

UNITED STATES OF AMERICA  
DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
TRANSPORTATION AND MARKETING PROGRAMS  
NATIONAL ORGANIC STANDARDS BOARD MEETING

The Radisson Barcelo Hotel Washington  
National Gallery Ballroom  
2121 P Street NW  
Washington, D.C.

Saturday  
October 19, 2002

The above captioned meeting convened at 9:00 a.m.

Chairperson:

David Carter

BOARD MEMBERS:

Kim Burton  
Materials Committee Chair  
Handler Representative  
Microquality Beverages  
Chico, California

Mark King  
Processing Committee Chair  
Retail Representative  
Indianapolis, Indiana

Owusu Bandele  
Crops Committee Chair  
Farmer Representative  
Baton Rouge, Louisiana  
Southern University

Jim Riddle  
Accreditation Committee Chair  
Certify Representative  
Minnesota

George Siemon  
Livestock Committee Chair  
Farmer Representative  
Wisconsin

Rebecca Goldberg  
International Committee Chair  
Environmental Representative  
New York

Michael Lacy  
Science Representative  
Athens, Georgia

Kevin O'Rell  
Organic Handlers Representative  
Boulder, Colorado

Goldie Caughlan  
Consumer Representative  
Seattle, Washington

Barbara C. Robinson  
Deputy Administrator  
Transportation and Marketing Programs  
USDA Agricultural Marketing Service

Richard H. Mathews  
Program Manager

Dennis Holbrook  
Crop Representative  
Mission, Texas

George Siemon  
Farmer Representative  
Wisconsin

Ann Cooper  
Consumer Representative  
New York

Rosalie Koenig  
Producer Representative  
Florida

Nancy Ostiguy  
Environmental Representative  
State College, Pennsylvania

SPEAKERS GIVING PUBLIC COMMENT:

Thomas Harding  
AgriSystems

Ken Chambers  
Colorado Sweet Gold

Grace Marroquin  
Marroquin International

Jim Pierce

Dan Leiterman  
Crystal Creek Company

Bill Denevan  
Apple Grower  
CCOF

Jim Cranney  
US Apple Certification

David Engle  
Executive Director  
Midwest Organic Services Association  
Wisconsin

Emily Brownrosen  
Organic Materials Review Institute

Marty Mesh

Mark Keating  
Agricultural Marketing Service  
(speaking as a private citizen)

Mark Itzkoff, ESQUIRE  
Olsen, Frank, and Weaver  
Washington, DC

Pete Gonzalez  
Oregon Trust Incorporated

Andrea Caroe  
QAI  
Co-chair  
QAC Certification Subcommittee  
OTA

OTHERS PRESENT:

Richard Siegel, Esquire

Kelly Shea

Uruashi Ranga

Katherine Beneman (ph)  
NOP

Bob Pooler  
NOP

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P R O C E E D I N G S

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8:05 a.m.

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CHAIRPERSON CARTER: Alright. We'll call the meeting to order, and just as we start off, I'd like to go down -- for those of you who are new here -- we'll go down and introduce the members of the Board, who they are, where they're from and who they represent, so Mike, you're on.

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MR. LACY: I'm Mike Lacy from Athens, Georgia, and science representative.

MR. O'RELL: Kevin O'Rell from Boulder, Colorado, representing organic handlers.

MS. GOLDBURG: I'm Becky Goldberg. I'm from New York or New Jersey, depending on whether you count my employer or my residency, and both seem to get counted at various times, and I'm an environmental representative.

MS. CAUGHLAN: Goldie Caughlan from Seattle, Washington. I'm one of the three consumer representatives on the Board.

MS. BURTON: Kim Burton, Microquality Beverages, Chico, California, and I'm the handler representative.

MR. RIDDLE: Jim Riddle from Minnesota. I'm

1 a certify rep.

2 CHAIRPERSON CARTER: Dave Carter from  
3 Westminster, Colorado near Denver, Colorado, also a  
4 consumer representative.

5 MS. ROBINSON: Barbara Robinson, Deputy  
6 Administrator for Transportation and Marketing  
7 Programs, USDA Agricultural Marketing Service.

8 MR. KING: I'm Mark King, Indianapolis,  
9 Indiana. Retail representative.

10 MR. BANDELE: Owusu Bandele, Baton Rouge,  
11 Louisiana, Southern University, and also farmer  
12 representative.

13 MR. HOLBROOK: I'm Dennis Holbrook, Mission,  
14 Texas. I'm a crop representative.

15 MR. SIEMON: George Siemon from Wisconsin.  
16 I'm a farmer rep.

17 MS. COOPER: Ann Cooper, New York, consumer  
18 rep.

19 MS. KOENIG: Rosalie Koenig from Florida.  
20 Producer rep.

21 MS. OSTIGUY: Nancy Ostiguy, State College,  
22 Pennsylvania, environmentalist rep.

23 CHAIRPERSON CARTER: Alright, thank you. On  
24 -- just as far as some opening comments, the main thing

1 I'd like to say is we're right now, I think, at a  
2 critical time for this program. We've got two days  
3 from now we're going to really celebrate the  
4 implementation of something that's been in the works  
5 for well over 30 years. I know that there's all the  
6 approval jitters and probably a lot of concern about  
7 all the things that happened in time for October 21st,  
8 but on Monday, I think we will all have a chance to  
9 stand up and really celebrate what has been done, and I  
10 think of really building a whole new part of  
11 agriculture in the food system.

12 This meeting for the next two days has got a  
13 lot of work to do, and I think that, as I have  
14 communicated to everyone within the NOSB and the folks  
15 within the NOP, is that as we go forward in this Board,  
16 we will always have an opportunity for some good,  
17 lively exchange and debate in this body, but we will  
18 always do it in a professional and a courteous manner.

19 I think that the important thing is that we remember  
20 always that we have differing opinions but we have a  
21 common bond to the integrity of organics, and come  
22 Monday, we're going to celebrate that.

23 With that, I would just like to also say that  
24 anyone who is planning on giving public comments needs

1 to sign up in advance. The -- we will be adopting a  
2 Board policy manual here at a point in this meeting.  
3 One addition is that the Executive Committee has  
4 recommended that we would use as operating policy for  
5 this meeting is that if you -- the proxies are allowed  
6 as long as -- you're allowed one additional proxy in  
7 addition to your speaking time, as long as it was filed  
8 in writing by the person offering the proxy, in  
9 advance. But no speaker will have more than ten  
10 minutes during the public comments.

11 The other thing is that we've been requested  
12 by NOP that everybody that is in attendance today sign  
13 up so that they -- so we know who's here. So if there  
14 is some follow-up communication or anything coming up  
15 in this meeting, that they can distribute that to the  
16 folks in the audience as well as folks on the Board.

17 Now, with that we will then call the  
18 attention of the Board to the agenda that we have, and  
19 are there any additions to the agenda or corrections?  
20 Yes, Kim.

