
TRANSCRIPT OF PROCEEDINGS OF: (NOSB) MEETING 03-22-00

HAHN & BOWERSOCK

Page 1 to Page 52

**CONDENSED TRANSCRIPT AND CONCORDANCE
PREPARED BY:**

***HAHN & BOWERSOCK
3187 REDHILL AVENUE
SUITE 115
COSTA MESA, CA 92626
Phone: (800) 660-3187***

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRANSCRIPT OF PROCEEDINGS OF THE
USDA
NATIONAL ORGANIC STANDARDS BOARD (NOSB) MEETING

Taken on: March 22, 2000

REPORTED BY: Dianne G. Slockbower
C.S.R. Number 10676
Registered Professional Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AGENDA	PAGE
SPEECH BY MS. KATHLEEN MERRIGAN	4
PUBLIC COMMENTS	19

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Transcript of proceedings, taken before
Dianne G. Slockbower, a Certified Shorthand Reporter for
the State of California, with principal office in the
County of Orange, on Wednesday, March 22, 2000 at the
Embassy Suites, 7762 Beach Boulevard, Buena Park,
California.

- NOSB BOARD MEMBERS:
- Karen Anderson
 - Margaret Misner
 - Marvin Hollen
 - Rod Crossley
 - Steven Harper
 - Margaret Wittenberg
 - T. Keith Jones
 - Frederick Kirschemann
 - William Welsh
 - Steven Pavich
 - Eric Sideman

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MS. MERRIGAN: Our goal was to get this one in the ball park, I would say we're in the ball park, but we're not all the way to home base yet. We recognize that it's a proposed rule and that they're going to have to be modifications made along the way and we're already monitoring the comments that have come in. As of yesterday, I think we had close to 200 E-mail comments that had come in, and something like 23,000 hits on our web page.

So we expect that – we expect a lot of letters, we have a war room set up, I'm sure Keith has told you all about that. And hopefully we'll be able to get the comments up as soon as we receive them. We've invested a lot of time and energy thinking through the technology contract and getting staff from other areas of AMS to man that war room. That will also help us too, because we're going to have to be on very quick turnaround this year to get to a final rule; and so we will be monitoring the comments as they come in. So please don't feel like the most important strategy is to hold your comments to five minutes before the deadline. We're going to read them all, but it will really help us too to be reading them as they come in along the way.

I really want to today address very briefly three or four points – issues that just looking at the

Page 5

1 early returns on comments seem to be issues of particular
 2 concern, and give you a sense of what our latitude is in
 3 dealing with these issues or at least our underlying
 4 rationale for why we chose the path that we did.
 5 The first issue is genetic drift. Residue
 6 drift has always been an issue for organic farmers. If you
 7 have a neighboring farm, pesticide residues comes on your
 8 farm, there again farmers suffer. We in this proposal say
 9 that organic, as we've said in the statute, as we've said
 10 all along; organic is a process claim not a product claim.
 11 That incident of drift alone, unless it – it's a problem
 12 with the PDP mean, alone does not require that that product
 13 not be sold as organic and it does not result in
 14 decertification if that farmer's land as organic, because
 15 we recognize that that occurs through no fault of the
 16 farmer.
 17 Now, we also expect that a farmer working with
 18 his or her certifying agent will be proactive in this area
 19 and if necessary set up the kind of structure on his or her
 20 farm to prevent these instances from happening. It's not
 21 only just the neighboring farm but we have, as you know,
 22 many operations that have both organic and non-organic
 23 portions. And so figuring out how to keep things separate
 24 is important, has been important in the history of organic.
 25 This issue has, though, taken on a new life in this new era

Page 6

1 that we're in of biotechnology and the issue of genetic
 2 drift and from what I read and what I know, we don't even
 3 have all the necessary scientific knowledge behind us to
 4 fully understand all the mechanisms of genetic drift.
 5 Probably should, probably should have five years ago, but
 6 the reality is we probably don't know as much as we would
 7 like.
 8 Consequently, out of anxiety for the future
 9 livelihood of organic farmers, people have come to the
 10 Department already and said, Isn't there something you and
 11 AMS can do on this issue.
 12 The first example that I've heard, could we
 13 require non-organic farmers, conventional farmers and
 14 abutting farm operations, for example, to put in buffer
 15 strips and not have the – to protect that organic farm.
 16 And what I want people here to understand is that in no way
 17 does AMS have the authority to do that under the statute
 18 that we are putting this program together. We only have
 19 authority to regulate organic farmers.
 20 So that's – I just don't want a huge amount
 21 of energy to go down that lane, because as far as I've been
 22 told by lawyers, so far there's – it's just a dead-end.
 23 The other issue that people raised to us is
 24 could we put something in about a citizens right to sue.
 25 As you know, a lot of these pesticide problems have been

Page 7

1 taken care of through state tort laws, through nuisance
 2 claims and I expect that some of those laws will also be
 3 relied upon in the issues of genetic drift. But without an
 4 act of Congress we also can't do a citizens right to sue.
 5 That would require a Federal act of Congress. So on that
 6 issue, certainly we're receptive to comments to hear what
 7 people say, but I haven't heard of anything yet that we can
 8 actually do on that subject. So I just wanted to be really
 9 blunt about that, because there's so many issues that we do
 10 need help on, and whether that's a really important issue
 11 and one where we may want to look to our regulatory
 12 agencies to do a lot more in terms of product approvals on
 13 those kind of issues, I'm not sure there's anything that
 14 AMS can do.
 15 The second issue that I know has generated a
 16 lot of concern, and I caught the tail end of your
 17 discussion of questions with Arthur Neil, is on this new
 18 concept thrown out at you, the Pesticide Data Program. The
 19 Pesticide Data Program is was one of the reasons why I was
 20 excited about taking the job as administrator. It is the
 21 premiere pesticide residence testing program in the world.
 22 And it's one of those programs that both environmental
 23 groups and chemical industry lobby for funding for because
 24 it has been somewhat unimpeachable and it is the bedrock
 25 currently for EPA decision making for food quality

Page 8

1 protection and pesticide decision making. And it's
 2 especially geared to dietary concerns of children and
 3 infants. It's not a perfect system, it doesn't cover every
 4 conceivable crop. We are building the program over time.
 5 We do anywhere from ten to thirteen commodities a year.
 6 And I didn't bring it in, I left it in the van, but I just
 7 did bring the summary of data that just came out a couple
 8 weeks ago, the latest summary of annual data, but I also –
 9 on these little remarks that Mark has, I have the web page
 10 site – oh, Arthur has it. My remarks has the web site
 11 that you can look this up and it's not the complete data
 12 stats, but it has pretty good – pretty extensive,
 13 actually – prepare your printer – data stats that you can
 14 look at. But having done some of the calculations, nearly
 15 all of the pesticides if you use the five percent tolerance
 16 which has been somewhat standard practice among a lot of
 17 the certifiers, the PDP mean is actually significantly
 18 lower, by major multitudes. And I think – I don't have
 19 the details – here, Mark, let me grab one of those.
 20 Arthur may have already shared with you some
 21 good examples, let me just give you a couple that we
 22 calculated yesterday. We took the PDP mean (inaudible) on
 23 apples and the PDP mean in this case is 30 times lower –
 24 35 times lower than five percent of the EPA tolerance. And
 25 then we took the PDP mean for malathion soybean grade, and

