

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE (AMS)
NATIONAL ORGANIC PROGRAM (NOP)

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MEETING OF THE NATIONAL ORGANIC
STANDARDS BOARD (NOSB)

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WEDNESDAY

APRIL 28, 2010

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The National Organic Standards Board convened at 8:00 a.m. in the Heidrick Ag History Center located at 1962 Hays Lane, Woodland, California, Daniel G. Giacomini, Chairperson, presiding.

MEMBERS PRESENT:

DANIEL G. GIACOMINI, Chairperson

TRACY MIEDEMA, Vice-Chairperson

TINA ELLOR, Secretary

STEVE DeMURI

JOE DICKSON

JAY FELDMAN

BARRY FLAMM

JOHN FOSTER

WENDY FULWIDER

JENNIFER M. HALL

KATRINA HEINZE

JEFFREY W. MOYER

ANNETTE RIHERD

JOE SMILLIE

STAFF PRESENT:

MILES McEVOY

JUDY RAGONESI

VALERIE FRANCES

ARTHUR NEAL

MARK BRADLEY

LARS CRAIL

SHANNON NALLY

DR. KERRY SMITH

DR. LISA BRINES

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Adjourn

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

8:07 a.m.

CHAIRPERSON GIACOMINI: The Wednesday session of this meeting is now in session. We have a quorum of the Board members present. Everyone's giving us the thumbs up, so we're ready to go.

Hope you had a nice evening, and it loss like some of you who are not here had a very enjoyable evening, from the size of our crowd compared to what we had yesterday. So that's good. We'll probably be adding as we go along.

On the agenda today is the Committee discussions and presentations. The Committee's been working for six months on these documents, and now have had the opportunity to review the public comments submitted in writing on Regulations.gov, and have presented here in person.

First up on the agenda today is the Crops Committee. Well, are there any

1 announcements for this morning? Valerie,
2 anything, program? We do have a pair of
3 glasses that were found left on the table. If
4 anyone is missing their set for some reason
5 and all of a sudden can't read this morning,
6 we may have your glasses.

7 Joe, is there anything you would
8 like to say to Tracy?

9 (Laughter.)

10 CHAIRPERSON GIACOMINI: No. You
11 just get two rounds in. Okay. First up this
12 morning is our Crops Committee, with
13 Chairperson Tina Ellor.

14 MS. ELLOR: Thank you. Although
15 we don't take up much room on the agenda, we
16 had a tremendously busy midterm between the
17 two meetings. The first item on our agenda is
18 Sunset 2011, ferric phosphate, which has been
19 on our work plan for a very long time.

20 We've finally, you know, we had to
21 take some action on it or it would just have
22 gone off the list, and we did not want that to

1 happen. So there is a petition to remove up
2 before us, but we're still waiting for some
3 more information. We got a tremendous amount
4 of information on this in the public comment.
5 I have, you know, five solid inches of
6 material that we'll have to look at.

7 But the Crops Committee
8 recommendation was to relist this, and in the
9 meantime consider the petition to remove. We
10 had most -- almost every public comment
11 actually was in favor of keeping this on the
12 list. We didn't get any public comments to
13 the contrary.

14 Farmers use this. They feel that
15 they need it, and so we voted, I think, after
16 a lot of discussion of this in committee, we
17 voted 4 to 2, with one absent, to keep it on
18 the list. I believe it was Kevin and Barry
19 who voted to take it off, and Barry, do you
20 want to say something about that?

21 MR. FLAMM: Well, I had concerns
22 with the use of the material. I was also

1 concerned that we couldn't act upon the
2 petition to remove beforehand. So but after
3 reading all the public comments, I'm going to
4 reverse my vote.

5 MS. ELLOR: Thanks, Barry. So we
6 have these additional questions, none of which
7 were answered in the public comments. So
8 we're still waiting on science and tech maybe
9 to get us some impartial third party
10 information before we consider that petition
11 to remove. So is there any questions about
12 that one before we move on?

13 CHAIRPERSON GIACOMINI: Any
14 discussion on that item?

15 MA. HEINZE: So this is just a
16 sunset?

17 MS. ELLOR: Yes, this is just a
18 sunset.

19 MS. HEINZE: Thank you.

20 CHAIRPERSON GIACOMINI: Any other
21 questions on ferric phosphate sunset?

22 MR. FELDMAN: I have a question,

1 just timing on -- do we know the timing or do
2 we have a sense of the timing on consideration
3 of the petition.

4 MS. ELLOR: I think we'll bring it
5 back up to the floor when we get the
6 information we requested from science and
7 tech. So that's really dependent on that.

8 CHAIRPERSON GIACOMINI: The policy
9 of the board is to give a bit of a priority
10 toward petitions to remove, but it's only a
11 priority within the framework of having all
12 our information. So you know, it's not given
13 a priority and make a hasty decision. Any
14 other debate?

15 MS. ELLOR: Okay. Moving on to
16 sunset 2012, which we spent a tremendous
17 amount of time on. We had a lot of
18 information and we as the Crops Committee did
19 this in two tiers. We first, you know, I'm a
20 good one for giving homework to all the
21 committee members, and they have totally
22 stepped up to the plate. I can't tell you how

1 much I appreciate that.

2 We split the list and had assigned
3 different materials to committee members, to
4 take a look at, to see if we felt like we had
5 sufficient material, or if the material was in
6 depth enough and high enough quality for us to
7 consider this.

8 So we spent, you know, a couple of
9 meetings on that to say okay, do we feel like
10 we have enough information to look at this for
11 sunset, or do we want to send it back for
12 additional technical review. So that was the
13 first wave.

14 So the ones that made it through
15 that first wave are the ones that we're
16 considering, that we're calling low-hanging
17 fruit, you know, that we feel like we had good
18 information that there was so much in commerce
19 that it would be pretty disastrous to take
20 them off, to take them off the table for
21 farmers to use.

22 So that's, I think, how we defined

1 low-hanging fruit. But a lot of work went
2 into that first wave of review. So what we
3 ended up with, and I think everyone probably
4 has this information but I guess I should read
5 it into the record, what we are considering.

6 I think we unanimously are
7 recommending all of these items to be
8 relisted, is hydrogen peroxide, and feel free
9 to jump in any committee members who had these
10 homework assignments if you want to add
11 information as I go along.

12 The hydrogen peroxide, they just
13 looked at fairly recently in relation to our
14 peracetic acid discussion. So we felt like we
15 had good information on that one. This
16 writing is so teeny; it's hard for old eyes.

17 Soap-based algicide/demossers,
18 herbicide soap-based, ammonium soaps, ammonium
19 carbonate, boric acid, elemental sulfur, lime
20 sulfur, and we did have some comments
21 yesterday that grape growers really want to
22 keep some of these things on.

1 Horticultural oils, insecticidal
2 soaps, sticky traps and barriers, hydrated
3 lime, and this is a different usage category.

4 Unfortunately, I didn't split the list. But
5 we did review them in every usage category.

6 We took a look at all the technical
7 information available by separate usage
8 categories.

9 Lime sulfur, potassium carbonate,
10 aquatic plant extracts, elemental sulfur,
11 humic acids. The soluble boron products, I
12 had a comment this morning that there may be
13 some information that would cause us to take
14 this off the list.

15 I guess somebody said to me this
16 morning that most of what's in the trade now
17 are natural products, and it probably doesn't
18 need to be on the list. So if we wanted to
19 consider deferring that one until the fall,
20 until they can get us that information, you
21 know, we have the option to do that, I guess.

22 Sulfates, carbonates, oxides,

1 silicates of zinc, copper, iron, manganese,
2 molybdenum, selenium and cobalt; liquid fish
3 products; Vitamin B-1, C and E. Ethylene gas,
4 I think that might be a mistake and I should
5 have caught that before, because I think we
6 decided to send that back for additional
7 review. So I'll go back through my minutes.
8 I'm pretty sure that that should be on the
9 fall side of the roster.

10 I'm almost done, and 205602, we
11 are considering them all. Ash from manure
12 burning, arsenic, lead salts, potassium
13 chloride, sodium fluoaluminate, strychnine and
14 tobacco dust at this meeting, and we have
15 deferred sodium nitrate to get further
16 technical review for the fall meeting.

17 CHAIRPERSON GIACOMINI: I think
18 that for the sake of recognition of humanity,
19 any questions on that list that she just read?
20 The full and accurate list is the one posted
21 in the document, in case you missed something
22 one way or the other, just for the record.

1 MS. ELLOR: Right, right. I want
2 to go through briefly, just so you, everybody
3 knows, that we have done due diligence. We
4 really did. We got a document from Valerie
5 called "Down the Rabbit Hole" I think it was
6 called.

7 It was a tremendous map to where
8 we could find information that we otherwise
9 never -- oh look. Here it is. It's an
10 amazing thing, "Down the Rabbit Hole." So we
11 considered -- pardon?

12 CHAIRPERSON GIACOMINI: John
13 helped put it together.

14 MS. ELLOR: Oh, okay. Thank you,
15 John. That was tremendous.

16 MS. FRANCES: John took notes
17 during our conference call and wrote it all up
18 for us. So that is --

19 MS. ELLOR: Yes, that was
20 terrific. We have -- and we all delved down
21 every rabbit hole, let me assure you. We
22 looked at old meeting minutes, from you know,

1 and looked at public comment from the last
2 sunset. We looked at technical reviews. We
3 looked at committee discussions. We really
4 went down every rabbit hole to come to the
5 conclusions that we've come to.

6 We didn't have any comments
7 against relisting any of these, and we had
8 many comments in favor. So I don't know if
9 there's anything more I need to say about that
10 before we ask for discussion.

11 CHAIRPERSON GIACOMINI: Any
12 further discussion on the crop sunset? Jay?

13 MR. FELDMAN: Yes. I just, if I
14 could just take a minute, Dan, to give a
15 perspective of a new member on this committee,
16 because I think it's a really incredible
17 process, an important process.

18 I wanted to say that the biggest
19 frustration, which hopefully we're dealing
20 with in sunset later, is that some of us felt
21 that there should be clear annotations on some
22 of these materials, which we don't apparently

1 now have the authority to adopt.

2 And the other issue that's come
3 up, and you mentioned it Tina, is this whole
4 question of whether there isn't a substitute,
5 like a natural organic substitute. You
6 mentioned the context of soluble boron, which
7 happened to be one of the materials that I was
8 assigned.

9 So we have a tremendous challenge
10 that I think we need to work on, and that is
11 figuring out how we get, in a timely manner,
12 the information on the available alternatives,
13 and incorporate that into our discussion, so
14 that it's fully informed.

15 As new information comes up on
16 these products, I think it's really incredibly
17 important that we have the ability to
18 annotate. For instance, on boric acid, there
19 are formulations that are now bait
20 formulations, that are much less harmful to
21 the user and to the facility where they're
22 being used, but we don't have the authority to

1 annotate the bait formulations of that product
2 under our current process.

3 Finally, so much of what we're
4 talking about when we're talking about
5 materials goes to the question of the organic
6 systems plan. I mean this is really clear
7 with the micronutrients, where the idea of
8 foliar nutrients is really counterintuitive to
9 organic, in the sense that we are always
10 trying to feed the soil to feed the plant, and
11 in some cases we want a tool to enhance that
12 process.

13 But when is the appropriate time
14 to apply that foliar application, and who
15 makes that evaluation and is it being
16 adequately done. I know I'm very concerned,
17 and I know other members are, that we have
18 clear communication between the certifiers,
19 the inspectors and the committee that's
20 reviewing these materials, so that we know
21 that they're not being overused, that they're
22 being used properly, that they're being used

1 as a last resort and that the functionality of
2 the organic system plan is really working.

3 We don't enough of that
4 information going into the decision-making
5 process. So I just wanted to get that on the
6 record, because I've reviewed some of the
7 transcripts on some of this previously, and I
8 know I'm not expressing anything new here.

9 But we don't see this kind of
10 discussion and therefore when the committees
11 get together, we really need to invite you all
12 and the public to share that information, this
13 type of information with us, so that these
14 decisions over time can be improved. Thank
15 you.

16 CHAIRPERSON GIACOMINI: Further
17 discussion?

18 (No response.)

19 CHAIRPERSON GIACOMINI: Question,
20 Madam Chairman. Tina, do you intend to bring
21 this up as one vote or blocked as you have it
22 in this application?

1 MS. ELLOR: I think it was -- on
2 our last committee call, we sort of thought we
3 could do that all as one big block, that this
4 was really the low-hanging fruit.

5 CHAIRPERSON GIACOMINI: The Chair
6 appreciates that. Thank you. Any further
7 questions this document?

8 MS. ELLOR: Okay. I'm going to
9 turn this over to Jeff for the List 4 inerts
10 discussion, again a document that we've really
11 sweated blood over.

12 MR. MOYER: Thank you, Madam
13 Chairman. We did sweat blood over this one
14 for sure, and Tina, I know you have children
15 at home and you must be a slave driver,
16 because Tina does assign homework. If you
17 don't show up for a meeting, you get assigned
18 a project like this. So I think I was
19 punished a little bit with this one.

20 It was a lot of work. The
21 committee worked together as a team on this,
22 and so I'll start the discussion here, because

1 I'm sure there will be some discussion coming
2 out of this document. I'll start the
3 discussion, but other committee members feel
4 free to jump in as we go along.

5 I'm going to turn your direction,
6 if I could, to the opening page of the
7 document, the guidance recommendation that we
8 submitted, and specifically call your
9 attention to section -- the second paragraph,
10 Section 2119 of the Organic Food Production
11 Act, where it states what the requirements are
12 of our committees and of the Board, in terms
13 of the National List. I apologize for my sore
14 throat here. I will be coughing periodically
15 here.

16 I blame it on the airplane that I
17 flew out in and had problems with the
18 ventilation system, and it was either ice
19 cold, put a coat on or so hot you couldn't
20 stand it. They couldn't figure it out. She's
21 a good mother. You get punished, but then you
22 get rewarded. That's great.

1 (Laughter.)

2 CHAIRPERSON GIACOMINI: Jeff, I
3 don't think you should look at it as
4 punishment. I think she assigned it to you as
5 the opportunity for you to reach your
6 potential.

7 MR. MOYER: Thank you. Another
8 parent speaking, yes. I feel like I'm at a
9 soccer game or something.

10 CHAIRPERSON GIACOMINI: That's
11 when I yell at you.

12 MR. MOYER: Yes, that's the
13 yelling phase, okay. If you look at that
14 paragraph again, to get back to the document,
15 we do have certain responsibilities as a
16 Board, as it pertains to the National List,
17 and in particular if you look at Item 2 there
18 -- well actually both those items.

19 It says that we are to work with
20 organizations like the Environmental
21 Protection Agency, National Institute of
22 Environmental Health Studies and so on.

1 Then Section 2 discusses how we
2 should work with manufacturers, and in
3 particular it lists in that Item No. 2 that we
4 should look at synthetically produced
5 materials, including inerts. So it's
6 certainly the work that we put into this
7 document does fall under our purview, and is
8 really something that we have a responsibility
9 to do.

10 What I'm going to do now is skip
11 over all the historical documents, because you
12 all had time to read those, either choose to
13 do it or not at your leisure. I'm going to
14 draw your attention to page one, two, three,
15 four, five of the document, which really gets
16 into our proposed guidance.

17 We did spend a lot of time listing
18 the public comment. We had public comment all
19 over the board on this. We did spend a lot of
20 time working with organizations like OMRI.
21 Had many phone calls with them. We had a lot
22 of phone conversations and public testimony

1 from EPA.

2 We had Chris Pheiffer at our last
3 meeting, been in touch with Chris quite a bit
4 on the telephone, although he is extremely
5 hard to get a hold of and doesn't always
6 return calls as promptly as our committee
7 would have liked to get the work done. We did
8 get good feedback and good reaction from EPA,
9 so their voice is included in this document as
10 well.

11 Obviously, EPA List 4 and List 3
12 no longer exist as lists. They are up for
13 sunset. We do need to take action as a
14 committee, and the action that we're choosing
15 to take is the one that's in front of you on
16 page five.

17 It would have been a lot easier
18 for this committee to look at 40 C.F.R. 180 in
19 whole, and just absorb that into our document
20 as an item, and we could all vote on that and
21 go home, and it would be a lot less work. It
22 would also be a lot less transparent, and we

1 think not in keeping with the responsibilities
2 that we are assigned by OFPA, and the
3 expectations of the folks in this room and
4 other rooms that have sat in front of this
5 Board and testified, particularly when we look
6 at what inerts really mean.

7 Inerts is a really deceptive word.
8 Most of the materials, if you look at the list
9 and I believe when I counted up the list that
10 EPA gave me, 859 came up on the list that they
11 gave me. So it's a lot of materials. Most of
12 them I could not pronounce. I couldn't
13 probably spell one of them if you asked me to
14 right now.

15 And they're really not inert.
16 They say they're inert because they're inert
17 for the specific use of the target of the
18 pesticide that you're using. So for example,
19 if you're using something to kill larvae of a
20 moth, the inert may not have any effect on the
21 larvae of that moth. It could kill fish or
22 frogs, you know. But it is inert for its

1 intended use of the pesticide.

2 The other thing that came to the
3 attention of this committee very clearly was
4 that inerts often make up the largest
5 percentage of the material that you're
6 applying for its intended use. So for
7 example, you could have a product that has a
8 five percent active ingredient, and the other
9 95 percent is made up of inerts.

10 So while we spent a lot of time in
11 discussion on that five percent, we would be
12 amiss if we didn't spend some time discussing
13 that other 95 percent of the material that's
14 being applied out into the environment.

15 So for that reason, we have chosen
16 to follow the track that we did, and the
17 document that's in front of you, trying to
18 balance, we think, the public comment that we
19 heard from consumers and their expectations,
20 the responsibilities that OFPA gave us, and
21 the pesticide industry in general.

22 We did get together last night as

1 a committee late at night in the hotel lobby,
2 and we added the paragraph, and the committee
3 can review that, because they didn't see the
4 exact wording. I did that in my room last
5 evening.

6 It's just one sentence that we
7 think responds to the written comment that we
8 got in particular about pulling EPA more
9 closely into this project, although EPA has
10 been involved, will be involved, and we will
11 lean heavily on their expertise and capacity
12 in this area.

13 We think that -- the committee
14 thought last night, based on the public
15 comment that we heard yesterday, that it would
16 be important for us to spell it out more
17 clearly, and the fact that we need to create
18 or expected the creation of a memorandum of
19 understanding between the EPA and the NOP for
20 the evaluations of the materials previously
21 known as EPA List 4, Inerts of Minimal
22 Concern, and EPA List 3, Inerts of Unknown

1 Toxicity.

2 Moving on down into the document,
3 the goal of this document is several-fold.
4 The first is to have EPA look at these, all
5 these materials, whatever there are, if it is
6 859 or whatever it is, looking at all those
7 materials and run them through a filter that
8 would be a filter of our design, working off
9 of the work Katrina's doing, to look at
10 synthetic and non-synthetic.

11 Some of these materials are
12 naturals. The goal of that exercise would be
13 to create a list of naturals, a sublist of
14 this, of 40 C.F.R. 180, that is the naturals
15 list. And then talking with the pesticide
16 manufacturers, attempt to guide them or steer
17 them to looking at that list, in an attempt to
18 either formulate or reformulate, using those
19 materials, because they have --

20 We have no authority over that
21 last. If they're naturals, they're on, and we
22 don't have to worry about it. We don't have

1 to do any reviewing. There is a possibility
2 that some folks hopefully would be able to
3 reformulate or show interest in reformulating
4 or formulating to that list.

5 If you look at Item No. 2 on the
6 document, we made provisions for those
7 organizations, those manufacturers who could
8 not, would not, for whatever reason,
9 determined that they could not reformulate.

10 Those ingredients or inert
11 materials would have to be gone through the
12 process of this Board reviewing them, with
13 help again, via that MOU from the EPA, so we
14 can gather all the information that we would
15 need.

16 Now last night we talked about the
17 time frame in here. You'll see that in Item
18 2, where we talk about reviewing within 180
19 days. These time frames may not be
20 reasonable, but rather than sit and last
21 night, late at night, guess on what kind of
22 time frames would be more reasonable, we left

1 those times in the document, knowing that this
2 is just the first step in this process, if it
3 goes out for rulemaking.

4 There would be time for input from
5 other folks and from manufacturers, who would
6 be able to give us a better schedule or time
7 frame, and at that point we'd incorporate that
8 into the document.

9 Item No. 3 suggests that when
10 those materials come in we will give them
11 priority review and whether it's a one-year
12 grace period, I don't know what it's going to
13 be. The bottom line is until this takes
14 effect and the pesticide manufacturers
15 actually have to reformulate or change, it's
16 years from now.

17 So there's plenty of opportunity
18 for them to have input to work with EPA and to
19 work with this Board and the program to get
20 these things accomplished. Then finally in
21 Item No. 4, we're pretty much saying that if
22 they don't reformulate and don't submit

1 petitions, those materials will drop off the
2 list and they will not be available for use in
3 pesticide manufacturing -- pesticide use in
4 organic production.

5 Those materials that are put on
6 the list, of course, would fall under the
7 guidance document of the Policy Committee's
8 document on sunset. So every one of these
9 materials would be reviewed every five years
10 through the sunset process.

11 Moving forward, the new materials
12 that would be considered for 40 C.F.R. 180
13 that a pesticide manufacturer wants to use in
14 organic pesticide production would have to be
15 petitioned to the then-sitting board. That
16 way, the list of inerts stays current and
17 constant and is ever-changing, deleting,
18 growing, just like the list of other materials
19 that we have on our standard today.

20 Discussion?

21 CHAIRPERSON GIACOMINI: Tina?

22 MS. ELLOR: Thank you, Jeff, and

1 it was a tremendous effort and many hours of
2 phone calls, you know, to get to this point.
3 I would just want to make clear, and I think
4 Jeff did say this, that there are all of these
5 materials on the list now that we have never
6 looked at.

7 So we just didn't feel like it was
8 in the best interest, or and I heard this term
9 a lot yesterday, continuous improvement, that
10 we would not be taking any steps forward if we
11 just rolled over the 40 C.F.R. 180 list and
12 kept those materials, which have not been
13 through any filter by the NOP or the NOSB or
14 the organic community.

15 So yes, we are taking on a huge
16 task, but we feel like it's a very important
17 one.

18 CHAIRPERSON GIACOMINI: Katrina?

19 MS. HEINZE: I have a couple of
20 questions. The first, and this is a simple
21 one and I maybe should have thought to ask it
22 first. But are List 4 inerts on the National

1 List as a result of NOSB action or as a result
2 of originally being included in OFPA. I
3 should have looked and didn't. Do you know?

4 MR. MOYER: I'm actually going to
5 let Jay handle that question, because he's got
6 some historical perspective on how those two
7 items got put on our list.

8 MR. FELDMAN: The phrasing in OFPA
9 is "inerts of toxicological concern are
10 disallowed." Coincidentally, at the time that
11 EPA was developing their list, there was some
12 overlap in that verbiage, you know, in terms
13 of the use of the term "toxicological
14 concern."

15 But the decision to use List 4 was
16 borne out by the categorization of List 4 and
17 the classification of it being chemicals of no
18 concern, you know; basically deemed not
19 harmful. So no, OFPA offers wide latitude for
20 how this Board really interprets "of
21 toxicological concern." It doesn't cite or
22 annotate any specific vision or any other law

1 or authority, but uses that phrase
2 "toxicological concern."

3 MS. HEINZE: Thanks. I have two
4 more questions. Is that okay, Dan?

5 MR. MOYER: I would add to that
6 that those materials, while they consider them
7 toxicologically of no concern, they weren't
8 run through any filter that we have, and they
9 consider many other things of toxicological no
10 concern.

11 MS. HEINZE: My question was more
12 procedural, that if it's listed in OFPA, then
13 this is a more complicated problem?

14 MR. MOYER: Yes.

15 MS. HEINZE: So my second question
16 is could you give examples of what a natural
17 inert would be, or non-synthetic?

18 MR. MOYER: Sugar was given
19 yesterday.

20 MR. MOYER: Sugar and molasses.

21 MS. HEINZE: I mean do we -- I
22 guess my broader question is do we really

1 expect there to be a long list of non-
2 synthetic inerts, or do we expect --

3 MR. MOYER: I think I can address
4 that question better than giving you -- here's
5 some examples like sugar and molasses, you
6 know, which are given names that are this long
7 in the list.

8 MS. HEINZE: Valerie has a list
9 behind you.

10 CHAIRPERSON GIACOMINI: Valerie
11 has a list. There you go.

12 MR. MOYER: My understanding, from
13 talking with the EPA, that they think the list
14 will be substantial. Not five or ten or 25,
15 but several hundred that could be considered
16 natural, as they run through our filter, not
17 their own, and they're willing to work with
18 any filter we choose to give them.

19 MS. HEINZE: Okay. So then my --

20 MR. MOYER: Now that may or may
21 not be the ones that pesticide manufacturers
22 are currently using. I don't know. Can they

1 reformulate to that? We don't know. There's
2 a lot that the EPA doesn't know. There's a
3 lot of unknowns, so part of the reason for
4 this document, I guess I should have said, is
5 for us to open the door, gather the
6 information, and as Jay said yesterday, really
7 get out in front of EPA, which is in the
8 process of reviewing the 40 C.F.R. 180 inert
9 materials, and give them a filter, an
10 additional filter to screen at the same time
11 for us.

12 MS. HEINZE: Okay. So my last
13 question has to do with the time line, so I
14 appreciate your comments that given the public
15 comment, the time lines that you have outlined
16 in the document may or may not be appropriate.

17 I would wonder if they consider --
18 that committee would consider adding, taking
19 out the specific times and maybe adding a
20 sentence, that asks the NOP to determine an
21 appropriate time line. As I read through it,
22 I was actually quite confused about what the

1 trigger points were for different, now it's
2 allowed, now it's not allowed, now it has to
3 be petitioned.

4 I worry while we, our intent may
5 be to leave that flexibility, sometimes that
6 intent doesn't get captured once it goes off
7 into the regulatory world.

8 MR. MOYER: Yes. It was not
9 something we discussed at eleven o'clock last
10 night, but I'm looking around the room and
11 seeing heads nod on Tina's committee, and I
12 would agree with that, that we could
13 substitute the actual time frame with a
14 sentence allowing the NOP to develop the time
15 frame.

16 Of course, our goal is to be as
17 little, to disrupt as little the materials
18 that farmers have to use, because there's
19 precious few of them already, and we're not
20 looking at taking materials away from farmers,
21 or to disrupt the manufacturers.

22 Rather to gently steer them if we

1 can into something that's better for organic
2 and better for consumers, and more in tune
3 with what we all are about, and give them the
4 time do that.

5 MS. HEINZE: Thank you very much.

6 CHAIRPERSON GIACOMINI: Joe.

7 MR. SMILLIE: Well, I really
8 appreciate the last comments, that you're not
9 trying to take tools out of the hands of
10 farmers. That's really critical, and I know
11 that's our intention. I still worry that we
12 may have unseen ramifications of what we're
13 doing.

14 My question is I used to be
15 involved in this industry quite a while ago.
16 Could you give us, you or Jay or the
17 committee, give us an idea of the different
18 types of inerts? Like sometimes inerts are
19 fillers and sometimes they're synergists, and
20 as I recall, there's a lot of different
21 purposes for inerts.

22 Again, they don't have

1 toxicological effect. But the purpose of it,
2 there's different purposes for inerts. We're
3 using one word, but there's a lot of different
4 things that they do. Some make them soluble
5 in water; some --

6 MR. MOYER: Anti-foaming agents.

7 MR. SMILLIE: Yes. Give us like a
8 rough idea of the types of actions --

9 MR. MOYER: If you're willing to
10 do that, Jay, I'll let you do that.

11 MR. FELDMAN: Yes. I mean I think
12 you covered a lot of it.

13 MR. MOYER: You sort of stole our
14 thunder on that, Joe.

15 (Simultaneous speaking.)

16 MR. FELDMAN: I would add
17 adjuvants to the list, you know, sticking
18 agents. The way I think about it, as you
19 know, there are different formulations of
20 products. Whether they're dust, granule, you
21 know, liquid. The inert really makes up that
22 part of the formulation, which is the carrier

1 for that product, and then has other
2 characteristics that enable that product to be
3 effective.

4 I mean sometimes, and this -- we
5 sort of heard reference to this yesterday,
6 this idea that there is a synergist. That
7 walks -- you know about PBO, piperonyl
8 butoxide, and that, I don't think EPA has even
9 figured out whether that should be listed on
10 the label or not. In some cases it is in some
11 of the botanical products.

12 But that's where a review by this
13 Board would be very helpful, you know, to sort
14 through issues like that, where there's this
15 distinction between, and I guess there has
16 been some debate on this in one product, as to
17 whether an ingredient is actually active or
18 inert, and sorting through that process as
19 well.

20 But you know, it is, as Jeff said,
21 the majority, typically the majority of the
22 product formulation. So it is part to which

1 we are exposed and the environment is exposed.

2 I really appreciate everybody viewing this
3 with the importance that it really has, and
4 hopefully we can get the resources in place to
5 help us do these types of reviews, and work
6 collaboratively with EPA and maybe even use
7 the TAP process in certain circumstances.

8 But I really think EPA is up to
9 doing this, and I think that the concept of an
10 MOU would work really nicely, under the
11 umbrella of going green and trying to promote
12 products that are safer for the environment.
13 This fits in perfectly with that agenda at
14 EPA.

15 MR. MOYER: Well, it opens the
16 door to a greater transparency in what we're
17 really using and applying.

18 MR. SMILLIE: Well again, thank
19 you for those comments, because getting in
20 front of the EPA on this. When I heard that,
21 well yes. We've got a lot of resources to get
22 in front of EPA.

1 MR. MOYER: Well, only insomuch as
2 that we're helping to guide them into
3 something that they want to do anyway.
4 They've expressed interest and really came to
5 our meetings. We didn't have to beg them to
6 come.

7 They were interested in being
8 there, because it falls under their --
9 basically it's falling under their purview
10 anyway, and they are adjusting this whole
11 concept of inerts just being listed as inerts.

12 Even in the conventional world,
13 they're going to have to start labeling what's
14 in there. So let's just, you know, we can
15 take the lead in that part. That's, I guess,
16 what I meant, Joe.

17 MR. FELDMAN: To clarify getting
18 in front of, we don't want to get run down by
19 a truck or anything, but --

20 (Simultaneous speaking.)

21 MR. FELDMAN: But the thinking is
22 that EPA's put out a proposed reg, which is

1 cited in the document here, which basically
2 looks like it's really moving forward, and
3 that is the disclosure of all inert
4 ingredients.

5 So getting out in front means
6 we're watching our process. We want to be in
7 tune with their process, so that when the
8 manufacturers are required to change their
9 labels, we know what those materials are, and
10 we can say to our farmers and our consumers --
11 we've evaluated these things.

12 So we're in the process of
13 evaluating these things, so that we can ensure
14 compliance with the statute.

15 MR. MOYER: And you know, it's a
16 little unfortunate, when you look at the list
17 the way it appears today, with something as
18 benign as saying List 4 and List 3 inerts, it
19 seems pretty innocuous. You can see the list
20 if it's still there, and that's just a little
21 one-pager, but there's many pages.

22 To take that list, if we had the

1 list then in our document as a list of
2 materials, I personally don't want to be on
3 the Board when we say this Board listed 859
4 new materials onto the synthetic list. That
5 is not a position I want to be in.

6 But that's essentially what we
7 would be doing if we took in 40 C.F.R. 180 in
8 whole, because it's -- but again, it would
9 look very innocuous and it would be simple for
10 us to do. I just don't think it's the right
11 thing to do.

12 CHAIRPERSON GIACOMINI: John?

13 MR. FOSTER: Isn't your term just
14 about over?

15 (Laughter.)

16 MR. FOSTER: I'm just checking.

17 CHAIRPERSON GIACOMINI: Leave this
18 for you, John.

19 MR. FOSTER: I'm just asking.

20 CHAIRPERSON GIACOMINI: Probably
21 the folks behind you are going to be -- than
22 you. This is going to take some time.

1 MR. MOYER: That's right. We
2 talked about this last night, that that's not
3 an inconsequential commitment that we're
4 layering onto the next generation, if you
5 will, of NOSB members and petitioners for that
6 matter.

7 But anyway, so I'm glad you
8 brought that up. So last night we were
9 talking about being very specific in asking
10 NOP to look into MOU development, and I wanted
11 to ask if the program had any thoughts,
12 concerns, obvious road blocks to that, or what
13 your assessment of the likelihood of
14 successful outcome there?

15 MR. NEAL: I don't think -- this
16 is Arthur Neal, for the record. I don't think
17 that the program would have an issue with
18 developing an MOU. I do think the Board could
19 probably also consider a task force on this
20 issue, maybe assembling some folks who are
21 familiar with the types of inerts that are
22 being used currently in organic crop

1 production, livestock production and things of
2 that nature.

3 That task force could potentially
4 include some people from EPA. But you know,
5 instead of just running down the road of, you
6 know, creating another huge petition process
7 right off the bat, we may want to do some
8 filtering first.

9 But that's just another idea to
10 consider. That way, we've got enough, I
11 guess, expertise around the inert issues,
12 because I know I don't know everything about
13 the inerts, which ones are used and how
14 they're used and when is it going to be
15 inactive, when is it a non-active ingredient.

16 We may want to make sure that
17 we've, you know, kind of done that kind of
18 homework first.

19 MS. ELLOR: Yes. That's sort of,
20 you know, one of the thrusts behind the
21 recommendation, is to do that initial
22 filtering, natural versus synthetic, and then,

1 you know, maybe at that point, when we've done
2 that filtering, it might be a good thing to
3 put a task force in place, including the EPA.
4 But I don't know, Jeff. What do you --

5 MR. MOYER: Well, I think in
6 effect, the MOU would be a representation of
7 that sort of task force mentality, whether
8 it's an actual task force or not. It would
9 include, by default, NOP, EPA folks and Board
10 members. So yes, I think that's how we
11 envisioned it working out through the MOU
12 process.

13 And again, nothing starts until,
14 in terms of time lines until each one of those
15 steps takes place. So there is plenty of time
16 built into this, and again, I like Katrina's
17 idea of you weren't there at 10:30 last night,
18 so but taking those time frames that we have
19 in here, the specific time frames.

20 I guess what we wanted to do is
21 make sure there was a time frame vested in
22 this document, but a sentence that just

1 broadens that and gives us more flexibility
2 would probably make a lot of sense.

3 CHAIRPERSON GIACOMINI: Katrina?

4 MS. HEINZE: I wanted to go back,
5 Jeff, to the comment you made about none of us
6 wanting to be on the Board that put 859 or
7 whatever the number was materials on the list.
8 I do want to be sensitive to that, and this
9 is, you know, a very complicated subject, that
10 these materials are in use judiciously in
11 production today.

12 But even with this recommendation,
13 there could be hundreds of materials added to
14 the list, correct?

15 MR. MOYER: That is correct.

16 MS. HEINZE: And having lived
17 through Harvey, when 606 went from four or
18 five items to the -- I haven't counted -- 90,
19 whatever, 100, whatever, the perception in the
20 public, and certainly what's seen in the
21 popular press, is that we weakened the
22 standard and added 100 items to the list.

1 And those are fairly innocuous
2 items, as opposed to what may be added through
3 this. I'm not sure that that would change how
4 we all felt about doing the right thing. But
5 I'm concerned about that, and how that's going
6 to be perceived.

7 MR. MOYER: We discussed that at
8 great length, because it is a real serious
9 issue for the general public. However, we did
10 survive 606. The industry survived. I think
11 it's better for having gone through that
12 process.

13 I think that we will be better for
14 going through this process, and we'll be able
15 to offer to the consumer a more transparent
16 process and a better product ultimately, if we
17 can drive some of these formulations to the
18 natural list.

19 Maybe someone, you know, maybe a
20 lot of them already are. I don't know that.
21 The fact is there's a lot of unknowns out
22 there, both at the EPA, at OMRI -- I shouldn't

1 say both -- but at OMRI, EPA, here, Washington
2 state.

3 There's a lot of stuff happening
4 out there that we just don't know until we
5 start probing and asking the questions, and
6 using EPA to do that work for us seems to make
7 the most sense.

8 The bottom line is we may add more
9 materials. In effect, we're reducing the
10 material list by a lot, but it may not appear
11 that way. That's a concern for all of us, for
12 sure.

13 MS. HEINZE: Yes. The purpose of
14 my comment is maybe not so much for the Board
15 but for those of you in the public who do
16 communicate with broadly, is to help us
17 articulate this in a way that it is understood
18 by the consumers, for the improvement that it
19 is.

20 MR. MOYER: Very good point.

21 Thank you, Katrina.

22 CHAIRPERSON GIACOMINI: Jay.

1 MR. FELDMAN: I just wanted to
2 emphasize what Jeff's already said, that you
3 know, the comments that we received were
4 incredibly creative, and I think -- I just
5 want to say that I appreciate, you know, the
6 ideas that have been thrown out there in terms
7 of, you know, working with EPA, which is
8 something we've tried to incorporate now in
9 the document.

10 Even the idea of not doing
11 anything or, you know, contracting with OMRI
12 and other technical advisory groups. So I
13 think the point I wanted to make here is that
14 these, elements of these ideas can be
15 incorporated along the way.

16 You know, we're building on the
17 base of getting the technical information out
18 of EPA, because they've got the complete list.
19 They know what's there. They can sort it out,
20 as Jeff said, to our specifications. Then
21 along the way, we may need to do some
22 additional in-depth technical reviews, as

1 suggested here.

2 But I think, I guess it's fair to
3 say we rejected the argument of not doing
4 anything, and I guess the reference was made
5 to the EU and other systems that have chosen
6 not to do anything. We felt, in the interests
7 of transparency, that that was simply not an
8 option for us.

9 CHAIRPERSON GIACOMINI: Thanks.

10 MR. MOYER: Well, and we shouldn't
11 discount the involvement of industry, the
12 actual pesticide manufacturer industry, in
13 this process. It's documented that we intend
14 to have them fully vested in what we do,
15 working, either with us if they're willing,
16 but certainly with EPA and with the program.

17 CHAIRPERSON GIACOMINI: Tina.

18 MS. ELLOR: Yes. We didn't want
19 to take the "sweeping under the rug" option,
20 and Katrina sort of said what I already said.
21 We might be adding hundreds, maybe one, maybe
22 two hundred. But we're taking off, you know,

1 859. So you know, if we can make the public
2 aware of that and, you know, the reasons
3 behind it, that would be very, very helpful.

4 CHAIRPERSON GIACOMINI: Barry?

5 MR. FLAMM: I think, excuse me, I
6 think Jeff has done a very good job of
7 explaining the rationale of the committee, and
8 I just, as a member of the committee, I just
9 want to lend my support and reinforce what has
10 been said.

11 I think what we're proposing is a
12 responsible approach, and as Tina just said,
13 I don't think sweeping these materials under
14 the rug any longer is the right approach.

15 I think EPA's on a new track of
16 exposing what's really in a lot of these
17 chemicals, and we just don't know what it will
18 be. I think that's everything, where so much
19 of this information is CBI and that's one, I
20 think, one problem that we had, when we first
21 tried to develop a way of narrowing this down,
22 the lack of availability of some of this

1 information.

2 But EPA does have it, and I think
3 that's our first step. Whatever that list
4 happens to be that's necessary and safe for
5 the environment and human health that we end
6 up keeping, that's the way it will have to be.

7 I think -- I don't think it's
8 responsible to take the approach that we're
9 concerned about the image of adding numbers to
10 a list, when in reality it's quite a large
11 list and some of these things, we're sure,
12 shouldn't be in use in organic production.
13 But we'll find out when we go through the
14 process.

15 CHAIRPERSON GIACOMINI: Tracy.

16 MS. MIEDEMA: I would like to
17 respectfully disagree with my colleagues on
18 this, and would definitely prefer that we let
19 EPA get ahead of us and we collaborate with
20 them, and here's why.

21 With the 606 items, you know, here
22 we are five years out. The perception is

1 still very much that we let a bunch of stuff
2 into organic that had no place there, rather
3 than what we actually did is create a
4 situation where there's a commercial
5 availability hurdle that must be met, that
6 items must be added to the National List,
7 instead of what was really an open-ended
8 certifier-by-certifier decision before.

9 There's much less getting into
10 organic than prior to the creation of 606.
11 But it seems that there's almost nothing we
12 can do to make that point. It's a very
13 nuanced argument.

14 The Washington Post article last
15 year was still very, very confused on that
16 matter. The items that are being discussed as
17 non-organic, getting into organic, are very
18 benign things like, you know, purple carrot
19 juice.

20 I think we're really dreaming if
21 we think that the perception would ever be
22 that we have reduced the number of chemical

1 inerts allowed. So you know, this is a
2 situation where I agree with your point that
3 it's sort of a higher integrity in the truest
4 sense of the word, I guess.

5 But we would be cutting off our
6 nose to spite our face, because we could take
7 -- we could destroy the perception of
8 integrity in such a big way, that we could do
9 irreparable damage to organic by adding, you
10 know, two, three, four, five hundred items to
11 the list. I just think it's -- I think it's
12 a mistake.

13 If EPA leads the way, they could
14 have categories of materials that would be
15 just as short. We could keep the stuff out,
16 but the way the list would look would be much
17 more sensible and palatable in the long run,
18 and understandable by consumers.

19 CHAIRPERSON GIACOMINI: Joe?

20 MR. SMILLIE: Woof. That was,
21 that's -- I was thinking of the same things.
22 I'd like to find a compromise, and I think

1 what Arthur has suggested is a really
2 excellent route.

3 The history of this Board, in
4 working with task force, has been excellent.
5 We've had the Aquaculture Working Group, we've
6 had the Materials Group, we've had the Pet
7 Food Task Force.

8 Those groups created an open forum
9 where all the players could participate.
10 That's how we got all the aquaculture people
11 involved. That's how we got the pet food
12 people involved.

13 That's how the materials, the blue
14 ribbon panel of the top, you know, NOP policy
15 wonks in the industry got together and
16 provided our committee with a really excellent
17 set of documents.

18 So I think our history in having
19 these working groups and task forces has been
20 excellent. It will be a way that will be,
21 that will take a little bit of workload off
22 us. The EPA can participate. It will be a

1 more friendly forum for manufacturers, who,
2 quite frankly, are a little paranoid about
3 their materials.

4 We have to create a welcoming
5 place for them to participate in this. We
6 can't sit here as a Board and say we're going
7 to review, we're setting the filters, we'll
8 work with EPA. I think this is a perfect
9 place, as Arthur has suggested, to form an
10 inerts task force, create a home for all of
11 the players to participate in.

12 We'll participate in it too, in
13 the same way that our group, the joint
14 committee, worked with the Materials Working
15 Group. It'll just be a more, I think,
16 respectful vehicle to get all that information
17 out, and they'll have -- and we don't have to
18 agree or disagree with their findings. We
19 could -- but we'll have somebody that's an
20 active group working on our behalf, because we
21 have limited resources, and EPA can
22 participate in it.

1 So I think it's -- and as far as
2 timelines go, you know, we don't want to rush
3 this. We want to make sure that we get it
4 established. So that's how I would propose a
5 compromise, to direct action of the NOSB or,
6 as Tracy suggested, just pushing it totally
7 back to the EPA.

8 CHAIRPERSON GIACOMINI: Tina.

9 MS. ELLOR: It is a point well
10 taken, and where I'm having trouble here is
11 that our timeline is, is that we would have to
12 turn this over for the next sunset.
13 Otherwise, all inerts drop off the list.

14 So, you know, we as a committee
15 thought that taking no action was not really
16 an option.

17 We definitely have a change in the
18 NOP. I mean before, if we'd said, you know,
19 task force, a year and a half ago there would
20 have been shudders all around. So, you know,
21 that is something maybe we could consider. I
22 don't think that this document would preclude

1 that. I think that we could use that as a
2 vehicle to accomplish what we are trying to do
3 with this document, within this document.

4 CHAIRPERSON GIACOMINI: Katrina.

5 MS. HEINZE: When do the National
6 List, listings for List 4 inerts sunset? What
7 year is that?

8 MS. ELLOR: It's a 2012 sunset.
9 So by fall, you know, we would have to say
10 okay, we're just going to let these things
11 through again, without taking any action.

12 MS. HEINZE: So even with this
13 recommendation, would that not happen?

14 MS. ELLOR: It would happen, but
15 at least there would be some movement in the
16 direction that we've been being, you know,
17 pushed in for how many years now.

18 MS. HEINZE: So what would
19 manufacturers do in the interim after they had
20 sunsetted off the list but before this review
21 had happened?

22 MS. ELLOR: Well, that's why we

1 have, you know, a timeline. I think -- we
2 just didn't want to put the List 4 through at
3 this meeting for 2012 sunset, until we had
4 this discussion. And so we still have yet to
5 have that discussion.

6 CHAIRPERSON GIACOMINI: Jay?

7 MR. FELDMAN: I appreciate the
8 idea. I guess task forces can perform
9 different functions, and on the function of,
10 you know, carrying out some of the objectives
11 here, which are technical in nature, sorting
12 out natural from synthetic, generating a
13 database, perhaps, on what or what the
14 technical aspects of the issues are around
15 exposure and use patterns and so forth.

16 But in essence, Joe, I think this
17 is different and Tracy this is different than
18 other issues you're citing, around which we've
19 had task force, in that we know we're dealing
20 with a set of materials. We know we're
21 dealing with a set of inputs.