21 MS. BURTON: We do have some changes to the  
22 agenda with regards to materials, and I would just go  
23 down the agenda. On page two, under crops, the  
24 potassium silicate material will not be reviewed. The

1 Tab was not completed in time for this meeting. Take  
2 that one off.

3 Under livestock, we had deferred several  
4 livestock materials from the last meeting, asking that  
5 the contractor supply us with supplemental information.

6 They provided us with three supplemental reports, one  
7 of those we received last night. So I am going to go  
8 through the materials that will not be on the agenda  
9 based on the fact that we did not get reports in, the  
10 balance of them, the crops committee is going to have  
11 to tell us what -- or livestock -- what they determined  
12 to do. Calcium propionate -- that will not be  
13 reviewed, that supplemental report was not finished.  
14 The furosemide was not completed, and the proteinated  
15 chelates was not completed.

16 CHAIRPERSON CARTER: Okay. Any other  
17 corrections to the agenda? Yes, Mark?

18 MR. KING: Yes, as many of you know, we  
19 attempted -- the processing committee attempted getting  
20 a speaker to do an overview of ion exchange. Due to  
21 the short time frame, we had lost some 30 days, really  
22 to acquire someone and then the criteria were that you  
23 have to be an expert, be objective, and we're not going  
24 to pay you -- so we weren't able to do so, so that will

1 be a change from the agenda.

2 CHAIRPERSON CARTER: Okay. Anything else?

3 MS. GOLDBURG: The International Committee is  
4 the deferring its recommendation on US/EU Equivalency.

5 CHAIRPERSON CARTER: Okay. Keep going and  
6 we'll be done by lunch.

7 (Laughter.)

8 CHAIRPERSON CARTER: Okay, anything else?  
9 Seeing none, we will go ahead and leave the agenda  
10 open, but those are the announced changes and just in  
11 regard to the audience in regard to the livestock  
12 materials, the executive committee did discuss this and  
13 the fact that we did receive some of the additional  
14 information, but still incomplete and we feel it's  
15 better to defer or delay, to make the right decision,  
16 rather than do something now with incomplete  
17 information.

18 With that then, we will open the floor for  
19 public comment, taken in order of sign-up, and  
20 Catherine, do we have a --

21 (off record comments)

22 MS. BURTON: Could I have a clarification of  
23 your last statement?

24 CHAIRPERSON CARTER: Yes.

1 MS. BURTON: You had said that the executive  
2 committee decided that we were going to --

3 CHAIRPERSON CARTER: We discussed it on some  
4 of these, saying that if we got the items in, I mean it  
5 was best not to make a decision on some of these  
6 things.

7 MS. BURTON: Okay, yes. I thought we would  
8 leave that up to the livestock committee to figure out.  
9 So I don't know if we know --

10 CHAIRPERSON CARTER: ... we talked about that  
11 in the livestock committee.

12 MS. BURTON: Okay.

13 CHAIRPERSON CARTER: I'm sorry we had two  
14 back to back calls and they blended in -- the  
15 livestock.

16 MS. BURTON: Okay.

17 CHAIRPERSON CARTER: While I was sitting on  
18 the floor of the airport in Louisville. Okay, our  
19 first speaker now -- and we will limit you to five  
20 minute comments. You will get a little sign. Jim will  
21 be the official timekeeper, and you'll get the little  
22 sign when you have one minute left, and all bang  
23 together when you're done. We'll also who's up and  
24 who's on deck. So the first speaker is Thomas Harding

1 with AgriSystems. On deck is Mark Keating.

2 MR. HARDING: Good morning and welcome to  
3 Washington again. A good way to spend our weekends.  
4 I'm going to speak on two points, one is on behalf of  
5 the companies I represent with regards to the organic  
6 dairy program, and the dairymen that's involved in this  
7 program, and we're going to speak in support of the  
8 new, proposed language for the OTA. We want to make it  
9 very clear that we do not support, even though there  
10 seems to be some confusion about the language, we do  
11 not support the broad spectrum use of antibiotics. In  
12 fact, it's clear to us that they're prohibited.

13 In addition to that, the -- as of last night  
14 anyway, our group supported in general that the  
15 replacement language, particularly the origins of herds  
16 for livestock, be supported as OTA has presented it.  
17 And that we be clear about the non-antibiotic use and  
18 that we support the ... gestation as the language  
19 proposed.

20 It is very important that we understand  
21 where everyone is coming from on this. At the last OTA  
22 livestock committee meeting, which was in this city  
23 just a week ago, I think there was a surprise to  
24 everyone to find what was actually being done out there

1 in the industry. I think it is important that the NOSB  
2 livestock committee and all of those who look at the  
3 livestock system in general, recognize the realities.  
4 And therefore, we support this language. We support  
5 this proposal, and we do not support the broad spectrum  
6 use of antibiotics. In fact, we do not support the use  
7 of antibiotics. I want to be clear about that because  
8 there's some mixed idea of what is or what isn't in  
9 this language.

10 The second point is -- I want to go back to  
11 the issue of where we are in the young stock part of  
12 this discussion. The way the replacement stock  
13 language reads right now is kind of vague and very  
14 unclear as to what you can do to bring young stock or  
15 an animal into the herd once you make the transition.  
16 The problem we have in the way the language is written  
17 is that it doesn't really deal with replacement cows in  
18 general. What we're advocating in the way the language  
19 is written right now is that we would actually support  
20 the bringing in of a conventional animal, transitioning  
21 that animal into the herd from l... to gestation and  
22 moving forward, rather than to develop the genetic pool  
23 that we have on the farm in the dairy itself. And I  
24 think we need to be very careful about this, because

1     what we're doing is we're encouraging the conventional  
2     production of replacement animals, rather than  
3     encouraging farmers who are organic dairymen, who are  
4     certified, to replace those animals with their own  
5     genetic pool. Thank you very much.

6             MR. SIEMON: Tom, you were referring to OTA's  
7     position.

8             MR. HARDING: Correct.

9             MR. SIEMON: Has the Board been given that  
10    position? If you all are going to refer to it.

11            MR. HARDING: I think it's in the language,  
12    if not, you'll be given it in a few minutes.

13            MR. SIEMON: I don't see it in any of our  
14    papers here.

15            MR. HARDING: It's the unfortunate position I  
16    have of speaking first.

17            MR. SIEMON: It leaves the group a little bit  
18    unsure of how the OTA proposal is different from ours.

19            MR. HARDING: I think that's going to be  
20    addressed in a few minutes. I apologize for being  
21    first.