Page 9

1 it's 65 times lower than five percent of the EPA tolerance.
 2 So I think we really need to look at this. It's an
 3 imperfect measure, but I would argue that it's better than
 4 the five percent. And how can we make this PDP concept,
 5 which we were able to get by all the federal food safety
 6 agencies and OMB, how can we improve upon it as opposed to
 7 jettison it. That would be my question to you.
 8 The third issue I wanted to talk about is fees
 9 impact on small business. As you know, in the first
 10 proposed rule, USDA asked the question about should the
 11 exemption for small farmers be increased from the \$5,000
 12 level. And as many of you know, we got very strongly held
 13 opinions on both sides of that issue. It would require –
 14 according to our legal aides, it would require an act of
 15 Congress to change this in any significant way. What we
 16 did in this proposal, as you know, is we redefined the 5000
 17 to be \$5,000 of organic agricultural materials as opposed
 18 to just agricultural materials, and then we also added a
 19 \$5,000 exemption for handlers (inaudible). The idea is if
 20 you're a small guy and you're finishing up the Farmers
 21 Market, you've been doing preserves and that sort of thing,
 22 that you might be able to couple together – doing
 23 blueberries – you might be able to couple together a
 24 \$10,000 exemption. But we still recognize that the onset
 25 of all this bureaucracy is going to have some cost on small

Page 10

1 farmers. We haven't figured out, frankly, all the ways of
 2 relieving that burden. We did that exemption. We do again
 3 ask the question in the proposed rule, should it be raised.
 4 One way we could raise it without statutory change, I
 5 suppose, would be to inflate it. We might be able to get
 6 away with that argument to inflate it to \$2,000 arguing
 7 that Congress passed that statute in 1990, but that only
 8 gets us to somewhere under \$8,000. So it's not a huge
 9 change, but it would be if you're making \$5,001, it's a
 10 huge change.
 11 We also prevailed in our argument with other
 12 agencies at USDA, with our own internal budget office, and
 13 with office of management budget, that this was not going
 14 to be a user fee full cost recovery program. The first
 15 proposal it was, and we argued, and I was able to argue
 16 from the point that I was there when the statute was
 17 written – and I'm sure everyone's sick of hearing me say
 18 that – but the statute includes both an authorization for
 19 an appropriation and a user fee authority. And why would
 20 Congress have put in that authorization for appropriation
 21 if they didn't mean for this program to have ongoing
 22 appropriation. Well, we've prevailed in that argument, so
 23 as a result this proposal has no direct fees assessed to
 24 farmers and handlers. The only fee that USDA charges is
 25 for the direct cost of accreditation services.

Page 11

1 We then argued that for two reasons there
 2 should be – well, three reasons, there should be a
 3 phase-in period such that we would not have the full cost
 4 of accreditation recovered by the Federal Government. Our
 5 reasons were that, again, this is industry dominated by
 6 small and moderate sized farmers, and if we assess large
 7 fees to certifiers, understandably a certain portion of
 8 those fees will be passed on to farmers, and we find that
 9 problematic.
 10 Secondly, we are on a learning curve here.
 11 And just – in any kind of business, any kind of operation
 12 you imagine, the first year doesn't run as well as the
 13 second year and the third year. And we didn't want our
 14 learning experience to be born by the industry. And the
 15 third reason is we had some very good appropriations
 16 language in the Senate Appropriations Bill over the years
 17 to back us up, that there was this concern about fees and
 18 the imposition on small farmers. What we were able to do
 19 therefor was to put in AMS's budget proposal a \$639,000
 20 item, a one time item, that Congress will now decide upon
 21 whether to keep in the budget over the next coming months
 22 that would pay for the salary and related expenses for
 23 accreditation the first round. Anyone who gets their
 24 applications in that first six months – and we base this
 25 amount of money on the thought that at least the 49

Page 12

1 existing certifiers in the United States, and at least ten
 2 foreign certifiers would be applying. And that amount of
 3 money would cover that many. There may be more, there may
 4 be less, we had to pull it out of thin air how we did the
 5 calculation.
 6 I just raised that for a very important
 7 reason – and just to finish that thought off –
 8 accreditation, as you know, is good for five years. So
 9 provided that Congress provides that money, the additional
 10 cost to the small guys, the small farmers, are really
 11 take – place in terms of whatever residue testing a
 12 certifying agent might feel is necessary, if they're not
 13 currently requiring such things. Whatever necessary
 14 amendments to organic system plans, additions – I think in
 15 some cases what we're requiring for an organic system plan
 16 might be more elaborate so that some certifying agent is a
 17 requirement. So there may be some costs, but there
 18 shouldn't be this huge difference the day this rule becomes
 19 final and it's in place for the small guy.
 20 However, if Congress doesn't appropriate that
 21 money, I just want you to know that we're in a pretty big
 22 bind because to get a final ruling out this year, and not
 23 have that money in the Congressional Appropriations Bill,
 24 will mean that we will have to get full cost recovery in
 25 accreditation. So those projected fees that certifiers see

Page 13

1 that would be born by them the second time 'round, so to
 2 speak, would in fact be the fees for the first time around
 3 too.
 4 And I can't give you an average because, as
 5 you all know, certifiers every shape and size, and so we
 6 project a range in the regulatory impact analysis of this
 7 proposed rule. But our hope is Congress will appropriate
 8 that money and we'll be able to pull that one off. But if
 9 we're not, I will be faced with a decision as going to a
 10 finer rule without full cost recovery or delaying a final
 11 rule and having to do some additional notice and comment on
 12 a different fee schedule all together. That potentially
 13 could put us into next year.
 14 Lastly, I just want to say that we're really
 15 looking to the NOSB in the next few months to help guide
 16 this discussion and to give us feedback where you can. The
 17 proposed rule specifically cites future work that we might
 18 receive from the NOSB on retailing. I don't expect that we
 19 would be going there by final rule, but we do recognize the
 20 fact that that may not be an issue that's totally resolved,
 21 we've left the door open that we might go and do some sort
 22 of the certification of retailing operations, although this
 23 proposed rule doesn't encompass that. We also specifically
 24 look in the proposed rule, we cite looking for the NOSB for
 25 guidance on the development of aquatic animal standards.

Page 14

1 And I know that we have a series of meetings set up and
 2 that's going to consume some of your time over the next
 3 year, and I hope that we'll be able to help you in your
 4 deliberations.
 5 And finally, because of some of the related
 6 issues of wild caught seafood with honey – well, bees.
 7 And because of the – I note – Fred, you are the last
 8 person in the world that wants to hear this. Honey is
 9 still an open issue because it has consumed such a huge
 10 amount of the livestock subcommittee's attention. But that
 11 still remains an open issue and we signal that in the
 12 proposed rule. It's not that we don't plan on ever doing
 13 that, but we just didn't feel – for a variety of
 14 reasons – we were ready to propose national standards for
 15 honey production.
 16 So those are just some thoughts. Mark's
 17 got – I'm actually going to spice this up a little, and
 18 put it on our web page as official remarks from the NOSB
 19 today. If Mark would pass these out, that would be great,
 20 and I'm happy to answer any questions anyone might have.
 21 UNIDENTIFIED SPEAKER: The first one I would want
 22 to know – I guess I would caution you about raising the
 23 exemption because, if you remember, the NOSB recommendation
 24 to the first proposal was that the exemption not be
 25 raised. We felt that the exemption should not be used as a