22 We have a structure in our, you

1 know. Within the context of the NOSB, there
2 is a structure for reviewing materials.
3 That's been established. We're really only
4 asking a very simple question.

5 Do we want to review them or don't
6 we want to review them? The issue of
7 defining, you know, sort of a holistic
8 approach to an issue that had previously not
9 been fully fleshed-out is really not relevant
10 here.

11 I think the only question is who
12 has the resources and the expertise to review
13 materials that we're using in organic
14 production and processing and handling. Who
15 has that ability? But in this case, we're
16 really talking about production, I should say
17 just production, because we're talking about
18 materials used in crop production, essentially
19 pesticides for which there are inert
20 ingredients.

21 So we already have a structure.
22 We have a statutory duty to review these

1 inputs. The process is changing by virtue of
2 EPA having changed its process. We're trying
3 to adapt to that new process that EPA has
4 adopted, and it's relatively straightforward
5 once we decide as a board that we are meeting
6 our duty to review these materials.

7 And what this proposal does for
8 us, it gives us the options to use a range of
9 technical inputs, EPA, OMRI, other -- the
10 technical review panels, S&T. I mean we have
11 all kinds of options that we can use under
12 this proposal.

13 But the point is we're really
14 asking the Board to raise this notion that we
15 need to review these things. We have a
16 responsibility to our constituent, you know,
17 to growers and consumers to review these
18 things. We've already seen some interest on
19 the part of registrants or manufacturers, who
20 have already come before this Board disclosing
21 their inert ingredients.

22 In effect, we've had a test run of

1 this already on a number of products. We just
2 need to adapt to a changing landscape at EPA
3 and put the process in place. I don't think
4 we really have a choice, and I think what Jeff
5 has outlined here in collaboration with the
6 committee is really one that offers us
7 flexibility to meet that statutory
8 responsibility.

9 CHAIRPERSON GIACOMINI: Arthur.

10 MR. NEAL: Arthur Neal. One of
11 the things I just want the Board and really
12 the entire public here to understand is that
13 when we initiated the sunset review process,
14 the first one, OMB deemed it to be non-
15 significant in terms of having an economic
16 impact.

17 Meaning that when we conducted the
18 reviews, we would not be pretty much
19 disrupting the industry, or adding an
20 additional burden onto the industry, given the
21 tight timelines that we have to review these
22 materials.

1 If our decision-making becomes
2 such that we will be disrupting the industry,
3 that process is going to change, guaranteed.
4 Everything that we will do regarding materials
5 will probably then have to go through a more
6 extensive review in the federal government,
7 through OMB, because of the economic impact.

8 That means that each decision that
9 the Board makes on the material will probably
10 have to have an economic impact study done
11 associated with it.

12 CHAIRPERSON GIACOMINI: Tina.

13 MR. MOYER: I told you there'd be
14 some discussion on this item this morning.

15 (Laughter.)

16 MS. ELLOR: So what you're saying
17 is, essentially, that the larger the list
18 becomes, the more oversight will be required
19 by the federal government essentially.

20 MR. NEAL: No. What I'm saying is
21 we've got to be very thoughtful about how we
22 proceed, and that we can't make arbitrary

1 decisions.

2 When we do make our decisions, we
3 have to make sure that we've taken the full
4 industry into consideration and involved them
5 to the point where we can fully explain how we
6 got to the point where we have arrived, and
7 that economics were taken into consideration.

8 That's kind of the reason why I
9 suggested a task force, because we can
10 demonstrate at that point, if we're going to
11 change -- we're probably going to change the
12 way we have inerts listed, but we can
13 demonstrate that we've involved the industry
14 in which we're going to impact.

15 MS. ELLOR: So at what point would
16 you suggest that we solicit that involvement?
17 In this document, as part of this document?

18 MR. NEAL: I'm not saying this
19 particular document. It could be. I think
20 that the process needs to be thought all the
21 way through before we just say we're going to
22 include x, y and z.

1 Because as Tracy has already
2 stated, EPA and you, Jay, you said that, who
3 has the expertise to review these materials?
4 EPA has the expertise to review the materials.
5 EPA has access to the materials.

6 So the process needs to be such
7 that we leverage the resources that are
8 already in place to get the work done as
9 efficiently as possible, and how we engage the
10 industry needs to be thought through and not
11 just, you know, a quick decision made, because
12 we want to make sure that it is an orderly
13 process as well.

14 CHAIRPERSON GIACOMINI: Jeff.

15 MR. MOYER: I just wanted to
16 respond to that. I mean, and that was what we
17 talked about last night with this concept of
18 this MOU. Now we didn't flesh it out there,
19 because that's really something that the
20 program needs to do in relationship to
21 industry and EPA.

22 As that document unfolds, we as a

1 committee envision that that's where that
2 would all take place, and we can do that MOU.

3 MR. NEAL: Definitely work with
4 the Board in developing that so that make
5 sure that all interests are represented.
6 Right.

7 MR. MOYER: So all we're
8 suggesting in our document is the goals of
9 what that MOU would achieve, and the technical
10 steps that we envisioned taking place,
11 positioning the Board where it wants to be.
12 But the MOU really would outline how that task
13 force organizes around those objectives, to
14 accomplish it in a timely, and as I said
15 earlier, with as little disruption to the
16 industry. Particularly, I mean, as a farmer,
17 we use some of those products too. I don't
18 want to see them disappear. That's not our
19 goal. But our goal is to be transparent about
20 what's there and steer the industry if
21 possible to a more benign set of substances.

22 CHAIRPERSON GIACOMINI: Valerie.

1 MS. FRANCES: I just want to say
2 that, and I've had conversations with Chris
3 Pheiffer also, and they all stand ready to
4 help. I think the partnership is there ready
5 to help with the review. I think the other
6 question that people are asking is, where do
7 we park the list, once you go through that
8 review?

9 I don't think any -- where you
10 park the list doesn't probably in the end
11 affect whether you review the materials or
12 not. I think it has historically, because it
13 just went on as List 4, and it was sort of the
14 whole, you know, set of issues there that
15 really weren't reviewed.

16 I think that can change, where you
17 can have that review that you need to do and
18 have the technical support to do that. Then
19 where do you park it?

20 I think that's really the other
21 question of then, if you have a list of
22 categories that are parked in our national

1 list, but the categories are really held at
2 EPA, I think that will facilitate your review
3 and facilitate the public's understanding of
4 what those categories represent.

5 CHAIRPERSON GIACOMINI: Arthur,
6 did you have something related to that?

7 MR. NEAL: Yes. Real short. I
8 think a lot of these details, too, could be
9 worked out in conversation with EPA with the
10 Board, through the more intimate settings.

11 CHAIRPERSON GIACOMINI: Jeff?

12 MR. MOYER: Yes, and I was amiss
13 in not mentioning what Valerie just said in
14 conversations with the EPA. Another way
15 around this, even though it looks like we're
16 adding more materials, they would be willing
17 to create a sublist of 80 C.F.R. 140, that
18 would our list, that they would us manage,
19 which we would possibly adopt as a separate
20 one-line item on our -- or actually it would
21 be two lines, because everything that's
22 happening here in Crops happens in --

1 CHAIRPERSON GIACOMINI: Right.

2 Yes. That's something that we need to
3 clarify.

4 MR. MOYER: I should mention that.
5 There is a great over -- for some reason,
6 Livestock did not get this on their work plan.
7 That doesn't mean that the Livestock Committee
8 was not involved. There's a great deal of
9 overlap between the Crops Committee and the
10 Livestock Committee.

11 CHAIRPERSON GIACOMINI: Including
12 the chairman.

13 MR. MOYER: Including the chairman
14 of the Livestock Committee, who sits on the
15 Crop Committee. So there was a great deal of
16 interface and interaction between those two
17 committees, because whatever we do in Crops,
18 and that's where it fell for purposes of this
19 meeting, would also affect Livestock.

20 But there is a possibility that we
21 could have that subcommittee managed, to some
22 extent, by -- we'd still be doing all the

1 review pieces, because that's our
2 responsibility, but they would help manage
3 that list as a single item on our standards.
4 I appreciate that, Valerie. Thank you for
5 bringing it up.

6 CHAIRPERSON GIACOMINI: I think
7 that's something, one of the points I was
8 going to make when we're basically all done.
9 There were -- I received questions as to why
10 is this just a Crop document and not
11 Livestock? We do have a huge exchange of
12 members between those two committees.

13 Both chairmen are on the other
14 committee. The Livestock chair is on Crops
15 and the Crop chair is on the Livestock. So
16 that was an exchange. But I think we've
17 looked at the background now. We need to
18 formalize the relationship of continuing this
19 process with Livestock, because we are going
20 --

21 We're getting to the point of
22 listing, and it's that creative type stuff of

1 working with, you know, if EPA would create a
2 list that we could put in both cases, because
3 if we don't do that, we're not looking at
4 adding 300 items. We're looking at adding 600
5 items, because every item we have, right now
6 the way it's set up, would need to be listed
7 twice.

8 You know, so some framework like
9 that, creative thinking, that would certainly
10 be welcome. Katrina.

11 MS. HEINZE: This has been a
12 useful conversation for me. I agree with
13 everything that Tracy said. So what I'm
14 hearing is that there's a lot of -- what the
15 committee wanted to do is to put forth a
16 recommendation that showed that, as a board,
17 we wanted to be more involved in viewing
18 individual inerts.

19 But that there is a quite a bit of
20 flexibility, not just on the time frame, but
21 in the manner and how that's going to be
22 executed. It might be a task force; it will

1 be done in collaboration with EPA. But up to
2 and including the fact that we're not exactly
3 sure how it's going to show up on the list
4 yet. Is that true?

5 MR. MOYER: There is flexibility
6 in terms of the timeframe and how it would
7 show up on the list. I don't see the
8 flexibility in how we review those materials,
9 because we already have a standard process for
10 that review, and we would follow that existing
11 process.

12 Of the materials that we create in
13 the sublist, not of everything else, unless
14 someone would then petition it as a petitioned
15 item.

16 MS. HEINZE: Okay. I guess that
17 flexibility, I don't see reflected in the
18 document. So for example Item 6 in your
19 recommendation says "list the specific inert
20 ingredient components recommended for
21 inclusion on 205.601(m)." So to me, I read
22 that to say each individual item is going to

1 be listed.

2 That doesn't reflect the
3 flexibility of having EPA manage the list. If
4 this document is intended to directionally
5 point us in the right direction, but still has
6 flexibility, it would be nice to have some of
7 that flexibility reflected in the document.

8 MR. MOYER: I will say, when you
9 read this document, you can read into it all
10 the opinions of everybody on the committee,
11 because we were as diverse as the conversation
12 is here, and have been for months, and certain
13 individuals are far to the right and others
14 are far to the left.

15 And we're trying to get a
16 compromise document here that we think the
17 Board would approve. But I agree. Item 6
18 doesn't necessarily reflect the language that
19 we just talked about here in the listing
20 component. So I guess we know that we have
21 some work to go back and do based on this
22 conversation, and we'll adjust that, because

1 we have nothing else to do tonight anyway.

2 When you see the document
3 tomorrow, I think you will see a similar tone
4 and set of objectives, but the verbiage will
5 the different.

6 MS. HEINZE: We are grateful for
7 your work tonight. Thank you.

8 CHAIRPERSON GIACOMINI: I would
9 just like to make a little clarification on
10 one of the items you just said, Jeff. We do
11 have a process for reviewing materials, but
12 there are a lot of things about these type of
13 materials that's unique, including you know,
14 part of it is the simple fact that the vast
15 majority of the list you can't say, you know.
16 I can't either.

17 We do have the experience, and I
18 want to be as diplomatic as possible, but also
19 as accurate as possible. When we went through
20 the initial part of the 606 process, for
21 whatever reason, and I was chairman of the
22 Materials Committee at the time. If someone

1 needs to take the blame, I'll take it.

2 There are items that went on that
3 list in that initial process where very
4 quickly we realized -- it was brought to our
5 attention, through feedback that the program
6 had received, that not all the information
7 that had been supplied on some of those
8 petitions from the manufacturers or the people
9 making the petitions were necessarily
10 accurate.

11 I think this is one of those cases
12 where we need to make sure that if we have the
13 opportunity to work very closely with EPA on
14 this, outside of our normal material
15 petitioning process, that we need to do it.

16 Because people coming forth with
17 petition information that we have no other way
18 of verifying, and we find out it's not
19 completely truthful. Personally, as an
20 individual of this industry, I take huge
21 offense of that, as the method used to get
22 something on the list.

1 We have the CBI issues that we
2 don't have complete access to, and there's
3 other -- there are other mechanisms that sort
4 of keep us from always getting that full
5 information. We also don't have any punitive
6 leverage to keep that from happening, outside
7 of how we may review it at sunset, or how we
8 may deal with it in a different way.

9 I wish there were more uproar
10 among the industry for the way that was
11 handled, and not the way it was handled, but
12 the results of it. So I would say, yes, we do
13 have a petition process. We do have a process
14 for handling petitions. But in this case, the
15 closer we can work with EPA on this issue, the
16 better off we're going to be. John.

17 MR. FOSTER: I'm not quite sure
18 where I was back when I got in the queue here.
19 I think what Arthur had said and what Valerie
20 had said was the majority of what I wanted to
21 say, so I won't repeat it.

22 But I do want to be careful about

1 how we characterize this list in two ways.

2 One, there's a lot of things that could easily
3 be certified organic on this list. It's not
4 a -- apple leaves, for example. If someone
5 wants to do that, you could do that
6 organically.

7 So there are a lot of complicated
8 things, obviously purely synthetic things.
9 But I just want to be careful how we
10 characterize this. It's running, I think it's
11 running the risk of becoming, ironically,
12 overly materials-centric, that we keep in mind
13 these historically have been inert
14 ingredients.

15 And I'm not saying it's not
16 important. I'm just saying at one point,
17 someone said okay, these are inerts of minimal
18 concern. I'm not saying we should stick with
19 that, but I don't want to characterize them
20 and turn them into something that they're not.

21 The other thing is that this is
22 not unlike a lot of input lists that growers

1 provide to certifiers, in that there's a lot
2 more things on this list than are actually in
3 use. Just because it's on the list doesn't
4 mean it's in use in a pesticide that is in
5 current use in organic production.

6 In fact, most of these would not
7 be in organic -- products that would be
8 organically allowed. So just because it's on
9 the list doesn't mean they're in use right now
10 (a), in agriculture, or (b), in organic
11 agriculture.

12 So I just want to be careful how
13 we characterize this list. It's not as --
14 it's not the octopus that it's starting to
15 sound like, I don't believe.

16 CHAIRPERSON GIACOMINI: Okay.
17 Jeff, you have a response to --

18 MR. MOYER: Yes, I think you're
19 absolutely right, John. Part of the problem
20 we have is we're sitting in a field of
21 unknowns here, and we don't really know what
22 is being used.

1 You know, in EPA language, which
2 is included in Item No. 2 on my list, you
3 know, they specifically use the words "what
4 materials or items on that list would the
5 industry choose to defend."

6 (Applause.)

7 CHAIRPERSON GIACOMINI: Mark
8 Bradley, come on down.

9 (Laughter.)

10 MR. MOYER: Annette was getting
11 thirsty, so she called Mark. Okay. What I
12 was going to say is we are -- everybody's
13 turning off their cell phones. We are living
14 in this vacuum of unknown information, and the
15 EPA was really clear in the language they gave
16 us to use in Item No. 2 of our set of goals
17 here.

18 It was to ask the industry, when
19 you discuss industry, don't ask them what they
20 would like to see on the list, because they'd
21 say everything, because it makes life easier.
22 Ask them what they would choose to defend,

1 which means those are the materials they
2 actually really need.

3 They feel like between that list
4 and taking the list of naturals out, they're
5 going to shrink the workload tremendously.
6 But until we find all that out via the MOU,
7 whether it's the task force is the operating
8 tool that makes that work, or however the MOU
9 is set up, I think we're going to be in a
10 position where we're going to have a lot more
11 information to address that down the road.
12 That's the goal of this document. Thank you.

13 CHAIRPERSON GIACOMINI: Tina.

14 MS. ELLOR: The minimal concern --
15 oh, I'm sorry. I'll talk louder. The minimal
16 concern phrase is not one of ours. We didn't
17 put it through our process and decide that
18 those things were of minimal concern.

19 We've attached the list to our
20 document, so everyone can have a chance to
21 look down through there and, you know, you can
22 decide for yourself whether you feel like

1 those things are of minimal concern.

2 I personally don't feel like all
3 of them are of minimal concern. That's my
4 personal opinion.

5 I had a couple of points. We
6 could solve one of the major concerns that
7 Tracy had, and I thought that was very well-
8 stated, thank you, that we're listing all of
9 these things individually, that if we could
10 have a subset of the EPA list that, you know,
11 we could somehow work out, that we refer to
12 that list, but we still, you know, look at
13 those materials. I think that's ideal.

14 I had a question for the program.
15 Just refresh my memory, because I'm not a wonk
16 this way. If we do this as a task force, how
17 does that -- how does that get implemented
18 with the involvement of the EPA? If they are
19 part of our task force, is that voluntary on
20 their part, or would that --

21 I guess that's why we thought a
22 memo of understanding might be a better

1 vehicle, or a good vehicle in addition to a
2 task force. How does that work?

3 MR. NEAL: Just like the
4 Aquaculture task force, the Pet Food task
5 force, we had NOP representatives on those
6 task forces. I sat on Aquaculture for a while
7 until I left. Keith Jones sat on Pet Food for
8 a while until he left. Valerie just said she
9 was on one -- both.

10 And so providing guidance,
11 information, things of that nature. Now what
12 happens is that that task force comes back
13 with a recommendation for the full Board to
14 consider. The full Board, you know, considers
15 it fully, makes any necessary adjustments to
16 it and then recommends it to the program.

17 Just because I may have sat on the
18 task force doesn't mean that the entire
19 program is going to agree with the
20 recommendation that comes to the program,
21 because I'm not trying to, as a quote-unquote
22 liaison for the program, I'm not steering the

1 Board or the task force where I necessarily
2 want them to go.

3 I'm trying to provide them with as
4 much guidance as they need to make the right
5 decisions for the tasks they have before them.
6 And so EPA knows what its limitations are,
7 what they're able to do.

8 They can provide that information
9 to folks on the task force, so that it gives
10 them the opportunity to make, you know, the
11 best decision that they can make within the
12 confines of what EPA can do.

13 MS. ELLOR: So that EPA would
14 function within the task force, much like the
15 NOP would function within the task force?

16 MR. NEAL: It could. Now let's
17 stop for a minute. The task force concept, we
18 can flesh out a little bit more on paper for
19 consideration. Don't want to talk about it
20 here because, you know, we'll just be kind of
21 kicking out ideas and brainstorming. Because
22 when we start writing, everything may look

1 differently, because we do want to incorporate
2 the intent of the Board with this
3 recommendation.

4 So there are a lot of things to
5 consider, in terms of how all people who
6 participate, you know, what their roles would
7 be, how that would all come together.

8 One other comment that I wanted to
9 make, that goes to John's comment and yours,
10 is that there may be a way that we can have --
11 or convince EPA or encourage EPA to develop a
12 list of inert ingredients allowed for use in
13 organic production, maybe. That's that subset
14 you were talking about.

15 Since they're in the process of
16 making all these modifications, let's see if
17 we can't work with them quickly to consider
18 this. That way, there will be a designation
19 in the EPA regulations that will address that.

20 CHAIRPERSON GIACOMINI: Jennifer.

21 MS. HALL: I think that actually
22 is kind of the best of all worlds, because I

1 absolutely respect where Tracy's coming from,
2 and I think there's a great risk of adding
3 just countless materials, though I respect the
4 process and I think it's a really strong one.

5 The flip side of that, from a PR
6 perspective, is, certainly, if we just adopt
7 something because we're worried about listing
8 and having all those items actually say
9 something other than what it really means, is
10 then it looks like oh, there was this mountain
11 of work and it seemed too hard and we just
12 kind of swept things in because perhaps that
13 was easier, and the ramifications of that, I
14 think, would actually be worse.

15 So I think what we do need to
16 find, which is what we're coming to, is a
17 place of compromise, where things have been
18 sufficiently vetted and what comes out on the
19 other end, I think, will be adopted and
20 understood.

21 CHAIRPERSON GIACOMINI: Jeff.

22 MR. MOYER: Yes, and in the

1 discussions -- I agree very much, Jennifer,
2 and the discussions we had with EPA were very
3 much along the line, while they didn't
4 specifically say they would do it, was that
5 there were indications that they would create
6 a list of inerts for organic production
7 through this process.

8 So that's kind of how that -- we
9 used the term MOU as a mechanism to flush out
10 that relationship and determine how we're
11 going to handle that. But that would all be
12 done through that process. That's kind of
13 what we were thinking.

14 CHAIRPERSON GIACOMINI: Any other
15 comments or questions? Steve?

16 MR. DeMURI: To the program, how
17 long does an MOU take to implement?

18 MR. NEAL: It varies on the
19 complexity of the issue. An MOU such as this
20 shouldn't take us long. I'm not going to put
21 a specific time frame on it. We do know that
22 this is a current issue for EPA. It's a

1 current issue for us. EPA, we know, has
2 always been willing to work with us.

3 We need to define the parameters
4 of how we want to work with them, with the
5 Board, you know, with a decision. In making
6 decisions concerning inert ingredients to be
7 used in organic production, we're going to
8 need to involve the Board. But we need to
9 define that, and we need to see how EPA's
10 administration wants to do that as well.

11 So it can be done quickly. It
12 could be complex, but I think we can get this
13 one done within a reasonable timeframe.

14 CHAIRPERSON GIACOMINI: Steve?

15 MR. DeMURI: So, as a follow-up,
16 do you need anything else from us to get that
17 going, other than this recommendation?

18 MR. NEAL: From a personal
19 perspective, and Miles you can chime in
20 whenever you'd like.

21 (Laughter.)

22 MR. McEVOY: Being quiet is good.

1 MR. MOYER: He's looking for that
2 lifeline, though, Miles, and you're just
3 sitting there smiling.

4 MR. NEAL: No, seriously. I think
5 that your intent in the recommendation should
6 be enough to give the staff adequate insight
7 into what you're thinking, and we can maybe
8 draft up a potential MOU or some process for
9 the Board to consider, for us to move forward
10 with the conversation with EPA.

11 MR. McEVOY: Yes. We've actually
12 been talking about this, of how we're going to
13 work with EPA for the last, well, last six
14 months really, and it's been a lack of
15 resources that we haven't made much progress.

16 We met with them in the fall on
17 this whole inert issue, and now that we have
18 really three new staff that are experts in
19 materials evaluation, we have a little more
20 resources, that we can pursue this a little
21 more aggressively. It is a very important
22 issue.

1 It needs some attention to work
2 out a memorandum with EPA. We understand that
3 they're very willing to work with us, Chris
4 Pheiffer in particular. They have a lot of
5 resources that we can help to move this whole
6 thing along. So I don't think it will be that
7 difficult to establish that memorandum, that
8 agreement.

9 Kind of the difficulty is having
10 clear direction from the NOSB of what you guys
11 want to see, what your involvement would be,
12 and working out the parameters. Once we do
13 that, it will be pretty straightforward.

14 MR. NEAL: And I'm going to
15 suggest this. I'm going to suggest that, give
16 the program an opportunity to -- our response
17 to your recommendation, I'm saying this on the
18 record I guess, would probably be the drafting
19 of the MOU, that kind of would process what
20 you shared.

21 We'd work with you to see whether
22 or not if we understood you correctly. It

1 won't be necessarily the program has, you
2 know, gone off and done a certain thing, other
3 than the fact to work with you, to make sure
4 we've understood what your desire was, so we
5 can continue to move forward in establishing
6 this relationship with EPA.

7 CHAIRPERSON GIACOMINI: Okay, all
8 right. Any other --

9 MR. MOYER: I think that concludes
10 my report, Madam Chairperson.

11 CHAIRPERSON GIACOMINI: I have one
12 more thing, Jeff, just for language. I don't
13 need an explanation. I would just like to
14 come in and take a look at this. I was not
15 completely clear on Item 2 on that list of the
16 proposed guidance.

17 At the start of the fourth line,
18 you use the word "currently." Is that
19 currently, is that according to the 2004 list?
20 Is there a difference, and what's the most
21 appropriate? Just look at that word and make
22 sure you're clear that it's saying what you

1 intended to say.

2 Okay. All right, if that's it
3 there, I think it goes back to Tina for one
4 more --

5 MR. MOYER: Yes, I think that's
6 what we meant.

7 CHAIRPERSON GIACOMINI: Okay.

8 MS. ELLOR: Mr. Chairman, do you
9 think we could take a break?

10 CHAIRPERSON GIACOMINI: Would you
11 like to take -- okay. We can do that. I love
12 these suggestions. I'm always open. So I was
13 looking to finish yours off and then take a
14 break before we go to Livestock. But we'll
15 take a break now?

16 MS. ELLOR: Oh, no. Yes, it's
17 going to take some time.

18 CHAIRPERSON GIACOMINI: Okay. So
19 let's take a break now. On that clock over
20 there we're going to shave it just a little
21 bit. What are we at here, at 45.

22 (Whereupon, the above-entitled

1 proceeding went off the record at 9:36 a.m.
2 and resumed at 9:47 a.m.)

3 CHAIRPERSON GIACOMINI: Board
4 members, please find your seats. Everyone
5 else, find your seat or please take the
6 conversation outside, please.

7 All right. We're going to bring
8 this back to order here, continue on with
9 Crops. Back to Tina with one more
10 recommendation. Excuse me. Any
11 conversations, please either finish them off
12 already or take them outside. Thank you.

13 MS. ELLOR: Okay. The next item
14 on our agenda is the National Organic
15 Standards Board Crops Committee
16 recommendation, Production Standards for
17 Terrestrial Plants in Containers and
18 Enclosures, also known as, a.k.a.,
19 greenhouses.

20 And, fortunately, we have in the
21 gallery today Gerry Davis, and he's the main
22 architect of this. Gerry is to this document

1 what Jeff was to the list, is to the List 4
2 document, and we completely are going to rely
3 on him for question and discussion, as much as
4 he's willing to participate. A godfather.

5 CHAIRPERSON GIACOMINI: One of the
6 godfathers.

7 MS. ELLOR: This document or
8 permutations of this document have been in the
9 grinder ever since I've been attending these
10 meetings, and we know, we were talking this
11 morning, that this is at least the third
12 public comment round that this has been
13 through.

14 So we feel like it's been well-
15 vetted by the public, and we did get together
16 last night to respond, to change the document
17 in response to comments that we got in writing
18 and comments that we got yesterday from the
19 public.

20 Let me just quickly go through
21 comments that we did get. We had comments
22 that we need to somehow, you know, let

1 everybody know that sprouts are fine. So we
2 put language in to accommodate sprouts. Let
3 me pull it up on my screen so I don't have to
4 squint over there.

5 Some other concerns were
6 transplant production, and we made some
7 language changes that would accommodate that,
8 which I'll go through. We had several
9 comments about carbon dioxide. So,
10 essentially, we just struck that off, and
11 there are natural ways to reduce carbon
12 dioxide, which would of course be allowed
13 without petition.

14 But if somebody wants to generate
15 carbon dioxide in some way that's synthetic,
16 it's going to have to be petitioned. So we
17 just struck that item off.

18 There were some comments we got
19 in. We had both sides. There were comments
20 that wanted to be even more prescriptive and
21 more detailed and take more questions out, and
22 we had comments saying this is way too

1 prescriptive and repetitive.

2 In our Crops Committee discussions
3 last night, we you know, thought a lot of that
4 would shake out in the rulemaking. There's
5 still more options or more opportunities for
6 public comment, moving forward with this, if
7 the Board passes the recommendation.

8 We had the full support of Oregon
9 Tilth and Vermont Organic. I can't even read
10 my own writing here. So we had a lot of
11 comments in support, and we have made some
12 adjustments, I think, in response to public
13 comments. So let's quickly go through those
14 changes that we made. Just got to find it
15 here.

16 CHAIRPERSON GIACOMINI: While
17 she's doing that, one of the requests the
18 chair is going to make here at this meeting is
19 for the vice chairs to really try to keep
20 track of all the -- be the main person on the
21 committee that keeps track of any of the
22 changes that are made, so that we don't have

1 any --

2 We can have a better chance of
3 dealing with any discrepancies between what
4 Valerie's version and the chair's version and
5 all those different things. We have one more
6 for a cross-reference.

7 MS. ELLOR: Okay. So the changes
8 we made, and Gerry helped us out with this
9 before he left yesterday. He handed me a
10 paper with some suggested language changes,
11 and we did take a lot of that into account.

12 I'll ask the committee to jump in
13 and Gerry also, if you would, to jump in a
14 little more on what the history of and the
15 background of this document is, where it's
16 coming from, you know, what they were trying
17 to do.

18 So I'm going to ask before I even
19 go through the changes, ask Gerry to maybe
20 speak to how this whole thing came about and
21 has evolved, and why, you know, why we're even
22 doing this. Gerry?

1 MR. DAVIS: Gerald Davis, former
2 NOSB member, and one who worked on this
3 document in the various permutations of it
4 over the years, trying to move it forward. It
5 was handed to the Board that I was on in the
6 first, in the very first year, five years ago,
7 from work, I think it started in 2003.

8 So one of the reasons for -- to
9 answer some of the public comments about this
10 seeming somewhat prescriptive, is that in
11 discussing this and looking at the principles
12 of growing organic crops in, within
13 enclosures, which often means in containers
14 rather than in soil, directly planted in the
15 earth in other words, it's not necessarily
16 intuitive how it should be done in such a way
17 that it will line up with organic principles.

18 There are operations that are
19 currently certified by some certifiers, that
20 for example are using hydroponic methods. So
21 some of the comments from at least one
22 certifier is kind of reflecting that, that

1 they already have growers growing things that
2 they're certifying organic and they're using
3 at least, to some extent, hydroponic
4 principles.

5 Canada recently specifically
6 stated in their COR regulations for organic
7 that absolutely no hydroponics or aeroponics
8 are allowed. The program a couple of years
9 ago asked us to address that topic. So we
10 specifically covered that in this document.

11 So that's just -- hopefully that
12 explains a little bit on why we're trying to
13 be -- why we might seem a little prescriptive
14 and what we pointed out here because there's
15 one element of the organic community saying
16 well, these hydroponic operations should be
17 okay. They're already certified organic.

18 Then there's others saying
19 absolutely not. You can't have hydroponics in
20 organic, and you know, the Canadians agreed
21 and we received a lot of public comment the
22 last couple of years from the public saying no

1 way. There shouldn't be hydroponics in
2 organic.

3 What we tried to do when we
4 developed this document, and in my opinion, I
5 think some of the comments from some of the
6 people in the gallery the last couple of
7 meetings, I think they looked at the details
8 of the language and the specifics in the
9 regulation part, and they don't really look at
10 the background and discussion explanation in
11 some of the accompanying documents that we've
12 had floating along with this work.

13 As the committee went through
14 this, we have to really look at the regulation
15 as it exists, talking about soils and the
16 ecology of soils, and what makes organic
17 farming organic farming. Hydroponics, if you
18 really look at it, you do not have a soil
19 ecology for plants, to grow plants that
20 normally should be grown in a soil with its
21 accompanying ecology.

22 So we try to spend enough time in

1 the document to explain this, why it's
2 important, and not just say no hydroponics
3 because we say so, or because the Canadians
4 say so. But probably enough said about that.

5 When it comes to dealing with
6 containers, we didn't want to get real
7 specific on what a container is, because
8 there's all variations of what is used. But
9 the foundational premise of it all is that the
10 container is a vessel that keeps the plant,
11 the crop that's being grown from ever
12 contacting the soil of the organic parcel.

13 So it has to be a vessel and
14 associated equipment like floor mats that
15 absolutely would prevent that plant from
16 rooting into the ambient soil underneath,
17 which would allow us to explain why rotations
18 and so on and so forth are not necessary in
19 that situation.

20 Greenhouses are expensive to build
21 and maintain. There's a very short list of
22 crops that financially will work in a

1 greenhouse, that make enough income, food
2 crops that is. There's lots of ornamental
3 crops. But very few food crops that will
4 allow for -- to make enough money to grow in
5 greenhouses and make it all work.

6 So to do organic vegetable crops
7 or fruit crops in a greenhouse, you have some
8 rotation problems. You just can't keep
9 growing back to back to back to back; hence,
10 the reason for the containers. Now I don't
11 want to get off track.

12 MS. ELLOR: So if you could just
13 be available to us as we go through the
14 discussion, that would be probably very
15 helpful.

16 MR. DAVIS: Do you want me to stay
17 here while you do it, or go back there?

18 MS. ELLOR: Oh, go sit down and
19 relax.

20 MR. DAVIS: Thank you.

21 MS. ELLOR: Enjoy the show. As I
22 said, we did get together last night as a

1 Crops Committee very late, you know. Some of
2 us had had some things to drink, but I think
3 that we made -- we responded to the
4 preponderance of the public comments that came
5 in on this wave of public comments, and we had
6 tried to respond during the past public
7 comment periods, we responded to those as
8 well.

9 So this document is a very
10 different document than you saw even in the
11 fall of last year, when it was a discussion
12 document. So going through the first,
13 throwing out the first change that we made
14 under 205.203(c), we've added the language
15 "sprouts." The sprouted radical and hypocotyle
16 of seeds are produced without soil by design
17 are not subject to this recommendation.

18 So that doesn't, you know, that
19 handles the sprout concern, and scrolling
20 down, we made some changes to match up the
21 titles in our actual recommendation with the
22 title of the recommendation. So we have

1 places where we had in the titles "Greenhouse
2 Production Systems."

3 We have changed to "Terrestrial
4 Plants in Containers and Enclosures
5 (Greenhouse)," and we use the two terms kind
6 of interchangeably. But I've made that change
7 in a couple of places.

8 Going down to 205, 205 -- I'm in
9 the wrong place -- 205.209(b), (d), "Producers
10 may use supplemental CO2." We have just
11 struck that, and our rationale for that is
12 that there are natural ways to produce CO2,
13 which is in the trade already. If people want
14 to use synthetic CO2, then that's going to
15 have to be petitioned, and that was a comment
16 that came up quite a lot.

17 And the other change, and I hope I
18 captured this, and it seems like I did not,
19 can you read that other change for us, the one
20 that --

21 MR. MOYER: Under Section
22 205.209(b), following the last sentence of

1 that, we suggested adding the following
2 sentence: "Growing media used to produce crop
3 transplants should also be capable of
4 supporting a natural and diverse soil
5 ecology."

6 MS. ELLOR: Were you able to
7 capture that, Valerie?

8 MS. FRANCES: Is this the new (d)?

9 MR. MOYER: B. B as in Boy.

10 MS. ELLOR: This is the last
11 sentence in (b), and I did not put it in. I
12 somehow forgot to do that. So if we could add
13 that in?

14 CHAIRPERSON GIACOMINI: Okay.
15 While they're doing that, I would just like to
16 make one, I guess it's a clarification on this
17 document, for anybody that might really be
18 looking at it in detail, and could be
19 concerned about a problem.

20 At the end of the document, it's
21 listed as being seconded by a "Rigo Delgado,"
22 who is no longer on the committee, on longer

1 on the Board. Everyone needs to be aware that
2 our turnover of new members is not meeting to
3 meeting. It's January 24th, and the date of
4 the document is January 23rd.

5 MS. ELLOR: Oh, thank you Dan. I
6 forgot to mention that. You know, we have
7 been working on this document for so long and,
8 you know, right or wrong, it wasn't meant to
9 exclude anyone new from acting on this
10 document. But we wanted to make sure to
11 include the people who had worked so hard on
12 it. So we voted on this before the Board,
13 before the Crops Committee turned over.

14 CHAIRPERSON GIACOMINI: Well, it's
15 also a matter that, you know, we had a
16 tremendous amount of work and we were working
17 on various projects, and if that's when it's
18 done, the committee has the right to move
19 ahead with it then.

20 MS. ELLOR: Okay. So the other
21 change reads "Growing media to use to produce
22 crop transplants should be capable of

1 supporting natural and diverse soil ecology."
2 That was to make sure that, you know, it was
3 clear that transplants are covered under this
4 document.

5 MS. FRANCES: A quick question.

6 CHAIRPERSON GIACOMINI: Valerie.

7 MS. FRANCES: There was a sentence
8 before the last sentence that you just had me
9 add in, that I think sort of partially said
10 the same thing. So I was trying to make sure
11 you weren't redundant. It says "Growing media
12 shall contain sufficient organic matter
13 capable of supporting natural and diverse soil
14 ecology."

15 MS. ELLOR: Yes, and we did mean
16 to leave that in, yes.

17 CHAIRPERSON GIACOMINI: So you
18 have both statements?

19 MS. ELLOR: We do.

20 CHAIRPERSON GIACOMINI: Okay.

21 MS. ELLOR: And I think we could
22 open it up for discussion.

1 CHAIRPERSON GIACOMINI: Any
2 discussion.

3 (No response.)

4 CHAIRPERSON GIACOMINI: No
5 discussion from the Board?

6 MS. ELLOR: Wowie-gazowie.

7 MR. MOYER: We used them all up on
8 the other --

9 MS. ELLOR: Okay. Well then that
10 --

11 CHAIRPERSON GIACOMINI: Oh, John
12 can't let it go. Okay, John.

13 MR. FOSTER: Well, I just assumed
14 I wouldn't be the only one, but so I -- so
15 coming on the Board the day after this was
16 passed, and I respect all the reasons that it
17 happened when it happened.

18 So at the risk of being something
19 of the armchair quarterback, I look forward to
20 the continued opportunity to change this as it
21 goes through the process. I do feel pretty
22 strongly that this -- it's a little

1 overwrought, and I think there's some mixed
2 priorities in it.

3 I think it gives the appearance to
4 me of something that started out as one thing,
5 and maybe halfway or a third of the way
6 through got added to, a little like a house
7 with different architectural styles, with
8 three different contractors a little bit.

9 I'm not saying -- I do think that
10 the changes that were made last night were
11 appropriate, but I would -- I would push it
12 farther and I'll provide that important
13 content as the opportunities arise.

14 CHAIRPERSON GIACOMINI: I think in
15 any case like this, you know, the risk is that
16 you have the support of old members. You may
17 not get the support of new members for
18 whatever reason.

19 MR. FOSTER: That's the process
20 sometimes.

21 CHAIRPERSON GIACOMINI: Just for
22 the record, Madam Chairman, could you give us

1 the -- who made the motion, the maker of the
2 motion and the second, and the vote on these
3 amendments, which would have been within this
4 committee structure?

5 MS. ELLOR: Yes. Jeff made the
6 motion. I seconded and the vote was unanimous
7 to accept these changes within the committee.

8 CHAIRPERSON GIACOMINI: Okay,
9 thank you. Any further discussion on this
10 document?

11 MS. ELLOR: Hallelujah. Then that
12 concludes the Crops Committee for this
13 morning. Thank you.

14 CHAIRPERSON GIACOMINI: All right,
15 thank you. We'll move ahead now to the
16 Livestock Committee, with Acting Chair Jeff
17 Moyer.

18 MR. MOYER: Okay. Starting with
19 the Livestock report, I would be amiss if I
20 didn't mention the absence of Kevin Engelbert.
21 Sitting in this position, figuratively and
22 literally, I'm only half the man that Kevin

1 is, particularly as it relates to the
2 documents that I'm going to bring forward on
3 Kevin's behalf.

4 Kevin certainly knows these
5 documents inside and out, far better than I
6 do, and I will lean heavily on the rest of the
7 Livestock Committee to fill in the gaps, which
8 I'm sure I will leave many of.

9 Also, I'm standing in as co-chair
10 with Wendy. Kevin and Wendy agreed that this
11 being Wendy's first meeting, it may be a
12 little taxing for her to grab everything
13 that's happening. Literally drinking from a
14 fire hose would be less than adequate in
15 describing how it feels sometimes sitting in
16 this position at your first meeting.

17 So I will be standing in, at least
18 at this point, for Wendy and Kevin, but Wendy
19 will join in as we move forward. I'm sure the
20 next recommendation that we have in front of
21 the Board will get some discussion, as well as
22 the last one on inerts. This one is the

1 methionine recommendation.

2 I'm going to keep my presentation
3 fairly short, because most of the Board
4 members are familiar with this material. It's
5 been in front of us many times, and the
6 background statement of our recommendation
7 calls that to your attention.

8 This is the, I believe, the fourth
9 time in the last few years we've been looking
10 at this material. Each time, it's been
11 petitioned for an extension or a removal of
12 the sunset clause, so that the material could
13 be permanently on the usage list for poultry
14 producers.

15 The recommendation that we had in
16 front of the committee, if you can bring that
17 up, Valerie, the recommendation was for a set
18 amount of material to be used by different
19 categories of poultry. I'll just read the
20 recommendation. It was to amend 7 CFR
21 205.603(d)(i) as follows:

22 "Read DL-Methionine," "DL-

1 Methionine hydroxy analog and DL-Methionine
2 hydroxy analog calcium," gives the CAS
3 numbers, "for use only in organic poultry
4 production until October 1st, 2015, provided
5 that the total amount of synthetic methionine
6 in the diet remains below the following
7 levels, calculated" -- this is important --
8 "calculated as an average pounds per ton of
9 100 percent synthetic methionine."

10 So they were asking for an average
11 over the life span of the bird, methionine in
12 the diet over the life of the bird, I'm sorry.
13 "Laying chickens, four pounds; broiler
14 chickens, five pounds; turkeys and all other
15 poultry, six pounds."

16 The committee voted unanimously, I
17 believe, to reject this petition for several
18 reasons. We thought the rates of the pounds
19 of material were relatively high, and the fact
20 that they were averaged over a long period or
21 averaged over the life span of the bird meant
22 that in certain cases, they would be getting

1 quite a bit of, or could conceivably get quite
2 a bit of methionine, synthetic methionine, and
3 other times maybe not as much.

4 Instead, the committee made a
5 different recommendation that we have in front
6 of you for your consideration as well. That
7 recommendation really came from listening to
8 public comment. We heard a lot of it
9 yesterday.

10 We've heard it over the last few
11 years, and they range very much from consumer
12 groups who want, or represent their
13 constituencies as wanting to remove methionine
14 completely from the list and have it sunset
15 and disappear, as was the -- some of the
16 conversations in previous years, to folks from
17 the poultry industry, whom you just heard
18 yesterday and we've heard at previous
19 meetings, saying that they want these levels
20 that they've asked for.

21 The Livestock Committee has
22 attempted to seek a balance between those two

1 different constituent groups, and also to sort
2 of try to put this methionine question to rest
3 for a greater length of time, so we don't have
4 to deal with these constant petitions coming
5 almost on an annual basis, from the Methionine
6 Working Group or task force.

7 That recommendation is as follows:

8 "To amend 7 CFR 205.603(d)(i) as follows: DL-
9 Methionine, DL-Methionine hydroxy analog and
10 DL-Methionine hydroxy analog calcium, for use
11 only in organic poultry production until
12 October 1st, 2012, at the following maximum
13 levels per ton of synthetic methionine per
14 feed ration:

15 "Laying chickens, four pounds per
16 ton; broiler chickens, five pounds per ton;
17 and turkeys and all other poultry, six pounds
18 per ton." In case you don't, can't grasp the
19 nuance between those things, what we're doing
20 is we're giving them what they've asked for
21 until the year 2012.

22 At that point, after 2012, "after

1 October 1st, 2012, the following maximum
2 levels per ton: Laying and broiler chickens,
3 two pounds per ton; turkeys and all other
4 poultry, three pounds per ton."

5 The point being that we've
6 reduced, after 2012 we've reduced the amount
7 of methionine in our recommendation that would
8 be allowed to be fed synthetic methionine to
9 the poultry birds, and then it would fall
10 under regular sunset from then moving forward.

11 I believe I captured that
12 correctly. Other members of the Livestock
13 Committee?

14 CHAIRPERSON GIACOMINI: Yes. As
15 chair, I'm certainly going to try to not drive
16 the discussion, but when it's relevant to the
17 recommendation we're discussing, I'll chime
18 in, and I think this is one of those cases.

19 The other change that we made in
20 the recommendation was to take away the
21 average over the life span. These are maximum
22 amounts for every kind of feed that's mixed.

1 So it's not going to call on the certifiers to
2 have to deal with that calculation.

3 One of the issues that was brought
4 up yesterday was, well, where did you come up
5 with these numbers? Was it scientifically
6 done? Was it from this organization, was it
7 that university? It wasn't done from that,
8 but it wasn't -- they weren't just made up
9 either.

10 I called a fair number of feed
11 mills in California that number one I knew
12 were not part of the methionine task force,
13 were not plugged in on that kind of a
14 knowledge level, and also that I knew of that
15 I could get information from because of my
16 relationship in working with nutritionists in
17 the feed industry in California.

18 I asked them for a -- no
19 proprietary information guys, just tell me how
20 much methionine are you putting in in all your
21 different kinds of poultry mixes. They would
22 give me a rundown, from starters to pullets to

1 broilers to layers to turkeys to ducks, and
2 some of them, I think, one of the mills that
3 I talked to listed the amount that they were
4 currently using as pretty much representing
5 the amount that the task force was asking for
6 to use on average.

7 There were -- I did not find a
8 single mix from a single mill that asked for
9 more than what was being asked, that was being
10 requested. So that was our justification for
11 not going with the average, in addition to the
12 burden with the certifiers of the calculation.

13 The other issue is that I found,
14 in those conversations, a couple of mills that
15 were already including as little as half the
16 amount of methionine in their mixes, according
17 to these categories, that were being
18 requested. They were already using only about
19 half of the amounts.

