S. HRG. 115–171

PESTICIDE REGISTRATION UNDER THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT: PROVIDING STAKEHOLDERS WITH CERTAINTY THROUGH THE PESTICIDE REGISTRATION IMPROVEMENT ACT

HEARING

BEFORE THE

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

MAY 11, 2017

Printed for the use of the
Committee on Agriculture, Nutrition, and Forestry

Available via the World Wide Web: http://www.govinfo.gov/

U.S. GOVERNMENT PUBLISHING OFFICE
28–499 PDF WASHINGTON : 2019

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Thursday, May 11, 2017

UNITED STATES SENATE,
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,
Washington, DC

The Committee met, pursuant to notice, at 9:31 a.m., in room 328A, Hon. Pat Roberts, Chairman of the Committee, presiding.

Present: Senators Roberts, Boozman, Ernst, Grassley, Thune, Daines, Perdue, Stabenow, Brown, Klobuchar, Gillibrand, Donnelly, Heitkamp, Casey, and Van Hollen.

Chairman ROBERTS. Good morning. I call this meeting of the Senate Committee on Agriculture to order.

We are going to go out of order here just for a moment, and I recognize the distinguished Ranking Member, Senator Stabenow.

Senator STABENOW. Well, thank you very much, Mr. Chairman, and first of all, I want to thank you for coming to Michigan this past weekend. You were a big hit, so do not come to Michigan and run for office for the Senate.

[Laughter.]

Senator STABENOW. But, in all seriousness, it was a wonderful opportunity to have both you and your staff to Michigan, to hear from our growers, consumers, conservation partners, and local food groups.

One of our witnesses who owns the Hopyards of Kent, which is one of the fastest growing agriculture sectors in Michigan, wanted to give you this product of her business as a thank you. It is a Michigan Pale Ale from Hopyards of Kent. Please enjoy it——

Chairman ROBERTS. Thank you.

Senator STABENOW. —not during the hearing, but you can enjoy it afterwards.

[Laughter.]

Senator STABENOW. We are, in all seriousness, very appreciative. It was a great opportunity for us to, once again, as we did in Kansas, talk about working together to write a Farm Bill. Which is what we do here on the Agriculture Committee, so thank you.

Chairman ROBERTS. Well, thank you. We had in excess of 250 people in a place to hold a hearing that held about 200.

Senator STABENOW. That is right.

Chairman ROBERTS. We heard from one specialty crop after another specialty crop group——

Senator STABENOW. That is right.

Chairman ROBERTS. —including this young lady who and thank you for this gift.

Maybe we should open it up and—I usually have a glass of ethanol with Senator Grassley every morning.

[Laughter.]

Chairman ROBERTS. It warms me right up.

Senator STABENOW. Now we understand.

Chairman ROBERTS. Maybe this would sort of calm it down after that, but thank you for this very much. Thank you for the hearing, and thank you for all the work that you and your staff did to make it a very good hearing.

I am going to do this.

Senator STABENOW. Yes.

Chairman ROBERTS. Note the Chairman was able to do this.

Senator STABENOW. Yes. Good.

Chairman ROBERTS. Thanks to Pam Bouma Miller, who was the person who gave the testimony for the hops industry, and who obviously depends on pesticides.

STATEMENT OF HON. PAT ROBERTS, U.S. SENATOR FROM THE STATE OF KANSAS, CHAIRMAN, COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Chairman ROBERTS. Twenty-four years ago, a Congressman wrote, "One of the critical tools used by producers to enhance their ability to produce the world's most abundant, most affordable food supply is pesticides." The author of those words in 1993 was yours truly, proudly representing the First District of Kansas, the Big First.

In that same article, I discussed reforms at that time to the Federal Insecticide, Fungicide, and Rodenticide Act, or what we call "FIFRA", needed at the time to improve, among other things, reregistration of chemistries.

Today, the Committee will cover the same issues critically important to agriculture with regard to providing farmers and, as a consequence, our nation's consumers with the necessary crop protection tools to prevent, manage, and eradicate devastating pest and plant diseases that threaten our food supply.

In my travels throughout Kansas talking to producers, even most recently at the field hearing that our Committee held in Michigan, a consistent message shared with our Committee is that farmers and ranchers in rural America want regulatory certainty.

The hearing today will touch on that theme as well as cover a variety of issues, including the Federal Insecticide, Fungicide, and Rodenticide Act and pesticide registration processes.

The Committee will hear from two panels of witnesses consisting of government officials from the EPA and the Department of Agriculture as well as a panel of stakeholders to discuss these issues, what works well, and what challenges remain.

The EPA has the primary responsibility for regulating the sale, use, and distribution of pesticides. The EPA carries out this respon-

sibility through FIFRA, a licensing statute which requires the EPA to review and register the use of pesticide products.

Today's hearing is a reminder of this Committee's responsibility and my personal commitment, along with the Ranking Member, to conduct business through regular order and in a transparent manner.

Relating to FIFRA, this Committee has legislative work ahead of us with the reauthorization of the Pesticide Registration Improvement Act, or PRIA. PRIA, while technical in nature, is critically important with assisting both the EPA in carrying out administrative functions and industry that relies upon timely pesticide registration decisions to get products on the market and in the hands of farmers.

PRIA expires at the end of this fiscal year, and with that deadline in mind, it is my hope that today's hearing will lay the groundwork for our Committee action on advancing PRIA this work period. There is widespread support for PRIA among the registrant community, which includes agriculture and non-agriculture use, labor, and environmental advocates. Illustrating this, is a letter from the PRIA Coalition addressed to our Committee expressing support for the legislation and urging swift action.

I ask unanimous consent for this letter to be included into the record. Without objection, it is so ordered.

[The following information can be found on page 78 in the appendix.]

Chairman ROBERTS. We know that many rely heavily on timely and predictable registration decisions. It is important that we get PRIA across the finish line, not only to provide certainty to the industry, but to provide new products to growers for crop protection and to consumers to protect public health.

As I have said before, U.S. farmers and ranchers will need to feed a growing population all around the globe. In order to meet that demand, it will be extremely important to provide certainty and eliminate any regulatory barriers that might challenge farmers from meeting this goal.

I look forward to hearing from our witnesses, and with that, I recognize Stabenow for her remarks.

STATEMENT OF HON. DEBBIE STABENOW, U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator STABENOW. Well, good morning, and thank you very much Mr. Chairman for holding this very important hearing.

Our Committee has a long history of working in a bipartisan manner to reauthorize the Pesticide Registration Improvement Act, which many of us know as PRIA.

Most recently, our Committee took action in 2012 when I served as Chair, and today's hearing is a critical step in this process and an opportunity to listen to expert stakeholders and the EPA.

Today, we will hear about the importance of PRIA from the perspective of farmers, farmer workers, and consumers.

Agriculture is a risky business. We know that. Our producers know there are few certainties, if any, that they can rely on in the field. From unexpected natural disasters intensified by climate change, to low commodity prices, unpredictable events are a harsh

reality that directly affect farmers' bottom lines and ultimately American jobs.

That said, for nearly 15 years, PRIA has served as a valuable tool for stakeholders, the EPA, and farmworkers, providing certainty, which is needed to fight pest and weed infestation.

Pesticide registration fees also support important education and training programs that keep our farmworkers and their families safe.

PRIA also plays an important role off the farm. Products as common as household cleaners and disinfectants to lifesaving treatments that combat Ebola and the Zika virus and avian flu all rely on regulatory certainty and science based decisions provided by PRIA.

PRIA also provides the financial and staffing stability that the EPA requires to fulfill its regulatory responsibilities, including both new registrations and the re-registration of pesticide products.

More important than getting products in the hands of consumers is ensuring these products are safe for both human health and the environment. In my opinion, any risk, however small, of an unsafe product entering the commercial market is avoidable if we make decisions that are rooted in science.

In fulfilling its regulatory responsibility, the EPA must stay true to sound science and take every precaution to protect our nation's citizens, most importantly, our children.

I have seen firsthand the devastating effects of excessive lead in Flint's drinking water, and I believe there can be no tolerance for exposures to products that have devastating developmental effects on children.

I have always been committed to supporting and advocating for smart Federal regulations that are based on the principles of sound science. Whether it is certainty of man-made climate change or the safety of biotechnology, we must look first and foremost to science to drive our laws and regulations.

That is why it is extremely unfortunate it appears that scientific inquiry is being jeopardized now at the EPA. Late last week, in a very concerning and abrupt move, the agency dismissed several members of its Board of Scientific Counselors. This is a highly unusual move that has raised strong concerns. Former Bush Administration EPA Administrator Whitman warned that it could send an alarming message to scientists that they must have industry ties to be taken seriously.

In order for the EPA to meet its mission and its statutory responsibilities in programs like PRIA and others, the agency's decisions must be based on sound, peer-reviewed science. Hastily dismissing numerous scientists from the agency's technical advisory boards sends the wrong message to the public and to all of us about the EPA's integrity and the safety of the products they approve.

I urge the agency to reverse their decision and allow these scientists to serve terms in line with historic norms under both Republican and Democratic Administrations.

Mr. Chairman, science underpins everything we are talking about here today. I am pleased to partner with you last year on a science-based biotechnology bill, and I look forward to a Farm Bill

process that also recognizes the importance of good data and sound science.

I am sure we will learn more about these matters today, and I look forward to hearing from our witnesses and the Committee's effort to reauthorize the Pesticide Registration Improvement Act in the near future.

Thank you.

Chairman ROBERTS. I thank the Senator.

I want to welcome our first panel of witnesses before the Committee this morning, certainly both having the experience and the tenure so that they could wave the banner of sound science and can be recognized anywhere.

Our first panelist is Mr. Rick Keigwin. Rick currently serves as the Acting Director for the U.S. Environmental Protection Agency's Office of Pesticide Programs. He brings to the Committee 20 years of experience with regards to his testimony. Mr. Keigwin has served in a variety of leadership capacities at the agency, including in the Pesticide Reevaluation Division, the Biological Economic Analysis Division, and the Registration Division. I do not know of any division that you have not served on, sir. We welcome you, and we look forward to your testimony.

Our second witness joining Rick is Dr. Sheryl Kunickis, who joins us today from the U.S. Department of Agriculture's Office of Pest Management Policy, where she has served as Director since 2010. In this capacity, she coordinates the Department's role in pesticide regulatory processes and related interagency affairs, primarily with the Environmental Protection Agency. She also integrates the Department's programs and strategic planning related to pest management.

We welcome both of our witnesses, and we look forward to your testimony.

Rick, why don't you proceed.

STATEMENT OF RICHARD P. KEIGWIN JR., ACTING DIRECTOR, OFFICE OF PESTICIDE PROGRAMS, U.S. ENVIRONMENTAL PROTECTION AGENCY, WASHINGTON, DC

Mr. KEIGWIN. Thank you, Chairman Roberts. Good morning. It is very nice to be here. Chairman Roberts, Ranking Member Stabenow, and members of the Committee, my name is Rick Keigwin, and I currently serve as the acting director of the Office of Pesticide Programs at EPA.

Safe pesticide use makes an enormous contribution to our society, particularly in the production of U.S. food and fiber. Innovation in pesticide use has greatly increased U.S. agricultural productivity and contributed to a predictable food supply and stable food prices.

There are now more than 17,000 registered pesticide products containing more than 1,200 active ingredients, with uses ranging from insect repellents, household cleaners, lawn and garden chemicals, hospital disinfectants, biotechnology products, and a wide range of agricultural chemicals used to provide an abundant food supply.

Working with stakeholders, EPA has developed a highly regarded program for evaluating pesticide safety and making regu-

latory decisions. Our approach to decision-making is based on a model of transparency. Using this approach, the agency makes decisions consistent with the information that is peer-reviewed and protective of human health and the environment.

Under the Federal Insecticide, Fungicide, and Rodenticide Act, or FIFRA, EPA ensures that when used properly, pesticides provide significant benefits to society, such as controlling disease-causing organisms, protecting the environment from invasive species, and fostering an affordable, safe, and abundant food supply. FIFRA's safety standard requires EPA to weigh these benefits against harm to human health and the environment that might result from using the pesticide.

In addition, under the Federal Food, Drug, and Cosmetic Act, EPA sets tolerances or maximum residue limits for pesticides used on food and animal feed. The EPA may establish a tolerance for a pesticide in food or feed only if we find that there is a reasonable certainty of no harm from exposure, from consumption of the food treated with that pesticide, and from other non-occupational sources.

The Pesticide Registration Improvement Act, or PRIA, as you mentioned, was first signed into law in 2004, and we are now talking about PRIA 4, the third reauthorization of PRIA.

PRIA is a successful example of user fees paid by the private sector supporting vital regulatory programs. EPA's pesticide activities are funded by a combination of appropriations and user fees, with one-time registration service fees accompanying registration applications and annual maintenance fees supporting continued registration of pesticide products.

Under PRIA, entities seeking EPA's approval to sell or distribute pesticide products, in most cases, pay a fee to process their applications. The amount of the fee depends on the type of application, the complexity of the application, and the type of entity. So, for example, a small business pays reduced fees, and government and government-sponsored organizations are exempt from paying the PRIA fees.

PRIA was developed by a coalition of pesticide stakeholders representing seven different trade groups within the pesticide industry and public interest groups representing both the farmworker and environmental communities. The result of this collaboration is that there are elements in PRIA that are important to all of the represented stakeholders in the coalition, and EPA for the past many years has served in an advisory capacity to this coalition and has welcomed the opportunity to provide technical assistance to them.

Before PRIA, EPA could not process all of the applications we received in a timely manner. Backlogs developed, and applicants could not predict when the agency could make a decision. With the additional resources provided by PRIA, the agency can now process new applications in a timelier manner. As part of our efforts to continue to improve the registration process, EPA has integrated efficiencies throughout our review process, enabling the agency to successfully meet the requirements of PRIA. Since PRIA became law, the agency has seen an increase in the approval of pesticides for us in growing specialty groups, helping farmers meet their pest control needs.

Further, some of these fees support improved pesticide safety education that helps protect our farmworkers and farmworker families.

In conclusion, the EPA has a history of working in strong collaboration with the grower community to address potential pesticide risks, while providing growers with the necessary tools to meet their pest management needs. Through meetings with growers and agricultural stakeholders, we gain a better understanding of how farmers use these tools to grow their crops.

Thank you for the opportunity to testify today. I will be happy to answer any of your questions. Thank you.

[The prepared statement of Mr. Keigwin can be found on page 49 in the appendix.]

Chairman ROBERTS. We thank you for your statement and more especially for being on time.

Dr. Kunickis, please.

STATEMENT OF SHERYL KUNICKIS, DIRECTOR, OFFICE OF PEST MANAGEMENT POLICY, U.S. DEPARTMENT OF AGRICULTURE, WASHINGTON, DC

Ms. KUNICKIS. Chairman Roberts, Ranking Member Stabenow, and members of the Committee, thank you for the opportunity to provide testimony on the importance of pesticides in providing America's safe, abundant, and affordable food supply. I am Dr. Sheryl Kunickis, director of USDA's Office of Pest Management Policy, or OPMP. I have worked on behalf of the public for almost 29 years. I have served as the associate deputy director for Ag, Lands, and Wildlife at the White House Council for Environmental Quality and served as the acting director in the Office of the Chief Scientist at USDA. I earned a Ph.D. in soil science from North Carolina State and an M.S. and B.S. in agronomy from BYU.

OPMP harnesses the USDA's expertise to inform regulatory actions under FIFRA, as well as pesticide-related provisions of other statutes, and coordinates agricultural biotech issues for USDA. We strive to ensure fully informed decision-making in a number of ways: by clarifying the benefits and costs of Federal actions on U.S. agriculture, by providing the best data on agricultural production and pesticide use, by effectively communicating the concerns of our stakeholders in all sectors of the agricultural industry, and by encouraging the use of quality science for issues related to pesticides and pest management. To this end, I lead a highly regarded interdisciplinary technical staff with broad expertise.

America's abundant, affordable, high-quality, and safe food supply is exceptional and the envy of the world, despite the uncertainties of weather, consumer markets, labor availability, pests and diseases, and production costs. Pesticides are a critical component of all farming systems. Whether it is use of organic materials such as spinosad insecticide in organic cranberry production to manage fireworms or plant-incorporated genetically engineered Bt insecticide in controlling rootworms across millions of acres of corn production, pesticides are essential tools for farmers in managing pests.

We need certainty, when possible. USDA welcomed EPA's proposed classification of glyphosate, commonly known as Roundup, as

not likely to be carcinogenic to humans. USDA publicly commented in support of EPA's conclusion, which is in line with other major risk-based assessments conducted by regulatory bodies across the world. Glyphosate is important to agriculture because of its excellent crop safety in GE crops, the broad range of weeds it controls, its flexibility, and its economy of use.

Agriculture depends on a strong, scientifically-based EPA to evaluate pesticides. USDA supports PRIA, as it will provide the certainty needed for registrants to get innovative technologies to market and for growers to know what tools they have available to address the next pest challenge, and, of course, the educational component is essential.

Now let us discuss the role of the Endangered Species Act in the registration of pesticides. Since 2013, EPA and the Services have been working on a nationwide ESA consultation for chlorpyrifos, diazinon, and malathion. Chlorpyrifos is a broad-spectrum insecticide. Diazinon is impregnated in cattle ear tags to control flies, and malathion is part of the toolbox used to combat mosquitoes, maintain the cotton boll weevil program, and manage spotted wing drosophila, an extremely destructive, invasive insect in fruit production.

The services analyze effects of pesticides based on the maximum allowable use instead of actual use. We have concerns about the impacts of potential mitigation actions on U.S. agriculture. FIFRA, the law that directly regulates the registration of pesticides, already requires EPA to prevent any unreasonable risk to man or the environment, a standard which could include endangered species. This dual regulation challenges EPA meeting its statutory obligations to regularly review pesticide registrations. The current workload is not sustainable. Regulatory certainty is needed to ensure the continued safe use of pesticides, while offering necessary protections to endangered species and their habitat.

In closing, let me reiterate that our food supply is one of the safest anywhere in the world. The USDA Pesticide Data Program annually tests a variety of domestic and imported foods. In 2015, more than 99 percent of the samples tested had pesticide residues below the tolerance level established by EPA. These legal limits are established by our colleagues at EPA and are but one example of the immensely important work that EPA does to register safe and effective pesticides that are essential to both conventional and organic agricultural systems.

Thank you very much, and I will look forward to addressing any of your questions. Thank you.

[The prepared statement of Ms. Kunickis can be found on page 60 in the appendix.]

Chairman ROBERTS. Thank you so much.

Senator Stabenow, we have two witnesses that were very succinct and on time. I think that is—I am not sure if that is a record, but at any rate——

Senator STABENOW. It may be.

Chairman ROBERTS. We thank you very much.

Mr. Keigwin, in the context of PRIA, often times the conversation focuses only on the benefits for the registrants. Would you elabo-

rate, please, on the other types of benefits that PRIA provides? I am going to mention certainty and obviously worker protection.

Mr. KEIGWIN. Thank you, Senator.

So certainty for growers, I think, is very important. Knowing that tools that are in the pipeline will become available by a date certain, I think it is critically important to help growers meet their pest management needs. EPA has been very successful as part of implementing PRIA that nearly 98 percent of the time or even more frequently, we are meeting the statutory due dates for completing our registration decisions, and that is something that we are very proud of.

PRIA also extends funding for pesticide safety education programs, which is also very critical to ensure that the people that help us grow our food remain safe and that their families remain safe, and the funds from PRIA help to support programs either at land-grant universities or in other organizations to ensure that they have the protections that they need.

One of the new things with PRIA 4 that I would like to highlight is that it sparks innovation for the development of lower-risk pesticides. One of the provisions of PRIA establishes higher fees and longer review times for those products that do not get classified as a reduced-risk or lower-risk pesticide, so the result being that something that does have the merits of being a lower-risk pesticide can be advanced to the market more quickly.

So those would be three that I would highlight for you today.

Chairman ROBERTS. I appreciate that very much.

Doctor, as the Department of Agriculture—well, number one, you went from North Carolina State to BYU. That is a long ways.

Ms. KUNICKIS. I went in the other direction. I started out at BYU and ended at North Carolina State.

Chairman ROBERTS. I see. You just reversed. So instead of going West, young lady, you went East.

Ms. KUNICKIS. Yes, sir.

Chairman ROBERTS. All right. Is BYU, the—are they still the Cougars?

Ms. KUNICKIS. Yes, sir.

Chairman ROBERTS. Then you went from the Cougars to a Wolfpack?

Ms. KUNICKIS. Yes, sir.

Chairman ROBERTS. Kansas State played BYU in a Bowl that I attended. Our cornerback tripped on the last—one of the last plays of the game, and your quarterback threw for a touchdown. Otherwise, the Wildcats would have defeated the Cougars. We are into four-legged hairy animals. I think we are going to quit right there.

Ms. KUNICKIS. Okay.

Chairman ROBERTS. As the Department of Agriculture works to facilitate U.S. agriculture exports, it is absolutely critical to maintain the free flow of trade. Trade has become a big issue, not only in general, but more especially with this Administration. We have a very key vote coming up with regards to Robert Lighthizer to get trade moving again, make trade great again.

APHIS works hard to keep open markets by ensuring U.S. ag products are free from pests. Without access to appropriate products to manage pests, my question is, is the U.S. at risk of trade

restrictions on our exports? Could you please talk about the threat of losing existing markets if pests are discovered in our exported animal products and the role that pesticides play in keeping our agriculture trade open and consistent?

Ms. KUNICKIS. Yes. Thank you, and that is a great, very important question. We are absolutely delighted to have Dr. Perdue—or now Secretary Perdue at the head of USDA. It has been delightful to have him in office for the last, I guess, almost three weeks.

Secretary Perdue has talked already about the importance of expanding trade. He is committed to doing that, and we have no doubt that he will follow up on his commitment.

Secretary Perdue is the chief salesperson, and when he meets with folks, I expect that he will honor his commitments with them to provide a safe and abundant food supply to those folks that are our trading partners.

As you said, the risk there is if we cannot, if we have pests that are in our commodities and in our food supply, without pests we would not—I mean without pesticides, we would not have the fumigants needed to—we would not be able to ensure the safety of the food that goes overseas. We would not be able to ensure that our food is pest-free.

Pesticides are absolutely essential to those who are growing the food, for those that are shipping the food, and for those that are eating the food. So I have no doubt that Secretary Perdue will follow up on his promise, and that the United States agriculture will be able to trade with a healthy food supply as long as we have pesticides.

Chairman ROBERTS. I appreciate your response very much.

Senator Stabenow.

Senator STABENOW. Thank you, Mr. Chairman, and thank you to both of our witnesses.

Mr. Keigwin, I first want to thank you personally for your engagement with Michigan State University and our Michigan hop growers that created the gift that we just gave to the Chairman to facilitate Section 18 exemptions under FIFRA.

Most recently, I have heard from Michigan sugar beet growers about emergency use needs under Section 18 as well. What steps can be taken by growers, states, manufacturers, and the EPA to make the Section 18 process more efficient, so that growers facing unexpected risk can get needed crop protection tools in a timely fashion?

Mr. KEIGWIN. Thank you, Senator, and I have had the great fortune of meeting with Michigan growers on a number of occasions. Your growers sponsor an annual tour to help educate EPA employees about Michigan agriculture and what farmers do to help grow our crops, so thank you for that.

In terms of Section 18s, we have a pretty solid record of completing our decision-making for most Section 18 or emergency exemptions in less than 50 days, but there are times—and I think this situation with the sugar beet one, growers, that came to your attention highlights the need for early engagement between EPA and the Michigan Department of Agriculture and the grower community and the land-grant universities.

Knowing early on what tools a grower might need to address the emerging pest situation, it is hard when at the end of the process or right when they need to apply the product for EPA to say, "Wait. Hold on. We might have a problem." So one process efficiency would probably be for us to have earlier engagement, maybe even before the state submits their Section 18 request to see if there might be any issues with that particular chemical, and to the extent to which there are, we could work collaboratively with cooperative extension and with the state to maybe find some alternatives that we could move through the process more quickly to address the emerging pest management need.

Senator STABENOW. Thank you very much.

Dr. Kunickis, when developing new integrated pest management strategies with growers, does the USDA staff recommend Farm Bill conservation programs to farmers as a tool to combat weed resistance, and secondly, do you have recommendations for how the conservation programs can be improved to help address weed resistance as well as the continued decline in the pollinator populations?

Ms. KUNICKIS. Thank you for your question.

Yes. We do engage with our conservation program folks, both NRCS and the Farm Services Agency staff. IPM is a critical component of those. NRCS has a conservation practice related to IPM.

Weed resistance is front and—in front of our—is one of the high-priority issues for our office. We have met with the agency folks to make sure they are fully aware of the issue of weed resistance. As we all know, resistance, weed resistance is not just about pigweed in Georgia. It is about having weed resistance all across the entire United States, and it is not just about pigweed. It is in all species. So we work really hard to work with the conservation agencies and helped to educate their staff about the issue of weed resistance.

IPM, we coordinate across the Department and with other Departments on Integrated Pest Management. We work with the IPM centers that are funded by the National Institute for Food and Agriculture. We meet regularly with them. They help us develop the pest management strategic plans. We engage with growers on those to make sure that those are accurate and up to date.

Thank you.

Senator STABENOW. Well, thank you very much, and we look forward to hearing more comments from you as we move forward on the Farm Bill with suggestions or recommendations that you would have on conservation programs.

Ms. KUNICKIS. Thank you.

Mr. Keigwin, can you talk about the role of the EPA's Board of Scientific Counselors in reviewing the safety of crop protection materials?

Mr. KEIGWIN. For pesticide products and pesticide science, our studies and our methodologies for how we conduct our reviews have not been reviewed by the panel that you referred to. In fact, under FIFRA, there is a separate congressionally chartered peer review body called the FIFRA Scientific Advisory Panel, and so our work is peer-reviewed separately, not through the BOSC, but through the FIFRA SAP.

Senator STABENOW. Thank you very much.

Thank you, Mr. Chairman.

Chairman ROBERTS. Senator Ernst.

Senator ERNST. Thank you, Mr. Chair, and thanks to our witnesses for being here today. I appreciate it.