Page 15

1 way of justifying high fees. And our reasoning was that so
 2 many of the organic farms that are certified in this nation
 3 are in that range of 5- to \$10,000. And the last thing we
 4 want to do with the national program is lower the number of
 5 certified farmers. So I caution you not to raise the
 6 exemption.
 7 MS. MERRIGAN: I want to say we've had many
 8 comments from people saying they wanted no exemption at
 9 all. This proposal, by the way, would allow a State to
 10 require certain things of exempt operations. The exemption
 11 is really from the Federal program. If the State has a
 12 program and they require a registry or some sort of
 13 certification of their growers, we do not prohibit that.
 14 But I understand that this exemption level
 15 may – because of the diametrically opposed and very
 16 strongly held opinions that we had last time, we may not
 17 come to any different resolution in the final rule this
 18 time. But what I guess I want to urge people to do is to
 19 help us think creatively about other ways we might help
 20 small farmers. One of the questions that we raise in the
 21 proposed rule is – as it's currently written in your
 22 exempt operation, the only thing you can do is direct
 23 sales. The concept being is, you know, farmer to consumer.
 24 You don't need a whole lot of audit trail, dah, dah,
 25 dah, you know, usually it's a small operation, you know the

Page 16

1 guy. I mean, if you've ever been in Greenfield you know Ed
 2 Hatch, Hatcher's Patch, you know. You know the people that
 3 you buy from.
 4 One of the questions we raised in the proposed
 5 rule is what about as a minimal step to try to find other
 6 outlets for farmers who may be on the cusp is to allow an
 7 exempt operation to sell product to a handler who's
 8 producing a less than 50 percent product. So, in other
 9 words, a product where organic is only on the side
 10 information panel designating those ingredients that are
 11 organically produced. Couldn't an exempt operation be one
 12 of the suppliers for that product. That's a question
 13 that's formally put in the proposed rule that we'd like
 14 some feedback on. But that question sprang up from our
 15 efforts sitting around the table at USDA trying to think
 16 our way out of this box. And so I'm sort of putting the
 17 question to all of you.
 18 UNIDENTIFIED SPEAKER: I think I want to follow up
 19 with – I'm pretty sure that consumers don't want the
 20 exemption to be used to relieve the fee, there should be
 21 some other method of doing it. I don't think they want
 22 these small growers – even if they buy directly from
 23 them – to not be under the oversight of certified.
 24 MS. MERRIGAN: We get comments very strongly both
 25 ways.

Page 17

1 Any other questions from the Board?
 2 Steve.
 3 STEVE: I do have a question about the wild cod
 4 issue. The hearings are going to occur – my
 5 understanding, 'cause I haven't seen the register yet, but
 6 May 17th is the cutoff for deadlines, my understanding; is
 7 that correct or comments?
 8 MS. MERRIGAN: On –
 9 STEVE: On the whole wild cod issue – aquaculture?
 10 MS. MERRIGAN: You're asking a question I don't
 11 have the answer for. I'm not sure what he's referring –
 12 we have put a notice out about the hearings that we plan on
 13 having and inviting – you know and people will be invited
 14 to testify at those hearings.
 15 STEVE: But this is also –
 16 UNIDENTIFIED SPEAKER: May 17th, is the cutoff date
 17 for public comments.
 18 MS. MERRIGAN: Public comments on what?
 19 UNIDENTIFIED SPEAKER: To be submitted, written
 20 comments.
 21 UNIDENTIFIED SPEAKER: If you can't make it to the
 22 hearing, you can –
 23 MS. MERRIGAN: But you can also show up at the
 24 hearing, but that's the only way we can have them available
 25 to distribute them at the meeting.

Page 18

1 UNIDENTIFIED SPEAKER: Right. I guess the question
 2 I have is I'm trying to formulate here the – sort of a
 3 plan of action, thinking of how the NOSB is going to
 4 approach this. May 17th is really close as far as getting
 5 comments on this whole issue, it seems a little too close
 6 for me, but to be honest with you, as far as getting the
 7 whole industry's reaction to such a complex issue and then
 8 trying to move ahead and provide recommendations to the
 9 secretary, putting them in the rule – I just wonder if you
 10 have an outlook on that?
 11 MS. MERRIGAN: Well, we're going to be looking to
 12 the NOSB to be a deliberative body on this and we expect
 13 those deliberations will carry on through the summer,
 14 potentially early fall, before we put out a proposed rule.
 15 The calendar is aggressive. We are not fully in control of
 16 that calendar, it's somewhat dictated by Congress.
 17 UNIDENTIFIED SPEAKER: Okay. Thank you. Can I
 18 follow-up on that? Does that mean that the NOSB can submit
 19 comments –
 20 MS. MERRIGAN: The NOSB as the key advisors to the
 21 secretary can submit comments any time they wish.
 22 UNIDENTIFIED SPEAKER: If the NOSB has not
 23 formulated an official position, will AMS still oppose a
 24 rule?
 25 MS. MERRIGAN: That's kind of a million dollar

Page 19

1 question. I certainly would want to act with NOSB
 2 recommendations behind us. However, I am not alone in
 3 deciding when all of this will occur. And it could be that
 4 we will have to do a proposed rule and NOSB will be ongoing
 5 deliberations. I don't know. I'm not fully in control of
 6 this one. I am trying my best. And I think it's therefor
 7 very important that people do what they can to – at the
 8 various public meetings that we're going to hold or at
 9 least help sponsor, to try to get out as many of the issues
 10 as possible. If, for whatever reason, AMS finds that this
 11 is a more complex issue than we may have anticipated or
 12 others may have anticipated, then we may have to argue that
 13 we need to act on a longer time frame. But if everyone
 14 seems to say this is a great thing and they're pushing us,
 15 I don't necessarily think I'm going to be able to stop the
 16 train because the NOSB hasn't given me a recommendation.
 17 Thank you.
 18 MS. WITTENBERG: Thanks a lot, Kathleen.
 19 (Ten-minute recess taken.)
 20 MS. WITTENBERG: First of all we have John Faus
 21 with Small Family Fishery Coalition, is he here today?
 22 I'll move on.
 23 Jack Samuels?
 24 MR. SAMUELS: Well, I've obviously got more than
 25 four minutes here.

Page 20

1 MS. WITTENBERG: If you have things you can submit
 2 to us, you can summarize it and we can read it later on.
 3 MR. SAMUELS: Well, anyway, you can read pretty much
 4 the introduction. The point that I'm trying to make is
 5 that indeed the Act speaks to the need to accommodate human
 6 health. And it also speaks of the need also that any
 7 exempted substance must be necessary for production or
 8 handling of the agriculture product because of
 9 unavailability of wholly natural substitutes. I'll just
 10 try to hit the problems that I have.
 11 I have the following objections in 205601 and
 12 603, there's no reference made to the affect on human
 13 health as required by the Act, and as discussed in my
 14 presentation here, or for it to be available from other
 15 sources. This grievous omission allows for the inclusion,
 16 for example, of neurotoxic amino acids that are known
 17 endocrine disrupters and known causes of adverse reactions
 18 to humans, to be used on organic crops and in or on organic
 19 foods. It could occur in categories such as herbicides,
 20 plant disease control for plant or soil amendment, growth
 21 regulators, et cetera.
 22 It was interesting for me to note that under
 23 aquatic plant extracts it says, "other than hydrolyzed."
 24 But in no other area do we speak of hydrolyzation.
 25 Hydrolyzation results in neurotoxic amino acids and is in

Page 21

1 fact where the concern is.
 2 Anyway, 205605 specifically lists number of
 3 processed foods that are known to be used by food
 4 processors to introduce process free glutamic acid or MSG
 5 into processed food without the knowledge of most
 6 consumers. Yet the NOSB has allowed – excuse me. Yet the
 7 NOSB has not allowed the food ingredient monosodium
 8 glutamate, which includes this same component.
 9 As we sit here today, scientists have determined that
 10 free glutamic acid should be avoided by people using the
 11 popular drugs called MAO inhibitors, should be avoided by
 12 people with predisposition or diagnoses for multiple
 13 sclerosis or predisposed or diagnosed with ALS. It's
 14 been – free glutamic acid has been implicated in other
 15 neurodegenerative diseases and found to cause learning
 16 disabilities, grotesque obesity, endocrine disorders and so
 17 forth, in studies on experimental animals.
 18 In the list of approved ingredients, I have
 19 some concerns and I will list them in the order of
 20 concern.
 21 One, under yeast – well, yeast of (inaudible)
 22 brewers and nutritional yeast all contain free glutamic
 23 acid. Carrageenan (phonetic) is a serious problem for MSG
 24 people, sensitive people. Enzymes are used by industry
 25 very broadly to produce MSG without disclosure on products.