20 So that was basically the
21 framework that we used, and then we took those
22 numbers and we worked as a committee through

1 Wendy's connections with a number of
2 professors, animal welfare people, poultry
3 nutritionists, to find a number that -- the
4 numbers that we were comfortable at leaving,
5 at setting as the benchmark.

6 So there was background, there was
7 effort, there was work. It was not pulling
8 out a hat, short straws or anything like that.
9 Then the final thing is taking off the date,
10 so that this entire issue goes in sunset. So
11 in the five years after it would transfer
12 over, well that's a clarification. Miles,
13 would that be five years from when it's
14 posted, or five years from the last transition
15 date to the step-down?

16 MR. NEAL: For clarification, this
17 is Arthur, if you put methionine back onto the
18 National List, you're asking can it be used
19 for an additional five years? Is that the
20 question?

21 CHAIRPERSON GIACOMINI: No, no.
22 The question is the recommendation, it gives,

1 takes an unlimited use of methionine with a
2 drop dead date. We're changing that listing
3 to a qualified amount for X period of time.
4 Then a reduced amount after that date, that
5 would become the sunset review.

6 My question is does the sunset
7 review kick in from when this change is posted
8 in the Federal Register, or from the date of
9 that change?

10 MR. NEAL: Posting in the Federal
11 Register. When the material is added to the
12 National List.

13 CHAIRPERSON GIACOMINI: Okay.
14 That's all I have. Any other questions and
15 statements, comments? Steve?

16 MR. DeMURI: Well, if I understand
17 what you had just asked, because I had same
18 question. So that would mean that the reduced
19 rate would be sunsetted in 2017?

20 CHAIRPERSON GIACOMINI: Yes. It
21 would -- the substance would be on --
22 essentially, well --

1 MR. McEVOY: No, I don't think so.

2 CHAIRPERSON GIACOMINI: No?

3 MR. McEVOY: If it's coming off in
4 October 2010 --

5 CHAIRPERSON GIACOMINI: Yes, it
6 would be 2015.

7 MR. McEVOY: And we do rulemaking
8 before October of 2010, it's going to be five
9 years from that date.

10 CHAIRPERSON GIACOMINI: It would
11 be 2015. So one item would be on the list not
12 in this same cycle.

13 MR. MOYER: I should have
14 mentioned that methionine, as it appears on
15 the list today, has a drop dead date, not a
16 sunset date. That drop dead date is October
17 of 2010. So that's why we need to act on it
18 at this meeting, or before the next meeting
19 it's gone.

20 If don't do anything, it
21 disappears completely. We did listen to the
22 poultry industry and felt that they did have

1 some convincing arguments, that they need
2 some. But we also listened very intently to
3 the consumer groups that said they don't want
4 any. So we're trying to find a balance that
5 will allow the poultry industry to maintain
6 the integrity of the scale that it has today.

7 CHAIRPERSON GIACOMINI: Miles.

8 MR. McEVOY: Yes. Methionine
9 comes off in October 2010. If you make a
10 recommendation to continue it on the list, we
11 still need to go through proposed and final
12 rulemaking. So the likelihood of that
13 happening between now and October, wow. I
14 don't know. You look at other National List
15 rulemaking --

16 CHAIRPERSON GIACOMINI: It's the
17 time frame we had, based on when we received
18 it.

19 MR. McEVOY: Right, right.

20 MR. MOYER: We were very adamant -
21 -

22 MR. McEVOY: But that's going to

1 be very challenging.

2 MR. MOYER: We were very adamant
3 to the poultry industry that they needed to
4 get their petitions into us in a much timelier
5 fashion than we received them.

6 CHAIRPERSON GIACOMINI: Yes. I
7 think we received this, I believe, a week
8 before our deadline for posting documents for
9 the November meeting, I believe. It was like
10 the last weekend in August is when we received
11 it.

12 The other thing is, and relevant
13 to Jeff's comment about getting all these
14 petitions, we meant to do it this way as a
15 Board the last time we had this review. The
16 reason we gave the drop dead date that we did
17 is because of the complexity of this issue and
18 the turnover of Board members.

19 We knew we would have ten of the
20 same people that had reviewed this substance
21 previously still on the Board, and that every
22 year we extended that out, the more

1 reeducation of the entire process we would
2 have to do.

3 So yes, it was very close to when
4 we had it last time. We intended to do that,
5 to have the people who have gone through the
6 process before. Shannon, do you have -- okay.
7 Just like that seat better. Any other
8 statements, comments, questions? Katrina?

9 MS. HEINZE: Well thank you for
10 the nice segue about reeducation. As one of
11 those folks who should remember, because I was
12 around, I am finding that given that we've
13 discussed methionine at almost every meeting
14 that I've been on the Board, I am a little
15 fuzzy on why we think methionine is bad
16 anymore.

17 Like I kind of lost -- you know,
18 early on, there was a lot of discussions about
19 why consumer groups don't like it, and I just
20 can't remember. I'm not saying I don't agree
21 with it; I just need a refresher.

22 MR. SMILLIE: Yes. My

1 understanding is because it's a synthetic, and
2 the poster child for a failed sunset process.

3 CHAIRPERSON GIACOMINI: Tina.

4 MS. ELLOR: There's a lot of
5 feeling, I think, in the public eye, that it
6 is a growth promoter and not that -- it's used
7 to -- I guess Jeff could explain this better,
8 because I've heard him say it so many times.
9 Go ahead, Jeff.

10 MR. MOYER: Well, in some cases,
11 it's used to allow a type of production
12 standard and practice that many consumers
13 don't like. Overcrowding, for example, is one
14 thing. Yes, if birds have access to pasture,
15 have more space, have more outdoor access,
16 they don't need as much methionine.

17 So it's a reflection of how the
18 industry has grown up conventionally, and to
19 some extent now organically, and those
20 production practices in the eyes of the
21 consumers.

22 MS. HEINZE: So it's not a

1 specific objection to the material, but the
2 production practices that that material
3 enables?

4 MR. MOYER: I would say that's a
5 clearer description, yes.

6 MS. HEINZE: Okay, thank you.

7 CHAIRPERSON GIACOMINI: I would
8 have to spend some time with OFPA, to see if
9 there's any further constraint on that, though
10 as a nutritionist, I would certainly object to
11 the use of an amino acid being described as a
12 growth promoter.

13 Balanced nutrition is balanced
14 nutrition. The birds growing better is
15 sometimes a matter of man getting out of the
16 way. We can talk about management facilities
17 and other issues, but this is absolutely by no
18 means -- my hairs are standing up. No, it's
19 not a growth promoter. Wendy? I'm sorry.
20 Jay was already in line.

21 MR. FELDMAN: That's okay.

22 MS. FULWIDER: Methionine is an

1 essential nutrient for growth, and they need
2 it for feathering, you know. Otherwise, we'll
3 have naked birds out there. Part of it is,
4 you know, we don't have a natural diet for
5 chickens. We're making them vegetarians. So
6 we do need, you know, the synthetic source of
7 methionine until we can come up with something
8 better.

9 So whether we need to promote USDA
10 to push for more research money or whatever,
11 we need to get natural methionine for these
12 birds.

13 CHAIRPERSON GIACOMINI: One of the
14 biggest requirements for this is the fact that
15 we have in OFPA the condition that sets that
16 with the restriction of slaughter byproducts
17 being fed to livestock. We have,
18 unfortunately, the creation of an abnormal
19 diet for one of our species. Jay?

20 MR. FELDMAN: Is there not
21 agreement on the committee that, what Jeff
22 mentioned earlier, that the management

1 practices affect the need and reliance on this
2 crop. Is there disagreement within the
3 committee on that issue?

4 CHAIRPERSON GIACOMINI: Wendy?

5 MS. FULWIDER: Well, management
6 practice is certainly part of it. But that's,
7 you know, just a piece, you know, because even
8 if you turned all these birds out on the
9 pasture, they're not going to be able to get
10 enough methionine from the bugs that are out
11 there.

12 MR. FELDMAN: Right. So my other
13 question, given what we heard in the public
14 comment period yesterday, is -- and the
15 frustration I'm feeling, given how Joe, he so
16 clearly articulated the problem as the poster
17 child for us not, or the difficulty in
18 connecting the dots between research,
19 management practices and product reliance.

20 Where I think where we may, I
21 don't know what our leverage is, Mr. Chairman,
22 on this, but it seems to me that there is

1 agreement that we can do better on the
2 management side, that product development is
3 in process, but is meeting some stumbling
4 blocks. Alternative products are in process.

5 I was hoping there was a way that
6 we could encourage NOP, other agencies within
7 the Department, to get behind this type of
8 research that we heard about yesterday, so
9 that we can close the loop and effectively put
10 in place all the pieces of the system, to
11 ensure that we do what we're supposed to do as
12 a board, and that is to seek to reduce the
13 reliance on synthetics, where possible.

14 CHAIRPERSON GIACOMINI: I think
15 that's a good idea, to talk to the program.
16 We are a FACA committee to offer
17 recommendations to the Secretary, especially
18 regarding the National List, and there are
19 certainly people in the industry that believe
20 the reading of OFPA was to keep the National
21 List no larger than necessary.

22 Maybe the Livestock Committee

1 could work with the program on the
2 justification and the reasonableness of a
3 recommendation that would encourage somewhere
4 along the line using the right language, and
5 encourage the support of research. Jeff?

6 MR. MOYER: Yes. Wendy and I were
7 just talking here between ourselves. There's
8 also the whole concept of breeds. Different
9 breeds have different methionine requirements.

10 But while there's an expectation
11 of consumers that we don't have, that we try
12 to reduce the methionine, there's also an
13 expectation on consumers that the chicken that
14 they buy has a certain look and appearance.

15 So they like, you know, a chicken
16 with a certain amount of breast meat or
17 whatever. There's all that piece that fits
18 into just the whole context of what we're
19 doing in the production system, as well.
20 It's very complex.

21 For that reason, we are
22 recommending, the committee is recommending

1 that we do allow some synthetic methionine to
2 remain in the diet.

3 CHAIRPERSON GIACOMINI: And the
4 turnover of those kind of management practices
5 would take years. I mean there are not the
6 eggs out. There's not the birds to create
7 enough eggs to replace all the birds, you
8 know. That would just be incredible.

9 There's also -- it would also
10 require an extreme amount of scientific
11 knowledge, and that is not -- this board would
12 have to do a lot more homework and deal with
13 a lot of issues to get to that level of
14 knowledge. Wendy?

15 MS. FULWIDER: One other thing
16 that's a real difference is that in organics,
17 the poultry that we use are the same breeds
18 that they use in the conventional industry,
19 and you know, that's real different than what
20 is happening with the pigs or the dairy cows
21 or some of the other species. So that's
22 something that they maybe need to transition

1 to as well, that would make a difference.

2 CHAIRPERSON GIACOMINI: Any other
3 comments on methionine?

4 MR. FELDMAN: The vote in the
5 committee -- I'm sorry. The vote in the
6 committee on this, was there any minority
7 position on this?

8 CHAIRPERSON GIACOMINI: No.

9 MR. FELDMAN: No.

10 CHAIRPERSON GIACOMINI: The
11 closest thing to a minority opinion on this is
12 that when I originally wrote this document, it
13 had another step-down, and the committee voted
14 to just go with one step-down, and I was happy
15 to go along with that.

16 But when I went through and I
17 found a number of feed mills that were already
18 feeding, including only half this amount of
19 methionine, with no encouragement and push at
20 all to find an alternative method of ration
21 formulation, it didn't seem completely out of
22 line. But I'm happy to go along with the

1 committee, so there was no minority position.

2 MR. MOYER: Yes. The committee
3 vote, Jay, was on a motion by Dan, seconded by
4 myself, five yeses. But there were three
5 people absent from that vote.

6 MR. FELDMAN: Including Kevin, I
7 imagine.

8 CHAIRPERSON GIACOMINI: Kevin was
9 included.

10 MR. MOYER: Kevin was on the vote.

11 CHAIRPERSON GIACOMINI: Yes. Joe?

12 MR. SMILLIE: Wendy's vote, were
13 you included in the vote?

14 CHAIRPERSON GIACOMINI: You were
15 on the call that day?

16 MS. FULWIDER: Yes.

17 MR. SMILLIE: Yes, okay.

18 CHAIRPERSON GIACOMINI: Any
19 further discussion?

20 (No response.)

21 CHAIRPERSON GIACOMINI: Okay,
22 Jeff.

1 MR. MOYER: The next item of
2 business before the Board from the Livestock
3 Committee is our recommendation for 205.603
4 and 205.604 sunset materials, and I'll call
5 everybody's attention to the spreadsheet,
6 Valerie. We'll go right to that. You should
7 have it somewhere.

8 We'll just go through those
9 materials. The committee did vote to relist
10 a bunch of the materials, but also are
11 suggesting that we vote to defer some of the
12 materials to the fall meeting, so that we can
13 collect more information and have put in
14 requests for TRs and questions to S&T on those
15 materials.

16 So I'll just go down them. The
17 ones that we are voting to approve would be
18 atropine, biologics vaccines, butorphanol,
19 chlorhexidine, electrolytes, flunixin,
20 glucose, hydrogen peroxide, iodine, magnesium
21 hydroxide, oxytocin, ivermectin, peroxyacetic
22 acid, phosphoric acid, tolazoline, copper

1 sulfate, lime hydrated, mineral oil, sucrose
2 octanoate esters, trace minerals, vitamins,
3 excipients, and on 204, we voted to keep
4 -- I'm sorry, on 205.604, we are suggesting
5 that we vote to keep strychnine as a
6 restricted or unusable material.

7 All the other materials on that
8 list will be deferred to fall.

9 CHAIRPERSON GIACOMINI: Just as a
10 note, even though the final vote date on this
11 was March 2nd, a tremendous amount of the work
12 on this was done before the turnover of
13 committees, and we were able to utilize the
14 expertise of Dr. Hugh Karreman, a
15 veterinarian, in analyzing the status in the
16 industry, for lack of a better term, of a lot
17 of these substances that we both included, and
18 put off for next time or requested a new TR.

19 MR. MOYER: I should also mention
20 that these were not unanimous votes. The
21 committee vote was split. Both motions were
22 made by Dan, seconded by Wendy, and both had

1 a three yes -- I'm sorry, a five yes and three
2 no vote.

3 CHAIRPERSON GIACOMINI: No, three
4 absent.

5 MR. MOYER: I apologize. Three
6 absent.

7 CHAIRPERSON GIACOMINI: They were
8 unanimous among people present.

9 MR. MOYER: That's right, thank
10 you.

11 CHAIRPERSON GIACOMINI: Steve?

12 MR. DeMURI: Since I'm sure you
13 kept up with the public comments better than
14 I did for livestock materials, can you give me
15 a brief summary of what kind of public
16 comments you saw on all these materials?

17 CHAIRPERSON GIACOMINI: I think
18 you got them all. There were some, I think
19 mostly --

20 MR. MOYER: Mostly supportive.

21 CHAIRPERSON GIACOMINI: They
22 supported the list. I mean they supported the

1 recommendation.

2 MR. MOYER: Yes. I didn't see
3 anything -- I didn't see anything that was
4 really --

5 CHAIRPERSON GIACOMINI: I didn't
6 find any --

7 MR. MOYER: I didn't find any.

8 CHAIRPERSON GIACOMINI: --that
9 specifically disagreed with any specific
10 single substance that comes to mind. If there
11 is, we will review it for the fall meeting,
12 and it will come up as we've discussed for
13 transparency.

14 MR. MOYER: Right. There is the
15 opportunity for new comments to continue to
16 come in on these.

17 CHAIRPERSON GIACOMINI: And that
18 sunset ANPR is still open for comments.

19 MR. MOYER: As per Dan's
20 instructions.

21 CHAIRPERSON GIACOMINI: So we
22 would encourage anyone to submit that.

1 Katrina?

2 MS. HEINZE: I maybe didn't follow
3 the list as closely as I should have. We did
4 get a comment from Hugh Karreman, that we
5 should relist except for furosemide. Is that
6 on our list for this meeting?

7 MR. MOYER: No. That list, that
8 material is, I believe, postponed or yes.
9 We've deferred that to the fall meeting,
10 because we've asked for further information in
11 TAP, which we use on a bunch of materials.

12 CHAIRPERSON GIACOMINI: There's
13 also a number of materials that have been
14 approved by this Board for recommendation for
15 listing, in a very similar category that the
16 Livestock Committee expects to only end up
17 with one. We currently have ivermectin. It's
18 not the committee's or the industry's
19 preferred substance.

20 At various times we've had
21 recommend -- petitions to put additional
22 things on. We've put them on as a better

1 alternative to ivermectin. When they are
2 listed, we will review, have somewhat
3 encouraged possibly the petition to remove,
4 and we don't know within, in feedback from the
5 program, exactly -- we believe now all of the
6 ones we have recommended will be listed.

7 Then we will proceed to work with
8 those, whether we can timely do that within
9 sunset or a recommendation to remove. Any
10 other comments?

11 MR. FELDMAN: Did we get any other
12 public comments on this besides Hugh?

13 MR. MOYER: I did not see any
14 public comment that individually called out a
15 specific material that they took exception to
16 our vote on.

17 CHAIRPERSON GIACOMINI: No. I
18 believe --

19 MR. MOYER: Most of them were
20 supportive of our vote.

21 CHAIRPERSON GIACOMINI: Yes. I
22 believe there were some certifiers who agreed

1 with our recommendations.

2 MR. MOYER: Now I would say in the
3 fall, that may be a different story, because
4 we pulled out the more difficult and
5 contentious materials to get more information,
6 and we'll be addressing those then. I believe
7 there are 11 of those.

8 CHAIRPERSON GIACOMINI: That was
9 part of the reason that we decided to proceed
10 the way we did progress-wise, with the blip in
11 the sense that ANPR, is that we knew within
12 each committee they had chosen the least
13 contentious issues that we were going to be
14 dealing with of the list.

15 So it's -- you could say it's not
16 really a great surprise that we didn't receive
17 a lot of negative comment. Any other comments
18 or questions?

19 (No response.)

20 CHAIRPERSON GIACOMINI: Okay.

21 Next one.

22 MR. MOYER: Okay. The next

1 material the Livestock Committee puts in front
2 of the Board has to do with Section
3 205.238(c)(i) of the standard, where we voted
4 to make some adjustments in the language back
5 in November of 2009, under the animal welfare
6 recommendation.

7 There was public comment regarding
8 that section I just read, 205.238(c)(i).

9 CHAIRPERSON GIACOMINI: Are we
10 going to (c)(i) or the definition?

11 MR. MOYER: I'm sorry. I'm just
12 going in the order that I have it in the book
13 here, and that's what I have next, unless I
14 missed something.

15 CHAIRPERSON GIACOMINI: On the
16 agenda, we're at the animal health care
17 product definition, is the next one.

18 MR. MOYER: I apologize, Mr.
19 Chairman. We'll come back to that document,
20 and we'll move on to the order that's
21 published in the agenda. Still under 205,
22 Section 205.238, Livestock Health Care Product

1 Standard, there was discussion in the language
2 that we used in the November 2009 document
3 that talked about the administration of drugs
4 and vaccines, but no real discussion about
5 animal health care products.

6 So we are proposing that we
7 include a definition for the term "animal
8 health care products" to include substances
9 which maintain or enhance animal health and
10 well-being, or help prevent illness or
11 disease.

12 Drugs as defined by the FDA, as
13 well as those substances viewed by the FDA via
14 regulatory discretion are subsets. So we're
15 attempting to change that definition.

16 CHAIRPERSON GIACOMINI: Well, what
17 happened at the November meeting with the
18 animal welfare document is that it came to our
19 attention that we had a problem in the fact of
20 everything was sort of listed as a drug, and
21 we had definition problems in dealing with
22 drugs, because that has specific definitions.

1 The first half of the effort to --
2 because a lot of these things are not
3 necessarily drugs, and Hugh could explain it
4 better than I can.

5 But to try and solve, the first
6 half of trying to solve that problem then, and
7 it was an error that we made in this document
8 and I would like us to fix it, is that we did
9 not -- the change we made then was adding
10 animal health care products under the listing
11 of excipients.

12 Then we came back for the second
13 half of this to include the definition of
14 animal health care products. We're hoping
15 that that will solve this, the drug issue. We
16 heard public comment from a certifier
17 yesterday that they did not believe it was.

18 It was our best stab at this time,
19 and once we get a chance to see how the whole
20 thing looks and feedback from the program, we
21 may have to take another stab at it again.
22 But that was the origin of this.

1 So we should have included the
2 definition, the listing of excipients from 603
3 that we passed in November in the regulatory
4 or in the background somewhere part of this
5 document, and we did not do that. We really
6 should include that before presenting it
7 tomorrow.

8 MR. MOYER: Yes, and OFPA
9 specifically calls out the ability of farmers
10 to administer some of these type of things,
11 like the homeopathic remedies or teat dips,
12 which aren't really drugs but they are health
13 care products.

14 CHAIRPERSON GIACOMINI: Any other
15 discussion?

16 MR. MOYER: Katrina.

17 CHAIRPERSON GIACOMINI: Katrina.

18 MS. HEINZE: I'm sorry. It's just
19 my day to be confused. I didn't get when I
20 read this recommendation that it's coupled
21 with November's animal welfare document. Did
22 I hear that correctly just now?

1 CHAIRPERSON GIACOMINI: Yes.

2 MS. HEINZE: So to fully
3 understand this, to see where this definition
4 would be used, I should go back to that animal
5 welfare document?

6 CHAIRPERSON GIACOMINI: That's
7 what we're adding. The key point is to read
8 from that document the change that was made to
9 excipients.

10 MS. HEINZE: Okay. Unfortunately
11 because we don't have Internet, I don't have
12 access to that. Does anyone have it on their
13 computer so I could look at it in the next
14 day, before we vote tomorrow?

15 CHAIRPERSON GIACOMINI: That would
16 have been the final recommendation. I don't
17 have that on my --

18 MR. MOYER: We can provide that,
19 yes.

20 CHAIRPERSON GIACOMINI: The final
21 recommendation for -- okay.

22 MR. MOYER: From November. Yes,

1 we have that.

2 MS. HEINZE: That would be useful.

3 CHAIRPERSON GIACOMINI: Yes. We
4 will include that in this before, when we look
5 at it tomorrow.

6 MS. HEINZE: Okay, thank you.

7 CHAIRPERSON GIACOMINI: Any
8 further questions?

9 (No response.)

10 CHAIRPERSON GIACOMINI: Okay,
11 Jeff.

12 MR. MOYER: Okay. Now we'll be
13 going, in my book backwards, in your book
14 forwards, to the clarification of Item
15 205.238(c)(i), and 205.238(c)(ii), as it
16 relates again, Katrina, back to the animal
17 welfare document and recommendation that we
18 made last November.

19 CHAIRPERSON GIACOMINI: Since you
20 asked for clarification on that, this is
21 actually slightly misleading. The problem
22 with (c)(ii) was attempted to be corrected

1 with the listing in excipients, and the new
2 definition. This is only a (c)(i) document.

3 MR. MOYER: I only have (c)(i)
4 information, so I'm trying to follow the
5 rules, Dan. It's not working very well for
6 me. As I said early on, I'm only half the man
7 Kevin is, and I'm sure he would have had this
8 down pat. So my apologies to the audience as
9 we go through this process.

10 Anyway, 205.238(c)(i) specifically
11 said in the language that we approved
12 initially last November, says, and I'll just
13 read it, "Self label or represent as organic
14 any animal or edible product derived from any
15 animal, treat it with antibiotics and
16 substances that contains a synthetic not
17 allowed under 205.603, or any substance that
18 contains a non-synthetic substance prohibited
19 under 205.604.

20 "Milk from animals undergoing
21 treatment with prohibited substances cannot be
22 sold as organic or fed to organic livestock.

1 Milk from animals undergoing," and this is the
2 specific language that I want to call your
3 attention, "milk from animals undergoing
4 treatment with substances having a withholding
5 time cannot be sold as organic or fed to
6 organic livestock during the withholding
7 time."

8 We got a lot of, or some comment
9 back from dairy farmers and producers of other
10 livestock, that keep their calves or their
11 young, whatever the animal is, on the mother
12 cow as a means of feeding the young stock,
13 that it's difficult for them to remove that
14 young animal from the mother if the mother is
15 being treated.

16 So that the bottom line, the
17 question that comes, sort of that comes out of
18 this discussion or that you need to consider,
19 as Dan and I were talking about it this
20 morning, really comes down to is the treatment
21 of the mother animal, does that render her
22 milk not organic or just not organic for sale?

1 If the milk is truly not organic,
2 then it could not be fed to the calf. But if
3 the milk is still organic but not legal for
4 sale during the withholding period, it could
5 still be fed to the calf.

6 I will also then call your
7 attention to the recommendation of this, of
8 the committee, which was to basically strike
9 that last line from that language that I just
10 read. So I can't read what the new language
11 was.

12 I guess I could. It just goes --
13 that last line that currently says "milk from
14 animals undergoing treatment with substances
15 having a withholding time cannot be sold as
16 organic or fed to organic livestock during the
17 withholding time." We just, the committee is
18 recommending that we strike that last
19 sentence.

20 At the same time, I call your
21 attention to the minority opinion. There is
22 a minority opinion on this recommendation,

1 that for all the reasons presented here,
2 suggests that we would be making a serious
3 mistake to remove that sentence, and that the
4 milk, while it may be considered by some
5 people organic, it should not be fed to young
6 stock whose --

7 It could be within a matter of
8 hours or days of birth, would be getting
9 conceivably some dosage of what you gave to
10 the mother coming into the young stock. There
11 was concern by the minority opinion, which was
12 written by Kevin Engelbert.

13 CHAIRPERSON GIACOMINI: Tina?

14 MS. ELLOR: Just to give a little
15 bit of history of how this happened, this
16 language that we're taking out was put in at
17 one of those late night meetings at an NOSB
18 meeting with the Livestock Committee, and it
19 was put in without any public input.

20 We, you know, heard about that
21 quite a lot, and decided that we needed to
22 address it, because it was put in after the

1 public comment and after the discussion, in
2 time for the voting. So there wasn't a chance
3 at that point for much public input on it.

4 MR. MOYER: Yes, and I will say
5 that the discussion at that particular meeting
6 was more concentrated on the dairy industry,
7 where people handle the cattle quite a bit.
8 The animals are much more accustomed to
9 possibly, or the operation may be accustomed
10 to having nurse animals that may be willing to
11 take on other calves or other young stock.

12 But there may be opportunities for
13 this, or places where this would fit into a
14 beef operation, where the cattle are out on
15 pasture, where you bring the mother cow in,
16 get her in a head gate, give her whatever
17 treatment you're giving, and then turning them
18 loose on pasture, where you have very little
19 control.

20 You can't walk up and pet them.
21 They won't accept alternate animals. It could
22 be sheep, it could be in many different

1 categories, where the milk is actually not
2 used for human consumption at all, but is only
3 fed to the calf.

4 Or you could have a situation
5 where you only have one animal that has just
6 given birth and there are no other substitute
7 mothers or opportunities for milk replacement
8 if you only had one cow. This would be in
9 that case an extreme hardship, because you'd
10 have nothing to feed that calf.

11 Or if you did feed it to the calf,
12 the calf could, would then be considered not
13 organic, and that's -- we felt that that was
14 an extreme hardship as well. But if you want,
15 I can read the entire minority opinion, or you
16 just read it for yourself, or maybe you have
17 read it.

18 CHAIRPERSON GIACOMINI: Could you
19 summarize the public comment we've received?

20 MR. MOYER: I'm going to ask Wendy
21 to do that, if you don't mind Wendy.

22 MS. FULWIDER: Some of the public

1 comment was positive and they're in favor of
2 it, for the reasons that I would argue for it,
3 and I would like to have the chance to do, and
4 some of them were negative, because they feel
5 that that milk has been -- it's not allowed
6 for sale and so then the calf shouldn't be
7 getting it either.

8 But my argument would be that, you
9 know, the cow is still organic. These are
10 substances that we have allowed, and why deny,
11 you know, the babies, you know, whether it's
12 dairy or beef or sheep or pigs or whatever,
13 why disallow them the use of that milk? You
14 know, it's going to go somewhere. Why, you
15 know, throw it down the drain? It's going to
16 end up in the water supply, it's going to end
17 up in the environment.

18 So I just think that's the wrong
19 way to go. The reason I think a lot of this
20 came about is because of the humane things,
21 that Hugh brought to the table here.

22 When I first got involved in the

1 organic industry, the big criticism that I
2 heard that I did not expect to hear was that
3 organic is not humane. What are you doing in
4 that industry? Animal welfare is your
5 specialty.

6 So now that we have all of these
7 wonderful things, you know, that prevent
8 suffering, it would be wrong, you know, to say
9 that we can't give this milk to the babies.
10 The other thing that we're going to do is
11 we're going to discourage farmers from using
12 pain meds, and these things are very seldom
13 going to be used.

14 It's only going to be a case if an
15 animal needs to be dehorned at a late age; if
16 she has to have some kind of surgery, you
17 know. Those are the only times these things
18 are going to come into play. It's not going
19 to be a routine use.

20 CHAIRPERSON GIACOMINI: One of the
21 issues -- oh now they're not paying attention.
22 One of the big issues on this is the question

1 of whether this milk is organic, not available
2 for sale or not organic.

3 MR. MOYER: Right.

4 CHAIRPERSON GIACOMINI: Does the
5 program have anything to say on that point,
6 that discussion?

7 MR. MOYER: I would mention before
8 they answer Dan that under the system, the cow
9 or the mother animal is still fed the
10 continuous organic diet, as is any of the
11 young stock, except for what milk they would
12 be getting. So there's still a complete --

13 CHAIRPERSON GIACOMINI: Well, the
14 potential --

15 MR. MOYER: The cow is not
16 rendered non-organic.

17 CHAIRPERSON GIACOMINI: Right.
18 The potential for withholding times could
19 eventually go to things that we have no idea
20 of right now, even to naturals that
21 theoretically could be something the cow could
22 eat in the field. So the implications of that

1 are huge.

2 But relevant to this is the milk
3 produced by a cow within the period of time of
4 a withholding time. Is there anything in OFPA
5 or the regulation that tells us that it is
6 milk not to be sold for human consumption, or
7 not organic milk?

8 MR. McEVOY: Okay. It's a very
9 good question. It's a complex question. We
10 want to consider it carefully and we'll get
11 back to you.

12 (Laughter.)

13 CHAIRPERSON GIACOMINI: Would it
14 be appropriate for the committee and this
15 Board to proceed with this recommendation, or
16 to wait for your response? I think the
17 committee, I would assume, from knowing the
18 people on the committee, the committee would
19 probably wish to proceed.

20 MR. McEVOY: Yes. I would think
21 that you would want to proceed to voice your
22 intent of how you would like the regulations

1 to be interpreted, or if there's a need for a
2 change to the regulations, of how you would
3 like to see that change made.

4 So you can certainly express your
5 intent of what you would like, and then we can
6 determine whether or not that would require a
7 regulatory change or just a clarification
8 through guidance, all right?

9 CHAIRPERSON GIACOMINI: Thank you.
10 Jay?

11 MR. FELDMAN: I had a question on
12 the minority report and sort of I'd like to
13 hear your response to this. Kevin writes that,
14 "On the extremely rare occasion that a non-
15 dairy livestock farm needed to treat a
16 lactating animal with a 205.603 substance with
17 a withholding time, in all likelihood the
18 animal would be too sick to produce milk, and
19 her young would be nursed by a surrogate
20 mother or fed by hand by a purchased organic."
21 Is that --

22 MS. FULWIDER: I would disagree,

1 because I mean I've -- with sows, I mean if
2 you have one that needs to have a surgery, you
3 know, on her hoof, and that's not going to
4 preclude her from producing milk, or dehorning
5 on a cow or you know, yes.

6 MR. MOYER: Yes. Any animal can
7 get hurt in the pasture situation, who needs
8 some sort of surgery or treatment, where they
9 might be given a material that has a
10 withholding time. I do suggest, as Jay is
11 doing now, that everybody read through the
12 minority opinion. I want to make sure that in
13 Kevin's absence, that that document is given
14 its full weight, since he is the chair of the
15 Livestock Committee.

16 He isn't here to argue his point.
17 I know that was one of his concerns, of not
18 being here and so I challenge all of you to
19 make sure that you read that minority opinion.

20 CHAIRPERSON GIACOMINI: The
21 essence of that opinion comes down to the
22 question of whether this is still organic milk

1 or not, and that's a huge part of it. Is it
2 organic milk that is not sellable for human
3 consumption, or is it not organic milk? If
4 that's the decision, are there other
5 implications that that leads us to. Jeff.

6 MR. MOYER: And Kevin specifically
7 calls that out on point five. Even though
8 they're not numbered, if you count the dots on
9 the side, point five of Kevin says milk is
10 either organic or it isn't. So he
11 specifically calls out that question.

12 CHAIRPERSON GIACOMINI: Jay.

13 MR. FELDMAN: I may have misheard
14 you. I thought you said the milk would not be
15 saleable as organic milk.

16 MR. MOYER: The milk would not be
17 saleable as organic milk during the
18 withholding period. But once that's over, it
19 would be again.

20 MR. FELDMAN: Right.

21 MR. MOYER: So that's why the
22 question that Dan says, is it organic milk,

1 not for sale to human consumption, or is it
2 not organic milk? It is an organic cow, it is
3 an organic calf, it is all fed organic feed.
4 But there is this small window of withholding
5 time.

6 The other issue that comes up
7 under animal welfare is also the bonding
8 issue, the concern that folks who raise
9 livestock have, in order to keep the young
10 stock with the mother, so that there is a
11 constant and initial and consistent bond
12 formed between the young stock and the adult,
13 as part of their natural behavior in the
14 world.

15 CHAIRPERSON GIACOMINI: Jeff,
16 you're up next. Did you have anything
17 specific? Okay, Valerie.

18 MS. FRANCES: I just want to
19 remind you that FDA's reason for it not being
20 sellable has nothing to do with it being
21 organic. We extend the withholding time
22 certainly, because it's organic. But the FDA

1 reason is really from a human consumption
2 perspective, as a safety issue of having drug
3 residues in milk.

4 CHAIRPERSON GIACOMINI: Wendy?

5 MS. FULWIDER: The Banamine or the
6 flunixin, that would be, you know, given to an
7 animal that is so sick she might not have
8 milk. But the thing with that is, you know,
9 that turns them around real quick, and then
10 she would have milk again.

11 You know, the other substances
12 that are on here are pretty specifically for
13 pain or for surgery. So that would not
14 inhibit milk production in any way.

15 The other thing is, you know, if
16 you have hogs, you know, and you have to take
17 the babies away from the hog, I mean that's
18 going to be quite harmful to the mother,
19 because you can't just -- well, I don't know.
20 It's kind of hard to go out and milk a hog.

21 (Laughter.)

22 MR. MOYER: Joe's willing to try.

1 I can see it on his face. He's ready to go
2 out. Bring that sow on. He's ready.

3 (Laughter.)

4 CHAIRPERSON GIACOMINI: Any other
5 comments on this point? Arthur.

6 MR. NEAL: Just a question. I
7 haven't had an opportunity to see the comments
8 on this particular recommendation. How many
9 producers, just an estimate, how many
10 producers commented on the recommendation, to
11 give you an idea of how practical it is?

12 MR. MOYER: Well Horizon.

13 MR. NEAL: Horizon?

14 CHAIRPERSON GIACOMINI: Yes.
15 Kelly Shea, Horizon, who is also a producer-
16 processor, had comments.

17 MS. FULWIDER: Organic Valley.

18 MR. MOYER: Organic Valley.

19 CHAIRPERSON GIACOMINI: Organic
20 Valley.

21 MR. MOYER: That's under
22 mentioned, comments on it.

1 MR. NEAL: But the comment --

2 MR. MOYER: Horizon supported the
3 minority report.

4 CHAIRPERSON GIACOMINI: Yes.

5 MR. NEAL: One more comment, and
6 just so you all know for future references
7 too. When we're making potential
8 clarifications to the standard such as this,
9 there's going to be -- this is not a non-
10 significant clarification. It has an economic
11 impact.

12 So as we get your recommendations,
13 the more representation we get from the
14 industry that is going to -- and the section
15 of the industry that it's going to impact,
16 it's going to help us more.

17 Because I can tell you now, if we
18 get this recommendation, it's going to take us
19 a long time to process it, because we don't
20 have any data to show OMB what type of impact
21 it's going to have on the industry. I'm just
22 being real. You don't want to hear that, but

1 it's the truth.

2 CHAIRPERSON GIACOMINI: Tina.

3 MS. ELLOR: There was a lot of
4 discussion about this at the last meeting,
5 when we put the language in, without any
6 public input. We had a lot of feedback from
7 certifiers that this is what's being done in
8 trade, and this is what's being done now.

9 CHAIRPERSON GIACOMINI: Jeff.

10 MR. MOYER: Yes. Just to stress
11 what Tina is saying, the negative impact would
12 come into effect if we voted for the minority
13 opinion. If we vote the way the committee is
14 recommending we vote as a Board, then there is
15 little, if any, change in the industry the way
16 it is actually being interpreted and
17 implemented in the field today.

18 CHAIRPERSON GIACOMINI: Yes. We
19 are essentially amending the document we did
20 in November. They would both come to you long
21 before you ever sat down and started
22 rulemaking on it. So there wouldn't be a

1 flip-flop change in that respect. Miles.

2 MR. McEVOY: Yes. This may be the
3 way that certifiers are interpreting it, but
4 we will take this question and give you a
5 formal response to what the regulations
6 actually mean in this regard.

7 CHAIRPERSON GIACOMINI: When? Joe
8 said ask when.

9 MR. McEVOY: Well, we gave you the
10 written response to all your recommendations
11 at the meeting this time. In the future, what
12 we'd like to do is get the written responses
13 to the Board, well let's say, within 90 days
14 after the end of the Board meetings. You'll
15 have them long before your deliberations for
16 the next Board meeting.

17 CHAIRPERSON GIACOMINI: And that
18 will be something that as you add your
19 resources and your manpower and each committee
20 has a representative at the program, that
21 communication will be much easier to
22 facilitate.

1 MR. McEVOY: Right, and then when
2 we send you that response, we'll make that
3 publicly available at the same time.

4 CHAIRPERSON GIACOMINI: Valerie?

5 MS. FRANCES: So the trigger will
6 be when the final recommendation from the
7 Board are posted, which is usually within 30
8 to 45 days after the meeting? That's the
9 trigger for the program then, that began their
10 response process?

11 CHAIRPERSON GIACOMINI: Well,
12 we're talking about a response in the
13 preparation of the document, is what you're
14 talking about? Isn't it Miles?

15 MR. McEVOY: No. We're talking
16 about a response to the recommendation that
17 you come out --

18 CHAIRPERSON GIACOMINI: Oh, okay,
19 okay.

20 MR. McEVOY: This is a new
21 question that will get you an answer for it.

22 MR. FELDMAN: I have a process

1 question then. If there is an enforcement
2 issue currently, because this process is going
3 on. Certifiers have been certifying as
4 organic this practice, and we don't have
5 answers to the regulatory effect or perhaps
6 the legality of this or your interpretation of
7 our authority here, why do we need to do this
8 right now before having that information?

9 I feel a little uncomfortable not
10 knowing what the reading of the statutory
11 authority is, and if we're not being -- if no
12 action is not disruptive to current practice,
13 and the NOP doesn't view it as an enforcement
14 issue, then shouldn't we get these answers
15 before we act? Isn't that the logical
16 progression?

17 MR. McEVOY: That would be one way
18 to progress. But there's -- you certainly
19 have the ability to take on issues that you
20 think are important for clarification, in
21 putting your best thoughts forward on what the
22 Board wants -- how the Board wants the

1 standards to be interpreted.

2 Then we can do a legal review to
3 say well this is -- that's fine. We can do it
4 that way, or we can say, "Well, if you want it
5 to be interpreted that way, in order for us to
6 do it that way we need to do a regulatory
7 change." It can go either way.

8 MR. FELDMAN: Yes. I've been
9 arguing in committee to go the latter way, to
10 get the legal ruling, find out what the
11 parameters are for authority, work within the
12 parameters of our authority and then act.

13 I think I would argue to the Board
14 that that should be -- that the methodology by
15 which we operate, and this is a good place to
16 begin because we're not having any impact on
17 current practice by not acting.

18 MR. McEVOY: The other thing I'd
19 like to say is that we support the decisions
20 that certifiers are making. They're
21 accredited certifiers. They're audited.
22 They're doing an excellent job of making good

1 judgment calls on the way that the NOP
2 regulations are written.

3 These kinds of questions come up
4 all the time. What we're trying to do is not
5 answer them in letters. We take them under
6 very thorough consideration, and when we make
7 a determination, we want to make that publicly
8 available to everyone, to the certifiers, to
9 the certified operations, put them on the
10 website, so it's a very open and transparent
11 process.

12 So that's why those kinds of
13 questions we're asking for clarification.
14 We're a little hesitant of just answering them
15 without thorough and careful consideration of
16 the impact.

17 CHAIRPERSON GIACOMINI: Well I
18 think that in itself, though, is part of the
19 answer, in that it's not a simple question
20 that has an easy answer, and to a great extent
21 that's why I ask the question.

22 Because one side of -- one group

1 of people says, thinks that it feels that the
2 regulation says one thing. Another one says
3 well no, you're absolutely and completely 100
4 percent wrong. It says this over here.

5 In asking the question, the answer
6 from you today is it's not a simple question,
7 and it is not decided absolutely one way or
8 another. So that is -- that is an answer
9 relevant to this issue. Can we finish this?
10 Jeff, in responding to Jay's --

11 MR. MOYER: Well, just in response
12 to Jay, I think because this is a language
13 change in a document that we approved last
14 November, and this is a clarification of that,
15 I think it is completely relevant that we vote
16 on it today, to indicate to the program which
17 direction we want to go with the clarification
18 of that language. Then let the chips fall
19 where they do.

20 But if it was just a document in
21 and of itself, I would agree that maybe you're
22 right. But because this is a piece of a much

1 larger document that we've already voted on
2 and approved, and put in front of the program,
3 I think if we have a decision to make or a
4 choice in which direction we'd like to see
5 that go here today, it would be very
6 beneficial for them to know that in advance.

7 CHAIRPERSON GIACOMINI: Right. To
8 go back a little bit on history in that
9 November document, the reason within -- that
10 this paragraph came up within the animal
11 welfare document that we were working on, was
12 a concern that it was not clear enough, that
13 milk from cows that had received prohibited
14 materials, antibiotics for instance, and I'm
15 not saying this exists, but the concern was
16 that it was not clear enough that that was not
17 legitimate to be fed to the calves, okay.

18 Either in milking that cow through
19 that withholding time, in a separate bucket,
20 or putting that cow out for calves to nurse.
21 The intention of the Livestock Committee in
22 opening up this paragraph was to be clear that

1 that was not allowed.

2 On the last morning, in an on-the-
3 fly situation, we ended up with language that
4 many people on the committee in reviewing it,
5 and a number of people that we received
6 comments from the community, felt that we had
7 just -- we had put in the wrong sentence.

8 In this case, we believed we put
9 in a sentence that should not have been there.
10 But that's why we opened up the whole
11 paragraph, was to be clear on that one issue.
12 Any other questions?

13 (No response.)

14 CHAIRPERSON GIACOMINI: Now I
15 would like to say one other thing. Is
16 Livestock almost -- yes. Wendy, you're going
17 to have to take over if Jeff's not here.

18 MS. FULWIDER: Yes.

19 CHAIRPERSON GIACOMINI: There are
20 processors in the industry that do not allow
21 dual operations within their producer groups.
22 There are processors that do allow dual

1 operations, in that they have an organic dairy
2 and a non-organic dairy. That is not within
3 the regulation, but that's their right.

4 There are also processors that
5 specifically have already said "you can't do
6 this." But that's not that it's being done,
7 that that policy comes from directly,
8 necessarily from the regulation. Jeff. Wendy
9 is so happy you're back.

10 MR. MOYER: I'm always happy.

11 CHAIRPERSON GIACOMINI: Are we
12 ready to move on to discussion on the stocking
13 charts. Jeff?

14 MR. MOYER: Okay, Mr. Chairman.
15 That concludes the recommendations from the
16 Livestock Committee, and before I move onto
17 the next item, I'm going to say one more time,
18 please read Kevin's minority opinion, in light
19 of the fact that he's not here.

20 The next item the Livestock
21 Committee has to put in front of the Board has
22 to do with the stocking rate and density

1 charts that we pulled out of the animal
2 welfare document back in November of 2009, to
3 give the committee and the industry a chance
4 for input. This is just a discussion document
5 for us today, and I don't know. Valerie, if
6 you can pull up the chart?

7 The committee has a blank chart on
8 our discussion document, along with some
9 charts that were supplied. I believe Wendy
10 was a great asset in pulling these things
11 together. The Crop Cooperative Stocking
12 Density Chart, the Canadian chart, and the GAP
13 outcome standards-based charts are all made
14 available to the Board to look at.

15 We heard a lot of conversation
16 from the poultry industry in particular on
17 these densities, and happy to hear that. I
18 know at the last meeting, I believe it was in
19 November, the poultry industry said on the
20 record that they don't know where they were in
21 the last few years.

22 They were probably asleep at the

1 switch, but they're glad to be engaged now,
2 and we're glad that they are engaged as well,
3 because we need information from industry,
4 from producers and from consumer groups, and
5 they're obviously engaged as well, in how we
6 begin to fill out this chart, or if we
7 actually do.

