this water? Is water
6 contact incidental? These are all factors that
7 should be considered.

8 So the California LGMA has now
9 finalized their water metric. If you're not
10 familiar with the California LGMA, I'm happy to
11 explain that structure, but it is organized under
12 the State of California. It's voluntary, but
13 it's not that voluntary if you want to have a
14 market share.

15 So within California, this is now the
16 law of the land for production in California.
17 And the question has been, well, is Arizona going
18 to follow suit now that Arizona has a leafy
19 greens marketing agreement, too? But they're use
20 of water and their sources of water a little bit
21 different, so they're still working on that. And
22 then the rest of the industry has said, well, is

1 this now going to be imposed upon us? And should
2 it be imposed upon us?

3 United Fresh's secretary for the
4 harmonized standard -- the harmonized standard is
5 the standard that the USDA HGAP Plus+ is built
6 off of -- and there is a water requirement within
7 the harmonized as there are water requirements in
8 most GAP audits. And we learned from our -- the
9 other organizations that we've worked with that
10 understanding how to assess the risk of ag water
11 was the most challenging part, or the part that
12 had the most variation and interpretation amongst
13 growers.

14 So independently and prior to these
15 big outbreaks, we had started down the path of
16 trying to put some guidance together for growers
17 on, what does it mean to assess the risk of your
18 agricultural water? And really we came up with
19 basically the same thing that the California LGMA
20 had come up with.

21 Although we recognize that different
22 crops are different, some are stored after

1 harvest. There maybe be some die-off there, the
2 use of water is a little bit different, but we
3 took this similar risk-based approach in
4 determining what quality of water is appropriate
5 for its intended use. And there's a detailed
6 hazard mitigation table that accompanies that.

7 Currently, the Center for Produce
8 Safety, which is a -- which funds produce safety
9 research, is actively soliciting research
10 proposals from five different regions of the
11 United States and within each region requiring
12 that there be five sites per region that would
13 also evaluate water issues, especially around
14 water treatment.

15 So if we're going to be treating
16 water, how can we do it in a way that is
17 effective, that is validated, that is -- that
18 recognizes the environmental impact that one may
19 have. You know, we don't want to have unintended
20 consequences here in haphazardly treating water.
21 And how does it apply to more than just leafy
22 greens? So that work is -- hopefully, will be

1 starting soon. The proposals are still out being
2 requested.

3 So in terms of what we need, I think
4 we do need more science, but we can't wait for
5 the science. We need to communicate what we
6 already know. So, you know, people have been
7 collecting data. Individual growers have their
8 water quality tests, have their data, and so this
9 needs to be part of the discussion too, coming
10 forward and sharing that information with the
11 agencies as FDA is considering how to adapt the
12 rule.

13 We'll continue to collaborate. We've
14 got a review coming up in just a couple of weeks
15 where, within our food safety group, we'll be
16 talking about, if FDA came to United today and
17 said, well, what do you think we should put in
18 the rule? We want to have an answer, and so
19 we're working on that, again, following a risk-
20 based, science-based approach, recognizing the
21 science is incomplete, but will probably always
22 be incomplete.

1 So as members ask -- as growers ask,
2 well, what should I do now given that the rule is
3 on pause, it's do what you've been doing and do
4 the right thing. So test your water, make sure
5 that the water is appropriate for use if you're
6 not treating that water, but go ahead and don't
7 just do nothing.

8 So I'll stop there. I'm happy to take
9 any questions on either the water topic or,
10 really, I feel pretty comfortable talking about
11 anything that Kiley mentioned as well.

12 MR. BROWN: Going back to Kiley's
13 comment, this is a critical issue, getting major
14 retailers to accept the USDA GAP Plus+. I mean,
15 right now, especially this year where we had a
16 horrible transition from Georgia to Michigan, you
17 know, these smaller growers, the under the 2
18 million in sales growers, they're not
19 incentivized to get GFSI, so we can't buy from
20 them as a larger grower/shipper/packer.

21 You know, from the large retailers, we
22 can get an exception, but then they want you to

1 get paperwork and a commitment from the smaller
2 growers that they're going to go up to the next
3 level, but these guys aren't going to do it. And
4 I think that if we could really focus on getting
5 the retailers to accept the USDA Harmonized GAP
6 Plus+ would be a major win because this product,
7 you know, it's safe product.

8 MS. MCENTIRE: Yes. Which, you know,
9 as Kiley said, even the USDA Harmonized GAP Plus
10 is recognized by GFSI, so retailers should be --
11 should accept it. Now, it's not truly
12 benchmarked because it can't be the structure
13 that is through government. You cannot -- it's
14 ineligible for true bench marking. But it has
15 been recognized. On the technical side, it has
16 been recognized by GFSI.

17 So this is really frustrating to me to
18 hear that the buyers continue to deny market
19 access when the product has -- and the production
20 processes have been demonstrated to be in
21 accordance with the Harmonized. And so --

22 MR. BROWN: The bigger problem is that

1 they have local programs and they will accept
2 that product from the small growers in a local,
3 regional area. But for us, at our volume, we
4 can't buy that product from that same grower and
5 fit it into our DCs in a different area. I mean,
6 it's just ridiculous.

7 MS. MCENTIRE: It is. I mean, it's
8 not logical, right? So I do have one member of
9 my team, Dr. Emily Griep, who is focused on the
10 Harmonized. And a big part of what she's doing
11 is reaching out to the buying community, to the
12 big buyers, to try to educate them about
13 Harmonized, whether it's through USDA or through
14 one of the other audit organizations, to invite
15 them to participate in a process as we update the
16 Harmonized so that they see the rigor, the -- you
17 know, the science behind the standard. And
18 ideally, our objective is to increase acceptance
19 of the Harmonized.

20 MR. BROWN: Thank you.

21 CHAIR CARR: Anybody else?

22 MS. HARPER-LARSEN: Number one, thank

1 you very much for presenting. You did mention
2 the die-off rate, and at CPS there was some
3 science that was presented that the die-off rate
4 may not actually be accomplishing what is written
5 into the regulation?

6 MS. MCENTIRE: Yes. And we have this
7 odd situation where, at the equivalent, we go
8 four days to achieve your data. I kind of
9 skipped over it, but it was on the slide that was
10 in the California LGMA that -- for overhead water
11 use that it is 21 days. So that's quite a
12 difference between, you know, four days being
13 adequate, saying, no, it has to be for -- at
14 least for leafy greens, has to be 21 days.

15 This is an area where I suspect we may
16 have differences for different commodities, that
17 there are, in fact, different die-off rates
18 depending on the density you're planting, the --
19 yeah, it's really about the amount of UV light
20 that's contacting the microorganism on that
21 surface.

22 So I think this is an area where we

1 can make improvements, but there's adequate data
2 not just those presented at CPS, but there's been
3 some additional research that shows, under many
4 circumstances, where these may not be protective.
5 So I would be very cautious about relying on
6 those four days. It's not to say 21 is perfect,
7 even for romaine. We simply don't know. But it
8 was -- felt that that was a prudent timeframe to
9 use for leafy greens.

10 MS. HARPER-LARSEN: Since we see that
11 leafy greens and their conversation of what they
12 do tends to work its way through the rest of the
13 industry, what do you see coming down the pipe
14 for us as many of us approach our planting
15 season?

16 MS. MCENTIRE: First, I think that
17 it's important to communicate -- and, you know,
18 this is a responsibility that I'll take on, to
19 communicate to bios that not all products are
20 leafy greens, that the risk is different
21 depending on the product and, you know, several
22 aspects and attributes of that commodity.

1 So I would not want to see someone
2 just take the California LGMA water metrics and
3 replace leafy greens with fresh produce. I don't
4 think that would be appropriate. But the concept
5 of assessing the risk of your water and being
6 able to defend -- particularly, if you're using
7 surface water to be able to defend why that water
8 is not risky. I think that that's where growers
9 should be very mindful of how they're going to
10 make the case because it's obvious that testing
11 for generic E. coli is not the way to measure or
12 assess the risk of that water when it comes to
13 public health associated with the consumption of
14 that product.

15 MS. HARPER-LARSEN: Can you address
16 some of our bullet points and maybe give us --
17 since she's not going to be available to us
18 tomorrow, United's opinion of some of those? And
19 --

20 MS. MCENTIRE: Sure. So I left my
21 notes at my seat, but I do remember a few of my
22 comments. One is that I would be very cautious

1 about the perception that there would be an
2 unfair expectation of foreign production versus
3 domestic. So there should be -- absolutely
4 should be a level playing field, and I think that
5 we need to urge the agencies to ensure that,
6 indeed, there is.

7 So even as we're talking about water
8 or other aspects of production, that what U.S.
9 producers -- is standard that U.S. producers
10 need, that we have a way of verifying that that's
11 being met for all types of fresh produce that's
12 going to be coming into the United States. But I
13 don't think that we should feel that we need to
14 only inspect farm produce, and that domestic
15 produce is, you know, always going to be okay
16 because, clearly, the evidence supports that we
17 have issues domestically as well. So I think
18 that having -- you know, just maybe wordsmithing
19 a little bit to make sure that that's clear is
20 one area I have good feedback.

21 I was surprised to see mention of the
22 Prevent Controls Rule because that is for

1 facilities that are required to register with FDA
2 -- oh, thank you. Yeah, all my notes. And I
3 will leave them with you. The Preventive
4 Controls Rule only applies to facilities required
5 to register with FDA, and it's very clear that
6 farms are not required to register with FDA.

7 As you mentioned, the Preventive
8 Controls Rule covers breakfast cereal and
9 crackers and, you know, like, everything in the
10 grocery store that's not regulated by USDA and
11 FSIS with very few FDA exceptions is covered
12 under Preventive Control. So I don't think you
13 want to get lost down the Preventive Controls
14 track. I think stay focused on the Produce
15 Safety Rule is where I would encourage the group
16 to focus.

17 On working with the agencies, with FDA
18 and CDC, with our advisories, this is something
19 that United is committed to because it's just a
20 whole lot of work when you're the one fielding
21 hundreds of calls and texts and emails. It's
22 like, oh, I need -- I have a real motivation to

1 make sure that things like this don't happen
2 again.

3 I can say that we've made progress.
4 I feel -- I see that we've made progress in
5 working with the agencies and having better
6 communication and better dialogue. There are
7 some legal barriers and there are some, just,
8 situational kinds of barriers.

9 So, for example, the idea of having a
10 fresh fruit and vegetable regional food safety
11 technical expert and regional grower/stakeholder
12 advisory committee to be able to work with the
13 agencies, well, what if a member of that
14 committee is the one that's -- that maybe we
15 don't know it up-front, but later it's found out
16 that they were involved in this situation, you
17 know? How do you prevent that sort of conflict
18 of interest when the reason that an advisory is
19 issued is because all the facts aren't known yet?

20 So there are some real challenges in
21 establishing those types of relationships and in
22 establishing those boards or committees or groups

1 of experts that the agencies can tap in the event
2 of an outbreak investigation. Nevertheless, I
3 think that there are things that we can do that
4 kind of get at that.

5 And so myself and Dr. Bob Whitaker of
6 PMA, who I've worked very closely with, we have a
7 proposal into both FDA Frank Yiannas and CDC Amy
8 M. Williams about structure through with
9 collaboration could be improved. And both before
10 as well as during, and then even after an
11 outbreak to do, sort of, that hotwash, that
12 debrief, on a situation.

13 So I think that we're all kind of
14 seeing things the same way, that what's happening
15 now is not ideal, not where we want to be, and
16 all recognize the need to collaborate. But I
17 think exactly how we do that -- there are some
18 legitimate issues that need to be overcome.

19 This one -- my main point's really the
20 foreign piece, the preventive controls piece, the
21 working with the agencies, and then even some of
22 the language around the FSVP. The FSVP

1 inspections are not of produce. They're not of
2 product, any product. It's the inspection of the
3 importer and the importer's records. So that
4 produce can still be inspected, but it would be
5 inspected under the Produce Safety Rule, and that
6 would be done in-country.

7 So FDA does have staff around the
8 world and will perform on-farm inspections for
9 fresh produce that is going to enter the United
10 States, just, it's not under FSVP. FSVP is for
11 the importer. And just today, FDA came out with
12 their announcement of how they have issued a
13 warning letter, which, you know, is one of the
14 bigger sticks that FDA has to work with: a
15 warning letter against an importer.

16 It wasn't related to fresh produce.
17 It was related to a tahini product. But there is
18 a new type of import alert that FDA now has at
19 its disposal that will detain product at the
20 border if the importer is known not to comply
21 with FSVP. And there's no way that you can test
22 your way out of it, so it's unlike other import

1 alerts. I found that to be very interesting and
2 potentially quite powerful. So that's my
3 feedback on your bullets.

4 MS. HARPER-LARSEN: Thank you.

5 CHAIR CARR: Any other questions?

6 MR. SIEVERT: I have a question.

7 MS. MCENTIRE: Sure.

8 MR. SIEVERT: So have we made enough
9 progress since the last two advisories to where,
10 if something happens again, we will be able to
11 get enough resources together to do the actual
12 recall versus the advisories? Is it that much --
13 but I'm sure there's been a lot of dialogue about
14 how we execute that.

15 MS. MCENTIRE: So no matter how I
16 think about it, I think I come up with an answer
17 of no. And in part, this is because one of the -
18 - well, the reason that an advisory is issued is
19 because FDA can't trace back to determine who is
20 producing that contaminated product. So there's
21 a fundamental traceability issue that is not
22 unique to fresh produce, but I think that it is -

1 - I think traceability -- because of the
2 perishability of the product, we rely more
3 heavily upon traceability, upon records that
4 exist.

5 When I'm talking about traceability,
6 I'm not talking about what's printed on a package
7 or the sticker that's on a case. I'm talking
8 about the records that exist in systems.
9 Sometimes they're on clipboards or file cabinets
10 or in an ERP system or a warehouse management
11 system.

12 But trying to stitch all these bits
13 and pieces of information, starting with, like,
14 my shopper card data at the grocery store, what
15 did I buy? And when we use something like a
16 generic PLU. All that I bought is a head of
17 cauliflower. Even if it's branded. You know, if
18 you were using the generic PLU, that information
19 is then lost and it's, well, hey, grocery store,
20 whose cauliflower were you selling at this rough
21 timeframe? And trying to go back from different
22 parts of the country and figure out who's that

1 common cauliflower grower.

2 It's immensely complicated and the FDA
3 and CDC are not -- they are no longer willing to
4 spend however many weeks or months trying to
5 collect this information while people continue to
6 get sick. They feel that they know that it's
7 cauliflower, they're going to make a -- put out
8 an advisory to stop the consumption of
9 cauliflower until they can figure out whose it
10 is, if they can even figure it out.

11 That's one of the reasons that I
12 think, as an industry, we need -- that's an area
13 where we can do better. I think on the
14 contamination side, how do we prevent
15 contamination from occurring in the first place.
16 If we don't have outbreaks, then, you know, we
17 don't find ourselves in this situation. That's
18 another area where we can do better.

19 If we do have outbreaks, and
20 especially if traceability is poor, that's an
21 area where I do see improved communication. The
22 nature of the communications I get -- the heads

1 up that I get from FDA and CDC -- more so from
2 CDC because they're non-regulatory, so it's a
3 little easier to have a conversation with them.
4 I have seen improvements there, but at that
5 point, in my opinion, it's kind of already too
6 late. Does that answer your question? Is that
7 the answer you were expecting?

8 MR. SIEVERT: Not the answer I wanted,
9 but, yeah, I understand.

10 MS. HARPER-LARSEN: Talk about the
11 collaborative idea that you have already brought
12 to FDA and CDC. Is that something that you can
13 send over to us for our work group to look at so
14 that we could consider your thought process as
15 well as our own?