22            CHAIRPERSON CARTER: Let's see, alright, I  
23    don't see Mark in the room, so Richard Siegel and then  
24    we'll have Ken Chambers. Ken Chambers and then --

1 Dick, are you going to be speaking or --

2 MR. SIEGEL: No, no. I merely made a request  
3 for Ken to have --

4 CHAIRPERSON CARTER: Okay, then after that is  
5 Grace -- excuse me -- Marroquin.

6 MS. MARROQUIN: Very good.

7 MR. RIDDLE: Clarification. Does Mr.  
8 Chambers get ten minutes if he has the proxy from Mr.  
9 Siegel?

10 MR. SIEGEL: No. I didn't try to get a proxy  
11 for him --

12 MR. RIDDLE: Oh, you signed up and he's the  
13 speaker. Okay.

14 MR. SIEGEL: I simply was the one who  
15 requested it.

16 MR. RIDDLE: I just wanted to be clear when  
17 the sign came up.

18 CHAIRPERSON CARTER: Okay, go ahead.

19 MR. CHAMBERS: Alright, thank you. I'd like  
20 to thank Chair Carter and members of the Board for this  
21 opportunity to speak to you today about our company,  
22 Colorado Sweet Gold and the use of ion exchange to  
23 produce corn-based sweeteners and syrups.

24 Colorado Sweet Gold, located in Johnstown,

1 Colorado, is a unique corn wet mill and refinery  
2 operation that historically produce conventional corn  
3 starch, corn syrup and sweeteners. However, because of  
4 its small scale, it was unable to compete in the  
5 conventional world. The facility is the only  
6 operational small scale corn wet mill and refinery in  
7 the US which still lends itself to niche market  
8 production. And I think that's a very important part.

9 Most of the small plants have been shut down over the  
10 years. Consolidation has occurred in the conventional  
11 world, and these large plants now that can grind up to  
12 500,000 bushels a day are in operation. The small  
13 operation, like ours, that do 10-30,000 have all been  
14 shut in and cannibalized.

15 The intent of the management team of which  
16 I'm a partner, along with Charlie Gilbert, is to  
17 strategically reposition and retrofit the facility to  
18 become the only certified organic corn wet mill  
19 refinery in North America. Colorado Sweet Gold will  
20 have the ability to produce strategic organic non-GMG  
21 sweeteners, syrups and starches under one operation.

22 Initially the facility will require about  
23 10,000 acres of organic corn for start up. As the mill  
24 reaches full capacity, we'll need upwards of 30,000

1        acres -- I'm sorry, we'll need as much as 80,000  
2        additional organic acres for operation when we achieve  
3        the 30,000 bushel a day grind.

4                    Colorado Sweet Gold will become one of the  
5        largest sources of contracts for domestic US organic  
6        producers. The plant can process up to 30,000 bushels  
7        of corn daily, or approximately 11 million bushels of  
8        corn annually. Assuming a production of 120 bushels of  
9        corn per acre, at a current farm gate price of about  
10       3.70, and that's hopping all over the place right now -  
11       - it's been a little higher, a little lower, but that's  
12       a good median price -- CSG could add close to  
13       \$40 million annually in receipts to the organic farm  
14       economy, and that's without taking into account  
15       multiplier factor that you typically realized in ag  
16       economics.

17                   In addition to domestic corn base, CSG will  
18       be purchasing a significant amount of processing  
19       equipment and supplies to retool. The project will  
20       create new jobs and provide a significant stimulus to a  
21       regional economy that is quickly losing its  
22       agricultural base -- Front Reach (ph) Colorado,  
23       Wyoming, Eastern Nebraska.

24                   Colorado Sweet Gold currently employs a

1 skeleton crew of about 22 people. The operation is  
2 being managed to only handle corn for feed use --  
3 conventional corn for feed use, and is a distribution  
4 center for conventional corn sweeteners. When the  
5 plant becomes operational, we plan on employing about  
6 75 employees. The retrofit phase could require as many  
7 250 full time and part time employees, depending on the  
8 time frame that we're going to be dealing with.

9           The company will be producing or  
10 investigating the production of several strategic  
11 organic non-GMG ingredients such as the primary  
12 production that we're looking at for initial operation  
13 are going to be organic starches, including both  
14 modified -- which will be a waxy corn -- and native  
15 starches, organic syrups -- including dextrose, 42-  
16 fructose, and glucose. We're taking a very hard look  
17 at being able to do a semi-refined corn oil and of  
18 course the organic feeds that will be available for the  
19 burgeoning animal organic meat markets, including high  
20 protein corn gluten meal, corn germ, and gluten feed.

21           Some of the other things that we're  
22 investigating the production of would be an organic,  
23 non-GE lactic and citric acid, white distilled grain  
24 vinegar -- which is acetic acid, and an organic soluble

1 fiber.

2 But, all of these organic, non-GMG products  
3 are in jeopardy. The entire project has been stifled  
4 due to the question of whether the NOSB has the  
5 authority to review organic processes, in this case,  
6 ion exchange. I'll remind you that ionic exchange has  
7 been approved for organic processing by the NOP, the EU  
8 and IFOM (ph). There have been some questions raised  
9 about the resin beads that are used for filtration of  
10 impurities, but there are no clear guidelines on why or  
11 how they should be reviewed in respect to other  
12 synthetics that have incidental contact with organic  
13 ingredients.

14 CSG has been caught in a twilight zone.  
15 First, in the fall of 2001 we were certified, but then  
16 last December came the uncertainty over the scope of  
17 the NOSB to review previously exempted filtration  
18 processes. This uncertainty has had a very negative  
19 effect on Colorado Sweet Gold's ability to pursue  
20 equity investment dollars. In addition, further delays  
21 will keep CSG from making contract commitments for 2003  
22 corn production. And yet --

23 MR. RIDDLE: Time.

24 MR. CHAMBERS: Okay, fine. Two seconds?

1 CHAIRPERSON CARTER: Finish your thought.

2 MR. RIDDLE: Finish your sentence.

3 MR. CHAMBERS: I'd like the Board to  
4 recognize that ion exchange filtration should not be  
5 subject to the Board's review for national list. If  
6 the Board can exempt the use of ion exchange filtration  
7 from its review process, this will allow Colorado Sweet  
8 Gold to become an active member of the U.S. organic  
9 community. Thank you very much. I appreciate the  
10 time.

11 CHAIRPERSON CARTER: Okay, questions for --  
12 Kevin, yes.

13 MR. O'RELL: Ken, you submitted a letter to  
14 the Board and in that you had indicated that the FDA  
15 recently said that it would treat ion exchange resins  
16 as food contact substances as opposed to processing  
17 agents.

18 MR. CHAMBERS: Right.

19 MR. O'RELL: Where -- can you provide the  
20 documentation for that?

21 MR. CHAMBERS: We do have that.

22 CHAIRPERSON CARTER: Make sure you're at the  
23 mike because all of this is going on --

24 MR. CHAMBERS: Yes, we do have a copy of that

1 and -- Dick is pulling that out right now. We made  
2 copies of all of this for -- and we have additional  
3 information should you need it as well.