Page 22

1 And I noted here citric acids and things like calcium
 2 citrate – here's an opportunity for you to require that
 3 that citric acid be made from citric fruit, no problem.
 4 But when it's made from corn, it indeed is a problem. Can
 5 I cover these last couple things?
 6 MS. WITTENBERG: You need to wrap up.
 7 MR. SAMUELS: I think this one point is very
 8 important for you, and that is in regard to flavoring and
 9 natural flavoring which I understand has not been dealt
 10 with yet. I think you'd be doing a great service if indeed
 11 you required that flavorings and natural flavorings not
 12 include any amino acids. You don't know how many people in
 13 this country are not buying products because in fact they
 14 are fearful of anything that has flavoring or natural
 15 flavoring.
 16 And I'll just close by saying that I have a
 17 serious problem, I think I shared with you last time I was
 18 here, that people are starting to get sick from organic
 19 fruits and vegetables. I frankly thought that it was from
 20 drift from a product called Oxigrow (phonetic), I asked you
 21 not to approve amino acids because of Oxigrow; but I now
 22 find that OMRI has approved at least two hydrolyzed protein
 23 fertilizers which are totally in opposition of the NOSB's
 24 board position at the last meeting. And I think that they
 25 should be advised to retract those allowed statuses.

Page 23

1 MS. WITTENBERG: Thanks a lot, Jack.
 2 All right. Jim Riddle is next.
 3 MR. RIDDLE: Jim Riddle, Winona, Minnesota; organic
 4 inspector and policy specialist. Hally Ross has signed up
 5 to speak and he's towards the end and he has agreed to cede
 6 his time to me, at the pleasure of the Chair could I have
 7 that now?
 8 MS. WITTENBERG: Sure, that's fine.
 9 MR. RIDDLE: Thank you. I'd like to begin by
 10 complimenting the National Organic program staff and
 11 leadership on this proposal. It seems that most of the
 12 elements are in place for a very workable program. It's
 13 greatly improved, but there still are some important issues
 14 to be addressed and I've circulated a list of 40 items that
 15 I've identified and you'll be pleased to know I'm not going
 16 to go through all of those items, but I will focus on the
 17 ones that are in particular importance I think to the NOSB
 18 and some things for you to consider during the next couple
 19 months, during the comment process, and some potential
 20 recommendations you can make to the program.
 21 The first one – and I'll just refer to my
 22 number there as I go along and skip down. Number one under
 23 Definitions; in the proposed rule, there's no definition of
 24 organic agriculture and no statement of principles. And
 25 the definition that's there of system of organic production

Page 24

1 is really inadequate. And the NOSB made a very
 2 comprehensive recommendation of a definition, it's on page
 3 199 of the green book. It's 155 words long, though. So it
 4 may be a little long for the proposed rule, but I would
 5 encourage you to look at the AOS definition of organic
 6 agriculture which brought it down to 45 words without
 7 losing much or any of the content.
 8 On the issue of genetic engineering, Kathleen
 9 mentioned that there's certain things that can't be done
 10 under this program, and I understand that, but I would like
 11 to see a direct linkage between the definition of excluded
 12 methods and prohibited substances. If prohibited
 13 substances included products of excluded methods, then
 14 everywhere prohibited substance is used in the rule
 15 automatically means no GMOs. That would strengthen it a
 16 lot.
 17 Also under Definitions, taking bees and honey
 18 out of the livestock definition leaves certifiers kind of
 19 in an awkward position, if there's no apiculture standards
 20 what happens with the certified honey that's now on the
 21 market, and the producers are going to want to continue to
 22 have their honey certified. I would really encourage the
 23 NOSB to make a recommendation for basic framework for
 24 apiculture standards and have a look at the AOS language
 25 there as a reference point.

Page 25

1 Item number four, this proposal doesn't
 2 contain any transitional labeling or any language; and
 3 yeah, you say states can have transitional labels or apply
 4 to have those approved, but really we're missing a huge
 5 national opportunity to include transitional as a marketing
 6 term; and it means that the operators would have to come
 7 under the supervision of a certification program, so it
 8 would have real teeth in it in order to be able to use a
 9 transitional label. So I'd like to see you make a
 10 recommendation to that effect.
 11 Number seven, this issue of retail operations,
 12 even those such as delis, salad bars, bakeries, juice bars
 13 all being exempt, I think goes beyond OFPA and does not
 14 provide for consumer protection. OFPA says that retailers
 15 are exempt unless they process. And I think those are
 16 processing operations and should be covered under this
 17 rule.
 18 Number nine, split operations are allowed, but
 19 even those that produce exactly the same crops – and
 20 there's no restrictions at all in this rule and yeah,
 21 certifiers are going to have to implement some restrictions
 22 when it's a split operation or parallel production; but a
 23 little more guidance in this rule would certainly be
 24 helpful on this of those criteria. And the NOSB did
 25 include in the organic plan some language on split

Page 26

1 operations on page 146 of the green book.
 2 Number ten, the rule has no restrictions on
 3 the quantity or quality or potential contaminants in raw
 4 manure. And this has been a huge issue with Europe,
 5 products have been stopped from going into Europe when they
 6 come from factory farm manure sources and I think you need
 7 to readdress that one as a Board.
 8 Next page – number thirteen, the seed
 9 treatment issue. Either we're going to put things like
 10 captan on the national list or we got to get real and not
 11 allow any seed treatments whatsoever. As an industry we've
 12 got to face this one head-on, but also the issue of seeds
 13 for sprouts is something the NOSB made a recommendation
 14 that organic seed only be used for sprout production,
 15 that's not included in this proposal as I read it.
 16 Number fourteen, there's no allowance for the
 17 New Herd Dairy Clause, and that's a huge concern for small
 18 producers, and without it it does place an undue burden on
 19 small dairy farms coming into the program. I think the
 20 NOSB should look at that again, make a recommendation that
 21 they have to be supervised for one year prior to
 22 certification but during that time there can be an
 23 allowance for non-organic feed, 20 percent for nine months,
 24 100 percent organic fee for the final three months, but
 25 they have to be supervised and under a program during the

Page 27

1 entire time.
 2 One minute on the entire –
 3 UNIDENTIFIED SPEAKER: You've been going seven.
 4 MR. RIDDLE: The issue of – skipping down to 22,
 5 the USDA certified organic seal. I like that, but it does
 6 violate ISO guide 61, if USDA is an accredited – an ISO
 7 compliant accreditation body, it's very specific that the
 8 accreditation body should not allow the use or its mark on
 9 a product to imply that's it's certified by the accreditor,
 10 and that's certainly what the language says. I would
 11 recommend changing it to Certified Organic USDA Accredited.
 12 It makes it very clear, the distinction between
 13 certification and accreditation on a product.
 14 I'll skip towards the end, two more items and
 15 then I'll finish. And that's number 33, that whole section
 16 on state programs. It's very confusing right now with the
 17 term, State Organic Certification Program used there, I
 18 would encourage striking the word "certification" and then
 19 the entire section makes sense, when you're talking about
 20 state programs.
 21 The last issue is the compliant section. It
 22 really deals with decertification issues and it handles
 23 that and appeals very well, but it doesn't deal with people
 24 who are outside of the certification loop. The
 25 non-certified operators making organic claims, who's going