16 MS. MCENTIRE: Yeah. I don't see why
17 not.

18 MS. HARPER-LARSEN: All right.

19 MS. MCENTIRE: You know, once you send
20 it off to FDA and CDC, it's FOIA-able anyway, so
21 it's out there. It was done under the banner of
22 the Romaine Task Force, but it -- that case in

1 particular is definitely not unique to romaine.
2 I think that it's applicable, really, to any type
3 of food, any type of situation.

4 MS. HARPER-LARSEN: And do you know
5 where we stand, really, with narrowing down
6 further in Yuma, in particular, right now, beyond
7 the last report that came out --

8 MS. MCENTIRE: Of the --

9 MS. HARPER-LARSEN: -- number of
10 fields? Like, have they been able to actually go
11 --

12 MS. MCENTIRE: I think the records are
13 what they are. And so from the traceability
14 standpoint, you know, it sent FDA and the state
15 off in -- you know, hunting around this wide
16 geography of possibilities. We can be reasonable
17 confident that every single one of those
18 possibilities isn't it, but there's way too much
19 noise in the traceability records and not the
20 clear signal. So unless testing found a
21 positive, I think we're kind of stuck with what
22 the trace-back investigation showed.

1 MR. WILKINS: Going back to his
2 question, I understand why you said no about the
3 advisory inspect. In '07, '08, '09, somewhere in
4 there, there was an advisory not to eat tomatoes
5 and it did not end up being a tomato.

6 MS. MCENTIRE: Right.

7 MR. WILKINS: Do we feel that we've at
8 least -- can narrow it down to the correct
9 commodity?

10 MS. MCENTIRE: You know, that's
11 usually the first question that I'm asked when
12 there's a hint of an outbreak. How can you be
13 sure that it's romaine or papayas or basil or cut
14 melon or whatever piece, maybe -- how can they be
15 sure? And I think the -- especially after the
16 tomato issue, CDC and FDA, they don't want to be
17 wrong.

18 So I think they've learned their
19 lesson, and they usually share the
20 epidemiological data that supports their
21 assertion that it is whatever product they say it
22 is. But we were all relying on people's memories

1 about what they ate, and you are trying to
2 compare that to, you know, for this whole
3 population, what did they eat that was different
4 from what we would've expected people to have
5 eaten.

6 And the what we would've expected
7 people to have eaten data are imperfect and not
8 necessarily current, but they are in the process
9 of being updated. CDC is working on that. And I
10 think that's an area where you may want to
11 explore if there is an opportunity to help CDC
12 get a sense of, what do people eat today? You
13 know, consumption habits have changed. There are
14 different products that are popular, so looking
15 at data that are a decade old and saying, well,
16 you know, 67 percent of people in 2008, I think
17 this data may not be -- you know, it doesn't help
18 us.

19 So there are still challenges on the
20 epi side, making sure that we do have the right
21 product. But at least in the past several
22 outbreaks, the data have been pretty compelling.

1 MR. WILKINS: So just identify that
2 you know the commodity and you know the source.
3 And they're not certified under the basic, like -
4 -- is there any heat being thrown back on that
5 retailer that they did not buy the basic food
6 safety requirements that's recommended?

7 MS. MCENTIRE: From a regulatory
8 standpoint, I have not seen that happen. But
9 with that said, something like Foreign Supplier
10 Verification Program or the supply chain program
11 under Preventive Controls is quite new. So there
12 wasn't really an opportunity -- FDA didn't have
13 the ability to enforce that against the buyer,
14 you know, for buying from someone who was -- had
15 substandard practices. The enforcement has
16 always been against the person who had
17 substandard practices. That's on the regulatory
18 side.

19 On the civil litigation, the lawsuit
20 side, then, you know, lawyers will go after
21 anybody in the supply chain who has money, and
22 usually that's not the grower. Usually, it is

1 somebody later in the supply chain. So I think
2 retailers feel -- should increasingly feel that
3 financial pressure to make sure that they are
4 buying from reputable suppliers and should have
5 that motivation.

6 MR. WILKINS: Are we missing that in
7 a bullet somewhere? You know, that the -- you
8 know, I work for a family-owned company of retail
9 stores, and the FDA advised that we pull it, no
10 questions asked, okay? And I would say a
11 majority of retailers are going to do that. So
12 now you're falling back to retailers that
13 possibly did it right, the producers that did it
14 right. And I think there's a -- there are always
15 people that are cutting corners and one bad apple
16 --

17 (Simultaneous speaking.)

18 MS. MCENTIRE: Right.

19 MR. WILKINS: -- the whole barrel.

20 MS. MCENTIRE: Right.

21 MR. WILKINS: And I just think that,
22 you know, if we find out the source, and that was

1 bought without the minimum food safety standards,
2 that that's one more step. I think if retailers
3 -- if we're doing it right, we ought to be --
4 have some protection from those that don't.

5 MS. MCENTIRE: And, you know, the
6 majority of people within the industry are those
7 good players. It is, kind of -- usually it seems
8 to be a bad apple type of situation, and it
9 really ticks off the people who are making those
10 investments in food safety, who are doing the
11 right thing. And they want some sort of credit
12 for that.

13 And at this point in time, it's more
14 difficult to figure out how to clear them, how to
15 communicate that they're not involved. That even
16 if we don't know who is involved, that we can be
17 reasonably certain that this population is not
18 involved. There's not a good mechanism right now
19 to do that.

20 I did observe, though, that the Food
21 Marketing Institute, which is the trade
22 association that represents the retailers, they

1 put out their recommendations to their members --
2 to the retail members on leafy greens. And one
3 of the recommendations is to only purchase -- if
4 you're purchasing leafy greens from California or
5 Arizona, to only purchase from those who are
6 following the LGMA standards, and were audited to
7 the LGMA standards.

8 So, again, it's a voluntary program.
9 It does cover, like, 99 percent of production,
10 but there's a lot of production out there. So
11 that 1 percent is -- you know, still somebody is
12 buying it. So determining how we ensure that
13 it's communicated through to procurement, you
14 know, that suppliers need to provide reasonable
15 demonstration of food safety is critically
16 important.

17 MS. HARPER-LARSEN: And I think maybe
18 what we see in food safety is a different sort of
19 in vernacular, okay? But when we're talking
20 about retailers or buyers in particular, we're
21 talking about internal requirements. And what
22 we're sort of looking at with our bullet points

1 is legal minimums. So audits are not a
2 requirement legally as it stands right now, so
3 they -- that goes into a business decision of the
4 buyer and of the retailer.

5 So when we're talking about
6 establishing a level playing field, bringing
7 everybody up to minimum produce safety rule
8 standards, both domestically and foreign, is
9 where we, as a grower community, have to work to
10 do that, okay? And then establishing with brands
11 that we won't allow purchases beyond established
12 minimums, so -- okay?

13 And let's talk about this, okay?
14 Deviating from your own internal specification,
15 okay? That's incredibly important as well. Or
16 maybe it's from a commodity standpoint as well as
17 our subgroup. And I know our subgroup was, like,
18 willing to look at anything within our
19 recommendations. We just have to make sure that
20 we're talking, sort of, the same language.

21 A audit requirement from a retailer
22 versus a legal requirement from a regulatory

1 body. And unfortunately, they are two different
2 animals. I'd love to see the audit requirements.
3 Makes it a whole lot more simple, and it gives us
4 metrics. Defined metrics that we have historical
5 on. But audited, unfortunately, does not mean
6 safe.

7 MR. WILKINS: Yes. And you got the
8 whole local piece of it.

9 MS. HARPER-LARSEN: That's correct.

10 MR. SIEVERT: You got the outside
11 purchasing piece, also.

12 MS. HARPER-LARSEN: That's correct.

13 MR. SIEVERT: So you don't have enough
14 product and you go buy it from somebody else, and
15 you don't know for sure. You'd think it is --

16 MS. HARPER-LARSEN: And you buy it
17 from an audited facility --

18 (Simultaneous speaking.)

19 MR. SIEVERT: -- or whatever. You
20 know what I mean?

21 MS. HARPER-LARSEN: And I think that's
22 what we maybe need to look at as an industry, and

1 that's probably beyond the capacity of our
2 subcommittee and of this committee, but our trade
3 organizations and coming up to a standard of
4 behavior where we have a supply chain that is as
5 infallible, okay, as we ultimately strive to be.
6 That when we have the opportunity to buy and make
7 a dollar, that we make sure that it's not at the
8 compromisation of an entire commodity group.

9 MR. SIEVERT: I don't look at it as --
10 I'm looking at it more from if Dole doesn't have
11 enough product and they have to go buy from
12 somebody that they know exactly what they bought.
13 I guess I'm looking at it more that way. I think
14 you have a -- we have so many rules around what
15 we can and can't buy to protect our members.
16 There's nobody out there making that unsafe
17 decision to buy on the outside to save the dollar
18 from somebody that we don't know we're doing
19 business with.

20 MR. WILKINS: You just made some
21 audibles that you're not 100 percent sure that,
22 like in Dole's case, that they did what they --

1 (Simultaneous speaking.)

2 MR. SIEVERT: No. And I know. Any
3 XYZ Company --

4 (Simultaneous speaking.)

5 MR. SIEVERT: Let me correct that.
6 That's XYZ Company. I'm not saying Dole or GNA
7 or anybody. But my point is, that companies are
8 out there buying to fulfil orders, and it's not
9 all their product. And if they grow 95 percent
10 of their product, to me, they're buying 100
11 percent of their product because that's what I --
12 we've had conversations today about people buying
13 product from other people to get it into -- to
14 handle year-round capacity, right?

15 So it's not a -- I think it happens
16 out there. I think that's where we don't know --
17 I'm assuming, because I think the one romaine
18 advisory was -- most of the sicknesses came from
19 food service. Is that correct? The first one?
20 Or was it the second one?

21 MS. MCENTIRE: The second one. It is
22 easier to have a cluster of illnesses that you

1 can trace from food service. It's kind of harder
2 to pick up through retail. It's kind of easier
3 to tell did everybody all eat in the same
4 whatever restaurant. So there may be a little
5 bit of bias -- but there can also be different
6 supply chain channels and so --

7 MR. SIEVERT: Right.

8 MS. MCENTIRE: -- that can be helpful
9 in trying to tease apart what's happening.

10 MS. HARPER-LARSEN: But, Tommy, if you
11 get something that you feel like our subgroup
12 needs to talk about, I'd hate to pull you away
13 from trade, but come over and let's talk about it
14 because --

15 (Simultaneous speaking.)

16 MR. WILKINS: I just know that in both
17 of our instance, we've thrown away an immense
18 amount of food and it's warranted. I mean, if
19 there's an advisory that you can get sick from
20 cauliflower, we have to pull it. There's no --

21 MS. HARPER-LARSEN: Right.

22 MR. WILKINS: That's not the question.

1 But for those that try day in and day out to do
2 their job with the rules that we are, I guess I
3 don't know that we police the bad eggs. I don't
4 know that we can. But it's just an -- it's
5 expensive not to pull it from the shelves, but
6 it's expensive to pull it from the shelves.

7 CHAIR CARR: Anything else?

8 MR. WILKINS: Thank you.

9 CHAIR CARR: Thank you.

10 MS. MCENTIRE: Thank you.

11 CHAIR CARR: Darrell, do we have any
12 housekeeping?

13 MR. HUGHES: Yes. Just briefly talk
14 about tomorrow. So we'll kick the day off, going
15 into work groups and refining recommendations,
16 position statements. I think the overall goal is
17 to pinpoint which ones need work and try to work
18 on them collectively within the work groups, and
19 then come together and then Chalmers will have
20 like what we did today with each of the leads,
21 present the status.

22 If there are any recommendations that

1 you think are good to go, let's at least mark
2 those off and then put them before the full
3 committee so that we make sure that we're all on
4 board. Like, okay, the work group says XYZ
5 recommendation. We don't think it needs any
6 changes. I think it's a good idea to make sure
7 that the full committee is on board. Does that
8 make sense?

9 And we can do that for any
10 recommendations that any work group thinks that
11 they're solid on. Any recommendation that needs
12 work, obviously, we'll work on that in committee
13 -- I mean, within your subcommittee work groups,
14 and then you'd come back and give an update on
15 where you think you want to go, get some insights
16 from your members. And then even beyond that,
17 work over the next few months just making them
18 what you all want them to be.

19 CHAIR CARR: So let me expand on it a
20 little bit more. So the general thought is if we
21 come back tomorrow, we get together, break into
22 our work groups for about an hour. Some people

1 may already have their work done that they may
2 have caused some work to be done. Then come
3 back, we can get 45 minutes for each working
4 group to talk. And if we can get to a consensus
5 place within that 45 minutes, we can vote on and
6 approve it. If we can't get to a consensus
7 place, we go to the next group.

8 And if somehow we're running ahead of
9 schedule on one group or the other and we got
10 time at the end, we can then come back to the
11 other group. Otherwise, if we don't get there in
12 that 45 minutes, that means we're going to be
13 working with this after this committee meeting,
14 being on conference calls and emails and stuff
15 like that.

16 If that's acceptable to everybody,
17 knowing each topic has got a lot of different
18 variables to it, deciding an allocation of time
19 has to be the order of the day; otherwise this
20 work could dominate your whole day and we
21 wouldn't get anywhere else. So if that works for
22 everybody, then we will do that and come back.

1 And I don't know how we're going to put it on the
2 board if we got new ones, so.

3 MR. HUGHES: Yes. So what I'm
4 thinking is each lead, if you have your -- do you
5 have your laptops here?

6 I've got an adaptor. I'll bring my
7 adaptor, we can just swap out laptops because I
8 don't want you to waste time emailing them to me
9 and then they get lost in the cloud somewhere --

10 CHAIR CARR: Some may be more
11 converse, some may be easier to agree to, some
12 may really have, you know, more in-depth
13 conversations, or they -- I do want to give
14 everybody the time to share their opinions on all
15 the different working groups, so.

16 MR. WILKINS: Are those PDF files
17 you've sent us or can we do some doctoring on
18 them?

19 MS. HARPER-LARSEN: On the
20 presentations.

21 MR. WILKINS: Yes.

22 MR. HUGHES: Yes.

1 MS. HARPER-LARSEN: They're PPTXs,
2 aren't they?

3 MR. HUGHES: Yes. They're PPTXs, yes.
4 You can update them from there, yes. Do you --

5 MS. HARPER-LARSEN: Can we do a
6 subcommittee consent agenda, like, if we come
7 together, we can go ahead and just say, we
8 consent. We have a consent agenda for this
9 entire part of the presentation with these
10 particular amendments?

11 CHAIR CARR: Yes, but it will be open
12 to the whole group to not be a consensus or to
13 offer suggestions or anything like that.

14 MR. HUGHES: Right. But think what
15 she's saying is, like, if the Food Safety
16 Subcommittee or work group says, we agree to move
17 all of these forward to the full committee, that
18 can happen in one move. And then from there,
19 it's up to the full committee to assess each one
20 and determine whether to not you, as a unified
21 body, wants to accept it or ask for changes or
22 whatnot.

1 MS. HARPER-LARSEN: And we can do that
2 with some modifications that we've already made
3 as long as we read them aloud and present them as
4 one --

5 (Simultaneous speaking.)

6 MR. HUGHES: Right. Yeah, yeah, yeah.

7 MS. HARPER-LARSEN: Yes?

8 CHAIR CARR: So let me back up on
9 that. Would you be able to provide the language
10 -- the change language?

11 MS. HARPER-LARSEN: Yes.

12 CHAIR CARR: Yes? Okay. As long as
13 you --

14 MR. HUGHES: Right. Yes.

15 MR. SMITH: What constitutes
16 consensus? 100 percent? 90 percent? What's the
17 threshold --

18 (Simultaneous speaking.)