4 CHAIRPERSON CARTER: Other questions? Yes,  
5 Rose.

6 MS. KOENIG: I just have a clarification  
7 because of the results -- I mean with what you  
8 presented, I think it was also in the letter, though I  
9 just got it on Wednesday. You said that it was  
10 previously approved by NOP. What do you mean by that?

11 MR. CHAMBERS: Previously --

12 MS. KOENIG: Well, you said it was approved  
13 by NOP and I wasn't sure --

14 MR. CHAMBERS: Right, ion exchange -- we  
15 actually were advised that NOP said that it was  
16 previously approved. We got our certification. The  
17 question was, well, the reason we didn't have our  
18 certification was because of a question on public  
19 comment as to whether or not NOSB has a right to review  
20 ion exchange.

21 CHAIRPERSON CARTER: Can you come over to the  
22 mike?

23 MR. CHAMBERS: I'm sorry. I'm used to this  
24 big voice of mine. And as a result of that call for

1 comment, our certifying agency backed off and said, we  
2 can't rule on this. NOP came back and said ion  
3 exchange is not -- is not not disapproved. You can use  
4 ion exchange, so we got our certification. Then came  
5 out a comment that well, while ion exchange is  
6 approved, ion exchange resins aren't. Well, ion  
7 exchange without ion exchange resins is just a steel  
8 tank. So that's where this whole issue has come up.  
9 Does that answer your question? Maybe Dick can clarify  
10 that muddled comment of mine, but --

11 MS. KOENIG: No, because, I mean -- and I  
12 guess these kinds of comments come out on a lot of  
13 things.

14 MR. CHAMBERS: Right.

15 MS. KOENIG: Take ion exchange out of the  
16 thing and a lot of growers say why don't we approve  
17 something, and well, you know, by saying that it's sort  
18 of -- it's easier to say in the rules what you're  
19 referring to because a lot of time growers will say,  
20 well, it's approved, and I'll say well, you have to  
21 give me the -- that's how I speak before I've been in  
22 the process, but --

23 MR. CHAMBERS: I'd like to defer that  
24 question if I could --

1           CHAIRPERSON CARTER: Identify yourself.

2           MR. SIEGEL: Yes, I'm Richard Siegel. I'm a  
3 lawyer here in town. I represent Colorado Sweet Gold.  
4 Colorado Sweet Gold came to me in February and said  
5 what are we going to do? Our certifier says that they  
6 will not -- they will not certify us because we use ion  
7 exchange. And the reason for that was that on December  
8 5, 2001, the processing committee of this Board  
9 produced for comment a proposed set of guidelines that  
10 mentioned ion exchange as an example, and it was a very  
11 short, attestative proposal, but it happened to mention  
12 ion exchange. So this gave concern to our certifier  
13 and so they held up the certification of Colorado Sweet  
14 Gold

15           We wrote a letter to the Program Manager, Mr.  
16 Mathews, and said this should not really happen at this  
17 point because it's entirely premature. What does the  
18 National Organic Program say about ion exchange? And  
19 we received a letter in response that said ion exchange  
20 has not been prohibited by the National Organic  
21 Program, therefore it is a permitted practice. So  
22 that's -- that's where we -- that's what we were told  
23 by the National Organic Program in February.

24           CHAIRPERSON CARTER: Jim?

1           MR. RIDDLE:  Yes, I just have a question.  
2    You say you've been in this twilight zone or this  
3    uncertainty for most of a year.  In light of that, have  
4    you submitted the resins petition for review?

5           MR. CHAMBERS:  No.

6           MR. RIDDLE:  It would seem that that would be  
7    certainly one avenue that you could have taken that  
8    could have resolved that uncertainty, or at least  
9    helped get it clarified.

10          CHAIRPERSON CARTER:  Ken, you need to come to  
11   the mike.  We are trying to get a good transcript.

12          MR. CHAMBERS:  Indications were that we could  
13   work through it without having to go through that  
14   process, and so that's why we followed that pattern.

15          MR. RIDDLE:  It would have hedged your bets.

16          MR. CHAMBERS:  In retrospect, there's a lot  
17   of things we would have done differently, but I mean  
18   we're -- what we have done essentially, Jim, is every  
19   step of the process, beginning with our certifier, we  
20   have followed every rule.  We have answered every  
21   request for information, for clarification, and at  
22   every one of those steps we said, okay, well, that  
23   satisfies it.  Then what happens is, oh, by the way, we  
24   need this now.  And so that's why this thing has drug

1 out as long as it has. We have been following the  
2 process. We have not tried to subvert it one bit. We  
3 have followed every recommendation, every request for  
4 information, we followed up, we provided -- I might  
5 add, at some great expense, not that that really  
6 matters a whit, but hey, when you're starting up like  
7 Charlie and I are, it means a lot. I don't have a  
8 million dollars in my checking account right now, but -  
9 - so that's why this process has been strung out.

10 MS. BURTON: I have one more -- and Richard,  
11 you might want to be available to answer this. Under  
12 this new definition of the ion exchange exchange resins  
13 going into packaging, will that note now going into the  
14 indirect food packaging CFR?

15 MR. SIEGEL: This -- the CFR is not going to  
16 reclassify substances as secondary direct, direct, or  
17 indirect. What it's going to say is if it has contact  
18 with the food which is not for any purpose of making  
19 any technical effect on the food, then it is a food  
20 contact substance, and all the FDA wants to know about  
21 it is we want some advance notice in case we want to  
22 question it. So this is really -- the new criterion  
23 for food additives, is is it a food additive or can it  
24 qualify as a food contact substance?

1 MS. BURTON: So they're creating a new --

2 MR. SIEGEL: No, they're not -- they're  
3 creating a new procedure. They're creating a new  
4 procedure. They're not going to be hung up any more on  
5 the way the ion exchange is a secondary direct additive  
6 or something else. They're going to say if ion  
7 exchange can be treated as a food contact substance, if  
8 it meets the statutory definition of a food contact  
9 substance, then it only needs a food contact  
10 notification, and that food contact notification is the  
11 same food contact notification that we apply to a  
12 packaging material.

13 MS. BURTON: Okay. You going to be here  
14 throughout the meeting? Because after we give our  
15 recommendation, I might have another question.