8 We heard some conversations
9 yesterday that maybe we don't need a stocking
10 rate chart like other certifying or standards
11 have. So I guess at that point, I just want
12 to open it up for discussion among the Board,
13 about how we're going, which direction we see
14 ourselves heading.

15 The goal of this, of the Livestock
16 Committee, is to finalize this into a voting
17 document for the November meeting, so that we
18 can add this piece to the animal welfare
19 document, which would conclude that document
20 in whole, so the Board can act on it. I'm
21 sorry, so the program can act on it.

22 CHAIRPERSON GIACOMINI: Any

1 discussion? Wendy?

2 MS. FULWIDER: Okay. I know
3 American Humane and Humane Farm were all
4 mentioned yesterday, as well as GAP and Humane
5 Society was here and made a comment as well.
6 I work with American Humane and Humane Farm
7 and GAP, and I talk with the Humane Society as
8 well.

9 So of course you see with CROPP,
10 you know, we did our own standards. I think
11 the outcome-based standard is really
12 important, and we don't want to tell farmers
13 how to farm and it's really difficult to tell
14 farmers how to farm, especially when you have
15 farmers in different climates.

16 We have the guys in Wisconsin, we
17 have the guys in Texas, and it's a real
18 different situation. A lot of these standards
19 want outdoor access 24-7, and that's not a
20 good thing for young animals in the winter
21 time. It's a real difficulty, you know, for
22 farmers that already have buildings in place.

1 So I think it's really good to
2 gather, you know, how our -- what densities
3 our farmers already have, and I think that's
4 a really good thing to do, and then, you know,
5 make a decision after that. But then, you
6 know, still with the outcome-based standards,
7 there are core criteria.

8 You know, are the animals clean.
9 Are they in good body condition. Are any of
10 them lame? You know, there are simple things,
11 you know, that auditors can go out and look at
12 and our own organic certifiers can look at and
13 see if we have a problem or not.

14 The other thing is they need to be
15 well-bedded. Every animal needs to be able to
16 lie down at the same time in a well-bedded,
17 clean, dry spot, you know. So there are
18 simple things that you can look at, where you
19 don't need to go out and measure everything.
20 Of course, if you have dairy cows, every cow
21 needs a bed.

22 And when you look at all of these

1 other standards, they're not the same. You
2 know there's no uniformity in any of them,
3 which is a huge problem. So it isn't an easy
4 thing, and it's something we need to really
5 talk to a lot of farmers about, and I know
6 they talked about doing, going out and talking
7 to different farmers and different groups. I
8 think that would be a really good thing to do.

9 CHAIRPERSON GIACOMINI: Jeff.

10 MR. MOYER: Yes. I just wanted to
11 mention that the Livestock Committee does also
12 listen and has heard from the public comment,
13 and the idea from consumers that they want to
14 see birds be able to move around freely in
15 these houses.

16 But yet from industry, we
17 recognize that they have to be able to
18 function financially and have a great deal of
19 capital invested in their operations.

20 So trying to find that balance
21 between consumer expectations advertising and
22 the realities of the real farm world is the

1 challenge, that not only this committee but
2 the entire board faces, as we wrestle with
3 this document. But it is quite important that
4 we come to some conclusion on it.

5 CHAIRPERSON GIACOMINI: Steve.

6 MR. DeMURI: We also heard quite a
7 few comments yesterday from producers who
8 claim that their birds like to be inside. You
9 can give them 100 miles of range and they stay
10 inside. I have a question for Joe Smillie.

11 From a certifier perspective, do certifiers
12 need stocking densities to be able to
13 determine whether or not producers are in
14 compliance with animal welfare regulations?

15 MR. SMILLIE: Livestock's not
16 quite my bailiwick, but the answer is we've
17 dealt with them both ways. In fact, maybe
18 there's other fellow certifiers out there that
19 could answer probably better than I can. But
20 we've dealt with them both ways.

21 We actually, we thought it would
22 be a good idea at my company to actually set

1 up what we thought were stocking rates, right?

2 So we did that, and you know, we have non-
3 compliance for it actually, because that was
4 above and beyond the current regulation.

5 So you know, it's -- you know, I
6 thought what Temple Grandin said at the OTA
7 conference in D.C. was appropriate. Every
8 situation's different, and inspectors have got
9 to be able to go in and judge based on the
10 situation. There's no one magic bullet on
11 stocking rates.

12 We've heard, we heard from the
13 poultry people yesterday about various
14 different systems within, you know, the needs
15 in different ways, whether it's perches or
16 outdoor.

17 So it's a complicated issue, and
18 basically the way we as certification
19 organizations look at it, is we've got the
20 regulation. You don't deviate from that, and
21 then you go in and you judge each situation
22 based on the parameters you've got.

1 If stocking rates come in,
2 technically it will be easier for certifiers.
3 But whether that's easier is best, I
4 personally would disagree. I think it could
5 become overly prescriptive, because we've seen
6 some small operations that do really marvelous
7 jobs, that would technically be under a
8 stocking rate.

9 We've seen people with good
10 stocking rates that the animals are in
11 terrible conditions. So it's just an
12 extremely complex question to ask. Would it
13 be easier?

14 The answer is yes. If there's
15 specific stocking rates, you know, the number
16 counting is a lot easier, you know, square
17 feet, you know. It's easier to do. But I
18 don't know if it's necessarily the right thing
19 to do.

20 But that's -- again, I'm really
21 not a livestock person and I don't participate
22 that much in the certification of livestock.

1 CHAIRPERSON GIACOMINI: Jeff.

2 MR. MOYER: Yes. Joe, I think
3 what we were trying to do with this idea of
4 stocking rates is give certifiers some sort of
5 minimum standard which they can go in and
6 judge by and say, "Yes, I mean it looks good,
7 but here's a minimum that says 1.2 square
8 foot per bird or whatever it is, and they're
9 only at two quarters of a square foot.

10 You know, you're going to have to
11 give them some room. But if somebody's got
12 more than that and you go in and you go, "Wow,
13 this is great," it may be just be fantastic
14 the way they're doing it.

15 So it gives some certifiers and
16 farmers and producers, for that matter, some
17 idea of where the organic industry wants them
18 to be heading.

19 MR. SMILLIE: Yes, and we can talk
20 about porches and fly areas and all those
21 things. I mean there's many ways to do it.
22 There's many tools that will allow the birds

1 to -- or any of those animals. We're talking
2 about rabbits and pigs and everything in here.

3 So the other things I object to,
4 and coming from the true north strong and
5 free, is looking at the Canadian standards,
6 those standards have just been implemented,
7 and you know, to say, "Well look, that's what
8 Canada's doing."

9 Well, that's great, you know. But
10 we haven't seen the ramifications of that, and
11 personally I've sat in a couple of those
12 meetings, and organic pork is going to be hard
13 to come by in Canada because of certain -- the
14 hard number of regulations they put in, that
15 most of the current Canadian porkers just
16 don't meet.

17 So I would urge you to go slow on
18 this, and let's as -- like we said, let's get
19 the numbers in. Let's keep this open and not
20 rush to judgment on it.

21 MS. MIEDEMA: One of the things
22 I'm hearing here with our inclusion of more

1 animal welfare and with our diversity is that
2 it's going to take a lot more discernment on
3 the part of certifiers, and so that onus is on
4 the training there for certifiers.

5 As we start to get into these
6 rangier areas of certifications, is the
7 program feeling prepared to, you know, for
8 this additional burden of training.

9 MR. McEVOY: Well, it seems like
10 you have a little ways to go here on animal
11 welfare, and I think it's an important issue
12 that's already in the organic standards in
13 terms of living conditions. You're looking at
14 providing more clarity there. It's an
15 important issue from a consumer's perspective.

16 So we look forward to your
17 recommendation and we'll be ready to provide
18 guidance and training to certifiers once we go
19 through this process. It's going to take a
20 while, but I think it's important.

21 CHAIRPERSON GIACOMINI: I think
22 now would be a good time to go back and look

1 at a little bit of history on this. Need to
2 switch that cord.

3 Going back on the history on this,
4 to bring everybody up to where we are now,
5 when we first opened animal welfare in the
6 Livestock Committee, we started with
7 discussions on our conference calls with
8 Temple, Dr. Grandin, and her recommendation
9 was the route that we originally took, where
10 we wanted to give mostly guidance to a large
11 extent on things that would show where the
12 animals were under distress.

13 Our initial document dealt with
14 body condition and leg lesions, and the
15 response we got back from the community,
16 particularly from the certifiers, is we don't
17 know what to do with that, or if we're already
18 doing it and we're evaluating these animals.

19 But what we really need from you
20 to help us with animal welfare is some
21 specific things to not to use any one of their
22 words, but some specific things so that we can

1 issue some non-compliance.

2 So we pulled back. We took
3 another route. We looked at and we had a
4 couple of conference calls with, I believe we
5 may have talked with some certifiers. But I
6 know we talked with some inspectors, and what
7 the inspectors said is right now, we have a
8 lot of things out there that deal with animal
9 welfare, that the problem is the animals are
10 obviously under distress, but we write it up
11 on a report. We tell the producers that
12 they're having a problem there. They get into
13 an argument with us and it doesn't go
14 anyplace.

15 So we were faced with that, you
16 know, how to proceed. The track we took in
17 this respect was to try and find some
18 reasonable, legitimate welfare numbers that,
19 as Joe said, there's some small guys with high
20 stocking density numbers that are doing great,
21 and these regulations -- our intent is that
22 these regulations would allow for that.

1 Just as there's big guys that have
2 plenty of space, and they're doing a horrible
3 job, there's other regulations for them.

4 There's other ways that they'll have their
5 non-compliance. But we wanted to find
6 something that we would start building that
7 fence with. What we had hoped for with the
8 Canadian numbers and with the two listings
9 that we had were more comments specific to the
10 numbers, as this number here, that number
11 there, up a little, down a little.

12 We did receive some saying you
13 guys don't need to start over. We've got
14 these welfare certifiers with these documents.
15 We would like anyone who has those documents
16 to forward them to us. Just like Tina said
17 there's a rabbit hole in the website for NOP
18 and NOSB, in trying to find information.

19 I've gone to a couple of those
20 websites. Maybe I didn't go to the ones where
21 they're easy and on the front page. But boy,
22 it was a rabbit hole. I couldn't find their

1 regulations and I know they have a set. So if
2 you have some, if you contact those groups,
3 please get them to us.

4 Send them to Valerie. I'm sure
5 even after Valerie moves on to her new
6 position and we have a new executive director,
7 Valerie will forward those to her, to that new
8 person in the position.

9 Give us the tools so that we can
10 look at these things. Jeff?

11 MR. MOYER: I was kind of
12 interested in maybe a comment from Joe Dickson
13 on, you know, one of the things that we're
14 also trying to do with this animal welfare
15 standard, in conjunction with the rest of our
16 standards, is differentiate, the organic --

17 I don't want to just pick on
18 poultry, but the organic livestock industry
19 from the conventional livestock industry, on
20 a basis greater than just switching feeds.

21 There's more to it than that, and
22 consumer's expectations, I believe, are more.

1 But I'd like to hear your comments.

2 MR. DICKSON: No, I appreciate the
3 opportunity, and you know, to echo sort of
4 some points that Wendy and Tracy both brought
5 up too, I think you know, the consumers'
6 expectation is that the living conditions for
7 organic animals are defined, not only in terms
8 of living space and stocking densities, but in
9 terms of health and welfare.

10 And you know, it was our company's
11 desire to kind of formalize our standards for
12 the meat we sell, both organic and non-
13 organic. We for about ten years have been
14 working on animal welfare standards, and we
15 have played with stocking density at various
16 points.

17 In recent years, and working with
18 CROPP on this as well, have moved towards
19 outcome-based standards. That's why we, you
20 know, partnered with several other leaders in
21 the area to start the Global Animal
22 Partnership.

1 Where we're going with that is the
2 finding that there are producers that are very
3 dense, that do a very good job. There are
4 producers that are very sparse that can do a
5 very poor job.

6 The more important thing to us and
7 to our customers is the happiness and the
8 welfare of those animals in those conditions.
9 So we've looked more at body condition and
10 other signs of animal welfare.

11 The flip side of that, as Tracy
12 brought up though, is the auditing. Most of
13 our resources in rolling out that program have
14 been devoted to very deep serious detailed
15 auditor trainings, coming up with systems to
16 ensure auditor to auditor consistency.

17 You know, I have deep concerns
18 that if we end up with an outcome-based
19 standard, there's going to be a huge onus on
20 the NOP and the certifiers to empower their
21 inspectors to effectively look at animal
22 welfare.

1 So I mean that's perhaps a hybrid
2 approach that uses some sort of objective
3 stocking density, and also some ideas from
4 outcome-based standards would be something the
5 committee can consider. But you know, there's
6 definitely a trade-off there.

7 MR. MOYER: Yes, and just as a
8 follow-up, I know when we originally, as Dan
9 said, put this document together, we were
10 looking at outcome-based. We got tremendous
11 pushback from the ACAs that they were not --

12 CHAIRPERSON GIACOMINI: We got
13 pounded.

14 MR. MOYER: Yes. We got pounded
15 that they were not, either tooled up nor did
16 they want to pay up for that, and the
17 inspectors.

18 That's why we included them our
19 phone conversations, and they were really
20 directing us towards something as Joe said,
21 that would be easier for them go in and say,
22 "You've got 20,000 birds. You've got 20,000

1 square feet, one square foot per bird. You're
2 in or you're out."

3 Yes, it's much easier to issue
4 non-compliances based on square footages, than
5 saying how many chickens have a problem with
6 their feet versus their -- or lesions on their
7 legs, and we got a lot of pushback on that.

8 MR. DICKSON: I'd say, you know,
9 at the bottom line is that consumer
10 expectations around animal welfare don't have
11 to do with stocking densities. They have to
12 do with the welfare of the animal. So while
13 a system like that is easier to audit, it's
14 also easier to game, and we have to look at
15 that really carefully.

16 CHAIRPERSON GIACOMINI: John?

17 MR. FOSTER: Having been in a lot
18 of livestock operations all around the country
19 as an inspector, and then as a reviewer of
20 other inspectors, numbers are really nice.
21 They're really comforting. I think it's a
22 false sense of security for the most part.

1 I wanted to -- I'm glad others are
2 kind of this opinion. The performance-based
3 is harder. It's harder as an inspector, it's
4 harder as a reviewer, it's harder on the
5 certifier. But it does serve the intent, the
6 will of the consumer.

7 It also serves the well-being of
8 the animal, and it serves the integrity of the
9 whole system best. If it's -- I recognize,
10 like I said, having walked in those shoes, it
11 will be much harder and will require more
12 training. But I think it serves all of the
13 things that we're all interested in, and it's
14 probably worth the effort to develop the skill
15 sets in the people who are out there.

16 Sometimes you have to, yes, learn
17 new stuff. I would welcome that as an
18 inspector. When I've had the opportunity,
19 I've enjoyed it. It's made me a better
20 inspector, made certifiers better overall with
21 that key, with that.

22 In a sense, it's looking at

1 performance-based goals for the health of the
2 animal, but that's really also a performance-
3 based goal for the industry, to make us
4 qualitatively better, not just quantitatively
5 knowable.

6 MS. HALL: I just want to
7 reiterate that the history that Dan pointed
8 out is 100 percent accurate, and that the
9 evolution of this has been difficult, and I
10 think that it coincides with the fact that the
11 feedback that I heard, at least from the
12 certifier community, was less that they
13 weren't in learning those things, and that
14 when there was a difficult call to make, at
15 least previously they didn't get the back up
16 from the program that it was enforceable, and
17 that that was the difficult line.

18 The more definitively it got, the
19 more enforceable it got. I think that there
20 may be a different feeling right now, that if
21 there is a call or question, that it will be
22 taken with greater integrity or really looked

1 into a little bit more.

2 But I also want to be careful
3 about maybe approaching a hybrid like Joe
4 suggested, because that could flip, you know,
5 in ten years from now, it could have a
6 different tone again.

7 I think that if we're looking at
8 putting something together, that it needs to
9 kind of blend those two realities, that the
10 definitive, at least guidelines being there,
11 but also taking into consideration the
12 variables that might influence those
13 guidelines, is an important place to be and
14 not necessarily one or the other. I think
15 Joe's absolutely right, that what people care
16 about is the end result, the welfare of the
17 animal and the health of that animal.

18 But the getting there is not
19 necessarily so easy, and that what we're in
20 the position of is defining a recommendation
21 that will, you know, the test of time won't be
22 influencing it as greatly, and whatever the

1 administration looks like at that time won't
2 be able to have as much sway with how it's
3 interpreted.

4 CHAIRPERSON GIACOMINI: Any other
5 questions for the committee? Jay?

6 MR. FELDMAN: We thought maybe
7 more information could be gathered through
8 some process. Do we need to formalize some
9 sort of listening session or symposium? Is
10 that redundant of what's been done previously
11 or would that provide new information?

12 MS. FULWIDER: Yes. They were
13 talking about doing something to what they had
14 done in the pasture, and I know I think some
15 of the certifiers are collecting information.
16 They were talking about that a little bit
17 yesterday.

18 CHAIRPERSON GIACOMINI: All the
19 certifiers are collecting information?

20 MS. FULWIDER: Well, some, some,
21 some.

22 CHAIRPERSON GIACOMINI: At the

1 request of the program.

2 MR. SMILLIE: With an extremely
3 tight time line.

4 MS. FULWIDER: But you know, the
5 other thing is, you know, I asked here does
6 organic mean good animal welfare, you know.
7 So we need to address that in some way.
8 Whether we're going to have our own program
9 and the USDA organic seal also means animals
10 are very well taken care of, or are we going
11 to get another animal welfare seal on our
12 packages? You know, that's a decision we have
13 to make.

14 CHAIRPERSON GIACOMINI: Yes, and
15 responding to part of your question, I don't
16 think we have to ask the certifier community
17 to get back to us on this. I think I'll
18 probably have emails on this on my computer
19 before I get home.

20 MR. FELDMAN: But I was thinking
21 the farm community, in terms of the community
22 affected by the regulation, do we need to hear

1 more from them? We heard from some during
2 this session.

3 Do we need to -- do we have all
4 the information we need, and would it be
5 appropriate to have, as you say, similar to
6 the livestock, to have a mechanism to collect,
7 in a formal way, this information?

8 CHAIRPERSON GIACOMINI: Well,
9 without the huge -- well Miles, maybe you want
10 to address some of this?

11 MR. McEVOY: Yes. It seems like
12 I'm ultimately new to this discussion on
13 animal welfare. But it seems like there's a
14 lot of programs out there. There's a lot of
15 information that could be brought to the Board
16 listening session, task force. I know that
17 the Board really wants to move forward on
18 making final recommendations.

19 But this is a huge area. You
20 really, really need to consider this very
21 carefully, economic impact. I don't think
22 you've gotten -- you've gotten some anecdotal

1 type of information, but take your time with
2 this. Do it very deliberately.

3 Task forces are very good ways of
4 including industry members to provide that
5 kind of economic impact to the whole process,
6 and develop something that can be embraced by
7 all sides, by consumer element and the
8 producer element in this whole picture.

9 CHAIRPERSON GIACOMINI: So just
10 for overarching clarification, task force is
11 no longer the dirty four-letter T word from
12 the program?

13 MR. McEVOY: Not in my book.

14 CHAIRPERSON GIACOMINI: Okay,
15 good. Thank you. Any other questions and --

16 (No response.)

17 CHAIRPERSON GIACOMINI: Okay.

18 MR. MOYER: We have one more item,
19 Mr. Chairman.

20 CHAIRPERSON GIACOMINI: We were
21 scheduled to break at 11:15 and it's 11:35.
22 I think we should probably take that break and

1 then come back. So at 11:50. We will break
2 for lunch at 12:30.

3 (Whereupon, the above-entitled
4 matter went off the record at 11:38 a.m. and
5 resumed at 11:56 a.m.)

6 CHAIRPERSON GIACOMINI: Okay. We
7 have a quorum. We're later than my intended
8 time, our announced time, so let's get started
9 again. Again, any conversations, please take
10 them outside and find a seat in the meantime.
11 Continuing on with Livestock, Jeff.

12 Mr. MOYER: Thank you, Mr.
13 Chairperson. We have one more discussion item
14 that I want to bring to the Board's attention.
15 But before I do that, I want to recant
16 something that I said. Under the sunset
17 document for 205.603, I did make an error when
18 I said that furosemide was being deferred. It
19 is not being deferred. We do have it on our
20 docket to vote on tomorrow.

21 There is one public comment by Dr.
22 Hugh Karreman, who was the original petitioner

1 of that material. In his comment, he is
2 saying that he would now request that that
3 material not be on the list, and if it was his
4 choice he would vote against it.

5 So we are going to take that
6 material off the docket for tomorrow and defer
7 it to the November meeting, so we have time to
8 review that in light of those public comments
9 from the petitioner itself. And now we'll go
10 back to the last document.

11 Mr. GIACOMINI: Any questions or
12 comments from any members of the Board?

13 MR. SMILLIE: Yes. I'm just a
14 little confused. Is he withdrawing his
15 petition?

16 MR. MOYER: No. He was the
17 original petitioner. The material is on the
18 list now. It is up for sunset. As the
19 original petitioner, he is saying if I were
20 there to vote, I would say this should not be
21 on the list anymore.

22 We have it on the docket as an

1 item that is being relisted, but in light of
2 the petition, since he was the original
3 petitioner, we would like, the Livestock
4 Committee would like to further review that
5 item, and we are asking that we pull it out of
6 that docket to vote on tomorrow and defer it
7 to the fall meeting. Thank you for that
8 opportunity to clarify that, Joe.

9 CHAIRPERSON GIACOMINI:

10 Clarification. I'm normally the one that
11 people turn to on this. Valerie, maybe you're
12 the one. At what point in time in the process
13 is the -- does the document pass from the
14 committee to the full Board.

15 Is it tomorrow at the motion to
16 accept? So if we make a -- if the Livestock
17 Committee makes a change, amends their
18 recommendation, we can present that amended
19 recommendation tomorrow, without having to go
20 into the amendment through the Board; correct?

21 MS. FRANCES: Yes.

22 CHAIRPERSON GIACOMINI: Okay.

1 Tomorrow is when that transition takes place?

2 MS. FRANCES: Yes.

3 MR. MOYER: It's still a committee
4 document.

5 CHAIRPERSON GIACOMINI: Right.

6 MR. MOYER: Thank you. The last
7 point of discussion that Kevin Engelbert
8 wanted to bring to the Board's attention
9 relates to apiculture.

10 If you recall, last year in
11 November, at the November meeting, the ACAs
12 presented a document in the public comment
13 that goes beyond the original documentation
14 that is in the standard, regarding bees and
15 bee culture.

16 We heard some testimony yesterday
17 about bees, and Kevin wanted to open the floor
18 at the Board level here for discussion on that
19 document, or anything else people wanted to
20 bring up regarding apiculture. You do not
21 have that document in your disk or in your
22 packet to refer to, but if there's anything

1 that people want to discuss about apiculture.

2 I know we heard from the Hawaiian
3 bee folks yesterday that they're in dire
4 straits. I don't know that any action this
5 Board takes, either now or in November,
6 whenever we have our next meeting, would help
7 them. But we wanted discussions. Dan?

8 CHAIRPERSON GIACOMINI: Jay.

9 MR. FELDMAN: I just -- this is an
10 issue dear to my heart. We have a lot of, as
11 we've seen in the public comment, there's a
12 huge intersection between pesticide use, the
13 pesticide use community and the organic
14 community. We see this most clearly when it
15 comes to honey bees and managing bees and
16 foraging bees.

17 This is where the organic board
18 and the organic program can be extremely
19 helpful. Because if you -- we had a meeting
20 with EPA and a bunch of beekeepers, who are,
21 I would say, conventional beekeepers.

22 But their biggest problem is

1 getting enforcement of pesticide labels, so
2 when their bees go out and forage and the
3 plants are flowering, there's compliance with
4 the label, so that pesticides are not being
5 used with plants that are flowering.

6 Which is specifically on the
7 label. So there's a problem with enforcement
8 that has huge implications for organic
9 production as well. And we talked a lot about
10 task force and collaboration with EPA.

11 But I think as we develop a
12 program, we have to be cognizant of some of
13 the huge problems that beekeepers are having
14 with foraging bees, in areas where pesticides
15 should be used but are being used in
16 conventional systems, and having devastating
17 effects.

18 The problems with bees, as you all
19 know, is We're dealing with sublethal effects.
20 So we're getting lethargic bees, bees that
21 have diseases, extreme vulnerabilities to
22 diseases that they didn't have previously

1 because their immune systems are, you know,
2 they're compromised.

3 So I just -- it's one of these
4 areas if we're going to get into it seriously,
5 we have to take on this issue of how
6 pesticides, conventional pesticide use, is
7 adversely impacting our efforts to develop an
8 organic bee industry.

9 We can't ignore it and I think it
10 has to be -- it can done collaboratively and
11 I think it will benefit everybody. It will
12 benefit both the conventional side and the
13 organic side.

14 CHAIRPERSON GIACOMINI: Joe.

15 MR. SMILLIE: Well, it's a real
16 pleasure to agree with you on this one, Jay.
17 From a certification standpoint, it's a real
18 challenge, because when we're certifying a
19 crop and, you know, we have to look out for GM
20 drift and we're talking about boundaries, when
21 you're certifying apiculture, boundaries
22 really start to spread out.

1 You really have to deal with a lot
2 of factors in the bees' foraging range, three
3 meters or whatever. Not three meters. Three
4 kilometers. But anyhow it's a really tricky
5 issue, and one of the things we have to do in
6 the certification of honey and apiculture is
7 really access what is being used in that
8 forage area.

9 Which is why a lot of organic
10 honey is totally restricted to pretty wild
11 areas in the southern hemisphere or very
12 northern Saskatchewan kind of thing. So we
13 really take on a real biodiversity challenge
14 when we start to -- when we get into the
15 certification of honey and apiculture.

16 CHAIRPERSON GIACOMINI: Any other
17 comments?

18 MR. MOYER: Mr. Chairperson, that
19 concludes the Livestock Committee report.

20 CHAIRPERSON GIACOMINI: Thank you,
21 Livestock Committee. We are now ready to --

22 MS. HEINZE Mr. Chairperson?

1 CHAIRPERSON GIACOMINI: Yes.

2 Katrina?

3 MS. HEINZE: I'm sorry. Before
4 you conclude your report, Miles was kind
5 enough to hand me last fall's animal welfare
6 recommendation, and I was unable to find
7 reference to the animal health care products.
8 I was hoping that before we retire for the
9 evening, I'm not sure what the right word is,
10 that someone could --

11 CHAIRPERSON GIACOMINI: We'll work
12 on that before tomorrow.

13 MS. HEINZE: Well, I was hoping
14 not just that you work on it before, but
15 before we retire for the evening, that you
16 perhaps could tell the rest of the Board where
17 we should look, in case we wanted to educate
18 ourselves before the morning.

19 CHAIRPERSON GIACOMINI: Okay.

20 MS. HEINZE: Thank you.

21 MR. FELDMAN: Dan, can I ask one
22 last thing?

1 CHAIRPERSON GIACOMINI: Jay.

2 MR. FELDMAN: Sorry, but and this
3 is something to the program, because it picks
4 up on an issue we've been dealing with
5 earlier, and that is the question of whether
6 the Board is within or outside its bound, its
7 legal boundaries, in terms of taking actions
8 on various things.

9 So this is something that I'd like
10 to ask to the list of possible, and some of
11 this, Dan, comes from the audience. A lot of
12 folks out there know a lot more about this
13 than I do.

14 It's been brought to my attention
15 that under the Organic Foods Production Act,
16 there's a limitation on the allowance of
17 synthetics used in livestock to certain
18 categories of synthetics, which includes, as
19 you know, a long list, copper and pheromone
20 soaps, et cetera, but does not include amino
21 acids.

22 I would like to know if the

1 committee looked at this, and if not whether
2 an OP could look at this in establishing the
3 legal basis for the allowance of synthetic
4 amino acids in livestock production, and what
5 our limitations are as a Board in terms of
6 doing that.

7 The other legal issue that I'm
8 hoping we can resolve before we vote, or maybe
9 it won't happen in that time frame, is whether
10 a material that was intended to be phased out
11 by a previous NOSB can be picked up again
12 without a petition process.

13 So in effect, if the intent was to
14 effectively to ban methionine by 2010, do we
15 have that authority, and that was voted on by
16 the Board, do we have the authority to pick
17 that up without a petition, and then extend it
18 and put it into the regular sunset process?

19 CHAIRPERSON GIACOMINI: There was
20 a petition. Each time. Each time the
21 methionine, and the other, that first
22 question, is something that I think, from the

1 time I've been on the Board, we've yielded the
2 wisdom of prior boards in their decision.

3 But on this one, each time it has
4 sat there on the list with a drop dead date,
5 it was a petition. That's where Jeff started
6 with, was the petition. We will vote on that
7 petition.

8 The recommendation from the
9 Livestock Committee was to reject that
10 petition, and then we had an alternative
11 listing for methionine as a modification of
12 what they were requesting in that position,
13 that we're proceeding with as the
14 recommendation for the list.

15 MR. MOYER: So we have the
16 authority --

17 CHAIRPERSON GIACOMINI: Yes. It
18 was done within the petition process.

19 MR. MOYER: Now if you move fast,
20 Mr. Chairperson, I'm done.

21 CHAIRPERSON GIACOMINI: Okay.
22 Well, we may have missed -- I believe in our

1 talking of things, we need to look at the --
2 we said, I think, we used some of the wrong
3 language. So we will try to work on fixing
4 that. But now if we'll go to Steve with the
5 Handling Committee.

6 MR. DeMURI: Thank you, Dan.

7 Before I get started, I'd like to thank all of
8 the members of the Handling Committee for the
9 tremendous amount of work they've done the
10 last four or five months on all these
11 materials we're looking at.

12 Especially the two new folks, John
13 and Joe. You guys jumped in head first and
14 stared fear right in the face and plowed
15 forward on helping us get through all these
16 sunset items for the last few months. I
17 greatly appreciate all your help.

18 As you all know, we had the
19 daunting task of redoing a total of 97
20 handling materials on 205.605 and 205.606 for
21 sunset 2012.

22 Like the other committees that

1 have gone before me, we have also decided to
2 split these up into groups. We're doing the
3 so-called low-hanging fruit this meeting, and
4 the ones that we need more information on or
5 need a little more time to discuss, we are
6 putting off to the fall meeting.

7 The grand total for this meeting
8 will be 54 that we'll be voting on. Not
9 individually at this meeting, and the other 43
10 we'll take up on the fall. If you'll review
11 the recommendation posted on the website,
12 you'll see that I grouped them in what I
13 thought were a logical order.

14 So we have 205.605(a), Groups 1
15 and 2. 205.605(b), Groups 1, 2 and 3, and
16 then the 606 items were grouped in two groups,
17 1 and 2. The reason for the grouping was a
18 couple of reasons.

19 One, some of the substances are
20 similar, so it just kind of made sense to put
21 them together in a group. In some cases,
22 individual reviewers had expertise in certain

1 areas, so they were handed assignments for
2 those materials. In other cases, we felt like
3 maybe some of them might be a little
4 contentious, so they were kind of grouped
5 together as well.

6 One of the items that we had
7 intended to make a recommendation on at this
8 meeting was nutrients, vitamins and minerals.
9 Based on the information that we received from
10 Miles on Monday, we're going to pull that back
11 for a recommendation for this meeting, and
12 defer that until the fall, so we can have a
13 chance to confer with the program on the scope
14 of our sunset recommendation for that.

15 So we will not be voting on that
16 tomorrow, and we will not discuss it today for
17 that reason.

18 As we go through each of these
19 groups, as I mentioned, they were assigned to
20 different members. I will hand off the
21 discussion and the explanation to those
22 members as we get to their groups.

1 Before we get into that, I'd like
2 to reiterate what Katrina and others have said
3 the last couple of days, and that is we fully
4 intend to read every public comment that comes
5 in between now and May 25th on these items,
6 and we will be prepared to re-recommend
7 anything that we think we need to, and we will
8 do an affirmation vote in the fall on
9 everything that we vote on tomorrow as well.

10 So I want everybody to rest
11 assured, both on the Board and in the public,
12 that we will read those public comments that
13 come in over the next few weeks.

14 Okay. The first group is 605(a),
15 Group 1, and they are acids, bentonite,
16 calcium carbonate, calcium chloride,
17 carageenan, dairy cultures, diatomaceous
18 earth, kaolin and nitrogen.

19 What we're going to do is give you
20 just a brief update on what each of these
21 substances do, especially for the new Board
22 members, to give you an idea of what they're

1 used for; a brief mention of the public
2 comment received, if any; and then we'll move
3 forward. We'll do this as quickly as we can.
4 Just a few sentences on each.

5 On the acids, they're all GRAS;
6 they're all generally recognized as safe by
7 the FDA. They're alginic, citric and lactic,
8 and the citric acid must be produced by
9 microbial fermentation and the carbohydrate
10 substance.

11 They're all very commonly used in
12 the food processing as acidifiers to adjust
13 pH. The alginic acid is produced from various
14 species of sea weed. Citric, which was
15 commonly extracted from citrus fruits in the
16 past; it is not any longer done that way.
17 It's now extracted by fermentation of the
18 carbohydrate substrate.

19 Lactic is produced by fermentation
20 of a suitable carbohydrate substrate by a
21 lactic acid bacteria. Bentonite, also
22 considered GRAS, the TAP for that was from

1 1995. It's a natural clay and mine resource,
2 and it's used as a processing aid, not as an
3 ingredient, in the clarification or refining
4 of wines and fruit juices. No human toxicity
5 at low levels of intake, and no public
6 comments that recommend that we not relist
7 that.

8 Calcium carbonate is a fine,
9 white, crystalline powder which is mined,
10 ground and screened, and it's used in
11 processing as an alkalite, a nutrient, a
12 dietary supplement, dough conditioner and
13 firming agent, and as a use food. It also has
14 GRAS status and no comments against relisting
15 of that.

16 Calcium chloride, commonly used in
17 the food industry as a firming agent,
18 especially for things like canned tomatoes and
19 potatoes. Also has GRAS status. No toxicity
20 issues according to the 1995 TAP, and no
21 recommendations against relisting. Everybody
22 agreed with our recommendation that we list

1 that.

2 Carageenan is a naturally-devised
3 substance, according to the 1995 TAP prepared
4 by the aqueous extraction and various types of
5 Red Sea weed. Then recovered, drum-dried and
6 frozen, or frozen. Its primary use is a
7 stabilizer and liquid milk-based products, but
8 also can be used for other thickening or joint
9 applications.

10 Also generally recognized as safe
11 by the FDA, and the committee, as with all of
12 these, found no other further information that
13 would cause us to not recommend for relisting
14 of these, and the public comment backed that
15 up.

16 Dairy cultures. These cultures
17 aid in the preservation of food by utilization
18 of carbohydrate conversion to lactic acid, and
19 the resulting pH drop helps protects against
20 spoilage organisms. Again, this was TAP-
21 reviewed in 1995.

22 A lot of these are fairly old TAPs

1 now but were pretty sufficient, pretty
2 thorough, and dairy cultures are used in a lot
3 of products, yogurts, cheeses, some butter,
4 milk-derived products, products such as that.

5 Diatomaceous earth is used as a
6 filtering aid in food production. It's
7 considered a processing aid, not an
8 ingredient, and results in no significant
9 residue in food when used under good
10 manufacturing practices.

11 It is GRAS as defined by the FDA,
12 and it is a substance, is a sedimentary rock
13 consisting of deposits of accumulated shells
14 of hydrosilica secreted by diatoms.

15 If you have a swimming pool at
16 home, you might have diatomaceous earths in
17 the filter for that.

18 Kaolin is another clay, very
19 similar to bentonite. Also a natural clay
20 used in food processing applications. It
21 occurs largely in deposits, and as a clay
22 consists primarily as alumina, silica and

1 water. It's a mine resource. It has no human
2 toxicity at low levels. Also considered
3 generally recognized as safe by the Food and
4 Drug, and no new information came to our
5 attention through public comment or through
6 research that would cause us not to relist
7 that item as well.

8 Nitrogen is a gas that's very
9 commonly used in the food processing industry.
10 It's compatible with organic food production.
11 It's non-toxic and not normally synthetically
12 produced. It is definitely FDA GRAS and
13 there's again no new information that has been
14 discovered or brought to our attention.

15 No public comment that did not
16 agree with our recommendation to relist this.
17 Originally TAP-reviewed in 1995, and it's used
18 primarily for reducing oxidation as an oxygen
19 replacer in food production. Superior
20 propellant without ozone-depleting properties,
21 and is often used as a sterile blanket to
22 purge gas or over-pressure gas in aseptic

1 processing systems.

2 So that is the first group of
3 205.605(a) items. What I'd like to do now is
4 hand over the mike to Joe Dickson. He's got
5 the next group, Group No. 2 of 605(a) items.

6 CHAIRPERSON GIACOMINI: Steve,
7 should we have a discussion on each, by
8 section?

9 MR. DeMURI: We probably should do
10 that.

11 CHAIRPERSON GIACOMINI: I think
12 that would probably be a little more, make you
13 know, less confusing.

14 MR. DeMURI: I should have
15 mentioned also that this is how I intend to
16 vote on these as groups tomorrow. So it would
17 be seven separate votes.

18 CHAIRPERSON GIACOMINI: Seven
19 separate votes.

20 MR. DeMURI: Rather than one large
21 vote for everything. The secretary has just
22 taken that as duly noted. Jay?

1 MR. FELDMAN: Great. Thank you
2 for that thorough review. My question goes to
3 the availability, you know, commercial
4 availability of the organic forms of this,
5 whether this is -- we're talking natural
6 substances.

7 MR. DeMURI: These are all 605
8 non-agricultural items.

9 MR. FELDMAN: Right. So
10 commercial availability.

11 CHAIRPERSON GIACOMINI: Commercial
12 availability does not exist, apply at this
13 time.

14 MR. FELDMAN: Does not exist for
15 this category, right.

16 MR. DeMURI: Does not apply to
17 these.

18 CHAIRPERSON GIACOMINI: I have a
19 question.

20 MR. FELDMAN: Okay.

21 CHAIRPERSON GIACOMINI: Inquiry.
22 I know a number of years ago in the ice cream

1 industry, some of the companies that were
2 trying to position themselves as more natural
3 ice creams with less additives, that
4 carageenan was one of the things that they
5 were including in their commercials that they
6 were attacking.

7 Are there any alternatives,
8 reasonable alternatives, and did you look at
9 the state of the -- the status of the current
10 necessity of that?

11 MR. DeMURI: There are some other
12 gums that are used in ice creams. We did not
13 get into the availability of those other gums
14 and which gums might be more or less --

15 CHAIRPERSON GIACOMINI: Just a
16 different version of the same beast though.

17 MR. DeMURI: They're all gums;
18 they're all natural-type gums. So no, we did
19 not delve into that, past what the previous
20 Board TAPs did.

21 CHAIRPERSON GIACOMINI: Right.
22 Katrina.

1 MS. HEINZE: In our previous
2 reviews of petitions for gums, we've heard a
3 lot of public comment that while they're all
4 gums, that each have very individual
5 properties in the finished product, and
6 they're not interchangeable.

7 CHAIRPERSON GIACOMINI: Any
8 further debate, discussion, questions? Okay.
9 Move onto the next session.

10 MR. DeMURI: Hey. Like I
11 mentioned, I'll hand it over to Joe. He's got
12 the next six items.

13 MR. FOSTER: Thank you, Steve. I
14 hope that oxygen is the least controversial
15 substance that we review at this meeting.
16 Oxygen is, you know, a constituent of air.
17 It's used as a processing aid largely in all
18 of production and to modify the atmosphere in
19 a number of curing and fermentation-type
20 processes.

21 It is GRAS. It did not raise any
22 red flags in its original TAP review, and I

1 don't have any reason to believe that those
2 circumstances have changed. Perlite is a
3 similar --

4 (Off mic comments.)

5 MR. FOSTER: Well, this is you
6 know, it's oxygen as fractionated from the
7 air. So fortunately we're not reviewing air.
8 Perlite is a similar storage of diatomaceous
9 earth. It's used as a filtering aid in food
10 processing. It's a volcanic rock. There are
11 no known safety issues. It is considered
12 grass by the FDA.

13 Interestingly, the production
14 practice is to heat it until it pops like
15 popcorn, to expand about 20 times its usual
16 size, and then it is ground into a powder,
17 which is used as a filter medium.

18 Potassium chloride. It is GRAS.
19 It is used as a salt substitute, is one of its
20 uses, and it's extremely bitter taste is a
21 self-limiting factor that keeps its usage
22 extremely low in foods.

1 It's also used as a yeast
2 nutrient, a gelling agent and in certain
3 dietary supplements as a source of potassium.
4 It is extracted from natural brines, and
5 there's no known environmental impact. It did
6 not raise any red flags in its review
7 criteria, in its original technical review.

8 Sodium bicarbonate and sodium
9 carbonate I'll speak to together, because
10 they're similar substances that are both
11 extracted in the same way from natural ore
12 deposits or derived from brine.

13 Both are used as leavening agents.
14 Sodium bicarbonate is best known as baking
15 soda. It is GRAS. We did receive two public
16 comments in support of the continued use of
17 these substances.

18 Sodium bicarbonate and sodium
19 carbonate are actually both used as alkali and
20 to regulate acidity and pH. Sodium carbonate
21 is additionally used in traditional Asian
22 noodle processing, and they are GRAS.

1 Non-synthetic waxes, specifically
2 carnauba wax and wood resin. Carnauba is
3 naturally extracted from palm leaves. Wood is
4 extracted from wood. They're only used on the
5 exterior of fruit and vegetables to improve
6 appearance, reduce dehydration, extend storage
7 life for those fruits and vegetables.

8 We received public comments in
9 support of the continued use of these
10 substances as well. That concludes my section
11 of 605(b).

12 CHAIRPERSON GIACOMINI: Is that a
13 (b)?

14 MR. FOSTER: A, A. I'm sorry.

15 MR. DICKSON: 605(a).

16 CHAIRPERSON GIACOMINI: Another
17 section of 605(a).

18 MR. FOSTER: I'm looking ahead to
19 my next group.

20 CHAIRPERSON GIACOMINI: Any
21 discussion?

22 (No response.)

1 CHAIRPERSON GIACOMINI: Seeing
2 none, proceed on, Mr. CHAIRPERSON.

3 MR. FOSTER: Thank you.

4 MR. DeMURI: Okay. The next group
5 are the first group of 205.605(b) items, and
6 Mr. John Foster has this first bunch.

7 MR. FOSTER: Thank you Steve for
8 something of a softball of materials. Yes.
9 Low-hanging fruit, all of them. Are they --
10 I can't quite -- is that the list? All right,
11 the calcium phosphates. Used for
12 fortification, baking and other leavening
13 powders. Generally recognized as safe.

14 Carbon dioxide I hope, without
15 annotation there. Used in carbonated
16 beverages. It's a pretty good solvent in some
17 circumstances for removing caffeine. It's
18 also used to displace oxygen in some packaging
19 contexts.

20 Also generally recognized as safe
21 when used in accordance with labeling
22 instructions. Also, of course, in wine-

1 making. Used frequently in wine-making.

2 Ethylene, and this does have an
3 annotation. Allowed for post-harvest ripening
4 of tropical fruits and degreening of citrus.
5 It just -- it hastens ripening of those
6 materials.

7 Glycerides, mono and diglycerides
8 used only in drum-drying of foods. Generally
9 recognized as safe. Glycerin, glycerin's
10 interesting here actually. Produced by
11 hydrolysis of fats and oils.

12 This is one, I think it's a
13 softball this time around. I suspect as more
14 novel ways of producing glycerin are moving
15 forward, we may have an interest in changing
16 the listing on the National List here.

17 Since it is produced by hydrolysis
18 of fats and oils, which you can do with a lot
19 of materials, my understanding is there's some
20 organic glycerin on the market, and we may be
21 -- I don't want to bring up the yeast thing
22 yet, but it's entirely likely we would see

1 that.

2 But at the time being, we're not
3 changing annotation. We're not dealing with
4 lists to change this at this time. It's used
5 broadly in the food industry. Generally
6 recognized as safe.

7 Hydrogen peroxide, a processing
8 aid, typically a packaged disinfectant. It's
9 a very good sanitizer for a lot of equipment,
10 where chlorine might not be a good option.
11 Generally recognized as safe.

12 Magnesium carbonate. This is
13 allowed only for use in foods that have a
14 "made with" claim, made with organic-specified
15 ingredients claim. Magnesium chloride
16 annotated, "derived from sea water only."
17 Used as a thickener or firming agent.
18 Magnesium stearate, a binding material. This
19 is also allowed only for use with foods with
20 a "made with" claim.

21 And ozone, I think. For some
22 reason the light is not bright. Ozone is the

1 last one. Used nominally to wash fresh fruits
2 and vegetables as a food contact sanitizer.
3 It has limited use, depending on what food
4 you're trying to disinfect, and that is
5 without annotation.

6 I looked at a number of resources,
7 all the original TAP reviews, mostly from '95
8 forward, and then there was no public comment
9 that contradicted anything except a relisting.
10 Several people kind of in groups asked to
11 relist these materials, and to my knowledge no
12 public comment said to remove any.

13 Oh, I also -- I should say also
14 called about a dozen processors out in the
15 world that I knew used some or a couple of
16 these materials, and other than those who made
17 public comment and all of them, when asked,
18 said yes, they would like to see them on the
19 list. That's anecdotal. That's it.