19 MR. HUGHES: Where's my book? Where's
20 my Roberts Rules of Order?

21 MS. HARPER-LARSEN: Is it a -- are we
22 66 and two-thirds? Are we simple majority? Is

1 it a all yay or it's an all nay?

2 MR. HUGHES: I would say simple
3 majority.

4 MS. HARPER-LARSEN: Okay.

5 MR. HUGHES: Oh, yes, that's right.
6 We do have a policy statement. I forgot I
7 created that.

8 (Laughter.)

9 (Simultaneous speaking.)

10 MR. HUGHES: I'll provide that for
11 everyone tomorrow because I have to do a little
12 with it. But we'll make sure that that's clear
13 at the top of the meeting tomorrow.

14 CHAIR CARR: All right. So I do have
15 a motion and a second to adjourn, but I do want
16 to say, is there anything else that anybody would
17 like to bring up and discuss?

18 MS. GLEASON: Just a quick question.
19 If we don't reach consensus today, what are the
20 final dates that we have to --

21 MR. HUGHES: Well, no one's going to
22 reach a consensus today. We're going home today.

1 MS. GLEASON: I mean -- sorry,
2 tomorrow. Tomorrow.

3 CHAIR CARR: Well, this committee ends
4 in the end of September with the annual budget,
5 so we need to be done; otherwise, we're not a
6 standing committee the 1st of October.

7 MS. GLEASON: Sure. Okay. Perfect.

8 CHAIR CARR: Is that correct?

9 PARTICIPANT: Yes.

10 MR. HUGHES: This committee does not
11 -- oh, from a monetary standpoint, yes. From a
12 monetary standpoint, that is absolutely true.
13 From a charter standpoint, your charter expires
14 March 2020. And so will we meet again and spend
15 money after September? No. But can we have a
16 conference call? Yes.

17 CHAIR CARR: Can I get a consensus
18 that we want to have this done by the end of
19 September?

20 (Chorus of yes.)

21 MR. HUGHES: I like that idea.

22 CHAIR CARR: Anything else?

1 MR. TISON: I amend the motion to
2 adjourn to a motion to recess --

3 CHAIR CARR: Thank you. So amended.

4 MR. HUGHES: 8:00 a.m. back here,
5 ready to go.

6 (Whereupon, the above-entitled matter
7 went off the record at 4:58 p.m.)
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a.m 1:10 4:2 99:15,16 396:4	accomplishing 166:21 364:4	174:14 181:1 212:21
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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Fruit and Vegetable Industry
Advisory Committee Meeting

Before: USDA

Date: 08-14-19

Place: Arlington, VA

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
true and accurate record of the proceedings.



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UNITED STATES DEPARTMENT OF AGRICULTURE

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FRUIT AND VEGETABLE INDUSTRY
ADVISORY COMMITTEE

+ + + + +

MEETING

+ + + + +

THURSDAY, AUGUST 15, 2019

The Advisory Committee met in the Fairfax Room of the Hyatt Regency Crystal City Hotel, 2799 Richmond Highway, Arlington, VA, at 8:00 a.m., Chalmers R. Carr, III, Chair, presiding.

PRESENT

CHALMERS R. CARR, III, Chair
KILEY HARPER-LARSEN, Vice Chair
RICHARD E. BOWMAN
JOHN CHANDLER
TINA ELLOR
K.C. ELY
BRET ERICKSON
MOLLY GLEASON
JULIE L. GORDON
JEFF HUCKABY
BRIAN KIRSCHENMANN
TOM LIPETZKY
KELLY POWELL-MCIVER
READE SIEVERT
STEVE SMITH
BRUCE TALBOTT
GREG TISON
DERRIN WHEELER
TOMMY WILKINS
CHARLES A. WINGARD
DONN ZEA

MEMBERS NOT IN ATTENDANCE

DAVID K. BELL
MICHAEL JANIS
PAUL PALMBY

STAFF PRESENT

DARRELL HUGHES, Designated Federal Official
LEANNE SKELTON, AMS, USDA

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

(7:59 a.m.)

1
2
3 CHAIR CARR: Welcome everybody back
4 this morning. I'll call the meeting officially
5 to order. As we said yesterday, we are going to
6 break up with our working groups from 8:00 to
7 9:00. And then we will come back and start
8 discussion on each working group's
9 recommendations. We have tables back there.

10 MR. HUGHES: Before everyone splits
11 up, I pulled open the policies and administrative
12 procedures for completing the recommendations.
13 So I said yesterday that I was going to go over
14 the process for approving recommendations.

15 And so first, let me read the section
16 that is about completing workgroup
17 recommendations. Developing workgroup
18 recommendations follow these broad steps.

19 One, the workgroup prepares the
20 recommendation or discussion document. Two,
21 during the committee meeting, the workgroup
22 presents its recommendation for discussion by the

1 full committee.

2 Three, at any point in the process
3 prior to the committee's vote on the status of
4 the recommendation, the presenting workgroup may
5 convene and vote to withdraw this recommendation
6 based on approval of this action by the majority
7 of the members of the workgroup. Once presented,
8 that -- number four, once presented, that
9 committee votes on the workgroup recommendation.

10 The committee, which is the full
11 committee, may take the following actions for
12 each workgroup recommendation. One, adopt the
13 recommendation as presented by the workgroup.
14 Two, amend and adopt the amended recommendation.
15 Three, reject the recommendation, or four, refer
16 the recommendation back to the workgroup for
17 further development.

18 And so the process for voting under
19 the Conducting Business Section, which is on page
20 7 of the policies and procedures, the second
21 bullet decides the vote. Two-thirds of the votes
22 cast at the meeting of the committee, at which a

1 quorum is present, shall be decisive of any
2 motion.

3 Following Robert's Rules of Order, all
4 abstentions will be recorded as such and will not
5 be included as part of the total vote cast.

6 Similarly, all committee members who recuse
7 themselves due to conflict of interest or absent
8 shall be recorded as such, and their votes will
9 not be counted toward the number of votes cast.

10 Votes, both abstentions and recusals
11 will be considered in order to establish a
12 quorum. And so, based on that, I would say that
13 the voting mechanism for the recommendations is
14 two-thirds, and it would be two-thirds within --
15 I guess, no, within the workgroup, I don't know
16 that you all need to vote to bring forward.

17 I think you just bring it forward
18 because you develop the work. You guys have
19 worked on it already, and so I think you just
20 bring it forward to the committee. And then two-
21 thirds of the committee has to vote to approve
22 it. Right?

1 CHAIR CARR: Yes.

2 MR. HUGHES: All right. Was that in
3 there already?

4 CHAIR CARR: No, you just read it, and
5 that's what I said.

6 MR. HUGHES: Okay.

7 CHAIR CARR: All right. That's it.

8 MR. HUGHES: All right. So the
9 committee leads will find a table, and I guess if
10 anybody wants to go out.

11 MR. WILKINS: Trade group is coming
12 right here.

13 (Whereupon, the above-entitled matter
14 went off the record at 8:03 a.m. and resumed at
15 9:34 a.m.)

16 CHAIR CARR: Okay. So since we are
17 starting back a little bit late, if this is okay,
18 and I'll ask you for a consensus on this. We
19 will go, and now we will cut everybody to 30
20 minutes, which will still keep us on time.

21 But at the end, if we feel that we
22 still need more time, we could always stay, but

1 to try to keep us on task to be done by 12:00.
2 So we will go in the same order we presented in
3 yesterday, and each group will have 30 minutes of
4 discussion.

5 If it takes less than that, then
6 great, we'll move on. If it takes longer than
7 that, we'll table that until the end, and we have
8 time to come back. So the first group -- who
9 went first yesterday?

10 MR. WILKINS: Trade did.

11 CHAIR CARR: Trade went first
12 yesterday. They will start, and we'll break
13 after that or break at 10:00 o'clock and come
14 back.

15 MR. WILKINS: You're going to put this
16 on the screen, Darrell?

17 MR. HUGHES: Yes. It's coming on
18 there. It's coming. All right.

19 MR. WILKINS: All right. My name is
20 Tommy Wilkins, and I'm going to discuss the Trade
21 workgroup, trade promotion. We have a couple of
22 things we want to talk about.

1 Our first recommendation comes in the
2 form of the Trade workgroup recommends that the
3 Fruit and Vegetable Industry Advisory Committee,
4 that it should inform the Secretary of its
5 concerns, and request that the Secretary make our
6 position known to the President and Congress.

7 The critical importance of ensuring
8 that export market promotion programs continue to
9 be made available for the United States
10 agriculture to successfully compete against
11 foreign competition and export markets and that
12 available funding for these programs be increased
13 to offset the balance of trade restrictions and
14 impacts of trade disputes.

15 The Trade group recommends that the
16 Fruit and Vegetable -- are we going to do these
17 one at a time or as a group?

18 MR. HUGHES: I think you would, based
19 on the buckets that you were going through, you
20 would read each one and then talk about the trade
21 promotion recommendations as a whole, right?

22 CHAIR CARR: Well, it's a part of the

1 group. While we're here, if they're -- provided
2 we vote the whole package, but let's just go with
3 each one. So does anybody have a problem with
4 the number one statement on the board?

5 MR. WILKINS: Do we vote now?

6 CHAIR CARR: No. We'll come back and
7 do it all together.

8 MR. WILKINS: Our second bullet point
9 is the Trade workgroup recommends to the Fruit
10 and Vegetable Industry Advisory Committee that it
11 should inform the Secretary of its interest in
12 developing a sustaining U.S. grown food program
13 that offers additional promotional support for
14 helping qualify agricultural competitors to
15 compete against foreign competition within the
16 United States.

17 CHAIR CARR: Questions or concerns?

18 MR. WILKINS: Number three.

19 MR. HUGHES: There isn't a number
20 three for trade promotion. Is there? There's
21 only these two. Do you want me to go back to Buy
22 American?

1 MR. WILKINS: We had three categories.
2 This is the first category that we're discussing.

3 CHAIR CARR: So let's move on to the
4 second category.

5 MR. HUGHES: Okay.

6 MR. WILKINS: So the next category.

7 MR. HUGHES: Okay. It's Buy American.

8 MR. WILKINS: All right. In talking
9 about Buy American, the committee supports the
10 Buy American requirements for school food
11 purchase, enhanced by Section 4207 of the
12 Agricultural Improvement Act of 2018.

13 The committee requests that the
14 Secretary consider meaningful improvements in the
15 guidance for and enforcement of this provision
16 and ask the Secretary to keep the committee
17 advised of his actions.

18 Recommendation revisions include the
19 following. Strike the significant cost different
20 language from the Buy American exception provided
21 to schools. This exemption is significantly too
22 ambiguous and does not recognize the myriad of

1 fruits and vegetable options that are available
2 should the desired first choice be cost-
3 prohibitive.

4 Require that public notice when
5 schools elect to purchase foreign-sourced food
6 products instead of domestically produced,
7 including and required that school maintain
8 documentation to justify foreign purchase of
9 fruits and vegetables over domestic.

10 For instance, whether alternative
11 supply sources were considered, whether bids were
12 sought at the best time of the year to allow for
13 domestic participation, whether substitutions
14 were considered, for example, applesauce instead
15 of peaches, pears instead of mixed fruit
16 cocktail, et cetera.

17 MR. HUGHES: And there's a third one
18 here.

19 MR. WILKINS: Establish financial or
20 commercial, which restrict from supplying schools
21 penalties for food distributors that misrepresent
22 their food products or who switched foreign

1 source product for contracted domestic food
2 products.

3 CHAIR CARR: Go back to the other
4 page. Any questions or concerns with this page?
5 Next page? Any concerns with the last part?
6 Moving on.

7 MR. WILKINS: So we're addressing
8 protecting U.S. growers, and our recommendation
9 is remedies for domestic product growers need to
10 be strengthened. A resolution process should be
11 added to take into account domestic regional
12 production of horticultural products that allows
13 for sustainable market access to foreign
14 suppliers.

15 CHAIR CARR: Is this in regard to
16 USMCA or -- is that the intent? You're trying to
17 address that.

18 MR. WILKINS: Yes.

19 CHAIR CARR: If there's no comments or
20 concern, then we will take a motion. These are
21 now I guess admitted in the form of a motion to
22 be accepted by the committee.

1 MR. BOWMAN: At the committee level,
2 there's a lot of debate. And this is the closest
3 compromise we could come up with that addresses
4 the seasonality issue that we thought could get
5 past the committee.

6 CHAIR CARR: My only concern is it
7 doesn't address trade agreements. Could you add
8 under current and proposed trade agreements,
9 remedies for domestic producer growers? Maybe
10 strike that, but I don't know.

11 MR. WILKINS: So maybe --

12 MS. HARPER-LARSEN: I have a
13 discussion point, too. Where did we stand when
14 we had the discussion point relating to H.R. 101
15 and Senate Bill 16, the improving domestic
16 production, strengthening domestic production?
17 Would that be separate?

18 MR. BOWMAN: When we thought that it
19 was two-thirds of the committee to get it past,
20 we didn't. We didn't want to bring up something
21 that was going die on the floor, but if somebody
22 wants to make a motion, we can vote on it I

1 guess.

2 MR. WILKINS: So there's two things.
3 If you have something to say, go ahead.

4 MR. WINGARD: I make a motion that we
5 insert the words in front of remedies in all
6 trade agreements called. Then it would read in
7 all trade agreements call out remedies for
8 domestic produce, so and so on.

9 MR. WILKINS: I don't have a problem
10 with that, and addresses some of what you're
11 saying. But it does not address what you're
12 saying.

13 MS. HARPER-LARSEN: I'll make a second
14 motion. I'll second Charles' motion to add the
15 verbiage in front. I second the motion.

16 CHAIR CARR: Darrell, can you put it
17 back up there?

18 MR. HUGHES: Yeah. I'm pulling it up
19 here.

20 CHAIR CARR: So will the working group
21 accept that as a friendly amendment, or do we
22 need to vote on this and have a discussion?

1 MR. WILKINS: I believe that's a
2 friendly --

3 MR. WINGARD: It was meant to be
4 friendly.

5 (Laughter.)

6 CHAIR CARR: The Chair recognizes
7 that. Darrell, you going to type that in up
8 there? I think that was a simple change, so
9 outside of that, is there any other discussion?

10 MS. GLEASON: I'm just curious what
11 the resolution process looks like or what the
12 trade group envisions that will do.

13 MR. WILKINS: The whole intention is
14 to prohibit any product from any country coming
15 in below cost, which is sometimes referred to as
16 dumping. So there has to be a process that would
17 identify and address that.

18 CHAIR CARR: So to be clear, I'm going
19 to vote, but the resolution process already
20 exists, but currently right now the resolution
21 process means that you must be -- you must have
22 25 percent of the production within a 365 day

1 calendar period to be able to bring it forward.

2 So this is addressing a regional area,
3 like Florida strawberries who has 75 percent of
4 domestic production in February and March in the
5 country and can then bring a resolution, but
6 right now they cannot do that because they don't
7 have enough production in 365 days. So this is
8 to address regional and seasonality issues within
9 current trade agreements.

10 MS. HARPER-LARSEN: Thank you.

11 MR. WILKINS: Yes. So in all trade
12 agreements there would be remedy for domestic
13 produce growers. When you get to the strength,
14 and then that's what we're addressing is the fact
15 that the instance that the chairman just
16 mentioned.