16 MR. SIEGEL: Sure.

17 MS. BURTON: Okay, thank you.

18 MR. CHAMBERS: I might add we're also going  
19 to have another gentleman here --

20 MS. BURTON: Another attorney will be here  
21 later.

22 MS. BURTON: Thank you.

23 CHAIRPERSON CARTER: Okay, Barbara. Oops,  
24 guys, you're not done yet.

1 MR. CHAMBERS: Oh, I'm sorry.

2 MS. ROBINSON: So have you submitted a notice  
3 to FDA about the ion exchange -- the resin?

4 MR. SIEGEL: No.

5 CHAIRPERSON CARTER: You've got to come to  
6 the mike.

7 MR. CHAMBERS: These resins are the same  
8 resins that are used in the conventional world --

9 MR. SIEGEL: No, we have not submitted a  
10 notice, but we are informing the Board that the FDA, as  
11 a matter of its policy, no longer looks at ion exchange  
12 resins as the type of substance that requires a full  
13 blown, additive petition, but it is now looking at ion  
14 exchange resins as a class and saying these have only  
15 contact with the food but not for the reason of any --  
16 putting any technical -- making any technical effect on  
17 the food.

18 MR. CHAMBERS: In other words, they are no  
19 longer viewed as a process A.

20 MS. ROBINSON: Okay. But you don't -- but  
21 with ion exchange resins, you don't have to follow this  
22 new procedure where you submit a food contact  
23 notification to the FDA and they have 120 days to  
24 object, because they're just going to say we've already

1       thrown it over there, right?

2               MR. SIEGEL:   Yes.

3               MS. ROBINSON:   Okay, and you --

4               MR. CHAMBERS:   They've been used for   years.

5               MS. ROBINSON:   -- you have names of somebody  
6       at FDA that we can talk with too?

7               MR. SIEGEL:   Yes.

8               MS. ROBINSON:   And a way to get in touch with  
9       her.

10              MR. SIEGEL:   Yes, the person --

11              MS. ROBINSON:   We have Dr. Anna Schanglan --

12              MR. SIEGEL:   Yes, she was the --

13              MS. ROBINSON:   She has kind of a big place  
14       though.   They couldn't like give us a phone number --

15              MR. SIEGEL:   Office of Food Additive Safety.  
16       But we can find her phone number.

17              CHAIRPERSON CARTER:   Okay, Jim.

18              MR. RIDDLE:   Yes, I'm just a little confused  
19       by the statement that the ion exchange and the resins  
20       have no technical effect, when in your letter to the  
21       Board, October 17th, on page five it says, "ion  
22       exchange is essential to the manufacture of organic  
23       high fructose corn syrup.   Its purpose is to filter out  
24       minerals, salts, proteins, and other bodies from the

1 water portion of the corn syrup." That to me, in  
2 laymen's terms, seems like a technical or a functional  
3 effect.

4 MR. CHAMBERS: It's a filtration medium. We  
5 aren't affecting the fructose itself. In other words,  
6 we look at the fructose --

7 MR. RIDDLE: But it's through an exchange of  
8 ions, correct, how this is achieved?

9 MR. CHAMBERS: Correct.

10 MR. RIDDLE: So it changes the chemical  
11 structure --

12 MR. CHAMBERS: It attracts out the minerals,  
13 salts and things that are in that process stream. It  
14 doesn't affect the fructose itself, only the aqueous  
15 carrier of the fructose. You pull out the bad stuff,  
16 and it leaves a more, a pure aqueous stream containing  
17 the fructose. But we are not affecting the fructose in  
18 any way. Only the process stream that contains the  
19 fructose. We aren't chemically or doing anything at  
20 the cellular level with -- to the fructose itself.

21 CHAIRPERSON CARTER: Kevin, and then back to  
22 you.

23 MR. O'RELL: And actually I might have a two  
24 part question. But first, you're saying that that it

1 says that the -- the information you just gave us on  
2 food contact surface --

3 MR. CHAMBERS: Correct.

4 MR. O'RELL: Instead, the manufacturer  
5 submits a FCN of its intent to market the product. The  
6 reason that you don't have to submit the FCN is because  
7 you're using resins that somebody else has already  
8 submitted a petition for? Is that -- I just want  
9 clarification and understanding on that.

10 MR. CHAMBERS: These resins beads are used by  
11 all the producers out there.

12 MR. O'RELL: So that's the reason that you  
13 specifically, as a manufacturer, don't have to submit  
14 the FCN?

15 MR. SIEGEL: That's right.

16 MR. CHAMBERS: These, by the way, are the  
17 same resins that are used over in Europe as well in  
18 organic products.

19 MR. O'RELL: And would you disclose the type  
20 of resins that you're using?

21 MR. CHAMBERS: I'm going to leave that to --  
22 oh, yes, we will. Certainly. Certainly. I think it's  
23 a Dow 66 and 88 -- the resins.

24 MR. O'RELL: And the resin that you're using

1 is just replacing the cation and anion ion exchange --

2 MR. CHAMBERS: One is a cation and one is an  
3 anion.

4 MR. O'RELL: One's an anion, but the cation  
5 is hydrogen that you're replacing, or is it sodium?

6 MR. CHAMBERS: Gosh, I wish our --

7 MR. SIEGEL: Our chemical -- our lawyer with  
8 chemical training will be here later on.

9 MR. CHAMBERS: Sorry about that.

10 MR. SIEGEL: But this is -- we've always  
11 understood that this does not make a substantive change  
12 in the -- in the food, but only a physical change.

13 CHAIRPERSON CARTER: Okay, Becky.

14 MS. GOLDBURG: Jim asked my question. But  
15 I'll ask a quick follow up. Is the rationale you  
16 articulated for why ion exchange doesn't have a  
17 technical effect on food essentially FDA's rationale  
18 too? Or does the FDA have some other reasons?

19 MR. SIEGEL: We ran extractives tests on --  
20 and this is explained in the body of the longer letter  
21 -- we ran extractive tests of our ion exchange resin.  
22 Our ion exchange resin comes in contact with food and  
23 inevitably a very, very, very tiny amount of this resin  
24 will therefore migrate into the food, just as from a

1 packaging surface. And we ran a test which indicated  
2 that 40 parts per billion was the -- not million, but  
3 40 parts per billion was the extent, and we would  
4 maintain that at such a tiny level, this does not --  
5 this is just like the -- in fact, this is at the low  
6 end of the migration that you have for packaging  
7 materials. So therefore, we're maintaining that this  
8 is not -- it's not intentional and intentionally or  
9 unintentionally it would not cause any technical or  
10 functional effects on the food. It's not put into the  
11 food for purposes of being in the food as an  
12 ingredient, it's really supposed to stay put, and the  
13 only thing we're talking about is the thermodynamic  
14 phenomenon that migration will occur from contact.

15 MR. CHAMBERS: I might add that this test --  
16 it's called the soxlit (ph) test, which was conducted  
17 by Texas A&M University, is an extremely over-  
18 aggressive test to really push hard to see what kind of  
19 extractables you can come up with. So it's far more  
20 aggressive than what you realize in the process. That  
21 was one of the things too that we were requested --  
22 that was some of the information that we were requested  
23 to provide somewhere during the chain of events, which  
24 gladly complied with.