Page 28

1 to investigate those and where's the money come from for
 2 those kind of potentially criminal or fraudulent
 3 investigations. So you see the list there of other things
 4 and I'll close now.
 5 MS. WITTENBERG: Thank you, Jim.
 6 MR. RIDDLE: Thank you.
 7 MS. WITTENBERG: Okay. Marty Mesh.
 8 MR. MESH: Well, I'm speaking for a couple people,
 9 so I'm ready for this guy's.
 10 UNIDENTIFIED SPEAKER: Seriously, how many have you
 11 signed up for?
 12 MR. MESH: Three presentations. Tony's got the
 13 list, we're wasting time.
 14 I'll read this statement and then I'll – it's
 15 from Joe Natolli. And I assume you all want public
 16 comments on pineapple ethylene or not?
 17 MS. WITTENBERG: Yeah.
 18 MR. MESH: Okay.
 19 "I, Joseph Natolli, and family have been
 20 producing pineapple since 1987. Our production level was
 21 always very small – 50 to 100 cases. We only shipped that
 22 flowered and ripened with the use of rotten fruit and or
 23 smoke."
 24 I'll stop there and tell you I'm reading it
 25 from Reno NA slash SA, which is a corporation; 64 acres,

Page 29

1 one million plants of certified organic pineapple. As of
 2 April the 15th, 2000 it will be certified by BCS OKO
 3 Guarantee of Germany with application pending to Florida
 4 organic growers. He's in New York and the field's located
 5 in the Dominican Republic. So back to his statement.
 6 "Although we never made much profit, it was
 7 always rewarding to produce quality fruit. In 1997 we were
 8 fortunate to come upon and lease a 64 acre field of virgin
 9 soil suitable for pineapple production. BCS OKO Guarantee
 10 of Germany, an international certification organization,
 11 confirmed our opinion that the soil was suitable for
 12 pineapple and is currently our certifier. In addition, we
 13 have an application pending with Florida organic growers.
 14 "We've been following the materials review
 15 regarding the use of growth regulators that contain
 16 ethylene for use in pineapple production and can tell you
 17 first hand that in order to fully reap the fruit of our
 18 labor, even in as small a field as ours – one million
 19 plants – it's absolutely necessary. Pineapple production
 20 is one of the leading natural resources in the Dominican
 21 Republic. Of a population of about 7 million people,
 22 pineapple is a staple on almost every dinner plate.
 23 Pineapple production technique is handed down from
 24 generation to generation through century, every conceivable
 25 technique has been used to promote uniform flowering and

Page 30

1 ripeness in commercial pineapple production, but none have
 2 been successful on a commercial scale. The fact of the
 3 matter is, without the use of an ethylene containing
 4 material, uniform flowering and ripeness simply will not
 5 happen. To do without a material that provides a natural
 6 ripening and flowering sequence as of ethylene, would be a
 7 waste of the wonderful quality fruit available to the
 8 organic community. And although we believe that sometime
 9 soon the method to harness natural occurring ethylene from
 10 fruit shall be commonplace, to prohibit the use of
 11 present-day ethylene availability in pineapple production
 12 because of the current method that's used to produce
 13 ethylene, would be devastating to even a small grower like
 14 us.
 15 "In addition, we would like to point out the
 16 concept of using an unnatural – " I didn't write it, I'm
 17 reading it, " – an unnatural growth regulator is not
 18 foreign in organic production. For example, seaweed – " I
 19 think that should be a natural growth regulator.
 20 "Also, the new reading of the use of ethylene
 21 in post-harvest organic production of tropical fruits,
 22 mainly bananas, has provided a solution to ripening that
 23 without would have made commercial banana production
 24 impossible. Just that it is common knowledge that ethylene
 25 is needed to ripen post-harvest bananas, so it is common

Page 31

1 knowledge that ethylene is needed in uniform flowering
 2 production in ripening.
 3 "All we are asking is to be allowed to use the
 4 same material that is being used in tropical fruit ripening
 5 to be used in pineapple production."
 6 UNIDENTIFIED SPEAKER: Are you going to submit that
 7 in writing, Marty?
 8 MR. MESH: Yes.
 9 MS. WITTENBERG: So who are you now?
 10 MR. MESH: "Board Certifiers Organic Growers and
 11 Consumers, Inc. Group represents organic pineapple
 12 producers as an interest in the consideration by the NOSB
 13 of the use of ethylene to induce flowering of organic
 14 pineapples. Pineapple producers have previously petitioned
 15 the NOSB to consider the use of calcium carbide to force
 16 the uniform flowering of pineapples. The NOSB recommended
 17 this use of calcium carbide and in its DC meeting last
 18 year. Calcium carbide is currently listed as (inaudible).
 19 "Although synthetic, ethylene gas is the only
 20 currently available material which enables pineapple
 21 producers to produce on a commercial scale. A ban on its
 22 use would possibly force growers to convert organic acreage
 23 to conventional or abandon the pineapple business together.
 24 FOG urges the NOSB to consider carefully the use of
 25 ethylene to produce uniform pineapple flowering and

Page 32

1 ripening. Certainly the inclusion of any synthetic
 2 material should be carefully weighed. I am not aware of
 3 any other alternatives for even the smallest scale growers.
 4 The concept of growth regulators are not out of the
 5 framework, for instance, seaweed has been used to do that.
 6 "The allowance of the NOSB of ethylene for use
 7 in post-harvest ripening of other fruits like bananas,
 8 papayas and mangos, would seem to be consistent with
 9 allowing a small amount of the product to be used to enable
 10 tropical pineapple production to take place.
 11 "I've heard of the EU position to allow the
 12 material with the phase out and future and this may be a
 13 reasonable approach for the NOSB to consider, as well this
 14 would hopefully encourage someone to look into developing a
 15 natural source of material which could be used."
 16 Shall I just go ahead?
 17 MS. WITTENBERG: Just go ahead.
 18 UNIDENTIFIED SPEAKER: That's your third one, right?
 19 MR. MESH: This is the last one. This is me
 20 personally.
 21 Although I echo Jim's feelings that this
 22 proposed rule is a vast improvement, my gut feeling after
 23 walking in when I did, is to say the public-private
 24 partnership is in jeopardy. The concept of not reinventing
 25 the wheel, that was the intent of the (inaudible) and prior

Page 33

1 NOSB recommendations, seems to be headed out the window as
 2 this proposed rule seems to be slanted heavily towards
 3 encouraging government certification programs run by state
 4 departments of agriculture.
 5 The proposed rule goes beyond ISO 65 in the
 6 separation of decision making from conflict of interest to
 7 now making it so no board member of a farmer based
 8 non-profit certification program can be certified by that
 9 program. And that a non-profit cannot take a tax
 10 deductible donation from a – for a restricted use purpose
 11 other than to operate a certification program. Although I
 12 don't work for the IRS, I think the USDA may have
 13 overstepped its legal authority on that one.
 14 I have identified several of the issues of
 15 concern but for the sake of time, I will not attempt to
 16 comment here, but let me just point out a few of the
 17 general topic areas. The definition of composting,
 18 (inaudible) – emergency pest and disease treatment seems
 19 to include non-emergency programs but no compensation
 20 responsibilities as recommended by the past NOSB is
 21 included. In the case of Valencia oranges, it is possible
 22 that a grower, through no fault of his or her own, could
 23 lose two years worth of crop premium and that nobody or no
 24 agency would be responsible for compensation.
 25 Your definition of employee goes way beyond