17 CHAIR CARR: So should you say that we
18 recommend that the Secretary works with the
19 Administration, because there's really not a
20 recommendation here.

21 MS. GLEASON: It seems like the
22 resolution process needs to be strengthened if

1 that already exists.

2 MR. WILKINS: I like where we're going
3 with this. We just have to get this in a form
4 that we can put up on the board. And the team
5 can jump in and either add or correct me as I go,
6 but we may recommend to Secretary Perdue that he
7 addresses the resolution process.

8 CHAIR CARR: You could do that, or you
9 could leave it as a statement and just say the
10 Fruit and Vegetable Advisory Committee believes
11 that all trade agreements, remedies for the
12 growers -- the resolution process should allow
13 for reasonable production.

14 MR. WILKINS: So that would be another
15 line in the bottom. So let's address that one
16 more time.

17 CHAIR CARR: So the question is, does
18 this group want this to be a recommendation to
19 the Secretary, which a recommendation, if I
20 understand right, a recommendation gives him --
21 what we were asking him to do, and he has to
22 report back on what he's done with that

1 recommendation.

2 Or you could simply have a statement
3 that says that this committee believes that all
4 trade agreements should have the ability for
5 regional industries to be able to bring
6 complaints for dumping through the resolution
7 process that already exists.

8 But the problem is it doesn't allow
9 for regional areas to bring those complaints. So
10 the first question is do you want this as a
11 recommendation, which means you're asking the
12 Secretary to do something.

13 We could ask the Secretary to -- that
14 he should work diligently with the Administration
15 that all trade agreements included. That would
16 be a recommendation. Or you could simply state a
17 statement that this committee believes that in
18 what all trade agreements should have. What's
19 the pleasure of the group and your working group?

20 Recommendations/statements, you can
21 choose either one.

22 MR. WILKINS: Can we erase the word

1 statement then?

2 CHAIR CARR: So if you're going to do
3 that, then we recommend that the Secretary of
4 Agriculture work with the Administration that in
5 all trade agreements --

6 MR. HUGHES: The Admin and what?

7 CHAIR CARR: The Administration --

8 MR. WILKINS: -- works with all trade
9 groups.

10 CHAIR CARR: Works with the
11 Administration to incorporate -- in all trade
12 agreements incorporate the following.

13 MR. HUGHES: With all trade groups.

14 MR. WILKINS: I think we're going to
15 abort the trade groups. We're saying that the
16 Secretary work with the Administration that in
17 all trade agreements. All right. Can you just
18 get that as one screen instead of the bullets to
19 the left? There you go.

20 MR. HUGHES: You can use shorthand
21 too, because I update everything.

22 MR. WILKINS: So we recommend the

1 Secretary work with the Administration in all
2 trade agreements. Any help here is fine.

3 CHAIR CARR: That all trade agreements
4 contain remedies for domestic produce. How about
5 that?

6 MR. WILKINS: And that all trade
7 agreements --

8 CHAIR CARR: Contain.

9 MR. WILKINS: -- remedies. Does that
10 answer that? So then in all trade agreements.
11 All right. So I'm going to read this again. We
12 recommend that the Secretary work with the
13 Administration so that all trade agreements --

14 MR. WINGARD: So within all trade
15 agreements.

16 MR. WILKINS: So that within all trade
17 agreements, remedies for domestic produce growers
18 need to be strengthened. The resolution process
19 should be added to take into account domestic
20 regional production of horticulture products that
21 allows for sustainable market access to foreign
22 suppliers.

1 CHAIR CARR: So the resolution process
2 already exists, so it doesn't need to be added.
3 The resolution process should include. It's
4 already there. The resolution process is already
5 there, so it's not to be added. It's got to --

6 MR. WILKINS: It should be --

7 MS. GLEASON: Domestic regional
8 production of horticulture products should be
9 added to the resolution process. It should be
10 reversed.

11 MR. WILKINS: So not taken but can be
12 added to.

13 MR. HUGHES: So you're saying domestic
14 regional production of horticulture products that
15 allows for sustainable market access to foreign
16 suppliers should be added to the resolution
17 process. Did I hear that --

18 MR. WILKINS: No I think that's in the
19 wrong place.

20 MS. GLEASON: Domestic regional
21 production of horticulture products should be
22 added to the resolution process to allow for

1 sustainable market access to foreign suppliers.

2 Is that -- no?

3 CHAIR CARR: I think we're going in a
4 different direction. Can we cut and paste the
5 original back up there since we chopped this one
6 up so much? It's really the resolution process
7 should allow for regional.

8 MR. HUGHES: Oh. All right.

9 MS. GORDON: I have it queued up on my
10 laptop if you guys want me to read it quick, the
11 original.

12 MR. HUGHES: No, that's fine. I'm
13 just going to save this as a V2 real quick and
14 then open up both.

15 MS. GORDON: The original statement
16 read remedies for domestic produce growers need
17 to be strengthened. A resolution process should
18 be added to take into account the domestic
19 regional production horticultural products that
20 allows for sustainable market access to foreign
21 supplies -- suppliers.

22 MR. ZEA: In my opinion, and I'm a

1 member of the subcommittee, I still believe that
2 the way that it is written places influence on
3 foreign suppliers rather than domestic producers.

4 CHAIR CARR: Yes, I don't understand
5 the last sentence with the foreign suppliers.

6 MR. ZEA: It's a way of suggesting
7 that we are not trying to regulate the provision
8 of foreign supply in the United States any more
9 fully than it is currently done, but we're
10 emphasizing that domestic production should
11 receive more attention.

12 MR. WILKINS: So a supplier that
13 covers a retailer 365 days a year has got to have
14 the ability to source from wherever that is.
15 What we're wanting to do is we give an American
16 farmer a chance without changing any of the trade
17 particulars that we have right now.

18 So what we're wanting or what our
19 intent was to put a little different spin on the
20 word seasonality with the -- to protect the
21 regional farmer. And I just believe that we, you
22 know, a majority of the people that are taking

1 care of retailers 365 days a year have -- have
2 got to have access to other supplies other than
3 domestic. We just need to protect them from any
4 --

5 CHAIR CARR: So let me ask you this
6 question to that. So in that situation where
7 you're supplying 365 days a year, and you're
8 actually able to buy products at below production
9 cost in the U.S. But you have products available.
10 On a regional basis, wouldn't have -- would you
11 allow for that regional producer, that regional
12 industry to then make a claim against that --
13 Mexico allowing products to come up here at that
14 cheap rate during a period of time.

15 MR. SIEVERT: Doesn't the original
16 piece go back to that, basically anti-dumping,
17 right? I mean that's really what you're trying
18 to protect. You're trying to protect against
19 Florida berries being \$8.00 and Mexico berries
20 coming across at \$4.00, right?

21 I mean that's -- you're looking at the
22 dumping not -- I mean whoever's supplying that

1 retailer year round is going to do the best job
2 they can to stay competitive, right? You're
3 protecting against dumping. That's what you're
4 looking for.

5 CHAIR CARR: So the southeast is
6 asking that the ability to make a regional claim
7 on dumping be included in the trade agreements.
8 That's what's really happening here. They note
9 in certain industries they don't have the ability
10 to do that in certain timeframes.

11 So basically just asking that the
12 resolution process take into account regional
13 production is what we're asking for. Where you
14 go with the foreign supply down below that, I'm
15 not sure how that ties in. It's just making a
16 request that that be -- the resolution process
17 right now precludes a regional industry from
18 bringing a challenge.

19 MR. SIEVERT: Because of the
20 percentage of year they provide supply.

21 CHAIR CARR: Right.

22 MR. SIEVERT: Okay. So that's

1 probably where that needs to go then, right?

2 MS. GLEASON: So take out the last
3 part about the last part about sustainable market
4 access for foreign suppliers?

5 MR. WILKINS: I'm going to battle that
6 one a little bit because I don't want to lose the
7 sight that companies in the United States support
8 a retailer for 365 days a year, we have to
9 maintain that we have access to alternate
10 suppliers, and that's important.

11 Okay. But I do think that we could
12 work on some verbiage around what you're saying
13 there. How do we -- so the remedies for domestic
14 produce needs to be strengthened. I think right
15 there is where we're looking for maybe a little
16 change in verbiage there.

17 CHAIR CARR: So let me do this. It's
18 time for break. We'll take a break. Hopefully,
19 during this break somebody can come up with some
20 language that we can come back and discuss.

21 If not, we're going to need to go on
22 to the next group, and then we will come back and

1 discuss this then. Again, we've got to give
2 consideration to all the groups. So if that's
3 okay with everybody, we'll be back in 10, 15.

4 (Whereupon, the above-entitled matter
5 went off the record at 10:02 a.m. and resumed at
6 10:15 a.m.)

7 CHAIR CARR: Okay. I think we have
8 language here that addresses both parties
9 concerns. If we can come to a real quick
10 consensus on this, we're going to do this. If we
11 can't, we're going to punch it back. So Tommy,
12 why don't you read it?

13 MR. WILKINS: On the recommendation of
14 attending U.S. growers, we recommend that the
15 Secretary work with the Administration so that
16 within all trade agreements, remedies for
17 domestic produce growers need to be strengthened.

18 A resolution process should be added
19 to take into account seasonal domestic production
20 of horticultural products in regards to anti-
21 dumping. This provision should not preclude for
22 affairs sustainable market access to foreign

1 suppliers.

2 MS. HARPER-LARSEN: I make a motion
3 that we accept this as written.

4 CHAIR CARR: The way we've been
5 handling this is if there is a consensus on this,
6 which we already have consensus on everything
7 else they put forward, then the group is putting
8 this forward as a recommendation. We vote on it
9 as one. Let's be clear. Do we have consensus on
10 this language as written? Is there any further
11 work to be done?

12 MR. ZEA: I'd just suggest a technical
13 amendment. Take out the word for between
14 conclude and fair.

15 CHAIR CARR: Okay. That's done. Make
16 that happen please. I know we've broke it up on
17 this, but we have gone through each one of their
18 recommendations. And Tommy, is it your intent
19 for your sub working group to put this forward as
20 one big package, and you would accept a motion to
21 be approved?

22 MR. WILKINS: Yes, I would.

1 CHAIR CARR: Do I have a motion?

2 MS. HARPER-LARSEN: You do.

3 CHAIR CARR: Do I have a second?

4 MR. WINGARD: Second.

5 CHAIR CARR: Any discussion? All

6 those in favor of passing the Trade group

7 recommendations, please say aye.

8 (Chorus of ayes.)

9 CHAIR CARR: Any opposed? Good. One
10 down. So who's next?

11 MR. WILKINS: All right, Steve. Show
12 them how it's done.

13 MR. SMITH: Thank you. I hope ours
14 goes maybe a little quicker and smoother, but you
15 never know.

16 MR. WILKINS: I will not take that
17 personally.

18 (Laughter.)

19 MR. SMITH: While Darrell's putting
20 this up, we made a few editorial changes, not
21 substantive changes. We did a little
22 wordsmithing to some of the paragraphs.

1 MR. HUGHES: Can I go directly to the
2 research recommendation?

3 MR. SMITH: Yes. So from what we had
4 yesterday --

5 MR. HUGHES: One second. I notice
6 that the text on this slide changed, and I don't
7 know. Is this for background?

8 MR. SMITH: Yes.

9 MR. HUGHES: Okay. Got it. So we can
10 skip over that.

11 MR. SMITH: I didn't get the font
12 change. Okay.

13 From what we had yesterday, we believe
14 that all specialty crops should be protected from
15 new and emerging crops that are specifically
16 listed as specialty crops in the Farm Bill.

17 Do you want to do both bullet points?
18 Okay. And the Fruit and Vegetable Industry
19 Advisory Committee is very concerned about the
20 impact on the specialty crops from the recent
21 decision by the USDA to define hemp as a
22 specialty crop.

1 CHAIR CARR: Any questions on that
2 before we move on? All right.

3 MR. SMITH: All right. Here's our
4 recommendations. We request that the Secretary
5 support additional base funding for applied
6 specialty crop agricultural research at land
7 grant universities and experiment stations and
8 cooperative extension that can be used to address
9 regional and local priorities driven by user
10 needs.

11 And number two, we recommend that the
12 Secretary review this decision, including hemp as
13 a specialty crop, looking into potential native
14 impacts to the existing specialty crops; in
15 particular, the impacts on federal funds for
16 research initiative grants.

17 If in any way it's determined that
18 hemp will dilute the limited research funds, the
19 Fruit and Vegetable Industry Advisory Committee
20 recommends that the Secretary reclassify hemp or
21 limit the crop from access to SCRI funds until
22 additional money is appropriated.

1 Is there a third one there, three and
2 four? The committee recommends that the
3 Secretary review research grant eligibility
4 criteria and process with the goal of increasing
5 the opportunity for private organization.

6 We project -- project funding in
7 public and private projects. Increase outreach
8 and involvement of potential industry applicants
9 to determine how future grants can be available
10 for emerging technology, development and
11 agriculture.

12 And number four, the committee
13 recommends the Secretary increase grant funding
14 available dedicated to the development of new
15 labor saving technology and equipment development
16 with the goal of recruiting agriculture, labor
17 efficiency and demand.

18 CHAIR CARR: I have a question on
19 number four.

20 MR. SMITH: Okay.

21 CHAIR CARR: So when you say increase
22 grant funding available for, is that new funding,

1 or are you asking the Secretary to mandate a
2 portion of the current SCRI funding to go to
3 labor funding?

4 MR. SMITH: John.

5 MR. CHANDLER: Yeah, I think the
6 intent is not to be that specific, to allow the
7 discretion of the Secretary depending on funds
8 available or how it would best fit in with
9 existing programs. But the report is really
10 driven as addressing some of the labor concerns
11 by increasing some technology solutions.

12 CHAIR CARR: So my concern and serving
13 on the Dairy board where we reviewed these grants
14 and the process for the grants, it could be
15 interpreted by the Secretary that you're saying
16 that he should be dedicating a portion of these
17 funds.

18 That's my only concern. If you're
19 giving him a recommendation that he increases
20 funding, and the only funding for this research
21 right now is coming out of these SCRI grants,
22 then a response could be he says 10 percent of

1 these funds have to go to this technology.

2 That would be my concern. I don't
3 disagree with the overall concept, but dedicating
4 those funds or mandating those funds go to
5 certain areas are a concern.

6 MR. CHANDLER: With that concern,
7 would you have a suggested amendment that you
8 think might keep the intent of allowing
9 flexibility for the Secretary because I wouldn't
10 want to preclude him from taking an action would
11 benefit the entire industry?

12 MR. WINGARD: We could put it into
13 that sentence, into that. We prefer that this
14 funding be new funds.

15 MR. CHANDLER: Explore additional
16 funding, if possible, or if available.

17 (Off-microphone comments.)

18 MR. CHANDLER: So what was it you
19 said?

20 MR. WINGARD: We're prefer that this
21 funding be -- we prefer that this be new funding.

22 MR. SIEVERT: How about provide new

1 funding?

2 MR. CHANDLER: What's that?

3 MR. SIEVERT: What about provide new
4 funding, instead of increase funding? How about
5 we recommend that new funding is available?

6 MR. CHANDLER: I'd hate for him to not
7 be able to -- I mean, my goal would be to keep it
8 as broad, allow him as much freedom of action as
9 possible, but if you want to limit him to just
10 new funding.

11 CHAIR CARR: Let me ask. Would you
12 take out the word increase and just say
13 prioritize?

14 MR. CHANDLER: Okay.

15 CHAIR CARR: Because increase means
16 you should be going up. Prioritize just means
17 they could make that -- so right now with the
18 SCRI fundings, there's already a huge portion of
19 that funding that goes to citrus right off the
20 top that was mandated.