1           MS. BURTON: I just want to clarify your  
2 clarification on the chain of events was not with the  
3 NOSB, it was probably with NOP or somebody else, so --  
4 and that's why we're in the situation we're in, because  
5 typically we get tap reviews and we thoroughly  
6 investigate the materials and make a logical decision.

7           And then my last comment would be that under the  
8 indirect CFR there's specific petitions, and there's  
9 certain guidelines that you follow to get put on that  
10 indirect list, so I would again, just like  
11 clarification as to why this wouldn't be reclassified  
12 into an indirect since it is really being a food  
13 packaging material.

14           MR. SIEGEL: Because the FDA's whole purpose  
15 in introducing this new structure is to say some things  
16 are food additive petitions, and other things are food  
17 contact notifications.

18           MS. BURTON: And that's more for education  
19 for the Board as we move forward from material review.  
20 So just something we need to get clarified.

21           CHAIRPERSON CARTER: Okay, other questions?

22           MR. CHAMBERS: I promise not to sit down  
23 until you release me.

24           CHAIRPERSON CARTER: Thank you, Jim, and

1 Rick, you did get your five minutes in one way or the  
2 other, right? Good. Okay. Grace Marroquin and then  
3 next up is Tom Hutcheson. I don't see -- is he up --  
4 okay. Very good.

5 MS. MARROQUIN: I want to thank you all for  
6 the opportunity to be here today. You're going to have  
7 to bear with me because I really don't know your  
8 language, you know as far as the proper, right way to  
9 be saying things. But I'm here today to respectfully  
10 request that the Board recognize that ion exchange  
11 filtration systems should not be subject to the Board's  
12 review for the national list until further time -- you  
13 know, it's exempt at this time -- until further time  
14 can be given to really realize the impact of what this  
15 type of recommendation would have on the industry.

16 Ken Chambers has given you all the technical  
17 side of this and they've done a pretty thorough amount  
18 of research on this. I am a company right now,  
19 Marroquin International. I've been in the industry for  
20 about 12 years. A lot of what we do is trading,  
21 brokering, development of ingredients. Presently I'm  
22 importing a organic corn syrup and on GMO (ph) corn  
23 syrups, corn syrup solids, maltodextrase from Austria,  
24 from the company Ograno, Zucko and Starkes. I've been

1 doing this since '95, and the corn syrups, honestly,  
2 haven't really started to move until the last two  
3 years, and that was primarily with the impending rules  
4 coming into place and the stand the organic industry  
5 took on GMOs.

6 I think any recommendations to stop the  
7 commerce using ion exchange would seriously cripple my  
8 business. Presently we're also importing dairy  
9 products which may be a moot point right now because of  
10 certainly the equivalency issues with the EU, but those  
11 also go under ion exchange -- all your demineralized  
12 weight products, weight protein concentrates.

13 I think time is needed for due process, for  
14 the industry to really have input on this issue. I  
15 didn't realize -- I mean if I had thought that ion  
16 exchange was going to be excluded, I certainly would  
17 have stepped up a long time ago. I just didn't realize  
18 it because I really thought -- and I was under the  
19 impression according to the NOP, that ion exchange was  
20 allowed. It was allowed in Europe. I know that there  
21 have been discussions, but it was still that it was  
22 allowed. And it wasn't until about three weeks ago  
23 when I heard "Grace, you're going to have to shut your  
24 doors" that I went into a panic when I started to

1 realize what was coming down the road here for me.

2 I know that I wasn't the only one that didn't  
3 realize this. The certifiers -- I've been selling  
4 product up until today, tomorrow -- you know, that has  
5 certified by all the various certifiers in the  
6 industry. The manufacturers using these products are  
7 manufacturers that have been in the industry since the  
8 beginning of this inception, selling products. There  
9 are over dozens of products right now on the shelves in  
10 the stores using corn syrup solids, multidextrins and  
11 corn syrups. There are -- I can't even tell you how  
12 many manufacturers right now have been doing R&D for  
13 the last year, two years, very actively. This  
14 decision, or this recommendation would have a serious  
15 impact on them, on their production, also the  
16 investment they've made over the years, and so I think  
17 that they need, also, to have the opportunity to make  
18 comments on this.

19 Presently -- the types of products right now  
20 that probably you all are using and bought -- those  
21 products made with corn syrup solids are products that  
22 have come about using dry mixes, gravies, sauces. The  
23 corn syrup solids are also used in -- when you're  
24 trying to put a flavor on a potato chip --

1 multidextrin's used this way too. Is that one minute  
2 left?

3 MR. RIDDLE: Yes.

4 MS. MARROQUIN: Oh, geez! Oh, my God. Okay.  
5 That was fast. Ion exchange, I mean to put it in  
6 perspective too, is also used in water filtration --  
7 water is used in every -- in all processes of organic,  
8 for cleaning, for flavoring, for cooking, for steaming,  
9 cleaning everything -- water is used, and I know water  
10 is exempt, everyone's told me that, but it goes through  
11 ion exchange. I don't understand that it can be  
12 acceptable there and not acceptable in its use.

13 And you have to look at it also from the  
14 perspective of a made with label. You've got some of  
15 your favorite cookies out there with a made with label,  
16 but are using corn syrups, and if you remove the corn  
17 syrup, then they're not going to be able to have an  
18 organic product, and it's not just the corn syrup, it's  
19 the organic sugar, the organic cinnamon. It's the  
20 organic chocolate. It's the organic nuts.

21 MR. RIDDLE: Time.

22 MS. MARROQUIN: So I urge you to give this  
23 more thought. We need time. We don't need to rush  
24 this. This has a larger impact on the industry than

1 what has been thought up to this point. And I'll be  
2 glad to offer more information.

3 CHAIRPERSON CARTER: Okay, question? Yes,  
4 Rose.

5 MS. KOENIG: Are you familiar with the  
6 material process and the criteria that we evaluate  
7 products by? I mean I -- I mean it sounds like you're  
8 not aware, which I totally understand, I'm a producer  
9 and I know that there's many people in the same  
10 situation that weren't keeping up with the process and  
11 you know, now are starting to show up. But are you  
12 also not aware of the criteria that we would evaluate  
13 your -- you know, if we were to look at the product.  
14 Because what I'm finding is a sense of panic, and I  
15 just want you to be aware that if it does go like most  
16 materials go through, it's -- you know, I don't want  
17 you to panic and think that it's never -- it may not be  
18 allowed. I mean it could be allowed if it goes through  
19 the materials process. We look at criteria and we take  
20 in those --- we make judgements on the criteria, so I  
21 would urge you to come and look at those criteria, that  
22 if it went through the material process, what the Board  
23 would be looking at. It's not that -- and I mean if  
24 you look historically at the decisions, we're going to

1 look at the industry impact and such. I'm not quite  
2 sure about what you're asking us to do.