20 CHAIRPERSON GIACOMINI: Questions.

21 Jay?

22 MR. FELDMAN: What is our

1 responsibility or authority to, in the case of
2 605(b), to look at alternative practices or
3 non-synthetic approaches to these uses to
4 these chemicals? Do you know?

5 CHAIRPERSON GIACOMINI: The sunset
6 process is a re-review of the process that put
7 them on the list. The major debate that we
8 are, sort of have reentered into the
9 discussion is whether we only look at new or
10 whether we look at all.

11 I would think that anything that
12 you are aware of on any of these things would
13 likely be new if it's something that's
14 developed within the last five years.

15 So that would be appropriate to
16 discuss that at this time.

17 MR. FELDMAN: Right. So I guess
18 my question is did any information come
19 forward at all on alternative, either
20 management practices or products, that would
21 fall in the non-synthetic category?

22 MR. FOSTER: Not to the extent

1 they could serve to replace these. There may
2 be a few isolated relatively unique
3 circumstances, wherein some of these might not
4 be the best alternative. However, either by
5 virtue of their limited applicability, or
6 limited availability in some cases, for the
7 use that was recently discovered, it's not in
8 that zone of being able to make that
9 transition.

10 I will just note that I was
11 pleasantly surprised with the, when I was
12 calling manufacturers, I was very pleasantly
13 surprised at the degree to which they were
14 actually inquisitive about asking questions,
15 asking similar to that.

16 Well, since you're asking John,
17 have you heard of anything that's, you know,
18 I could use that's different? I wasn't really
19 expecting that, and I was pleasantly surprised
20 by that.

21 CHAIRPERSON GIACOMINI: Katrina.

22 MS. HEINZE: I want to note that

1 for handlers, when we use these materials,
2 they are on our ingredient deck. So there is
3 very clear transparency to consumers that
4 they're being used. So speaking as a handler,
5 we are driven by the consumer questions that
6 we get. I answer the consumer questions that
7 Small Planet Foods gets, and consumers call
8 and say "Why do you have blank in your
9 product? Can you help me understand?"

10 So that's information and input to
11 our process, our R&D process that we use all
12 the time. So if there's an alternative, we
13 have a market incentive to use that
14 alternative, and would be allowed.

15 CHAIRPERSON GIACOMINI: Steve.

16 MR. DeMURI: I would hope through
17 the public comment process that if a
18 manufacturer had a substance that they thought
19 could replace one of these synthetics, they
20 would let us know that and we would definitely
21 take that into consideration, as we did the
22 sunset reviews. In the cases of these, none

1 of that information was brought to us.

2 CHAIRPERSON GIACOMINI: Further
3 questions, comments in this set?

4 (No response.)

5 CHAIRPERSON GIACOMINI: Mr.
6 Chairperson.

7 MR. DeMURI: Okay. Group 2 of the
8 205.605(b) items are Tracy Miedema, other than
9 the last one, which I will take. But Tracy,
10 I'll pass them off to you.

11 MS. MIEDEMA: Okay. The five
12 items on 205.605(b) are all synthetic
13 compounds or mine items that have potassium in
14 them. So the first one is potassium tartrate,
15 also called cream of tartar. Mainly used as
16 a leavening. It can be produced by an
17 extraction from tamarind pulp or isolated from
18 wine or a grape-making process, grape juice-
19 making process.

20 The second item, potassium
21 carbonate. This is caustic. It's used also
22 for pH control, leavening. Its common names

1 are salt of tartar or potash. It's produced
2 through an electrolysis of potassium chloride.
3 It's used in the manufacturing of cocoa,
4 chocolate, soft drinks. Also can be used as
5 a boiler additive.

6 The third item, potassium citrate,
7 also called citric acid salt. Can be used as
8 nutrients, as a sequesterant, as a chelating
9 agent, adjusting the pH of products, a
10 buffering agent, an antacid. It is created by
11 the treatment of citric acid with potassium
12 hydroxide. Various phosphates could serve as
13 a substitute.

14 The fourth item is potassium
15 hydroxide, also called lye. This is produced
16 through an electrolysis process. It is an
17 extreme corrosive. There can be some hazard
18 in the disposal of this material. It has a
19 very narrow usage in organic handling through
20 annotation, which is only to be used in the
21 production of IQF peaches, individually quick-
22 frozen peaches.

1 The last one is potassium
2 phosphate. This is a mined material used as
3 a nutritional supplement, a sequestrate pH
4 control agent. It has a very bitter taste.
5 there are some disposal issues to the
6 environment with this one as well that were
7 raised during the original TAP. But the
8 original Board decided to, in '95, to include
9 this item on the list.

10 The comments we received prior to
11 the meeting had unanimously called for
12 relisting. Yesterday we received one comment
13 in writing from a speaker who couldn't make
14 it, but noted that potassium hydroxide was
15 being used in the manufacture of soap labeled
16 as organic.

17 And I would defer that to the
18 program as really an enforcement issue, since
19 the annotation is clear that this is an IQF
20 peach handling material.

21 MR. DeMURI: Thank you, Tracy.

22 The last one on this list is xanthum gum.

1 It's a polysaccharide gum derived from
2 xanthomous, by a pure culture fermentation
3 process. The Board who originally listed it
4 determined that the source material was
5 natural, but its manufacturing process made it
6 synthetic, because it is purified by recovery
7 with isopropyl alcohol, then dried and milled.

8 The material is used in food
9 processing as a stabilizer, emulsifier,
10 thickener, suspending agent, bottling agent,
11 and quite commonly used in ice creams, baked
12 goods, salad dressings, those kind of food
13 products.

14 In the original TAP report, no
15 adverse dietary, physiological or
16 toxicological effects were found, and again,
17 we received no public comment that disagreed
18 with our recommendation to relist xanthum gum.
19 So that's the end of this group of 605(b)
20 items.

21 CHAIRPERSON GIACOMINI: Okay.
22 Discussion, questions on this set? Joe. Oh,

1 I've got to be quick, Mr. Dickson. Joe, do
2 you have anything to say?

3 MR. SMILLIE: Yes, I have a
4 question. It says "Potassium hydroxide
5 prohibited for use in the lye peeling of
6 fruits and vegetables, except for peeling
7 peaches during IQF." I don't necessarily
8 interpret that to mean it can't be used in
9 other functions.

10 It's simply to me the reading is
11 it can't be used for the lye peeling of fruits
12 and vegetables, as similar to the sodium
13 hydroxide, prohibited, which that reading for
14 sodium hydroxide is prohibited for use in the
15 lye peeling of fruits and vegetables.

16 To me, my interpretation is it
17 would be allowed for other uses. That's just
18 simply a prohibition on its use in that
19 specific area.

20 CHAIRPERSON GIACOMINI: Tracy?
21 Joe?

22 MR. DICKSON: Actually, Joe said

1 exactly what I was going to say --

2 CHAIRPERSON GIACOMINI: Okay.

3 MR. DICKSON: And I'd just add to
4 that that, you know, we've seen that
5 interpretation used in the marketplace, and I
6 believe that both substances are used in other
7 places than peach peeling.

8 CHAIRPERSON GIACOMINI: Okay.

9 Katrina? Miles.

10 MR. McEVOY: Yes, that's my
11 interpretation as well. It's just -- it can
12 be used in other things besides lye peeling of
13 peaches. That's my understanding. That's my
14 understanding as to how certifiers are
15 interpreting it. We do have a complaint on
16 this that we're looking into.

17 CHAIRPERSON GIACOMINI: Katrina?

18 MS. HEINZE: I have not read the
19 transcripts for when this was listed. Do we
20 know what the intent of the Board was that
21 listed this material?

22 MS. MIEDEMA: I went back to the

1 1995 recommendation, and it prohibited all
2 fruit peeling, and it intimated other food
3 uses. But specifically, you know, didn't seem
4 like it wanted to get used in any other fruit
5 peeling situations, and then the 2002 Board
6 added it for IQF peaches.

7 MS. HEINZE: Thanks.

8 MR. DeMURI: And I believe that
9 was based on a comment from an individual
10 manufacturer, who does IQF quick-frozen
11 peaches that needed it for their operation.

12 CHAIRPERSON GIACOMINI: Okay. Any
13 more comments on this section?

14 MR. McEVOY: Sounds like we might
15 need to provide some clarification on this to
16 the Board, in terms of the history of this?
17 Or do you feel like you have a solid
18 background on this?

19 CHAIRPERSON GIACOMINI: I think
20 we'll leave it up to the committee on whether
21 they think this affects their sunset analysis,
22 and we'll see how -- we'll go with that

1 tomorrow.

2 MR. McEVOY: Okay.

3 CHAIRPERSON GIACOMINI: Okay.

4 We're past the time of scheduled break. You
5 have two more sections for sunset to do. I
6 don't even know if the lunches are here yet.
7 They are? What's the opinion and feeling of
8 the Board?

9 MR. DeMURI: I can go either way.
10 I'm perfectly happy to finish up the handling
11 items. It depends on how bad people need to
12 eat.

13 CHAIRPERSON GIACOMINI: Is that
14 agreeable to everyone? Okay. Well, let's go
15 -- let's do them one at a time and then we'll
16 see how we are, how hungry everybody is after
17 the next section.

18 MR. DeMURI: The 606 items will go
19 pretty quickly, I think. Okay. We have one
20 more group of 605(b) items, and Joe Dickson
21 has those.

22 MR. DICKSON: All right.

1 Alginates are, they're the salts of alginate
2 acid, which I think is actually on 605(a) and
3 slated for fall review. But alginate acid is
4 extracted from brown algae. As you might
5 expect from something extracted from algae,
6 it's used as a thickener and stabilizer in
7 processed foods.

8 For all of the items on this list,
9 I'll just lump them. They are all GRAS and
10 they all had no negative public comments or
11 raised any red flags in their original TAP
12 reviews.

13 Ammonium bicarbonate and ammonium
14 carbonate are both used as a leavening agent,
15 similar to sodium bicarbonate and carbonate.
16 They are -- the question of which to use
17 depends on the pH and the sort of viscosity of
18 the baked good. But they're both used in
19 similar ways.

20 Ammonium bicarbonate and carbonate
21 are consumed completely in the leavening
22 process, and leave no residue in the food.

1 Ascorbic acid, a/k/a Vitamin C. As one of its
2 primary uses, it's used to fortify fruit
3 juices to replace Vitamin C to pre-processing
4 levels, as required by certain federal
5 regulations.

6 It's also used as an antioxidant
7 in cut fruits such as apples to prevent
8 darkening. It's made by a fermentation from
9 dextrose, and from there it's extracted and
10 purified. It's used in curing as an
11 antioxidant in flour and beer as a stabilizer,
12 in fats and oils as an antioxidant, and again
13 for Vitamin C enrichment.

14 Calcium citrate is -- that's the
15 next one -- prepared from citric acid. It is
16 then fermented to yield the final product.
17 It's used as a sequesterant, buffer, firming
18 agent and a source of calcium. Calcium
19 hydroxide is also known as lime. Limestone is
20 heated to a very high temperature to obtain
21 carbon dioxide and quick lime.

22 The quick lime is then mixed with

1 water to produce calcium hydroxide. It's used
2 as a buffer, a neutralizing agent, a firming
3 agent, a pH adjuster, and also used in making
4 calcium acid phosphate, which is baking
5 powder. It's also used in nutritional
6 supplements. That is the list.

7 CHAIRPERSON GIACOMINI: Any
8 discussion?

9 (No response.)

10 CHAIRPERSON GIACOMINI: Seeing
11 none, do we still want to move on? Go.

12 MR. DeMURI: Okay. Before I get
13 into the next group, which are all 606 items,
14 I should mention that for the record, that you
15 could probably see most of the committee up on
16 the screen. In every case, the votes were all
17 unanimous, except for maybe an absent member
18 for some of them. So nobody voted no for any
19 of these items to be relisted in the
20 committees.

21 All right. We're going to go on
22 to Group 606, the first group of 606 items.

1 Let me mentioned before I start these, that
2 everything on 606 is subject to commercial
3 availability. So just because they're on the
4 list, doesn't mean that users have free rein
5 to use them whenever they want.

6 They have to prove they're a
7 certifier, that they need to use them because
8 the, an organic form of these ingredients
9 isn't available in the quantity, quality or
10 form that they need.

11 So this is not rote approval to go
12 ahead and use everything on here whenever they
13 want. They do have to satisfy their certifier
14 that they actually need them. That applies
15 for all the 606 items.

16 So the first one under the first
17 group is casings for processing intestines and
18 sausage-making. As I mentioned, it would have
19 to be -- is subject to commercial
20 availability. I must be getting hungry. So
21 they would have to prove to the certifiers
22 that they need this. No public comment at all

1 that this was no longer needed to be on the
2 list.

3 The next one is celery powder.
4 It's an ingredient not currently commercially
5 available as organic. I did do a little
6 searching on this one myself, just to satisfy
7 my own curiosity, and found that it still is
8 not very available. There's a couple of
9 capsules and things that claim to have some
10 organic celery powder, but for large uses,
11 it's just not out there.

12 The reason that it's used
13 primarily is in organic meat, poultry and sea
14 food products manufacture, primarily as a
15 natural source of nitrate, although it also
16 contributes to the savory flavor of final meat
17 products. So it is a nitrate replacer for
18 organic products.

19 Chia, also known as salvia
20 hispanica. It's also an agriculture
21 ingredient not commercially available as
22 organic. Developed several years ago as a

1 source of Omega-3 fatty acids and dietary
2 fiber, which is added to some organic foods as
3 a nutritional supplement. Mostly from Peru,
4 Argentina, Colombia, and Bolivia.

5 Dillweed oil. Extracted from
6 fresh dill plant material through a steam
7 distillation process. The oil is used as a
8 critical ingredient in the manufacture of
9 organic dill pickle products. No information
10 brought forward that this item is now
11 available on the market, to be used in organic
12 pickles.

13 Fish oil. Fish oil is typically
14 used as an ingredient to increase the Omega-3
15 fatty acid content of organic foods. It's
16 derived from high fat-containing fish such as
17 salmon, tuna, anchovy and sardines. The
18 manufacturing involved alkali refining with
19 sodium hydroxide filtration, bleaching of the
20 clay and natural carbon, and deodorization
21 through a steam process.

22 Again, no information brought

1 forward that this should be removed from the
2 list, and no public comment disagreeing with
3 our recommendation to relist.

4 Galangal, in the frozen form only,
5 is a ginger-like knobby red-colored root stock
6 or rhizome cultivated in Southeast Asia. Used
7 in the formulation of authentic Asian
8 processed foods such as Southeast Asian soups.

9 The original petition stated that
10 the dried form of this ingredient was
11 available, but that the dried form did not
12 provide the flavor profile that the
13 manufacturer was looking for in their finished
14 product. So only the frozen form of this item
15 is listed.

16 Again, we had no public comment
17 that did not agree with our recommendation to
18 relist galangal frozen.

19 Gelatin has been on the list for
20 quite some time. Some of these items are
21 post-Harvey items, so they're up for their
22 first sunset review at this point. Gelatin's

1 been on the list for a while. Gelatin is
2 regarded as GRAS.

3 It's used in a wide variety of
4 organic products, including as the main
5 component of the outer shell that encapsulates
6 fish oil, which is the use that's specified in
7 the original petition. Many organic products
8 use encapsulated fish oil and some other
9 products. So it's pretty common in the food
10 industry to use gelatin.

11 It can be derived from a variety
12 of sources, including natural sources such as
13 skin, connective tissue in the bones of
14 animals and from the skin of a variety of
15 commercially-harvested fish. Again, no public
16 comment disagreeing with our recommendation to
17 relist gelatin.

18 Now a broader category of gums,
19 water-extracted only. This includes Arabic,
20 guar gum, locust bean and carob bean source
21 gums. The original 1995 TAP report for gums
22 determined them to be non-synthetic and

1 compatible with organic agriculture.

2 They're polysaccharides derived
3 from a variety plant sources. Each is
4 processed a little bit differently depending
5 on the source, but all those listed in 606
6 must be water-extracted.

7 Gums, of course, are used in a
8 wide variety of organic products, including
9 ice creams, baked goods, soups, candies,
10 jellies, baked goods, fillings and some
11 beverages. No public comment received that
12 disagreed with our Recommendation to relist
13 those gums on 606.

14 Konjac flour is the next item.
15 It's obtained from the tubers of various
16 species of amorphophallus. It's a soluble
17 dietary fiber that is similar to pectin in
18 structure and function. The tuber is ground
19 and milled, mechanically separated and washed
20 with water to produce the flour, and it is
21 used as a jelling agent, thickener, emulsifier
22 and stabilizer in organic foods.

1 Again, no public comment
2 disagreeing with our recommendation to relist
3 konjac flour.

4 Lemongrass-frozen is very similar
5 to galangal. It's also a grass-like spice,
6 also known as citronella that's used in
7 Southeast Asian dishes, Southeast Asian-
8 processed organic foods. It has a similar
9 situation to the galangal.

10 There are some dried forms of
11 lemongrass available, but the manufacturer who
12 originally petitioned this back in 2007, when
13 it was first listed, stated that the dried
14 forms were not suitable for their products
15 because it did not give them the flavor
16 profile they were looking for.

17 So this was listed only in the
18 frozen form. So frozen lemongrass we're
19 recommending for relisting, and we had no
20 public comment disagreeing with that
21 recommendation.

22 The next one is orange shellac,

1 unbleached, and this is an old, somewhat older
2 listed item. First presented at the NOSB
3 meeting in Austin, Texas in 2002. It is an
4 unbleached -- it's unbleached, and it's used
5 principally as a coating agent and as a
6 glazing or polishing agent on fruits and
7 vegetables.

8 It is considered GRAS by the FDA,
9 and it's a hard, durable, amorphous resin that
10 is semi-permeable to water. It is a mixture
11 of resins derived from secretions of the lac
12 insect, that are collected from resiniferous
13 trees and bushes and further processed to
14 yield shellac. Again, we received no comments
15 disagreeing with our recommendation to relist
16 orange shellac.

17 The last one in this group is
18 peppers, specifically chipotle chile peppers.
19 I remember this one. It was listed back in
20 2007. We've had some interesting
21 conversations on this one, but we did
22 recommend they relist it.

1 The original petitioner claimed
2 they needed this specific type of pepper that
3 they could not find in organic form,
4 especially processed in the way they needed it
5 processed for their product.

6 There are organic peppers out
7 there, but specifically processed in the form
8 that they needed for their products was not
9 available, and we received no comments to the
10 contrary when we recommending relisting of
11 this. So we are recommending for relisting of
12 chipotle chili peppers.

13 So that's all of the first group
14 of 606 items.

15 CHAIRPERSON GIACOMINI: Any
16 questions or comments? Katrina?

17 MS. HEINZE: For the new members,
18 I wanted to highlight. When we went through
19 the first set of post-Harvey 606 items,
20 something that continued to come up was this
21 disconnect between the fact that you might
22 have the raw agricultural material in organic

1 form, but could not put together a processing
2 supply chain for it.

3 Depending on the material, the
4 reasons why could vary. It could be proximity
5 to a processing location; it could be the size
6 of batches that were required. So that's why
7 you see some very specific materials on here
8 or specific form of the agricultural product.
9 It was less about you can't grow, you know.
10 You can clearly grow an organic -- chipotles
11 or jalapenos, right? But you can't put
12 together the rest of it, to have that final
13 material available.

14 MR. FELDMAN: Okay. Wow, great
15 job. I'm just curious in going through this,
16 do you see any of these as being close to
17 being replaced by an organic alternative? I
18 mean we heard yesterday and I see hops is
19 obviously going to be on here later on.

20 MR. DeMURI: That's for the fall.

21 MR. FELDMAN: Thank God, but I'm
22 just wondering. In the course of doing your

1 work, did you see any materials that were
2 close to being available commercially in the
3 organic form?

4 I'm curious as to what we can do
5 as a board to help facilitate that transition,
6 and create the encouragement that does what
7 605 or 606 was intended to do?

8 MR. DeMURI: Well as a board, I
9 think we can encourage manufacturers that have
10 these items available to bring that forward to
11 us. We do the best we can in doing some
12 research on some of these, but we can't see
13 every single from every single supplier.

14 So we rely on the public comment
15 process and even the petition process to
16 remove, to get these off, and I make a plea to
17 the industry to help us with that. When they
18 have an item that they think can replace any
19 of these, let us know about it, because we
20 definitely take that into consideration.

21 CHAIRPERSON GIACOMINI: John.

22 MR. FOSTER: My experience has

1 been if there's a supplier of these that's at
2 all tuned into a national supply chain, they
3 do bring it forward. I can see a few things
4 where -- that are closer than others to being
5 attractive in large scale growers and
6 manufacturers.

7 But I feel the industry was used
8 to pre-Harvey kind of sensibilities and
9 patterns, and is just getting to the point
10 where they're starting to get comfortable with
11 the durability and the consistency that this
12 is starting to look like, and that fear of
13 instability, for minor ingredients, that's a
14 big investment for a minor ingredient.

15 So the more stable we can make a
16 list, the more attractive it's going to be in
17 the long term, to do exactly what you want.
18 I don't think there's been that perception of
19 stability for a relatively small production
20 volume.

21 But the more stable it is, I'm
22 certain you'll see more action faster in the

1 next couple of years, I would guess.

2 CHAIRPERSON GIACOMINI: Katrina?

3 MS. HEINZE: I was going to add to
4 that too, that it is very much in the interest
5 of the supplier of one of these ingredients to
6 bring it before the NOSB, because once they
7 have, it would be very hard for a certifier to
8 then let a handler use it. So I believe we
9 would know.

10 MR. DeMURI: And to your point,
11 Jay, I do know of -- I'll take gums as a
12 specific example. I do know of a fairly major
13 manufacturer that makes organic gums, and they
14 are listed on the 606.com website. So
15 certifiers should know that, and they should
16 be asking their clients whether or not they're
17 using organic gums.

18 The research that I've done,
19 because we use organic, we use gums in our
20 operation, is that the supply is not quite
21 there yet to be able to handle everybody that
22 needs it. But it's getting pretty close.

1 CHAIRPERSON GIACOMINI: There's
2 one item on here that I'm really surprised is
3 on this first go-round. I remember the
4 conversations, the discussions we had. But I
5 want you to refresh me, so I can make sure I
6 keep it in the right context.

7 Was casing an original 606
8 listing, or was that a Harvey?

9 MR. DeMURI: That was a Harvey
10 item, 2006.

11 CHAIRPERSON GIACOMINI: Okay,
12 okay. I remember when that, those discussions
13 for putting that on the list was going on.
14 There was a lot of contention for GMO issues,
15 and now the organic beef industry is much
16 larger than it was then. The supply would
17 seem to be much more available if they were
18 pushed.

19 While it's not right there yet
20 now, and maybe I just shouldn't say it, but we
21 are closer to cloned animals being approved.
22 There was a tremendous amount of debate on

1 this last time. I'm very surprised that there
2 was no negative comment on this. But that
3 notwithstanding, I'm surprised it's on the
4 first set, first go-round of approvals, and I
5 would support you considering to put that off
6 until next time.

7 MR. DeMURI: What I think I'd
8 rather do is go ahead and vote on it, so I
9 don't have to pull it out and redo that
10 particular recommendation, and then rely on
11 additional public comment between now and the
12 end of May. If it looks like we get some,
13 we'll be more than happy to reconsider it.

14 CHAIRPERSON GIACOMINI: That's the
15 process we set up. Any other comments? We
16 are now pushing one o'clock. Do you really --
17 you're sure you really want to finish this?

18 MR. DeMURI: We only have four
19 more, and they're Joe Smillie's. I know he's
20 going to be very quick, because he's hungry.

21 CHAIRPERSON GIACOMINI: That means
22 he can't comment on them later as he goes on.

1 (Laughter.)

2 MR. DeMURI: So the last group of
3 -- the last four are four 606 items that Mr.
4 Smillie's going to handle for us.

5 MR. SMILLIE: I'll start with the
6 items. Basically, sweet potato starch, and
7 it's for bean thread only. It's one of those
8 items where there is sweet potato starch
9 available, but the production of bean thread
10 is a very, very narrow enterprise, engaged in
11 by very few people, which creates a very
12 specific type of food in Southeast Asian
13 cuisine.

14 There's no availability. The
15 original petition and the reviews were pretty
16 exhaustive, and the manufacturer is
17 aggressively looking for a supply that has not
18 shown up yet.

19 The second is similar in a certain
20 sense. Turkish bay leaves are distinctly
21 different from other bay leaves, and are not
22 replaceable by other bay leaves, and there's

1 a very limited supply due to a number of
2 fragilities on the supply side. The
3 manufacturer again is supposedly keeping their
4 eye out for it, and looking for the supply of
5 that. Right now, there isn't one.

6 The third one, wakame sea weed, is
7 a specific type of sea weed, and even though
8 there are some North American sources of sea
9 weed, it's a different variety and species
10 that isn't amenable to the wakame, the undaria
11 pinnatifida that's used in miso soups and
12 other specific Japanese cuisine items, and
13 that -- don't get so interested there. You've
14 got more chop stick practice, hashi practice
15 to cover.

16 But these items are all similar in
17 the sense that they're specific minor
18 ingredients used for specific cuisines. We
19 did have a number --

20 CHAIRPERSON GIACOMINI: Did you
21 miss kelp Joe?

22 MR. SMILLIE: Sorry? Yes, I'm

1 going to wait a second on that one. We did
2 have a number of sunset comments. I counted
3 15 in total. Some of them just were
4 supporting renewal in general, and others were
5 more specific as to their support. But they
6 all supported renewal of these items, and
7 there were some specific supports.

8 I'm going to deal with kelp last,
9 because it's a slightly different one. Unlike
10 the others, which were -- I hate keeping using
11 the post-Harvey, because now Arthur is back,
12 and I remember going through all the Harvey
13 talk with Arthur. We'd sit there and go man.

14 But anyhow, we've got kelp, which
15 is a pre-Harvey item, and that was put on
16 originally with the annotation for use only as
17 a thickener and dietary supplement. Again,
18 there was specific support for this, and there
19 is organic supplies of kelp available.

20 But the petitioner and the
21 information said that not all varieties.
22 Again, kelp is not as specific as the wakame.

1 It covers a number of varieties of sea
2 vegetable, and both the petitioner and the
3 available industry information says that
4 although organic is available for some uses,
5 it's not all types are available. The
6 petitioner or the support document basically
7 said that it should remain on 606, since that
8 wasn't available.

9 That received the only, I won't
10 say negative comment, but the only comment we
11 got was from CCOF, that supported all but had
12 some concerns.

13 Those concerns expressed by CCOF
14 weren't necessarily that the material wasn't
15 there, but they questioned the use of it as an
16 agricultural material, since there was no
17 specific standards for the production of sea
18 vegetables, similar to that we have no
19 specific maple syrup, mushroom or honey
20 standards per se.

21 So I'm interpreting that, unless
22 it's more specific, that they're not against

1 it, relisting. They just had some concerns
2 that specific standards for the production of
3 kelp aren't in the regulation. But I believe
4 and the committee believes that the production
5 of kelp is covered within the regulation, as
6 interpreted by certifiers.

7 So therefore we have support for
8 these items. The committee votes were all
9 unanimous in support of these items, and
10 again, commercial availability, as has been
11 previously expressed. If we get comments or
12 we get petitions to remove them, we'll
13 certainly look at them. They're there for, to
14 spur the industry to produce these as organic.

15 CHAIRPERSON GIACOMINI: Comments
16 on the set? Jay?

17 MR. FELDMAN: Kelp is a good
18 example, I think, in this area, of looking at
19 certain varieties becoming available while
20 others aren't. It brings up this issue of
21 annotation. So how do we deal with that? I
22 guess we're limited by our ability to --

1 CHAIRPERSON GIACOMINI: The
2 petition process.

3 MR. FELDMAN: So we have to
4 petition to remove from --

5 CHAIRPERSON GIACOMINI: To change
6 the annotation.

7 MR. FELDMAN: To change the
8 annotation. And you're saying that petition
9 exists?

10 (Simultaneous speaking.)

11 MR. SMILLIE: No, no, no. The
12 original. We've got the original petition,
13 the original TAP and specific comments.

14 MR. FELDMAN: So what would be the
15 process for that? I mean we are not going to
16 petition ourselves, right? But on the other
17 hand, we see commercial availability --

18 CHAIRPERSON GIACOMINI: Anyone on
19 this Board can submit a petition as an
20 individual, and you would just need to
21 withdraw yourself from that vote. But we have
22 14 other people to vote on that petition.

1 MR. FELDMAN: Right. I would urge
2 the committee to consider someone from the
3 committee to petition in this case, where
4 you've identified varieties that are
5 commercially available.

6 CHAIRPERSON GIACOMINI: Or we all
7 have friends.

8 MR. FELDMAN: Or we all have
9 friends.

10 CHAIRPERSON GIACOMINI: Katrina.

11 MS. HEINZE: I appreciate your
12 passion for this topic. It is really good.
13 We as handlers want to see this list be an
14 active, dynamic list. I just want to remind
15 you, just because it's on the list doesn't
16 mean that someone can use it.

17 So if there's a particular variety
18 that I as a handler wanted to use, and that
19 variety is available in organic form, I have
20 to use it.

21 MR. FELDMAN: Right.

22 MS. HEINZE: So there is -- just

1 because it's on the list really isn't a
2 problem.

3 MR. FELDMAN: Yes. I mean I
4 understand that. I guess I'm picking up on
5 the thread from yesterday regarding hops. I
6 don't know how representative that is of how
7 this plays out. I know our intent is for this
8 to happen, but the question is is it
9 happening, and what incentives can we adopt
10 that ensures that it moves in that direction.

11 MR. SMILLIE: Well, I think
12 Katrina answered it properly, that that's the
13 mechanism. It works. As you can see, we're
14 not here to discuss hops. I guarantee you
15 we'll have a battle royal on this in the fall.
16 But as far as this one goes, it's
17 significantly different.

18 And we did not get a petition and
19 we did get a comment from a supplier of
20 organic kelp, saying that they wanted to
21 relist, but they did not want to take it off,
22 because they could not supply all the needs.

1 MR. FELDMAN: Oh, okay.

2 CHAIRPERSON GIACOMINI: Okay. Any
3 further questions on that? Okay. We're a
4 little after. First of all, one more
5 reminder. There were a set of reading glasses
6 found from last night. If these are yours and
7 you can't figure out why you can't see the
8 paper in front of you, this might be it.
9 Whoops, Steve?

10 MR. DeMURI: I forgot. Katrina
11 asked me to let her talk briefly about colors,
12 because she has that large group for the fall.

13 CHAIRPERSON GIACOMINI: After
14 lunch.

15 MR. DeMURI: So Katrina, go ahead.

16 CHAIRPERSON GIACOMINI: After
17 lunch. Reconvene at two o'clock.

18 (Whereupon, the above-entitled
19 matter went off the record at 1:07 p.m. and
20 resumed at 2:00 p.m.)

21
22

1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 2:06 p.m.

3 CHAIRPERSON GIACOMINI: Okay, it's
4 after two o'clock. Could we please have the
5 members in their seats, and the rest of the
6 people find a seat or take the conversations
7 outside please?

8 Got you quiet. Barry will show
9 you how. Okay, all right. Two o'clock. We
10 have a quorum of the Board. We're back in
11 session. Valerie, thumbs up Valerie? We
12 ready to go?

13 That's wonderful, okay. I almost
14 had them under control here for a minute.
15 Golly, okay. Please. We're ready to move on
16 with the next part of our agenda. Yes, one
17 last moment back to the Handling Committee for
18 Steve.

19 MR. DeMURI: We need one minute.
20 Katrina's going to give us a brief update on
21 Colors. There's 19 of them that are up for
22 sunset 2012, that we're going to talk about in

1 the fall. So that's 19 of the 44 or 45 we had
2 to do in November. Katrina's handling those
3 for us, for the committee and would like to
4 provide an update.

5 MS. HEINZE: If I could beg the
6 indulgence of the Chair, I do not have the
7 classification of materials documents that
8 Valerie needs. Can I just -- on a drive. Can
9 I just have one minute to do that before I do
10 Colors?

11 CHAIRPERSON GIACOMINI: Yes. If
12 we had thought of it, we would have had a
13 long break right before this session. So but
14 since we didn't think of it, you can proceed
15 and we'll watch you. Excuse us for one minute
16 while we make some technology adjustments.

17 MS. HEINZE: With comments like
18 that, you're likely to have your joint Chair
19 walk out of the room and leave you to do it.

20 CHAIRPERSON GIACOMINI: Okay.
21 Three guys walk into a bar.

22 MS. HEINZE: Thank you, Mr.

1 Chairman. You ready for me to proceed on
2 Colors?

3 CHAIRPERSON GIACOMINI: Thank you.

4 MS. HEINZE: Thank you for your
5 patience. I should have done that during the
6 break. I just neglected to think about it.
7 Okay. The Handling Committee wanted to just
8 alert the rest of the Board that in the fall,
9 we will be reviewing 19 colors that are listed
10 on 606.

11 MR. MOYER: Katrina, could you
12 move the microphone a little closer? It's
13 difficult to hear on this side of the room.
14 I'm not sure why.

15 MS. HEINZE: Absolutely. Is that
16 better? Better? Better.

17 Okay. My husband would not say
18 I'm usually soft spoken, so thank you. I'll
19 be sure to pass along the information. The
20 Handling Committee has on our work plan to
21 review 19 colors currently on 205.606 for
22 sunset. We wanted to let the rest of the

1 Board know that in that process, we're also
2 evaluating how to best proceed with an
3 annotation change.

4 When those materials were
5 reviewed, we reviewed processes that were
6 either water or oil-extracted. But after much
7 discussion on the board, we chose not to
8 annotate those listings with that restriction.

9 It has since come to our attention
10 that there are some manufacturers who are
11 using solvent-extracted colors, and that was
12 not our intent.

13 So I have been working with the
14 program to determine the best way to proceed
15 with that, whether it's through a petition,
16 which we are prepared to do if that becomes
17 necessary, or whether the committee can
18 proceed with a recommendation, given our
19 information.

20 So we will have two
21 recommendations on these materials in the
22 fall. One will be an annotation change and

1 one will be the relisting of sunset. So we
2 just wanted you to be aware, since that's one
3 of our problematic materials. Any questions?

4 CHAIRPERSON GIACOMINI: So just to
5 be clear on that, that is not an annotation
6 change within sunset process?

7 MS. HEINZE: That's correct. It's
8 two separate recommendations.

9 CHAIRPERSON GIACOMINI: Thank you.
10 Any discussion, questions for Katrina on that?

11 (No response.)

12 CHAIRPERSON GIACOMINI: Okay,
13 seeing none. Does that conclude the Handling
14 Committee, Mr. Chairman?

15 MR. DeMURI: Yes it does, thank
16 you.

17 CHAIRPERSON GIACOMINI: Thank you.
18 Moving on to Joint Material Handling
19 Committee. The chairperson is Katrina Heinze.

20 MS. HEINZE: Thank you. Valerie,
21 you have many documents on flash drive. The
22 two that you have that you might want to open

1 are the 042610, Classification Materials.

2 Yes. It should be a Word document.

3 Then the other is titled the
4 "MCHC Presentation." It's a PowerPoint, thank
5 you, and it's just one slide, so you don't
6 need to flip through it or anything. Thank
7 you.

8 Okay. So while Valerie gets that
9 going, just for the Board, the presentation is
10 just a couple of different versions of the
11 definition of chemical change, and I'll refer
12 to them in my presentation. So you don't need
13 to look at them quite yet.

14 So first, I really want to thank
15 the committee for your continued work on this
16 topic. It has been a very long journey. I
17 want to particularly commend the new members
18 for jumping in with two feet. It has really
19 been a pleasure working with you, and having
20 your skills working on this topic.

21 At the November 2009 NOSB meeting,
22 the NOSB passed a recommendation on

1 classification of materials. In that
2 recommendation, we said that there were a few
3 public comments that needed additional study,
4 and stated our intent to do so. This addendum
5 is those clarifications.

6 Before I address the definition of
7 chemical change, there are a couple of other
8 points I want to highlight from this addendum.
9 The first is that -- oh bummer. Miles isn't
10 here. Pay attention Arthur.

11 The committee and the public, as
12 we continue to hear in public comment, very
13 much support the idea of having commercial
14 availability applied to 605. We understand
15 that at this point the NOP does not see this
16 option as viable, but we'd really ask the NOP
17 to continue to explore that option and perhaps
18 report back to the full NOSB on that topic in
19 the fall. So if that would be possible, we
20 would appreciate that.

21 Second, I also wanted to highlight
22 that we have received a few public comments,

1 asking us to explore merging 605 and 606. We
2 explored that with the NOP last summer, and
3 were informed it wasn't an option. So that's
4 why that wasn't in our recommendation.

5 Then I want to highlight a couple
6 of other points that are important. Our
7 November recommendation was rule change, that
8 would affect how a few materials are
9 classified. We want to highlight that
10 certifiers should not be using that
11 recommendation until it's formalized in a
12 guidance document and rulemaking.

13 We know the NOP is going to
14 prioritize that rulemaking once we've
15 completed hopefully at this meeting a
16 recommendation, and that they'll partner with
17 us to get a guidance document out as quickly
18 as possible. But we don't want to have chaos
19 in the marketplace between the two systems.
20 So we just wanted to remind folks that that's
21 our goal.

22 Livestock feed. This is a matter

1 that has been hovering on the outskirts of our
2 classification document as long as I've been
3 involved in the topic. There is a requirement
4 that agricultural products in a food ration be
5 organically produced without exclusion, and it
6 does get marked up in this. Yeast is the best
7 example.

8 While not related to
9 classification of materials, we've continued
10 to hear public comment that it's time to
11 revisit that requirement for agricultural
12 products. So I didn't want those public
13 comments to get lost once its classification
14 document is done. So I would perhaps ask the
15 Livestock Committee to be aware of those
16 public comments, and determine as you see
17 appropriate how you want to proceed with that.

18 Then I want to thank the Policy
19 Committee for your timely recommendation on
20 having two votes on every material. I
21 appreciate you getting that done so quickly,
22 so that that's formalized in the manual.

1 Okay. That was the easy stuff.

2 Let's talk about chemical change. In
3 November, we received public comment that
4 asked us to clarify our definition that we as
5 a board voted on in November.

6 They asked us to clarify our
7 support, that the term "synthetic and chemical
8 change" were intended to identify materials
9 that are man-made, synthesized compounds.

10 Similarly, we were asked to
11 address whether chemical changes generated
12 during processing methods allowed in OFPA or
13 using allowed National List materials, would
14 make an otherwise agricultural product
15 synthetic. The public did not support that
16 that would be synthetic.

17 There was consistent concern,
18 expressed by the public, that a recommended
19 definition of chemical change and the
20 definition of substance that goes with it went
21 too far, and moved a wide number of
22 agricultural materials into the category of

1 synthetic.

2 The simplest example, which we
3 have in our addendum, is toasted wheat
4 kernels. I get it's very simple. It is an
5 analogy for many other materials that we could
6 discuss. So if you toast a wheat kernel,
7 there is chemical change. It browns. It's a
8 different identity.

9 Our definition, as we recommended
10 in November, would make that synthetic, which
11 was not our intent. So I'm going to draw your
12 attention out the screen. The definition in
13 November says that "chemical change is an
14 occurrence whereby the identity of a substance
15 is modified, such that the resulting substance
16 possesses a different, distinct identity."
17 Then there's an associated definition of
18 substance.

19 So in fact for a lot of
20 agriculture products, if you heat them, mix
21 them, the long list of processing, you would
22 result in chemical change. So our definition

1 did do that.

2 After discussing these points
3 after the November meeting, the Joint
4 Committee worked on adding a sentence, which
5 you see in the middle definition, this is our
6 posted definition.

7 That sentence is "allowed
8 processing as defined in 205.2, that has only
9 agriculture or non-synthetic inputs, does not
10 result in a substantive change in identity as
11 it applies to the definition of this term."
12 So this was our attempt to address the public
13 comments in November.

14 This posted change was approved or
15 passed by the Joint Committee by a vote of 8
16 yes, 2 no and one absent. The two "no" votes
17 felt that the language went too far in kind of
18 drawing the line between what's Agricultural
19 or what's non-synthetic or what's synthetic.

20 This was, however, our best effort
21 to capture the idea. We are very grateful for
22 those who submitted thoughtful, written

1 comments ahead of the meeting, because that
2 gave us time to really look at the language,
3 and gave us better suggestions, which is why
4 we love public comment. It really helps us
5 get more brains involved.

6 These comments agreed that in our
7 effort to address their comments in November,
8 we erred and went too far. What they said is
9 that that middle definition could be applied
10 to processing of non-agricultural inputs,
11 which in fact it does. That wasn't our
12 intent.

13 They also said that it went too
14 far in going over to crops and livestock, and
15 would be too inclusive. So that was good
16 suggestions or good comments that the
17 committee took seriously.

18 We did receive one public comment
19 that said all chemical change should be
20 synthetic, and they wanted us to stick with
21 the November recommendation. Interestingly,
22 we also got a second set of public comments

1 which balanced the others received.

2 What those comments said is we're
3 "headed toward a very restricted definition of
4 chemical change that will radically increase
5 the regulatory burden and reduce the
6 availability of organic farming inputs, and
7 goes beyond the federal law and the
8 regulations enacted to capture the historic
9 intent of the organic philosophy."

10 I bring that up because I think it
11 really highlights how difficult classification
12 of materials is. It is a layering of science
13 and philosophy and consumer sensibility, and
14 what we realized a year ago or so is that our
15 job is to make the tough choice and draw the
16 best line we can through those very different
17 perspectives. So that is what the Joint
18 Committee is doing with our recommendation.

19 So based on the written public
20 comment, the Joint Committee has met through
21 the past week to discuss them, and as a result
22 on Monday night, we voted unanimously for the

1 third thing that you see.

2 So what that says, it's the same
3 first sentence; it hasn't changed since
4 November. What it says is that "Processing,
5 as defined in 205.2 of agricultural products,
6 using materials allowed on the applicable
7 section of the National List, i.e., 205.601
8 for crops, 205.603 for livestock and 205.605,
9 205.606 for handling, does not result in
10 chemical change as it applies to
11 classification of materials."

12 We believe that this new language
13 addresses the public comments submitted prior
14 to the meeting, specifically those comments
15 our original language allowed 605 materials to
16 cross over to crops and livestock or vice-
17 versa, and that it addresses processing as it
18 applies to non-agricultural inputs.

19 We did have a discussion about
20 whether we should include crops and livestock,
21 or restrict the second sentence to handling.
22 There was very strong support in the

1 committee, unanimous given that the unanimous
2 vote for this language, to support being
3 inclusive of crops and livestock.

4 We appreciate that there are those
5 in the public who looked at this definition
6 yesterday and provided verbal public comment.

7 I think in general they supported
8 the new language, but they echoed the debate
9 about limiting, whether they should be limited
10 to crops and livestock, or limited to
11 handling, or whether it should also apply to
12 crops and livestock.

13 Okay. I'm just going wrap up with
14 a summary of the rest of the public comment
15 we've received. We did receive a couple of
16 comments about our definition of non-
17 agricultural, which was passed in November.
18 These folks said it might need more
19 refinement. For example, with regards to wild
20 crops, mushrooms and kelp.

21 It is our intention at this point
22 to address those in the guidance document. If

1 we're not able to do that, we'll be back at
2 that point. But we do believe we can do that
3 in the guidance document.

4 I've already mentioned the matters
5 of livestock feed and commercial availability.
6 We did have one comment asking or recommending
7 that we change the title of 605, which we do
8 not believe we need to do. Okay. So I'm
9 going to wrap up.

10 I want to wrap up by reminding
11 everyone of two key points on classification
12 of materials. Remember that classification of
13 materials is not the same as allowance or
14 prohibition. So there are materials that are
15 classified as non-synthetic that are not
16 compatible with organic production and need to
17 be prohibited. Our definition does not change
18 that.

19 Similarly, there are materials
20 that are classified as synthetic that are
21 essential for organic and should be allowed.
22 Our definition doesn't change that. So

1 classification is separate from allowed or
2 prohibited.

3 My second point is there is no
4 definition that will address every single
5 material, and will draw the line perfectly for
6 every single material. There will always be
7 one example that someone can think of, that is
8 not going to work.

9 Our goal should be to address the
10 great majority of the materials for which
11 there's been confusion, and that's what
12 industry has asked us to do.

13 Right now there are classes of
14 materials that are confusing, that there is
15 differences in how to classify them, and we
16 have tried to address a great majority of
17 those. At least that is my opinion. I will
18 let other committee members voice their
19 opinions on that.

20 But I believe strongly that this
21 is really the best effort, and that further
22 work -- we could work on this for another ten

1 years. We absolutely could. There is
2 diminishing returns. I think we have done
3 tremendous work.

4 The Joint Committee has been
5 fabulous. We've had ongoing debates, and I'm
6 quite proud of what we're presenting. So
7 that's my presentation on this. I would open
8 it up for questions and debate.

9 CHAIRPERSON GIACOMINI: We could
10 certainly continue debating this for another
11 ten years, and we don't want to do that. We
12 don't want to put that on the Board. But I
13 think it's safe to say that very likely ten
14 years from now, they'll probably still be
15 talking about something like this, or they
16 will again, I should say.

17 MS. HEINZE: They'll have that one
18 material.

19 CHAIRPERSON GIACOMINI: Any
20 comments, questions? Tracy.

21 MS. MIEDEMA: I have a question
22 for the deputy administrator on this topic,

1 Miles.

2 (Laughter.)