21 Okay. So now you're left with all the
22 other commodities to feed for what's left after

1 you remove the citrus budget, which is \$45
2 million. So at that point, the pot is only about
3 60 or 70. I don't remember the exact number. So
4 after you do that. So mandating you increase
5 funding to it but if you prioritize it, then at
6 least that's what -- they'd go back and do that.

7 MS. HARPER-LARSEN: And each of these
8 grants does already have established priorities.
9 And when you apply, so we recommend
10 prioritization. That will give a definitive to
11 the Secretary and his office to just move this
12 stuff up the chain.

13 MR. CHANDLER: That's fine. So you're
14 happy?

15 CHAIR CARR: Yes.

16 MR. CHANDLER: Happy with that then?
17 Okay. The committee recommends that the
18 Secretary prioritize grant funding available
19 dedicated to the development of new labor saving
20 technology.

21 CHAIR CARR: Any other -- so this --

22 MR. LIPETZKY: Can we go back to

1 number 2? And this might be just making it more
2 of a point of clarification. It looks like
3 you've got the SCRI grant. So is there any
4 consideration or discussion around the specialty
5 crop block grant program component of this that
6 involves specialty crops?

7 MS. HARPER-LARSEN: That's a good
8 consideration.

9 MR. SMITH: We did talk a little bit
10 about specialty crop block grants. And our
11 thought was to leave the states alone in doing
12 what they wanted to do with those rather than
13 coming from a national perspective.

14 MR. LIPETZKY: And that helps because
15 somebody who does administer that side of it, I
16 was kind of wondering where that fine line would
17 be for states dealing with hemp as well as that
18 hemp direction coming from USDA.

19 MS. HARPER-LARSEN: But you guys do
20 get prioritization directly from USDA. You can
21 include that type of verbiage in this same thing
22 as well for specialty block grant as well as SCRI

1 to prioritize.

2 MR. SMITH: We intentionally left out
3 the state specialty crop block grants.

4 CHAIR CARR: So this is the full
5 recommendations on research. If there's not any
6 further discussion, we'll move to your next
7 topic.

8 MR. SMITH: All right. On crop
9 insurance, we make a recommendation that we urge
10 the Secretary to make it a goal to ensure that
11 fruit and vegetable farmers have access to
12 coverage options that are with crop farmers for
13 crop insurance generally works well, both in
14 terms of effectiveness in addressing the perils
15 unique to the crop and affordable premiums. A
16 lot of this was your language, wasn't it?

17 CHAIR CARR: Any discussion on this?
18 Next topic.

19 MR. SMITH: The overspending off
20 target. Recommendation one is that they should
21 recognize that they can and will be off target.
22 And therefore, reasonable tolerance should be

1 established, but first round application should
2 be available for mild and coast sensitive plant.

3 That application should be limited to
4 more desirable circumstances, such as lower
5 temperature of humidity, pre-plant, preseason and
6 other factors that would reduce the potential for
7 moving off target. You want to do these
8 individual?

9 CHAIR CARR: Well, yeah. We'll do
10 this. So my only thing there is you're saying
11 USDA, EPA. So again, a recommendation -- for us
12 to put a recommendation for a motion is it needs
13 to be a recommendation to the Secretary.

14 So my suggestion would be you should
15 say the Secretary of Agriculture should work with
16 EPA and FDA to recognize.

17 MR. SMITH: I don't have any problems
18 with that.

19 CHAIR CARR: Again, it's going to come
20 back because I think we're going to probably --
21 this is pretty shaky as well. A recommendation
22 from this group is often -- Darrell, you correct

1 me if I'm wrong, but a recommendation from this
2 committee has got to go to the Secretary.

3 And a recommendation means he's got to
4 come back and report to us what he's done with
5 that recommendation. By simply saying that, we
6 have no purview to recommend the EPA or FDA do
7 anything, so --

8 MR. SMITH: That's correct.

9 CHAIR CARR: If your intent here is to
10 start the conversation, then your request or your
11 recommendation should be to the Secretary of
12 Agriculture should do.

13 MR. SMITH: Should -- what word?

14 CHAIR CARR: Should work with EPA and
15 FDA to recognize -- remember, your preamble
16 before that talks about the science and all that.
17 You're assuming that he buys into that.

18 MS. HARPER-LARSEN: And I'm sort of
19 wondering why you're not asking for a mandated
20 demand or sync or technology or something like
21 that to be included into this pesticide
22 manufacturer, like make it a way your molecules

1 don't drift.

2 (Simultaneous speaking.)

3 MR. SMITH: I don't think we want to
4 get into label instructions about additives and
5 all.

6 MR. WINGARD: I think that would be
7 covered under desirable circumstances or more
8 desirable circumstances.

9 CHAIR CARR: So are we good there?

10 MR. HUGHES: Yes. I was just adding
11 -- it's a separate recommendation from the first
12 one?

13 MR. SMITH: No.

14 MR. HUGHES: Okay. So then we add it
15 back to --

16 MR. SMITH: All right. Yes.

17 MR. HUGHES: There we go.

18 MR. SMITH: All right. So we probably
19 need to add language that we strongly recommend.

20 MR. WINGARD: Go back to that one.
21 Something's changed. Something's not right. We
22 started out with remedies for domestic produce

1 grown --

2 MR. SMITH: That's still two things.

3 MR. WINGARD: Yeah, but that's from
4 trade.

5 (Off-microphone comments.)

6 MR. SMITH: All right. Back to number
7 two. Sorry. I'm assuming we need to get the
8 same language in here under the recommendation,
9 that the Secretary recommend the Administration
10 for extending the max of gene effects obtained or
11 any new formulations for in crop use on soybeans
12 and cotton not be renewed when the current
13 registration expires.

14 In addition, we recommend that the EPA
15 evaluate the performance of these products after
16 the 2019 season and make an appropriate judgment
17 about their use in 2020, even before the
18 registration expires.

19 We also recommend that the USDA
20 pesticide data program work with EPA to ensure
21 that the dicamba registration is not renewed
22 until such time when research can prove with

1 certainty that specialty crop producers would not
2 be adversely affected by any form of off target
3 movement, including volatility.

4 CHAIR CARR: So back up to number one.
5 Two things. Where does the bio come from, and
6 could that just be a question that determines,
7 say this is good now. But most in turn by
8 sensitive plant versus sensitive crop production
9 because a sensitive plant could be anything. But
10 if your concern is about protecting the other
11 crop production, I get that.

12 MS. GORDON: Non labeled plants and
13 non labeled crops.

14 MR. SMITH: I'll give you an example.
15 I lost all my trees in my home farm. That's not
16 a crop. So I would prefer to keep plant because
17 it's not a crop.

18 (Off-microphone comments.)

19 MR. SMITH: The more mild kind of
20 comes on Florida label language, also out of
21 Washington and Oregon on some of these products,
22 and certain counties in Michigan also have that.

1 CHAIR CARR: Any other questions? Do
2 you have another recommendation under this one?

3 MR. SMITH: Yes.

4 CHAIR CARR: Any on this page before
5 we move over to page 2?

6 MR. HUGHES: Well, yes. There's
7 something that I want to make sure that you guys
8 take into consideration, and that's Brenda Foos's
9 comment yesterday about the pesticide program and
10 that maybe that should be USDA should because of
11 the Office of Pesticide -- Pest Management.

12 MS. GLEASON: Pest policy.

13 MR. HUGHES: Pest policy or something,
14 and that was the first time I heard about that
15 office. And I just wanted to make sure that you
16 guys take that into consideration because that
17 program may not achieve --

18 (Simultaneous speaking.)

19 MS. HARPER-LARSEN: That was the
20 appropriate agency --

21 MR. SMITH: Right.

22 MS. HARPER-LARSEN: -- to use hard

1 data to work with the EPA.

2 MR. HUGHES: But as far as policy, but
3 our program is data based. It's not policy
4 based. And it seems like this is a policy
5 recommendation.

6 MS. GLEASON: Can we add the OPP, the
7 other office to that as well as USDA, PDP and
8 OPP, Office of Pesticide Policy, or whatever the
9 other office is called.

10 MR. HUGHES: You can do as you please.
11 I would just say that my suggestion would be to
12 make it broad so that if we are identifying the
13 wrong sub entity, the Secretary is able to send
14 it to a different USDA organization say like do
15 XYZ if he has the ability or whoever has the
16 ability to do that.

17 MR. SMITH: Well, her group actually
18 doesn't make the tolerances. That is EPA that
19 does that.

20 MS. GLEASON: So I think he's
21 suggesting that we just say that USDA should work
22 with the EPA.

1 MR. HUGHES: That is what Brenda's
2 recommendation was, yes.

3 CHAIR CARR: It says the Secretary?

4 MS. GLEASON: No OPP, instead of
5 naming a specific agency, just --

6 CHAIR CARR: Again, I would recommend
7 you go with say the Secretary of Agriculture
8 should do this and remove all the rest of that.
9 Just make it consistent. Your recommendations
10 are to the Secretary.

11 So that last sentence as of right now
12 you say recommend that USDA Pesticide Data
13 Program. It should be you recommend the
14 Secretary of Agriculture could work with EPA to
15 ensure.

16 MS. GLEASON: Right.

17 CHAIR CARR: Yes. That's all you're
18 doing is inserting that.

19 MR. TISON: I had one thing on the
20 word sensitive up there. Is that too broad or
21 not explain enough in that you have something
22 that's a plant that distinguished by the state of

1 the federal government by being an essential
2 plant. Is that going to end up with somebody in
3 a lawsuit or something? I know what you're
4 trying to say, but are we being too broad there
5 on that one?

6 MR. SMITH: I'm not sure how you would
7 make that any different particular meaning.

8 MS. GLEASON: Non-target?

9 MS. GORDON: Yes, non-target type
10 language.

11 MR. SMITH: I'd be okay with non-
12 target for that in number one.

13 MR. HUGHES: Where is --

14 MR. WINGARD: That would be the tree
15 on the side of the field then.

16 MR. SMITH: That's technically -- by
17 label, that is -- it does matter. We can say
18 sensitive, non-target plant.

19 MR. WINGARD: That might be the best
20 yet.

21 MR. HUGHES: I would put a comma after
22 sensitive. Any further on this page?

1 MS. GORDON: It doesn't read right.

2 MR. HUGHES: What did you say, Julie?

3 MS. GORDON: It does not read right,
4 number two doesn't where you added that.

5 MR. HUGHES: This goes away.

6 MS. GORDON: If you're going to add
7 that, don't we want to just take off the
8 beginning that says the Secretary should because
9 we're saying he should, then he shouldn't.

10 MR. HUGHES: Right. So I added that
11 because I didn't know who --

12 MS. GORDON: Oh, okay. All right.
13 There you go.

14 MR. HUGHES: Give me one second. That
15 needs a comma. Get rid of this red.

16 CHAIR CARR: All right. Next page.

17 MR. SMITH: This is switching gears a
18 little bit. USDA, EPA, FDA and we may have to do
19 the same language again -- to recognize the
20 latest legacy materials that have long been
21 prohibited and not been applied to fruit and
22 vegetable crop are now being detected in very

1 small levels.

2 The presence of a legacy material
3 should not be considered an adulterated product,
4 nor should the producer be subject to regulatory
5 action. So how do we need to start that out
6 different, Darrell?

7 (Off-microphone comments.)

8 MR. SMITH: Okay. And then number
9 four, we recommend the USDA use the same
10 language, require biotech developers to seek the
11 necessary reviews by USDA for seed genetics and
12 EPA for the corresponding pesticide registration
13 simultaneously resulting in a joint approval
14 process and the two agencies increase
15 collaboration for seed genetics and corresponding
16 pesticides are approved.

17 We hope that a simultaneous and joint
18 approval process will serve to facilitate
19 discussion between the two agencies and prevent
20 confusion among farmers.

21 And again, this originated from the
22 situation where the seed was registered or was

1 approved two years before the product was
2 registered and kind of forced -- sort of forced
3 EPA's hands and farmers were using the product
4 before it was actually registered.

5 CHAIR CARR: So is the one agency EPA,
6 so it should be the Secretary should work with
7 EPA to require? Is that cleaner language now?

8 MR. SMITH: Maybe get rid of this.
9 This that was highlighted there. There you go.

10 CHAIR CARR: Everybody good with this?
11 All right, next one.

12 MR. SMITH: Okay. Again, this is
13 about label language. The USDA should work with
14 EPA -- again, we'll leave that other language in
15 there -- to encourage chemical manufacturers to
16 write their chemical labels in a uniform manner
17 so that producers can easily determine the
18 correct requirements of the final material.

19 And even the Secretary should work
20 together to establish crop groups that are
21 consistent with each other with industry
22 standards, terminology, and other accepted

1 practices.

2 And this comes from the problem of how
3 crops are grouped together in different -- the
4 same active ingredients are accrued on one label
5 but not another label. Yeah.

6 MS. HARPER-LARSEN: So on Number 1,
7 instead of word, encourage, I think it's
8 appropriate to say require. There is --

9 MR. SMITH: I'd agree with that.

10 MS. HARPER-LARSEN: -- precedent
11 already in workplace safety requirements under
12 hazard communication for global harmonized
13 symbols that mandated specific mandatory label
14 writing to an extent. This would further
15 strengthen the uniformity.

16 MR. SMITH: Yeah. I agree with that.

17 CHAIR CARR: Any other? And this is
18 your last recommendation?

19 MR. SMITH: No, we've got --

20 CHAIR CARR: You only have one more?

21 MR. HUGHES: No, that's it.

22 MR. SMITH: That's it.

1 CHAIR CARR: All right.

2 MR. SMITH: So there's the four.

3 CHAIR CARR: So your intent is, as all
4 the changes are made, you want to put this
5 forward to this group for approval as
6 recommendations from your working group on
7 production?

8 MR. SMITH: I move we approve these
9 from our working group.

10 MR. WINGARD: And I second.

11 CHAIR CARR: We have a motion and a
12 second. Any discussion?

13 (No audible response.)

14 CHAIR CARR: All those in favor of
15 approving these recommendations please say aye?

16 (Chorus of ayes.)

17 CHAIR CARR: Any opposed?

18 (No audible response.)

19 CHAIR CARR: Very good. Well, we're
20 on time, correct? Going to Labor next.

21 (Off-microphone comments.)

22 MR. ERICKSON: Okay. I'm not going to

1 read through all the extra stuff. I'm going to
2 go straight to our recommendations which are here
3 in bold. Number 1, the fruit and vegetable
4 industry has identified that access to labor --

5 MR. WINGARD: Can you zoom in just a
6 little bit? Right there, a little bit better.
7 Thank you.

8 MR. ERICKSON: There's something wrong
9 with this thing.

10 (Off-microphone comments.)

11 MR. ERICKSON: All right. Number 1,
12 the fruit and vegetable industry has identified
13 that access to labor is our most critical need.
14 And we recognize the Secretary's commitment to
15 solving the agricultural labor crisis.

16 We recommend that the Secretary work
17 with Congress and the administration for
18 legislative agricultural immigration reforms.
19 These reforms should allow the industry to retain
20 the current workforce in light of their ongoing
21 critical contributions to the supply chain as
22 well as creating a new future flow of labor that

1 makes our workforce affordable, predictable, and
2 sustainable.

3 Number 2, we request the Secretary
4 form a multi-agency task force including, but not
5 limited to, USDA and Department of Labor, as well
6 as a nationwide cross section of industry
7 stakeholders with the primary charge of studying
8 the methodology behind and impact of AEWR and to
9 seek alternative solutions for wage
10 determination.