Mr. Keigwin, in your testimony, you highlighted the fact that your agency has met the time frame for approval 98 percent of the time on the more than 20,000 decisions since PRIA was enacted in 2004, and I think that is a pretty tremendous track record. I know there had been some extensions of timelines beyond the target of 730 days but still a very good percentage, so thank you for that.

But what I would like to know is what you believe can be done to remove duplicative regulations, free up some of those funds, or take other actions to further improve the time for getting new products on the market, so we can make our farmers and growers even more productive.

Mr. KEIGWIN. Thank you, Senator.

When Administrator Pruitt joined the agency, one of the things that he launched straight away was his Back-to-Basics Agenda, which is an initiative to help focus EPA's efforts on returning to our core mission of protecting human health and the environment.

As part of that effort, we have been beginning to reach out to stakeholders across the spectrum to identify areas of regulation that either may be duplicative, could be streamlined or modified, while still protecting public health and the environment.

In fact, last week, the Pesticide Program hosted a public meeting of a wide variety of stakeholders. Several hundred people participated in that meeting to help provide some insight to us on where we might look next in terms of streamlining, gain some additional efficiencies in our program, and among those were opportunities to look at some MOUs with other agencies where there might be opportunities to share our work and share our load or rely upon the work of another agency. So those are among the things that we are beginning to explore now.

Senator ERNST. Very good. In your opinion, does that seem to be a positive start? Is it being received well by your agency and other agencies?

Mr. KEIGWIN. It has, and, in fact, we have had some MOUs in place with other agencies. So this would not be a new territory to explore, but we can build upon some of our existing relationships and probably go further.

Senator ERNST. Very good. Thank you, Mr. Keigwin.

Dr. Kunickis, you noted in your testimony that agriculture depends on a strong scientifically based EPA to evaluate pesticides, and what can you do in your role to encourage that and ensure that politics—of course, politics, in the news all the time—that politics do not get in the way of sound science when it comes to reviewing pesticides?

Ms. KUNICKIS. Thank you. I appreciate that question. Science is the foundation of everything that we do at USDA, and I expect that is the same for EPA.

For us, we look at what any kind of rules or proposed rules or risk assessments that EPA does, and we look at it through the view of our agricultural sectors to see if it is—how it would work. Then we also look at models, the inputs, to see if they are valid, and if they are reflective of agriculture. But we also look at the

science that is underlying the work that EPA has done. We provide them information that we are aware of from the agricultural community and others, and then we have nice discussions with EPA about how we can work together to either improve or make changes or maybe better understand why they are doing what they are doing.

But we do look through it through scientific eyes. My entire staff is very—they are experts in their disciplines, and we ensure that each one of them is fully aware of what EPA is doing and that we can speak on behalf of ag to ensure that they are scientifically based decisions.

Senator ERNST. Well, I appreciate that, and we had the pleasure of hosting Secretary Perdue last Friday in Iowa, and it was wonderful to see the interaction that he had with our farmers and growers. He did mention several times that we want to make sure that things are scientifically based, any decisions that are made, and the fact that he encouraged collaboration amongst the agencies. So it was really great to see that.

Thank you both for being here today. I appreciate it.

Thank you, Mr. Chair.

Chairman ROBERTS. Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Mr. Chair.

Thank you to both of you, and we are glad we are continuing to work together on this very important bill and this program.

One of the missions of USDA's Office of Pest Management Policy is to promote the development of new pest management approaches that meet the needs of our evolving agriculture industry.

Mr. Keigwin, would EPA be able to examine the numerous pesticide products intended for sale in the U.S. without the resources that PRIA provides? It is called an easy question.

Mr. KEIGWIN. Thank you, Senator.

[Laughter.]

Mr. KEIGWIN. We certainly want to be able to do them on the time frames that we do the—the supplemental resources that PRIA provides certainly help us achieve the timelines that I was talking about earlier in my testimony.

Senator KLOBUCHAR. Okay. To get on to that timelines, I have heard from Minnesota businesses about the importance of having a more predictable timeline during the registration review process. What work have you done to make the regulatory approval process more predictable for industries and producers and the public?

Mr. KEIGWIN. So an important component of the registration review process is transparency and public engagement, and so we do have multiple opportunities throughout the review process for them to engage, for them to come forward to us with information, so that we are using real-world information in making our decisions, so that we are making the most informed decisions that we can.

Senator KLOBUCHAR. Okay.

Dr. Kunickis, your name is almost as hard as mine. Kunickis. What have you heard from farmers about the need for a timely review, and how does your team at USDA work with EPA?

Ms. KUNICKIS. We hear a lot from farmers, and actually, we reach out to a lot of the grower groups, folks that we know across the country, to talk to them about their needs.

We work very closely with EPA. We have a great working relationship. I keep in contact regularly with Rick right now on a regular basis. I always ask about what is the status of this pesticide that is in registration review, are there any concerns, are there any data that you need from USDA that we can provide to help inform some of the decisions that you are going to make, and we are very interested in if there is any mitigation measures that may be needed so that we can look and see if they are realistic for our growers.

This afternoon, my staff and I will be at EPA. We have our regular monthly meeting where we have a number of items on an agenda to discuss. So we work really well together, and we continue to look forward to working together.

Senator KLOBUCHAR. How do you think the USDA's role in the pesticide approval process would be affected by the resource and staffing cuts that are suggested in that proposed 31 percent budget cut in the budget? I know that our new Agriculture Secretary—I asked him this question, not with regard to pesticides, but just with regard to the general ag issues, and he did say that he hoped the Senate would fix it. I like that answer.

But how do you think—how do you think the USDA's role would be affected by the resource—the proposed resource and staffing cuts?

Ms. KUNICKIS. Well, certainly, any cuts that would come, we would have to—honestly, we would just have to figure out the best way to go forward.

Our office has been—we are very well trained, interdisciplinary, and are able to work together on different issues, even though it may cross many disciplines.

If the cuts come, it will make it a little more challenging. I would like to hire, and if we cannot, we do work with other staff across USDA to fill where we have gaps. So we will adjust. We always have. It has happened to us in the past, and if it happens again, we will adjust. Certainly, we hope that will not happen, but we are willing to do what we can on behalf of our growers.

Senator KLOBUCHAR. Mr. Keigwin, in your testimony, you mention that the reauthorization bill passed by the House would increase the types of registration actions covered under PRIA to 212 categories, up from 189 categories in the last reauthorization. Would the fee increase from $27.8 million to $31 million per year cover the additional 23 categories proposed for registration, and do you see the demand outpacing the additional increases for maintenance fees?

Mr. KEIGWIN. So thank you, Senator. The maintenance fees actually primarily go to fund the reevaluation program. The additional categories will have their own new PRIA fees associated with them, so they will diverge in those two different directions.

Senator KLOBUCHAR. Okay. I see. But the question was, Do you think that fee increase—the initial question—would cover the additional 23 categories? So you think it would?

Mr. KEIGWIN. So the fee increase is on the maintenance fee side, primarily, so that is for the reevaluation program.

Senator KLOBUCHAR. Okay.

Mr. KEIGWIN. The 23 new categories will have their own PRIA fees, and then there are fees—there is an increase in some of the

fee categories for the new registration side. So the 23 categories are new registration categories. The fee increase, I think that—I believe you are referring to happens to deal with the maintenance fee side to fund the reevaluation program.

Senator KLOBUCHAR. So you think it is all——

Mr. KEIGWIN. I think it will certainly help us get the work done.

Senator KLOBUCHAR. So it is all going to be paid for? It will not—okay. All right.

Mr. KEIGWIN. Coupled with appropriated dollars. We cannot fully fund the—we cannot fully do the work——

Senator KLOBUCHAR. But if you get the 30 percent decrease in the proposed budget that you are supposed to at EPA, would you be able to do all your work?

Mr. KEIGWIN. You know, as Sheryl said, we would have to figure out how to do things and look for additional efficiencies.

Senator KLOBUCHAR. Okay.

Chairman ROBERTS. Senator Perdue.

Senator PERDUE. I yield, Mr. Chairman.

Chairman ROBERTS. We have a Perdue that is not talking. That is very unusual.

[Laughter.]

Senator KLOBUCHAR. He is trying to be nice to the other members.

Chairman ROBERTS. I see. It is with great respect that I now ask Senator Van Hollen for his questions.

Senator Van Hollen. Thank you, Mr. Chairman. Thank you, Senator Perdue.

I just want to echo what Senator Ernst said, which is that we all want to make sure that we have a pesticide regulation regime that is scientifically based, and we all know that sometimes the conclusions are different from USDA versus EPA. I do want to ask you about that because, as we all know, recently there was a headline in the Washington Post that says EPA chief, the new EPA chief rejecting agency's own analysis, declines to ban pesticide despite health concerns.

Dr. Keigwin, you are quoted in this story as supporting the decision, but, Mr. Keigwin, could you talk a little bit about this EPA recommendation to regulate, ban chlorpyrifos because, there have been serious health concerns raised about it, including the impact on newborns, neurological impacts, and clearly, the EPA, when it issued its report last December seemed to be on the way of suggesting that we need to ban this to protect human health. We need to make sure we protect crops from pests, so that we have a vibrant agriculture community. We also need to protect human health, and the way EPA drew that line, at least back in December, was that banning this was necessary or moving in that direction to protect human health. Can you comment on that?

Mr. KEIGWIN. Sure. Thank you, Senator.

So we have been studying chlorpyrifos for quite some time and took regulatory action to mitigate some of the exposures to chlorpyrifos back in the last decade when we removed it from uses around the—most uses around the home, and about four or five——

Senator Van Hollen. The indoor, the indoor use.

Mr. KEIGWIN. The indoor uses, like the termiticide type of uses.

We also worked very successfully with the registrants about four or five years ago to put in place some buffers to protect residential areas around agricultural fields to deal with some spray drift issues.

I think what you are referring to, Senator, is a rulemaking that we were in the midst of that we began in 2015 when we proposed to revoke the tolerances for chlorpyrifos, because the science that we had at the time suggested that we potentially could not make the required safety finding under the Food, Drug, and Cosmetic Act.

We continue to do our work, and we took a revised assessment to our FIFRA Scientific Advisory Panel in the spring of 2016. They recommended some improvements to that risk assessment, and so in November of 2016, we issued a revised draft risk assessment for public comment, and that public comment period closed in mid-January.

We received almost 50,000 comments on that draft risk assessment, and a number of those comments raised some questions about how EPA had done the science, had concerns about how we had derived the regulatory endpoint from an epidemiology study, and strongly urged the agency to have that risk assessment further peer-reviewed before we completed regulatory action.

The decision that the Administrator made at the end of March was—while related to the rulemaking, was in response to a petition from the Pesticide Action Network of North America and the Natural Resources Defense Council. That action is now in litigation, so I have got to be very circumspect about what I say because it is an active litigation. But, in the meantime, we are continuing to review the science surrounding chlorpyrifos, taking into account the comments that we received during the public comment period.

Senator Van Hollen. So the review is ongoing now——

Mr. KEIGWIN. The review——

Senator Van Hollen. —and has not been stopped?

Mr. KEIGWIN. The review has not been stopped. It is ongoing as part of the re-registration process.

Senator Van Hollen. All right. Well, Mr. Chairman, I hope we will all adhere to the advice from our colleague, which is this be done based on the science and not the politics. I hope we can all agree with that proposition. We need to, obviously, prevent pests from chewing up our crops, but we also need to protect human health. So I look forward to continuing this conversation with you.

Just if I could ask, Mr. Chairman, have any of our—where are European partners in—are any of them in process of looking at banning this?

Mr. KEIGWIN. A number of other countries have reevaluations under way. Australia, as an example, just within the last couple of weeks, released a risk assessment for chlorpyrifos. Their risk assessment is different from ours, and so we are looking at the science that the Australian government considered and seeing what parts of that would be appropriate for us to use here.

Chairman ROBERTS. I thank the Senator.

Senator Perdue.

Senator PERDUE. I yield again, Mr. Chairman.

Chairman ROBERTS. Gracious.

Senator Heitkamp, would you like to proceed at this point?

Senator HEITKAMP. Well, I would love to. Thank you, Mr. Chairman, for the gracious offer.

Chairman ROBERTS. Well, thank you for coming.

Senator HEITKAMP. I have just a quick question about wheat for the Doctor. We are hearing more and more about pesticide residues in wheat and lots of questions about the use of crop protection tools on the crop itself. Much of the information as cited as the basis for criticism of wheat production traces back to misrepresentation of USDA's NASS data. Often the worst case is assumed, and every acre of crop is treated.

When USDA surveys growers about the use of crop protection tools, are you seeking to track overall use and trends, or are you gathering more in-depth information about management practices associated with crop protection tools, such as no till or reduced tillage and crop rotations?

Ms. KUNICKIS. Thank you for the question.

I want to just say that our colleagues at the National Ag Statistics Service do terrific work, and the survey that they do, the ag survey, is extremely, extremely important, the data that they provide.

I do not work for NASS, and why they ask the questions that they do and the reasoning behind them, I am not actually sure. I am glad to get the answers for you, but I assure you that the information that they use is information that we use in how we support some of the information that we provide in support of what EPA does.

I am glad to get the information from NASS, and they can better explain on how they come up with the questions and how they use the data.

Senator HEITKAMP. The other question that I have is, What role does USDA play in the endangered species consultation process during the registration review, and do you think you have sufficient data and real-world scenarios and management practices that reflect the use of products in the field?

Ms. KUNICKIS. USDA does not have a formal role in ESA consultation. Consultation occurs between EPA and the services, meaning Fish and Wildlife Service and the National Marine Fisheries Service. We are a side partner, I will say. We can provide data, any information on crop production, any crop production practices, how pesticides are used. We are always available to provide that information, but we do not have a role, a formal role in consultation.

Senator HEITKAMP. Do you think you should have a formal role in consultation?

Ms. KUNICKIS. I think it would be extremely helpful, extremely helpful to have a voice at the table on behalf of our agricultural producers.

Senator HEITKAMP. I do too.

Ms. KUNICKIS. Yes, ma'am.

Senator HEITKAMP. Yeah.

Thank you so much, Mr. Chairman.

Chairman ROBERTS. Thank you, Senator. I can anticipate a Heitkamp amendment to our reauthorization process.

Senator HEITKAMP. Who me?

Chairman ROBERTS. Senator Daines, I am going to recognize you, and that Senator Perdue has yielded twice.

Do you want to go for a third time? That is the record, by the way.

Senator PERDUE. I like records. I will yield again, Mr. Chairman. [Laughter.]

Chairman ROBERTS. Senator Daines.

Senator DAINES. Well, I am grateful for Senator Perdue. Thank you.

Mr. Chairman, thank you for holding this hearing today, and I want to thank you for coming before this Committee and providing your perspective and expertise on this critical issue. I represent the State of Montana. Our number one industry is agriculture. This is a big deal for us, and certainly, providing regulatory certainty is an essential role of government.

Our farmers and ranchers and businesses back home, if they complain about anything else—I mean, it is taxes, regulations, but it is the uncertainty of this city, what it produces in the field here for our ag industry. Reauthorizing the Pesticide Registration Improvement Act will be an important step towards reducing some of that uncertainty that exists today.

Pesticides play a vital role for farmers in keeping our pest populations down, improving our yields, certainly reducing the impact of diseases. In fact, in Montana, there is over 6,000 private pesticides applicators, and ensuring they and our producers have access to a safe and effective pesticides in a timely manner is simply imperative.

Dr. Kunickis, one thing I hear frequently from farmers and ranchers in Montana is the burden of duplicative or unduly burdensome regulations. In your testimony, you state that the EPA is required to review the impact of pesticides under the Endangered Species Act, despite the EPA already being required to review the pesticides to avoid, and I quote, "any unreasonable risk to man or the environment," end quote, under FIFRA. Would you view this as an example of a duplicative regulation?

Ms. KUNICKIS. Yes, sir, I would.

Senator DAINES. Mr. Keigwin, on a similar note, does using ESA to regulate pesticides pose any challenges for your office and the EPA more broadly?

Mr. KEIGWIN. ESA consultations and the assessment processes are new for us. We have been working with the Fish and Wildlife Service and the National Marine Fisheries Service to develop sound scientific procedures for how to evaluate the effects of pesticides on endangered and threatened species, and with the assistance of the National Academy of Sciences, they did give us some advice a few years ago about how to do that. But it is a much more complex evaluation process than what we have traditionally done for pesticides under FIFRA.

Senator DAINES. Thank you.

Dr. Kunickis, I do not have a lot of claim to fame, other than I am the husband of Cindy Daines, but I am the only chemical engi-

neer on the Hill amongst 535 members. That is what my training was in. I do understand the importance of utilizing sound science in our decision-making processes, and as you well know, there was an extended and vigorous debate surrounding the mandatory labeling of biotechnology last year.

I got to thank Chairman Roberts and his leadership. We were successfully able to prevent what I believe was a discriminatory and harmful law from impacting our farmers across Montana and across the country.

As you know, the Office of Pest Management Policy plays an important role in developing and implementing biotech policy at USDA in collaborating with EPA. As you work to develop and implement rules related to biotech disclosure in advance of next year's deadline, will you commit to ensuring that USDA's priority will be to make determinations based on sound science?

Ms. KUNICKIS. Absolutely.

Senator DAINES. Thank you for that. I have found in this town that political science sometimes becomes the primary message, and I want to always come back to the sound science and the facts. USDA has to be focused on the safety of the food and products with its jurisdiction, not on marketing and mandatory labeling efforts that have no bearing on food safety or plant pest risk.

Mr. Keigwin, what would be the implications the average farmer or producer in Montana if PRIA were not reauthorized?

Mr. KEIGWIN. One of the advantages of PRIA is that it does give growers some certainty about the availability of when new products will become tools for them.

In the absence of PRIA, if you go back to what the regulatory atmosphere was like prior to PRIA—I will give an example that a grower shared with me just yesterday. A new active ingredient before PRIA took about six years for EPA to complete the review for. Now it takes about two years, so the review process has been shaved rather significantly, while still ensuring that registration is protective of human health and the environment.

Senator DAINES. Mr. Keigwin, last question. As you know, there were instances in the past Administration where concerns were raised regarding the consultation of communication between EPA and USDA. What steps does your office take to consult with the Office of Pest Management or other agencies within USDA?

Mr. KEIGWIN. So Sheryl and I talk regularly. This is not just the first time today that we will be talking. We have a meeting this afternoon. We get together at least on a monthly basis.

Senator DAINES. So do you even need two offices? Is that what you are saying? You could——

Mr. KEIGWIN. I am not saying that.

[Laughter.]

Mr. KEIGWIN. But our staffs are well integrated. She has some former staff of mine.

I would like to get some of them back, Sheryl.

But it is a very good working relationship, and while we do not always agree, we find a way to work through the issue in a collaborative manner.

Senator DAINES. All right. Thank you.

Chairman ROBERTS. Senator Gillibrand.

Senator GILLIBRAND. Thank you, Mr. Chairman, and thank you to both of you for your service.

Dr. Kunickis, in your testimony, you stated that it is extremely important to the USDA that agriculture not be defined by those who are less than well informed about agriculture. I have to assume that you mean the 98 percent of Americans who are not actively engaged in farming.

So my question is, Is the voice of the American consumer not of interest to the USDA, and should the USDA ignore the concerns of shoppers because they are not experts on pesticide chemistry?

Ms. KUNICKIS. Actually, in my testimony, I was actually referring to some of the press who just repeat information that they hear from the Internet. Actually, a lot of what is said is not reported correctly, and that is what I was referring in my written testimony.

Senator GILLIBRAND. USDA objected to the legal and economic risk posed to farmers by EPA's proposed rule setting lower limits for some pesticides used on corn and some fruits. What is USDA doing to ensure that moms and dads who pack fruit in their kids' lunches are not less important than a chemical manufacturer?

Ms. KUNICKIS. Oh, let there be no doubt that at USDA, the safety of America's food supply is number one and number one for our children and for all people that eat our food, eat food that is produced for consumption. It is not an issue at all.

Senator GILLIBRAND. Thank you, Doctor.

Mr. Keigwin, in your testimony, you mentioned Administrator Pruitt's Back-to-Basics Agenda and how he is committed to returning common sense as well as transparent and peer-reviewed science to pesticide registration process. You have been in EPA leadership for more than 20 years. During that time, have EPA scientists ever done anything less than their very best to conduct rigorous analysis of the risks posed by pesticides to farmers and consumers?

Mr. KEIGWIN. Our scientists are among the most highly regarded scientists on pesticide regulation, and they do routinely seek peer review of their work.

Senator GILLIBRAND. Do you believe that Administrator Pruitt's recent dismissal of as many as half the scientists of the Board of Science Counselors in favor of industry representatives was done to improve science?

Mr. KEIGWIN. Senator, I cannot respond to that in that the work that my office does is peer-reviewed by a different panel, the FIFRA Scientific Advisory Panel, which is a congressionally chartered peer review committee, and there has not been any change to the scientific makeup of that committee.

Senator GILLIBRAND. You mentioned in your testimony that Pesticide Registration Improvement Act fees cover about 20 to 40 percent of EPA's total review cost. The President's budget would cut EPA funding by 31 percent and eliminate pesticide safety programs. With such deep cuts, would there be any way that EPA could conduct accurate and timely reviews of submissions?

Mr. KEIGWIN. So I have not seen what the President will ultimately propose. Obviously, a reduction in our congressional appropriations would have an impact on the program.

Senator GILLIBRAND. How high would PRIA fees need to be if these cuts happened?

Mr. KEIGWIN. So PRIA fees right now cover about 30 to 35 percent of the program costs. So a reduction would—potentially would necessitate, if that were an issue on the table, for a higher fee. There are also opportunities for us to look at further efficiencies in our process so that we could absorb some of the resources.

Senator GILLIBRAND. How would you—how would proposed budget cuts affect research and integrated pest management?

Mr. KEIGWIN. So EPA does not conduct research on integrated pest management. That is something that we rely upon our partners at USDA to do.

Senator GILLIBRAND. Thank you, Mr. Chairman.

Chairman ROBERTS. Senator Boozman.

Senator BOOZMAN. Thank you, Mr. Chairman, and thank you all for holding this hearing. It really is very, very important.

I do not have any doubt that you all work together well, and that is a good thing. You mentioned that sometimes you do not agree. Who has got final authority, or do you just kind of not do anything when you run into——

Mr. KEIGWIN. In the ideal world, we find ways to reach agreement, and we do that many, many times.

Senator BOOZMAN. But we do not live in an idea world.

Mr. KEIGWIN. But I think the relationship that the Office of Pesticide Programs and the Office of Pesticide Management Policy has been such that we successfully work through our areas of disagreement, and I think it is very rare when there is true disagreement. Sometimes it is just a nuance or a different way of looking at an issue, and I think I am very proud of the fact that we have been able to work well together to put in place the necessary protections for pesticides where they are needed and ensure that growers have the tools that they need to produce their crops.

Senator BOOZMAN. No, and that is—again, that is appreciated.

Dr. Kunickis, when I am home, traveling about Arkansas, like most of our states, it is such a heavily agricultural state. It does not really matter what state it is. It is remarkable, the percentage of GDP that our states have.

But I really feel very strongly that the answers to our problems really do need to come from the ground up. Can you talk a little bit about how you include the rank-and-file farmer? Do they have a seat at the table?

Ms. KUNICKIS. Yes, sir.

Senator BOOZMAN. Regarding pest management?

Ms. KUNICKIS. Yes, sir. We regularly—as we go through—as EPA puts out risk assessments, we review them, and then we look and reach out to growers all across the country, depending on what the pesticide in review is, and we ask questions about how are you using it, what specifically is the most important in the cycle of pest management, which—what is the timing, what is the—how many applications, which are the most important applications. We reach out from probably all 50 states, looking at all different crops. We know that apple production in one state is very different than apple production in another, so we reach out to growers, to grower

groups, and to as many people as we can to get the most correct apples—I mean—apples—answers.

We also make it very clear that a one-size-fits-all approach does not work for U.S. agriculture, and that we need to be very site specific on getting answers for how our growers do their agricultural production.

Senator BOOZMAN. We talk a lot about the dangers of pesticides, which is very, very appropriate, and we—certainly, we are all very concerned about that and want to make sure that things are—can you talk a little bit about some of the benefits, though, that as a result of being able to use pesticides in a safe way, scientifically safe, doing it right, some of the benefits that have occurred in the nation as a result of making such so we continue to have the safest, cheapest food supply and feeding much of the world?

Ms. KUNICKIS. Oh, yes. Pesticides have made us—have given us the ability to produce food in abundance with some of the newer tools. The genetically engineered crops, we are able to increase yields. We have got benefits. We have a pest-free food supply.

If you have ever looked at a piece of fruit that has got a pathogen on it, it is not very attractive, so fungicides are extremely important for addressing pathogen issues.

We all know the story of opening an apple and finding a worm. Most of the things that we eat do not have worms in it.

I had the great opportunity also to be in Michigan on one of the tours, and it was just so incredibly important to look at how they produce cherries and talk about the zero tolerance for worms. Frankly, I have never even thought about looking for worms, and yet I realize that is because we have such a high standard and because of the pest protection tools that—or the crop protection tools that are used safely by our growers all across the United States.

Senator BOOZMAN. Thank you, Mr. Chairman.

Chairman ROBERTS. I think that now concludes——

Senator BOOZMAN. Shout-out for the cherries.

Senator STABENOW. Yes, a great shout-out.

Chairman ROBERTS. Great.

Oh, I am sorry. Senator Thune is here. Coop, how did I forget you? It is almost high noon, Coop.

Senator THUNE. That means it is my time, Mr. Chairman. Thank you. Thanks for having this hearing, and I appreciate the attention to this subject. It is an important one.

If I could ask both of you sort of whether you believe the approval process under PRIA is staying current with biotechnology research and the development of some of the new products?

Ms. KUNICKIS. Yeah. That is a great question, and it is a very, very important question. Bottom line is technology usually moves faster than regulation. PRIA at least gives us some certainty as to when some of the products can get on the market, and so for those that are producing the newer technologies, it helps the regulatory folks to understand when we can get those on—when we need to complete our work to get those on the market.

But, certainly, we recognize that technology moves a little faster than the regulatory process.

Senator THUNE. Right.

Do you have anything to add, Mr. Keigwin?