3 MS. MIEDEMA: The question is this
4 topic affects so many other topics, that the
5 hope is if the Board decides to make this
6 recommendation to the program, that the
7 program would go through all of its terminal
8 reviews and promulgate rulemaking. Do you
9 have room in your priorities or would this fit
10 among priorities?

11 MR. McEVOY: Well, we do have a
12 lot that we're working on. This is an
13 important area to clarify how materials are
14 reviewed and evaluated, and either denied or
15 allowed onto the National List.

16 I'd ask you to think about whether
17 or not you need to request rulemaking in this
18 area, or you could use this as guidance for
19 your own decision-making, in terms of how
20 substances get reviewed, evaluated and either
21 allowed or prohibited.

22 Because it's probably going to

1 change. As you've said, there's always those
2 materials out there that you're going to look
3 at a little bit differently and want to modify
4 these definitions.

5 So do it through guidance. Do it
6 through your own internal guidance of your
7 NOSB policy, rather than asking for rule
8 changes. It might be an easier way. See how
9 it fits, see how it works for a while, and if
10 it's really settled and solid, then make it
11 into a recommendation for formal rulemaking.
12 That's what I would suggest.

13 We'll certainly utilize it for
14 guidance, but I'm not sure if we really want
15 to move towards rulemaking on this.

16 MS. MIEDEMA: Would you be willing
17 to include it in the handbook if it were as
18 guidance? But I don't know how that would
19 work.

20 MR. McEVOY: Sure. We already
21 have a lot of things on the deck in terms of
22 what we're putting into the first edition of

1 the handbook.

2 But the handbook will continue to
3 expand as we clarify more and more areas. So
4 it could be done through adding it into a
5 draft guidance, 60-day comment period, gets
6 comments, and then through formal guidance.
7 Yes, that's a possibility.

8 CHAIRPERSON GIACOMINI: Katrina.

9 MS. HEINZE: It is a bit what we
10 envisioned with the November recommendation,
11 that that would turn into a formal guidance
12 document, and we could feel it out for a bit,
13 make sure it was working and then proceed with
14 rulemaking. So that fits with what our
15 intentions were, I think.

16 CHAIRPERSON GIACOMINI: Jay.

17 Jeff.

18 MR. MOYER: In light of that
19 Katrina, does that change the wording at all
20 of your recommendation, or does it not?

21 MS. HEINZE: I don't believe it
22 does, because this would match then what --

1 the same language that we had in November.
2 Then it's just the timing for the next steps
3 that were in our November recommendation. So
4 I think that's not a problem.

5 CHAIRPERSON GIACOMINI: Any other
6 comments or questions?

7 (No response.)

8 CHAIRPERSON GIACOMINI: Okay, I
9 have one. John? I've been part of this
10 process since almost as long as I've been on
11 the Board. I was part of writing the document
12 that flew the industry into an uproar, that
13 created the Materials Working Group, of which
14 we were very grateful that they were able to
15 come together and step forth.

16 I've stayed a part of this process
17 the whole way through, and I've always tried
18 to help the committee write the best document
19 they could, even if there was a major part of
20 it that I didn't fully agree with. In the
21 November document, I had a major concern with
22 the step we took that eliminated the step of

1 agricultural products being able to become
2 non-synthetic, with minor processing or minor
3 change, I will use the word "change," before
4 they became synthetic.

5 I didn't have examples for that
6 then. I think that and other examples have
7 come up. We had a terrific one here, and the
8 reason I bring, I use this background is
9 because it all comes to the, if Valerie still
10 has that document, it still comes to the
11 chemical change issue. What is chemical
12 change?

13 Chemical change, the use of the
14 term has become an issue of chemistry. It's
15 become an issue of breaking bonds and moving
16 electrons and those kind of chemical issues,
17 that even with the fairly sophisticated
18 knowledge of chemistry that we had here
19 yesterday, people could not decide when the
20 bond was broken on the corn going to corn-
21 steeped liquor.

22 It reminds me very much of the

1 time a couple of years ago when we were
2 discussing aquaculture to well-respected
3 experts looking at the exact same data on sea
4 lice and coming to an 180 degree opposite
5 conclusion. Also in the last year and a half,
6 I've been working on documents for
7 nanotechnology.

8 We all agree that nanotechnology
9 should be synthetic, but in the shaving of
10 larger particles into the smaller particles of
11 nanotechnology, it's not a chemistry change.
12 There is a change in the chemical nature, but
13 there's not a chemical chemical change.

14 There are also very large
15 potential issues in the yeast recommendation
16 regarding yeast derivatives. If yeast fully
17 became agricultural, the definition of whether
18 those derivatives would be allowed as
19 agriculture, since we're saying they can't be
20 non-synthetic anymore, when and if that gets
21 changed from 605.

22 So there's a lot of issues. I

1 think we've gone -- I don't know how to get
2 the horse back in the barn. But I'm very
3 concerned that we've gone down the right road,
4 making this entirely a chemical, a chemistry
5 issue. We are not looking -- I think chemical
6 change from a standpoint of the chemical
7 nature, the chemical functionality.

8 Yes, everybody can say that oh
9 well that's too debatable. But as we saw
10 yesterday, the debate of when a bond gets
11 broken and what broke the bond is also pretty
12 darn debatable too.

13 So I'm not looking to go
14 backwards. I'm really not. But I like the
15 idea of keeping it as guidance and really
16 seeing if it works. But I disagree with -- I
17 now have substance to what I didn't agree with
18 in November. It's directly relevant to the
19 chemical change issue, and I just had to
20 express that.

21 MS. HEINZE: Well thank you.

22 However, the good news is we voted on that in

1 November.

2 CHAIRPERSON GIACOMINI: But
3 chemical change is the issue, so it makes the
4 difference. So any other comments?

5 MS. HEINZE: Yes, yes.

6 CHAIRPERSON GIACOMINI: Steve?

7 MR. DeMURI: Just as a reminder,
8 this is -- I see this as a tool to help us and
9 future boards determine where to put
10 substances as they are petitioned. It's not
11 the end-all to everything.

12 There's going to be case-by-case
13 instances where chemical change is going to be
14 debated. But we have to rely on the other
15 board members, whoever that happens to be at
16 the time, to make a logical decision on that.

17 CHAIRPERSON GIACOMINI: Any other
18 comments? John.

19 MR. FOSTER: So this has been the
20 one issue that more than any other that I've
21 been watching the Board go around about, where
22 I don't think it's been a clearer case of

1 where our wish for a simple answer or a simple
2 guideline or a simple flow chart or a decision
3 tree runs more counter to sensibilities that
4 we have, that we all bring to the industry.

5 My comment earlier about stocking
6 density, numbers are really nice, but I think
7 that gives a false sense of security. And in
8 this case, what I was taken with probably
9 increasingly in the last three or four weeks
10 of discussion was just how badly we want
11 something, a piece of paper to go to and say
12 "make it easy for us to decide these things."
13 There's a thirst for that.

14 I think part of that is a fairness
15 issue. We want to apply these things
16 consistently and I think that's appropriate.
17 But we also, everyone I think on the Board,
18 and certainly all the commenters, think of
19 this, think of the appropriate decision tree
20 in the context of the materials he or she
21 feels are appropriate. We filter, we kind of
22 iterate our decision tree model based on what

1 we feel is appropriate to be included.

2 I think that's a human thing to
3 do. I don't think there's anything wrong with
4 it, but it's not -- it's hard to be consistent
5 that way. It's hard to get an answer for
6 every material. And in all of our
7 conversations that we had over the last few
8 months, we would go around with "Well, how
9 does this definition sound? Oh, that sounds
10 pretty good. Well, what about that material?"

11 Inevitably, some people would say,
12 there would be some general agreement on a
13 basic decision tree or flow chart, and then
14 one material would come up and say well, I
15 don't think that should be an organic. So I
16 want to make the decision tree, call it
17 synthetic, whereas someone else would say
18 "Well, I think that material is okay. So I
19 want the decision tree to call it non-
20 synthetic."

21 And it was interesting for me to
22 watch, as a relative newcomer to the Board,

1 see how powerful our sensibilities are, in
2 wanting to control kind of the scientific
3 consistency of what constitutes chemical
4 change.

5 I had a whole new respect for the
6 Board's activities prior to my coming on it,
7 whereas it was this very cloudy issue. It's
8 less cloudy now, but I'm -- I think we'll
9 always have a tension between our personal
10 sensibilities about what's appropriate for
11 organic, and our wish for consistency in
12 application of a guideline.

13 Having said that, I really like
14 the idea of guideline as opposed to
15 rulemaking, and in my head I realize I've been
16 considering this. I hadn't identified it as
17 such, but I was thinking of it as a
18 rulemaking. But I think I prefer the guidance
19 model strongly at this point, for all of the
20 reasons that have been discussed already.

21 CHAIRPERSON GIACOMINI: Any other
22 comments?

1 (No response.)

2 CHAIRPERSON GIACOMINI: Seeing
3 none, Madam Chairman, you're next subject.

4 MS. HEINZE: Okay. Well actually
5 I was going to say on that point, you know,
6 what this document says right now is that the
7 rule changes or the definition changes, as
8 recommended in our November document, and this
9 would be added to that, be added to the NOP
10 work plan and prioritized as appropriate.

11 So we could add something like
12 prioritized after the guidance document's been
13 in place for some period of time or something.
14 Because in November we recommended definition
15 changes. This is just an addendum to that.

16 MR. McEVOY: So you're
17 recommending a rule change definition changes
18 in your -- that's what I seemed like you were
19 doing in November.

20 MS. HEINZE: We did in November.

21 MR. McEVOY: Right. So that
22 you're thinking --

1 MS. HEINZE: This is only an add
2 to that.

3 MR. McEVOY: To add to that
4 request for a rule change?

5 MS. HEINZE: Right. So we could
6 change the language to say that the rule
7 change should follow after the guidance
8 document.

9 CHAIRPERSON GIACOMINI: But it's a
10 low priority.

11 MS. HEINZE: Right.

12 MR. McEVOY: Yes. I guess the
13 question would be do you really want to
14 request a rule change here, or do you want to
15 use it for guidance and let it sit for a
16 while, and if it works really well, then
17 recommend a rule change.

18 MS. HEINZE: So then would we add
19 a sentence to this, to take back what we said
20 in November?

21 MR. McEVOY: If that's what you
22 choose to do, sure.

1 MS. HEINZE: Jeff.

2 MR. MOYER: That was my point
3 earlier in terms of the recommendation,
4 because it is an addendum to a recommendation
5 you already made for rule changes. So do we
6 have to change or add a sentence in this, to
7 rescind that request for rule change, and make
8 it more of a guidance document? That was --

9 MS. HEINZE: I get the question.

10 MR. MOYER: I'm sorry. I wasn't
11 clear.

12 MS. HEINZE: No.

13 CHAIRPERSON GIACOMINI: Valerie.

14 MS. HEINZE: Actually Jay had
15 something. Hold on.

16 CHAIRPERSON GIACOMINI: Oh, okay.
17 Jay.

18 MR. FELDMAN: With respect to the
19 decision made in November, do we have
20 definitional work to do regarding some of
21 that?

22 CHAIRPERSON GIACOMINI: That's

1 what this was.

2 MS. HEINZE: That's what this is.

3 MR. FELDMAN: No, but this on
4 significant or insignificant?

5 MS. HEINZE: That's in the
6 guidance document, and yes, we do have that
7 work. I haven't talked about it yet.

8 MR. FELDMAN: That would be in the
9 guidance document?

10 MS. HEINZE: Correct.

11 MR. FELDMAN: Okay. I'm wondering
12 if given the way Miles has described the
13 guidance document, as an opportunity to see
14 how this works, which I would really enjoy
15 that opportunity, that we don't lock ourselves
16 into a definition that precludes us from
17 making slight changes, similar to what seems
18 to have occurred with an annotation
19 restriction, or the sunset guidance on
20 allowance of annotations.

21 We've locked ourselves out of
22 tweaking that until we go through a long

1 process of officially changing that, which is
2 -- I guess it's not as lengthy as rulemaking,
3 but it's still a significant process. So is
4 there a way, is it feasible to create
5 flexibility, so if we see that oh, we didn't
6 think of this, because you know, as we go
7 through applying the definition, that we have
8 the ability to.

9 MS. HEINZE: I guess would I would
10 say if it stays at the guidance document
11 level, what having been through this now for
12 three years, I think any change to the
13 definition that we would want to do should
14 come to the full board, and that's how this
15 would stand.

16 I do like that. I will see if I
17 can work on some proposed language to address
18 the timing of rule change, with regards to the
19 guidance document that we can talk about
20 tomorrow.

21 CHAIRPERSON GIACOMINI: Okay,
22 Valerie?

1 MS. FRANCES: I just want to
2 remind and affirm that the program is working
3 really hard to respond to the Board's
4 recommendations now in a timely fashion, and
5 if you've asked for rule change, they're going
6 to need to address that in their responses.

7 This has obviously been requested
8 by OIG and other, you know, articles out there
9 in the press, that be specific about what you
10 want, so that it's -- we're giving the
11 appropriate answer to what you want.

12 MS. HEINZE: That's just a change
13 in direction from where we were.

14 CHAIRPERSON GIACOMINI: This has
15 some interesting logistics. This is an
16 interesting road. I'd like to hear what Miles
17 says, and then I may have a question for him.

18 MR. McEVOY: Yes. I guess one of
19 the responses back to the Board would be to
20 really, when you're working on something,
21 you're doing great work but you're not quite
22 finished, like with the animal welfare and the

1 classification materials, don't call it a
2 final recommendation.

3 Or call it a work in progress or
4 something, because if it's a final
5 recommendation, then that's something that we
6 as the program should officially respond to.

7 But then in the meantime, you're
8 working on further changes to it. So you
9 bring up for more discussion and, you know, it
10 might go on with animal welfare for another
11 meeting or two.

12 So I'm not exactly sure what the
13 right terminology should be, but the final
14 recommendation terminology is probably not the
15 right one, because then it looks like we're
16 not taking action on your final
17 recommendation.

18 But you actually don't want us to,
19 because you're not done with your work. So we
20 have to get a little bit clearer on our
21 communication between the program and the
22 Board.

1 The other issue about this
2 classification materials is that some of the
3 things that you want to use as an alternative
4 definition, we already have definitions in
5 OFPA and the regulations, that OFPA takes
6 first priority. We always go there first, and
7 then you go to the regulations, and then the
8 rest has to align with those things.

9 So if part of your definitions are
10 different and aren't just clarifications or
11 guidance to the definitions that are in OFPA
12 and the NOP regulations, then the only way you
13 can really use them is by a rule change.

14 MS. HEINZE: And in fact that's
15 what November was.

16 CHAIRPERSON GIACOMINI: Yes,
17 that's my question. In suggesting this to be
18 guidance, how do you implement the suggestions
19 that we are making in changes to definitions?
20 How would that get implemented to see if it
21 works?

22 MR. McEVOY: Well, if it is not in

1 alignment with the existing regulations, you
2 can't do it. You've got to following the
3 existing regulations, and if you want to use
4 different regulations, then you have to make
5 a final recommendation to make a rule change,
6 and then we'll respond whether or not we
7 support that. If we support that, then we'll
8 start going through the proposed rule and the
9 final rulemaking.

10 CHAIRPERSON GIACOMINI: So in
11 areas of this path we took on classification
12 materials, when it's clarification of language
13 in the regulation, we could go guidance.

14 MR. McEVOY: Right.

15 CHAIRPERSON GIACOMINI: But if we
16 think the needed path that needs to be taken,
17 and I believe we were very conscientious not
18 to touch any OFPA definitions. But any of the
19 definitions that are in the rule but not in
20 OFPA, we can't -- there's no mechanism to give
21 those the guidance try.

22 MR. McEVOY: Right. If you want

1 to add definitions to the regulations or
2 change those definitions, that has to be done
3 through rulemaking. So you've done a lot of
4 work in this area, and a lot of that work that
5 you've done is discussion is guidance, is
6 things that kind of help you to decide how to
7 make decisions.

8 But part of it is actual language
9 changes to the regulations, and if that --

10 CHAIRPERSON GIACOMINI: Well that
11 -- all that work was done in November, and it
12 was only with the follow-up that the committee
13 felt and with the community coming to us, that
14 this definition in particular needed work,
15 that we are back here on this specific item.

16 But all the other recommendations,
17 from language to interpretation, was pretty
18 well completely done in the November document.

19 MR. McEVOY: Okay. Pretty well
20 completely done. So --

21 CHAIRPERSON GIACOMINI: Except for
22 this.

1 MR. McEVOY: Except for this. So
2 the rest of your final recommendation is a
3 final recommendation on all the other
4 definition changes you want, except for this?
5 And how do you --

6 MS. HEINZE: That is correct.

7 MR. McEVOY: Okay. And --

8 MS. HEINZE: And they are changes
9 to the rule.

10 MR. McEVOY: Okay. So if that's
11 what you would like, then we look forward to
12 your final recommendation on this.

13 MS. HEINZE: Arthur.

14 CHAIRPERSON GIACOMINI: Arthur
15 Neal.

16 MR. NEAL: As I look at the third
17 definition, one of the questions I asked
18 myself, and this is not final.

19 I'm just thinking to myself, does
20 this require a rule change? Because as I look
21 at it, we're trying to help people understand
22 more clearly what a chemical change is, and

1 for the purpose of clarifying the existing
2 definition, this could be viewed as just
3 additional insight or guidance as to how that
4 definition is understood, that applicable
5 sections of the National List, if they're used
6 in the processing of, or if processing an
7 agricultural ingredient, they do not result in
8 the chemical changes that applies to the
9 classification of materials.

10 I mean I don't know if that
11 requires a rule change. So that may be some
12 of the feedback that you get after it goes
13 through the internal process.

14 CHAIRPERSON GIACOMINI: Well, we
15 made a rule change on this definition in the
16 November document, that the committee felt was
17 not the proper recommendation to make. This
18 is trying to fix that. We at the very least,
19 if we want to go back to the original, we
20 would have to, you know, rescind whatever,
21 however you want to describe it.

22 MS. HEINZE: Hey Dan? I guess I

1 would respectfully disagree.

2 CHAIRPERSON GIACOMINI: Okay.

3 MS. HEINZE: That in November we
4 passed a recommendation that we strongly
5 believed was the right one, but that it needed
6 clarification.

7 CHAIRPERSON GIACOMINI: We did not
8 have -- did we have a chemical change
9 definition from that one?

10 MS. HEINZE: Yes.

11 CHAIRPERSON GIACOMINI: Okay.

12 MS. HEINZE: The first sentence,
13 where it says "November," is what we
14 recommended in November. At that meeting, we
15 got public comment that it needed
16 clarification.

17 CHAIRPERSON GIACOMINI: Okay, all
18 right.

19 MS. HEINZE: It was our
20 understanding at that time, both from the
21 public and the program, that that needed to
22 happen through an additional part to the

1 definition of chemical change, as opposed to
2 clarification.

3 We can certainly change that and
4 say that this second sentence could be in the
5 guidance document. Regardless, as a Board, we
6 need to decide that that's the right sentence.

7 MR. McEVOY: Yes, the other thing
8 you can do is you can determine what you want,
9 and then we can let you know whether or not it
10 requires a rule change, or we can put it into
11 guidance. So some of these things that may be
12 new definitions, don't necessarily have to go
13 into the rule to start to use them, as long as
14 they're aligned with the existing regulations.

15 But if you're requesting a change
16 to an existing definition that's in the
17 regulation, then that would require a change.

18 CHAIRPERSON GIACOMINI: Jeff.

19 MR. MOYER: I'm glad you brought
20 that up Miles. I mean part of the reason, I
21 think, at least I'll speak for animal welfare
22 or many of those other documents that come to

1 the program still needing some tweaking, and
2 we call them final recommendations, is to
3 finally at some point put some of these
4 discussions to bed, so we can move on to other
5 things.

6 As you can see, these kinds of
7 conversations can go on ad infinitum, and we
8 will never be finalized until we like hand it
9 to you and at least you have something to
10 react and respond to. I think your point at
11 the end was well-taken, whether or not it
12 should be rule change or guidance. It really
13 should come from you folks, not from us.
14 We're just putting the recommendation in front
15 of you, and I think that's what we want to do
16 with this document.

17 Otherwise, as was noted earlier,
18 ten years from now we'll still be doing it.
19 Ten years from now we'll be talking about
20 animal welfare. Ten years from now we could
21 be talking about all of the things that we've
22 been talking about and never reach consensus.

1 But we need to move on to many of
2 the other things that are coming on our plate.
3 So handing it off to you through a final
4 recommendation is the only way we have to get
5 it onto your plate.

6 MR. McEVOY: Okay.

7 CHAIRPERSON GIACOMINI: Katrina.

8 MS. HEINZE: I would suggest that
9 the right thing to do is to see if there's any
10 more questions on this proposed sentence, and
11 then that I tweak the update on next steps,
12 part of our addendum, to summarize some of
13 this conversation, to say that we are
14 recommending hopefully this, for rule change,
15 but that we would ask that the next step be
16 that the program look at this addendum,
17 together with our November recommendation, and
18 advise on which of the definitions need to go
19 through rule change and which could be part of
20 the guidance document. Does that make sense?

21 CHAIRPERSON GIACOMINI: Right now
22 we are -- yes. Right now we are still though

1 in the discussion at the committee level.

2 This document is still in the hand of the
3 committee.

4 MS. HEINZE: Yes, I get that. I'm
5 just talking about --

6 CHAIRPERSON GIACOMINI: You can
7 sort of take a "How do you feel poll." But it
8 hasn't -- it's not in front of the entire
9 Board for a full vote.

10 MS. HEINZE: I get that.

11 CHAIRPERSON GIACOMINI: So the
12 committee can take it back and do what they
13 need, and present it tomorrow morning.

14 MS. HEINZE: I get it. Any other
15 questions about that? We don't need that
16 slide, Valerie. Yes.

17 CHAIRPERSON GIACOMINI: Jay.

18 MR. FELDMAN: I have a question
19 for Miles on the program. I think you said
20 this. I just want to clarify that. Once you
21 get this document in the form of a final
22 recommendation, you will or the Department

1 will evaluate whether the proposal is in
2 compliance with OFPA, and the standard and the
3 definition of synthetic in agricultural
4 products in the statute, you'll make that
5 determination or the OGC will make that
6 determination.

7 If there's a problem with that,
8 which there may well be, you would get back to
9 the NOSB.

10 MR. McEVOY: Yes. That's the
11 process. Okay, you've got it.

12 MR. FELDMAN: Great, thanks.

13 CHAIRPERSON GIACOMINI: Okay.
14 Anything else?

15 (No response.)

16 MS. HEINZE: Well thank you. That
17 was a direction I didn't expect it to go.

18 CHAIRPERSON GIACOMINI: That was
19 an interesting turn of events.

20 MS. HEINZE: That was interesting.
21 Okay. Our second topic is the guidance
22 document. Yes, so, good segue. What I was

1 going to start with was this one should be
2 easier, but I don't think that's appropriate
3 anymore.

4 A very key next step from our
5 November recommendation was to develop a
6 guidance document that would put the
7 recommendation into practice. So I'm glad we
8 worked on that, given our last discussion.

9 What we decided to do is to
10 present at this meeting a draft document. We
11 intentionally did not view the draft that we
12 presented as complete, but instead complete
13 enough. What we want to do is to provide to
14 the public and you, the rest of the NOSB, with
15 a view of the direction that we were going
16 with with the guidance document, and an
17 opportunity to comment, so that you could
18 influence the remainder of our work.

19 Specifically, we asked for input
20 on three questions. Does the guidance
21 document reflect the November NOSB
22 recommendation? In general, the responses to

1 that were yes, it does. Do the example
2 materials reflect the range of materials that
3 currently pose classification difficulties?

4 In general, the answer was no.

5 Are there materials whose
6 classification would be unclear using this
7 document, and we did get some materials that
8 folks thought we should look at. I'm not
9 going to review the document at this time
10 unless you want me to, but rather I wanted to
11 summarize public comment and then what we plan
12 to do with that public comment.

13 It's our intent to take the public
14 input that we've gotten and any comments we
15 have from the Board during this discussion,
16 and further refine our document. We will then
17 work with the NOP to develop a draft to put
18 into the NOP process for guidance documents.
19 There's a formal process published in the
20 Federal Register on the development, issuance
21 and use of guidance documents.

22 That process includes additional

1 opportunities for public comment. So there
2 will be more opportunities for public comment,
3 which I think is very important.

4 So to summarize the public
5 comment, we appreciate the work of the public.
6 A number of folks really took the time to go
7 through this guidance document line by line,
8 word by word, give us very detailed comments,
9 give us alternate sentences, structures that
10 we can really use, and we so appreciate that.
11 That will be very helpful for us.

12 So just to summarize the public
13 comments, we had one public comment that said
14 it was clear from the recommendation that
15 source -- or from the guidance document, that
16 source and manufacturing process are possibly
17 the most important piece of information to
18 have when making a classification.

19 Also, it is important for the
20 industry to know that once a classification
21 has been made regarding a substance, that the
22 information leading to that classification is

1 just as important as the classification
2 itself.

3 So what they really liked is this
4 work sheet approach versus a decision tree,
5 because the work sheet requiring documenting
6 a lot of that thought process about source and
7 process.

8 There was generally concerns with
9 Question Number 2, which is is the substance
10 certified organic or certified "made with"?
11 Folks felt that that would get very confusing
12 between Crops and Livestock, didn't apply to
13 Crops and Livestock. That question is a bit
14 of a stop gap, because of the chemical change
15 definition that we came up with in November.
16 If as a Board we approve the addendum that we
17 just discussed, this question would no longer
18 be necessary.

19 The third class of public comment
20 was that the examples were too handling-
21 centric. So again, the public gave us a
22 number of other materials that we should look

1 at, and we do appreciate that. There is
2 general consensus among the public that we
3 needed different work sheets for crops,
4 livestock and handling. Then someone provided
5 us some examples of what they thought those
6 should look like.

7 We had said in our document that
8 this question of significant and
9 insignificant, we knew required more work, and
10 we asked for suggestions from the public on
11 how to proceed on that. We got a number of
12 suggestions, and I know I've had informal
13 offers during breaks for that as well. So we
14 will continue with the work on significant and
15 insignificant.

16 We were asked that the guidance
17 document addresses the materials on the
18 National List cannot across over between
19 sections. So for example, that a material on
20 605 cannot be used as a crop input unless it's
21 on 601. So we will do so.

22 Specific materials were offered

1 for us to consider in development of the
2 document. Someone redirected us back to the
3 Material Working Group. Suggestions were some
4 additional definitions in there that they felt
5 we should consider, and finally someone said
6 we should align the guidance document with the
7 proposed addendum if it's passed, and provided
8 some examples where they weren't in alignment.

9 So that was the public comment.

10 Again, we will take those back. We'll
11 incorporate them into our work, so that
12 hopefully what we do provide to the program
13 has been fully fleshed out. Any questions or
14 comments?

15 CHAIRPERSON GIACOMINI: Any
16 comments from the Board on the guidance
17 document?

18 (No response.)

19 MS. HEINZE: That's a discussion
20 item, so this is your last opportunity.

21 CHAIRPERSON GIACOMINI: Only for
22 discussion.

1 (No response.)

2 CHAIRPERSON GIACOMINI: Seeing
3 none, does that conclude the --

4 MS. HEINZE: That concludes the
5 Joint Committee's presentation for today.

6 CHAIRPERSON GIACOMINI: Okay,
7 thank you.

8 MS. HEINZE: On time.

9 CHAIRPERSON GIACOMINI: We are on
10 schedule for a break. We'll take that and be
11 back at 3:15 on the nose.

12 (Whereupon, the above-entitled
13 matter went off the record at 3:01 p.m. and
14 resumed at 3:25 p.m.)

15 CHAIRPERSON GIACOMINI: We have a
16 quorum. We'll come back into session. Any
17 conversations going on, if you'd please take
18 those outside or otherwise find your seat. Me
19 too, no. I didn't mean that. I understand
20 there have been some discussions going on on
21 some of the material issues.

22 I would like to, as a slight

1 digression from the agenda, just to cover,
2 make sure we finish this off properly, to ask
3 each of the three chairmen of the material
4 committees, Crops, Livestock and Handling, if
5 there is any further discussion, any input
6 that they want to look at, to bring to the
7 table at this time. Steve, Handling?

8 MR. DeMURI: I have had some folks
9 that were experts in certain areas come to me
10 and talk to me during breaks and what-not, and
11 I appreciate that input. I don't know that we
12 need any further input at this point. I feel
13 like most of the Board members are pretty well
14 versed on the materials that we talked about.

15 If anybody has any questions on
16 anything, particularly with potassium
17 hydroxide or any of the gums, we do have
18 experts in the audience who are willing to
19 discuss that. If anybody has any questions on
20 those, we could call those experts up to
21 answer any questions.

22 CHAIRPERSON GIACOMINI: If any

1 Board members have questions on this.

2 MR. DeMURI: Any Board members
3 have questions.

4 CHAIRPERSON GIACOMINI: And
5 anybody that has questions on those substances
6 can still make comments to the sunset ANPR,
7 and it could possibly be pulled out of the
8 affirmation vote next fall and put onto the
9 spring docket.

10 MR. DeMURI: I did mention that,
11 right, to the folks that I talked to, I
12 mentioned they still have several weeks to
13 make comments as well.

14 CHAIRPERSON GIACOMINI: Tina,
15 Crops.

16 MS. ELLOR: As far as I know,
17 we're good.

18 CHAIRPERSON GIACOMINI: Jeff,
19 Livestock?

20 MR. MOYER: Yes. I have no need
21 to pull anybody to the front.

22 CHAIRPERSON GIACOMINI: Thank you.

1 Okay. Moving on, back onto the agenda. Next
2 on the agenda is the Materials Committee, with
3 chairperson Katrina Heinze.

4 MS. HEINZE: The Materials
5 Committee has one item on the agenda. It is
6 a status update on nanotechnology, and Dan has
7 graciously agreed to do the presentation for
8 that topic.

9 CHAIRPERSON GIACOMINI: Switching
10 hats, I need Joe's hat set for switching hats.
11 Yes. The Materials Committee in the NOSB
12 began looking at nanotechnology. I believe
13 this is our third recommendation. Didn't we
14 have a discussion and then a recommendation
15 that we pulled or at least a year.

16 The significant amount of comment
17 at the last one was to request sort of a
18 technical review on this substance/technology.
19 We discussed that item and we prepared this
20 document with that thought in mind, was to
21 -- and it has been submitted to the program to
22 be forwarded on to the technical advisory,

1 what are those called -- reviewers, and for a
2 report to come back to us on suggestions
3 around forming the definition, which would be
4 applicable and usable and correct for the
5 organic industry.

6 The nature of -- no, that's a bad
7 word to use in this situation. The
8 development of the nanotechnology industry is
9 one that even within themselves, aspects of
10 the definition continue to change. It wasn't
11 that long ago that the maximum size considered
12 for nanotechnology was 100 nanometers. That
13 has been expanded to 300.

14 There are some people that think
15 that should be bigger. That's one of the
16 questions we asked. When we're dealing with
17 an issue of very small particles of natural
18 substance -- very small pieces of natural
19 substances, it could not have occurred without
20 very advanced technology instruments that are
21 used to generate those particles.

22 We asked whether a consideration

1 of that technology needed to be part of the
2 definition. So there were a number of issues
3 that we looked at, from everything from art,
4 we were using resource materials of popular
5 pres articles, scientific journal articles,
6 going all the way to essentially being text
7 books on the subject. I did read what would
8 essentially have been sort of a lay person's
9 text book on nanotechnology.

10 So that's where we, the resources
11 that we used to come up with this. We're very
12 appreciative of the comments that helped us
13 deal with definition. We are also very
14 appreciative of the comments that continue to
15 express the feelings of the industry, which is
16 certainly that nanotechnology and the products
17 of are not appropriate in organic.

18 Should we do that by calling it
19 synthetic? Should we do it by creating
20 essentially a big four, along with the sewage,
21 sludge, irradiation and excluded methods?
22 Those are all considerations.

1 The decision to go any of those
2 routes is greatly dependent on the definition
3 that we can define, that we can create to
4 isolate what nanotechnology is to this
5 industry, that we are specifically trying to
6 prohibit.

7 We're not trying to prohibit
8 homogenized products. We're not trying to
9 prohibit products created in the milling
10 process. But there are some more advanced
11 technologies that are being used to create
12 mouth feel in ice cream and other products,
13 that do need to be included in that debate.

14 Those are the kind of things we're
15 trying to find with this document, that
16 hopefully we will get feedback from the
17 reviewer on. One of the things that we became
18 aware of in reviewing this is that the
19 standard definitions of nanotechnology are
20 created by the nanotechnology industry.

21 And because -- I think partly
22 because of the nature of people -- how some

1 people feel about nanotechnology, and how
2 similar it is to the genetic engineering and
3 in our case excluded methods issue, they have
4 purposely, I think, for the most part created
5 a definition for their use that is as
6 expansive as possible.

7 So that if it really gets really
8 bad press, they can come back and say "See
9 look, nanotechnology is homogenized milk.
10 Nanotechnology is, you know, churned ice
11 cream. Nanotechnology is flour milling."
12 Those are not the kind of things -- and that's
13 a value to them in their industry, with the
14 function of what they're trying to achieve.

15 The other thing they're trying to
16 do is there is money in nanotechnology for
17 research. The broader the definition, the
18 more research projects qualifies
19 nanotechnology, even if it just is freeze-
20 drying ice cream in liquid nitrogen.

21 There's one company that has
22 liquid nitrogen frozen ice cream, and they say

1 it's nanotechnology with nanoparticles. So we
2 need a definition that works for us. I think
3 most of you were here yesterday.

4 I think a lot of us wanted to look
5 at that, the situation of really having that
6 strong, solid line and possibly putting it in
7 that big four category.

8 But we have to understand what the
9 implications are, because nanotechnology is
10 going to be all around us, and as I used in
11 that example, and maybe it's not the best
12 example, but it's an accurate representation
13 of what can happen when an outside entity, an
14 outside municipal organization, an outside
15 somebody without -- we're already allowing for
16 when required by law.

17 Well, if it's a filter in a water
18 system in a municipal water supply, it's not
19 required by law -- it's what they chose to put
20 in. If we firmly and completely identify it
21 under that, creating the big four with
22 nanotechnology as an absolute prohibitive,

1 what happens to that factory in the middle of
2 a city that is manufacturing organic products,
3 and they suddenly have a small contamination
4 of some nanotechnology particles in their
5 water supply that they have absolutely no
6 control over? Are they out of business?

7 It may not -- like I say, it may
8 not be the exact best example, but it's
9 certainly a very good representation of the
10 kind of issues we need to be aware of, that we
11 are aware of as we look in proceeding with
12 this, and the reason that we need to try to
13 find the absolute best, most accurate
14 definition of nanotechnology or the products
15 of nanotechnology or however we decide to come
16 up and craft it, that fit this industry and
17 the needs of this industry.

18 So Madam Vice Chair, I'm going to
19 hand that over to you. If you would please
20 run our discussion for anyone who wants to
21 make comments, ask questions or make comments
22 on this.

1 MS. MIEDEMA: Jeff.

2 MR. MOYER: Thank you, Tracy. I
3 guess my question to you, then Dan, would be
4 since, as you just stated, the industry is
5 currently in the driver's seat in regards to
6 the definitions of nanotechnology, do you see
7 our definition changing or being pushed in a
8 certain direction, based on whether or not we
9 are looking at it under the idea of it being
10 an excluded method, or whether we're looking
11 at it as being defined as a synthetic.

12 It would seem to me like the
13 definition could be altered or swayed in
14 different directions, based on the goal of --

15 CHAIRPERSON GIACOMINI: Well, I
16 think it's the other way around. I think the
17 goal would be to find a definition that would
18 allow it to be, to go under that, the big four
19 excluded method type of scenario. That would
20 be the ideal situation. But it takes the
21 right definition to do that.

22 MR. MOYER: Yes, it does.

1 CHAIRPERSON GIACOMINI: And if we
2 can't reach that definition, we may have to go
3 back to the next one. Because like I said
4 before, you know, if you're taking a chunk of
5 silver and making nanosilver, you haven't
6 changed any bonds. You've just made smaller
7 pieces. That where our current definition in
8 a lot of things we deal with with synthetic
9 don't work.

10 I want to be clear on one thing.
11 That was an example I used before, when we
12 were discussing on the joint committee
13 document, you know. That's just an example.
14 That is not -- we are so far down the road on
15 that, that that will be something we can work
16 on later, if we get there.

17 Please don't use that and your
18 opinion on nanotechnology as a decision to
19 change your consideration or not vote for what
20 you would otherwise like to do on that
21 recommendation.

22 So please don't do that. It's two

1 separate issues and after we get to where we
2 end up wanting to be with nanotechnology, if
3 that ends up being a factor, that is something
4 we can deal with then in that structure. So
5 please don't let that influence your vote on
6 the Joint Committee document.

7 MS. MIEDEMA: Yes, Tina.

8 MS. ELLOR: I'm actually going to
9 speak as Kevin right now, so pretend I'm
10 Kevin. He did email me some discussion points
11 on, you know, things on the agenda that he
12 wanted to mention. So for this comment, I'm
13 Kevin.

14 MR. MOYER: Before you start Tina,
15 I would say that you're a worse Kevin than
16 even I am.

17 MS. ELLOR: Thank you, Jeff.

18 (Laughter.)

19 MR. MOYER: And that was meant to
20 be a compliment.

21 MS. ELLOR: All right. Well,
22 here's what Kevin has to say. "I'm

1 disappointed that the committee has requested
2 a TR for nanotechnology, but I am thankful
3 they did not approve nano for organic
4 agriculture.

5 As a relatively new and extremely
6 complicated development, the final TR in
7 nanotechnology will never be written. A new
8 TR will probably be warranted every year."
9 This is not me; this is Kevin.

10 "Public comment leaves no doubt
11 that consumers do not want nanotechnology
12 allowed in any segment of organics. Humans
13 overestimate their ability to not only detect
14 results, but also to predict them.

15 "Predicting the impact on humans
16 when different nanoparticles interact in the
17 human body is impossible. Organics must
18 represent a clear-cut difference with regard
19 to the use of nanotechnology in food
20 production.

21 "I hope the committee requests
22 that the focus of the TR centers on defining

1 nanotechnology," which if he was here, he
2 would know that, "and the appropriate sizes of
3 particles depending on uses, so that when they
4 write their final recommendation, there will
5 be no doubt that nanotechnology has no place
6 in organics."

7 CHAIRPERSON GIACOMINI: Yes. I
8 hope -- I'm the person they're talking about.

9 MR. MOYER: He's the chair.

10 MS. FRANCES: Are you replying?

11 MS. MIEDEMA: I'm replying to
12 that.

13 CHAIRPERSON GIACOMINI: Yes. I
14 hope that we were clear --

15 MS. MIEDEMA: One free pass.

16 (Laughter.)

17 CHAIRPERSON GIACOMINI: Golly.
18 See if I turn the gavel over to you again.
19 Okay. I'm hoping we were clear enough in this
20 document that we forwarded to the program,
21 that we are not asking for a technical review
22 on nanotechnology.

1 We are asking for help in crafting
2 a definition. That's what we were asking, and
3 I am hoping that is what the program saw. I'm
4 hoping that's what the technical reviewers
5 see.

6 MS. MIEDEMA: Katrina.

7 MS. HEINZE: I just wanted to
8 articulate the journey that we've been on with
9 regards t nanotech. It is so abundantly clear
10 that our consumers do not want nanotech in the
11 food, the organic foods that they consume.
12 What is very unclear to us is what they mean
13 by nanotech, because different folks mean
14 different things when they say nanotech.

15 So I think a lot of the debate
16 that we had as a board at our November meeting
17 about how to prohibit nanotech centered on
18 this idea of we didn't know what it was. So
19 to Dan's point, we asked for a TR that said
20 help us define this, so that we're prohibiting
21 all the things that we want to prohibit, but
22 not having unintended consequences.

1 So I think that I feel very good
2 about the direction, and I'm looking forward
3 to getting some help back from the program.
4 We also got some good public comment, up to
5 and including a couple of public comments that
6 gave us a draft definition that they thought
7 might be beneficial.

8 So I'm looking forward to some
9 good work before the next meeting.

10 MR. MIEDEMA: Any other comments?
11 Madam Chairwoman, Materials. How are we
12 doing?

13 MR. HEINZE: That concludes the
14 Materials, unless there's other discussion.
15 We're done.

16 CHAIRPERSON GIACOMINI: Thank you,
17 Madam Vice Chair. We move on. We're actually
18 a bit ahead of schedule, so if we can keep on
19 that for this next one, we'll be able to do a
20 little bit extra here this afternoon. Move on
21 to the CACC, Compliance, Accreditation and
22 Certification Committee. Chairperson, Joe

1 Smillie.

2 MR. SMILLIE: Thank you, Mr.
3 Chair. A little bit of background on this,
4 that the recommendation, guidance
5 recommendation, not a rule change, is
6 guidelines for the use of inert atmospheric
7 gases with products labeled and sold as 100
8 percent organic.

9 The committee started with the
10 issue of looking at the 100 percent seal, the
11 100 percent claim. That's where we started
12 from. There was a pretty broad spectrum of
13 opinion, both from the Committee and the
14 sector, that this claim was not working very
15 well in the marketplace for a number of
16 reasons.

17 Especially the ACAs had a lot of
18 trouble with it; consumers had trouble with
19 it. Nobody was really happy with it. So
20 foolishly, we put it on our work plan and
21 started to look at it. The feeling we got
22 right away was that it would just be really

1 nice to get rid of it, to abolish the 100
2 percent claim. It doesn't exist in the EU,
3 doesn't exist in Canada.

4 It's problematic for a number of
5 reasons, and we felt that that would be just
6 a nice thing to do. But we decided that it
7 would be a big step, and Arthur and people
8 like Arthur, you know, rule change, it would
9 be maybe too big of a step.

10 So we took a second step, which
11 was that well let's just fix the things that
12 are wrong with it. Well, there's a lot wrong
13 with it. Perhaps the thinking about it.
14 Maybe the claim itself is okay, but the
15 thinking about it and the delivery into the
16 marketplace hasn't worked too well.

17 We got into a number of complex
18 issues, which we put in our first
19 recommendation, and those include sanitizers,
20 food contact substances, post-harvest handling
21 issues, diatomaceous earth and grain bins, all
22 sort of things. You know, chickens with

1 peracetic acid on them and you know, water
2 baths.

3 It just became an incredibly
4 complex issue, and we had a lot of opinions on
5 each of these issues, and putting them all in
6 one recommendation didn't look very feasible,
7 since we didn't have a lot of agreement. So
8 we narrowed it down more, and we got down to
9 some of the most egregious issues, which we
10 felt were the use of atmospheric gases as
11 packaging aids.

12 The reason that this became an
13 issue was because the program interpreted the
14 use of these inert atmospheric gases, nitrogen
15 mainly but others, as processing aids that
16 would prevent the product from achieving 100
17 percent claim.

18 We had a number of manufacturers
19 who felt that when we put coffee beans into a
20 vacuum pack foil, or they put olive oil into
21 a jar and they flushed it with nitrogen, that
22 that product was still 100 percent.

1 They let us know in no uncertain
2 terms that they felt that they were being
3 prevented from using that seal after they had
4 created it, which you know, they felt that was
5 economic damage to them, and they had two
6 options.

7 Either change the seal or stop
8 flushing with nitrogen, neither of which were
9 very good solutions, and neither of which
10 achieved a higher degree of organic integrity.
11 We looked at the situation and we have come to
12 the conclusion on our committee that we
13 believe that inert atmospheric gases are
14 packaging aids and not processing aids, and
15 we've cited the CFRs that we believe support
16 that contention.

17 So onto the document itself. We
18 made, we did have a number of comments. I
19 could be wrong. It's sometimes hard, and I'll
20 go off on my little soap box. When you have
21 your name and it says "multiple issues" on
22 regulations.gov, sometimes we might miss your

1 comment.

2 Or if you follow the excellent
3 example of the OTA and you break it down and
4 each issue has a title, then Valerie can put
5 them all so that we see them all, and the
6 broad category, "multiple issues," we don't
7 lose your input. So I recommend to everybody
8 if you've got multiple issues, give them all
9 a title and give them separate documents, so
10 that we don't miss them.

11 I got seven, and six of them were
12 entirely favorable to this document and one
13 was opposed. I'll go into that opposition and
14 the reasons for it. The one tweak that was
15 requested was from OTCO, and we have taken
16 that as a friendly amendment.

17 The difference between what you
18 have in the document and what's up on the
19 screen, you'll see that we agreed with their
20 opinion that "made with organic" label -- yes,
21 that one -- how many ingredients and food
22 groups. That category also requires

1 processing aids be on the National List.

2 Again, this document's not about
3 processing aids, but we had to quote that in
4 order to differentiate between what we believe
5 is a packaging aid and a processing aid. So
6 we made that minor correction to the document.
7 It doesn't change the intent of the document.
8 It just makes the document, we believe,
9 correct.

10 So the rest of the document goes
11 through our reasoning. Basically again, to a
12 minor tweak to allow handlers to use, to flush
13 their product, make it safer with nitrogen,
14 which is again 70 percent of what you're
15 currently breathing more or less, and create
16 a better product with no loss of organic
17 integrity, because we believe it's a packaging
18 aid and not a processing aid.