11 Number 3, considering that Congress
12 has been unable to pass agricultural labor
13 reforms, combined with the expedient rate at
14 which the agricultural workforce is dwindling, we
15 request collaboration between the Secretary of
16 Agriculture and the Administration, in particular
17 the Secretary of Labor, to broaden the
18 interpretation of temporary work to less than one
19 year, thereby allowing more agriculture companies
20 to participate in the program.

21 Number 4, we recommend that USDA
22 research methods to make the farm labor survey

1 more robust and to work with the Secretary of
2 Labor to ensure that the refined data which is
3 collected is utilized by DOL to support
4 agricultural employers and workers.

5 Number 5, we request that USDA work
6 with necessary agencies to amend the rule related
7 to 51 percent or more of product coming from
8 outside the H-2A farm applicant with the
9 understanding that the industry has undergone
10 significant changes, and that many growers also
11 package shipped product for other growers in
12 their region.

13 MS. HARPER-LARSEN: Before you go on -

14 -

15 MR. ERICKSON: Yes?

16 MS. HARPER-LARSEN: Can you remove in
17 their region? Because we have to recognize that
18 these are packed for people, and that regionality
19 is ---

20 MR. ERICKSON: Loosely defined.

21 MS. HARPER-LARSEN: Yes.

22 MR. ERICKSON: Okay. Number 6, we

1 request the Secretary collaborate with the
2 Secretary of Labor to create meaningful impact
3 for employers utilizing the H-2A program by
4 developing a program to identify preferred
5 employers who possess solid history in the
6 program for an expedited and more streamlined
7 application process.

8 And finally, this Committee commends
9 the Secretary of Agriculture and his team for
10 their involvement in the development of DOL's
11 proposed H-2A modernization rule, July 26, 2019,
12 which offers significant reform to the
13 application process and, if enacted, should
14 benefit all employers.

15 Furthermore, we request the
16 Secretary's continued engagement in this process,
17 compelling stakeholders to submit comments and
18 ensure these new rules are published as soon as
19 possible.

20 CHAIR CARR: Very good. Much to
21 approve.

22 (Laughter.)

1 CHAIR CARR: So when we say AEW, R,
2 let's go ahead and define that a little bit
3 better.

4 MR. ERICKSON: Okay.

5 CHAIR CARR: So it's the methodology
6 behind the current H-2A program wage rate.

7 MR. ERICKSON: Current H-2A wage rate?

8 CHAIR CARR: And then go ahead and
9 type out adverse effect wage rate -- adverse wage
10 effect rate.

11 MS. GORDON: And its impact.

12 (Off-microphone comments.)

13 MS. GORDON: Can you go back up to the
14 one where you --

15 MR. ERICKSON: Well, we're not through
16 here.

17 (Off-microphone comments.)

18 CHAIR CARR: So, Bret, one thing, it
19 was supposed to look at the effect of that wage
20 rate and the ability -- or, really the
21 sustainability of agriculture.

22 The whole premise was is for them to

1 study the wage rate and look at the effect that
2 it is having, or will have, on the industry,
3 based on the current inflationary period we're
4 in, and then seek alternatives there.

5 So I don't know how you want to say
6 that, but that's your -- and its impact to ---
7 you're missing after it, and I thought you had it
8 before.

9 MR. ERICKSON: I probably did.

10 CHAIR CARR: You could just say to the
11 sustainability of production agriculture.

12 MR. CHANDLER: At the very end, right?

13 CHAIR CARR: What?

14 MR. CHANDLER: At the very end after
15 wage determination.

16 MR. ERICKSON: Okay. Is that right?

17 CHAIR CARR: So when you're saying ---
18 back up here a second. You're asking him for
19 with the primary charge, to study the rate and
20 methodology and --

21 MR. ERICKSON: Hold on, hold on, I'm
22 not moving that fast.

1 CHAIR CARR: I was just saying what
2 you had up there. To study the methodology on
3 the current H-2A adverse wage rate and its impact
4 to the sustainability of production agriculture.

5 MR. ERICKSON: And to seek alternative
6 solutions for wage determination?

7 CHAIR CARR: That are clear and
8 predictable. They are clear and predictable.

9 (Off-microphone comments.)

10 CHAIR CARR: Somebody want to go back
11 to Number 1? I think that was Kelly.

12 (Off-microphone comments.)

13 MS. GORDON: It was me. The very
14 first sentence says, it says that these are our
15 most critical needs. The fruit and vegetable
16 industry has identified that labor is our most
17 critical need.

18 It sounds like out of all the things
19 we're doing here, this is our most critical need,
20 to me. So are we identifying that labor is the
21 one --- can we say, like, it's a priority,
22 instead the most critical need?

1 MR. HUGHES: Or among our most
2 critical needs?

3 MS. GORDON: Yes.

4 PARTICIPANT: I don't have a problem
5 with that.

6 MR. ERICKSON: I would say labor is --
7 I mean, a lot of us, our highest priority because
8 the fact --

9 CHAIR CARR: Well, if we don't solve
10 our labor problem, we're not going to have an
11 industry.

12 MS. GORDON: All right, if that's the
13 consensus.

14 MS. GLEASON: I mean, it's not a
15 problem for my small farmers. But I see where
16 it's a problem for the industry.

17 MR. ERICKSON: Must have just
18 happened.

19 (Laughter.)

20 MR. HUGHES: Can we go to the very
21 last one. I want to read that to see if I've got
22 the right insights.

1 MR. ERICKSON: Which?

2 MR. HUGHES: The very last one, the
3 last one above the ---

4 (Off-microphone comments.)

5 MR. HUGHES: And so my only comment
6 is, I don't know what that recommendation is for,
7 because the Secretary will always do that. I
8 mean, when you post rules and ask for public
9 comment, and then there are regulations that
10 require comments to be published, then there are
11 rules you have to follow. And so that's the
12 only thing that I would say about that. And I
13 don't know if that says you were asking him
14 something.

15 CHAIR CARR: Yes, we're asking him to
16 work with industries like United and compelling
17 them to get stakeholders to make a --

18 There were only 61 comments filed in
19 the last rotation. This one is going to be a lot
20 more controversial. So we need the Secretary to
21 engage with stakeholders, encouraging their
22 membership to supply comments.

1 PARTICIPANT: Is encouraging a better
2 word than compelling?

3 CHAIR CARR: I'm fine with that.

4 PARTICIPANT: Compelling a little
5 mandatory.

6 MR. BOWMAN: Mr. Chair, another
7 comment, it's a little --- you know, there's a
8 push by some people in Congress right now to bring
9 in the pool of undocumented workers that are
10 currently in the U.S. into the H-2A program, which
11 I think is a very, very bad idea.

12 And I don't know, if -- since it's not
13 a bill yet, if we would consider making a
14 statement on that. Substituting the H-2A
15 workforce with undocumented domestic workers for
16 five years at a time is not the solution to our
17 labor needs.

18 CHAIR CARR: It's come to me that the
19 Secretary supported that the last two years
20 already.

21 MR. BOWMAN: I have a different opinion
22 now. I don't need to feel like I'm at fault

1 there.

2 MS. HARPER-LARSEN: What about
3 verbalizing a more streamlined process to take
4 undocumented agricultural workers forward with
5 citizenship?

6 CHAIR CARR: We already have that one
7 in. We have that. I understand what you're
8 saying. And I would like to discuss that probably
9 offline.

10 MR. BOWMAN: I agree.

11 (Laughter.)

12 PARTICIPANT: I'm okay with that.

13 CHAIR CARR: I don't think the
14 industry's going to support that.

15 PARTICIPANT: I don't support that one
16 either. But I do support their ability to return
17 home and come back later if they so choose.

18 MR. BOWMAN: I think the Congressman
19 from Florida is bringing a bill up right now.

20 CHAIR CARR: Yeah.

21 MR. WINGARD: I think that's one of the
22 most -- that is one part of the issue that has

1 prohibited us from moving forward on any solution.
2 So it's a very divisive issue. And I understand
3 what you're saying and agree with you, but I think
4 we don't even need to get into that, just because
5 of the --- it's a lightning rod.

6 I want to go to five if we could. This
7 is Charles Wingard, by the way. Don't we want to
8 not say we request the USDA, but we recommend to
9 the Secretary?

10 PARTICIPANT: Same language.

11 MR. WINGARD: Well, whatever the
12 similar language is to use with the Secretary.

13 CHAIR CARR: Darrell, you've got to
14 clean all that up if we missed that somewhere
15 where we've said the USDA should or something.

16 MR. HUGHES: Do you want to change it
17 all to we request the Secretary?

18 CHAIR CARR: Or we recommend to the
19 Secretary.

20 MR. HUGHES: As long as you guys will
21 give me that blanket authority to update,
22 streamline --

1 MS. HARPER-LARSEN: Do you need a
2 motion on that?

3 MR. HUGHES: I don't think so.

4 CHAIR CARR: No, consensus. We're
5 voting to approve these, but since we're --- he's
6 going to take these and ---

7 PARTICIPANT: And fine tune them.

8 (Simultaneous speaking.)

9 MR. HUGHES: Yeah, exactly.

10 CHAIR CARR: We have 30 to 60 days, for
11 the record, to clear up our minutes from today.
12 So those changes need to go ---

13 MR. HUGHES: It's 90 days.

14 CHAIR CARR: Up to 90 days.

15 MR. TISON: I remember seeing the word
16 we. I thought I said Chairman of the group.

17 (Laughter.)

18 CHAIR CARR: Chairman of the group is
19 the only one who participates.

20 MR. HUGHES: And since we're talking
21 about that, one of the things that I will have to
22 work with the leads on, does the Chairman want to

1 know? Like, all of you in the findings will have
2 to retool or refine that language. So, I mean,
3 we're approving the recommendations for this bill,
4 like the little finishing touches that need to be
5 executed.

6 MS. GLEASON: Can you go back to three?
7 I am not sure how this works, because I don't --
8 I mean, it's not an issue with our small scale
9 producers.

10 But if it's expanding temporary work to
11 almost a year, and folks then have back to back
12 contracts where they are in the country
13 indefinitely, then I have a small issue with not
14 providing a path to citizenship for those folks.

15 CHAIR CARR: So first of all, being in
16 the H-2A program, they have to have no intent to
17 immigrate. So you have to take that off.

18 Then the second part of it is mandated
19 by current law, they have to serve so many days
20 out of the country. Even if the employer does a
21 back to back contract, that worker, at some point,
22 will have to take a break. It's usually 60 days

1 out of every year --

2 MS. GLEASON: Okay.

3 CHAIR CARR: -- that they can't come
4 back. So the worker wouldn't be back to back, but
5 you allow the employer to have a group of workers.
6 We started using this language in the industry now
7 called pooling of workers.

8 And so one way Gary -- one way Gary
9 could get around this is Gary would have to accept
10 that they would not have a continual worker for
11 three years, but they could take a workforce and
12 work them for nine months, and then bring in
13 another workforce. And most of the industry did
14 the same thing.

15 And, you know, then they could have --
16 they would be able to have employees, they just
17 wouldn't be the same employees. But at least
18 they'd have access to workers. Now that's broad
19 strokes.

20 MS. GLEASON: Okay.

21 CHAIR CARR: But in this program, no
22 worker coming in can ever have the ability to get

1 in the line for citizenship. They can go through
2 the regular process, but it wouldn't be an
3 entitlement group, being in this program.

4 MS. GLEASON: Okay.

5 (Off-microphone comments.)

6 CHAIR CARR: A lot of times, people get
7 caught up in current workforce versus a guest
8 worker. But then guest workers, when they leave
9 their families, their wives, their children, they
10 don't come in and stay home. They've reached
11 their home. It's just the worker coming here
12 because of the work.

13 MS. GLEASON: Thank you.

14 CHAIR CARR: Any other questions? I
15 know there's a lot of language up there. You read
16 the ones with -- do you want to move those forward
17 as --

18 MR. ERICKSON: Yeah, so do we have a
19 motion to approve these?

20 MS. ELLOR: I'll make that motion.

21 MR. TALBOTT: Second.

22 CHAIR CARR: Any discussion?

1 (No audible response.)

2 CHAIR CARR: All those in favor please
3 say aye.

4 (Chorus of ayes.)

5 CHAIR CARR: Opposed?

6 (No audible response.)

7 CHAIR CARR: Very good. Moving on to
8 the last group.

9 (Off-microphone comments.)

10 MS. HARPER-LARSEN: Is that good? Do
11 you want me to bring it up more?

12 CHAIR CARR: Please.

13 MS. HARPER-LARSEN: All right. Here's
14 an issue with our workgroup objective statement.
15 This was not modified at all during our last sub-
16 group meeting. Okay, moving forward, I'm going to
17 skip over the members of the group.

18 MR. ERICKSON: I have a quick question.

19 MS. HARPER-LARSEN: Yes?

20 MR. ERICKSON: Before you start, did
21 you guys address all of the items that Jennifer
22 had suggested yesterday?

1 MS. HARPER-LARSEN: We did.

2 MR. ERICKSON: Very well.

3 MS. HARPER-LARSEN: And with the
4 inclusion of an additional item that you guys will
5 see at the very bottom.

6 MR. ERICKSON: Wonderful.

7 MS. HARPER-LARSEN: Thank you very
8 much. That's why it took us a bit longer, because
9 we had that dialogue with her.

10 MR. ERICKSON: Yeah, great.

11 MS. HARPER-LARSEN: And we also had two
12 of our tech experts at our table as well.

13 MR. ERICKSON: Perfect.

14 MS. HARPER-LARSEN: Okay. So you will
15 see that we have combined some based on that
16 dialogue. We wish to protect producers and
17 packers from undue economic burden related to
18 increased microbiological testing requirements.

19 We would like the USDA to collaborate
20 with the FDA to obtain funding for -- on farm
21 water sampling education outreach, research
22 projects, financial assistance for small and very

1 small operations, a development of online produce
2 safety rule grower training programs in English
3 and Spanish to meet FSMA requirements.

4 But we encourage the FDA to continue to
5 work with growers to develop science-based water
6 microbiological testing standards in a timely
7 manner. We encourage the re-evaluation of these
8 agricultural water testing requirements annually.

9 So we basically took everything that
10 relates to water, slapped it into one bullet
11 point.

12 MR. HUGHES: So here's a quick question
13 for you. With the current setup of this type of
14 recommendation, it wouldn't allow me to use the --
15 - we request the Secretary of Agriculture, blah,
16 blah, blah. And so it seems like it fits better
17 at the start of the second sentence. And so I
18 just want to highlight that so maybe something
19 gets ---

20 CHAIR CARR: In regards to the second
21 bullet point, we ask the Secretary --- can we just
22 always say instead of USDA, so it says we'd like

1 USDA, and then data you suggested. Can we just
2 say we recommend or we request the Secretary of
3 Agriculture ---

4 MR. HUGHES: Protect producers, blah,
5 blah, blah, okay.

6 MS. HARPER-LARSEN: Okay. So you would
7 like --

8 (Simultaneous speaking.)

9 CHAIR CARR: -- words to fit that
10 later. You give him the ---

11 MR. HUGHES: I just wanted to make sure
12 that was okay to change back, yeah.

13 MS. HARPER-LARSEN: Yes.

14 CHAIR CARR: That is our tip.

15 MS. HARPER-LARSEN: We want to keep
16 that consistency flowing. All right, are we good
17 to move on to the next one?

18 (No audible response.)

19 MS. HARPER-LARSEN: All right. We ask
20 that Secretary Purdue work with the FDA to
21 establish a FSMA produce safety rule and
22 preventive controls for human food, fruit, and

1 vegetable-mixed type use operation -- that was the
2 inclusion from Jennifer, Regional Grower
3 Stakeholder Advisory Boards for collaboration, and
4 to seek in programs.