Mr. KEIGWIN. Senator Thune, I think the other thing that I would add to what Sheryl just mentioned is that over the past couple of years, USDA, EPA, working with our colleagues at the Food and Drug Administration, have been going through a systematic process of updating the system that we use to regulate products and biotechnology.

To specifically address the point that you were making about new products coming through the pipeline, the three agencies worked together and commissioned a review by the National Academy of Sciences to give us some insight on what new tools were coming down the pike, so that, in fact, we could be better prepared to make regulatory decisions to enable those products to come onto the market as quickly as they can.

Senator THUNE. Yeah. I agree. I mean, you cannot keep up with sometimes what is happening out there, but we have to do the best we can, and there are lots of wonderful things that are happening in technology that will make us more efficient and more productive.

So I represent South Dakota, and we are one of the top honey-producing states in the nation, and so I wonder if you could tell me if any progress is being made to combat the Varroa mite, which is something that contributes to what we call CCD or Colony Collapse Disorder, something that has really affected the bee population in this country and, as a consequence of that, honey production. Do you have anything on that?

Mr. KEIGWIN. So one of the things that EPA has done is that when a new tool is even in the discovery process to control Varroa mite, we will accelerate the registration of that product through the process as quickly as possible.

We had an example from just a couple of years ago that there was a tool that was available to Canadian beekeepers that was not available to U.S. beekeepers. Because of the scientific relationships that we have developed with our colleagues in Canada, we were able to make use of their reviews. This was a new active ingredient for us, and we were able to complete the registration process for that product in four months because of our ability to rely upon the science that our colleagues in Canada had already undertaken.

Senator THUNE. Well, it is a huge problem. CCD has just destroyed beehives all across the country, and the losses that our bee producers are incurring continue to mount and to pile up. So much of this is just doing this research and trying to find solutions. So I hope you will keep up, keep up with that, and the folks out there who are involved in the industry will keep up with it as well.

That is all I have, Mr. Chairman. Thank you.

Chairman ROBERTS. Did you ever get Grace back on her buckboard? You do not have to answer that.

[Laughter.]

Chairman ROBERTS. I want to thank the first panel very much. You have given us excellent testimony, and thank you for the work you do. Appreciate it.

I would now like to welcome our second panel of witnesses before the Committee.

[Pause.]

Chairman ROBERTS. I would like to welcome our second panel of witnesses before the Committee.

Mr. Dale Murden, who joins us today from Harlingen, Texas, where he and his family currently grow sorghum, cotton, and citrus. Mr. Murden has served in a variety of capacities throughout his agricultural career, including as the past president of the National Sorghum Producers, the past chairman of the Texas Sorghum Association, and the current president of Texas Citrus Mutual. That is the grower organization for the Texas citrus industry. Mr. Murden also spent the last 25 years as president and CEO of Rio Farms, a 30,000-acre private research foundation farm that grew sorghum, cotton, sugarcane, citrus, soybeans, corn, grapes, and vegetables. No wheat.

Our second panelist is Mr. Gary Black, and I now turn to Senator Perdue to introduce our next witness.

Senator PERDUE. At the risk of losing my opportunity to establish my all-time record of yielding, I would like to introduce our next speaker, Mr. Chairman. Thank you.

I am proud to introduce Georgia's Commissioner of Agriculture, Gary Black. Gary is a personal friend of mine, has been for years. He is a dedicated partner and advocate for our farmers in Georgia. Throughout a 35-year career in agriculture, he is a farmer.

He has been very focused on Federal policies and working at the state level and working on the impacts, food safety, science-based environmental stewardship, and agricultural marketing.

Agriculture in our state is the largest economy, and we take it very seriously, that Gary Black is our number one marketing officer for that industry. He has consistently supported us to where we are the number one state in the country for peanuts, broilers, pecans, and blueberries.

Commissioner Black's perspective on pesticide registration is especially important since states are partners with the Federal Government in this process. Over the last two decades, the ag seed and chemical industry has been substantial and seen a substantial increase in the cost and time of getting new technologies from discovery and development to farmers in the field. A large portion of these increased costs is from the increasingly complex and onerous federal regulatory environment. It is important that EPA and USDA work with their state partners like Commissioner Black to ensure the process of getting pesticides to market is done in a timely manner while still ensuring their safety.

Thank you, Gary, for being here with us today. Your insight is important to Georgia and our country, and I look forward to your testimony. Thank you.

Chairman ROBERTS. Our third panelist is Mr. Jay Vroom, no stranger to the Committee. Mr. Vroom is the president and chief executive officer of CropLife America, the largest national trade organization representing agricultural pesticide manufacturers and distributors, a position he has held since 1989.

In addition to his current position, Mr. Vroom remains active on several boards and organizations, including the Agricultural Retailers Association, the National Wheat Foundation, and the Coalition for Advancement of Precision Agriculture, just to name a few.

Raised on a grain and livestock farm in north central Illinois, Mr. Vroom remains active in his family farming operation.

I now turn to Senator Stabenow to introduce our final witness.

Senator STABENOW. Well, thank you, Mr. Chairman, and welcome to all of our witnesses. I would like to introduce Ms. Virginia Ruiz, who currently serves as the director of Occupational and Environmental Health for Farmworker Justice. Farmworker Justice is a nonprofit organization that works with migrant and seasonal workers to improve their lives and working conditions, immigration status, health, occupational safety, and access to justice.

Before proceeding, Mr. Chairman, I do have to apologize in advance that I have to leave at this point in time. I have other colleagues that are coming, and I greatly regret that. I have been looking forward to hearing your testimony, but, unfortunately, I will have to step out to another meeting.

So thank you, Mr. Chairman.

Chairman ROBERTS. Mr. Dale Murden. Mr. Murden, please proceed.

STATEMENT OF DALE MURDEN, PAST CHAIR, NATIONAL SORGHUM PRODUCERS; PAST CHAIR, TEXAS SORGHUM PRODUCERS; AND PRESIDENT, TEXAS CITRUS MUTUAL, MISSION, TX

Mr. MURDEN. Thank you, Chairman Roberts, Ranking Member Stabenow, and members of the Committee for the opportunity to testify today.

On behalf of the more than 700 commercial citrus growers in Texas and the nearly 50,000 sorghum producers nationally, I want to express our appreciation for convening this hearing.

My name is Dale Murden. I am current president of Texas Citrus Mutual, past chairman of National Sorghum Producers, and a past state director of the Texas Farm Bureau, but more importantly, a lifelong farmer.

Mr. Chairman, I did grow wheat once, but unfortunately, I had to bale it for the horses.

Citrus and sorghum growers face a broad range of challenges, many of which are unique to their crop. However, my testimony today will focus on issues and concerns that they share, the viability of both crops are threatened by new and invasive pests and the importance of access to crop protection tools to combat these pests.

For citrus, it is the threat of HLB, or citrus greening, which is vectored by the Asian citrus psyllid. There is no known cure for this disease, and Texas growers have witnessed the experience of our friends in Florida, where 100 percent of production acres are now infected, and production has been cut by more than half. The first confirmation of HLB in Texas was in 2012, and we now have more than 100 groves confirmed infected.

For sorghum, the sugarcane aphid, first confirmed in the United States in 2014, has spread throughout the producing regions in the United States, impacting over 70 percent of the acres planted. Although expensive, without the necessary pest management products, sorghum growers would see an 80 to 100 percent yield loss.

These are just two examples of significant pest threats, but every crop faces pest and pathogen challenges. Farmers look to researchers, crop protection industries, and regulators to investigate, develop, and approve tools that are safe and effective.

We need EPA to be sufficiently staffed with smart, qualified, and dedicated people who can evaluate products in a timely manner. The Pesticide Registration Improvement Act helps to foster and create a pathway for new and effective products to come to the market.

Smaller acreage crops, like sorghum and specialty crops like citrus, are rarely the primary targets of new registrations. However, PRIA provides a level of certainty and accountability to the registrants, giving them the confidence to invest the resources to gain approvals for crops like the ones I grow.

I wish to express my strong support for the swift passage of PRIA. Farmers need the certainty that new and innovative pest management products and the re-registration of existing products that meet the necessary benefits to risk thresholds continue to flow, and PRIA plays a vital role in providing certainty.

I do want to share my perspective on a number of factors in recent years that have undermined regulatory certainty for the grower community. We have seen EPA publish press releases associated with preliminary risk assessments without the related benefits assessments, which then paints a negative picture of these pesticide use patterns and undermines public trust in these products. There have been instances where EPA short-circuited the risk assessment process and instead based decisions on the identification of hazards only.

These are significant departures from what is expected under FIFRA and have prevented some crops, including sorghum and citrus, from receiving access to vital tools.

FIFRA is the primary underlying statute for pesticide registration and requires that EPA study and evaluate pesticide products for potential impacts to the environment, non-target organisms, and human health, yet it seems that every time a new product is approved or re-registered, the decision is challenged. This issue is causing significant uncertainty for growers, and I have to believe that our system can do better. I would encourage Congress to find a way to address this issue.

I appreciate that we have a regulatory system at EPA that is largely transparent and encourages stakeholder engagement in the product review process. However, the notice and comments period often require responses that are so technical in nature that only toxicologists and risk modelers are suited to do so. While theoretical models are undoubtedly important, they should not replace the need for real-world data and the results of field studies. I believe that greater interaction with these stakeholders that actually use the crop protection tools they are assessing, EPA would be able to include stronger and more realistic scenarios in the risk assessments.

Thanks again, Chairman Roberts, for holding this important hearing and the invitation to participate. We appreciate all of the work this Committee does on behalf of the American farmer. Once again, I urge the Committee and the Senate to take the necessary actions for the swift approval of H.R. 1029, PRIA 4.

[The prepared statement of Mr. Murden can be found on page 63 in the appendix.]

Chairman ROBERTS. We thank you, Mr. Murden, and thank you for that perspective with regards to what we are about affects the producer directly.

We now have the head of the Georgia Department of Agriculture, and we would like for you to proceed, Commissioner Black.

STATEMENT OF THE HONORABLE GARY BLACK, COMMISSIONER, GEORGIA DEPARTMENT OF AGRICULTURE, ATLANTA, GA

Mr. BLACK. Mr. Chairman and members of the Committee, it is a pleasure to be here today. I may be the one in the room that is most relieved that the Senator from Georgia did not yield for the fourth time. I thank you, Senator Perdue, for you kind introduction and dear friendship, and thank you for your service to our state and our nation.

Mr. Chairman, I am Gary Black. I am Commissioner of Agriculture for the State of Georgia. I have been in that role for six and a half years. It is an elected position in Georgia.

Today, I come to you—we have submitted some very detailed written testimony today, but when I have meetings with constituents, I like people to just come visit with me. So for my four minutes and 20 seconds, Mr. Chairman, and the balance of this time, I would like to visit with you.

Chairman ROBERTS. Well, please proceed with your——

Mr. BLACK. I am today representing our directors and secretaries and commissioners who are on the ground every day. We work together with farmers, and we are the co-regulators with some of our Federal agencies. Certainly, EPA is one of those partners.

We have some overarching things, Mr. Chairman. It is critical for Federal and State agencies to deliver a predictable, transparent, and science-based regulatory framework to protect human health and the environment, while allowing the agricultural community to produce their products. That is a tenet I think we can all agree with.

State departments of agriculture are regulatory partners with EPA, USDA, FDA, and the many other Federal agencies. In 43 states and Puerto Rico, the state department of ag is the FIFRA lead agency.

We have been discussing a topic called Cooperative Federalism. It is kind of an in-depth thing that you maybe will be hearing NASDA talk quite a bit about in the future. Where I come from, boil it down this way, I think we ought to work together better. I think we ought to be able to work with Federal agencies, and I think the states ought to be included in a more meaningful way. Maybe we can give just a little more detail in just a moment on that.

PRIA is an essential vehicle to provide the infrastructure resources for EPA, and states rely upon this to execute our statutory mandate in registering, enforcing, and regulating pesticides. We strongly support H.R. 1029 and look forward to its passage certainly in a very bipartisan way.

We want to help our Federal partners develop a regulatory framework that provides the necessary protections and minimizes

the economic impact and regulatory burdens to our producers. That is an overarching key theme.

We need a well-resourced and fully staffed Office of Pesticide Programs to deliver a scientifically sound, efficient, and timely review of crop protection products, and I would also add to that, the Office of Pest Management Policy, or the programs down at USDA as well. It is important to have that as a priority, and I believe Secretary Perdue is going to really put some energy behind that through his leadership.

Mr. Chairman, I asked my division director for plant industry, who deals locally with EPA—I asked him, "If you had a magic wand and you were me, what would you say today?" He really is a big champion of our theme at our department regarding how we interact as regulators with the regulated community, and it is just a simple three-step process.

First, we should exist to help people get in business. We have regulatory frameworks. We want the economy to thrive. We want people to be employed. We want people to have jobs. As a regulator, I think we can do that. We ought to be helpful.

Secondly, we should help people stay in business. We should educate as we regulate, and that is a theme that we have adopted at our department. We can show that it works. He said, "I would like to see that with our Federal partners at EPA and many other agencies as well."

Now, we sometimes get blamed for the third leg of that stool, and that is putting people out of business. But we do have laws, and people must follow laws. As a regulator, you can be assured that this is not a soft approach to regulation because I sign administrative orders every week, but we ought to come alongside our agricultural businesses and our farmers and make sure that we are friends along that process.

Certainly, we are pleased to be here today, Mr. Chairman, and I thank you for your service, and I am thankful we have an opportunity to cooperate. We just want to make sure that the states are at the table as we move forward. Thank you.

[The prepared statement of Mr. Black can be found on page 42 in the appendix.]

Chairman ROBERTS. Well, thank you, Commissioner. Thank you for being on time, and we have noted with interest the Black three-step program that we will be considering. I think the Committee—I think all of us would agree with your premise, and we thank you for your testimony.

Jay, welcome back.

STATEMENT OF JAY VROOM, PRESIDENT AND CHIEF EXECUTIVE OFFICER, CROPLIFE AMERICA, WASHINGTON, DC

Mr. VROOM. Thank you, Mr. Chairman and members of the Committee. It is indeed an honor for me as president of CropLife America, representative of our 110 member companies, to be back in front of the Committee and specifically to talk about PRIA today.

In short, a lot has already been said, not everything, but a lot has already been said. The simple conclusion here is that PRIA is the easy button for this Committee, but we also ask you in our written testimony and otherwise for this Committee to also work

with the Appropriations Committee to ensure that the PRIA appropriations targets—for the appropriated dollars get back up to where the law has asked for the taxpayers to partner with us as industry fee payers to help ensure that the resources are there for EPA to do this important job that all the witnesses and the members of the Committee have been talking about this morning.

We could go on and on some more about all the facts and figures, about all the great abundance of American agriculture. That is a given. The people watching on television and your constituents and all the constituents of the United States Senate really care about one thing, and that is a simple number. I have got the world population clock here on my iPhone. It says there are over 7.5 billion of us on this planet.

I can remember 20 years ago, Mr. Chairman, when you helped pass the Food Quality Protection Act. That number was below 6 billion. This population is growing rapidly, and we as citizens of this planet depend on innovation to continue to feed us and to protect us from disease, and that is what PRIA really is all about, is providing the government structure and regulatory scheme so that companies can innovate, and that those kinds of important resulting products can be evaluated by our regulators at EPA and with the support and guidance of USDA and that those products can be used by farmers to produce safe and abundant food for us in America, so we can export more food, wheat from Kansas and all kinds of important things from Minnesota and Georgia and elsewhere, and that we have a sound economy, and that we can continue to grow as an economy and be world leaders.

I just got back from Europe last week. I have been in the developing world over the last few years as well. I can tell you that the entire world depends on us, the United States of America, for innovation, and PRIA is one of the foundations that this Congress and this Committee can advance, hit that Easy button, to ensure that innovation green light is still there for farmers, for industry, for food consumers to continue to depend on, because, frankly, Europe has retreated from innovation. They are relying on us. Certainly, Africa, Asia, everywhere else in the world, whether they want to admit it or not, are relying on what you do in this Congress and this Committee to help lead.

So that 7.5 billion number is growing. Over 50 million babies have been born this calendar year, and I want to introduce to you Max, on my other iPhone. We will celebrate his first birthday—he is my first grandson—back on the farm in Illinois on Saturday, and I am here because of Max and those other 50 million babies that have been born this year that really depend on that innovation miracle that America is providing to the whole world.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Vroom can be found on page 73 in the appendix.]

Chairman ROBERTS. We congratulate you on your grandchild, and we wish the best for Max and everybody else that is coming aboard this planet. Thank you for proving time and time again that the Malthusian theory is not correct.

Ms. Ruiz, we are now in the midst of a 15-minute vote

on the floor of the United States Senate, and we are hopefully going to be able to come back and hear your testimony and have a Trade Representative confirmed by the

United States Senate, an extremely important vote.

So I am going to state that the Committee stands adjourned, subject to call of the Chair, and I plan to be back within about seven minutes. I hope that will fit your schedule because we certainly want to hear your testimony.

Ms. RUIZ. Thank you.

Chairman ROBERTS. The Committee stands adjourned subject to call of the Chair.

[Recess.]

Chairman ROBERTS. The Committee will come to order.

Ms. Ruiz, you are recognized for your statement. Thank you very much for coming.

STATEMENT OF VIRGINIA RUIZ, DIRECTOR OF OCCUPATIONAL AND ENVIRONMENTAL HEALTH, FARMWORKER JUSTICE, WASHINGTON, DC

Ms. RUIZ. Thank you, Chairman Roberts and other members of the Agriculture Committee. Thank you for the opportunity to present my testimony this morning.

My name is Virginia Ruiz, and I am the director of Occupational and Environmental Health at Farmworker Justice. Farmworker Justice is a national advocacy organization that supports farmworkers in the U.S. to improve their living and working conditions, health, occupational safety, and access to justice. Farmworker Justice has been a member of the PRIA Coalition, along with the Natural Resources Defense Council and pesticide industry representatives since the initial passage of the 2003 Pesticide Registration Improvement Act, and we support its reauthorization in the form of the Pesticide Registration Enhancement Act.

Under PRIA, money set aside from pesticide registration fees supports worker protection activities. For more than 10 years, the PRIA set-asides have funded important programs at EPA, including pesticide safety training for farmworkers and pesticide handlers, the development of worker and employer training materials on pesticide safety and implementation of the Worker Protection Standard and the Certified Pesticide Applicator rule, also education and training for medical providers to diagnose and treat pesticide poisonings, and support for State public health agencies to maintain pesticide injury surveillance programs.

Farmworkers, and especially those who mix and apply pesticides, face substantial risk of becoming poisoned by pesticides because they work with them at their greatest concentrations and strengths. Farmworkers and their families come into contact with pesticides on a daily basis. The pesticide residues that remain on their work clothes and skin when they return home from work can also expose members of their families and cause injury.

Pesticide exposure causes farmworkers to suffer more chemical-related injuries and illnesses than any other workforce in the nation. U.S. EPA estimates that up to 3,000 farmworkers suffer acute pesticide poisoning every year through occupational exposures, with symptoms that include irritated eyes, rashes, nausea, dizzi-

ness, headaches, and shortness of breath. These estimates do not include those who suffer long-term effects of exposure, such as cancer, Parkinson's disease, asthma, birth defects, and neurological harms, including developmental delays and learning disabilities. EPA has found that some of the greatest risks from the organophosphate chemicals, such as chlorpyrifos, are to agricultural communities and workers.

Many of these acute poisonings are preventable through basic workplace protections and worker safety education, such as those required by the EPA's Worker Protection Standard, or the WPS. The WPS applies to hired workers and pesticide handlers involved in the production of agricultural crops. In November of 2015, after more than a decade of stakeholder meetings, study, and consideration, EPA finalized revisions to the WPS that provide critical improvements designed to reduce the risk of illness or injury resulting from workers' occupational exposures to pesticides.

Also, in January of this year, after more than 40 years, EPA updated its regulations concerning the certification of and training requirements for individuals who apply restricted use pesticides, which are some of the more dangerous pesticides available on the market.

The updated Worker Protection Standard and Certified Pesticide Applicator rule provide long overdue protections for farmworkers, their families, and rural communities across the U.S. from exposure to pesticides. These regulations call for basic preventive measures that will save millions of dollars in medical costs and lost productivity due to illness.

These common-sense measures include annual basic safety training, posting of application and safety information, meaningful hazard communication, functioning personal protective equipment, adequate supervision of non-certified pesticide applicators, and the prohibition of children from handling pesticides.

PRIA funding is necessary to help EPA meaningfully and effectively implement these important safety standards, but these worker protection activities are meaningless if the Worker Protection Standard and the Certified Pesticide Applicator rule are weakened and rolled back.

PRIA set-asides help to provide employer compliance assistance and worker safety training. However, these funds must complement and not replace EPA funding for other important pesticide safety, worker protection, and environmental justice programs. Stable funding for the agency as a whole is vital to provide occupational and environmental education for workers, their families and rural communities, and to prevent adverse effects from pesticide exposure.

Farmworker Justice requests that this Committee reauthorize PRIA as quickly as possible and without any changes or amendments to existing language.

Thank you very much for the opportunity to address this important issue, and I look forward to answering any questions you may have.

[The prepared statement of Ms. Ruiz can be found on page 69 in the appendix.]

Chairman ROBERTS. Thank you very much for your very timely comments, and when you state that PRIA should be moved as quickly as possible and without any changes or amendments to existing language—I am reading your statement—I can assure you we are going to try to do just that. Thank you for your leadership on behalf of all of our farmworkers.

Mr. Murden, you highlight in your testimony the many challenges that sorghum producers and citrus growers face—I think you went a little farther than my question here—from threats like sugarcane aphid and citrus greening. Crop protection tools like pesticides and insecticides are certainly valuable tools with regards to dealing with these types of threats, and as you mentioned in your remarks, there are many challenges surrounding the use of these effective tools beyond just the administrative challenges related to FIFRA and agencies like the EPA and the USDA.

What are the regulatory challenges that create uncertainty for farmers? Can you give me a rating? We have the good Commissioner and his three-point plan, but pretty tough to list these challenges by their problems. But give it a shot.

Mr. MURDEN. Well, I think for us, one that comes to mind right now is we had labeled use pesticides that were taken away. We do not really understand why, and the frustration we are getting of Section 18 back has been very cumbersome and slow, and we are trying to work through those issues right now, some products that were safe and did work and were economical for us. It just did not make a whole lot of sense why we lost them in the first place, and getting them back has been a challenge.

Chairman ROBERTS. You also mentioned the problem of all the paperwork or the work that goes into responses that are called for. Give me a couple examples, if you could.

Mr. MURDEN. Well, in some of those responses, I mentioned toxicologists and things like that. I am just a farmer, and some of the questions they ask you to respond to are just out of my league, and you have to count on your science friends to kind of help you out some.

You know, I think those folks need to get out of that cubicle more and to my turnrow a little bit more often, and they might appreciate what is going on a little better.

Chairman ROBERTS. I appreciate that.

Mr. Vroom, in your testimony, you mentioned that prior to the implementation of the first PRIA, there was little certainty for registration packages at EPA. Can you elaborate on how PRIA has continually improved the regulatory certainty for the registrants?

Mr. VROOM. Thank you, Mr. Chairman. Absolutely. So we described in our written testimony how the passage of the Food Quality Protection Act in '96 really put a huge bind on EPA's processes, and the biggest casualty of that additional work was a slowdown and a virtual halt for new product approvals, because of the burden of reevaluating under the new standards of FQPA. It took us a full eight years after FQPA to 2004 to get PRIA put in place.

So wait times went above four, five, even six years for new active ingredients, and even at that time, sunk cost investment in the new active ingredient for manufacturer was probably in excess of $150 million. Today, it is approaching $300 million.

Within a couple of years of PRIA being enacted and having the effect of additional resources for EPA and the clarity of priorities of timelines, that four-year-and-more wait time dropped to about two years. Now it has creeped back to about three for a variety of reasons, part of which is the missed targets of appropriated dollar support, and that is why we think, again, getting the appropriators at the table and helping come up with a compromise approach, just like the compromise that is represented by the coalition that Virginia referred to that we are both a part of—Farmworker Justice and the pesticide industry—makes sense to get to some compromise here on the Hill with appropriators and authorizers.

But thank you for the question.

Chairman ROBERTS. Commissioner Black, in your testimony, you described the unique role the states have under Federal Insecticide, Fungicide, and Rodenticide Act, or FIFRA. It is a unique and effective regulatory enforcement environment. However, I am concerned that other Federal statutes not meant to impact the states' responsibilities regarding FIFRA registration may be burdensome.

What type of interaction have you seen between your state enforcement responsibilities and other Federal statutes? I am talking about the Endangered Species Act. Would you support the modernization of this act? The answer to that is yes, but please proceed.

Mr. BLACK. Mr. Chairman, yes, sir, we would support that, absolutely, and it has been a topic of discussion for a long time. I know you are passionate about it.

One of our—maybe the best example in the State of Georgia is a success that winds up as a challenge. We have extensive holdings in cotton. We have had a big problem with pigweed, with Palmer amaranth. We began working on the new technology with industry and with our Federal partners. EPA was involved early in a successful way trying to help solve the problem in Georgia. We have invited them out of the cubicles, and we have had them experience first hand, the program with pigweed in Georgia and why we needed Dicamba and 2,4–D technology within our seed technology.

That worked pretty well, but now we have regulatory decisions regarding application methods that are not rooted in science. Tank mixes of 2, 4-D and Dicamba with this soybean and cotton technology are not allowed. Mr. Chairman, my experts tell me that there is no scientific basis for this decision> The answer they have gotten is just are simply scared. The EPA is scared of being sued because of the Endangered Species Act.

I am not sure that is exactly—getting back to our sound science, we would love to stick to science, but the tank mix issue with respect to Dicamba and 2,4–D is a problem that we are experiencing right now.

Chairman ROBERTS. I appreciate that.

Ms. Ruiz, I do not have a question for you, other than the fact to repeat my comments to you that the Committee is going to work as quickly as possible and without any changes or amendments to existing language, and I am reading to you, your statement, so thank you. I appreciate that.

Senator KLOBUCHAR. Thank very much, Mr. Chairman, and thank you to all of you for being here and your good work that you do all the time.