3 MS. MARROQUIN: Well, I guess I'm not aware  
4 to tell you the truth, because like I said, I never  
5 thought of this as an ingredient. It's a process, and  
6 so I didn't realize that it was something that would  
7 have to be reviewed in this manner because it's a  
8 process. It's a filtration system. And I do -- if you  
9 sense some panic in me, it's because I have containers  
10 on the water. I have product in warehouses. There are  
11 manufacturers with product on the shelves, and I'm  
12 signing contracts. I have contracts. I don't know  
13 what to tell people. I mean I was urged not to contact  
14 my customers to say you need to write in, because maybe  
15 it didn't need to go there. There are processes that  
16 I'm not aware of. I've been in the trenches for too  
17 long.

18 MS. KOENIG: I mean -- and I don't mean to --  
19 what I'm trying to do is, I understand in both your  
20 cases, I fully understand your sense of panic, but as a  
21 producer, it's -- the only thing I can do is give you  
22 an analogy, okay, and my analogy is the compost  
23 regulations which had a great impact on me as a  
24 producer, but being an NOSB member, of course I have to

1 be more aware of the rules, but even any grower. It  
2 impacted many growers, so growers read the rule and  
3 then went to their compost manufacturer and made sure  
4 that they were following the rule. Now, compost to me  
5 -- you know, again, was something that was very  
6 specific, similar to this, but it was really my  
7 obligation as a business person, to get my ducks in a  
8 row for this implementation phase. And that's what I'm  
9 saying. So I don't have any miracles to work, let's  
10 put it that way.

11 MS. MARROQUIN: I would like to try to take  
12 the panic out of it, but the product is certified.  
13 Certifiers have been accepting the product all along,  
14 until today, probably tomorrow, as an ingredient for  
15 their manufacturer, so it's just -- it didn't occur to  
16 them and they're in the business, and yes, I should  
17 have done more except I didn't realize, because again,  
18 I thought of it as a process, not as an ingredient.

19 CHAIRPERSON CARTER: Okay, thank you, Grace.

20 MS. MARROQUIN: Thank you for your time.

21 CHAIRPERSON CARTER: Okay, Tom Hutcheson,  
22 followed by Hubert Karreman. Tom, it's good to see  
23 you.

24 MR. HUTCHESON: Thank you. I've had my beard

1 surgically removed. I've had it on too long. Gotten  
2 stuck. First, OTA is delighted to extend its  
3 congratulations to the National Organic Standards Board  
4 and the National Organic Program, all members past and  
5 present for getting us to this point. It's been a long  
6 process and not too much bloodshed, I think, and we all  
7 look forward to moving forward.

8           There are of course a number of details  
9 waiting to be acted on, not all that will need to be  
10 will be acted upon soon. There is much working out  
11 ahead. I think the purpose is always to move towards  
12 sustainability, whether by great leaps such as OFPA  
13 (ph) and the work of this Board up to this point on the  
14 Rule, or by baby steps. We have taken one huge step in  
15 getting this far, but often we need to take many baby  
16 steps along the way.

17           I think one of the tasks of the Board now is  
18 to discriminate between what is a legitimate baby step  
19 as opposed to a giant leap, recognizing the move in  
20 good faith towards best practices, versus what is  
21 really an attempt to roll back or lower standards.  
22 This is a necessary exercise in discrimination, which I  
23 think will be the task of the Board for some time to  
24 come. Please strive to make clear in all your

1 recommendations, what the direction is that you're  
2 trying to move toward, and what the next step should  
3 be. This will help future Boards and everyone reading  
4 the recommendations.

5 In one specific instance, which OTA will have  
6 further comments on tomorrow, OTA greatly appreciates  
7 the guidance the NOSB livestock committee has provided.

8 The timeframe for incorporating this strict  
9 interpretation leading to production is tight, however,  
10 and OTA will at least urge NOSB to allow a phase-in  
11 period for any new guidance policy. That's all I have  
12 at this time.

13 CHAIRPERSON CARTER: Okay, thank you Tom.  
14 Any questions for Tom? Alright, Hubert Karreman.

15 MR. RIDDLE: He'll get in here, but --

16 CHAIRPERSON CARTER: Okay, probably is, then  
17 we have Uruashi --

18 MR. RIDDLE: Oh, Kelly.

19 CHAIRPERSON CARTER: Kelly, he identified  
20 you? Okay. Are you Hugh today?

21 MS. SHEA: I'm Kelly Shea. Hugh is the proud  
22 father of a brand new bouncing baby girl and so he said  
23 that he was going to e-mail his comments to the NOP and  
24 indicate that he wanted the Chair to read his comments.

1 Did you not receive that?

2 CHAIRPERSON CARTER: No, I have not. We'll  
3 find them then, and I will -- okay.

4 MS. BURTON: He might have sent them to  
5 materials, maybe. We had a lot of e-mails coming  
6 through. I got them.

7 CHAIRPERSON CARTER: Did you hear that,  
8 Kelly? He may have sent them to materials and Kim will  
9 look through her -- so we will find them and respect  
10 his -- and convey congratulations to him as well.  
11 That's great. Okay, Uruashi Ranga? Not here. Okay,  
12 Jim Pierce followed by Dan Leiterman.

13 MR. PIERCE: Same NOSB station, same NOSB  
14 time. It's good to see Rebecca, and good to have  
15 Michael back. Ladies and Gentlemen of the the National  
16 Organic Standards Board, NOP staff, gallery and press.

17 It's once again my privilege to address this assembly.

18 The thrill, the honor, and the anxiety have yet to  
19 wane. For the record, I am Jim Pierce, Certifications  
20 R at Organic Valley, this country's largest farmer-  
21 owned cooperative with over 500 farmer members.

22 Here we are on the eve of the long-  
23 anticipated October 21, 2002 implementation date. When  
24 this Rule came out in December 2000, many of us

1 anticipated some sort of a genesis "let there be light"  
2 moment as in "let there be organic" once and for all,  
3 end of discussion. Wrong. The moment is turning out  
4 to be more of a dawning of a new day with soft music,  
5 bright new light from the east. But it is clearly a  
6 new day, fresh and with great promise, and I understand  
7 that later in the day there's going to be a party. So  
8 that's good.

9           Assuming that organic is about  
10 sustainability, to summarize scenarios is clearly a  
11 more earth-friendly approach. As we all know, there's  
12 a lot of unsettled issues, as well as dozens of changes  
13 and decisions caught up in the bureaucratic limbo. But  
14 the foundation system would appear to be fundamentally  
15 sound. The independent certification bodies have been  
16 accredited, and as they are aware of the controversies  
17 and pending actions, additions to the CFR, they're well  
18 suited to advise and protect their clients.

19           My point to you is to keep up the good work  
20 for this noble cause, while the fruits of your labor  
21 may not be harvested for some time. You're planting  
22 good seeds in fertile ground. Keep on your toes,  
23 because the world is watching.