5 MR. SMITH: I think we should take
6 Purdue out of that and just ---

7 CHAIR CARR: We would change all of
8 that to read always the Secretary ---

9 (Off-microphone comments.)

10 MS. HARPER-LARSEN: Are we good there?

11 PARTICIPANT: There was difference for
12 a second --

13 MR. HUGHES: I'll fix all that. You
14 don't have ---

15 MS. HARPER-LARSEN: Okay. Next, we
16 encourage development of a FSMA produce safety
17 rule, preventive controls for human food as
18 warrants our verification program, interactive
19 decision tree to assist entities in determining
20 which rules they must comply with and when. Yes?

21 CHAIR CARR: So again, do you say we
22 encourage, but we've got ---

1 MS. HARPER-LARSEN: We ask the
2 Secretary to.

3 CHAIR CARR: Okay.

4 MS. HARPER-LARSEN: Blanket statement.
5 Again, the next --

6 CHAIR CARR: So let me just, because
7 now he doesn't see any of the language to that.
8 And you don't have USDA up there. So can we also
9 --- the way I understand it, if we say we
10 encourage, that you're going to say we recommend
11 that the Secretary of Agriculture?

12 MR. HUGHES: So whenever there's
13 encourage?

14 CHAIR CARR: So right now, there is no
15 mention of USDA in either one of those two bullet
16 points.

17 MR. HUGHES: Right.

18 CHAIR CARR: But that is the intent.

19 MR. HUGHES: Right. So I will put
20 there we encourage the Secretary ---

21 CHAIR CARR: No, we recommend.

22 MR. HUGHES: We recommend the Secretary

1 develop --

2 CHAIR CARR: Yes.

3 MR. HUGHES: Yeah.

4 MS. HARPER-LARSEN: And you can
5 wordsmith it.

6 MS. SKELTON: Can I interrupt? You may
7 want to encourage the Secretary to work with FDA
8 to develop.

9 CHAIR CARR: Yeah.

10 MS. SKELTON: It's their regs.

11 CHAIR CARR: Thank you. Would that be
12 the same below two.

13 MS. SKELTON: Same verbiage, yes.

14 MS. HARPER-LARSEN: Same verbiage, we
15 encourage development of FSMA, foreign supplier
16 verification program information modules, and this
17 is a new addition in multiple languages, that are
18 prioritized on import volume.

19 So basically we saw, beyond English and
20 Spanish, we also had China and Vietnam on the top
21 importers list. And that needs to be developed.

22 These modules should focus on educating

1 distributors, wholesalers, cross-docking
2 facilities and aggregation entities.

3 CHAIR CARR: Any discussion?

4 (No audible response.)

5 CHAIR CARR: Next page.

6 MS. HARPER-LARSEN: Okay. We support
7 providing increased funding on an annual basis for
8 personnel marketing and education outreach for the
9 USDA Harmonized GAP Plus audit program in an
10 effort to more successfully market GFSI technical
11 equivalents and FSMA recognition with producers
12 and packers.

13 New language -- so we sort of split up
14 this, we strongly encourage the Secretary's office
15 to engage members of the buying community,
16 including retailers, food service entities, and
17 consumer brands in discussions relating to GFSI
18 technical equivalents. Any discussion?

19 (No audible response.)

20 MS. HARPER-LARSEN: Next, we encourage

21 --

22 MR. WILKINS: I've got a question.

1 MS. HARPER-LARSEN: Oh.

2 MR. WILKINS: I don't like the word
3 buying.

4 PARTICIPANT: Call it procurement?

5 MS. HARPER-LARSEN: Okay. Procurement
6 community, procurers?

7 MR. WILKINS: I think you could take
8 out the buying community, and just say including
9 retailers and food service.

10 MS. HARPER-LARSEN: Engage retailers,
11 food service entities, and consumer brands in
12 discussions for writing the GFSI technical
13 equivalents? Charles?

14 MR. WINGARD: I agree with that.

15 MR. SIEVERT: How about distribution
16 chain, something like that, and then offer some
17 examples?

18 CHAIR CARR: Would it be on farm supply
19 chain -- beyond the farm supply chain?

20 MR. SIEVERT: Well, that whole bottom
21 part is about the farm.

22 CHAIR CARR: I mean, that's --

1 MR. SIEVERT: That's why the buying
2 part was in there. Something about buying food,
3 something about the purchasers.

4 MR. WILKINS: But we're trying to get
5 retailers and food service to understand Gap
6 Plus+.

7 MS. HARPER-LARSEN: Yes.

8 MR. WILKINS: And so it is retailers
9 and food service that needs to understand that.

10 MS. HARPER-LARSEN: It's major
11 procurement decision makers.

12 CHAIR CARR: But that's beyond
13 retailers.

14 MR. WILKINS: Well, it should be ---

15 CHAIR CARR: Right. I mean, you have
16 wholesalers out there that don't ---

17 MR. WINGARD: But shouldn't it be the
18 whole supply chain? Shouldn't it be those that
19 transport it too? Don't we want them to
20 understand this? Anybody who's got control or
21 custody of the product so they ---

22 MS. HARPER-LARSEN: Not for the audit

1 purposes. You can't audit GFSI. You can't audit
2 harmonized Gap Plus truckers. You can't audit.
3 That's not applicable to that audit.

4 CHAIR CARR: Yeah, this is not what
5 this is saying. This is saying that you want the
6 supply chain or the procurement chain part of it
7 to recognize this program as being --

8 MS. HARPER-LARSEN: Like this? We
9 strongly encourage the Secretary's office to
10 engage all foreign procurers, like retailers, food
11 service entities, and consumer brands in
12 discussions related to GFSI technical equivalence?

13 CHAIR CARR: Is that okay?

14 MR. WILKINS: So the retailers are
15 talking about if they don't buy nothing they have
16 to go to a market to replenish. And I think
17 that's a very strong part of it. I don't
18 understand the consumer brands.

19 MS. HARPER-LARSEN: You have recognized
20 consumer brands that are major fresh fruit and
21 produce brands, Dole, Dandy, Fresh Express, that
22 are known consumer identifiable, Green Giant,

1 brands who currently have provisions not to accept
2 USDA Harmonized Gap, because it's not benchmarked.
3 And the reason for that is simply semantics.

4 MR. WINGARD: So to his point, what
5 makes Dole, which is what you listed as a brand,
6 what makes them not a procurer?

7 MR. WILKINS: They're a source, not a
8 procurer.

9 MS. HARPER-LARSEN: They are also a
10 procurer, straight up.

11 CHAIR CARR: Procurer, yeah, they are.

12 MS. HARPER-LARSEN: They're a source as
13 well, sometimes.

14 MR. WINGARD: Okay, I get that.

15 MR. ZEA: If you said supply chain,
16 you're going to have to really -- to make clear
17 what you're talking about ---

18 MS. HARPER-LARSEN: If we just say
19 supply chain, and we give them directive to say,
20 go to the major retailers, go to your major food
21 service entities, and go to your major consumer
22 brands, you're not going to ---

1 MR. ZEA: But say that then in parens
2 and offer some examples, right?

3 MS. HARPER-LARSEN: So to engage major
4 retailers, to take out all foreign procurers or --
5 -

6 CHAIR CARR: How about try it this way.
7 Just say encourage the supply chain, like
8 retailers, food service entities and --- we want
9 the whole supply chain to recognize this
10 equivalent.

11 MR. WILKINS: And these are such as?

12 MS. HARPER-LARSEN: So go back up to
13 the previous statement?

14 CHAIR CARR: No, just right there in
15 front of your cursor.

16 MS. HARPER-LARSEN: Okay.

17 CHAIR CARR: Take out of farm produce,
18 and just say encourage the supply chain, i.e.
19 retailers, food service ---

20 MR. WILKINS: Such as?

21 MS. HARPER-LARSEN: Anybody else that
22 I'm missing there?

1 CHAIR CARR: So supply chain
2 incorporates it all. You've highlighted these
3 three segments.

4 MR. WILKINS: I think that's pretty
5 good.

6 CHAIR CARR: Kiley, would that be your
7 intent?

8 MS. HARPER-LARSEN: Yes.

9 CHAIR CARR: Okay.

10 MS. HARPER-LARSEN: But what we need is
11 we need leadership from the Secretary's office to
12 open dialogue with these entities. We're not just
13 asking for additional funding towards the
14 harmonized program for education throughout our
15 stakeholders. We need that dialogue.

16 MR. WINGARD: So you think you should
17 take out such as and put to include. That points
18 the finger.

19 MR. WILKINS: Good point.

20 MS. HARPER-LARSEN: Shall I read it
21 again?

22 CHAIR CARR: Not right now.

1 MS. HARPER-LARSEN: Okay. Are we good?

2 (No audible response.)

3 MS. HARPER-LARSEN: Excellent. All
4 right. We encourage the USDA's regular
5 collaboration with the FDA to share technical
6 expertise and data so as to inform FDA's
7 implementation plan -- that's specific verbiage,
8 by the way -- to ensure that foreign supply is
9 held to the same standards as domestic supply in
10 regards to all aspects for FSMA compliance when we
11 are giving specific examples of surveying
12 Hepatitis A, contaminated Egyptian strawberries,
13 and Chinese peaches and squashes. We just
14 basically strengthened our original bullet point
15 to give some additional examples. And it lends
16 credence to your trade.

17 CHAIR CARR: Comment?

18 MS. SKELTON: Yeah, now that I see that
19 on the screen -- this is Leanne Skelton, now that
20 I see that on the screen, I think we're mixing
21 things up here.

22 I've got FSMA compliance. That's what

1 you're angling for, is that everybody is uniformly
2 protected by compliance. That's what you want, I
3 think. And I don't mind the examples, but the
4 examples aren't, because of FSMA compliance, or
5 non-compliance. That's USDA's purchasing
6 programs. You can do what you want, but you might
7 be mixing things up a little bit.

8 MR. WILKINS: So should that be USDA
9 instead of FSMA?

10 MS. SKELTON: Well, I think what, if I
11 remember how the group was talking about this,
12 they wanted to ensure that, regardless of the
13 source of product, it was to have equal, uniform,
14 consistent compliance activity related to those
15 models.

16 MR. WILKINS: So we might say FSMA and
17 USDA compliance and give an example.

18 CHAIR CARR: I'm sorry, I don't even
19 understand how the two examples work into that.

20 MS. HARPER-LARSEN: Okay, all right.
21 So I can get in with the Chinese peaches in school
22 lunches, because that was just against USDA

1 procurement issues.

2 But when we talk about FSMA compliance,
3 those growers and the importers did not meet what
4 we currently have for FSMA compliance. And they
5 brought in adulterated products.

6 MS. SKELTON: Did they have to meet it?
7 Were they of the size that had to meet it yet?

8 MS. HARPER-LARSEN: I don't think they
9 were under the requirement --

10 MS. SKELTON: Yeah.

11 MS. HARPER-LARSEN: -- currently. It
12 was all due to the date.

13 MS. SKELTON: Might you be as well
14 served to just strike the examples?

15 (Off-microphone comments.)

16 MS. HARPER-LARSEN: As it reads now?
17 We spent some time trying to come up with an
18 accurate flow that would represent a very robust
19 segment.

20 (Off-microphone comments.)

21 MR. WILKINS: I think that's what
22 you're trying to say.

1 MS. HARPER-LARSEN: And so the FDA does
2 have a specific implementation plan. And we need
3 USDA's technical experts and our data to have a
4 seat at the table for that, okay? And it brings
5 in our objective to make sure that foreign supply
6 and domestic supply are held to the same
7 standards.

8 All right. Our next one is, we
9 encourage the USDA to engage with the FDA
10 regarding prioritization of FSBP inspections
11 related to produce that have caused outbreaks in
12 the United States.

13 You will notice yesterday that Jennifer
14 said the inspections are not on the produce, it's
15 on the importer and the documentation. So what we
16 tried to do was take that information and craft it
17 into something that was palatable.

18 So prioritization of documentation
19 inspections are people who are having trouble with
20 the produce causing outbreaks. Are we good there?

21 (No audible response.)

22 MS. HARPER-LARSEN: Okay. We encourage

1 the USDA to work with the FDA and CDC to hold town
2 hall-style meetings to improve agency
3 understanding. Agency was changed from
4 regulatory.

5 A growing, harvesting, packing, and
6 traceability process is prior to issuing
7 additional fruit and vegetable consumer
8 advisories. Previous consumer advisories have
9 temporarily and sometimes permanently disrupted
10 the market for some fresh fruit and vegetables.
11 And we gave examples that we have documented
12 economic evidence of market disruption, at
13 consumer request.

14 We did remove all of those bullet
15 points. The seeking input, commentary, although
16 several of us maybe were not involved in that,
17 Leanne did confirm that there was input sought.
18 Maybe it just wasn't broad enough as it should
19 have been.

20 MR. HUGHES: I have a question for you.
21 So the other three workgroups have some type of
22 overview or finding statement that will accompany

1 a recommendation or a position statement so that
2 it informs various leadership up the chain.

3 Do you plan to, which it doesn't have
4 to be robust, but do you plan to include some type
5 of background workgroup finding that adds some
6 meat that explains why you've reached that
7 recommendation?

8 MS. HARPER-LARSEN: I don't see any
9 reason why we can't -- I can't provide that to the
10 group for review.

11 CHAIR CARR: But in that particular
12 one, you actually have it at the bottom. It's
13 just where it's at. But you discuss at the end
14 why previous consumer advisors have temporarily
15 altered markets, so you're ---

16 MR. WILKINS: But not only the market.

17 MR. HUGHES: I'm not just specifically
18 talking about that one. I'm just talking about in
19 general, that some of them, it's just a
20 recommendation. And, I mean, I can easily see
21 certain leaders saying, well, where is this coming
22 from? Did they say anything else?

1 MS. HARPER-LARSEN: Because we're not
2 there to convey it.

3 MR. HUGHES: Right.

4 MR. WILKINS: So I would like for us to
5 somehow incorporate the pain that a restaurant, or
6 retailer, or anyone that has the product in their
7 supply chain, from PC to stores, or distribution
8 to restaurants, they say, well you have to dump
9 that product. So it's not just the market, but
10 it's everything in the supply chain is damaged in
11 some sense.

12 MS. HARPER-LARSEN: Consumer supply
13 chain?

14 MR. WILKINS: Well, it just doesn't
15 address the fact that, if we have any of those
16 examples in our supply chain, and there's an
17 advisory ---

18 MR. SIEVERT: Should it be up on the
19 report, where it says previous consumer
20 advisories?

21 MR. WILKINS: Yeah.

22 MR. SIEVERT: The financial?

1 MR. WILKINS: Yeah, I may do that.
2 There may be something there that I tried that
3 that causes financial strain on customers that
4 have advised -- I don't know. We just have ate
5 millions of dollars -- ate's a bad word. We've
6 lost millions of dollars on these advisories.

7 MS. HARPER-LARSEN: When they haven't
8 been found or when they have been found?

9 MR. WILKINS: Both.

10 MR. WINGARD: Well, to Tommy's point,
11 when the Romaine advisory came out from major
12 retailers that kale listed in their computer
13 system in the same category as Romaine.

14 So we had to pick up the kale that we
15 already had in their warehouse. And we had to eat
16 it. And it was bag of kale salad that was their
17 label. So it's not like I can sell it down the
18 street. But we lost, like, 10,000 cases.

19 MR. ELY: So what if -- after we had,
20 you know, we had created an economic hardship in
21 this industry.

22 PARTICIPANT: Yeah, there you go, and

1 temporarily.

2 (Off-microphone comments.)