I was specifically asking in the previous witnesses here about the timetable, and I know that PRIA has a proven track record of providing a stable funding source. Minnesota industries like Ecolab have been at the forefront of developing innovative products, and the predictability—this is what we want, right—as well as safety, that PRIA provides, allows products like these to reach the marketplace in a consistent way.

So what lessons can we take from the PRIA Coalition on bringing coalitions together to address some of the inefficiencies that we can have? I would love to take some of this success that we have in having a bill that everyone agrees on and having a way of doing things into some other areas.

Anyone can answer this.

Mr. VROOM. Thank you, Senator Klobuchar. So, on behalf of CropLife and others, hopefully on behalf of the coalition, we do think that EPA has learned a lot about doing its business more efficiently and effectively .

Since the—what now?—13-plus years that PRIA has been there as an added resource, but also with regard to the policy guidance that is there in the law about timeline and targets to make decisions, whether they are yes or no, they are targets. Mr. Keigwin got the question earlier on behalf of EPA from some of you—I think Senator Ernst—about the 730-day target timeline for making decisions on new active ingredients, and the statistic that was quoted from EPA is that they meet all of these deadlines in PRIA 98 percent of the time. There is an asterisk on that.

So percentages can be tricky, and in our testimony, we noted that a study that we did from 2012 through 2014, which was a fairly representative period out of the 13 years, that 730-day target was vastly missed by 50 to 100 percent in some of those years.

So they ask for a renegotiation of the deadline and then count that as a met deadline when they meet the renegotiated timeline.

An example that came up at a conference that we sponsored with EPA a couple of weeks back, the head of the registration and the head of the re-registration divisions openly admit that their computer systems still do not talk to each other, and so there is a lot of duplicated work that has to occur to translate one computer's messaging to the other one. They are doing a lot of the same work.

Senator KLOBUCHAR. Okay.

Mr. VROOM. So there is still more progress that can be made in those kinds of areas.

Senator KLOBUCHAR. Mr. Murden, in your testimony, smaller acreage and other specialty crops, you noted are sometimes disadvantaged in the development of new products or registrations. In Minnesota, that means things like sweet corn and apples and barley. Can you explain how having regulatory certainty and accountability helps some of the smaller crops, like the ones you grow?

Mr. MURDEN. Yes, ma'am. It boggles my mind how much it takes to bring a chemical to register. I mean, some of the money you are talking about, 250- to $280 million, is, quite frankly, more than some of these industries are as a total. So we need the level play-

ing field and need all the help we can get. I am not any less important than the corn growers.

Senator KLOBUCHAR. Really? No.

[Laughter.]

Senator KLOBUCHAR. Okay. Except in Iowa. But I am just kidding. It's a joke.

Okay. So thank you for that. We actually are number one for sweet corn, and that is why I brought that up. It is different.

Commissioner Black, I authored legislation that was included in the 2014 Farm Bill that created an Ag Science Committee at EPA to provide advice to the Science Advisory Board. Efforts to increase this communication between the agencies, as I just noted in the first question, are important. Do you think the USDA outreach to EPA has been helpful, and what do you see as ways to improve it?

Mr. BLACK. Yes, ma'am. I believe anytime that we can come together across agency lines to help farm families and help this business, that is what we should do because it should be about service. It should be about finding solutions. We believe state departments of agriculture have a role to play because we are implementing federal laws and regulations We are the ones on the ground every day working with farmers, working with businesses and real people in real ways.

I absolutely believe in the supremacy of Federal law. We have requirements under law. We have things that we have to enforce. I do not think Federal Government, though, has a monopoly on talent, skill, and experience, and there is quite a bit of that at the state level. We would actually like to be a part of how to improve the skill sets within the Federal Government, so that when we have people who have responsibilities in agriculture, that they actually have a background to provide the service.

Senator KLOBUCHAR. Yeah.

Mr. BLACK. I think that makes a lot of sense.

Senator KLOBUCHAR. Yeah.

Mr. BLACK. When my Plant Industry Division director sits at a meeting and an EPA person from our region leans over and asks him "Do we grow many peanuts in Georgia?". I think that is a problem, not that that is a bad person, but——

Senator KLOBUCHAR. No. It is just—yes, why did that——

Mr. BLACK. —maybe the skill is not matched up quite——

Senator KLOBUCHAR. Do you grow many peanuts in—no, I am kidding.

Okay. Thank you. I know exactly what you mean, and the Chairman has allowed me to ask one more question because I want to make sure Ms. Ruiz gets a question in here.

In your testimony, you discuss the importance of the newly updated Worker Protection Standards and the certified applicator rule. Can you talk about the specific risk, the new protection standards and rules eliminate, and why we want to keep them in place?

Ms. RUIZ. Thank you. Yeah. The recently updated WPS contains some fundamental safeguards to protect farmworkers, their children, and pesticide handlers from acute and long-term illnesses and injuries associated with pesticide exposure. The revised WPS and CPA rules significantly increase protections for children by requiring that pesticide handlers and applicators be at least 18 years

old. Children under the age of 18 often lack the maturity to safely handle these chemicals, and so allowing them to do so puts not only them, but also their coworkers at serious risk.

The WPS also includes provisions, so-called "application exclusion zones," to protect workers and bystanders from direct spray and airborne drift from—during the pesticide applications.

Finally, enhanced safety training required by the WPS includes some practical measures for workers to avoid exposing their families to pesticide residues on their skin and clothing.

The updated certified pesticide applicator rule, whose implementation has been twice delayed by the EPA, also includes some critically needed safeguards that have the potential to save children's lives.

One example I wanted to bring out—and this is something that was cited by EPA in its rulemaking—in 2010, a commercial pesticide applicator in Utah misapplied a pesticide, a restricted use pesticide, at a home where two young girls lived. He applied the wrong dose and placed it too close to the home, and tragically, these children became ill and died from the exposure.

There are hundreds of acute health incidents related to restricted use pesticide exposure reported every year. Misapplications that result in tragic events could be avoided with strengthened certification and training requirements for these applicators.

Senator KLOBUCHAR. I really appreciate it. Thank you.

Ms. RUIZ. Thank you.

Chairman ROBERTS. The Chair now recognizes the Senator who has achieved a record of gentlemanly yields that I do not think ever will be broken. I can assure you as long as I am in the Chair that he will hold that record.

Senator Perdue.

Senator PERDUE. I want to apologize for the Chairman's humor this morning, but——

[Laughter.]

Senator PERDUE. Mr. Vroom, you have touched on it just a minute. I want to dial into this just a minute as a business guy. Taking 11 years, $280 million, to bring a product to market is not competitive. I get the gravity of this. I get the dangers. I understand how important it is for when you say 7.5 billion folks out there who need food.

But you also say in your testimony that in that kind—the biggest regulatory challenge to EPA's performance is implementing the Endangered Species Act and the harmonization with FIFRA for pesticide registration, and that we are averaging somewhere between 950 and 1,100 days compared to the 730 target.

Mr. VROOM. Right.

Senator PERDUE. Specifically, what do we need to think about as an industry, and what can you help us with that would speed that up and address the 11 years and $280 million of product entry?

Mr. VROOM. Well, Senator Perdue, thank you for that question, and, of course, there are endangered species in every state in the Union. Some states have more than others, and some states have more that are at the intersection or potentially or in theory at the intersection with farming and production agriculture than others, but it is everywhere.

We all want to ensure that we can protect the environment and that threatened and endangered species and their habitats, which are all very carefully described under the Endangered Species Act that has now been in place for 45 years. We want to respect that and ensure that those goals are achieved.

But in the 16 years since some organizations have decided to use the courts to try to get a new interpretation of what EPA should do under the Endangered Species Act, we have seen no additional protections for endangered species. But it has added 15 to 20 percent resource consumption by EPA to respond to these paper procedural matters and to the court cases.

We have, as an association on behalf of our members, participated in over a dozen of those Federal lawsuits. Most of them have been successfully managed. We have gone through discovery and arguments in the courts, but at the end of the day, we now see that those same activist organizations are litigating over brand-new chemistries. It used to be just old chemistries. Now it is holding up access to new chemistry approvals to get to the marketplace.

So amending the Endangered Species Act is not easy for Congress. We were part of a coalition that attempted to do that 10 years ago and failed. We think that a fresh look at that but also with regard to administrative improvements that could be done by both the Departments of Interior and Commerce, USDA, and EPA might be another pathway or a combination along with things that Congress might be able to assist with.

So we would like to come back to you and talk more about those ideas because, again, it impacts more than just our industry. It is vital for farmers. Certainly, ranchers in the West have got lots and lots of issues with regard to endangered species and the ability to graze animals and the like, so a very important topic that needs a lot more time and attention. So thank you very much.

Senator PERDUE. Thank you.

Commissioner Black, I am impressed. "Cooperative federalism." I did not know you had five-syllable words in your vocabulary.

Mr. BLACK. Thank you.

Senator PERDUE. But would you expand on that a little bit and talk about specifics in Georgia where you may have started applying that concept?

Mr. BLACK. Well, Senator, thank you. Again, that is a term that goes back to some learned folks that discussed it 200 years ago regarding what the relationship should be between the federal government and the state government.

But let me boil it down this way to put it in my terms. It is that we work together. All of the those stakeholders that have a role in enforcing the law should work together and communicate, and we should have a servant's mind about it. Our job here is really not to be the government, to hide in the weeds, to jump out and say "boo," but that we should not be afraid to say "yes, if" and guide it that way.

One example that comes to mind immediately relates to Georgia and the nation is a product approved to control feral HOAs. I have a call a day asking what we are doing to solve the feral HOA problem.

Well, there is an EPA-approved product. You all have probably seen this. It has been in the news. Some colleagues out West approved it. We will not approve that in the State of Georgia because it harms wildlife, and I do not understand why they did not figure that out to start with. So that is an example where if cooperation between the states and EPA, states having a seat at the table during the approval process would be helpful. We also believe this is really important at FDA, the implementation of Food Safety Modernization Act. We are on the ground every day. We would like for more of our federal partners to be open to invitations to leaving Washington, and come to the ground where the work is being done. I promise you we will be good hosts in Georgia.

Senator PERDUE. Could I ask Ms. Ruiz just one quick question?

Chairman ROBERTS. Sure.

Senator PERDUE. Thank you for your forbearance.

Ms. Ruiz, the 18-year-old rule for application—and I understand the seriousness or the dangers around these products. I am interested. Was there a comment period, and what comments did you get from family farms about the 18-year rule? I am not debating. I am not arguing against it, but as a person who did a lot of work on a farm below the age of 18, I am curious as to what impact it had and what kind of comments you got back from small family farms.

Ms. RUIZ. For both the Worker Protection Standard and the Certified Pesticide Applicator rules, there is an exemption for family members——

Senator PERDUE. I see.

Ms. RUIZ. —from that minimum age requirement.

Senator PERDUE. Great. Thank you very much.

Thank you, Mr. Chairman.

Chairman ROBERTS. That will conclude our hearing today, with the exception of I feel compelled to inform Mr. Vroom that—and anybody else that cares—I talked to a farmer this morning out in southwest Kansas. It usually does not rain that much in southwest Kansas. We have had 14 inches of rain in southwest Kansas. That is incredible. I think the last time we have had that was 1878. I remember that well.

[Laughter.]

Chairman ROBERTS. But the whole point of that is that with rain, we now have the habitat for the lesser prairie chicken which has been listed and then not listed on the endangered species list, and I think with the habitat that we will have enough of lesser prairie chickens, that we will have the greater lesser prairie chicken. Now that gets a little bit silly if you really get down to it, but it is not because of all of the prohibitions to farmers and how they would conduct their cropping operations and everything else with regards to the Endangered Species Act.

So I would hope that if any of you have any ways that we could take a look at that—and we will cooperate with the other Committees that have that jurisdiction to see if we can get some answers.

We are pretty close to listing farmers on the endangered species list, given the rough patch that we are in.

With that, thank you to each of our witnesses on both panels taking time to share your views on pesticide registrations and

issues impacting agriculture and the crop protection industries. The testimonies provided today will be very valuable for the Committee to hear firsthand.

Let me say to my fellow members, we would ask that any additional questions you may have for the record be submitted to the Committee Clerk five business days from today or by 5 p.m. next Thursday, May 18th.

The Committee stands adjourned.

[Whereupon, at 11:54 a.m., the Committee was adjourned.]

A P P E N D I X

MAY 11, 2017

Testimony of
The Honorable Gary W. Black, Commissioner of Agriculture, State of Georgia
On behalf of the National Association of State Departments of Agriculture

As submitted to the U.S. Senate Committee on Agriculture, Nutrition, and Forestry Public Hearing on Pesticide Registration under the Federal Insecticide, Fungicide, and Rodenticide Act: Providing Stakeholders with Certainty through the Pesticide Registration Improvement Act.

May 11, 2017
328A Russell Senate Office Building

Chairman Roberts, Ranking Member Stabenow, and distinguished members of the Committee, thank you for the invitation to testify today on behalf of the National Association of State Departments of Agriculture (NASDA) and the Georgia Department of Agriculture on the pesticide registration process. I appreciate the opportunity to share a state agency perspective on this important topic. My name is Gary Black, and I proudly serve as Georgia's Commissioner of Agriculture and NASDA member as an ambassador, advocate, regulator, and educator.

NASDA

NASDA represents the commissioners, secretaries, and directors of the state departments of agriculture in all fifty states and four territories. State departments of agriculture are responsible for a wide range of programs including food safety, combating the introduction and spread of plant and animal diseases, and fostering the economic vitality of our rural communities. Environmental protection and conservation are also among our chief responsibilities.

In forty-three states and Puerto Rico, the state department of agriculture is the state lead agency responsible for administering and enforcing the labeling, distribution, sale, use and disposal of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)[1]. Georgia is one of those forty-three state agencies with FIFRA responsibilities and serves as a co-regulatory partner with the U.S. Environmental Protection Agency (EPA) on the delivery and enforcement of pesticide programs and activities.

[1] 7 U.S.C. §136, *et. seq.*

Georgia Agriculture

I am proud of the fact that Georgia has a rich history in production agriculture. Some would even say that it is in our name. For you see the name "Georgia", the feminine version of George, truly means "a farmer", or "worker of the land". In fact, the first crop of soybeans in North America was harvested on Skidaway Island in 1765. Today we are better known as world leaders in the production of poultry, peanuts, pecans, cotton, forest products and our famous sweet Vidalia onions. Our agricultural economy continues to thrive representing a $75 billion annual economic impact to our state's economy and serves as our largest industrial sector.

The diversity of our agricultural production is equally reflected within our agency's Plant Industries Division. The Georgia Department of Agriculture routinely register approximately 15,000 pesticide products annually and issues license to over 30,000 certified pesticide applicators. Through our cooperative agreement with EPA we make every effort to provide unmatched education and regulatory oversight to our agricultural producers and pest management professionals. The regulatory burden over the last decade has put considerable stress on our agency, our land grant university system and partnering stakeholders who are charged with pesticide registration and enforcement.

Relationship between EPA and the Agriculture Community

It is no secret that we have experienced a number of significant challenges between the agriculture community and the EPA over the recent years. I want to start by acknowledging the tremendous efforts by newly appointed EPA Administrator Scott Pruitt to improve this relationship. From his meeting directly with several of my colleagues in NASDA; to offering public remarks at the national meetings of various agriculture producer organizations; and countless other efforts all within his first few weeks at the helm, Administrator Pruitt has demonstrated genuine respect and appreciation for the hard-working women and men who feed and clothe us. While we are still working with EPA to address several remaining regulatory challenges and process improvements, we see these efforts as a badly needed reboot of our relationship with EPA, and we applaud the Administrator's efforts in delivering a transparent, predictable, and science-based regulatory approach to protecting human health and the environment while allowing for the production of the world's safest, most abundant, and most

affordable food supply. The FIFRA registration process and the Registration Improvement Act (PRIA) are cornerstones to this essential regulatory foundation.

Cooperative Federalism

Among NASDA's highest priorities is the pursuit to codify and institutionalize the concept of cooperative federalism. That is, the recognition that governance of this great nation is a shared responsibility of federal and state partners. This is particularly true with regard to the regulation of pesticides. Through the administration of FIFRA, EPA undertakes extensive review of more than 125 different health, safety and efficacy studies, and ultimately, EPA makes a decision to register a pesticide for distribution, sale and use if it determines that using the pesticide according to specifications "will not generally cause unreasonable adverse effects on the environment."

While some may believe this is the end of the process, it is in fact only the beginning. Specifically, the pesticide must also be registered in any state where it is to be used. In most cases, it is the responsibility of my colleagues in the state Departments of Agriculture to review and register these products for use in the state.

Nobody will be surprised to learn that there are high costs associated with bringing crop protection products to the market. We are concerned that regulatory costs and burdens are unnecessarily exacerbated when, as we have witnessed in the past few years, there is not a robust level of communication, cooperation, and coordination between EPA and its co-regulatory partners at the state level. NASDA members, myself included, have been continually frustrated by the seeming lack of regard for our concerns and contributions to this process.

We were particularly encouraged by Administrator Pruitt's comments during his confirmation hearing reaffirming the role of states through Cooperative Federalism, and subsequently, we have been extremely pleased with the direct action and outreach EPA has undertaken to execute this new directive.

As I've suggested, many issues of concern of the state co-regulators with EPA's regulatory proposals can and should be addressed at the beginning of the process. Communication, cooperation and coordination shouldn't be a goal, they should be a given. We feel there are opportunities to strengthen this regulatory partnership between EPA and the state departments of agriculture, and we would

welcome the opportunity to explore these possibilities with the Committee going forward.

FIFRA Process Integrity

FIFRA established a unique, effective, and comprehensive regulatory structure to provide pesticide-related environmental and public health protection in which state lead agencies have primacy in the enforcement of pesticide matters. FIFRA created requirements for pesticide registration, labeling, and use that are the end result of an extensive pre-market approval process. This registration process requires products to meet strict safety guidelines and includes rigorous examination of environmental fate data and health exposure assessments.

It is essential for state departments of agriculture and the producers we serve to have a robust, transparent, and scientifically-sound FIFRA registration and reregistration process to deliver new technologies and critical crop protection tools in a timely and predictable manner. In order to achieve this end, NASDA requests Congress ensure there is a fully funded, fully resourced, and fully staffed Office of Pesticide Programs to conduct the rigorous and timely scientific review necessary for these essential crop protection tools.

NASDA supports the original intent of Congress that FIFRA be the primary federal statute under which pesticide registration and use is regulated. As regulatory partners with EPA, state departments of agriculture play an essential role in delivering, implementing, and enforcing various FIFRA-related programs.

Pesticide registration and use should not be regulated under other federal statutes that were neither designed for, nor intended to be the governing statutes for pesticide distribution, sale and use (e.g. the Clean Water Act, the Endangered Species Act, the Toxic Substances Control Act, the Resource Conservation and Recovery Act, etc.). Pesticide uses that have been reviewed and registered under FIFRA should not be subject to additional requirements (including costly and duplicative permit requirements) under other federal statutes.

In situations where conflicting or duplicative requirements of other environmental statutes overlap with FIFRA, deference should be granted to the FIFRA registration process in a manner that is science-based, transparent, and

allows stakeholders the opportunity to comment upon and fully analyze the ramifications of the proposed action. EPA must recognize that state lead agencies are not only important stakeholders, but are also co-regulators under FIFRA and must, therefore, be intimately involved in this process.

Pesticide Registration Improvement Act

The Pesticide Registration Improvement Act (PRIA) is once again nearing time for reauthorization. The current law (PRIA 3) expires on September 30 of this year. PRIA provides a stable and predictable funding source for the EPA Office of Pesticide Programs and establishes a functional and timely process for pesticide and inert ingredient review so that registrants are able to efficiently plan for product approval and market availability. Equally important, PRIA provides additional resources to the states to conduct pesticide education, training, and worker protection activities.

As you know, PRIA has attracted wide, bipartisan support due to its unique success of delivering good government through stakeholder collaboration. NASDA is a member of the PRIA Coalition, which includes organizations representing the registrant community, chemical and biotechnology industries, farmworker advocates, and environmental non-governmental organizations. NASDA supported legislation (H.R. 1029) introduced in the House by Representative Davis of Illinois that attracted widespread bipartisan support, and in fact was agreed to by unanimous voice vote in the House of Representatives on March 20.

Legislation passed in the House would reauthorize existing provisions for seven years, as opposed to the five year extensions in previous iterations of PRIA. The legislation provides two increases of 5% each on registration fees over the seven years. The legislation also provides a $500,000 set aside for EPA to meet deadlines for efficacy guidelines for pesticides to combat bed bugs (which have shut down schools, hotels, dorms, and movie theaters), and crawling and flying insects, which will inform industry what efficacy tests are required. The bill increases maintenance fees to $31 million annually from 2017-2023 and provides increased funding for grant programs, promoting Good Laboratory Practices, and farm worker protection education. This latest iteration of PRIA also sets the appropriations trigger level at 2012 budget levels of $128.3 million ensuring that the industry fee supplements appropriations. Under FIFRA Section 33(c)(3)(B),

the EPA is authorized to use 1/17 of the amount of the Pesticide Registration Fund (but not less than $1 million) to enhance current scientific and regulatory activities related to worker protection and $500,000 in each fiscal year, 2018 through 2023, for funding of the Pesticide Safety Education Program (PSEP). State agencies strongly support the allocation of these funds to support the critical mission related to worker protection.

NASDA supports this legislation and asks that this Committee and the Senate to act swiftly to pass this important legislation and send this to the President for his signature.

Support for OPMP

The U.S. Department of Agriculture's (USDA) Office of Pest Management Policy (OPMP) was created as part of the 1998 Agricultural Research, Extension, and Education Reform Act in order to provide leadership in coordinating interagency activities with the EPA, the U.S. Food and Drug Administration (FDA), and other Federal and State agencies to coordinate agricultural policies within the Department related to pesticides. The law further requires OPMP to consult with and provide services to producer groups and interested parties.

The Congress believed creating OPMP was necessary to focus and coordinate the many pest management and pesticide-related activities carried out within the Department. From the legislative history, it is apparent Congress felt strongly this was a necessary step for USDA to effectively carryout its statutory responsibilities with respect to pesticide issues and pest management research.

The law creating this office established that the Director of this office would work with EPA, State Departments of Agriculture producers, producers, and other appropriate groups to develop effective, efficient mechanisms for gathering data necessary for making regulatory decisions. To achieve the many objectives the law envisioned in creating this office, it was expected the office would be created within and staffed by an official within the Office of the Secretary.

Congress was particularly concerned the Director of the OPMP be someone the Secretary had trust and confidence in to ensure that the department would be an effective and forceful advocate within the administration on issues within the

purview of this office. As such, the law requires the Director of the OPMP report directly to the Secretary or Deputy Secretary of Agriculture.

We ask that members of this Committee use your considerable influence to ensure OPMP is vested with the authority and political leverage intended by the statute under which it was created. OPMP is an essential resource and indispensable partner to state departments of agriculture in its delivery of expertise on pesticide regulatory programs.

Conclusion

State departments of agriculture play a critical role in carrying out the regulatory programs impacting our agricultural producers. We serve as both enforcement agents and ambassadors to our agricultural producers, and at a minimum, we have a responsibility and an obligation to fulfill the spirit and intent of the statutes, programs, and Executive Orders controlling and directing that regulatory development process.

It is essential for our federal partners to utilize the expertise of the states and the producers in those states to inform, develop, and implement a scientifically sound, consistent, and transparent regulatory framework to ensure our producers are able to continue to produce the food, fiber, and fuel our country and much of the world depends upon.

Before I conclude my remarks, I want to offer a solution and point out a constant theme all of my colleagues as Secretaries, Directors and Commissioner of state departments of agriculture discuss throughout the country and that is the need to "Educate before you Regulate."

I appreciate the opportunity to testify before you today, and I welcome any questions you may have.

TESTIMONY OF

RICHARD P. KEIGWIN, JR.

ACTING DIRECTOR, OFFICE OF PESTICIDE PROGRAMS

U.S. ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE

SENATE COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY

May 11, 2017

Good morning Chairman Roberts, Ranking Member Stabenow, and members of the committee. My name is Rick Keigwin and I serve as the Acting Director of the Office of Pesticide Programs in the U.S. Environmental Protection Agency.

Safe pesticide use makes an enormous contribution to our society, particularly in the production of U.S. food and fiber. Innovation in pesticide use has greatly increased U.S. agricultural productivity and contributed to a predictable food supply and stable food prices. The EPA estimates that pesticides used to control various pests such as insects, weeds, and fungus contribute billions of dollars per year to the U.S. economy, translating into a bolstered workforce of American jobs. Additionally, the pesticide industry— which is impacted by the EPA's decision making and assistance— accounts for various aspects of the U.S. economy: a dozen major pesticide producers; another 100 small producers; 1,700 pesticide formulators and 25,000 distributors; 23,000 commercial pest control firms; more than two million farms; and more than

88 million households.[1] There are more than 17,000 registered pesticide products containing more than 1,200 active ingredients, with uses ranging from insect repellents, household cleaners, lawn and garden chemicals, hospital disinfectants, biotech products and a wide range of agricultural chemicals used to provide an abundant food supply. These factors contribute greatly to the EPA's challenging and complex undertaking to run an efficient and equitable regulatory program.

Further, EPA Administrator Pruitt launched a "Back to Basics" agenda -- a formal plan to return the agency to its core mission of protecting the environment while engaging in cooperative federalism across a broad spectrum of interested parties. For example, as part of the Administration's regulatory reform effort, just last week the EPA held a public meeting to garner feedback on pesticide registration issues. This meeting, one of several regulatory reform meetings held by EPA program offices, allowed regional, local, agricultural, and other pesticides stakeholders to share their views on pesticide regulatory development, reform initiatives, evolving public policy and program implementation issues. These meetings highlight the current Administrator's commitment to all Americans in returning common sense, as well as transparent and peer reviewed science, to the pesticide registration process.

[1] EPA Pesticide Industry Sales and Usage: 2008-2012 Market Estimates

I would now like to provide an overview of how the EPA regulates pesticides to protect human health and the environment while making tools readily available to provide a safe and abundant food supply.

PESTICIDE REGULATION

The EPA's regulates pesticides under the authorities of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food Drug and Cosmetic Act (FFDCA); the Food Quality Protection Act of 1996; the Endangered Species Act (ESA); and the Pesticide Registration Improvement Renewal Act (PRIA).