19 That's basically it. We will not,
20 we are not addressing, you know, post-harvest
21 handling, diatomaceous earth, peracetic acid
22 in chicken baths, food contact substances.

1 We'll save those for a different time and
2 place, if they're to be discussed.

3 We simply want to right what we
4 believe is a wrong, and ask the program to go
5 back and possibly, in our opinion I think, I
6 hope I'll get the votes for this one, correct
7 their interpretation of inert atmospheric
8 gases. So Mr. Chair.

9 CHAIRPERSON GIACOMINI: John.

10 MR. FOSTER: So I'm not a
11 chemistry guy, but my understanding is inert
12 gases are all on the right-hand side of the
13 periodic table, and nitrogen isn't there.
14 Isn't it? I don't know. I don't have access
15 to the Internet, so I can't --

16 MR. SMILLIE: I'm not basing this
17 on the periodic table.

18 MR. FOSTER: Well, my
19 understanding --

20 CHAIRPERSON GIACOMINI: We have a
21 representative from the --

22 (Simultaneous speaking.)

1 CHAIRPERSON GIACOMINI: --of a
2 scientist. We have a scientist on the Board.

3 MR. FOSTER: Perhaps I can finish
4 my comment, and then we can go there.

5 MR. SMILLIE: Okay. Sorry to
6 interrupt.

7 MR. FOSTER: So that's my
8 understanding. If I'm wrong, I'm happy to be
9 corrected. So to call it inert atmospheric
10 gases, I don't know if that's accurate. I
11 know it's not all about the name, but the name
12 is important.

13 Also so I'm not quite sure,
14 looking under the paragraph that starts with
15 "historically." There have been two other
16 classes used in organic processing which are
17 not ingredients, but have not been considered
18 processing aids either. The first is
19 sanitizers.

20 MR. SMILLIE: Right.

21 MR. FOSTER: So with that in mind
22 and my understanding is food contact

1 sanitizers are much more commonly used in
2 processing than inert gases, inert atmospheric
3 gases. Why did you, this is my question.

4 Why did you pick atmospheric gases
5 to be the one to stand kind of on its own as
6 a packaging aid, which I'm not really familiar
7 with that term? Why that one instead of
8 sanitizers to still allow 100 percent claim?

9 MR. SMILLIE: I believe we had a
10 clarification from the program on sanitizers,
11 that their -- the ruling, the thinking we got
12 or the policy we got from the program was that
13 sanitizers shouldn't be included, that they
14 were already allowed.

15 MR. McEVOY: Well, you want a
16 response to that?

17 MR. SMILLIE: Yes.

18 MR. McEVOY: Okay. So sanitizers
19 can be used in different ways, right. So they
20 can be used as a food contact substance, or
21 they can be used on food contact surfaces for
22 sanitizing those surfaces, or they can be used

1 in the dump tank water. So that it would be
2 different uses.

3 MR. SMILLIE: Correct.

4 MR. McEVOY: So the question was
5 did we clarify this in the past? Is this
6 before I came or --

7 MR. SMILLIE: Yes, before you
8 came.

9 MR. McEVOY: Okay. So I'll turn
10 it over to Mark.

11 (Laughter.)

12 MR. SMILLIE: Well, let me -- but
13 in response to that, yes, those are two
14 different uses. As I said in preamble, we
15 didn't touch the use of them in the tank
16 water. We're just not addressing it. Why we
17 chose not to do it, I think we'll let
18 Livestock do that one.

19 But as far as on the sanitizers
20 and use on equipment on food contact surfaces,
21 we did get a clarification on that. That's my
22 recollection and understanding.

1 MR. McEVOY: Okay, and there
2 certainly needs to be more clarification, and
3 that will come out in the draft guidance that
4 we're putting out later this summer, okay.

5 MR. SMILLIE: But I kind of would
6 respond to you John with tai chi. We just, I
7 didn't, we didn't deal with that in this
8 document. So the sanitizer issue. We felt
9 that that was clear enough.

10 MR. FOSTER: But why -- so you
11 didn't.

12 MR. SMILLIE: No.

13 MR. FOSTER: Okay, that's fine.

14 CHAIRPERSON GIACOMINI: Madam
15 Scientist, would you like to respond to John's
16 first statement at all, if you're capable
17 without being on the Internet and having a
18 periodic table in front of you.

19 MS. HEINZE: Only if he wants me
20 to.

21 MR. SMILLIE: Please.

22 MS. HEINZE: Okay. I will process

1 this by saying that the last time I did
2 chemistry was 15 years ago, and it does wane
3 quickly from the little gray matter.

4 As I recollect, nitrogen in the
5 air exists at N₂, and is very non-reactive.
6 So from a chemistry perspective, it would be
7 viewed as inert.

8 MR. SMILLIE: Thank you.

9 MS. HEINZE: Who knows if it's on
10 the right? You think chemists memorize the
11 periodic table?

12 CHAIRPERSON GIACOMINI: All right.
13 Jeff.

14 MR. MOYER: Yes. Joe, you
15 mentioned that there was one written public
16 comment opposing your recommendation.

17 MR. SMILLIE: Right.

18 MR. MOYER: I'm just wondering if
19 you, I didn't pick that one up in my reading.
20 I'm just wondering if you could tell us what
21 their thought was or why they're opposing it.

22 MR. SMILLIE: Right. It was CCOF,

1 and they felt that we were making simple
2 things complicated. Well, I don't want to
3 paraphrase it, but if I totally misquote, I'll
4 ask Jake to come up and rephrase it, and we'll
5 have the debate that I avoided yesterday,
6 specifically avoided because it was getting to
7 be a long day.

8 So but their point, and I
9 understand it. Their point is it takes a
10 simple thing and it makes it more and more
11 complicated as you get more and more different
12 ways to interpret it, and I understand that.
13 It's true. But I felt that it was better to
14 serve, you know, have justice served than make
15 it more complicated and to keep things simple.

16 The second point was I think they
17 said that basically they felt if something was
18 on 605, that therefore it had to be -- that
19 gave it a certain recognition, that it
20 couldn't then be used in a product and have
21 the product called 100 percent.

22 That's where we differ. We

1 believe it is on 605, as the document says, as
2 a processing aid, and if you use it as a
3 processing aid, then you can't claim 100
4 percent. Well, we do not believe it's being
5 used as a processing aid, in any sense of the
6 word "processing."

7 It's a packaging aid, not a
8 processing aid, and we cite CFRs to support
9 that conclusion.

10 MR. MOYER: As a follow-up, in the
11 usage that you're envisioning, is there
12 residual on the food?

13 MR. SMILLIE: No, absolutely not.

14 MR. MOYER: I just wanted that on
15 the record.

16 MR. SMILLIE: It's totally inert
17 and the purpose of it is to displace oxygen,
18 which isn't inert and which causes rancidity.

19 MR. MOYER: That's my
20 understanding.

21 CHAIRPERSON GIACOMINI: Tina.

22 MS. ELLOR: I'd just like to say

1 that I find this recommendation to be
2 intuitive and logical and righting a wrong, as
3 you said. This appeals to my sensibilities
4 and my sense of logic, and I agree with it.
5 But now to put my Kevin hat on --

6 MR. SMILLIE: I hear the "but."

7 MS. ELLOR: Well, Kevin did send a
8 comment in on this, which I promised that I'd
9 read in to the record, and even though I'm not
10 a very good Kevin, Kevin says "I agree with
11 the recommendation as far as it has gone, but
12 I think the CACC needs to add a definition to
13 2052 for a packaging aid, so that inert
14 atmospheric gases that are used in the 100
15 percent organic products are defined as such.

16 "I agree that they do not fit the
17 definition of processing aid or ingredient.
18 Inert atmospheric gases by definition do not
19 react to the product they come in contact
20 with, and as the committee has stated, are
21 used to maintain quality of packaged products.

22 "I think that represents a very

1 important usage, as long as the gases are
2 positively inert with regard to the products
3 and packages they are used with. I am sure
4 there are many organic products that would
5 benefit from the allowance of inert
6 atmospheric gases, especially considering they
7 do not contain any preservatives like their
8 conventional counterparts probably do.

9 "Making the distinction between a
10 processing aid and a packaging aid need not be
11 difficult nor create a loophole that would
12 allow a processing aid to be called, to be
13 used by calling it a packaging aid," and he
14 suggests a definition.

15 "Packaging aid. A gas added to
16 the package for an organic product at the time
17 of sealing, that must be atmospheric and also
18 inert with regard to the packaging material
19 and the product the gas is used with." That's
20 it. Okay, thank you.

21 MR. SMILLIE: I take that as a
22 friendly amendment.

1 CHAIRPERSON GIACOMINI: Jay.

2 MR. FELDMAN: Yes. I didn't know
3 he made that comment. I would agree with
4 that. I think, you know, it's a question of
5 process, and getting a definition. You were
6 citing a definition of packaging aid in the
7 CFR. You were citing a definition of
8 processing aid and distinguishing this from
9 packaging aid. So the question would be
10 whether we need to have a definition.

11 MR. SMILLIE: That would create a
12 rule change, right, and I just didn't want to
13 go there, because that will delay justice
14 being served. So I don't think we need a rule
15 change. I think that it's clear, but that's
16 our opinion.

17 CHAIRPERSON GIACOMINI: Katrina?
18 Valerie?

19 MS. FRANCES: I just want to
20 remind folks that in the spring 2009
21 discussion document on this issue, there was
22 a lot more background material on the history

1 of FDA's definitions in the EAFUS list versus
2 the GRAS list, and the intersection of them
3 and what was on one list and what was not on
4 the other list.

5 It is available for your review,
6 and I just stuck it here on Katrina's jump
7 drive as well, that you could pass around,
8 because I can't email it to you. But there is
9 some additional material there for anyone who
10 wants to review it.

11 MR. SMILLIE: But to answer you
12 Jay, both, both. We looked at both, to try
13 and -- and again, once you know, it's like
14 I've had this singular experience. Once you
15 dive into FDA CFRs, it's like the never-ended
16 story. It just, you know, it's the Alice in
17 Wonderland quote.

18 CHAIRPERSON GIACOMINI: Jeff.

19 MR. MOYER: I'm just wondering
20 from the program's perspective, do we need a
21 rule change to make this adjustment, or is
22 this as simple as Joe was trying to present it

1 as?

2 MR. McEVOY: I would suggest that
3 the Board determines what it would like to do,
4 we'll take it and review it and see what needs
5 to happen, whether or not it could be done
6 through guidance or through a rule change.
7 We'll get back to you.

8 MR. SMILLIE: But clarification.
9 If we don't ask for a definition of a
10 packaging aid, then it shouldn't require a
11 rule change. Am I not correct?

12 MR. McEVOY: You're asking for an
13 interpretation of the standard.

14 MR. SMILLIE: Right.

15 MR. McEVOY: To allow these inert
16 gases to be used and still be able to label
17 the product as 100 percent organic?

18 MR. SMILLIE: Correct.

19 MR. McEVOY: We'll have to see
20 whether that aligns with the current
21 regulations or not. If it aligns with the
22 current regulations, then it could be done

1 through guidance. If it doesn't, then it
2 would require a rule change.

3 MR. SMILLIE: But if we ask
4 specifically for a definition of packaging
5 aid, then it would require a rule change.

6 MR. McEVOY: Right, yes.

7 MR. SMILLIE: So that's why we're
8 not.

9 CHAIRPERSON GIACOMINI: Arthur,
10 did you have something?

11 MR. NEAL: Yes, real short. If at
12 all possible if we can -- I think I was
13 sharing this earlier with Dan, make sure that
14 when we come with these recommendations, we've
15 thoroughly kind of checked the other agencies
16 who have responsibility for some of these
17 terms. I know you looked at them.

18 MR. SMILLIE: We looked at it.

19 MR. NEAL: Because this is one of
20 those -- it's kind of close to processing aid,
21 but not quite, maybe not quite a processing
22 aid. The whole packaging issue is a question

1 of concern. But I agree with Miles. We'll
2 look at it, determine whether or not a rule
3 change is necessary. If not, we'll be back in
4 touch with you.

5 MR. SMILLIE: That's fine.

6 CHAIRPERSON GIACOMINI: Further
7 questions? Steve?

8 MR. DeMURI: What if a processor
9 is processing -- let me give you a real life
10 example here -- carrot juice. They process
11 carrot juice with no additives. They take it
12 to -- they chill it, put it in a tank and put
13 a nitrogen blanket on it to hold it for two or
14 three hours until they can get it to an
15 evaporator and a filler.

16 They go to a filler. They put it
17 directly into a sterile container with no
18 nitrogen. Is that, would that be considered
19 100 percent organic?

20 MR. SMILLIE: The same material,
21 same purpose, but it's part of a process
22 rather than at the end of a process. And so

1 that gets back to your philosophical --. It's
2 the intention, not the nature. So you know,
3 I don't know. They put a blanket on it in the
4 tank, right?

5 MR. DeMURI: Yes, to keep it from
6 oxidizing.

7 MR. SMILLIE: Yes, right.

8 (Simultaneous speaking.)

9 CHAIRPERSON GIACOMINI: Okay. A
10 qualification of final packaging would be
11 potential.

12 MR. DeMURI: But there's no
13 difference at all in the --

14 MR. SMILLIE: No, none.

15 MR. DeMURI: --the contact or the -
16 -

17 MR. SMILLIE: But you see the
18 carrot juice is being processed.

19 MR. DeMURI: Yes.

20 MR. SMILLIE: That's what we hung
21 some of this on, was it's not part of a
22 process. It's the end of it and it doesn't

1 interact. Now the nitrogen doesn't interact
2 with the carrot juice.

3 MR. DeMURI: No, not at all.

4 MR. SMILLIE: But it becomes part
5 of the process.

6 MR. DeMURI: It is a processing
7 step, I guess you could call it, because it's
8 not -- there's no interaction at all with the
9 carrot juice and the nitrogen.

10 MR. SMILLIE: Right.

11 CHAIRPERSON GIACOMINI: Okay. Any
12 further -- okay. I would just -- Jeff.

13 MR. MOYER: I just want a point of
14 clarification. Joe, a question. Under the
15 hypothetical that's not so hypothetical that
16 Steve just gave us from some company that we
17 don't know, but if in that situation you're
18 saying that this rule would not pertain to
19 that, because that is processing and this is -
20 - what you're talking about is packaging?

21 MR. SMILLIE: That would be my
22 conclusion of it, yes.

1 (Simultaneous speaking.)

2 MR. SMILLIE: But you know what?
3 It really doesn't harm organic integrity a
4 whole heck of a lot either.

5 MR. MOYER: No, I'm not saying it
6 does. I'm just saying for the point of
7 discussion here of this, that would not be
8 categorized under this.

9 MR. SMILLIE: That's the way I
10 would look at it if I was a certification
11 agent that had to deal with this regulation,
12 which speaks to Jake's point, of making things
13 more complex, which I understand. But you
14 know, I don't necessarily shy away from it.

15 MR. MOYER: Thank you.

16 CHAIRPERSON GIACOMINI: John.

17 MR. FOSTER: As you might have
18 guessed, I'm a little uncomfortable saying
19 it's okay in a bottle but not okay in a tank.
20 That inconsistency is hard, and just amending
21 this language to say that final packaging is
22 okay? That seems -- that's a bit of a stretch

1 for me. I don't like that inconsistent logic.

2 CHAIRPERSON GIACOMINI: Well, and
3 that logic is not taken in other similar
4 situations.

5 MR. SMILLIE: Well again, I just
6 said in my opinion. I'm just trying to get --

7 CHAIRPERSON GIACOMINI: Right.

8 Katrina.

9 MS. HEINZE: I think as a consumer
10 I would be really confused if I was buying a
11 bottle of carrot juice whose ingredient deck
12 said organic carrot juice, and it wasn't 100
13 percent organic. Wouldn't that be confusing
14 to you?

15 MR. SMILLIE: There's so many
16 products out there that are currently --

17 MS. HEINZE: I get that.

18 MR. SMILLIE: That's why
19 originally we said we'd like to get rid of the
20 whole category.

21 MS. HEINZE: So that was going to
22 be my comment, which was how many products are

1 really labeled 100 percent organic? Because
2 I don't -- okay. I buy organic all the time,
3 right. We write the little dollar signs on
4 the grocery list all the time. It's kind of
5 a family joke.

6 I don't think I have anything in
7 my cupboards or grocery, you know, or
8 refrigerator that's labeled 100 percent
9 organic. But as a consumer, I'm pretty clear.
10 When I buy that cauliflower, it's probably 100
11 percent organic. But when I buy the cereal,
12 it's probably not. I don't think we should
13 sell our consumers short. So maybe this is --

14 MR. SMILLIE: You'd better check
15 the cauliflower.

16 MS. HEINZE: Really? Do we really
17 think -- no, because it doesn't say 100
18 percent.

19 MR. SMILLIE: Seriously, it
20 depends on how it was processed. If there's
21 any kind of processing aid whatsoever used in
22 that -- and that's why certifiers in the U.S.

1 especially, and I'm going to put a plug in for
2 the home grown certifiers here, have to deal
3 with a lot of certificates that we get in as
4 ingredients saying "100 percent."

5 We know they're not 100 percent,
6 because we know all the -- and they say "well,
7 it's all 100 percent." They say "yes, but did
8 you use a processing aid?" "Well, but they're
9 allowed." "Yes, but the regulations specifies
10 not only to do they have to be allowed; they
11 have to be organic processing aids."

12 So if you crush apples with
13 conventional rice hulls, that apple juice is
14 not 100 percent organic, Because the press aid
15 was conventional. If you crush that apple
16 juice with apples with organic rice hulls,
17 then you might be able to claim 100 percent
18 product.

19 MS. HEINZE: Perhaps we should
20 reinterpret my comment to say I get that the
21 regulation might be more complicated. But as
22 a consumer, it's 100 percent organic, because

1 it's a head of cauliflower. There's nothing
2 else in it.

3 I get it depends by the
4 regulation, but we need to put our consumer's
5 hat on and say they bought a cauliflower, they
6 bought a bottle of juice that has no other
7 ingredient, from their perspective.

8 CHAIRPERSON GIACOMINI: Tracy?

9 MS. MIEDEMA: I don't think we're
10 going to resolve all of the logic
11 inconsistencies, and one of the things that
12 you were saying John that troubles you, you
13 know, that the blanket of nitrogen is used and
14 that, you know, ruins the chances of 100
15 percent because it's a processing aid. But
16 then you flush the package and that time it's
17 okay.

18 We have GRAS packaging that is
19 very reactive and migrates in the organic
20 products today, and into products that are
21 labeled and can be legally labeled 100 percent
22 organic. That's not logical. But it's

1 accurate from a regulatory standpoint.

2 So we're not going to be able to
3 create this crystalline superstructure that
4 all makes perfect sense in every direction
5 here today with what we're doing. I was very
6 compelled by CCOF's comments yesterday though,
7 and the introduction of the term "packaging
8 aid" into an area that's already fraught with
9 all of these issues that we're talking about
10 today.

11 I thought made a lot of sense that
12 we might be, even in the interest of fairness,
13 that we might be muddying things up a little
14 bit more. I was one of the people on the CACC
15 that voted for this recommendation, but I'm
16 reconsidering my vote.

17 CHAIRPERSON GIACOMINI: Steve.

18 MR. DeMURI: The problem I have
19 with it is that carrot juice company A, with
20 the nitrogen in the tank that's trying to
21 protect quality, cannot label his product as
22 100 percent organic, and carrot juice company

1 B, that is flushing with nitrogen, but not
2 putting nitrogen in his tank, cannot. There's
3 a market inconsistency there.

4 MS. MIEDEMA: Under this
5 recommendation.

6 MR. SMILLIE: Well, that's one
7 possible conclusion. That's one possible
8 conclusion. Once again, we're up against that
9 wonderful old maxim. We're letting perfect be
10 the enemy of good.

11 I'm just trying to get these poor
12 coffee bean guys who are screaming at me, why
13 can't I call my product 100 percent, and the
14 olive oil guys, who don't use filtering aids,
15 who use centrifuges or whatever to get their
16 olive oil, those guys want to label it 100
17 percent. I think they have a right to, but
18 that's up for this Board to decide.

19 CHAIRPERSON GIACOMINI: I think
20 the other way to look at it, Joe, is members
21 of the Board just want to try and help the
22 committee make it good enough, not considering

1 perfect as the enemy of the good, but just
2 helping to make sure that it's good enough.
3 Jay?

4 MR. FELDMAN: So Joe, I am
5 sympathetic to what you want to do, and I --
6 but I'm thinking, up until a few months ago,
7 I thought I knew what the definition of
8 synthetic was in OFPA, and now I'm totally
9 confused.

10 (Laughter.)

11 MR. FELDMAN: I think I know what
12 the definition of packaging is, but I imagine
13 a year from now I'll be totally confused. So
14 I think we should probably do this right, you
15 know, get the definition out there and just do
16 it right and solve it, because I think what
17 you're trying to solve is a real issue.

18 Now it is unfortunate that it
19 takes more time than we would like it to take.
20 But we've gone down this path before. We went
21 down the path on synthetics and the five
22 percent, down this path on synthetic amino

1 acids.

2 We shouldn't do that, even though
3 we see the good or we believe that those are
4 good decisions, because they come back to
5 haunt us.

6 CHAIRPERSON GIACOMINI: Any
7 further comments? A couple of things, Joe.
8 First of all, if we ever do look at a
9 definition, I would not recommend isolating
10 the aspect of this document of the gas, as
11 Kevin suggested. I think it would need to be
12 a far more generic issue than that for the
13 packaging, on the packaging aid.

14 In his recommendation on packaging
15 aid, he used gas, and I think we would need to
16 make sure that we're totally inclusive, if we
17 do go the route of that definition.

18 MR. SMILLIE: Well, if this Board
19 wants to get into packaging, that's a whole
20 new topic.

21 CHAIRPERSON GIACOMINI: I just
22 wanted to comment on that recommendation.

1 Okay, Tina?

2 MS. ELLOR: You know, I just want
3 to go on record as saying that I support this
4 recommendation, and I think that better,
5 better is good.

6 CHAIRPERSON GIACOMINI: Any
7 further comments or questions? One more
8 issue, Joe. As you went through the process
9 of this, as you reached the point in time
10 where this was what you were looking to make
11 a recommendation on, it seems to be a fairly,
12 definitely a handling document. Was there any
13 consideration to transfer this to the Handling
14 Committee work plan?

15 I don't know whether their work
16 load could fit it, but just so that we can --
17 we have the issue that we're looking at at
18 this meeting on who's doing what work, and
19 this was one of them that came up.

20 MR. SMILLIE: Well basically it
21 was organic, in the sense that it started off
22 really as a CACC issue, the 100 percent claim

1 and the enforcement and compliance with 100
2 percent claims. As we went through it, it
3 became more and more, at first a post-harvest
4 handling issue, and then finally a handling
5 issue.

6 So if it's continued, it would
7 definitely be part. If we're going into
8 packaging aids, then it would definitely have
9 to move to the Handling Committee. It ceases
10 to be a 100 percent claim, unless we decide to
11 go back and ask for the abolishment of the 100
12 percent claim, which is a possibility. Then
13 it would remain a CACC issue. If it becomes
14 a packaging aid --

15 CHAIRPERSON GIACOMINI: Can we try
16 and find that buzz please.

17 MR. SMILLIE: If it becomes a
18 packaging aid issue, then it would go to the
19 Handling Committee. At the same time, I don't
20 necessarily agree with the fact that we have
21 to be as narrow in scope as to which committee
22 handles which issues.

1 I believe that workload is also a
2 factor that should be considered, and if
3 there's a committee that, you know, is
4 involved in an issue, they could either make
5 it a joint issue with the Handling Committee.
6 Right now Handling, since I'm on it, has got
7 a load of work. So I didn't mind keeping this
8 one on our committee, and I don't think
9 necessarily, you know, workload should be a
10 factor.

11 CHAIRPERSON GIACOMINI: I agree.
12 I just wanted you to address that issue.

13 MR. SMILLIE: Sure.

14 CHAIRPERSON GIACOMINI: Thank you.
15 Any other statements or comments? If not, I'm
16 bringing my committee back to you, Mr.
17 Chairperson. I believe you have one more?

18 MR. SMILLIE: I thought that one
19 was easy. Okay, history. Actually --

20 CHAIRPERSON GIACOMINI: Valerie,
21 that's not the right document. There should
22 be one, March 8th, 2010.

1 MS. FRANCES: Which document are
2 you on right now?

3 MR. SMILLIE: Made with.

4 CHAIRPERSON GIACOMINI: Made with.

5 MS. FRANCES: Yes. I hadn't
6 gotten there yet.

7 CHAIRPERSON GIACOMINI: Oh, okay.

8 MS. FRANCES: Looking for -- hang
9 on.

10 CHAIRPERSON GIACOMINI: Okay.

11 (Off mic comments.)

12 MR. SMILLIE: Okay, there we go.
13 Okay, the history of this document was that
14 the previous administration, NOP, asked us to
15 put this on the work plan. They felt that the
16 made with category would look better with some
17 sort of a USDA imprimatur or seal of some
18 kind, and we accepted that.

19 When the administration changed, I
20 checked with the current administration. I
21 said we had this on our work plan. You guys
22 don't want to do this, do you? They said "Oh

1 yes, we'd like to get your opinion on that."

2 I said, oh shoot, okay. We'll do it.

3 These are facts, absolutely. No
4 wiggling on this one, MM. So basically we
5 said, okay, we'll do it, and we jumped into
6 it. Basically, there is a strong feeling that
7 the made with category is kind of -- somebody
8 called it yesterday, who was it, that called
9 it the stepchild, the poor stepchild of the
10 organic industry.

11 And in a certain sense, it is, and
12 in a certain sense, there's been a lot of
13 problems with it. So we concurred with the
14 program in saying let's take a look at this
15 category, because you know it's not -- it,
16 like the 100 percent, is not working that
17 well. There's problems there.

18 The program, since we started that
19 work, has identified one of the problems,
20 which is the use of organic in the
21 manufacturer's name when they're putting out
22 a made with product, has caused confusion in

1 the marketplace. So they're taking that on
2 and dealing with that issue.

3 There was another issue that I
4 thought was very, very important, and years
5 back, which is the use of organic and non-
6 organic of the same material in a made with
7 product. And NOSB did make a recommendation
8 to the program, to eliminate that. There was
9 a loophole, and you had to be a lawyer,
10 because it was like a triple double negative,
11 to understand how you could use organic and
12 non-organic of the same item in a product.

13 So we made a recommendation and we
14 asked the program to fix that loophole, and
15 stop the use of organic and non-organic in the
16 name of the product. We're still waiting for
17 the implementation of that. So those two
18 items, we believe, rest with the program, and
19 they'll hopefully be dealing with them soon.

20 The next thing we looked at is the
21 fact that, should there be sort of greater
22 recognition for the made with label claim in

1 the marketplace. Because after all, it is 70
2 percent organic.

3 We want to grow this industry. We
4 want more farmers to be able to sell more
5 product, and for companies with certain
6 technical restrictions and the one that I
7 think of, the one I'm used to was corn chips.
8 You see a lot of corn chips in the
9 marketplace, various different companies, who
10 are "made with organic corn."

11 Well, there's a reason for that.
12 You can get organic corn reasonably priced,
13 but when you're in a plant that makes both
14 organic corn chips and conventional corn
15 chips, you've got the hot oil bath that the
16 chips, either fresh masa or powdered masa,
17 have to go through.

18 Changing that oil bath and putting
19 organic oil in is a very significant capital
20 investment. So if you want to have organic
21 corn chips, that's a big step. You can get
22 into the organic industry and use organic corn

1 and just run through conventional oil, which
2 makes it a made with product.

3 But there's a lot of other areas
4 that made with could be suitable for for
5 various different reasons. So for a lot of
6 people, this issue was that we're not seeing
7 as much action in the made with category as
8 perhaps we should.

9 So we looked at it. We came up
10 with an idea and we batted it around in
11 committee, and again, it was a discussion
12 document, no intention of making a
13 recommendation.

14 But we batted it around and came
15 up with the idea, well, maybe on the back
16 panel, we'll have like a little mini-organic
17 USDA seal, so the consumers know that this
18 product has gone through the certification
19 system and the USDA regulation just like an
20 organic product has -- that the manufacturer,
21 the ingredients were subject to the same
22 scrutiny, to the same regulation, and should

1 have a little more credit. That was sort of
2 like the feeling behind it. So we floated out
3 this discussion document.

4 Well, we did get a reaction, and
5 the reaction was pretty much, I would say
6 uniformly, "no way, Jose." People did not --
7 the people who responded, okay, did not want
8 to see any kind of a USDA seal for made with
9 organic products. They felt that that was
10 diluting the organic product that was on the
11 marketplace that manufacturers and farmers and
12 everybody along the chain had created.

13 And it was pretty -- it was a very
14 strident response. No seal, no way, no how.
15 But the other parts to that comment were yes,
16 there is something wrong with the made with
17 category, and we recognize that.

18 We don't think the seal's going to
19 fix it, and I can speak with one voice on
20 this, because the comments were all of the
21 same vein, almost all of them, all 14.

22 They all said that there needs to

1 be more consumer education about this.
2 Yesterday, on verbal commentary, and I
3 apologize, I didn't write down who it was, but
4 someone said we should allow some sort of
5 statement that this product meets NOP
6 regulations and has gone through the NOP
7 certification system or something like that.
8 I thought --

9 MS. FRANCES: Urvashi.

10 MR. SMILLIE: Urvashi, okay. Good
11 comment -- or something to that effect.
12 That's where I think this committee sits now
13 with it, although you're just getting my
14 opinion and we had a lot of opinions and
15 you'll hear them shortly.

16 So basically we said okay, they
17 don't want us to go with some sort of variant
18 of any kind of the USDA seal, but we really
19 need some action on the part of the industry
20 and the program and the NOSB, to make this
21 category less of a stepchild and more like the
22 younger sister, more recognized, and that

1 consumers understand that the manufacturer
2 went through the same certification process,
3 that there was some rigor to it, and it's not
4 like sort of a semi-USDA claim.

5 You know, it's just the certifier
6 that handles it; USDA's got nothing to do with
7 it. No. It's a label claim, and that's not
8 clear in the marketplace, and that's what we
9 were requested to come up with, in lieu of a
10 seal. And I'd like to open it up for other
11 comments from committee members with NOSB.

12 CHAIRPERSON GIACOMINI: First, I
13 would just like to thank the accredited, the
14 ACAs for proper use of Spanish, as Jose is the
15 Spanish translation for Joseph. It was very
16 appropriate in this case for "no way, Jose,"
17 for Joe's document. So any comment from the
18 Board?

19 MR. SMILLIE: As long as they
20 don't say Pepe, I'm okay with it.

21 CHAIRPERSON GIACOMINI: Steve.

22 MR. DeMURI: I have a question. I

1 tried to look it up real quick, but I didn't
2 see it. Are "made with" products allowed to
3 use the certifier seal on their labels?

4 MR. SMILLIE: Funny you should
5 mention it. Yes.

6 CHAIRPERSON GIACOMINI: Other
7 comments or questions? Jay?

8 MR. FELDMAN: Isn't there an
9 asterisk required for those products that are
10 certified by that certifier? Doesn't it link
11 back to the specific ingredients?

12 MR. SMILLIE: No, no. That would
13 be an ingredient panel claim. If you're not
14 making a made with organic claim, but you want
15 to highlight in your ingredient panel which of
16 your ingredients are organic, you can do that.
17 The claim is very clear. I mean it's --

18 MR. FELDMAN: Made with. Okay, so
19 that's --

20 MR. SMILLIE: It has to be 70
21 percent, and your claim can be three or less
22 ingredients on the principal panel display

1 claim.

2 MR. FELDMAN: Okay. But I guess
3 the question is, you're saying it's not
4 consistently required that on the ingredient
5 panel, the organic ingredients be identified.
6 You don't have to. Did you consider that, as
7 an option for clarifying to the consumer what
8 might be in that product?

9 I mean, I think that might help
10 give some clarity to the consumer that this
11 is a real product that has complied with the
12 standards of OFPA in regard to the ingredients
13 that they're making a claim for.

14 CHAIRPERSON GIACOMINI: Tracy.

15 MS. MIEDEMA: The issue there,
16 Jay, would be, that for the company who is
17 really trying to get some organic ingredients
18 into their products, but may have an unstable
19 supply, they'd have to change their packaging
20 for every, you know, cycle. So it's actually
21 a disincentive for beginning to use organic
22 ingredients.

1 CHAIRPERSON GIACOMINI: Katrina,
2 Jennifer.

3 MS. HALL: The other difference
4 there is that it doesn't differentiate
5 necessarily products that have been inspected,
6 that if you had organic on the label from
7 those that may have an organic ingredient on
8 the ingredient label, that have not been
9 inspected in the marketplace, like for some of
10 the other things that just don't, right now,
11 fall under the sphere.

12 Which is why yesterday I tried to
13 kind of explain just a different framework of
14 thinking about the seal itself, and using it
15 not as, necessarily, its history as the gold
16 standard, but truly as the verification, that
17 it's been through the process, being
18 inspected, certified, that it's fully under
19 the umbrella of the program, and not so much,
20 you know, just the gold standard that it's
21 been.

22 Now I do believe that in this

1 distinction of using it on the front or the
2 back, that that's a fairly straightforward
3 thing to, and I worked with consumers every
4 day, to train them, to understand that if it's
5 on the front, that is the highest content and
6 if it's on the back, then it's 70 percent,
7 where right now it's very ambiguous to me.

8 CHAIRPERSON GIACOMINI: Jeff.

9 MR. MOYER: Thank you, Mr.
10 Chairman. My question would be to you, Joe.
11 Would any of this conversation that we're
12 having today with the made with label relate
13 to the issues that came up with the wine
14 industry yesterday?

15 MR. SMILLIE: Well, yes and no.
16 That's a separate -- I probably would get help
17 from Shannon on that, but that's -- that
18 confuses me, because basically that was --
19 they're allowing a made with claim to have
20 different varieties of grapes.

21 In other words, you can make a
22 Meritage with 70 percent Cabernet Sauvignon

1 and 30 percent Merlot, and the Merlot can be
2 conventional. And TBT and NOP say that's
3 okay, okay. Right now, we've got a problem
4 where you can have organic wheat and
5 conventional wheat in a made with product,
6 which I believe is not the intent of the rule.
7 Is that what you're referring to? I'm
8 confused.

9 MR. MOYER: Yes and no. I'm
10 confused as well, so that's why I was looking
11 for some clarification on whether or not this
12 would relate specifically to their -- because
13 they don't do any better than they did, right?

14 MR. SMILLIE: The label claim for
15 made with is clear. I don't believe there's
16 confusion about the regulation of the label
17 claim. There's confusion in the marketplace
18 about what consumer perception of the made
19 with claim is.

20 The regulation is clear. I mean,
21 once we fix the organic or not, the regulation
22 is clear as a bell as far as I'm concerned.

1 MR. MOYER: I understand that.

2 But in terms of what your document had,
3 whether you go back and change it or not was
4 to have the seal on it, which right now they
5 can't use the seal.

6 MR. SMILLIE: That's correct, yes.

7 MR. MOYER: So if they could use
8 the seal, would that remedy the issues that
9 they were questioning? No.

10 MR. SMILLIE: No.

11 MR. MOYER: Okay.

12 MR. SMILLIE: No. That was just
13 our suggestion to float it out, that a small
14 USDA seal on the back panel could sort of give
15 more credibility to the claim. That's what
16 our response was, a unanimous no, no use of
17 the USDA seal. That was what response we got
18 back.

19 CHAIRPERSON GIACOMINI: Joe.

20 MR. MOYER: I understand that,
21 Joe. But I guess my question is did -- if
22 that response that you got hadn't been there

1 and we could go ahead and use a small seal on
2 the back panel, would that help the wine
3 industry? Would that be something we could
4 do? Would that be a remedy for them at all?

5 MR. SMILLIE: No. What they want
6 is to be able to call it organic wine. They
7 couldn't do that. They can only call it wine
8 made with organic grapes. Even if it's 100
9 percent organic, which is one of the other
10 problems with the made seal, is, it's often
11 called with 70 to 94. It can be much more
12 than 70, even more than 95.

13 MR. MOYER: Although currently,
14 there's no incentive to move much beyond 70 in
15 many cases.

16 MR. SMILLIE: Well, that's where
17 it starts to get a little fuzzy, and we're
18 looking for the solution, because the
19 percentage claim that you can make on a made
20 with product is not mandatory. But you can
21 make on a made with product. It's not
22 mandatory, but you can make a percentage

1 claim.

2 So you could make a made with
3 product. This is where you get a little --
4 you've got to watch, you've got to be really
5 careful with the program on this one now,
6 because you have to watch how you're
7 representing the made with claim, because
8 they're really crossing their t's and dotting
9 their i's, and you know, they're going to be
10 counting angels on the head of a pin on this
11 one now.

12 It's like there's a percentage,
13 you can make a percentage claim on a made with
14 product. So there is an incentive to boost
15 your organic content in a made with claim.
16 But it's not many.

17 CHAIRPERSON GIACOMINI: Jim.

18 MR. DICKSON: Well, first to
19 Jeff's point. There's a really big incentive
20 to go to 95 percent from 70 percent, to
21 organic or made with that's using the USDA
22 organic seal on the package. That ties into

1 my main point, which is, you know, for
2 consumers, the USDA organic seal means quite
3 a lot.

4 They have come to accept it as
5 sort of this official, you know, legitimacy as
6 an organic product. It's really, you know,
7 taken on a lot of equity in the stores as a
8 very meaningful market.

9 In the made with category, we have
10 seen a lot of consumers very confused about
11 the category. Many perceive it as
12 unregulated. There's just a lot of confusion
13 about what it means, and you know, our
14 proposal for the use of a mini-seal on the
15 back of the package clearly was going down the
16 wrong road, as the feedback we received.

17 But there's still a big problem in
18 that category, and I don't know if the
19 solution is, you know, Urvashi's suggestion
20 that we look at different languages used on
21 the package to emphasize its certified nature
22 or what it is.

1 But I think we, you know, as an
2 industry need to look more closely at that
3 category, to figure out what we can do to
4 accurately and meaningfully represent it to
5 consumers, because it's not as organic as a 95
6 percent organic product. But it's still way
7 more organic than a conventional product.

8 The producers looking at entering
9 that category, I think, there are a lot of
10 folks out there who are reluctant because of
11 all the confusion in the marketplace. I think
12 we can shore it up quite a bit.

13 CHAIRPERSON GIACOMINI: Jeff.

14 MR. MOYER: I just wanted to say I
15 support that 100 percent, because I think it
16 is extremely important to the industry and to
17 farmers who are producing the raw ingredients
18 for those products. It's extremely important
19 as a growth -- an entry point and a growth
20 mechanism for it.

21 I'm just trying to find the best
22 solution. I would have supported the mini

1 label, but that's not what the industry
2 supports. So what is the solution? I'm not
3 sure.

4 MR. SMILLIE: Well, let me answer
5 two of those things. We did get feedback and
6 it was, you know, 14 people. But if I look
7 down the list, there was only a few handlers,
8 a few companies that responded, and there's a
9 lot of companies out there that make made with
10 product. Sometimes they don't know we exist,
11 which is sad, tragic, certainly ironic. But
12 that's their choice. If they don't want to
13 play, then they pay.

14 So we may get more comments on
15 that. The other thing is that this is a first
16 step, and we got some good feedback and we're
17 not giving up on this. We're going to go back
18 to the drawing board and come back with some
19 more ideas, because we really believe work
20 needs to be done.

21 I think, my gut feeling is once
22 the age of enforcement starts, you know,

1 cruising down the aisles, the supermarket,
2 supernaturals and health food stores and coops
3 start seeing all the product there, and we
4 start to get the made with category sort of
5 cleaned up a little bit.

6 And once they implement our
7 previous recommendations, I think there will
8 be a lot more interest in it, and I think that
9 it's our job to come up with a clear message
10 to the consumer about the value of this
11 category, without diluting the power of the
12 organic category.

13 CHAIRPERSON GIACOMINI: Steve.

14 MR. DeMURI: Speaking from a
15 handler perspective, since you didn't get very
16 many comments, we have just one made with
17 product in our entire line of organic
18 products, because we can't find any organic
19 okra. Just kidding.

20 (Laughter.)

21 MR. DeMURI: No, actually it's
22 organic clams.

1 CHAIRPERSON GIACOMINI: The gavel
2 is ready.

3 MR. DeMURI: We would rather see
4 something in the -- under the "certified by"
5 statement, that says certified by XYZ under
6 the auspices of USDA or something to that
7 regard, rather than a seal.

8 MR. SMILLIE: So I'll take it
9 that's Campbell's official comment?

10 MR. DeMURI: No. That's my
11 comment.

12 CHAIRPERSON GIACOMINI: Katrina.

13 MS. HEINZE: I won't talk about
14 the comments we have about products we have on
15 the marketplace. We have two. I would concur
16 with what Steve said, that we've recently
17 taken a product from organic to made with
18 because of a supply issue, and have found that
19 consumers are very clear on the difference,
20 and are expecting us to go back to 99 percent
21 as quickly as we can.

22 But that seal is 95 percent. So

1 some other statement that says certified in
2 compliance with would be a good middle of the
3 road, I think.

4 CHAIRPERSON GIACOMINI: Other
5 statements? Yes. I just completely agree
6 with that. I'm far more concerned with the
7 dilution of organic than I am with the
8 promotion of made with. If there's a problem
9 with made with, let's fix it without
10 compromising organic.

11 I certainly don't want to set up
12 either scenario, where we're encouraging
13 manufacturers to take something from 96 to 94,
14 because the made with is almost -- it would be
15 good enough.

16 I think we have enough issues --
17 to address Jennifer's point, I think we have
18 enough issues that we're still trying to get
19 the consumer on, that trying to educate them
20 with a smaller, a different size and a
21 different placement of where the organic seal
22 goes and what that means.

1 I think they'll see the seal, and
2 that's the seal and it's organic, and it will
3 really dilute the value of organic, because I
4 think that will be real hard for them to
5 discern. Any further statements, comments on
6 this issue?

7 MR. SMILLIE: Again, we won't be
8 addressing this tomorrow, so this will be the
9 last words on the subject. But we intend to
10 put it on the work plan. It will be back on
11 the work plan.

12 CHAIRPERSON GIACOMINI: And does
13 that conclude your section?

14 MR. SMILLIE: Yes, Mr. Chair.
15 That concludes the CACC.

16 CHAIRPERSON GIACOMINI: Okay, and
17 we are at -- we're at the point for another
18 break. We are at 35. 4:50 we will reconvene.
19 Please be prompt.

20 (Whereupon, the above-entitled
21 processing went off the record at 4:38 p.m.
22 and resumed at 4:55 p.m.)

1 CHAIRPERSON GIACOMINI: Okay. We
2 are back in place and the time is up for that
3 break, and we have one more section to go, the
4 Policy Development Committee. Barry, can you
5 please lead us along?

6 MR. FLAMM: Thank you, Mr. Chair.
7 The Policy Committee has one recommendation
8 for changes to the policy and procedures
9 manual, and three discussion items, two
10 involving changes to the policy and procedure
11 manual and one kind of a floater that will go
12 upstairs if the committee thinks it's worth
13 pursuing.

14 In any case, the recommendation is
15 to add to the policy and procedure manual a
16 two-tier decision-making process on materials
17 and we appreciate, Katrina, your thank you
18 notes. It did get noticed, since we almost
19 never get a thank you.

20 And Steve will take the lead on
21 that one. The two discussion items involve
22 sunset review approaches and Jay, one of our

1 two new members, will handle that.

2 I will present the collaboration
3 proposal to update the manual on NOP/NOSB
4 collaboration, and Annette is going to go over
5 what is not a change in the policy and
6 procedure manual, but a discussion on a
7 possible rotation of board members.

8 We have one committee member
9 missing, and that's Kevin, and he was
10 particularly interested and involved in the
11 sunset approaches, and Jay will summarize some
12 comments that Kevin has given to us, that he
13 wanted to be considered part of the record.

14 So with that introduction, Steve,
15 would you please kick off and present the two-
16 tier decision-making on materials?

17 MR. DeMURI: Certainly, I'd be
18 happy to. Thanks, Barry. As has been
19 mentioned several times, as we've been talking
20 about materials subjects, we thought it would
21 be a good idea to align the policies and the
22 policy manual with respect to voting for

1 materials with the classification work that's
2 been done.

3 So try to stay ahead of the game a
4 little bit, we decided that we would make
5 recommendations to change the applicable
6 sections of the policy manual so that we would
7 be doing a two-tier voting process as
8 materials are brought before the Board for
9 adding to the National List.

10 Interestingly enough, when you
11 look back through the old meeting transcripts
12 and the old recommendations, back in the old
13 days, back in the 90's and early 2000's, there
14 actually was a two-tier voting process in
15 place.

16 And as I went back and looked
17 through the old transcripts, I didn't look at
18 everything, but the ones I did look at, I
19 really couldn't see any hard-cut time when
20 that was stopped or any reason for it being
21 stopped. Maybe somebody else has some insight
22 on that.

1 But for some reason, the Board at
2 some point quit doing the two tier voting, and
3 we believe that now is a good time to go back
4 to that with these material classification
5 issues that are coming before us.

6 So with that, hopefully
7 everybody's had a chance to kind of read
8 through the recommendation. Valerie, if you
9 can go to the outline for writing committee
10 recommendations page. Go down to Section 5,
11 Committee Vote.