3 MR. ELY: That is the ---

4 MS. HARPER-LARSEN: All right. So
5 previous consumer advisories have created economic
6 hardships and temporarily and sometimes
7 permanently disrupted the market and consumer
8 supply.

9 It's actually not just the consumer
10 supply chain, it's consumer demand.

11 MR. SIEVERT: And maybe that's ---

12 MS. HARPER-LARSEN: Consumer supply
13 chain incompetence?

14 MR. SIEVERT: How about consumer
15 confidence?

16 PARTICIPANT: Right, confidence is a
17 good --

18 PARTICIPANT: I like confidence.

19 MR. WILKINS: I'd take supply chain out
20 and put confidence.

21 MS. HARPER-LARSEN: And consumer
22 confidence for consumption of some fresh fruit and

1 vegetables.

2 Is there another example that needs to
3 be listed there? I just looked at majors and
4 discussed it with my workgroup committee. Is
5 there something else? I mean, should we stick in
6 some kale in there, since you lost 10,000 cases?

7 MR. WINGARD: No, because the kale ---
8 (Simultaneous speaking.)

9 MR. SMITH: Those will resonate. It's
10 not just fresh. We lost tomato sales with the
11 bogus tomato problem in 2008 in canned.

12 PARTICIPANT: So fresh and processed.

13 MR. SMITH: Fresh and processed.

14 MR. WINGARD: I'd put canned up beside
15 the fresh, fresh and canned.

16 MR. HUGHES: For those who haven't
17 checked out, it's 11:30. But don't all leave.
18 Keep working. Just a reminder.

19 MS. HARPER-LARSEN: All right, how does
20 this read now?

21 MS. SKELTON: Change your first canned
22 to processed.

1 PARTICIPANT: Yeah, I'd say that the
2 process ---

3 (Off-microphone comments.)

4 MS. HARPER-LARSEN: All right. Are we
5 good to move forward?

6 (No audible response.)

7 MS. HARPER-LARSEN: All right. We
8 encourage the USDA to work with the FDA and CDC to
9 coordinate a fresh fruit and vegetable
10 stakeholder-driven workgroup focused on improving
11 communication and advising during the consumer
12 advisory process and other related activities.

13 So we took out a lot of wordiness, made
14 it more broad, and we also referenced what had
15 been provided by United and PMA in direct
16 discussion under Appendix D that has been
17 submitted for review to the FDA in relation to
18 developing a more robust collaborative effort.

19 What was lacking from United and PMA's
20 Appendix D document was the fact that USDA and
21 smaller stakeholders did not have a seat at the
22 table. And so in our bullet point we wanted to

1 make sure that USDA was recognized for their
2 contribution in that process and that we had a
3 more robust, broad, stakeholder group represented,
4 rather than just larger membership organizations.

5 Last, and this is a new bullet point,
6 we ask that the Secretary's office seek
7 appropriate annual funding streams for FSMA-
8 related training initiatives, in specific, the
9 Produce Safety Alliance, which is the produce
10 safety rural grower training, which is federally
11 mandated for all entities that are not applicable
12 to the Tester Amendment that grow, harvest, and
13 sometimes pack their own product.

14 We don't have appropriate annual
15 funding streams. It's specifically, right now, on
16 a time-limited grant. So we have a law, and we
17 don't have the education outreach to enact it. We
18 essentially have a defunct domestic supply
19 initiative. So therefore, that's the new bullet
20 point.

21 MR. WINGARD: Are you trying to get
22 money, you want money every year here? You're

1 saying recurring funding streams.

2 MS. HARPER-LARSEN: What I think we
3 need to look at is, like, a line item specific,
4 that when we say recurring funding streams, right
5 now what we would be dealing with is grant, versus
6 a line item on the budget. So is it recurring, or
7 is it an annual line item?

8 MR. HUGHES: Yes.

9 MS. HARPER-LARSEN: It's an annual line
10 item, correct?

11 MR. HUGHES: It is an appropriations --
12 and appropriations line item, right?

13 MS. SKELTON: It would end up as an
14 appropriation, yes.

15 MS. HARPER-LARSEN: So that's the, I
16 mean, it's super important when we're considering
17 this verbiage that we ask for recurring. They're
18 going to take additional -- just keep funding that
19 grant. And then when they decide to slice that
20 grant up, well, bye-bye.

21 CHAIR CARR: Technically they can't
22 count your grant as recurring funding. But if you

1 say the word recurring, that may speak line item
2 funding.

3 MS. HARPER-LARSEN: Because it's not --
4 no, because it's not the original funding source?
5 You can't recur something that hasn't happened
6 yet.

7 MS. GLEASON: Can you just add
8 recurring line item funding?

9 MS. HARPER-LARSEN: Or appropriations?

10 CHAIR CARR: And take out funding.

11 MS. SKELTON: Change your first
12 appropriate to adequate.

13 MS. HARPER-LARSEN: We've got really
14 good technical assistance for our committee, don't
15 we? Yes, uh-huh.

16 MS. HARPER-LARSEN: So we ask that the
17 Secretary's office seek adequate, recurring, line
18 item appropriations for FSMA-related training
19 initiatives. All right, do we have it?

20 CHAIR CARR: Any other questions or ---
21 so you're ready to put this forward?

22 MS. HARPER-LARSEN: Yes.

1 CHAIR CARR: May I have a motion?

2 MR. SIEVERT: Motion.

3 CHAIR CARR: Have a second?

4 MR. ELY: Second.

5 CHAIR CARR: Any discussion?

6 (No audible response.)

7 CHAIR CARR: All those in favor, please
8 say aye.

9 (Chorus of ayes.)

10 CHAIR CARR: Those opposed?

11 (No audible response.)

12 CHAIR CARR: Well, very good. So our
13 work on recommendations at this level is done.
14 Darrell, for housekeeping, you're going to type
15 these up, send them out to the whole group, one
16 last time to the specific committee leads to look
17 at it.

18 And then, again, we're going to ask
19 everybody to review these one more time and come
20 back. But how they have to handle that process?
21 Do we just have their acknowledgment?

22 MR. HUGHES: Yeah, similar to how we do

1 the minutes, since you guys have already approved
2 them at a high level here, just going through and
3 looking at the two versions to make sure they're
4 consistent, and there has been nothing deleted, or
5 so on and so forth.

6 CHAIR CARR: And let me also go and add
7 that so, beyond that, if there's something else
8 that needs to come up during this next -- after
9 the end of September, we can make further -- you
10 can work within your working groups and bring
11 something else forward. We'll get it to Darrell,
12 and get it out to all of us. And we can bring
13 other recommendations. This doesn't have to be
14 the end of the process --

15 MR. HUGHES: Right.

16 CHAIR CARR: -- is what I'm saying.
17 Things may emerge in that time period.

18 MR. HUGHES: Yeah. And, I mean, we
19 won't be able to meet in person again, but we will
20 be able to revise which, I think, most of you are
21 comfortable doing at this point.

22 CHAIR CARR: Well, before we leave, I

1 want to thank all the committee leads again for
2 taking the charge of working with the your groups
3 over the summer, getting these done, fantastic
4 process today. Everybody's gone through it,
5 everybody's gotten their input, so again ---

6 (Simultaneous speaking.)

7 MR. HUGHES: When I read through the
8 actual recommendations in the position statements,
9 it's the expectation that the overviews, the
10 workgroup findings, paragraphs, that also needs to
11 finalized by then. And I'm looking for a
12 complete, refined, package.

13 MR. WILKINS: I'm sorry, so ---

14 (Simultaneous speaking.)

15 MR. WILKINS: -- there will be more in
16 there that I think might be changing a little bit.
17 You said you might change a little bit of your ---

18 MS. HARPER-LARSEN: The reason why we
19 arrived at that recommendation.

20 MR. HUGHES: Straight to that whole
21 section on protecting the farmer, that background
22 section needs to be 100 percent revamped.

1 PARTICIPANT: Right.

2 (Simultaneous speaking.)

3 MR. HUGHES: And so, I mean, I don't
4 mind moving for the refined recommendations in
5 position statements for clearing. But then the
6 same thing will have to happen for the meat that
7 supports those recommendations.

8 So it's up to you. Do you want the
9 workgroup leads to get their refined workgroup
10 finding statements that -- the background
11 statement's completed?

12 CHAIR CARR: Yes, I want to get -- let
13 me get those completed so that one time, one final
14 package can go back out to everybody.

15 MR. HUGHES: All right. So can we --
16 what timeframe would you like those refined
17 paragraphs to be submitted to me?

18 CHAIR CARR: Is two weeks good enough
19 for the working group leads?

20 (Off-microphone comments.)

21 MR. WILKINS: Well, that's two weeks.

22 MS. HARPER-LARSEN: I want to do that

1 in September.

2 PARTICIPANT: Let's do two weeks.

3 MR. WILKINS: August 30th is Friday,
4 that's two weeks and a day.

5 CHAIR CARR: Kiley, you're a working
6 group leader. If you can't do that timeframe,
7 tell us what you can do.

8 MS. HARPER-LARSEN: I can do the
9 following Friday.

10 CHAIR CARR: So the goal would be to
11 have all the findings to you within two weeks and
12 you to have those back to us in a week or ---

13 MR. HUGHES: Yeah.

14 CHAIR CARR: -- after that?

15 MR. HUGHES: Yeah, within a week after
16 that.

17 CHAIR CARR: So sometime after Labor
18 Day we should all see a final product. And again,
19 if there are substantive changes to that product,
20 then if there's a wordsmith or something like
21 that, you can work with Darrell directly on that.
22 But subsequently, we have to come back together as

1 a group to make any changes to that.

2 All right, so we've gone through the
3 committee leads, and we've gone through all this.
4 Are there any other topics that need to come up to
5 be discussed?

6 MR. HUGHES: I had on the agenda to
7 schedule follow-up meetings. But I think I'll
8 table that until we get all the material in.
9 That's it, yeah. Thank you all.

10 CHAIR CARR: So what else?

11 MS. HARPER-LARSEN: I do have one
12 thing. Based on the discussion that we made a
13 unanimous vote in the trade section for
14 recommendations as it relates to defending
15 domestic production in the United States, there
16 are both a House and a Senate Bill, H.R. 101 and
17 Senate Bill 16, that are currently looking to take
18 our policy recommendation into law.

19 And I wanted to know if it would be the
20 pleasure of the committee to make a formalized
21 vote on the support of H.R. 101 and Senate Bill
22 16, which is the Domestic Protection Act, to lend

1 further credence to our policy recommendation.

2 MR. SIEVERT: Could we have copies of
3 those bills before we ---

4 MR. HUGHES: Wait, let me ask this
5 question first. Are we amending the approved
6 trade or this is just an additional?

7 MS. HARPER-LARSEN: Just an additional,
8 I don't know, separate.

9 MR. HUGHES: Yeah, you can do what you
10 want. Then you have to put it in writing and then
11 approve. Or, I mean, it's on the record here in
12 minutes. But if someone wants minutes it's --
13 we're, like, almost out of time here today.

14 CHAIR CARR: Well, I mean --

15 (Simultaneous speaking.)

16 CHAIR CARR: Let me have the chair,
17 Darrell. So we've already adopted the language
18 that supports those bills, but remember, our job
19 is to recommend to the Secretary or to make a
20 statement.

21 So this is legislation. So is your
22 recommendation that this committee recommends that

1 the U.S. Secretary of Agriculture should support
2 and work for the passage of those bills?

3 MS. HARPER-LARSEN: Yes.

4 CHAIR CARR: Okay. Since nobody has
5 seen those bills, I would have to say that -- I'd
6 recommend that we circulate those bills. And then
7 we can come back together via email and vote on
8 them.

9 MR. ZEA: So bills by review of the
10 Senate.

11 CHAIR CARR: So have I agreed to work
12 with you on this?

13 MS. HARPER-LARSEN: But they are
14 supported by a multi --- it's a bilateral support,
15 multi-state.

16 MR. WILKINS: But there is bilateral
17 multi-state objection to that. And I think that
18 -- I hate to overstep what we agreed on today. If
19 you do that, then it weakens the stance we made
20 today. It changes the stance we did today. And
21 I think you're taking one step back to come back
22 to doing something we didn't agree to today. I

1 strongly disagree with that.

2 CHAIR CARR: Yes, Charles?

3 MR. WINGARD: I'm not sure exactly what
4 our charter says. I don't have it right in front
5 of me. But I think we were charged to make
6 recommendations to the Secretary of Agriculture on
7 how he can lead his agency forward to help our
8 industry. And Kiley understands that would be one
9 way to do it. But I don't think we should --

10 CHAIR CARR: I don't think that was our
11 charge.

12 MR. WINGARD: No. I just don't think
13 we should get into lobbying for passage of this or
14 that. I mean, I do think we have to protect the
15 industry. I get that completely. But that's for
16 people on Capitol Hill to figure out, not for this
17 group.

18 We may have all got in here and in two
19 hours be lobbying for individuals, but as a group
20 I think we're charged to recommend to the
21 Secretary what we think he needs to do to help our
22 industry.

1 CHAIR CARR: And, Charles, just
2 following that -- serving on another USDA
3 committee, you are not allowed to take a position
4 on legislation. You can go up there on the Hill
5 as yourself, or represent your company. But you
6 can never, ever go up and say as a member of the
7 USDA Food Advisory Committee, I recommend you
8 support this. You cannot do that.

9 I mean, I probably should have done
10 that from the opening. So I would say that,
11 Kiley, I understand your position. So if you want
12 to move forward with it, then I'm going to say
13 that we have submit the bills to everybody, and
14 then everybody can think about it. Otherwise,
15 would you accept the language as it's adopted
16 today that covers the very same things you're
17 trying to say?

18 MS. HARPER-LARSEN: So I would just
19 make the commentary that I put a motion on the
20 floor. If I don't see a second to it, then it's
21 going to fall flat according to Robert's Rules of
22 Order which dictates our committee's standing.

1 But what I think is very important to
2 note is that the policy recommendation that we put
3 forward does not say the same thing as both of
4 those bills, and it does not have the teeth.

5 MR. WILKINS: We are not in legislative
6 recommendations.

7 MR. TALBOTT: The other problem we've
8 got is legislation is a moving target. And to say
9 I support X, by the time it goes through
10 legislative meat grinding --

11 PARTICIPANT: It'll be amended.

12 MR. TALBOTT: It can be ugly. And it
13 may not say anything close to --

14 CHAIR CARR: There is a motion on the
15 floor. Is there a second for that motion?

16 (No audible response.)

17 CHAIR CARR: Hearing no second --

18 MS. HARPER-LARSEN: It dies.

19 CHAIR CARR: -- it dies.

20 MS. HARPER-LARSEN: Thank you though
21 for the consideration.

22 CHAIR CARR: We put it on the record.

1 And we have all discussed it. So is there
2 anything else to come before this Committee?

3 MR. WINGARD: Mr. Chairman, I'd like to
4 commend everybody here for their commitment to the
5 industry. It's been great getting to know you
6 all. I hope it was great, I hope it was someone
7 goes on getting the ---

8 (Laughter.)

9 MR. WINGARD: But thank you to
10 everybody for --- I think that everybody should be
11 commended for the giving of their time and their
12 talent to this process, and to the USDA staff, and
13 to those visitors in the room. And with that, and
14 thank you, Mr. Chairman, for leading us. And with
15 that, I make a motion we adjourn.

16 PARTICIPANT: Second.

17 CHAIR CARR: Motion to adjourn,
18 seconded, so admitted. Thanks everybody, travel
19 safe home.

20 (Whereupon, the above-entitled matter
21 went off the record at 11:45 a.m.)

22

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Advisory Committee Meeting

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