The EPA has developed a highly regarded program for evaluating pesticide safety and making regulatory decisions. Our approach to decision making is based on a model of transparency. Using this approach, the agency makes decisions consistent with information that is peer-reviewed and protective of human health and the environment. Credibility is at the core of meeting the requirements of pesticide registration and reevaluation activities. The EPA has incorporated many processes that have integrated inherent efficiencies into our risk assessment process, enabling the agency to successfully meet the requirements of PRIA. We have done this in a collaborative manner with our regulatory partners and stakeholder community.

Under FIFRA, the EPA ensures that, when used properly, pesticides provide significant benefits to society, such as controlling disease causing organisms, protecting the environment

from invasive species, and fostering an affordable, safe and abundant food supply. FIFRA's safety standard requires the EPA to weigh these types of benefits against harm to human health and the environment that might result from using a pesticide.

FIFRA generally requires that before any pesticide may be sold or distributed in the United States, the EPA must license its sale through a process called "registration." During registration, the agency examines every pesticide product that is intended to be distributed or sold in our country. In addition, under FFDCA, the EPA sets "tolerances" (maximum residue limits) for pesticides used on food or animal feed. The EPA may establish a tolerance or a tolerance exemption for a pesticide residue in food or feed only if the agency finds that there is a "reasonable certainty of no harm" from consumption of the pesticide treated food and from other non-occupational sources of exposure.

FIFRA also requires the EPA to reexamine previously approved pesticides every 15 years through a program called "registration review." Any changes to the use of a pesticide identified through registration or registration review, as necessary for safe use, appear on product labels.

In 2016, the EPA registered pesticides containing 20 new active ingredients, more than half were biopesticides or reduced-risk conventional chemicals, and approved products for 213 new uses. In addition, we approved hundreds of registration amendments and reviewed thousands of notifications of other minor changes to labels.

Some of the most dramatic examples of how pesticides can provide direct benefits occur under section 18 of FIFRA, where the EPA may respond to "emergency exemptions" requested by states to authorize the temporary use of an unregistered pesticide to address an unusual pest outbreak. Likewise, the EPA also approves special local need exemptions for states under section 24(c) of FIFRA. In 2016, to address serious pest threats, EPA completed 108 section 18 emergency decisions, including the use of antibiotics on citrus to combat citrus greening in Florida, which is devastating to the citrus industry. We also expedited registration of five chemicals for use on quinoa to be responsive to domestic grower's needs, as well as Peruvian import needs.

Additionally, in response to the Zika virus crisis, four section 18 emergency exemptions were authorized to the Centers for Disease Control and Prevention to reduce populations of disease carrying mosquitoes in Puerto Rico, the United States Island Territories, and the continental United States. Authorizations were completed on all of the actions in less than 39 days and as little as eight days. The EPA also expedited 94 Zika fast track amendments with a turnaround time of two weeks or less, and expedited the approval of two unregistered sources to ensure adequate supplies of repellent to protect against Zika.

PESTICIDE REGISTRATION ENHANCEMENT ACT (PRIA 4)

The Pesticide Registration Enhancement Act (PRIA 4) is the third reauthorization of the Pesticide Registration Improvement Act (PRIA), which was signed into law in 2004. PRIA and its reauthorizations (hereafter collectively referred to as PRIA) provide examples for how user fees paid by the private sector can help support vital regulatory activities. The EPA's pesticide regulatory programs are funded by a combination of appropriations and user fees, with user fees consisting of a one-time registration service fees that accompany applications for covered activities under PRIA and annual maintenance fees to support continued registration of pesticide products.

Under PRIA, entities seeking the EPA's approval to sell or distribute pesticide products must, in most cases, pay a fee to process their applications. The amount of the fee depends on the type of application, complexity of the application, and the type of entity. For example, under PRIA, lower fees are charged for new pesticide products that are the same or similar to products already registered (known as "me too products"), than for entirely new pesticides. Small businesses pay reduced fees, and PRIA exempts government and government-supported organizations, like the USDA's Interregional Research Project No. 4 (IR-4), from application fees. PRIA registration service fees were intentionally set at levels that represent only a portion of the cost necessary for the EPA to complete its review – about 20 percent to 40 percent of total costs depending on the PRIA category.

PRIA was developed by a coalition of pesticide stakeholders representing seven different trade groups within the pesticide industry and public interest groups reflecting the environmental and farmworker safety communities. The result of this collaboration is that there are elements to the law important to all of the represented stakeholder entities in the coalition. The EPA serves in an advisory capacity to this coalition and has welcomed the opportunity to provide technical assistance.

For the pesticide industry, PRIA requires the EPA to make decisions on applications within mandated timeframes. PRIA was developed with the intention of providing additional resources to the EPA in order to achieve faster and more predictable registration decision time frames and in that respect has demonstrated success. The pesticide industry has actively sought to increase the number and types of registration actions covered under the fee for service programs from 90 categories in PRIA 1, to 140 categories in PRIA 2, 189 categories in PRIA 3, and now 212 proposed categories in the PRIA 4 legislation.

Before PRIA, because of limited resources, the agency could not process all of the applications it received in a timely fashion. Large backlogs developed, and applicants could not predict when the agency would make a decision. Pesticide companies had to establish priorities for which of their applications the EPA would review first. With the additional resources provided by PRIA, the agency can now process new applications in a timelier manner. The EPA has approved more than 20,000 decisions since PRIA went into effect in 2004, meeting the

timeframes for more than 98 percent of those actions. With this kind of consistency in the EPA's review of registrations, pesticide companies can develop more accurate business plans for marketing their products.

Pesticide users also benefit from the more rapid approval of more new pesticide products. Since PRIA became law, the agency has seen an increase in the approval of pesticides for "minor uses" to meet the pest control needs of farmers who grow minor crops – primarily fruits, vegetables, and nut crops. Further, under the law, some of the PRIA fees go to support improved safety standards for agricultural workers and to provide pesticide safety education for farm workers and farm worker families. Finally, PRIA sets aside a portion of the fees to increase funding for grants that improve understanding of integrated pest management and develop new tools to reduce pesticide use.

Society and the environment also benefit from PRIA. A number of the new pesticides receiving approval under PRIA are safer than the previously approved products that they can replace. Expedited review time frames under PRIA provide incentive for the development and submission of these reduced risk pesticides. In addition, PRIA reauthorized maintenance fees to support the EPA's registration review program. As mentioned earlier, under FIFRA, the EPA must reevaluate all previously registered pesticides at least every 15 years to make sure that products in the marketplace can still be used safely. The registration review program makes sure that, as the ability to assess risk evolves and as public policy and pesticide use practices change,

all registered pesticides continue to meet the FIFRA statutory standard of no unreasonable adverse effects.

Turning to PRIA 4, the House bill (H.R. 1029) reauthorizes PRIA for seven years and, consistent with previous authorizations, provides for two fee increases of five percent to be implemented in fiscal year 2019 and fiscal year 2021. With regard to maintenance fees collected under section 4 of FIFRA, PRIA 4 extends that provision for seven years, increases fees from $27.8 million to $31 million per year, and includes a provision allowing the EPA to average across years to correct for over or under collection within PRIA 4. An existing provision in FIFRA is removed that prevents the EPA from spending annual maintenance fee funds without exactly matching those funds from dollars appropriated in the same year. In recent years, the EPA has not been able to spend all of the maintenance fees collected from registrants due to this constraint. We are working expeditiously to resolve this issue and are in the process of developing a plan to ensure that these fees are utilized in a cost effective manner to meet our statutorily mandated responsibilities.

Also, an information technology (IT) set-aside of $800,000 per year established under PRIA 3 is eliminated and replaced with a new set-aside of $500,000 per year over five years to develop and finalize rulemaking and guidance for product performance data requirements for certain invertebrate pests of significant public importance. In addition, a second maintenance fee

set-aside of $500,000 per year over seven years is established for Good Laboratory Practice (GLP) inspections.

As mentioned before, PRIA 4 expands covered applications to 212 categories, up from the 189 categories specified under PRIA 3. An example of category changes requested by the regulated community is the alignment of antimicrobial new chemical and new use categories to be consistent with Part 158W definitions. In general, new and amended categories reflect an effort to better align fees and time frame structures to the EPA resources necessary to review those actions. PRIA 4 also creates a financial incentive for registrants to develop and submit to the EPA reduced-risk pesticide applications, by raising fees for corresponding non-reduced risk categories within the conventional new chemical and new use fee tables. PRIA set-asides for worker protection, partnership grants, and pesticide safety education are extended. PRIA 4 directs the EPA to look for opportunities to streamline review processes for new chemical and new use applications, and to provide prompt feedback to applicant during process.

Additional reporting requirements specified by PRIA 4 include progress in meeting mandatory deadlines for development of product performance rulemaking and guidance for public health pests, the number of GLP inspections conducted under the set-aside, progress in priority review and approval of new pesticides to control vector borne public health pests for use in the United States, including territories and military bases globally, and the effectiveness of and engagement of stakeholders in worker protection, partnership grants and pesticide safety

education activities. Registration review reporting requirements are amended and reporting requirements remain for the unspent balance of the IT set-aside under PRIA 3.

CONCLUSION

The EPA has a history of working in strong collaboration with the grower community to address potential pesticide risks while still providing growers with the necessary tools to meet their pest management needs. Through meetings with the grower community, we will continue to gain the invaluable contributions that farmers make to our economy, the importance of working with them and the unique insights they provide. Under Administrator Pruitt's leadership, the EPA will double down on helping America through common sense regulations, including those in PRIA, allowing farmers to grow an abundant food supply and also grow the economy.

Thank you for the opportunity to testify today. I will be happy to answer any questions you and the other members may have.

Statement of Dr. Sheryl Kunickis
Director
Office of Pest Management Policy
U.S. Department of Agriculture

Before the

Senate Committee on Agriculture, Nutrition, and Forestry

May 11, 2017

Chairman Roberts, Ranking Member Stabenow, and members of the Committee, thank you for the opportunity to provide testimony on the crucial importance of pesticides in providing the safe, abundant, and affordable food supply that Americans enjoy and depend on. I am Dr. Sheryl Kunickis, Director of the U.S. Department of Agriculture's (USDA) Office of Pest Management Policy (OPMP). I have worked on behalf of the public for nearly 29 years, including 22 years at the USDA Natural Resources Conservation Service (NRCS). I served as the Associate Deputy Director for Agriculture, Lands, and Wildlife at the White House Council on Environmental Quality (CEQ) in 2008, and completed a detail as the Acting Director of the USDA Office of the Chief Scientist. I have served in my current position as OPMP Director for the past seven years. I earned a Ph.D. in soil science from North Carolina State University and a B.S. and an M.S. in agronomy from Brigham Young University.

OPMP leads USDA activities related to pesticides and pest management, which includes harnessing the Department's expertise to inform federal regulatory actions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as well as pesticide-related provisions of the Endangered Species Act; the Federal Food, Drug, and Cosmetics Act; the Clean Water Act; and the Clean Air Act. We also coordinate agricultural biotechnology issues for USDA, including the Secretary's Advisory Committee on Biotechnology and 21st Century Agriculture (AC21). In engaging with EPA and other entities, we strive to ensure fully-informed decision-making in a number of ways: by clarifying the benefits and costs of federal actions on U.S. agriculture; by providing the best data on agricultural production and pesticide use; by effectively communicating the concerns of our stakeholders in all sectors of the agricultural industry; and by encouraging the use of quality science for issues related to pesticides and pest management throughout the government. To this end, I lead a highly-regarded, interdisciplinary technical staff with broad expertise, including entomology, plant pathology, weed science, agricultural economics, biotechnology, and risk assessment.

Several specific provisions of FIFRA require EPA to consult with the Secretary of Agriculture during different parts of the pesticide registration and cancellation processes, as well as on any proposed or final regulation issued under FIFRA. We also comment on a wide range of guidelines, risk assessments, and other relevant documents. USDA has a good working relationship with EPA, and consultation is an important part of that. Where regulations or other policy changes impact agriculture, USDA should be a full partner whose input on proposed actions should be considered vital. When there are differences of opinions, EPA should work

with USDA to find practical solutions that recognize the importance and needs of agricultural production, while still protecting human health and the environment.

America's abundant, affordable, high-quality, and safe food supply is exceptional, and the envy of the world, despite the uncertainties of weather, consumer markets, labor availability, pests and diseases, and production costs. Pesticides are a critical component of all farming systems. Whether it is the use of organic materials such as spinosad insecticide in organic cranberry production to manage fireworms, or plant-incorporated genetically-engineered (GE) Bt insecticide in controlling rootworms across millions of acres of corn production, pesticides are essential tools for farmers in managing pests, ensuring food security, and meeting market demands for quality. Therefore, it is extremely important to USDA that agriculture not be defined by those who are less than well-informed about agricultural production. Some recent press accounts, for example, portrayed EPA's decision to deny the petition to revoke tolerances of chlorpyrifos, a key insecticide used on over 50 crops, and to keep it on the market as being politically-based. What was lost in much of the reporting was that EPA had concluded "despite several years of study, the science addressing neurodevelopmental effects remains unresolved and that further evaluation of the science during the remaining time for completion of registration review is warranted" to the pesticide. USDA had serious concerns with EPA's risk assessment approach, as evidenced by our public comments throughout the last few years of the previous administration. We are confident that EPA will continue to regularly review any new data on chlorpyrifos, as it does for all pesticides, to make certain that pesticide use regulations remain in line with the newest science.

USDA also welcomed EPA's September 2016 classification of glyphosate, commonly known as "Roundup," as "not likely to be carcinogenic to humans." When EPA presented its analysis to its Scientific Advisory Panel in December 2016, USDA publicly commented in support of EPA's conclusion, which is in line with other major, risk-based assessments conducted by regulatory bodies in the European Union, Japan, Australia, and other countries. In fact, just last week, Health Canada concluded in its re-evaluation decision that glyphosate "is not genotoxic and is unlikely to pose a human cancer risk." Glyphosate has been used safely in the United States since the 1970s for general weed control in both agricultural and non-agricultural settings, and since the mid-1990s with genetically modified crops. Glyphosate is important to U.S. agriculture because of its excellent crop safety in GE crops, the broad range of weeds it controls, its applicability in minimum and no-till as well as conventional tillage, and flexibility and economy of use. USDA is coordinating with EPA on approaches to manage the emergence of Roundup-resistant weeds, through added information on labels and recommendations to diversify management practices and combine or alternate effective herbicides.

Agriculture depends on a strong, scientifically-based EPA to evaluate pesticides, both new and old, to ensure that, when following the label, they can be used as part of integrated pest management system. USDA supports the Pesticide Registration Improvement Extension Act as it will provide the certainty needed for registrants to get innovative technologies to the market, and for growers to know what tools they have available to address the next pest challenge.

Now let us discuss the role of the Endangered Species Act (ESA) in the registration of pesticides. Since 2013, EPA and the Services, which are the Fish and Wildlife Service and the National Marine Fisheries Service, have been working on nationwide ESA consultations for three key pesticides – chlorpyrifos, malathion, and diazinon. The Services analyze the effects of pesticides based on the maximum allowable use, as defined by the label, instead of the actual use on farms, while also considering how the impacts may be ameliorated based on the environmental fate and transport and subsequent toxicity for each threatened and endangered species. Among the many important uses of pesticides, chlorpyrifos is a key broad-spectrum insecticide, diazinon is impregnated in cattle ear tags to control flies, and malathion is part of the toolbox used to combat mosquitoes, maintain the cotton boll weevil program, and manage spotted wing drosophila, an extremely destructive invasive insect in fruit production. USDA supports appropriate reviews, protection, and where needed reasonable mitigation of federally listed species. However, we have concerns about the impacts that some of potential mitigation actions may have on U.S. agriculture. As you may know, EPA is currently required to evaluate the ecological impact of pesticides under the ESA, even though FIFRA, the law that directly regulates the registration of pesticides, already requires EPA to prevent "any unreasonable risk to man or the environment."—a standard which could possibly consider endangered species. This dual regulation under both ESA and FIFRA challenges EPA in meeting its statutory obligations to regularly review pesticide registrations. The first Biological Evaluations released to the public were over 12,000 pages long. The current workload is not sustainable. USDA has the motivation and expertise to offer advice and counsel to EPA and the Services. We look forward to working with the Services and EPA on these issues. Regulatory certainty is needed to ensure the continued safe use of pesticides, while offering necessary protections to endangered species and their habitat.

In closing, let me reiterate that our food supply is one of the safest anywhere in the world. The USDA Pesticide Data Program annually tests a variety of widely-consumed domestic and imported foods for the pesticide residues. In 2015, more than 99 percent of the samples tested had pesticide residues below the tolerance levels established by EPA, which in turn contain safety factors to protect the most vulnerable segments of the population, such as infants and children. These legal limits are established by our colleagues at EPA, and are but one example of the immensely important work EPA does to register safe and effective pesticides that are essential to both conventional and organic agricultural systems.

Thank you very much. I'll be glad to address any questions you may have.

Testimony of Dale Murden, President of Texas Citrus Mutual and Past Chairman of the National Sorghum Producers

United States Senate
Committee on Agriculture, Nutrition & Forestry
Public Hearing on Pesticide Registration under the Federal Insecticide, Fungicide, and Rodenticide Act: Providing Stakeholders with Certainty through the Pesticide Registration Improvement Act

Washington, D.C.
May 11, 2017

Thank you, Chairman Roberts, Ranking Member Stabenow, and members of the Committee for the opportunity to testify in front of you today. On behalf of the more than 700 commercial citrus growers in Texas and the nearly 50,000 sorghum producers nationally, I want to express our appreciation for convening this hearing and allowing me to share details about some of the challenges facing farmers in this country, particularly as it applies to crop protection tools.

My name is Dale Murden. I am the current President of Texas Citrus Mutual, Past Chairman of the National Sorghum Producers, Past State Director of the Texas Farm Bureau and a lifelong farmer. I spent the last 25 years operating a diversified irrigated 30,000 acre farm in Deep South Texas. I recently decided it was time to concentrate full time on my roots in the citrus industry and help where I could. My family and I currently still grow citrus, sorghum and cotton near Harlingen, Texas.

The Texas citrus industry is comprised of almost 30,000 acres across three counties in the Lower Rio Grande Valley where we grow more than 9 million cartons of fresh grapefruits and oranges each year and another 5 million cartons for fruit juice. The Farmgate value of Texas citrus is about $100 million per year with approximately $5 million of it coming from organic production.

The U.S. sorghum industry encompasses approximately 7 million acres, yielding over 500 million bushels of grain, most of which goes toward ethanol production and livestock feed. In addition, the sorghum industry has been successful in marketing our product internationally and now more than half of what we

produce is exported. These exports help chip away at our national trade deficit and strengthen our rural economy.

Citrus and sorghum growers face a broad range of challenges, many of which are unique to their crop. However, my testimony today will focus on issues and concerns they share, specifically the need for access to crop protection tools, which are safe and effective when used properly and as directed by the label. Both crops are threatened by new and invasive pests that have the potential to wipe out their viability. My intention is to illustrate the fact that farmers need tools, we need options for dealing with existential threats to our livelihood and our ability to produce the food and fiber necessary to feed the nation and beyond.

Fortunately, in this country we have a federal regulatory system and industries in place to help deliver on those needs. However, our system isn't perfect and there has been a general frustration in recent years that regulatory decisions and agency messaging has led to a shrinking toolbox and negatively impacting our ability to manage crop pests. If agriculture is to remain an important component of our national economy, farmers need the certainty that products to control damaging pests will be available because we are certain the pests will be there.

Pest Challenge Example 1: Huanglongbing (HLB or Citrus Greening)
Recent finds of the disease HLB and its vector, the Asian Citrus Psyllid (ACP), has growers of all sizes in south Texas extremely concerned. There is no known cure for this disease and we've learned from the experience of our friends in Florida that its impacts are devastating. Since HLB was first detected in Florida in 2005, we believe that 100% of production acres are now infected and production has been cut by more than half, costing the state nearly $8 billion in revenue.

Greening was first discovered in a Texas grove in January of 2012. Five short years later, we have confirmed that trees located in over 100 groves valley-wide show signs of the disease. With the extremely long latency period of this disease, it is unclear how many more trees have already been infected.

What this has done to growers in terms of dollars is hard to quantify. When it was first discovered in Texas, we removed not only infected trees, but several of the surrounding trees as well. This translated to lost income, and with no HLB

resistant trees to plant, it equated to a loss of future income as well. Today, positive HLB finds have become so widespread, that most growers have discontinued tree removal.

In a desperate attempt to mitigate the effects of HLB, most growers have initiated aggressive psyllid spray programs to try to slow the spread of infestation until a cure can be found. This strategy requires treatments above and beyond our regular care programs and has increased our grove care expenses by almost $400 per acre or 22%. However, these treatments are vital to prevent and slow the spread of the disease and, hopefully, allow our industry to weather the storm that was brought to us via the psyllid.

Pest Challenge Example 2: Sugarcane Aphid

For sorghum the sugarcane aphid (SCA), first confirmed in the U.S. in 2014, is driving up costs of production even as we see market prices decline. In 2016, the SCA reached the full extent of sorghum producing regions in the United States, impacting over 70 percent of the acres planted. The SCA has been shown to increase operating expenses by as much as $40 per acre – an almost 30 percent spike in production costs. This translates into an additional $200 million in expenses, nationally. When increased production costs are combined with resulting yield losses, we calculate the total burden incurred by U.S. sorghum farmers on account of the SCA approached $430 million in the 2016 growing season alone. However, we know based on work done at the University of Mississippi that without treating for sugarcane aphid growers would see 81-100% yield loss. Any misstep in tackling this pest has the potential to break the back of the industry.

Importance of Regulatory Certainty – PRIA

The Asian Citrus Psyllid and Sugarcane Aphid are two examples of significant threats to their respective crops. But nearly every growing operation and every crop face pest and pathogen challenges. Farmers look toward federal and academic researchers, crop protection industries and regulators at the Environmental Protection Agency (EPA) to investigate, develop and approve tools that are safe and effective.

Farming is all about managing risk with the intention of maximizing benefit, which for us is yield, not just for one day, month or even a year but instead over the

course of a generation or more. It isn't easy work and the agriculture community recognizes that approving products like pesticides, which come with inherent risk isn't easy either. We need the EPA to be sufficiently staffed with smart, qualified and dedicated people who can properly evaluate products in a timely manner.

Pests and pathogens have the capacity to change over time, sometimes building resistance to some pesticide products and modes of action. That's why one tool in the toolbox is not enough. Farmers need options so that we can manage for resistance, using different active ingredients at different times. Without the necessary approvals for a diverse set of modes of action we can quickly lose our ability to manage damaging pests.

The Pesticide Registration Improvement Act (PRIA) helps to foster and create a smoother pathway for new and effective products to come to the market. Furthermore, crops like sorghum and specialty crops like citrus typically are not the primary targets of new registrations due to their smaller acreage. However, PRIA provides a level of certainty and accountability to the registrants allowing them to invest the resources to gain approvals for crops like the ones I grow.

For all of the reasons stated, I wish to express my strong support for the swift passage of the Pesticide Registration Improvement Act (PRIA-4). Because farmers need the certainty that the pipeline of new and innovative pest management products and the re-registration of existing products continues to flow, leading to the approvals of pesticides that meet the necessary benefits-to-risk thresholds. Without the certainty that I will be armed with the tools to tackle the pest challenges I am sure to confront it is hard to see how I would continue to farm.

Importance of Regulatory Certainty – FIFRA

While not wavering in my support for PRIA I do want to share my perspective that despite, perhaps, the best intensions of some statutes, regulations, guidance and agency actions there are a number of factors that have undermined regulatory certainty for the grower community.

In recent years we've seen the publication of preliminary risk assessments and associated press releases by EPA. In the absence of related benefits assessments these reports paint a negative picture of certain pesticide use patterns and undermine public trust in those products. Some recent decisions by EPA were

made without a full risk assessment having been completed and instead were based on the identification of hazards only without knowing exposure risk. These are significant departures from what is expected under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and have prevented some crops, including sorghum and citrus from receiving access to vital tools.

In addition, it seems that every time a new product is approved or re-registered the approval is challenged through litigation. This is completely contrary to an environment that creates a level of certainty and the very fact that these cases are commonplace suggests an underlying weakness in the process. FIFRA is the primary statute for the registration and regulatory approval of pesticides. These products are studied and evaluated by EPA for potential impacts to the environment, non-target organisms, and human health by some of the most knowledgeable individuals in these fields. However, the regularity of the lawsuits suggests that these products are subject to a double, perhaps triple jeopardy of sorts, sometimes pulling the rug from under what was anticipated to be a safe, cost efficient, and effective pest management tool for growers. I have to believe that our system can do better. It is important to remember that the registration and review process carried out by EPA through the authority provided under FIFRA is meant to assess and evaluate risk in combination with benefits and is not meant to eliminate or squelch innovation by accepting only "no risk" outcomes.

Grower Engagement

I appreciate that we have a regulatory system at EPA that is largely transparent and encourages stakeholder engagement in the product review process. The trade organizations that I and many of my farming colleagues belong to often participate in many of these engagement opportunities to provide evidence and guidance on how the decisions made, including those by the Office of Pesticide Programs, will impact our industry. This is most typically done through the "comment period" of a "proposed rule." However, the Notice document associated with a proposed rule often includes extensive supporting documentation that are so technical in nature that only toxicologists and risk modelers are suited to respond and therefore impact the decision making process. While experimental data and theoretical models are undoubtedly important they should not wholesale supplant real-world data and the results of field studies in risk assessments. Are ecological risk assessments meant to evaluate likely scenarios and potential impacts or are they meant to reflect only

the most conservative and precautionary vision that can be dreamed up? I believe that with greater interaction and more conversations with the communities that actually use the crop protection tools they are assessing, EPA will be able to include stronger and more realistic scenarios into their assessments. I know that Texas Citrus Mutual and the National Sorghum Producers stand ready to work with the agency toward that end.

Conclusion

Thank you again, Chairman Roberts and Ranking Member Stabenow, for holding this important hearing and the invitation to participate. We appreciate all of the work this Committee does on behalf of the American farmer. And once again, I urge the Committee and the Senate to take the necessary actions for the swift approval of H.R. 1029, PRIA-4.