Page 34

1 the U.S. Department of Labor Guidelines. It seems to me
 2 that 205.501A – let's skim down and go to wild crop. The
 3 wild crop definition not maintained under cultivation or
 4 other agriculture management, for instance (inaudible) or
 5 harvested on wild crafted land but yet it is on a five-year
 6 burn program. According to your definition it couldn't be
 7 certified.
 8 The burden of crop residues in some specific
 9 regions is the only option available – that I believe it
 10 bans all burning of the crop residues. See treatments,
 11 there I had a problem with – 205.290A4 some planting
 12 stocks are less than one year; bananas, for instance, you
 13 talk about a year on that one.
 14 For the sake of time and because I don't have
 15 pages three and four – oh, here they are, pages three and
 16 four. No, I tell you what, you'll get it all in writing
 17 eventually.
 18 MS. WITTENBERG: Thank you, Marty.
 19 Next in line is Michael Sly.
 20 MR. SLY: Well, I've got two things I want to try to
 21 just quickly cover. And I am Michael Sly, and I'm glad to
 22 be here, and I think it's pretty appropriate and fitting
 23 that we're wedged here between Disneyland and Ripley's
 24 Believe It or Not.
 25 But two things; one, first, for the NOSB,

Page 35

1 under the organic watch hat, we did do a review of the AOS
 2 comparing it to the NOSB recommendations, and I think you
 3 all were sent a copy of this.
 4 Well, if anyone didn't get it, I've got a few
 5 extra copies. I can try to get it. And the reason I bring
 6 it up to you is because there are places that – where the
 7 AOS, I think, went into areas that the NOSB had not yet got
 8 to and I think that's very important for you all to look at
 9 those; because I think that's some important information in
 10 terms of having the NOSB continue to be progressive and
 11 look at the latest in standard setting. But there are also
 12 places in the AOS where they went below the NOSB in our
 13 understanding; and we think that's important for you to be
 14 aware of as well. So just that aside, I just want to bring
 15 that up as an opportunity for future NOSB discussions. I'm
 16 sure you're not short on things to do, but I think that's
 17 really important because this balance between private
 18 standards and public citizen panel setting is really
 19 important that they be as much as possible, not have a
 20 position where we have private standards that are below the
 21 NOSB recommendations. And then again in the private sector
 22 I think you should be very aware if they're starting to
 23 make movement that the NOSB hasn't commented on.
 24 So the second thing I want to do just briefly
 25 is to make a few comments about the proposed rule. With

Page 36

1 the national campaign we had tried to look at six broad
 2 areas in terms of evaluating the proposed rule that we
 3 think are very important. Obviously there are other areas
 4 that need to be looked at, but we try to take a cut at this
 5 looking at how does this impact small and modest-sized
 6 farms; how does this give a strong high standards; how does
 7 this protect farmers from GMO and other contaminants; what
 8 does this do about the factory or industrial sized
 9 livestock productions; and in looking at the question of
 10 consumer right to know and kind of the balance between
 11 public-private partnerships. So we're using that as a bit
 12 of a template to try to evaluate the rule, and to the
 13 extent that that's useful to the NOSB in your
 14 deliberations, I leave that with you for that help.
 15 And I think it's important, really important,
 16 that in looking at this rule that we have to really be very
 17 clear and very supportive of USDA and the places where they
 18 have got this rule right. This is very important that we
 19 respond to them in the places they got it right. This is a
 20 near-Lazarus-like feat that they have done here in
 21 resurrecting this proposed rule and they need to be given
 22 praise and credit for the places where they got it right.
 23 And they got it right in a lot of places. And Kathleen
 24 said, yes, they believe it's in the ball park, and I
 25 believe that, but I'm worried that not everyone is going to

1 be able to afford to come into the ball park.
 2 So from a fundamental policy point of view I
 3 think that looking at this proposed rule on how is the
 4 alignments in the balance between the sharing of cost and
 5 risk and power across the sectors and across the scale is
 6 very important in evaluating this rule. Because, you know,
 7 it was always our hope that the potential benefits of this
 8 rule would be to spread very widely the cost and the risk
 9 and the power in a way that would not put a burden on any
 10 one particular sector. And we think that that is a very
 11 important point to look at, and we think that currently
 12 what we have is a proposed rule that does not fairly
 13 balance that. And that we want to see one that is more
 14 balanced and spreads it out across the sector.
 15 Well, I think I had two –
 16 MS. WITTENBERG: He has two –
 17 MR. SLY: I moved into the other one right now.
 18 So that's an area, just a general comment
 19 about how we spread these costs out across the system. We
 20 don't think that it's there yet. I'm particularly
 21 concerned that the small and medium-sized farmers and small
 22 businesses that have raised organic from the fringe status
 23 to the booming sector that it is – can afford to be in
 24 this organic program. I think \$95 an hour is too high to
 25 pay. If OFRF is right and the 57 percent of the current

1 certified farms under \$30,000 in sales, then this proposed
 2 rule must be responding to that class of farmers. We must
 3 evaluate this rule and the impact on the farmers.
 4 And clearly there are other players in it and
 5 we want it to be fair for them as well, but if 57 percent
 6 of them are under \$30,000, this is very important to be
 7 evaluated in that light. I'm very troubled by the fact
 8 that under 205500 that the third avenue for importation in
 9 the United States that the NOSB recommended the USDA was
 10 left off this list; that's a very important omission and
 11 should be put back on the list because this clearly says to
 12 a co-op of coffee farmers in Honduras that has no national
 13 program, they have very little avenue to come into the
 14 United States except to pay this accreditation fee, having
 15 come in from the United States. There's no third party way
 16 to get in here. And that's wrong, and that should be
 17 changed. I think that will have a negative impact on these
 18 farmers in the global south and that needs to be fixed.
 19 I think the area around confinement and
 20 livestock, the issues of industrial style livestock
 21 production, needs to be carefully looked at in this rule
 22 and clarified. I think the – what is it called – the
 23 U.S. physical alterations that USDA has allowed, I believe,
 24 is too broad, is too much of a blanket allowance. I think
 25 that that needs to be honed. The NOSB should have a role

1 in looking at that issue, there's a big difference between
 2 debeaking and beak tipping, and I see none of that finesse
 3 in this rule and I think that that's too broad of an
 4 exemption there.
 5 On this question of the farmer and the fact
 6 that abatement programs, the boll weevil abatement program,
 7 the mosquito abatement program, emergency spray programs,
 8 genetic drift from your neighbor's pesticide, drift from
 9 your neighbors – AMS needs has been created in many places
 10 in this proposed rule. This is a place for them to be
 11 creative, there must be a safety net under these farmers.
 12 To ignore this issue altogether at this opportunity is a
 13 mistake, and we need to put a safety net under them. If it
 14 means you have to go to talk to crop insurance and say,
 15 Manmade disasters need to be included in this, let's do it.
 16 Let's not lose this opportunity to put some safety net
 17 under the organic farmers, otherwise this rule looks like
 18 just penalize the steward – penalize the steward, reward
 19 the polluter. There's no opportunity in here for a carrot
 20 or to sweeten this pot. So I think it's very important
 21 that the Board come out strong on that and for USDA to use
 22 this opportunity to take advantage of that problem.
 23 The peer review, I don't see any peers on the
 24 peer review. Maybe I missed something, but I think there
 25 needs to be peers on there. Consumer right to know seems