12 That step was the first spot where
13 we made a change, and that was we added a
14 sentence -- we struck one sentence and then
15 added a sentence at the tail end of that
16 section that says, "In the case of
17 recommendations for petitions to add materials
18 to the National List, two votes should be
19 taken and recorded.

20 "The first for synthetic or non-
21 synthetic material classification, and the
22 second to list or not list the material. The

1 record should lost the number of synthetic and
2 non-synthetic votes, and yes and no votes for
3 listing, and the number of abstentions and
4 absences." So that's the first addition to
5 that section.

6 To go to the next page, under
7 "Committee Vote," we added a short paragraph
8 there. It says, "the vote of the committee or
9 task force shall be reported," and then we
10 added "in the case of recommendations for
11 petitions to add materials to the National
12 List, two votes will be recorded. One for
13 synthetic or non-synthetic material
14 classification, and the other for listing or
15 not."

16 Following that is the NOSB
17 committee recommendation form that we all fill
18 out when we're making recommendations to list
19 materials, and we added to that, under Section
20 D, "Recommended Committee Action and Vote," we
21 added a short statement there that says
22 "Including classification recommendation," and

1 then a section right below that for recording
2 the synthetic and non-synthetic votes, the
3 absences and the abstentions.

4 Then right below that would be
5 votes for and against listing the material,
6 and the absences and abstentions. I believe
7 that was the changes that we made.

8 CHAIRPERSON GIACOMINI: Any
9 questions or comments from the Board?

10 MR. DeMURI: I have one more.

11 CHAIRPERSON GIACOMINI: Oh, I'm
12 sorry.

13 MR. DeMURI: I'm trying to get the
14 last, the very last page, or next to the last
15 page -- the last page, Valerie. I did
16 highlight a paragraph in there.

17 It's the procedures for the
18 materials review process for NOSB members.
19 This is highlighted only because it already
20 existed. This wasn't something we added, but
21 it was already in the policy manual.

22 It said, "NOSB members assigned to

1 those committees shall conduct a thorough
2 review of the material and vote on whether it
3 is synthetic or non-synthetic, and if it
4 should be allowed or prohibited for specific
5 use as either a crop, livestock or processing
6 material."

7 So this paragraph was already, has
8 been in the policy manual for years, and just
9 was not really followed in the past, for the
10 past several years at least. So we're just
11 reinstating a procedure that was already in
12 place.

13 That's the end of the changes. I
14 will mention that we had just a couple of
15 comments regarding this policy change, and
16 they were both in favor of the change. One of
17 them even happened to mention that they were
18 surprised that we weren't voting for a
19 synthetic and non-synthetic material. They
20 thought we were still doing that. So that was
21 interesting.

22 CHAIRPERSON GIACOMINI: Done?

1 MR. DeMURI: I'm done.

2 CHAIRPERSON GIACOMINI: Okay. Any
3 question or comments on this document?

4 (No response.)

5 MR. DeMURI: The next is going to
6 be presented by Jay on our sunset review
7 approaches, and, as Jay will outline, we tried
8 to -- I think after last fall's discussion of
9 sunsetting that, we felt it was an opportunity
10 to try to re-look at our sunset and to lay out
11 some options for discussion and for
12 consideration.

13 We had gone through, just two
14 years before, a review and updating of the
15 policy manual, but there was -- it was based
16 on some premises at the time and we're just
17 sort of laying this all out for discussion,
18 and Jay will explain where we're at right now
19 on it and what we've received and what the
20 options actually mean. Jay, please.

21 MR. FELDMAN: I will try. Thank
22 you, Barry. I appreciate it. I'm going to

1 get to play Kevin also today, so that will
2 make three of us and you get to vote at the
3 end of this presentation as to whether Jeff,
4 Tina or I did a better job. But that's just
5 a teaser, so you stay awake. We'll do that
6 later in the presentation.

7 I'll start with the background.
8 Here, we, in this document, we cite the
9 regulatory background on this issue, and
10 principally the underlying statutory language,
11 which says, basically, that, and then I'm
12 quoting here, in the strict sense of the law,
13 this language would seem to require that the
14 National List be reevaluated to ensure that
15 the list is in conformance with the standard
16 laid out in 2118 of the statute.

17 And I'm quoting, and you all know
18 this, that the use of such substances, one,
19 would not be harmful to human health and the
20 environment, two, is necessary for production;
21 I'm not going to read all the language -- and
22 three, is consistent with organic farming and

1 handling.

2 So with that as the basis, we
3 discussed what our possible options were. As
4 we were doing this, we got the great news, of
5 course, that NOP had come out with a ruling on
6 February 16th, which we got early release on
7 thanks to Valerie, and in that document, I had
8 earlier arranged with Miles to present this,
9 but since he's not here, I'll just remind you.

10 The document says there is nothing
11 in OFPA to prohibit the NOSB from making a
12 recommendation to modify or amend an
13 annotation during the sunset review process.
14 However, the NOSB policy manual states in the
15 sunset review procedures that amending or
16 creating new annotations is not part of the
17 sunset review process.

18 So we obviously have some work to
19 do if we want to change the process that we're
20 using. In terms of the discussion on this, we
21 all agreed that we don't want to do anything
22 that's disruptive to the organic marketplace.

1 So anything we do, we understand has to be
2 sensitive to that.

3 But, at the same time, we believe
4 as a committee, and we were unanimous on this,
5 that this process should be constantly asking
6 how are we, or how or if the reliance on
7 listed materials can be reduced.

8 One of the citations in the
9 Federal Register from years ago said that
10 because these substances may be critical to
11 the production and handling of a wide array of
12 raw and processed organic products, their
13 expiration could cause disruption of well-
14 established and accepted organic production
15 handling and processing systems.

16 Our perspective on that is that
17 the sunset process is the statutory mandate to
18 periodically question whether those
19 established and accepted processes should be
20 reaffirmed or altered, based on previous
21 decisions.

22 So the sunset process, to be

1 optimally effective, requires close
2 collaboration with the resources of NOP, and
3 that's a key element of what we believe is
4 important background information on this
5 topic.

6 Now it's interesting, because we
7 all had a chance now, all of those who worked
8 on this, many for longer periods of time, some
9 for shorter, have been involved now with the
10 sunset review process. The newbies on the
11 Board had an opportunity to dive into a number
12 of sunset evaluations, and I think that
13 experience has informed the positions that we
14 have on this issue.

15 As a result, you can see three
16 options that we, on page four, that we came up
17 with, one being a shift of the burden of proof
18 to the user community and the industry; two
19 being that we maintain an evergreen process,
20 and three being some sort of hybrid among
21 those two, the first two processes.

22 Since we put this out, we -- and

1 you heard many of the comments yesterday, we
2 received nine comments, which is not a lot on
3 such an important issue, but they are diverse
4 comments, and I think they cover the diversity
5 of the community of one former NOSB member,
6 five trade industry groups, two certifiers,
7 and one consumer farmer advocacy organization.

8 I'll get to what their issues are,
9 but let me first try to play Kevin on the
10 first option. The first option is the
11 hopefully straightforward approach, which
12 really calls for a shifting of the burden, and
13 some sort of petitioning process or formal
14 communication and request to the NOSB, to
15 retain status as a listed material.

16 Kevin writes in support of that
17 position, which he essentially drafted, "it is
18 my opinion, one of the best occurrences
19 possible would be for substances on the
20 National List to truly sunset. The message
21 sent to consumers and industry would be that
22 the rules are different in organic

1 agriculture. Decisions are made based on
2 what's best for human health and
3 sustainability, not on what's best for
4 business.

5 "Along these lines, there are" --
6 I'm sorry, "there has been displeasure voiced
7 regarding the statement in the recommendations
8 that getting items on the National List should
9 not be easy, nor should it be easy for them to
10 remain on the National List."

11 And at this point, he quotes
12 Barbara Robinson, former acting director of
13 the NOP, from the November 2007 NOSB meeting,
14 and she said "'I really want to applaud the
15 committee for exactly what you did. I
16 understand, and the Board should be prejudiced
17 against synthetics.

18 "'That is the nature. That is
19 your charge by law. You are supposed to be
20 prejudiced against putting synthetics on the
21 National List.' The path," -- I'm still
22 reading Kevin here -- "the path that needs to

1 be taken, so that organic agriculture becomes
2 more than just a footnote, involves fewer
3 items on the National List, not more.

4 "For 205.601, 603 and 605, we need
5 to have a true sunset process; for 602 and
6 604, an evergreen process needs to be present,
7 so that prohibited substances remain, unless
8 compelling evidence is presented to the NOSB
9 that dictates a change.

10 "Lastly, given that prohibiting
11 changes and annotations during the sunset
12 process is a policy of the NOSB, not the NOP,
13 I hope to hear sound public comment before the
14 fall meeting on why the NOSB should or should
15 not allow such action to take place.

16 "Given the rapid pace of change in
17 organic agriculture, being able to respond
18 quickly would enhance the NOSB's ability to
19 protect consumers." That's Kevin.

20 So there was some support for that
21 in the comments, not a lot. But there was
22 some support that there be a straightforward

1 process that is unequivocal on this issue.

2 Moving onto the second approach with the
3 evergreen process, there tended to be a lot of
4 support for that process, with some
5 modification among the trade groups.

6 There was only one or maybe two
7 outright supporters of that approach. Most of
8 the supporters modified their support by
9 suggesting that we shouldn't shift the burden
10 in a way that is burdensome, and we should use
11 the TAP review process or some sort of comment
12 period to enhance the ability of the Board to
13 make these decisions.

14 So I would say that the evergreen
15 process tends to have a fair amount of support
16 among the trade groups in that respect. But
17 the third option, which we're calling a hybrid
18 for now, really is our request to you all to
19 see if there's a combination approach that
20 might work here, taking the best set we can
21 get from those who are using the materials,
22 need the materials, can justify their

1 continued use, have information on
2 alternatives, have information on effects, and
3 try to shift some of that burden.

4 I think CCOF said it best, when
5 they said, regarding Option 3, "Industry
6 should bear the burden to prove that a
7 material should remain on the National List of
8 allowed substances, and that the NOSB should
9 bear the burden to show that a material should
10 be delisted."

11 So that wouldn't, under that
12 scenario, create an automatic delisting, but
13 would require some process whereby we would
14 have to generate the data, probably through
15 some sort of TAP review process and a
16 commercial availability assessment or
17 something of that sort.

18 So there you have it. I mean,
19 there are a range of opinions on this. We are
20 hoping to get more input as we bring this
21 forward at the next meeting, and hoping to do
22 this on somewhat of an expedited basis, so

1 that we can, you know, set an approach that we
2 feel better reflects the current thinking,
3 scientific thinking and organic practices
4 experience.

5 I should say one last thing, that
6 there seems to be I think unanimous support --
7 I think that's correct, among the nine at
8 least, that we should have the ability as a
9 board to annotate during the sunset process,
10 that that should be an ability on our part.

11 Miles, did you want to say anything more about
12 it? I read your statement from February and
13 summarized it.

14 MR. McEVOY: Sure. I would first
15 of all say that materials are really important
16 in organic agriculture, biological
17 agriculture. For many organic farmers,
18 materials are a critical input that allows
19 them to have a thriving, biologically alive
20 system, and that this bias against synthetics
21 is really not a good thing. I would really
22 caution the board to really think about that.

1 There's a whole continuum of
2 materials that are very synthetic, very
3 chemically changed, very toxic, to ones that
4 are just a little bit manipulated. Corn-
5 steeped liquor, you know, a little bit of
6 sulfur dioxide. If you call that a synthetic,
7 is that really a horrible substance?

8 So I just would really caution the
9 board about this bias against synthetics.

10 Okay. So in terms of sunset review, the OFPA,
11 from our perspective, it's definitely not an
12 evergreen process. The board's responsibility
13 is to evaluate these substances every five
14 years, to determine whether or not they should
15 be renewed or removed from the National List.

16 You have the opportunity to look
17 at old technical reports, TAP reviews, the
18 decisions by the board, the deliberations by
19 the committees, bring your own expertise, any
20 new information, bring all that information to
21 try to determine whether or not these
22 substances should be removed or renewed.

1 And then -- so we certainly don't
2 see it as an evergreen process. It should
3 really be a sunset review process. Then in
4 terms of annotations, I think that you should
5 be very cautious, if you want to look at
6 changing annotations or adding annotations
7 during the sunset review process.

8 But our understanding of OFPA,
9 there's nothing in OFPA that prevents you from
10 looking at annotations. You have a lot of
11 work in front of you. There's already been a
12 lot of people that have reviewed these
13 materials in the first place to get them on
14 the National List.

15 So I would use -- if you do change
16 your procedures, I would use that ability
17 very, very carefully, be very cautious.

18 MR. FELDMAN: Thank you. Mr.
19 Chair, back to you.

20 CHAIRPERSON GIACOMINI: Arthur,
21 did you have some -- yes or no. No, you don't
22 have to.

1 MR. NEAL: Well real quick. One
2 of the things too, we just want to make sure
3 that we keep in front of us, since we're
4 making decisions about materials, is to
5 remember how does the substance -- well does
6 the substance have a negative impact on the
7 goal of the environment and what we're trying
8 to do in terms of maintaining a system of
9 organic agriculture.

10 That kind of goes to Miles'
11 comment about synthetic. Just because it's
12 synthetic, the question is how does it really
13 impact the system of organic agriculture that
14 we're trying to promote? Just because it's
15 synthetic doesn't mean that it's having a
16 negative impact on what we're trying to do.

17 CHAIRPERSON GIACOMINI: Thank you.
18 I'm going to step out of the statement that I
19 made earlier. This is something that I feel
20 that it's worthwhile to the discussion for me
21 to introduce some ideas, relative to this
22 document here. So I apologize to the board if

1 they feel I'm not giving the rest of the board
2 a chance, and I'm driving this issue.

3 But I think from the start of this
4 document, as far as the background and granted
5 you say -- thank you, Joe.

6 (Laughter.)

7 CHAIRPERSON GIACOMINI: No, you do
8 not get to split the bill with Mark. It's two
9 separate bills. One of the sections that I --
10 parts that I believe you missed in the
11 historical perspective of this, and the
12 general process that I think we have almost
13 always gone through in this respect, is that
14 these kind of major documents, looking to put
15 change into the policy and procedure manual,
16 sort of come from an evolution and a change
17 within the respective part of the board, and
18 then the new thinking is applied into the
19 policy and procedure manual.

20 I think this kind of a document,
21 taking some of the perspectives that you did
22 without consideration from the Material

1 Committee, I think could have done with a
2 little more collaborative effort. I think
3 when we look at some of the issues involved,
4 the repetitioning process.

5 If everything would need to be
6 repetitioned in order to stay on the list the
7 next time around would be extremely disruptive
8 to the industry.

9 I believe that the annotation
10 change process, I disagree that you can do it
11 just a little bit or only part-way. I think,
12 in looking at the potential for the annotation
13 process, there is -- once you open that door,
14 there is absolutely no way to stop, on public
15 comment day, person after person after person
16 coming up and wanting to tweak this, tweak
17 that, this one over here, that one over there,
18 no, don't use an "and." You need to use an
19 "or."

20 This process, which is already --
21 it is one of the most significant processes
22 that we do on this board. There's no question

1 it is our directive in OFPA. But it doesn't
2 need to be any longer than it has to be.

3 I truly believe, from my
4 experience as the Material chair, in dealing
5 with all of those petitions, in dealing with
6 all of those technical reports, it very well
7 could become the only process we have the time
8 to complete. I would be very cautious of
9 opening up what I truly believe would be a
10 huge Pandora's box.

11 I think regarding the statement
12 from the program, I believe there were two
13 major points that the program made on that.
14 The first one I believe you kind of make much
15 ado about little, in that one of -- the
16 statement from the program.

17 No, to go back. The main policy
18 that we had always been working from in sunset
19 was that the sunset process was a complete
20 review of the original petition process, and
21 an evaluation of the new information and a
22 vote on the new information.

1 The new policy from the program
2 really said you can base your vote on
3 everything. I don't think we need to go
4 through all of these other issues, when really
5 the consideration of that is one of the main
6 issues in that document.

7 So I think really the main thing
8 was to expand and reconsider of all the
9 information involved, and I think that's
10 really the main thing of what they're working
11 on. As far as the second part being that OFPA
12 doesn't prevent annotation changes, I just
13 think that Pandora's box would be
14 overwhelming, because I don't think you can do
15 it just a little bit.

16 I think the effect on public
17 comment and the impact of our work process in
18 other issues would become overwhelming. So I
19 apologize for that little bit of a statement,
20 but yes, Jay.

21 MR. FELDMAN: Well, no. I
22 appreciate what you're saying. The challenge

1 we found is that as some of these approved
2 materials change their formulations, we're
3 sort of faced with a dilemma, because the
4 original product or active ingredient actually
5 that was approved, say in the Crops Committee
6 15 years ago, there are all these new
7 formulations of that product.

8 Which in many cases are better,
9 they're better in terms of limited exposure,
10 limited contamination. They've been much
11 improved. Yes, it may be true that users
12 would be inclined to use the better or newer,
13 more modern products. But others may not.
14 Others may be drawn to the others.

15 I should say this isn't -- we
16 heard public comment. Here's one that said
17 "Oftentimes the choice or renew or remove is
18 not appropriate for certain materials."
19 That's what we found. You know, I didn't want
20 to be forced to vote against materials or
21 actives. I prefer to tweak it, as you say,
22 and it is the risk.

1 I mean, you know, a lot of -- an
2 older board members, a previous board member
3 said, you know, trust the process from the
4 previous boards. Why go back and look at
5 stuff? Well because what's happened in this
6 arena is that things have changed dramatically
7 in terms of products. This is what we're
8 facing with the pheromones.

9 I mean pheromones are an
10 incredibly important tool but, you know, with
11 the uproar as you know around LBAM and issues
12 around encapsulated materials sprayed from
13 airplanes, or thrown out up by a ground rig,
14 is really problematic in certain
15 circumstances, and really not the formulation
16 that was originally approved by board.

17 So the question is do we look at
18 that. Might we say that that was not was
19 intended, that we are more interested in the
20 ties or the attractants? So in other words,
21 it gives us that flexibility. It enables us
22 effectively to leave things on the market that

1 we might otherwise be forced to try to let on
2 the market for allowable use, that we might
3 otherwise be forced to vote against.

4 CHAIRPERSON GIACOMINI: Well, I
5 think we have a process to take care of that
6 though. That process is the petition process
7 to change annotations.

8 The problem that we have, from the
9 Materials Committee, we have been trying to
10 request from the program, and I hope that at
11 some point in time now in the new
12 administration, and not only the new
13 administration but the increase in staff to
14 handle all of these issues, is to recognize
15 that certain aspects of the petition program
16 are broken. They don't work.

17 They have a huge and tremendous
18 bias to the manufacturer, and people trying to
19 do something outside of that structure, with
20 the amount of information that is required to
21 be considered, a complete petition or it's
22 rejected by the program and never comes to the

1 board, is overburdensome, to the point of not
2 being possible to complete.

3 That's similar to the situation we
4 dealt with in the Livestock Committee a year
5 or so ago, when the recommendation from a
6 conference call with the program and with the
7 Center of Veterinary Medicine was to present
8 a petition to the program for injectables.

9 The response we got back from the
10 program, after being on that call, was that
11 they wanted a full manufacturing process of
12 every potential injectable that would be
13 considered. It's a broken process. It's got
14 a bias and it needs to be fixed.

15 I think if we could focus on
16 fixing the process that we have in place, we
17 would be far better off and it can also be
18 done quicker than what we're looking at doing
19 here in sunset, because if we have a concern
20 today, where we find out something's broke, we
21 don't have to wait two or three or four years
22 for sunset. We can file the petition now and

1 take care of it. Arthur.

2 MR. NEAL: Great comments. Just
3 from a program perspective, we do realize that
4 there are some things that can be enhanced in
5 the sunset review process.

6 I think that what needs to happen
7 is that the program needs to be more involved
8 with the board in terms of talking about these
9 issues and working out some potential changes
10 to the process.

11 CHAIRPERSON GIACOMINI: But be
12 clear what I said. The broken part is the
13 petition process, not the sunset review.

14 MR. NEAL: Well, I think there are
15 some things that even in the sunset review
16 process that can be amended as well. The
17 petition process probably could be done a
18 little faster.

19 CHAIRPERSON GIACOMINI: Well, it's
20 a manufacturer's bias, and that is huge, and
21 it's almost impossible for the common man to
22 overcome. Katrina.

1 Ms. HEINZE: I do have a comment
2 on annotations, because I have kind of a
3 little prepared thing I wanted to do on
4 sunset.

5 I very much appreciate the fact
6 that the Policy Committee brought his as a
7 discussion document, to get input from the
8 rest of the board. I do wish that perhaps
9 more inclusion with the Materials Committee,
10 so we could have had kind of a user
11 perspective on it would have been useful.

12 Public comment clearly shows that
13 there's a wide variety of perspectives on this
14 topic. I want to particularly draw your
15 attention to the comments made by Kim Dietz.
16 Kim was very active in the last time the board
17 reviewed this, and I don't think we should
18 sell that board short.

19 They did debate all these topics
20 and the changes in materials and all those
21 things, and came up with a process that they
22 thought would work for that. I'm wary of us

1 revisiting what past boards have done, because
2 I think that will get harder as time passes.

3 I first want to say, I concur with
4 some comments that were made public comment
5 about synthetics, but also what Miles said.
6 I think it's a mistake for the NOSB to
7 approach sunset with the idea that synthetics
8 should be difficult to keep on the National
9 List.

10 If you look at leavening agents,
11 which are synthetics, it shouldn't be
12 difficult for us to keep synthetics on -- to
13 keep leavening agents on 605(b). They're
14 safe, they're necessary, and I don't think
15 consumers are really concerned about them
16 being there.

17 There are certainly synthetics
18 that should have a short life on the National
19 List as alternatives are developed. So I just
20 think that it's incorrect for us to approach
21 our sunset review with the perspective of
22 trying to boot every synthetic off the

1 National List. I think we need a more nuanced
2 approach.

3 So you asked us for what direction
4 did we want you to take. I agree that we need
5 better information from the public on
6 providing a rationale for why a material
7 should be on the list, if it's allowed or
8 taken off the list, if it's prohibited.

9 That should include the natural
10 alternatives or production methods to the
11 material. I do not support requiring
12 petitions to relist at all.

13 With regard to annotations, I
14 agree with pretty much everything that Dan
15 said. I would caution you to say that you had
16 public comments that all said they supported
17 changing annotations.

18 So specifically, if you look Kim's
19 document, she said she did support changing
20 annotations, but only if they required a new
21 or amended original petition, and technical
22 and scientific evidence that the change is

1 needed.

2 So I think if you read the rest,
3 that was the only one I had time to look at.
4 But I think if you look at the public
5 comments, you will see that there are several
6 that say "Yes, we understand why you want to
7 do annotation change, but it should be very
8 limited in scope. I shouldn't be a blanket
9 for all material."

10 So my final comment is colors. I
11 hadn't thought about this when I had asked
12 Steve if we could talk about colors. But that
13 is a very good example of an annotation change
14 that does need to happen, concurrent with the
15 sunset process. It shouldn't -- that
16 annotation change should not happen as part of
17 the sunset process.

18 So what the committee is doing is
19 bringing two recommendations, so it's very
20 transparent to the public that we are
21 considering annotation change. We'll get
22 public comment. We can have that discussion,

1 we can have that vote. But it's separate from
2 sunset.

3 The alternative, if annotations
4 were part of sunset, would be that every
5 single material that we considered would get
6 into the "do" loop that Dan described. I
7 think we're setting up future boards for
8 disaster should we do that. That's it, thank
9 you.

10 CHAIRPERSON GIACOMINI: Barry.

11 MR. FLAMM: I feel I ought to make
12 a response or at least an explanation to your
13 concerns, Dan, and what Katrina just said
14 about the involvement of the Materials
15 Committee, which I think we would really
16 welcome. I would like to point out that the
17 Policy Committee is a diverse committee and it
18 has the chairs or vice chairs of all the
19 committees.

20 So certainly nobody should be
21 unaware of what the Policy Committee was
22 doing. But more importantly, coming out of

1 the November meeting, where there was debate
2 on sunset and the sunset process, and what I
3 consider confusion over the implementation of
4 the recently revised procedures that are in
5 policy and procedure manual. So we were using
6 words like "evergreen," which had never --
7 doesn't appear in the manual, concepts.

8 So there seemed to be quite a bit
9 of honest confusion over the procedures that
10 need to be straightened out, and several board
11 members approached me, almost as a self-
12 evident fact, that the Policy Committee ought
13 to try to straighten that out.

14 So after consideration and
15 mentioning it, both at the meeting, the
16 November meeting and then at subsequent
17 executive committee meetings, it appeared on
18 the work plan.

19 I could have pursued maybe working
20 with the Materials Committee a little more
21 aggressively, but I really thought you were
22 really burdened, and if you wanted to join in,

1 we would welcome it.

2 In fact, the time before I pursued
3 having a joint effort with Materials to do
4 that, and the joint effort was primarily just
5 with Dan. We tried to work together on that.
6 So we weren't trying to exclude. In fact, the
7 more the merrier, more ideas.

8 So this paper was to lay out all
9 the things that just came forward. So without
10 -- we tried not to have any bias one way,
11 even though members may have an opinion. But
12 we wanted to --

13 I thought we laid out the option
14 and laid out the pros and the cons of each
15 action, the benefits of it, the cost of it,
16 and maybe come -- well, we have to come to
17 some sort of joint decision, and we may end up
18 --

19 But doing it just like we've been
20 doing it is not real clear, and I found this
21 is really my first time also through sunset,
22 and I found out what I thought some of the

1 premises about using past information and
2 using the past petition, using all that.
3 Well, it isn't even there. You can't find it,
4 you know.

5 So there's holes in the premises.
6 So I just want to say we take all the comments
7 and I don't care, you know. Dan, you're the
8 chair. If you want somebody else to do this,
9 I think we can do something else. But we were
10 just trying to perform a function for the
11 board and lay this out, and try to develop it.

12 It's not even going to affect
13 what's going on right now. This is something
14 to look at for really the next go-around.
15 We're not trying to push this. We wanted to
16 get the best ideas and see if we can't -- and
17 there are some new --

18 We had interpretations, like on
19 the -- that Miles had laid out for us now, in
20 terms of annotation, in terms of evergreen,
21 that was different than words that I have in
22 writing that came from the previous

1 administration.

2 So I think we just need to clear
3 the air so we can all work together, and so -
4 - and things, as Jay has pointed out, as you
5 all know, this is a moving target. The
6 information, what is being learned, what's
7 being looked at, it does change. So we have
8 to be able to -- and that's our intention.
9 That's what we say in the manual right now.

10 But sometimes it seems like in
11 spite of that, then we just end up what
12 appears to be doing what happened before. But
13 I'm trying very hard not to take the position
14 on all that, and I'm sorry if I offended
15 Materials, but that wasn't our intention.

16 MS. HEINZE: We didn't think you
17 were. We do appreciate you recognizing we
18 were overburdened. I equally could have
19 noticed you were working on it. I didn't, so
20 that's my --

21 MR. FELDMAN: We worked very
22 quietly.

1 CHAIRPERSON GIACOMINI: Jay.

2 MS. HEINZE: We work very noisily.

3 MR. FELDMAN: Again, I think we
4 have to come back to the fact that we've all
5 been through some sunset review, long days and
6 meetings together. We've made it out alive
7 and we've made it out liking each other.

8 So the fact is we have worked in
9 the process. The question is does that
10 process need to be tweaked? But that's not
11 why I raised my hand.

12 You know, any organization worth
13 its salt does a strategic plan. In the
14 strategic plan, they lay out their vision and
15 their mission and their core values and their
16 beliefs.

17 In the process of doing a
18 strategic plan, they then commit to reevaluate
19 the vision, the core beliefs, the tactics, the
20 approaches. The first thing they do, and I'm
21 not telling anybody here things they don't
22 know, but I want to remind us of this, is to

1 check in with their mission, to check in with
2 their mission.

3 That's what I read to you at the
4 beginning, what the mission of our work is.
5 I read to you Section 2118 of the Organic
6 Foods Production Act.

7 What I want to say, I think, is
8 that if we think this is a residue-driven law,
9 where we can define safe and we can start
10 talking about levels of exposure and
11 significant and insignificant, we are going
12 down a rabbit hole that John hasn't even been
13 able to identify yet for us, because that is
14 not what OFPA is about, and we really need to
15 keep that vision and those core values in
16 front of us.

17 I will read to you Section 2115.
18 "To be sold or labeled as an organically
19 produced agriculture product under this title,
20 an agricultural product shall (1) have been
21 produced and handled without the use of
22 synthetic chemicals, except, except as

1 otherwise provided in the title, in this
2 title."

3 Number two, "Except as otherwise
4 provided in this title and excluding
5 livestock, not be produced on land to which
6 any prohibited substances, including synthetic
7 chemicals, have been applied during three
8 years immediately preceding the harvest of the
9 agricultural products."

10 And three, "Be produced and
11 handled in compliance with an organic plan
12 agreed to by the producer and handler of such
13 product, and the certifying agent." I daresay
14 if you look at what is required in the farm
15 plan, chemicals come last. Materials come
16 last. It's process, okay.

17 So let's check in with our vision,
18 and let's use the sunset process to check in
19 with our vision like we would do if we worked
20 for an organization where we checked in with
21 our strategic plan. It's not a disservice,
22 it's not disrespect to the people that came

1 before us.

2 It's really respectful of the
3 people that came before us, to check in with
4 the foundation that they have built, and build
5 on that foundation. This is what the sunset
6 process is about.

7 We are not regulating chemicals
8 under de minimis risk standards, under --
9 effect standard, which one of our presenters
10 yesterday slipped into, if you noticed,
11 because he's used to presenting that standard
12 at EPA regulatory hearings.

13 That's not a bad thing, but that's
14 not our vision. That's not our mission, and
15 I really think that what the committee has
16 laid out here, Barry, I think you did an
17 extraordinary job of leading us to raise the
18 issues.

19 We brought this issue to you all
20 to get your input for this. We hope you can
21 see the vision that we're trying to uphold,
22 advance, nurture, respect, and we are

1 welcoming everybody to join that process. So
2 thank you. I'm sorry for getting on the soap
3 box, but I think this is a critical issue.

4 CHAIRPERSON GIACOMINI: No. If I
5 did, you're entitled to. Barry, your next
6 topic.

7 MR. FLAMM: The next topic is an
8 item in Section 5 in the policy and procedure
9 manual, which is NOP-NOSB collaboration. As
10 you know, the Policy Committee has been
11 systematically reviewing and trying to bring
12 up to date the policy and procedure manual of
13 --

14 Actually almost a year ago, Rigo
15 had led review of Section 5 on the
16 collaboration process. Some questions came up
17 that we weren't quite ready to handle. Rigo
18 felt that the section needed to be -- a lot of
19 redundancy needed to be taken out and be
20 streamlined, and some members of the committee
21 weren't quite ready for that.

22 But most importantly, this was a

1 time of transition, with changes in NOP, a new
2 hat and new funding, new staffing, lots of
3 things. So we thought it was best just to
4 postpone changing that section until we had an
5 opportunity to get public comment and get more
6 public comment.

7 But also to discuss it with NOP.
8 After all, we're talking about collaborating
9 and working together, so it's only right to
10 talk to the party that we wanted to
11 collaborate with. It wouldn't be very good to
12 start out talking about collaboration and not
13 even ask them what they thought about it.

14 And I -- we sort of delayed any
15 work on it, because we had the high hopes of
16 getting together in the retreat and talking
17 about that at that time, and that didn't
18 happen.

19 One of the reasons -- well, the
20 reason it didn't happen is because of the
21 restrictions that sort of the Sunshine Act
22 places on us. One of the interesting things

1 that -- we only received two comments, written
2 comments. At least if there were more, I
3 missed them.

4 The one that had the most
5 substance warned us about working out of the -
6 - in the shadows with NOP, and never really
7 reinforcing what sort of the Sunshine's all
8 about, and just it was sort of a reminder. So
9 that's one of the limitations we have in a
10 collaboration, is that it all has to be --

11 That's not bad, but that's one of
12 the things. So we can't just sit down and
13 work and collaborate as you might with other
14 parties or other organizations. So that's the
15 limitation.

16 I think, I hope you've looked at
17 what we have said, or it's mostly kind of
18 obvious, in coming out of the procedure
19 manual. One of the things that was suggested
20 though, as a tool of improving communication
21 and coordination would be to have an NOP staff
22 person assigned to a committee.

1 Now we strongly endorse and
2 support the executive director position, what
3 Valerie has done and her replacement will do -
4 -, an overarching thing. But that's an awful
5 lot of work, and we had one idea, and these
6 are just ideas, was to have a contact person
7 or somebody to work with the committee, to
8 help with a multitude of activities.

9 We don't have any really original
10 ideas. I'm still hoping before we revise
11 this, we will have a recommendation for the
12 fall meeting, that we'll have a chance to get
13 some feedback from the program and ideas from
14 the board on how we ought to improve our -- if
15 we need to improve.

16 I mean from my standpoint, it's
17 pretty good right now. But that's sort of the
18 sum of it.

19 CHAIRPERSON GIACOMINI: Any
20 comments or questions from the board? Yes.
21 I think this is a really good document. It's
22 always hard to put personality on paper, and

1 so much of a collaboration effort is the
2 personality of the people. The only thing,
3 the one thing I would like you to look at, as
4 you move forward in this, is in your NOSB
5 committee staffing, down towards the end,
6 where you're talking about things that will be
7 kept on the NOP website, you're including the
8 range of positions discussed during committee
9 meetings.

10 Historically in the past, and I'm
11 not sure it's necessarily what we want to
12 deviate from, is the committee meetings,
13 committee minutes are not posted. One thing
14 I would recommend for you to do is to develop
15 that structure, so that we can put the
16 position, get the position on the website,
17 without having to necessarily post the entire
18 committee minutes. Any further?

19 (No response.)

20 CHAIRPERSON GIACOMINI: I think I
21 hear a clock dinging somewhere. Barry, your
22 last item please?

1 MR. FLAMM: Our last item, Annette
2 will cover, and that's the rotation of board
3 positions. I have to say, this is something
4 Annette was assigned lately to, and another
5 board member that is no longer on the board
6 was really the -- initiated this particular
7 discussion document, and was probably
8 concerned about it.

9 Again, we're just trying to get
10 the feeling of whether this is a problem that
11 ought to be dealt with, and whether -- but
12 anyway, Annette, carry on please.

13 MS. RIHERD: I will make this
14 brief, because I know you all are tired and
15 are ready to go. As you know, when this was
16 first started, it was planned that there would
17 be three people appointed at a time. But
18 because people have left the board -- it's on.
19 Yes.

20 Because people have left the board
21 for various reasons, now like this year five
22 people came on. It was brought up that this

1 was a problem, and there was a suggestion that
2 we take it back to, we can get it to where
3 there's three people coming on a year again.

4 But many people put a lot of work
5 into the graphs and sat down and tried to
6 figure out a way to get this going on. But we
7 can't figure out a way to stop this problem
8 from happening again. So unless we have some
9 input from you guys, to say hey, here's an
10 idea, this will probably not go on.

11 So we really just need your
12 thoughts on this. There were two public
13 comments. One was that they didn't think this
14 should even be thought, and another one said
15 that they thought we should talk to you guys,
16 to see if there was a law that we needed to
17 follow or something.

18 CHAIRPERSON GIACOMINI: Valerie.

19 MS. FRANCES: I did put this
20 forward to the GSA secretary which governs the
21 FACA committees overall, and I was hoping to
22 get feedback before this meeting. I did put

1 this forward to those folks, and they did say
2 that they would look at this and take it under
3 review, and have promised to get back to us
4 and have not done so yet. So I'll continue to
5 pursue that.

6 But they were interested in the
7 topic and did feel that they would ultimately
8 have something to contribute. They have 1,000
9 committees that they look at and relate to.
10 But they were appreciative that the question
11 was brought forth.

12 CHAIRPERSON GIACOMINI: Barry.

13 MR. FLAMM: I'd like to call
14 attention to the discussion items for the
15 board members. There's some questions posed,
16 that unless there's an answer to these
17 questions, I don't think we can proceed to
18 develop charts or anything else.

19 Originally back in I think it was
20 2005, when the board spent a lot of time in
21 developing a rotation system and charts and
22 those are attached, but only as sort of a

1 reference, because unless you answer these
2 questions, there's no sense in going ahead.

3 One, is it first really a
4 question. Is it a problem? Does it make any
5 difference? I think having five people just
6 come on, five come off, it looks like we're
7 working pretty good. So yes. I don't know
8 whether it's a problem. So you have to kind
9 of --

10 And then there's a series of
11 questions that I think have to be answered.
12 If those are answered, depending on the
13 answer, then you can develop a schedule. But
14 one thing, definitely, you know, as you all
15 know, it was staggered when the board started,
16 and to get to this three every, for five year
17 terms.

18 But people resign, and that will
19 always happen. So there has to be, as Annette
20 alluded to, even you get a -- if you agree to
21 all this and get a rotation system, you'll
22 still have to -- there will still have to be

1 a commitment to appoint people, to fill
2 retired, I mean people resign.

3 But I think the first question, is
4 it a problem? Do you want to even pursue
5 this? We don't have -- we have no, within the
6 committee, no real strong feeling either way.
7 I just want to let you know that. So we're
8 really -- if we got to proceed this way, we're
9 willing to work out if we need answers from
10 the board on these questions.

11 CHAIRPERSON GIACOMINI: John.

12 MR. FOSTER: I don't perceive it
13 as a big problem. It's a little self-serving
14 on my part, coming in in this first wave of
15 five. I agree with you, Barry. I think it's
16 going okay. Despite the fact of getting hit
17 pretty square in the forehead with sunset
18 right out of the chute, I think it's been
19 okay.

20 I can imagine a whole lot of work
21 and thought and energy going into how to
22 reconfigure this, and as soon as it's done,

1 someone will leave early again. The odds of
2 it happening, such that we have six or seven
3 come on in a given year, is unlikely.

4 But I don't know. I don't see it
5 being that big a problem. I see more of just
6 the need for whatever alchemy goes into the
7 selection process. I think whoever is in
8 charge of that needs to take that into
9 account, and I trust that process, again self-
10 serving, but I trust the process, and if they
11 have five people to pick, then they'll pick
12 appropriately.

13 Everything I've seen so far is
14 that there's the capacity and the will to
15 present a very balanced board, with
16 representation from a very good representative
17 collection of folks, and I would expect that
18 in the future, regardless of how many need to
19 be appointed in a certain year. So I would
20 toss in that I think it's okay.

21 CHAIRPERSON GIACOMINI: Just on
22 that chart up there, I think there's a

1 correction that needs to be made. That 11
2 should be a five. There was six in '06, but
3 one of those appointees withdrew, which made
4 four in '07, which created the five in '11 and
5 the four in '12.

6 MR. FLAMM: Dan, that was a point
7 and I didn't make it clear enough. That's a
8 problem. Those charts were developed back in
9 2005, and I think, you know, I thought that it
10 was clear, but maybe it wasn't, that these
11 were illustrative of work that had been done
12 in the past, and what we can do now.

13 But there's absolutely no sense.
14 We could develop a chart. But for example, it
15 would make a lot of difference if it was
16 implemented today, that change, or if it was
17 implemented, you know, in January. I mean
18 when it's implemented would change the whole
19 chart.

20 So until you decide to do it, this
21 doesn't mean -- and there's a whole series.
22 People did a lot of worrying, and there was a

1 bunch of different charts, alternatives that
2 were developed, and they were good work. But
3 there wasn't a will to actually implement it,
4 and there was some features of it that were --
5 what I understand was disagreeable to people.

6 So that's the reason I think that
7 posing these questions were better, you know,
8 have to be answered first. The first one is,
9 is it worth doing? Does this board think --
10 I mean past boards thought it was, and part of
11 the board that left thought that this was
12 something that ought to be dealt with.

13 CHAIRPERSON GIACOMINI: Tina.

14 MS. ELLOR: I actually think it's
15 important to have a mechanism in place to deal
16 with this issue, whether during this
17 particular board turnover it was a problem or
18 not.

19 You know, in the future, it really
20 could be a problem. It so happened that, you
21 know, everyone hit the ground running, and I
22 think that's usually the case, although that

1 hasn't always been the case in the past.

2 I've been sitting through these
3 meetings now for ten years and seen a huge
4 variety of board members. So whether we use
5 it or not, I think it's good to have a
6 mechanism in place to deal with this issue.
7 You know, I was going to volunteer to leave
8 early, but I can see by the charts that that's
9 not going to do anybody any good.

10 (Laughter.)

11 MS. ELLOR: And I think we should
12 reward, you know, the people who have been
13 sitting in these meetings for ten years with,
14 you know, with a seat on the board. Then they
15 would hit the ground running.

16 MR. FLAMM: So are you suggesting
17 that -- well, there's two parts to that. One,
18 getting it back on a level playing, and that
19 are you -- and then the other is just
20 replacing people that retire early. I mean --

21 MS. ELLOR: And you know what? It
22 might just shake out all in the wash. I mean

1 it might just work out that it works back to
2 three years. But whether we use it or not, it
3 would be good if there was a mechanism in
4 place, if it was the will of the board and/or
5 the will of the NOP, that if this does turn
6 out to be a problem, say we're turning over
7 six in one year, then yes, we should have a
8 mechanism in place to start to stagger this
9 out again.

10 But I'd be interested to hear the
11 response to the inquiry that Valerie sent out.
12 I'm sure other boards have this problem. So
13 I'd be interested in hearing what the come
14 back on that is.

15 MR. FLAMM: Yes. That was going
16 to be part of -- it will be part of our input.
17 But --

18 CHAIRPERSON GIACOMINI: We're
19 running very late, but I think this deserves
20 as much attention as the things we started
21 with this morning. So I want people to have
22 note of the time, but not that I'm encouraging

1 them to cut this off if they think it's
2 important. Katrina.

3 MS. HEINZE: I'm going to
4 apologize. I missed when I read this document
5 that you had questions that you wanted
6 responses on. So are those the premises under
7 Section 4, Discussion?

8 MR. FLAMM: Yes. That's what I'm
9 interested in.

10 MS. HEINZE: Well, I apologize
11 that I kind of missed that that was your
12 intent. So I'll take a look at them and then
13 maybe in an email or something send you my
14 thoughts. I apologize for that.

15 CHAIRPERSON GIACOMINI: Steve?

16 MR. DeMURI: And keep in mind it's
17 not just a numbers game of numbers of people
18 going off at the same time. If John and I
19 both had to resign the same week, there would
20 be no handlers on the board.

21 So you need to have some kind of a
22 mechanism to fill those positions with X

1 members that could come on for a couple of
2 years or something. That's the kind of
3 comments we're looking for.

4 CHAIRPERSON GIACOMINI: Yes. Any
5 further? Arthur?

6 MR. NEAL: We just have to also be
7 mindful that members of the NOSB are appointed
8 by the Secretary. So it's not a quick
9 process. So we just want to be mindful of
10 that.

11 CHAIRPERSON GIACOMINI: Yes. I
12 would just like to also add that there may be
13 some disruption in the inequities of the
14 numbers. But in the past couple of years,
15 we've also leveraged that, to take advantage
16 of it.

17 We did it with the Material
18 Working Group on the material issues. It gave
19 us a year of no new people to not have to lose
20 as much as half a year, to bring that to the
21 table.

22 We also used it in Livestock with

1 methionine. The reason we gave them the drop
2 dead date that we did was because the next
3 time it came around, there were only going to
4 be five new people that had come on the board.

5 So we've had situations where we
6 really leveraged that discrepancy to our
7 advantage. So there might be some disruption,
8 but there also could be sometimes it can be
9 utilized positively. Further comments?

10 (No response.)

11 CHAIRPERSON GIACOMINI: Seeing
12 none, any -- is that the conclusion of your
13 discussion, Mr. Chairperson?

14 MR. FLAMM: That's the conclusion,
15 Mr. Chairperson.

16 CHAIRPERSON GIACOMINI: Okay.
17 That concludes our Policy Committee. It
18 concludes our business of the day. Any
19 announcements? We still have the pair of
20 reading glasses. Katrina?

21 MS. HEINZE: I apologize for this,
22 but I do now need the Joint Committee for

1 about two minutes.

2 CHAIRPERSON GIACOMINI: Katrina
3 may not be with us in the morning.

4 (Laughter.)

5 CHAIRPERSON GIACOMINI: In the
6 case of death, okay. Okay. Madam Secretary,
7 Tina.

8 MS. ELLOR: Also, I do need to get
9 the Crops Committee together tomorrow morning
10 briefly before the meeting. So if the Crops
11 Committee could maybe meet here at 7:30?

12 VOICE: No, no.

13 CHAIRPERSON GIACOMINI: Jay.

14 MR. FELDMAN: I have one --

15 MS. ELLOR: 7:30 tomorrow morning.

16 CHAIRPERSON GIACOMINI: John.

17 MR. FOSTER: I believe Richard
18 Matthews' phone went off in the back. I just
19 wanted to call attention to that.

20 CHAIRPERSON GIACOMINI: Yes. You
21 try and get it out of Richard.

22 MR. FOSTER: That's a rabbit hole

1 I can find.

2 CHAIRPERSON GIACOMINI: Okay.

3 Everyone thank you. Our meeting's in recess,
4 eight o'clock tomorrow morning. Have a safe
5 evening.

6 (Whereupon, at 6:05 p.m., the
7 meeting was recessed, to reconvene on
8 Thursday, April 29, 2010 at 8:00 a.m.)

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