Pesticide Registration under FIFRA: Providing Stakeholders with Certainty through the Pesticide Registration Improvement Act

Senate Agriculture Committee
Thursday, May 11, 2017

Testimony of Virginia Ruiz, Farmworker Justice

Chairman Roberts, Ranking Member Stabenow, and members of the Agriculture Committee:

Thank you for the opportunity to present testimony this morning. My name is Virginia Ruiz and I am the Director of Occupational and Environmental Health at Farmworker Justice.

Farmworker Justice is a national organization that supports farmworkers in the US to improve their living and working conditions, health, occupational safety, and access to justice. Farmworker Justice has been a member of the PRIA Coalition, along with the Natural Resources Defense Council and pesticide industry representatives, since the initial passage of the 2003 Pesticide Registration Improvement Act, and we support its reauthorization in the form of the Pesticide Registration Enhancement Act.

Under PRIA, money set aside from pesticide registration fees supports worker protection activities. The PRIA set-asides fund important programs at EPA, including

- pesticide safety training for farmworkers and pesticide handlers;

- the development of worker and employer training materials on pesticide safety and implementation of the Worker Protection Standard and the Certified Pesticide Applicator rule;
- education and training for medical providers to diagnose and treat pesticide poisonings; and
- support for state public health agencies to maintain pesticide injury surveillance programs.

Farmworkers, and especially those who mix and apply pesticides, face substantial risk of becoming poisoned by pesticides because they work with pesticides at their greatest concentrations and strengths. They come into contact with pesticides on a daily basis. The pesticide residues that remain on their work clothes and skin when they return home from work can also expose members of their families and cause injury.

Pesticide exposure causes farmworkers to suffer more chemical-related injuries and illnesses than any other workforce in the nation. The US Environmental Protection Agency (EPA) estimates that up to 3,000 farmworkers suffer acute pesticide poisoning every year through occupational exposures, including irritated eyes, rashes, nausea, dizziness, headaches, and shortness of breath. These estimates don't include those who suffer long-term effects of exposure, such as cancer, Parkinson's disease, asthma, birth defects and neurological harms, including developmental delays and learning disabilities. In fact, EPA has found that the greatest risk from the pesticide chlorpyrifos – which can harm children's brains - is to agricultural communities and workers.

Many of these acute poisonings are preventable through basic workplace protections and worker safety education, such as those required by the EPA's Worker Protection Standard (WPS). The WPS applies to hired workers and pesticide handlers involved in the

production of agricultural crops. In November 2015, after more than a decade of stakeholder meetings, study and consideration, EPA finalized revisions to the WPS that provide critical improvements designed to reduce the risk of illness or injury resulting from farmworkers' occupational exposures to pesticides.

Also, in January of this year, after more than 40 years, EPA updated its regulations concerning the certification of, and training requirements for, individuals who apply restricted use pesticides (RUPs), which are some of the more dangerous pesticides available on the market. The updated WPS and CPA rule provide long-overdue protections for farmworkers, their families and rural communities across the US from exposure to pesticides. These regulations call for basic preventive measures that will save millions of dollars in medical costs and lost productivity due to illness. These common sense measures include annual basic safety training, posting of application and safety information, meaningful hazard communication, functioning personal protective equipment, adequate supervision of non-certified pesticide applicators, and the prohibition of children from handling pesticides.

PRIA funding is necessary to help EPA meaningfully implement these important safety standards. But these worker protection activities are meaningless if the WPS and CPA rule are weakened and rolled back. PRIA set-asides help to provide employer compliance assistance and worker safety training. However, these funds must complement, not replace EPA funding for other important pesticide safety, worker protection and environmental justice programs. Stable funding for the Agency as a whole is vital to provide occupational and environmental education for workers, their families and rural communities, and to prevent adverse effects from pesticide exposure.

Farmworker Justice requests that this committee reauthorize PRIA as quickly as possible, and without any changes or amendments to existing language. Thank you for the opportunity to address this important issue. I look forward to answering any questions you may have.

Written Testimony of Jay Vroom
President and CEO, CropLife America

Before the Senate Committee on Agriculture, Nutrition & Forestry
To Review PRIA Reauthorization
May 11, 2017

Thank you, Chairman Roberts and Ranking Member Stabenow, for the opportunity to address the Committee on behalf of CropLife America and our more than 110 members; their customers, the U.S. farmers; as well as the public, which benefits from a wholesome, affordable food supply and protection from disease vectors. I am Jay Vroom, President and CEO at CropLife America (CLA). CLA is the national trade association for the United States' crop protection industry. CLA is closely affiliated with RISE (Responsible Industry for a Sound Environment), which represents the specialty, non-agricultural pesticide industry.

It is with honor and pleasure that I speak before you today to address efforts to reauthorize the pesticide industry's fee-for-service program, commonly referred to as PRIA. (While the name of the statute has changed slightly, it is convenient to use the customary PRIA abbreviation.) In 2003, Phil Klein of the Consumer Specialty Products Association and I co-founded the PRIA Coalition. The Coalition consists of a diverse collection of interests that have come together once again to support our fee for service program. Coalition participants include the American Chemistry Council Biocides Panel, Biotechnology Innovation Organization, Biological Products Industry Alliance, Consumer Specialty Products Association, CropLife America, The Worldwide Cleaning Industry Association, Responsible Industry for a Sound Environment, the National Association of State Departments of Agriculture, Farmworker Justice, and the Natural Resources Defense Council.

History of PRIA

The FIFRA amendments of 1988 put in place new and significant fees on registered pesticide products in order to provide EPA with added resources to accomplish re-registration. Those so-called "FIFRA Light" amendments did finally put EPA on a path towards achieving older products reviews. But the Food Quality Protection Act of 1996 subsequently added significant regulatory burdens to the Agency, and as a result, new product approvals suffered. It took an additional 8 years, from 1996 to 2004 – and 2 Administrations and 4 Congresses – to reach an agreement on fees for service that we now call PRIA. In the early years of PRIA, many of our companies saw wait times on registration of new food-use active ingredients drop from more than 4 years to about 2 years. But nothing ever stands still – and so we've experienced timeline erosion for almost all pesticide decision categories. The reasons for this fall into two clear categories.

1. Diminished Resources

   Since PRIA has been in place (2004-2016), appropriations money met or exceeded the "PRIA trigger" for the first 9 fiscal years, but in the last 4 years, Congress has missed its appropriations obligations by a total of $29 million. Since PRIA's 2004 beginning, the full-time employee count in EPA;s Office of Pesticide programs has dropped by over 21% (625 to 491). Clearly, EPA has done much to to offset the resource constraints through efficiency improvements – but we all need Congressional appropriators to restore adequate resources to meet the statutory requirements of FIFRA.

Since 2004, industry fees have been substantial – topping $521 million over 13 years. It has been a very good investment. PRIA 4 will extend that record – and be even better when PRIA appropriation targets are met!

2. Increased Regulatory Complexity

Society expects EPA to apply the best available science in its regulatory decisions regarding pesticide products. Science never stands still – so that regulatory burden on EPA increases every year. In that context, the single biggest regulatory challenge to EPA's performance is implementing the Endangered Species Act (ESA) and the harmonization with FIFRA for pesticide registrations. In additional multiple new data requirements must be fulfilled to support pesticide registrations.

CLA recently compared timelines for PRIA actions completed between 2012 and 2014. New active ingredient approvals took between 946 days and 1,137 days, on average, during those 3 years – compared to the PRIA target of 730 days. In other words, about one half of the timeline gains have eroded since the start of PRIA. Working together we need to address these issues – and speedy reauthorization of PRIA 4 will be a big, positive step ahead!

In recognition of this increase complexity and theincreased burden on OPP, PRIA 4 substantially increases the user fees for certain registration categories.

Reauthorizing PRIA in 2017

On behalf of the pesticide industry, I would like to emphasize the benefit of working alongside the NGO community and in concert with our state and federal regulators to extend the process improvements achieved in EPA's pesticide regulatory program, support stable funding for EPA, and continue funding necessary training and education programs.

The reauthorization legislation currently under consideration by the Senate would:

- Provide for the annual collection of $31 million in product maintenance fees through 2023 (an increase of $22.4 million over the seven years covered by PRIA 4);
- cap the fees paid by small businesses;
- add Endangered Species Act reviews, risk reduction, and information technology system enhancements to the eligible uses of the funds collected;
- designate $500,000 per year for the establishment of efficacy guidelines for products to address invertebrate pests of significant public health or economic consequence;
- designate $500,000 per year for enhancements to the Good Laboratory Practices Standards compliance monitoring program;
- continue funding of not less than $1 million per year through 2023 to enhance scientific and technical activities relating to worker protection;
- continue funding of $500,000 per year through 2023 for partnership grants;
- continues funding of $500,000 per year through 2023 for pesticide safety education programs;
- extend the authority to collect registration service fees until 2023 and provides for two 5% increases in the fees paid in 2019 and 2021; and
- continue the authority of the Administrator to waive fees for small businesses, under certain circumstances.

Mr. Chairman, prior to the implementation of PRIA in 2004, there was little certainty for registration packages moving through the EPA. Product registrations would often linger with no real process or timeframe for completion. This ambiguous process often led to frustration, and more importantly jeopardized innovation, as there was diminished incentive to invest in the research and development of new chemistries for the marketplace. The enactment of PRIA changed that experience for product registrants and all stakeholders. The success of PRIA has led to process improvements in OPP, established a dedicated funding stream for the Agency, created specific block grants for training and education programs, and created business certainty that keeps the wheels of innovation turning, which in turn results in the creation of jobs in the agriculture sector.

The PRIA fee framework ensures availability of: pesticide products to support U.S. agriculture; disinfectants for use by building and plant facilities managers; public health pesticides necessary to combat mosquito and other disease vectors; structural pesticides to protect homes and commercial buildings; products for the home and garden, turf, and ornamental industries.

Implementing ESA in the Context of Pesticide Regulation

PRIA 4 allows EPA to use industry fee resources to conduct endangered species reviews to support the registration review process. We can do better when it comes to the implementation of the ESA. The attempt to apply the ESA across the regulated business spectrum and the ongoing challenges between EPA and the Services (Fish and Wildlife Service and the National Marine Fisheries Service) continue to frustrate the harmonization of ESA and FIFRA, and to date have redirected valuable resources away from thoughtful efforts to protect threatened and endangered species.

We believe that we can achieve our national environmental goals, including goals to preserve and enhance biodiversity in agricultural landscapes, while maintaining and improving agricultural productivity. But we need effective, science-based federal policy to do so.

Leadership at both the EPA and the Services, with input from both the regulated community and other stakeholders, including the NGO community, are required to implement workable solutions to the long-standing management disharmony in FIFRA and ESA integration to ensure greater agricultural productivity through common sense problem solving.

Conclusion

Over the years, registrants have maintained a good working relationship with EPA. While we have had our disagreements, we respect EPA's role, and, in fact, benefit from greater public assurance that our products meet the tough standards imposed by the law and expected by the public.

Along with the need for more food production, the public has always wanted greater assurance of safety from our products. Over the years, the standards and requirements for pesticide registration have been toughened, laws have been amended, and public scrutiny has increased. Our industry has continued to respond to these demands through innovative products with improved environmental and safety profiles, lower application rates, more targeted modes of action, and reduced applicator risk.

This is a big task and we accept these challenges. Currently it is estimated that to develop a new pesticide product, taking all costs of research and development and meeting regulatory requirements amounts to an average investment of about 11 years and $286 million.

The U.S. has the toughest set of pesticide regulatory standards anywhere. The Food Quality Protection Act (FQPA) of 1996 was a significant overhaul of our pesticide laws. FQPA sets a template for approvals around the world. Registration of a new pesticide active ingredient is based on extensive data, generated at great cost, with an exhaustive government review, using conservative assumptions applying the toughest standards. It is never easy, but we meet that challenge every time we develop a new product. When the registration process works in a predictable manner, the entire agriculture supply chain benefits, which results in jobs on farms, in distribution, in transportation, in production and in innovation.

Mr. Chairman, PRIA is a critical piece in the regulatory picture that ensures timely registrations of new products and uses and supports the mandatory 15-year review of existing registrations. I am grateful for your past support of the pesticide industry's fee-for-service program. I appreciate the opportunity to provide input to the Committee today. We look forward to working closely with you and your staff as we ask for your support for seeing this important program reauthorized.

DOCUMENTS SUBMITTED FOR THE RECORD

MAY 11, 2017

May 3, 2017

The Honorable Pat Roberts
Chairman
Committee on Agriculture, Nutrition and Forestry
United States Senate
Washington, DC 20510

The Honorable Debbie Stabenow
Ranking Member
Committee on Agriculture, Nutrition and Forestry
United States Senate
Washington, DC 20510

Dear Chairman Roberts and Ranking Member Stabenow:

The undersigned organizations are writing to support HR 1029, the Pesticide Registration Enhancement Act. The support for this legislation comes from a unique coalition of organizations—environmental NGOs, farmworker advocates, state regulatory agencies, and pesticide companies.

This coalition first came together to support initial passage of the Pesticide Registration Improvement Act of 2003 (PRIA). The Pesticide Registration Enhancement Act is now the third reauthorization of PRIA. These same organizations continue to work with EPA to support administration of the program, to work together to develop subsequent reauthorization proposals, and to advocate for appropriated funds to further support the activities specified in the law.

Under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), a pesticide cannot be legally used if it has not been approved for registration through EPA's Office of Pesticide Programs. In addition, EPA is required to review a pesticide at least every 15 years to ensure that it continues to meet the FIFRA legal standard. The key goals of PRIA have been to provide an industry-funded source of adequate funding to support these key functions of EPA's Office of Pesticide Programs in registering new pesticides and new pesticide products, and, reviewing existing pesticide products.

Prior to PRIA, the review process for new pesticides could take several years or longer. PRIA established a new section of FIFRA, which put in place a fee schedule for pesticide registration requests. PRIA also lists specific time periods for EPA to make a regulatory decision on pesticide actions.

Also, prior to PRIA, EPA had a goal, but not a mandate, to review existing pesticides on the market. Under PRIA, EPA is required to review a pesticide at least every 15 years to determine whether the pesticide should continue to be distributed in the U.S., or whether additional measures are needed for a pesticide meet the legal standard for use under FIFRA.

H.R. 1029 builds upon the win-win tradition of PRIA. The maintenance fees in H.R. 1029 provide funds to EPA to accomplish the registration review required by the law in a timely fashion. It also tracks that the risk mitigation measures are implemented by the

agency. It increases and clarifies categories of EPA actions covered under the law and protects funds for research and grant programs for worker safety and training. It provides assurance that registration actions will be reviewed in a timely manner. The legislation also provides funds to address new issues, helping to ensure that companies continue to have access to export markets for their products.

This legislation will continue the positive progress that the original PRIA brought to the pesticide registration and evaluation process. We respectively urge Congress to move quickly to reauthorize this highly successful program, providing certainty to the regulated community in the review of pesticide applications, and continued scrutiny over the appropriate use of pesticides to provide assurance to the public.

Sincerely,

American Chemistry Council Biocides Panel
Biotechnology Innovation Organization
Biological Products Industry Alliance
Consumer Specialty Products Association
CropLife America
Farmworker Justice
ISSA – The Worldwide Cleaning Industry Association
National Association of State Departments of Agriculture
Natural Resources Defense Council
Responsible Industry for a Sound Environment

California Agricultural Commissioners and Sealers Association

May 15, 2017

The Honorable Pat Roberts
Chairman
Committee on Agriculture, Nutrition
Forestry
U.S. Senate
328 Russell Senate Office Building
Washington, DC 20510

The Honorable Debbie Stabenow
Ranking Member
Committee on Agriculture, Nutrition &
Forestry
U.S. Senate
328 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Roberts and Ranking Member Stabenow:

This is to acknowledge and thank you for the consideration of the Pesticide Registration Enhancement Act of 2017 (PRIA) before the Committee on Agriculture, Nutrition & Forestry. We urge the adoption of H.R. 1029.

Specifically, County Agricultural Commissioners and Sealers of Weights and Measures represent all of California's 58 counites and have dual roles of promoting and protecting the state's food supply, agricultural trade, the environment, public health and safety, consumer confidence and a fair marketplace in California. Unique to California, County Commissioners and Sealers are appointed by their respective Boards of Supervisors, and work cooperatively with California Department of Food and Agriculture and Department of Pesticide Regulation, federal and other state agencies, and stakeholders to implement regulatory programs at the local level for applicable laws, regulations, and ordinances. Supporting state and federal efforts, Agricultural Commissioners certify agricultural shipments for export, prevent the introduction, spread and establishment of invasive agricultural pests, and protect human health and the environment through regulatory enforcement of pesticide use.

California's pesticide use reporting program is recognized as the most comprehensive in the world. The California Department of Pesticide Regulation (CDPR) has been collecting, compiling and making use of pesticide use data for over 60 years. Since 1949, pesticide use permits have been required to possess and use pesticides classified as restricted materials. In 1990, California became the first state to require full reporting of agricultural pesticide use in response to demands for more realistic and comprehensive pesticide use data. Under the program, all agricultural pesticide use (date of application, type and quantity of product used, location of application, commodity treated and the property operator) must be reported monthly to county Agricultural Commissioners, who, in turn, report the data to CDPR.

We appreciate Congress' support of the fee for service program for pesticide registration and re registration programs at the U.S. Environmental Protection Agency. This reauthorization, coupled with appropriated funds, allows EPA to continue to effectively administer the program specified in the statute.

As you know, under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) a pesticide cannot be legally used if it has not been registered with EPA's Office of Pesticide Programs. Prior to the passage of PRIA, the review process could take several years or longer. PRIA established a new section of FIFRA that creates a fee schedule for pesticide registration requests. It lists specific time periods for EPA to make a regulatory decision on pesticide registration and tolerance actions submitted to the Agency. The goal of PRIA was to create a more predictable and effective evaluation scheme for affected pesticide decisions and couple the collection of individual fees with specific decision review periods. It also promoted shorter decision review periods for reduced risk applications.

H.R. 1029 also increases and clarifies categories of EPA actions covered under the law, uses maintenance fees for registration review, protects funds for research and grant programs for worker safety and training, and provides for funds to be used to address new issues and helping to ensure that companies continue to have access to export markets for their products.

H.R. 1029 continues to build on the progress that the original PRIA brought to the pesticide registration process. We urge Congress to enact this legislation that provides certainty for both regulators and those regulated.

Sincerely,

C. Fisher

Cathy Fisher
President

cc: The Honorable Dianne Feinstein
The Honorable Kamala Harris

QUESTIONS AND ANSWERS

MAY 11, 2017

Senate Committee on Agriculture, Nutrition & Forestry
Pesticide Registration under the Federal Insecticide, Fungicide, and Rodenticide Act: Providing Stakeholders with Certainty through the Pesticide Registration Improvement Act
May 11, 2017
Questions for Commissioner Gary Black

Chairman Pat Roberts (R-KS)

1. I greatly appreciate your comments regarding the need for timely and predictable crop protection tools through FIFRA registration and reregistration. I also share your concern that pesticide registration, sale and use be primarily governed under the federal statute that was intended to do so – FIFRA. FIFRA was intended to provide certainty and predictability through federal law, however, there are some indications that, for instance, certain relevant aspect of the sale of a pesticide may not be governed by FIFRA. Are you concerned about any court action that may degrade the jurisdiction of FIFRA?

> **Answer:** The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)[1] establishes a unique, effective, and comprehensive regulatory process and framework to provide pesticide-related environmental and public health protection. FIFRA created requirements for pesticide registration, labeling, and use that are the end result of an extensive pre-market approval process. This registration process requires products to meet strict safety guidelines and includes rigorous examination of environmental fate data and health exposure assessments.
>
> NASDA supports the legislative intent and plain meaning of FIFRA to be the primary federal statute under which pesticide registration and use is regulated, and NASDA is concerned with any litigation or court action attempting to subjugate or circumvent FIFRA's authority outside of the legislative process. In situations where requirements of other environmental statutes overlap with FIFRA, those requirements should be incorporated into the FIFRA registration process in a manner that is science-based, transparent, and allows stakeholders the opportunity to comment upon and fully analyze the ramifications of the proposed action. EPA must recognize that state lead agencies are not only important stakeholders, but

[1] 7 U.S.C. § 136 *et seq.*

are also co-regulators under FIFRA and must, therefore, be intimately involved in this process.

NASDA members are regulators with responsibilities for conservation, environmental protection, and wildlife management and also serve as co-regulators with federal agencies on numerous federal environmental statutes, and NASDA does support a science-based approach to advancing a workable integration of the requirements under FIFRA and the Endangered Species Act (ESA)[2] in a manner to ensure federal agencies are able to achieve the objectives of both statutes.

The ESA seeks to conserve endangered and threatened species and in doing so, often places unreasonable land use restrictions on landowners. ESA is enforced by the U.S. Fish and Wildlife Service (FWS) and National Marines Fisheries Service (NMFS) (together as, the Services). States must be involved early and thoroughly in all listings, determinations and other ESA regulatory procedures as states are valuable resources for data and have a greater understanding of local landscapes. As regulatory partners, federal agencies should seek state agency involvement and consultation as the Services work toward the ultimate goal of delisting species.

NASDA believes EPA and the Services must establish a collaborative, transparent and streamlined consultation process for pesticide registrations. The process should include clearly communicated criteria between EPA and the Services, be based on best available science and eliminate any duplicative steps. Any decisions made between EPA and the Services should not place unreasonable requirements on registrants and producers. EPA and the Services must include adequate time and robust opportunities for input from state departments of agriculture, who regulate pesticides in most states, and other impacted stakeholders. Regulatory decisions should be made in a timely manner that allows affected parties meaningful participation while addressing regulatory certainty.

2. In your testimony you discussed the National Association of State Departments of Agriculture's (NASDA) interest in codifying and institutionalizing the concept of Cooperative Federalism and you stated there are opportunities to strengthen the regulatory partnership between EPA and the State Departments of Agriculture. Please expand on your interpretation of Cooperative Federalism and identify what specific opportunities exist to help strengthen the regulatory partnership between EPA and the State Departments of Agriculture.

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[2] 16 U.S.C. § 1531 *et seq.*

Answer: NASDA strongly supports the concept and principle of Cooperative Federalism, which requires a robust partnership, role, and responsibility for states to be involved in the development and delivery of federal policy initiatives and federal rulemaking processes.

One essential component of Cooperative Federalism includes Consultations with states. Federalism consultations should commence early in the regulatory process and remain on-going. These consultations should allow significant opportunities for robust participation. Throughout the process of developing and implementing regulatory actions, it is important to emphasize that state regulatory agencies are not simply stakeholders, but are in fact partners with our federal agencies. States can—and should—be used more as resources for federal agencies. Often states have a wealth of data, experience, and expertise that will help federal agencies better develop, deliver, and implement science-based and statutorily compliant regulatory programs. The successful development and delivery of a transparent, predictable, consistent and science-based regulatory process and framework requires robust and meaningful Consultations with states.

As regulatory partners with EPA, NASDA members are charged with delivering and enforcing a variety of FIFRA regulatory programs, and EPA regulations have significant impacts on many state departments of agriculture and the regulated community. NASDA strongly values our partnership with EPA's Office of Pesticide Programs (OPP), and in an effort to assist our federal partners in developing and delivering a regulatory framework that provides the necessary protections and minimizes the economic impact and undue regulatory burdens on agricultural producers, NASDA recommends EPA consult with states during the inter-agency review process, similar to USDA and Congressional Committees with agricultural oversight, as required for regulations under FIFRA. NASDA recommends Congress consider formalizing this state consultation process in FIFRA.

In order to help strengthen our partnership with EPA and fulfill our statutory and regulatory mandates, NASDA strongly urges Congress to ensure OPP has the appropriate resources and staff necessary to consult and cooperate with its state partners and ensure states have adequate time, assistance, and resources necessary to assist in the development, delivery, and implementation of new rules and new standards.

Cooperative Federalism is critical to enhancing our federal-state partnerships in order that we may deliver a predictable, transparent, and science-based regulatory framework to protect human health and the environment while allowing the agricultural community to prosper. NASDA stands ready to help our federal partners develop a regulatory framework that provides the necessary protections and minimizes the economic impact and undue regulatory burdens on agricultural producers.

Ranking Member Debbie Stabenow (D-MI)

1. In your testimony you were critical of a court ruling that requires a modest, additional permit for pesticides sprayed directly into certain bodies of water. I'd like to get some clarity about the actual requirements of this court ruling for farmers and applicators. In 2015, EPA testified that zero permit applicants nationwide had difficulty applying their pesticides in a timely manner because of the permit. Can you point to any instances in Georgia where a pesticide applicator has not been able to apply their product because of the requirements outlined in the court ruling?

Answer: Thank you for the opportunity to provide clarity on the duplicative regulatory requirements currently in place following a 6th Circuit decision in *National Cotton Council v. EPA* in 2009, which required pesticide applicators to obtain a Clean Water Act (CWA) National Pollution Discharge Elimination System (NPDES) permit. For approximately forty years prior to this litigation, EPA and state agencies effectively regulated these pesticide uses exclusively under FIFRA, which already required EPA to consider the potential impacts on aquatic organisms or water quality in registering a pesticide.

Under the current NPDES regulatory regime, applicants are required to obtain a NPDES Pesticide General Permit (PGP) for a FIFRA-approved label that EPA has already reviewed and approved for these very uses (mosquito control; weeds or algae in irrigation canals or ditches; treatment of forests to control canopy pests, etc), and the application is governed by the FIFRA label instructions.

Since the 2009 ruling, EPA has repeatedly affirmed and testified that the current pesticide permitting process under FIFRA provides sufficient environmental protection for pesticide applications over water. The former director of EPA's Office of Pesticide Programs testified before the House Agriculture Committee that "EPA uses its full regulatory authority under FIFRA to ensure that pesticides do not cause unreasonable adverse effects on human health or the environment, including our nation's water resources." Moreover, the NPDES PGP requirements do not improve water quality. The NPDES PGP does not require any changes to the use or amount of pesticide applications. The NPDES PGP simply requires applicators to report their pesticide use to their state government, but these reports do not enhance water quality or provide any additional regulatory benefits for these products, which are already incorporated and protected under FIFRA.