1 to be weak to me. Seems like they need to clarify how you
 2 get avenue to this information. That's not strong enough
 3 in this proposed rule. And keep the standards high, don't
 4 lower it when you go final. Close the loop holes, don't
 5 price the small out of the program, and reward stewardship.
 6 Thank you.
 7 MS. WITTENBERG: Okay. Adrian Samuels.
 8 MS. SAMUELS: I'm Adrian Samuels. I'm a director
 9 of the truth in labelling campaign. I had not – was not
 10 prepared to speak today. I had not anticipated making a
 11 presentation, but when you began to discuss – even
 12 briefly – conflict of interest, it raised a question and
 13 concern that I have that I think the Board needs to be
 14 aware of.
 15 In the proposed rule being discussed here,
 16 there's discussion of prevention of conflict of interest,
 17 that's related to section 205.501, general requirements for
 18 accreditation. And that seems to be carried out quite
 19 fully and completely. That, however, is about the only
 20 place where that kind of clarity and fullness is
 21 undertaken.
 22 In section 205.509, the peer review panel,
 23 there is a little discussion of conflict of interest, and
 24 it says, "The administrator may establish a peer review
 25 panel to assist in evaluating applicants for accreditation

Page 41

1 and various sorts of functions as certifying agents." It
 2 goes on to talk about eligibility for peer review panels,
 3 the applicants must do a variety of things, and they must
 4 include information concerning their commercial interests
 5 and those of their immediate family members. And this goes
 6 on for a short paragraph. This is not a full discussion of
 7 conflict of interest.
 8 I am also reminded that on the NOP web page
 9 there is reference to the Organic Materials Review
 10 Institute – OMRI – which I believe has been hired by the
 11 NOP to review products proposed as or for use with material
 12 to be certified organic. Yet there is no reference in the
 13 proposed rule to preventing people and organizations who
 14 would profit directly or indirectly from recommendations
 15 made by themselves to the NOP for making those
 16 recommendations. People in organizations such as OMRI,
 17 might very well have conflicts of interest that might not
 18 be obvious. And over the past ten years I have become
 19 painfully aware of the scientists for sale – you see it in
 20 the newspaper from time to time, so and so has been found
 21 to be perpetrating research fraud, certain research reports
 22 were invalidated, inappropriate – you see that, you read
 23 that. And I am painfully aware of those things having gone
 24 on.
 25 And so I feel that it is absolutely necessary

Page 42

1 that the NOP should be protecting the organic industry from
 2 those with that kind of conflict of interest; more likely
 3 big business hiring possibly researchers to provide
 4 misguided, misleading research results for the benefit of
 5 the big business that is employing the researchers. I
 6 caution you to protect the program from that kind of
 7 conflict of interest. And it should be that there are
 8 safeguards to that extent included in the rule.
 9 MS. WITTENBERG: Thank you.
 10 Bill Wolf and Emily Brown Rosen.
 11 MR. WOLF: I'd like to ask that those be two
 12 separate presentations, is that acceptable?
 13 MS. WITTENBERG: We do have time.
 14 MR. WOLF: I come before you today as the president
 15 of the Board of Directors of the Organic Materials Review
 16 Institute – the acronym being OMRI. I would like to
 17 report a couple of things; one, OMRI currently has 33 state
 18 and private certifiers who are subscribing to OMRI services
 19 representing 6800 growers and processors.
 20 Second, I need to address the previous
 21 commenter's comments about conflicts of interest. We at
 22 OMRI have one of the strictest conflict of interest
 23 policies ever written regarding who makes policy decisions
 24 about branded products. No one who has any vested interest
 25 ever involved with products is involved with that process.

Page 43

1 And that is not – was not the case during the period when
 2 certifiers were reviewing brand of products. And I resent
 3 not being approached prior to public testimony when OMRI is
 4 being presented in that light. I want to correct that
 5 statement now. That is not why I came up here to talk.
 6 First, I'd like to applaud the hard work and
 7 the aggressive response to comments that the National
 8 Organic Program presented in the new rule. I think the
 9 proposed rule appears to have sound structure and
 10 fundamentally is a massive improvement over the first
 11 draft. However, I'm concerned about one major issue, and
 12 that is that the proposed rule as currently written will
 13 require review of a number of synthetics that are in use in
 14 organic agriculture. Including carriers (inaudible) in
 15 inputs for organic production, including pesticides,
 16 fertilizers, some livestock feed and processing carriers,
 17 including binders and materials that cause granulation, as
 18 examples.
 19 The preamble discusses the need to develop an
 20 expedited or prioritized list of synthetics that need to be
 21 reviewed. I just want to state for the record that both
 22 the executive committee of the Board of Directors and the
 23 staff have discussed the need to assist in developing such
 24 an expedited list and we would be glad to help identify
 25 materials that need to be reviewed. I think it's a

Page 44

1 difficult and challenging process. It's a process that
 2 needs to happen fairly quickly, openly, and with public
 3 participation. I think the rule as written opens the need
 4 for review of more materials than was previous in the
 5 previous draft, and I think everybody needs to be aware of
 6 that.
 7 I'd like to ask that Emily Brown Rosen, policy
 8 director of OMRI, will go into some more specific issues
 9 that I think are pertinent, and that's really all I had to
 10 say, in general. Thank you.
 11 MS. WITTENBERG: Thank you, Bill.
 12 Okay. Emily Brown Rosen.
 13 MS. ROSEN: I'm Emily Brown Rosen, as Bill just
 14 introduced me, policy director for OMRI. I'm glad to be
 15 here.
 16 Again, I'd like to thank the NOP staff
 17 particularly for all the really hard work they've done in
 18 this amount of time to incorporate the tremendous volumes
 19 of comments and be responsive and speak to us in a clear
 20 language that's readily understandable, with a little more
 21 explanation here and there. But it is a vast improvement
 22 and I think it's something we can really work with and move
 23 forward for the industry.
 24 OMRI will be making our comments to these
 25 proposals in the tone of constructive – positive,

Page 45

1 constructive criticism where they think there may be little
 2 mistakes or there may be bigger ones, with positive
 3 suggestions for making it a better program, particularly
 4 regarding materials.
 5 And this information, as we come up with it,
 6 it will be posted on our web site. We're already
 7 circulating some preliminary review of the materials at
 8 issue. So we hope to make that information available to
 9 the Board and the public in general for helping understand
 10 the issues and formulating their comments.
 11 I'd like to address most of my comments to the
 12 petition process for the national list, which we've just
 13 gotten to review for the first time yesterday. We really
 14 appreciate this new improved petition over the 1995
 15 petition. I think it's encompassing most of the issues
 16 that we had, particularly in the requirement for more
 17 comprehensive data from the petitioners. The more – and
 18 the better information we can gather from people that want
 19 to add stuff to the national list, the easier the job for
 20 the Board will be. And there's no reason not to have a
 21 good, clear proposal out there for what needs to come in.
 22 I want to emphasize the point that it makes in
 23 the petition that this is a petition that applies to the
 24 process for submitting generic single ingredient substances
 25 to the list. We're talking about the development of a