While the duplicative NPDES permitting system does not provide any enhanced regulatory protections, it has created significant undue burdens and unwarranted liability risks. For example, sixty-two mosquito control districts in California

spend an estimated $750,000 per year in compliance costs alone. This expense is not insignificant for extremely under-resourced districts, but these costs do require districts to divert precious resources from public health activities.

In addition, failure to obtain or comply with the permit can subject an application business to costly litigation, including those instituted under the citizen suit provisions of the CWA and can result in penalties of up to $51,570 per day for each violation. While I am not aware of any specific prohibitions currently in place in Georgia, I am aware of a recent on-going case involving a mosquito control district in northern Ohio, where the plaintiff's allegations involve a citizen's interpretation of the NPDES PGP requirements and related administrative matters. To date, that control district has spent more than $40,000 in legal fees in responding to allegations involving its operations under its NPDES PGP. In Georgia, we remain concerned that future frivolous lawsuits brought against mosquito control districts could impose significant costs and uncertainty to these critical public health activities and other necessary applications under the NPDES permitting framework.

The duplicative NPDES permit requirements negatively impact the use of critical tools in protecting human health and the food supply from destructive and disease-carrying pests, managing invasive weeds to keep open waterways and shipping lanes, maintain rights of way for transportation and power generation, and in preventing damage to forests and recreation areas. NASDA strongly urges the Senate to eliminate this unnecessary, expensive, and duplicative permitting requirement.

Senator Patrick Leahy (D-VT)

1. What, if any, federal resources, either at the EPA or USDA, do you believe should be dedicated to educating farmers and the regulated community about the EPA's Agricultural Worker Protection Standard Revisions that are due to take effect next year?

Answer: There is a clear and identifiable need for EPA to finalize, develop and deliver adequate enforcement guidance, educational materials, and training resources related to the Agricultural Worker Protection Standard (WPS) and to provide states the tools and financial resources necessary to effectively implement and assist the regulated community with compliance activities before any new regulatory requirements take effect.

NASDA appreciates EPA's program staffs' on-going efforts to develop, revise, finalize, and disseminate complete and accurate training materials, enforcement guidance, compliance materials and other necessary educational resources to assist EPA's state regulatory partners with executing a successful implementation

of the final rule changes. Furthermore, states have been working diligently with EPA program staff since the final rule was published in November 2015 to review, improve, and facilitate the expeditious development and delivery of these materials prior to the January 2, 2017 and 2018 implementation dates, respectively. Unfortunately, much of EPA's work to develop and provide these critical compliance and enforcement materials to state regulatory agencies remains incomplete and the release date did not allow for adequate outreach to occur during last year's grower meetings.

Frustrating the development and delivery of these critical training, guidance, and compliance materials was the insertion and final articulation of the Application Exclusion Zone (AEZ), which EPA has publicly acknowledged goes beyond the Agency's stated intent. Many State Agencies expressed concerns in letters to EPA in December of 2015. We understand EPA's Office of General Counsel (OGC) has issued interpretive guidance clarifying the Agency's intent under the final regulation; however, Agency guidance does not carry the weight and authority of a codified federal regulation and does not provide the necessary clarity to assist state regulatory agencies with compliance and enforcement activities.

In August 2016, the Association of American Pesticide Control Officials (AAPCO), which is a NASDA Affiliate Organization, sent a letter to EPA's Office of Pesticide Programs outlining their concerns with the lack of availability of Train-the-Trainer materials and the OGC's interpretive guidance regarding the AEZ. These concerns along with the lack of implementation materials remain unaddressed and further demonstrate the need for a review and extension to the WPS revisions and implementation timeline.

In September 2016, the NASDA membership voted and approved an Action Item[3] during our Annual Meeting urging EPA to delay implementation of the revised WPS provisions. NASDA emphasized the new WPS regulations require significant additional staff time to provide outreach to workers, handlers, applicators, agricultural employers, trainers and other stakeholders. Under the WPS rule changes, trainers will now require retraining, and according to EPA's implementation timeline, this retraining must take place during the same period the state agencies are expected to conduct outreach and education to the producers in their states. These enhanced compliance and record keeping requirements require EPA's timely delivery of educational resources or training materials to assist SLAs and the regulated community in understanding, complying, and enforcing the new requirements.

NASDA submitted a supplemental request for relief to EPA in February asking the Agency to extend the implementation of the WPS rule changes that went into effect in 2015 until EPA has finalized and delivered adequate enforcement guidance, educational materials, and training resources to the states with the

[3] NASDA Action Item H: *Implementation of Revised Agricultural Worker Protection Standard* (Sept. 2016); http://www.nasda.org/File.aspx?id=45396

adequate advanced time necessary to effectively implement the rule changes and assist the regulated community with compliance activities.

At this time, even if all of the compliance and enforcement materials were completed and distributed to all the appropriate state enforcement agencies, there are simply not enough calendar days, training opportunities, or resources available to conduct the necessary outreach and educational activities necessary to facilitate a successful implementation of the updated WPS provisions.

NASDA notes this request to extend the implementation timeline is consistent with EPA's delay in implementation and enforcement to the WPS[4] rule promulgated in 1992, which was implemented in the field in 1995-96. The previous WPS implementation delay was required due to the lack of necessary training materials for pesticide workers and pesticide handlers, compliance assistance materials for agricultural employers, and inspection guidance materials for state regulators.

The implementation and compliance with the WPS rule changes are the responsibility shared by EPA, state regulatory agencies, agricultural employers, trainers, and workers. This requested extension to the implementation timeline is essential to ensure EPA's state regulatory partners and the regulated community have the appropriate information, training, and resources necessary to effectuate a successful implementation of the WPS rule changes. Implementing these regulatory changes without providing the necessary educational resources or training materials to assist state regulatory agencies and the regulated community in understanding the new requirements and how to comply with them is inappropriate and in direct conflict with the fundamental principle of "educate before you regulate."

NASDA notes these interpretive issues, such as the AEZ, and implementation challenges could have been averted if EPA had consulted with states during the on-set of WPS regulatory rulemaking process, and NASDA requests Congress provide EPA and the states the necessary time and resources to ensure an effective and efficient implementation of the WPS regulations.

2. There have been some reports that the President's FY18 budget request will completely eliminate several EPA pesticide programs that deal with human risk and the environment or change them to rely completely on increased fee collections from the industry to fund the programs. Do you support such a change in these important programs?

   Answer: As regulatory partners with EPA, NASDA members are charged with delivering and enforcing a variety of FIFRA regulatory programs, and states rely

[4] 40 C.F.R. §170

heavily on EPA's State & Tribal Assistance Grant (STAG) funding and PRIA funds to ensure EPA's Office of Pesticide Programs (OPP) and state departments of agriculture have the necessary resources to fulfill our statutory and regulatory mandates under FIFRA and to deliver a regulatory framework that provides the necessary protections and minimizes the economic impact and undue regulatory burdens on agricultural producers.

Specifically, NASDA encourages Congress to adequately fund EPA-OPP at $128.3 million to ensure the agency has appropriate resources necessary to support FIFRA-related activities, training, resources to facilitate state meetings, and field training resources. NASDA also urges Congress to fund EPA State Pesticide Program Implementation & Enforcement Grants at $34 million ($15 million for Pesticide Program Implementation and $19 million for Pesticide Enforcement grants). NASDA supports funding of at least $5 million for OPP to support existing resources available to states and tribes to develop pollinator protection plans. This funding is critical for states in developing and implementing state managed pollinator plans. NASDA supports OPP's work to improve pollinator health through research and technical analysis on pollinators and improving understanding to promote pollinator health through the regulatory processes.

3. USDA's Animal Plant Health Inspection Service (APHIS) is responsible for monitoring plant and animal health throughout the world and uses that information to set effective agricultural import policies to prevent the introduction of foreign plant and animal pests and diseases. However, our farms and forestlands continue to see the devastating effects of exotic, invasive pests that make their way into this country every year. Do you feel that APHIS has been given sufficient resources to protect our farms and forestlands from these dangerous invasive pests and plant diseases?

Answer: APHIS is a critical partner to NASDA and state departments of agriculture across a range of animal and plant health mission areas necessary to protecting American agriculture and rural economies from the threats posed by animal and plant diseases and invasive pests. It is estimated that plant pests alone cost the U.S. economy over $100 billion a year.

In spite of APHIS' essential role and critical mission, the Agency has been subject to a steady decline of resources and staff over the recent past. To rectify this downward trend, NASDA strongly supports a minimum of $950 million in discretionary funding for APHIS. Any further reductions to the APHIS budget

will result in deterioration of essential services and impair the Agency from carrying out its fundamental mission, which is "to protect the health and value of American agriculture and natural resources."

NASDA also urges Congress to fully fund the Cooperative Agricultural Pest Survey (CAPS) program, which is an important state-federal cooperative program that conducts science-based national and state surveys targeted at specific exotic plant pests, diseases, and weeds identified as threats to U.S. agriculture and/or the environment. A strong agricultural pest detection system is essential to providing a continuum of checks from offshore programs, domestic port inspections, and countrywide surveys.

NASDA further encourages Congress to adequately fund APHIS's critical Wildlife Services (WS) programs at $120 million and supporting $20 million to the national control program for feral swine, which are also invasive species that cause an estimated $1.5 billion annually in damages to pastures, crops, and natural areas.. In cooperation with state departments of agriculture, industry and others, WS leadership and expertise is needed to resolve conflicts between humans and wildlife, protect public health and safety related to water quality and safety of air travelers, and protect agriculture from detrimental animal predators through identification, demonstration, and application of the appropriate methods of control.

Senate Committee on Agriculture, Nutrition & Forestry
Pesticide Registration under the Federal Insecticide, Fungicide, and Rodenticide Act: Providing Stakeholders with Certainty through the Pesticide Registration Improvement Act
May 11, 2017
Questions for Mr. Rick Keigwin

Chairman Pat Roberts (R-KS)

Roberts 1. Please describe to us EPA's role regarding endangered species under FIFRA, including EPA's ecological risk assessment. Are significant agency resources dedicated to this type of analysis?

EPA Response. Before the EPA may register a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the applicant must show, among other things, that using the pesticide according to label specifications "will not generally cause unreasonable adverse effects on the environment." FIFRA defines environment as "water, air, land, and all plants and man and other animals living therein and the interrelationships which exist among these." The EPA evaluates the impacts of pesticides to all animal and plant species as part of ecological risk assessments that support decision making under the FIFRA standard of " no unreasonable adverse effects on the environment."

The application of the EPA's pesticide ecological risk assessment methods to all plant and animal species (except for five pilot projects discussed below) is described in a document called the *Overview of the Ecological Risk Assessment Process in the Office of Pesticide Programs. Environmental Protection Agency Endangered and Threatened Species Effects Determinations* (Overview Document, 2004). Although the Overview Document is consistent with agency-wide ecological risk assessment guidance, based on available data sources, and supportive of pesticide regulatory decisions under FIFRA, the EPA, the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), collectively called "the Services", had historically been unable to reach agreement regarding application of the scientific methods described in the Overview Document to endangered and threatened species (collectively referred to as listed species) assessments conducted to support consultations under Section 7 of the Endangered Species Act (ESA). Under section 7(a)(2) of the ESA, the EPA must ensure that agency actions taken under FIFRA are not likely to jeopardize the continued existence of any ESA-listed species or destroy or adversely modify critical habitat.

As a result of the agencies' disagreements and numerous associated lawsuits against the EPA and the Services for failure to meet ESA obligations, the EPA, the Services, and the U.S. Department of Agriculture (USDA) sought out the advice of the National Academy of Sciences (NAS) to provide recommendations on how to assess the risk of pesticides to ESA-listed species and critical habitat. In an April 2013 report, NAS provided recommendations to the EPA, the

Services, and USDA on a common interagency approach for ESA pesticide consultations.[1] Since release of the NAS report in 2013, the EPA has been working with the Services and with USDA as an invited participant, to develop shared interim scientific approaches in the context of national-level listed species risk assessments for five pilot chemicals (chlorpyrifos, diazinon, malathion, carbaryl, and methomyl) currently undergoing registration review.

The EPA has employed a three pronged strategy that is intended to protect listed species and critical habitat by focusing resources on areas where we can achieve the most protections. First, the EPA is focusing the majority of its ESA consultation work through registration review.

Second, the EPA intends to complete endangered species assessments for new herbicide tolerant crops. In order to maximize resources, these initial registrations will not be nationwide in scope, and to the extent practical, will focus on situations where the EPA can make "no effect" decisions for ESA-listed species and critical habitat.

Third, the EPA will provide information that compares the potential hazards of new active ingredients to already registered pesticides with similar modes of toxicity and the same use patterns to allow comparison of the relative toxicity of new chemicals to available alternatives. EPA resources needed to conduct ecological risk assessments in support of FIFRA regulatory decisions as described in the three pronged strategy above are estimated at approximately 55 to 60 FTE per year, depending upon the number of submissions received each year under the Pesticide Registration Improvement Act (PRIA) and the complexity of any risk assessments conducted as part of the registration review program.

Roberts 2. Under the Endangered Species Act, the EPA is charged with examining their actions to regulate pesticides. If a pesticide "may affect and is likely to adversely affect" a listed species, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service become involved in this regulatory process through formal consultation with the expert agency, here EPA. The Services then issue Biological Opinions providing documentation regarding whether a pesticide's use would jeopardize listed species or destroy or adversely modify critical habitat. Do the Services provide EPA with the best scientific and commercial data available in these processes? Does EPA have satisfactory access to this data, including any modeling done by the Services? In what ways could the Services improve their Biological Opinions provided to EPA, or towards the consultation process generally? Is there sufficient transparency in these processes?

EPA Response: Section 7(a)(2) of the ESA requires that Federal agencies, including EPA, "in consultation with and with the assistance of the Secretary," ensure their discretionary actions do not likely to jeopardize the continued existence of any endangered or threatened species, or result in the destruction or adverse modification of critical habitat. Regulations at 50 CFR 402 set forth procedures for consultations between the Services and Federal agencies on actions that may affect listed species or designated critical habitat. Pursuant to these regulations, if an action is likely to adversely affect listed species or critical habitat, formal consultation is required. Formal consultation commences with the Federal agency's written request for consultation and concludes with the appropriate Service's issuance of a biological opinion. Federal agencies requesting

[1] https://www.nap.edu/catalog/18344/assessing-risks-to-endangered-and-threatened-species-from-pesticides

formal consultation are required to provide the Services with the best scientific and commercial data available or which can be obtained during the consultation. The Services use that information and any otherwise available information during consultation and the preparation of the biological opinion.

The Services assist Federal agencies in carrying out their section 7(a)(2) responsibilities, in part, by providing technical assistance. For example, for the ongoing pesticide consultations on the five pilot chemicals initiated after release of the 2013 NAS report, the Services assisted EPA by providing us with geospatial data depicting the occurrence of listed species and critical habitat. Such information is critical in establishing the overlap of species ranges with the areas of expected pesticide use. The spatial location data were obtained from the Services' field offices and provided to the EPA in varied levels of resolution, ranging from county to sub-county data. While this information is considered "best available data," the agencies have acknowledged the need to further refine the maps for future consultations.

Consistent with the consultation regulations, the Services typically rely on the EPA's biological evaluations for the exposure modeling and toxicity data cited in their Biological Opinions. NMFS relied on the biological evaluations as well as a peer reviewed salmon population model in their Biological Opinions. The EPA supports the use of population models in listed species assessments for pesticides, and is working with the Services on the development of those models.

Since the NAS report was released in 2013, the EPA has been working collaboratively with the Services on interim methods related to the final step of the ESA consultation process for pesticides in order to complete the first five pilot consultations using those methods. Due to the complexity of the consultations and the large number of species and critical habitats being assessed, the agencies are working to establish agreements intended to provide greater efficiencies and transparency to the consultation process.

The agencies are using the process described in the 2013 paper entitled, "*Enhancing Stakeholder Input in the Pesticide Registration Review and ESA Consultation Processes and Development of Economically and Technologically Feasible Reasonable and Prudent Alternatives*"[2] to ensure opportunities for stakeholder engagement and public comment. As part of this process, once received, EPA intends to make the Services' draft Biological Opinions available for public comment.

Roberts 3. How much does it cost EPA from start to finish to complete a consultation with the Services? Please include any full time equivalent (FTE) estimate as well for the agency.

EPA Response: To date, the EPA has completed formal consultation with the Services, including implementation of the mitigation identified in the biological opinions, on a small number of pesticides, all of which were limited in terms of geographic scope and the number of species subject to consultation.

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[2] Available at www.regulations.gov in docket: EPA-HQ-OPP-2012-0442.

The EPA completed a formal consultation with FWS on the rodenticide products, Rozol and Kaput prairie dog baits, in a 10 state area. Consultations with NMFS on listed Pacific Northwest salmon have also occurred for 32 chemicals in seven different biological opinions, although one biological opinion covering three chemicals was remanded. Mitigation recommended in one of the biological opinions, thiobencarb, have been implemented.

Pesticide consultation costs are supported with FTEs. However, data to support an accurate estimation of costs associated with nationwide pesticide consultations are not yet available because these consultations are ongoing and not yet complete. Since release of the NAS report in 2013, the agencies have worked with litigants to align ESA related lawsuits so that the agencies can focus on national level consultations on all ESA-listed species rather than the focus on single species, or a small subset of species in smaller geographical areas. As a result, the EPA and the Services agreed to complete nationwide pesticide consultations for five pilot chemicals (chlorpyrifos, diazinon, malathion, carbaryl, and methomyl) based on shared interim methods.

Since the EPA began the nationwide pesticide consultation work in fiscal year 2014, the EPA has expended approximately 6 FTE in FY 2014, 10 FTE in FY 2015, 10 FTE in FY 2016, and 5 FTE in the first half of FY 2017, in staff resources on pesticide consultations under the ESA. The work completed in fiscal years 2014 through mid-2017 has been largely focused on the development of the EPA's biological evaluations for the five pilot chemicals. These estimated costs do not include the EPA review of the Service's draft Biological Opinions and coordination with external stakeholders to implement any necessary label changes based on the conclusions of the final Biological Opinions since these steps have not yet occurred. Since the agencies have not yet completed a nationwide pesticide consultation following release of the 2013 NAS report, a comprehensive estimation of the total costs of pesticide consultation is not available.

Roberts 4. "PRIA 4," which passed the House in a bipartisan manner on the suspension calendar, contains a reauthorization provision for 7 years. Can you please walk us through a timeline that illustrates how this 7-years will be used towards the registration of pesticides?

EPA Response: The Pesticide Registration Improvement Extension Act of 2017 (PRIA 4) extends the authorization of the fee for service framework under PRIA for an additional seven years. During that time, applicants who submit applications under one of the PRIA categories and pay the required fee have the certainty that there is an established time frame for the EPA to review and provide its decision on that application. The EPA will review and provide decisions on all applications received over those seven years in accordance with the time frames and provisions specified in PRIA.

PRIA 4 also establishes funding to support good laboratory practice (GLP) inspections and to develop product performance guidance. The EPA will utilize the funds set aside from maintenance fees for those activities, and in the case of the product performance activities, will adhere to the deliverable schedule specified in the bill. Worker protection, partnership grants, and pesticide safety education activities will continue, using the funds specified for those activities. The EPA will provide an annual report each fiscal year providing the information required in the reporting requirements.

Roberts 5. The Texas State Department of Agriculture submitted a request to EPA for a Section 18 exemption for the emergency use of sulfoxaflor to deal with the Asian Citrus Psyllid, the vector for Huanglongbing (HLB or citrus greening). I understand EPA recently rejected this request. What impacts will this decision have on citrus growers in Texas and how will this impact the citrus industry more broadly? What recourse is available, if any, for EPA to reconsider this request?

EPA Response: The EPA conducted an initial review of the Texas Department of Agriculture's (TDA) FIFRA section 18 emergency exemption request for the use of sulfoxaflor on citrus to control the Asian Citrus Psyllid (ACP), and provided feedback to TDA about its application. However, no regulatory decision has been made on this request. The agency is currently in discussion with TDA and their extension expert to carefully assess the pest situation and the requirements for an emergency clearance under FIFRA.

As you may know, the regulations that establish the conditions for emergency approval state that the EPA must conclude that "no effective pesticides are available for control of the pest." The EPA approved emergency use of another pesticide, clothianidin, for this purpose to TDA on February 7, 2017. The agency is aware of the devastating impact ACP can have on citrus product. As a result, the EPA is carefully assessing the availability of sufficient control measures with TDA to evaluate if a critical pest management gap exists. Emergency requests may also be reconsidered or resubmitted at any time. The EPA is committed to supporting producers, researchers and industry stakeholders in their efforts to help mitigate this difficult disease.

Roberts 6. In your testimony you discuss an initiative launched by Administrator Pruitt - the "Back to Basics" agenda. Can you elaborate further on what EPA hopes to achieve through this effort, who are the stakeholders, and what action items should Congress anticipate from this?

EPA Response: The EPA Administrator launched a "Back to Basics" agenda -- a formal plan to return the agency to its core mission of protecting the environment while engaging in cooperative federalism across a broad spectrum of interested parties. For example, as part of the administration's regulatory reform effort, the EPA held a public meeting in early May to garner feedback on pesticide registration issues. With more than 175 participants, this meeting, one of several regulatory reform meetings held by the EPA program offices, allowed regional, local, agricultural, and other pesticides stakeholders to share their views on pesticide regulatory development, reform initiatives, evolving public policy and program implementation issues. These meetings highlighted the Administrator's commitment to all Americans in returning common sense, as well as transparent and peer reviewed science, to the pesticide registration process. For more information on the Administrator's "Back to Basics" agenda, please visit: https://www.epa.gov/home/back-basics-agenda.

Ranking Member Debbie Stabenow (D-MI)

Stabenow 1. One of PRIA's roles is providing the agency with resources for training agricultural workers in the safe and appropriate application of pesticides. These PRIA resources complement important rules that the EPA recently promulgated in this arena, including the Worker Protection Standard (WPS) Rule and the Certified Pesticide Applicator (CPA) Rule. Last week, just hours after our hearing concluded, Administrator Pruitt delayed the implementation of those recently finalized rules. Why were the aforementioned rules' implementation dates delayed?

EPA Response: Regarding the Certified Pesticide Applicator (CPA) rule, the effective date is being extended to May 22, 2018, to give recently arrived agency officials the opportunity to conduct a substantive review of the rule in accordance with the Presidential directives as expressed in the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled "Regulatory Freeze Pending Review," and the principles identified in the April 25, 2017, Executive Order "Promoting Agriculture and Rural Prosperity in America." At this time, the EPA has only one Senate confirmed official, and the new administration has not had the time to adequately review the January 4, 2017, CPA rule. The extension to May 22, 2018, will prevent the confusion and disruption among the regulated community and stakeholders that would result if the CPA rule became effective (displacing the existing regulation) and then substantially revised or repealed as a result of administrative review. The 12 month extension also provides time for the EPA to consider revisions to the certification rule based on input received through the Regulatory Reform Agenda effort.

Regarding the Worker Protection Standard (WPS) rule, the EPA believes it is appropriate to extend the implementation of all revised provisions to the WPS to provide state lead pesticide agencies with additional time to successfully implement the rule changes. As a result, the EPA intends to initiate a rulemaking action in the near future to extend the WPS implementation dates. The EPA is also working with our state regulatory counterparts to identify what areas of the rule need clarification and additional guidance to ensure that the new requirements to protect farmworkers achieve their intended goal.

Stabenow 2. Stakeholders concerned with the WPS rule heard about the implementation delay through an agency letter responding to an association inquiry, instead of reading about it in the Federal Register. When will the WPS delay be published in the Federal Register?

EPA Response: The May 11, 2017, letter to the National Association of State Departments of Agriculture (NASDA) accepting their petition was informational and does not have the effect of regulation. The letter expressed EPA's general agreement with the petition and expressly stated that EPA "will soon begin the regulatory process to formally extend" the WPS compliance date. The EPA expects the notice of proposed rulemaking to be published in the Federal Register in the summer of 2017 and expects to have the rulemaking process completed in fall 2017.

Stabenow 3. The notice for the delay of the CPA rule included a public comment period lasting five business days. Why is the agency providing such a limited period for the public to comment on a rule that took several years to finalize?

EPA Response: The agency's implementation of the proposed delay in the effective date of the CPA rule with an abbreviated opportunity for public comment is based on the good cause exception in 5 U.S.C. 553(b)(B), in that providing additional time for public comment is impracticable, unnecessary and contrary to the public interest. The delay of the effective date until May 22, 2018, is necessary to give agency officials the opportunity for further review and consideration of the CPA rule, consistent with the memorandum of the Assistant to the President and Chief of Staff, dated January 20, 2017, and the principles identified in the April 25, 2017 Executive Order "Promoting Agriculture and Rural Prosperity in America." Given the imminence of the CPA rule effective date, allowing a longer period for comment on this delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations.

The 90 day comment period for the 2015 proposed rule, combined with the EPA's extensive stakeholder outreach, provided the EPA with robust public comment regarding the risks and benefits associated with the CPA rule. Since there was already public comment on the merits of the certification rule, the narrow issue of when the rule should become effective could reasonably be addressed in a short period of time. If the EPA had not shortened the comment period to five days, the January 4, 2017, certification rule would have gone into effect, displacing the earlier rule. It would have caused unnecessary confusion and disruption to certifying authorities, pesticide safety education programs, pesticide applicators and other stakeholders for the certification rule to go into effect and then potentially be substantially revised or repealed following a substantive review.

Stabenow 4. Would EPA consider extending the comment period on the CPA rule delay proposal to accommodate requests from interested stakeholders for more time?

EPA Response: As explained above, the 90 day comment period for the 2015 proposed rule, combined with the EPA's extensive stakeholder outreach, provided the EPA with robust public comment regarding the risks and benefits associated with the January 4, 2017, CPA rule. Since there was already a robust public comment on the merits of the CPA rule, the narrow issue of when the rule should become effective could reasonably be addressed in a short period of time. The EPA received more than 130 comments addressing the proposed delay in the effective date of the CPA rule from a variety of commenters including: state pesticide regulatory agencies; pesticide safety education programs; organizations representing state departments of agriculture, pesticide safety education programs, pesticide applicators, growers, pesticide manufacturers, and pesticide retailers; nongovernmental organizations representing a range of interests, including but not limited to farmworkers, environmental advocates, occupational or migrant health clinics and employment law; and many private citizens. On June 2, 2017, the EPA published a final rule extending the effective date of the CPA rule to May 22, 2018.

Stabenow 5. With regard to the WPS rule delay, EPA sent a letter to an outside stakeholder group on May 11, 2017 indicating that the agency was accepting the group's petition to delay implementation of the rule, despite EPA rejecting a nearly identical petition from the same group less than four months earlier. What caused EPA to change its position?

EPA Response: Although the length of delay requested in the two petitions was the same, their supporting rationales differed. The EPA did not agree with the first petition's contentions, among them the adequacy of enforcement guidance, educational materials and training resources.

Further discussions with state regulatory partners provided the EPA with a better understanding of the states' concerns about their ability to effectively implement the rule. The second petition presented a more compelling argument that the states need additional time and resources effectively implement the WPS revisions and provide compliance assistance to the regulated community. Accordingly, the EPA agreed with the petitioners and granted the request to extend the WPS compliance date.

Stabenow 6. Does EPA feel that the delay in the two rules contradicts the provisions provided by Congress in FIFRA, which requires EPA to ensure that pesticides sold and applied in the U.S. "will not generally cause unreasonable adverse effects on the environment?"

EPA Response: To protect human health and the environment from unreasonable adverse comments that might be caused by pesticides, the EPA developed and implemented a rigorous process for registering and re-evaluating pesticides. The specific risk reduction and mitigation measures that result from the registration and re-evaluation processes are implemented through individual pesticide product labeling. Regulations such as the WPS and CPA rules, as well as training, outreach and education, augment these efforts to prevent unreasonable adverse effects on the environment by reinforcing labeling requirement and establishing additional protections for agricultural workers, pesticide applicators, and other handlers and persons.

During the delays, the protections from the registration and re-evaluation processes will continue to be implemented, as will the previous versions of the WPS and CPA rules. The delays provide additional time for the EPA and the states to prepare for implementation. The memorandum of the Assistant to the President and Chief of Staff, dated January 20, 2017, directed the EPA to postpone the effective date for regulations that have not yet taken effect. This delay was for the purpose of the Administrator or his delegates to review questions of fact, law, and policy that the regulations raise. The requirements of the CPA rule would not have gone into effect immediately because states, tribes and federal agencies have three years to submit revised certification plans. For the CPA rule, the additional time provides the EPA an opportunity to work with states and others to develop checklists, guidance and tools to facilitate the development of revised certification plans. For the WPS extension of the compliance date, the additional time allows for the development of necessary guidance and documents and more time to educate the regulated community.

Even if the CPA rule had become effective on March 6, 2017, the procedures and standards used for certifying applicators would not have immediately changed. Regarding the WPS rule, while

the agency has expressed its intent to extend the compliance date for the revised provisions in the 2015 final rule, the rule as promulgated remains in effects until the agency takes the necessary statutorily required steps to extend the compliance date.

Stabenow 7. Does EPA feel that accepting a petition for delay of the WPS rule without publishing notice of the delay in the Federal Register runs afoul of the agency's responsibilities under the Administrative Procedures Act, particularly because some of the requirements of the rule in question have already been in effect for months?

EPA Response: The May 11, 2017, letter to NASDA accepting their petition was informational and does not have the effect of regulation. The letter expressed EPA's general agreement with the petition and expressly stated that EPA "will soon begin the regulatory process to formally extend" the WPS compliance date. The EPA expects the notice of proposed rulemaking to be published in the Federal Register in the summer of 2017 and expects to have the rulemaking process completed in fall 2017.

Stabenow 8. During the implementation delays, does EPA intend to change the substance of either the Certified Pesticide Applicator Rule or the Worker Protection Standards Rule?

EPA Response: The changes in the implementation dates do not directly affect the substance of these rules. The EPA is reviewing proposals to revise the CPA and WPS rules submitted in response to the Regulatory Reform process announced through Executive Order 13777.

Stabenow 9. If yes to the previous question, will such an effort be accompanied by a formal rulemaking and public notice and comment period, as is required for modifying rules that have already been finalized?

EPA Response: The EPA believes that substantive changes to the rules would require a formal rulemaking process that complies with the Administrative Procedure Act and the statutorily required rulemaking process, including public notification and comment.

Stabenow 10. Two weeks ago, President Trump and Administrator Pruitt abruptly dismissed several members of the EPA's Board of Scientific Counselors. As you mentioned during the hearing, the primary scientific advisory board at EPA relating to pesticides is the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel. Does the administration plan future dismissals of scientists from the FIFRA scientific advisory panel?

EPA Response: The EPA does not have any plans to dismiss any current members of the FIFRA Scientific Advisory Panel (SAP). Consistent with standard practice for federal advisory committees, the EPA will consider extensions and normal rotation process when the terms of current FIFRA SAP members expire.

Regarding the EPA's Board of Scientific Counselors (BOSC), members serve three year terms that can be renewed once. On April 28, 2017, 13 members' terms expired. Four of these

members had served the maximum of two terms and could not be renewed for an additional term. The other nine members had served one term and were not renewed for a second term.

On May 25, 2017, the EPA published a federal register notice soliciting new members for the BOSC. The EPA anticipates that by late 2017, the BOSC will be reconstituted with expert scientists and engineers who will review and provide advice and recommendations on research under the EPA's Office of Research and Development. The individuals who have already served can reapply during the competitive nomination process.

Stabenow 11. Can you talk about the implications to the agency's mission of a potential future dismissal of scientists from the FIFRA panel?

EPA Response: The EPA does not have any plans to dismiss any current members of the FIFRA SAP. Consistent with standard practice for federal advisory committees, the EPA will consider extensions and normal rotation process when the terms of current FIFRA SAP members expire. The standing panel consists of seven members augmented with ad hoc experts for specific topics.

Stabenow 12. Would such a dismissal of scientists from the FIFRA panel conceivably cause a delay in pesticide approval and reregistration timelines?

EPA Response: The EPA does not have any plans to dismiss any current members of the FIFRA SAP. Consistent with standard practice for federal advisory committees, the EPA will consider extensions and normal rotation process when the terms of current FIFRA SAP members expire. A delay in scheduling peer review meetings can occur if a quorum of the standing panel falls below four members for any reason. The pesticide registration and registration review programs require the timely input of the FIFRA SAP on critical science issues to address safety for human health and the environment.

Stabenow 13. The majority of biopesticide active ingredients have historically met the safety standards of Section 408 of the Federal, Food, Drug and Cosmetic Act, resulting in exemptions from the requirement of tolerance for a food or animal feed. Please explain if the EPA's policy for granting tolerance exemptions has changed with respect to biopesticide active ingredients?

EPA Response: All tolerances and tolerance exemptions established by the EPA meet the safety standard under section 408 of the Federal, Food, Drug, and Cosmetic Act (FFDCA) of "reasonable certainty of no harm" from consumption of the food treated with the pesticide and from other non-occupational sources of exposure. It is the EPA's general practice to grant an exemption from the requirement of tolerance when no toxicological endpoints with adverse effects are observed in the data or literature provided in support of the registration application. Almost all biopesticides fall into this category. In instances where toxicological endpoints showing adverse effects are identified and risk assessment comparing exposure to those endpoints is required, the EPA has typically established numeric tolerances for residues in or on the treated commodity. This is consistent for all pesticides regulated by EPA including biopesticides, antimicrobials, and conventional pesticides.

Senator Patrick Leahy (D-VT)

Leahy 1. With the EPA's recently announced a one-year delay until the new regulations for the certification and training of pesticide applicators come into effect, the Administrator cited the need for giving the regulated community adequate time to come into compliance with the regulations. How does the EPA plan to actually support education, guidance and training efforts for our farmers and state lead agencies to assist them in understanding the requirements to ensure we are protecting children, farmworkers, and pesticide applicators from exposure to pesticides?

EPA Response: Even if the January 4, 2017, CPA rule had become effective on March 6, 2017, the procedures and standards used for certifying applicators would not have immediately changed. The CPA rule included an implementation schedule where the certifying authorities, e.g., states and federal agencies, would have up to three years to submit revised certification plans that conform to the revised standards with an additional two years for the EPA to review the plans and agree upon a timeline for the certifying authority to implement the plan.

The initial focus of the EPA's implementation efforts will be to develop the information and materials that certifying authorities need to determine what revisions are necessary to their certification plans and any associated laws, regulations and policies. The EPA held an intensive implementation course for state and tribal regulators on the CPA rule in April 2017, which identified or clarified many of the key implementation issues and the tools that certifying authorities need to move forward in revising state certification plans. During the next 12 months, the EPA plans to work with the certifying authorities, pesticide safety education programs, pesticide applicators and other stakeholders to develop checklists, guidance and tools to facilitate the development of revised certification plans and to discuss how to effectively implement the CPA rule.

Leahy 2. Will the President's Fiscal Year 2018 budget request include any funding increases to support this work to ensure that this rule can finally move forward next year?

EPA Response: The President's 2018 budget request does not include funding increases for CPA rule implementation.

Leahy 3. When the Pesticide Agricultural Worker Protection Standard Revisions were first proposed in 2014 and then finalized in 2015, they had been a long time coming and were the product of years of work by the EPA and received over 390,000 public comments. In the two years since the rule was initially finalized how has the EPA worked with the regulated community to educate and assist them with the transition to the updated requirements?

EPA Response: In 2016 and 2017, the EPA conducted extensive training for state, territorial and tribal regulatory agency program staff and inspectors and for pesticide safety educators, to develop a wide base of knowledge about the WPS revisions. The states and pesticide safety educators have more direct reach to the regulated community and do much of the educational

and compliance assistance activities. The EPA educated the regulated community and other stakeholders through webinars, meetings and discussions with national trade associations. During this time frame, the EPA revised the two key implementation documents: the WPS How to Comply Manual, which explains the WPS requirements to the regulated community (September 2016) and the WPS Inspection Manual (January 2017). The EPA also reviewed and approved pesticide safety training materials and train-the-trainer programs and has responded to hundreds of questions from states, the regulated community and other stakeholders. The following four other important implementation tools are being developed (with their anticipated completion date): (1) guidance on implementing the WPS respirator requirements (June 2017); (2) revised WPS pesticide safety poster (summer 2017); (3) an online train-the-trainer program (November 2017); and (4) a video version of WPS pesticide safety training for handlers (late 2017). Once these projects are complete, the regulated community will have the key tools it needs to comply with the WPS. As with any regulation, the EPA will continue to provide additional clarification and guidance as well as targeted tools like fact sheets over time.

Leahy 4. The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) tasks the EPA's regional offices with overseeing states' pesticide-use programs and ensures that chemicals are actually used according to their label. In the past, some audits have found that different EPA regions were inconsistent in reporting or retaining records of issues discovered during reviews. How has the EPA strengthened its oversight to ensure adequate guidance and training on chemical use?

EPA Response: In response to the EPA Office of Inspector General Report 15-P-0156 titled, "EPA's Oversight of State Pesticides Inspections Need Improvement to Better Ensure Safeguards for Workers, Public and Environments are Enforced," the EPA strengthened its oversight to ensure adequate guidance and training on chemical use by the following actions:

- FIFRA Project Officer training – a three day training presented in March 2015.
- FIFRA state grantee training - a one day training presented in September 2016.

Senate Committee on Agriculture, Nutrition & Forestry
Pesticide Registration under the Federal Insecticide, Fungicide, and Rodenticide Act: Providing Stakeholders with Certainty through the Pesticide Registration Improvement Act
May 11, 2017
Questions for Dr. Sheryl Kunickis

Chairman Pat Roberts (R-KS)

1. What role is the USDA playing in the Endangered Species Consultation process during registration review? Do you have sufficient data on real world scenarios and management practices that reflect the use of products in the field?

   USDA does not have a formal role in the Endangered Species Consultation process. The Environmental Protection Agency (EPA) as the "action" agency consults with the Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS). USDA has participated as an observer during the ongoing pesticide ESA consultations with FWS and NMFS. Staff in the USDA Office of Pest Management Policy, are available to respond to questions regarding the use and usage of pesticides on agricultural crop production as well as animal agriculture uses. OPMP works with grower groups, individual farmers, university extension personnel, agricultural scientists, private crop consultants, pesticide registrants, and other stakeholders to obtain the best available information to help inform efforts in registration review. OPMP relies on pesticide data provided by the National Agricultural Statistics Service (NASS) and purchased, non-governmental data sources. However, there are minimal data on specialty crops due to the lower acreages. Only the State of California has a robust pesticide use reporting database.

Senator Patrick Leahy (D-VT)

1. Will the USDA prioritize any funding in the FY18 budget proposal to support farmers or state lead agencies with educational materials and training resources so they can begin making changes in their operations to begin complying with the Agricultural Worker Protection Standard Revisions next year when the rule is set to go into effect?

   There is no specific funding in the FY18 budget proposal to support farmers or state lead agencies with educational materials and training resources. However, as part of implementation of this rule, the Environmental Protection Agency (EPA) has provided training materials as well as resources for states and educators, and grant opportunities on their Occupational Pesticide Safety and Health website located at https://www.epa.gov/pesticide-worker-safety.

Senate Committee on Agriculture, Nutrition & Forestry
Pesticide Registration under the Federal Insecticide, Fungicide, and Rodenticide Act: Providing Stakeholders with Certainty through the Pesticide Registration Improvement Act
May 11, 2017
Questions for Mr. Dale Murden

Chairman Pat Roberts (R-KS)

1. You referenced frustrations about litigation and its impact on pesticide approvals. How do lawsuits such as these impact growers?

   Response: The regularity with which both new and older chemistries are challenged in the courts creates a great deal of uncertainty for a grower like me. We know that each year pest challenges will manifest yet we do not know if the tools needed to respond to these challenges will be available.

   New crop protection tools like sulfoxaflor and various neonicotinoids have been pivotal in citrus growers' attempts to slow the spread of the Asian Citrus Psyllid, the vector of citrus greening. Unfortunately recent court decisions have rejected the legitimate registration of these products. For sulfoxaflor, the court decided that EPA did not sufficiently assess risks to honeybees, which are not endemic to the United States and are not used by citrus growers for pollination services but are instead uninvited livestock. Earlier in May a federal court decided that EPA did not meet the consultation requirements under the Endangered Species Act (ESA) when registering 59 pesticides, including neonicotinoids, despite meeting all of their Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) obligations. We do not yet know what will happen with the 59 crop protection tools but in the case of sulfoxaflor, the registration for citrus was lost.

Another case regarding 31 other active ingredients, including insecticides and herbicides, were challenged based on the ESA consultation process is still pending before the same court that decided against EPA on the 59 active ingredients. Most of the 31 active ingredients are older chemistries and are going through re-registration but the court has clearly indicated that they are threatened by the same legal jeopardy as 59 newer active ingredients.

At a minimum the delays and costs associated with defending pesticide products will undoubtedly pass to the producer and eventually to the consumer, assuming the U.S. will remain competitive in the global marketplace for growing crops. Alternatively, we may lose these products entirely, significantly hampering our ability to control endemic and invasive pests and eliminate the viability of growing the vast majority of crops including the citrus and sorghum that I grow. How can I suggest to young people that they can make a life and living in farming when I'm not sure I'll be capable of it in the next few years based purely on concerns about maintaining access to safe and reliable pesticides?

2. The Texas State Department of Agriculture submitted a request to EPA for a Section 18 exemption for the emergency use of sulfoxaflor to deal with the Asian Citrus Psyllid, the vector for Huanglongbing (HLB or citrus greening). I understand EPA recently rejected this request. What impacts will this decision have on citrus growers in Texas and how will this impact the citrus industry more broadly?

   Response: After initially receiving a notice from EPA rejecting our request, the agency has decided to reconsider and has asked for additional information.

Sulfoxaflor is a vital tool in slowing the spread of citrus greening, by controlling its vector, the Asian Citrus Psyllid. Unlike every other effective insecticide, Sulfoxaflor can be applied just one day before harvest and allows for a 12 hour field re-entry, which means we can protect our trees from the psyllid the entire season, while protecting the health and safety of our farm works.

Ranking Member Debbie Stabenow (D-MI)

1. Can you provide the Committee with information regarding the responsibilities of the employees that handle pesticides in the course of running your citrus and sorghum operations? Roughly how many are mixing and applying those chemicals, and across how many acres? Can you also talk about some of the benefits that PRIA has provided to you, and those workers?

   Response: At this point in time, I personally do all of the pesticide mixing and applications on my farm. However, I used to bring on about ten employees. They were trained in handling and applying chemicals on approximately 30,000 acres of crops. Trainings on the products, their appropriate use and handing, the application equipment and what to do if a worker was exposed were done in both English and Spanish. In addition, records and safety information were readily available to workers. Sufficient water and soap, as well as, eye wash equipment are always kept close by when and where applications are being made.

Senator Patrick Leahy (D-VT)

1. I understand that you, as a farmer in Texas, are subject to the state's Agricultural Hazard Communication Regulations, which requires a covered employer like yourself to make a Material Safety Data Sheets, product label, or equivalent documentation for covered pesticide chemicals accessible to agricultural laborers, an agricultural labor's designated representative, treating medical personnel, members of the community, the department, and emergency personnel in the same manner as the workplace chemical list is to be made accessible to those persons.

   In the case of a state like Texas or California or Washington which already have designated representative laws in place, would the EPA's Agricultural Worker Protection Standard Revisions requirements for designated representative be any different from what you already have to comply with in Texas?

   Response: I do not believe it would be above and beyond what I am already doing. However, I must admit that I have not thoroughly evaluated the proposal.

2. How have you worked on your own farm to reduce and limit your farmworkers' pesticide exposure? And how often do you offer your employees and pesticide handlers' full training on pesticide application and safety measures?

   Response: We practice integrated pest management scouting and application procedures on my farm. We do not ever want to spray anymore than ever absolutely needed. Cost is an issue, of course, but more importantly, a potential

disruption in the balance of beneficial insects that help to offset secondary pest outbreaks.

In recent years, my family and I have done the work on the farm. When I have hired farm workers in years past (maximum 10), they are trained according to the EPA's Worker Protection Standard in their first week on the job. Typically, we do the training once per season. If a worker returns the following year, he/she is trained again with any and all updated information.

3. USDA's Animal Plant Health Inspection Service (APHIS) is responsible for monitoring plant and animal health throughout the world and uses that information to set effective agricultural import policies to prevent the introduction of foreign plant and animal pests and diseases. Do you feel that APHIS has been given sufficient resources to protect our farms and forestlands from invasive pests and plant diseases?

   Response: I strongly believe that USDA-APHIS is underfunded. My border region in southern Texas is wide open to pest and disease pressures on a daily basis from airborne issues, commercial truck passage, tourist travel and of course illegal travel with fruits and vegetables that harbor numerous issues. We have had to deal with regular incursions of mexican fruit fly, boll weevil, fever tick just to name a few. The price tag for responding to these pest emergencies is in the hundreds of millions of dollars. I believe there would be a great deal of financial savings for producers and federal coffers if APHIS was better resourced to regularly survey and respond to invasive pest incursions before expanding to a regional issue.

Senate Committee on Agriculture, Nutrition & Forestry
Pesticide Registration under the Federal Insecticide, Fungicide, and Rodenticide Act: Providing Stakeholders with Certainty through the Pesticide Registration Improvement Act
May 11, 2017
Questions for Ms. Virginia Ruiz

Chairman Pat Roberts (R-KS)

1. I appreciate the PRIA coalition, of which your organization is a member, sending a letter of support to the Committee expressing swift consideration and advancement of H.R. 1029. Will Farmworker Justice and other PRIA coalition members commit to work with me to get PRIA-4 enacted into law before current authority expires?

Farmworker Justice will support PRIA reauthorization if the statute assures that current standards and training requirements to protect agricultural workers and their families from pesticide-related illness and injury will not be weakened. Farmworker Justice has supported PRIA since the initial passage of the 2003 Act. PRIA funding is necessary to help EPA meaningfully implement important worker safety standards, including the Worker Protection Standard (WPS) and Certified Pesticide Applicator (CPA) rule. The WPS and CPA rule are the only federal rules that provide protections from overexposure and pesticide-related injury for agricultural workers and their families. After decades of stakeholder and public engagement, EPA strengthened the WPS in November 2015 and the CPA rule in December 2016. These rules form the basis for the "regulatory activities relating to worker protection" envisioned in the PRIA set-aside language at 136w-8(c)(3)(B).

Senator Patrick Leahy (D-VT)

1. Do you believe that the EPA and USDA have sufficient resources and funding available to properly educate farmers and the regulated community about the EPA's Agricultural Worker Protection Standard Revisions that have now been delayed a year?

EPA has worked extensively with the regulated community to provide information and training to farmworkers, farmers and state regulatory agencies about the changes to the Worker Protection Standard. EPA needs stable funding to carry out important pesticide safety, worker protection and environmental justice programs. In addition to PRIA set-aside funds that provide education and training resources for agricultural workers and employers, Congress should appropriate increased funding for EPA to provide occupational and environmental education for workers, their families and rural communities, and to prevent adverse effects from pesticide exposure.

2. What do you think it would require for an education campaign to help farmers understand these new pesticide requirements to ensure we are actually protecting children, farmworkers, and pesticide applicators from the dangerous exposure to pesticides?

EPA needs to engage all stakeholders, including farmworkers, farmers, and state regulatory agencies in order to ensure that the important protections in the Worker Protection Standard and the Certified Pesticide Applicator rule are implemented in a meaningful way. EPA plays a crucial role in providing funding to facilitate education and compliance with worker protection rules. Non-profits and educational institutions are providing pesticide safety training to workers and developing educational materials for stakeholders on the WPS and CPA rule using money from PRIA set-aside funds. PRIA funds are an important resource, but there remains a gap

between the services needed and the services provided to improve worker safety and health. Congress must increase appropriations to EPA to support meaningful and effective worker protections in agriculture.

Senate Committee on Agriculture, Nutrition & Forestry
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May 11, 2017
Questions for Mr. Jay Vroom

Chairman Pat Roberts (R-KS)

1. Certainty is an issue I hear repeatedly from farmers back in Kansas and across the country. PRIA offers certainty to registrants and the crop protection industry as it directs EPA to review product registrations in a timely and predictable manner in order to get new products in the hands of farmers and to consumers to help protect public health. Your industry faces a variety of challenges on several fronts. Can you elaborate on some of the challenges that face your industry from regulatory issues like the Endangered Species Act or the Clean Water Act? Not all challenges facing your industry can be addressed administratively or through Executive Orders. Would your organization support Congressional efforts to address any of these issues?

A: As you suggest, there are a number of challenges we face as an industry. However, your question hits on and specifies our most significant issue, that being the intersection of the Endangered Species Act (ESA) and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Over the years, there have been attempts to find policy approaches that would allow for a more efficient and collaborative approach to the consultation process between the Environmental Protection Agency (EPA) and the U.S. Fish and Wildlife Service (FWS) and the National Marine and Fisheries Service (NMFS) (collectively the Services) when pesticides are being registered and re-registered. Unfortunately, these approaches have not held and lawsuits have undermined these interagency efforts. While we continue to look for and work

with the administration to find ways that improve and harmonize the process we believe the most prudent and lasting approach requires legislative action.

A requirement of ESA is an assessment to ensure that any federal government action is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species. The current FIFRA risk assessment requires that for a pesticide to be registered the EPA must determine that it will not cause unreasonable adverse effects on the environment, which includes threatened and endangered species. In 2004, because of EPA's unique expertise and thorough pesticide risk assessment process, FWS promulgated regulations allowing for alternative ESA consultation procedures providing EPA the authority to decide when a pesticide is not likely to adversely affect a threatened or endangered species.. Unfortunately these resource saving procedures were partially struck down following a legal challenge by activist groups. As a result, pesticide registration and re-registration actions have been unreasonably delayed by years while the EPA and Services are required to go through a cumbersome and resource intensive process that has had no beneficial impact on threatened and endangered species or their critical habitat.

In recent years, nearly every new pesticide registration and many re-registration decisions are challenged in the courts. Just two weeks ago, on May 12th, a federal court found that EPA violated the ESA by failing to consult with the services when making registration decisions on 59 products. Now the activist plaintiffs would like the court to take these products off the market despite the court's finding that the products do not cause any imminent hazard to the environment. This is an excellent example of a broken system and highlights the need for a legislative fix to ensure that threatened and endangered species are protected, while allowing our industry to bring new products to the market and help farmers provide the food and fiber our nation needs.

Senator Patrick Leahy (D-VT)

1. There have been some reports that the President's FY18 budget request will completely eliminate several EPA pesticide programs that deal with human risk and the environment or change them to rely completely on increased fee collections from the industry to fund the programs. Do you support such a change in these important programs?

A: We have now had an opportunity to review the President's FY 2018 budget and while we appreciate that the budget does not propose funding OPP entirely via fees, we are nonetheless concerned about any proposed reduction in EPA's Office of Pesticide Programs (OPP). The Pesticide Registration Improvement Act (PRIA) was first enacted in 2004 and has been reauthorized twice since that time. Each of these was negotiated among registrants, the Environmental Protection Agency, and non-governmental organizations with legally enforceable deadlines that the law applies to EPA and were based upon predictions and assumptions of resource availability to EPA. Those resources come through fees paid by industry as well as annual Congressional appropriations. The law includes provisions intended to ensure that industry fees enhance the funds available to EPA, rather than supplant them. This minimum appropriations amount is often referred to as the "PRIA trigger."

Funding for OPP met or exceeded the minimum appropriation specified in PRIA for the first nine years of the law (2004-2016). However, in the last 4 years, Congress has missed its appropriations obligations by a total of $29 million. Commensurately, the full-time employee count in EPA's Office of Pesticide programs has dropped by over 21% (625 to 491) since 2004, with the sharpest declines occurring during the last four years.

PRIA was modeled after the Prescription Drug User Fee Act (PDUFA), which establishes a cost-sharing, fee-for-service model for prescription drug approvals at the Food and Drug Administration. Other public health and safety programs, such as meat and poultry inspection, operate on a 100% taxpayer funding model to preserve public confidence in the regulatory decisions made by agencies while recognizing that fee-payers have little or no control over certain costs they would be expected to bear. We believe that the current OPP funding model best preserves the public's confidence in EPA's regulatory decisions while ensuring that industry fees help augment the agency's budget.