Page 46

1 generic list and in that sense we are concerned that the
 2 confidentiality clause, that you've inserted right up there
 3 as number one at this point, is not appropriate for a
 4 generic materials list.
 5 It's really fundamental that the generic
 6 materials and the synthetics that are approved for use in
 7 organic production are – are the result of the list
 8 process; and that process is open to the public, open to
 9 NOSB, that the TAP reviews become public and are circulated
 10 and that the public has a chance for comment. So by making
 11 confidentiality an exception right up at the top, it really
 12 undercuts the process. We urge that this clause be
 13 clarified or amended in the notice so that it limits what
 14 information can be considered confidential, and it clearly
 15 states what information must be subject to full public
 16 disclosure. We recognize the need to keep sensitive
 17 business data, such as financial sales, costs, possibly
 18 some research data, and any information that would pertain
 19 to a brand name formulation. However, the composition of
 20 the generic materials and their environmental, agronomic,
 21 and human health impacts are so important, that they must
 22 be part of the public dialogue in setting standards and
 23 constructing the list.
 24 We also see the need for the NOSB to continue
 25 to approve its decision making policies and having public

Page 47

1 opportunity to comment on the materials processed. We ask
 2 that the NOP publish any proposed additions in the national
 3 list, to do otherwise it would only strengthen the case
 4 that USDA is constructing a vast secret list of synthetic
 5 ingredients and that's obviously not what we're here to
 6 do.
 7 Synthetics in food processing raised a special
 8 question that required the additional set of criteria that
 9 are not covered in the OFBA (phonetic). We see that they
 10 are referenced in the new petition, but we'd also hope that
 11 they would be included in the federal proposed rule to give
 12 them a little bit of weight and be a required part of the
 13 review process for synthetic ingredients in processed food.
 14 This was the NOSB recommendation, and it should be
 15 followed.
 16 Finally, we're concerned that the cost to the
 17 public of this program, particularly if there may be a
 18 number of frivolous petitions submitted that have no
 19 business in OFBA (phonetic), we urge you to reconsider your
 20 decision to eliminate fees for petitions for material
 21 review because we think a fee structure, however nominal,
 22 to both offset the administrative cost of the program and
 23 discourage the mission of petitions that don't even apply.
 24 So that's it. I thank you for your time.
 25 MS. WITTENBERG: All right. Shirley Harvey.

Page 48

1 MS. HARVEY: Thank you for the opportunity to speak
 2 to you this afternoon. I'm here speaking for NOMSG, an
 3 acronym for National Organization Mobilized to Stop
 4 Glutamates.
 5 We feel that in creating a national definition
 6 for the term "organic," the Department of Agriculture may
 7 be leaving the door open for the approval of chemicals that
 8 many feel are not appropriate for use with organic products
 9 and leaving the door open, for example, to approval of
 10 manufactured amino acids, such as glutamic acid, acerbic
 11 acid and alicystine (phonetic), the three neurotoxic amino
 12 acids often used in processed food. We are concerned about
 13 the effect of these amino acids on MSG sensitive
 14 individuals as well as future generations. Our members are
 15 all sensitive to these chemicals, reacting with illnesses
 16 such as migraine headaches, asthma, intestinal disturbances
 17 and atrial fibrillation and neurodegenerative diseases, and
 18 many others.
 19 We're able to survive by eliminating processed
 20 foods from our diet and using only fresh fruits, vegetables
 21 and meat. Certifying produce that has been sprayed with
 22 these chemicals will deny us access to the only foods safe
 23 for us to consume. Thank you.
 24 MS. WITTENBERG: Thank you very much.
 25 Margaret Schumaker.

Page 49

1 UNIDENTIFIED SPEAKER: Margaret had to go home.
 2 She's another MSG sensitive person who indeed got into some
 3 MSG and was sick. And so she will not be speaking. I
 4 didn't take her time, so let me ask two questions.
 5 One, if I could make a suggestion, in the
 6 future when the schedule for future meetings is put on the
 7 web site, why don't you include the allowable time for
 8 comments so that people have prepared for three minutes,
 9 four minutes, five minutes, so that they know how to
 10 respond.
 11 And then the other is, may I ask then should
 12 we -- like I made comments, should I still submit comments?
 13 MS. WITTENBERG: Oh, yes.
 14 UNIDENTIFIED SPEAKER: This is not a submission?
 15 Okay, thank you.
 16 MS. WITTENBERG: Thank you.
 17 Sissy Bowman.
 18 MS. BOWMAN: Hi, everybody. I didn't bring hats, I
 19 have pins instead, but this is going to be really short, I
 20 just need my four minutes.
 21 First of all, you're seeing a lot of these
 22 NASOP (phonetic) buttons, and I hope that you all take the
 23 time to approach some of the people who are wearing these.
 24 We have a rich diversity of states represented here, and I
 25 think that it would be a really good idea if you take the

Page 50

1 time to talk to them about the variations in the different
 2 types of states programs. And unfortunately the schedules
 3 kind of collided today, so a lot of them aren't here, but
 4 they're going to be around at the expo. So please do talk
 5 to people about what this is.
 6 I'm also here to represent the State of
 7 Indiana. Very briefly, we have some concerns about the
 8 state language and we will be submitting a lot in writing
 9 on that. But just kind of a heads-up that we're kind of
 10 confused and we don't find that section really clear.
 11 Maybe it would be clearer to us if there's two places for
 12 definitions -- state certification programs and just state
 13 programs perhaps would clarify that for us.
 14 Another issue is the peer review panel. I
 15 can't stress strongly enough how important a good peer
 16 review panel is going to be in this process. Marty
 17 mentioned the burning of crop residues, that was one of the
 18 first things that jumped out at me. Being a produce
 19 grower, when I saw that ban on burning crop residues I
 20 immediately thought, What am I supposed to do with diseased
 21 squash vines. A peer review panel that represents
 22 producers and inspectors and certifiers is really going to
 23 be of assistance in trying to figure out how this language
 24 applies out in the field. And Indiana's program has a peer
 25 review panel, and I can tell you, you can talk to our

Page 51

1 commissioner about how valuable that diversity is.
 2 And also in reading that, I know it's kind of
 3 contradictory, but it says the secretary shall consider
 4 reports submitted by the peer review panel. And it goes on
 5 to say, He may appoint one. But the fact that he shall
 6 consider it, indicates to me that we really need a peer
 7 review panel there.
 8 There's a couple of definitions that I think
 9 need to be added to the rule; one, is pasture. I mean, I
 10 think we all think we know what it is but it would be nice
 11 to see that defined a little more clearly. And then raw
 12 manure I think should be defined. One of the concerns I
 13 have about that is I know some people with green house
 14 operations that are also raising tawopi (phonetic) and
 15 things like that; so is the waste water from a fish tank
 16 raw manure and is that something that's going to be
 17 prohibited under this prohibition of applying raw manure
 18 directly or what about pond water? So those are just some
 19 questions that we had regarding that.
 20 We would like some clarification on reasonable
 21 security, that would really help small certifiers, we still
 22 don't know what that means. And then two other things from
 23 the consumer point of view -- and this is just Sissy Bowman
 24 the consumer here. If I read correctly there's a table in
 25 there -- and I'm sorry I didn't write down the page

Page 52

1 number -- with regard to the less than 50 percent, it seems
 2 to indicate that GMOs would be allowed in that. I think if
 3 you're going to have the word "organic" on it, that
 4 consumers need to be assured there are no GMOs in it even
 5 if it's less than 50 percent.
 6 Then also I would like to see a prohibition on
 7 GMOs being used on split operations. The potential for
 8 drift there seems like that's just not really very organic
 9 if you allow that. Thank you for your time.
 10 MS. WITTENBERG: Thank you, Sissy.
 11 Okay. Well, that does it for the public
 12 comment section.
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25