24           I've recently returned from Europe where I

1 had the great privilege to be part of a group of  
2 organic farmers and industry experts viewing first  
3 hand, on the ground, state of the European organic  
4 industry. Early in our voyage it struck me how  
5 internationally historic and how far reaching the  
6 impact of your decisions will be felt.

7           Sitting in this room at the same old, grouchy  
8 critics staring you down, it may be difficult to fathom  
9 the magnitude of each jot and tittle that you  
10 collectively resolved.

11           So, humbly offered observations from the  
12 czar, from Europe. European organic dairy farmers are  
13 hooked on conventional medicine, particularly  
14 antibiotics. Early in their standards crafting, they  
15 decided that once alternative methods have been shown  
16 ineffective, anything goes with double withholding  
17 time. We met with veterinarians that had less  
18 knowledge of homeopathics than John Block. We saw  
19 herds where every dairy cow is administered antibiotics  
20 routinely under the guide of temporary derogations. We  
21 also saw hard, documented evidence that cows in  
22 parallel trials, treating sub-clinical mastitis with  
23 antibiotic were absolutely no better off than those  
24 treated aggressively with alternative medicine and good

1 animal husbandry. But they're hooked. And they're  
2 looking to us to show them how to break their  
3 addiction.

4 On the other hand, to their credit, we also  
5 witness first hand successful egg production without  
6 synthetic amino acids, or beak tipping, and with access  
7 to living pasture, which they translate nicely to  
8 "Vintergartens". It would appear that it can be done,  
9 and they're very willing to help to show us how.

10 We saw consuming public light years ahead in  
11 their acceptances and commitment to organic or "beo"  
12 (ph) as they call it. As organics -- as Europeans  
13 struggle with many of the same all too familiar issues,  
14 such as sprawl, sky rocketing land prices, disappearing  
15 farm population, foreign imports that erode their  
16 heritage and social fabric, they have been much more  
17 successful in taking a stand towards preserving what  
18 they believe in by respecting and learning where their  
19 food comes from, and subsequently by committing to it  
20 with their pocketbooks.

21 In conclusion, for today anyway, let me leave  
22 you with this. Keep the faith. Stay true to your  
23 goals. Consider the global impact of your decisions.  
24 Don't even try to control the industry beyond sound

1 fundamental guidelines. And if you want to see  
2 pictures from Europe, come and see me later. Thank  
3 you, and God bless you.

4 CHAIRPERSON CARTER: Questions? Mark.

5 MR. KING: Yes, could you speak a little bit  
6 about the size of specific operations that you look at  
7 in comparison, perhaps, to the average size in the US,  
8 and how that might equate to the number of people  
9 served in terms of food they're producing?

10 MR. PIERCE: Well, clearly, scale of  
11 operations in Europe is much smaller. It is --  
12 typically their farms are smaller, but comparable maybe  
13 to organic farms in that organic farms tend to be small  
14 as well. However, cumulatively, they serve their  
15 purpose. I mean they're typically ten to 15 percent of  
16 the food market is organic over there, and typical ten  
17 to 15 percent of the farms, and in some areas, you  
18 could go 50 or 60 miles and it was 80 or 90 percent  
19 because the infrastructure was so tight for that area  
20 that virtually everything was organic.

21 Now a lot of their incentives become organic  
22 because the European governments will give them  
23 subsidies once their farms are organic. So they're  
24 closely tied to conservation. But as a result, they

1 brought all these people in and now they're building  
2 the markets to move the product. Does that answer your  
3 question?

4 MR. KING: Yes, and have they been able to  
5 maintain a price structure that's suitable?

6 MR. PIERCE: They're challenging that. Now  
7 they don't trust the government to help with their  
8 price structures. Their certification bodies  
9 themselves take a much more active role in branding and  
10 marketing organic products. So you'll see the Dameter  
11 (ph) brand and BEOSwiss (ph) brand and stuff, but no,  
12 now there's a little bit of a glitch in the general  
13 economy in Europe, especially Italy, and organics are  
14 suffering because organics is that extra price. For  
15 the most part, their prices are solid. I understand in  
16 some areas there's a glut of dairy and so they're  
17 struggling to keep the price sound. So they're dealing  
18 with - they're virtually dealing with so many of the  
19 same issues we are, it was both distressful and  
20 heartening, the camaraderie of it.

21 CHAIRPERSON CARTER: Okay, thank you. Becky.

22 MS. GOLDBURG: Quick question, Jim. I was  
23 wondering if you saw a pervasive use of antibiotics  
24 outside of dairy production in Europe? In other words,

1 in other sectors of livestock or poultry?

2 MR. PIERCE: I don't recall anything  
3 specific. Do you, Jim?

4 MR. RIDDLE: No, we didn't visit any beef  
5 operations, but yes, not in poultry, there was no  
6 antibiotic. They had a very tight regimen of  
7 vaccinations of the pullets and young chicks.

8 MR. PIERCE: They really acted like they were  
9 addicted. They kept saying we don't want to be doing  
10 this to our young stock or to our dry cows, but we  
11 really don't know how, any other way. Their vets were  
12 not well versed in homeopathics and alternative  
13 medications because they've never really been forced  
14 into it. So when we start asking them about pinchers  
15 and aloe vera -- they really had no background to it,  
16 plus, like vets here, they get paid to sell what's in  
17 their kit bag. So it was a tough thing. We can't wait  
18 until they come over here. We can wait to show them  
19 midwest organic agriculture.

20 CHAIRPERSON CARTER: George.

21 MR. SIEMON: Just something, we're on a  
22 travelogue now, but people don't realize 80 percent  
23 organic feed over there too, you've got to mention  
24 that, and you also -- you say the positive methionine,

1 you have to mention the results of some disastrous  
2 flocks that you saw that were poorly managed ...

3 MR. PIERCE: You're right. I've got all the  
4 pictures. It was quite a trip, but we did see it done  
5 well in addition to some poor farms.

6 MR. RIDDLE: And that farm that was doing it  
7 very well, with 2000 birds, so it wasn't just a  
8 backyard operation. So that was the scale at the  
9 Swissm...

10 MR. BANDELE: In some regards it seems as  
11 though the Europeans are ahead like for example, with  
12 some of the alternatives of medical research and what  
13 not, how does that not the case with the animals,  
14 according to what you're saying?

15 MR. PIERCE: A lot of the research, I think  
16 is ahead. The Swiss, particularly, we had met some  
17 people who had done extensive research on antibiotics  
18 in parallel trials. However, to get that implemented  
19 at the farm level, without a mandate from the  
20 certification, just seems to be something they can't --  
21 they can't quite do. Does that answer your question?

22 MR. BANDELE: Yes, it does.

23 MR. PIERCE: Anything else?

24 CHAIRPERSON CARTER: Other questions? Just a

1 comment, Jim. If the NOSB ever decides to put together  
2 a designation for a pullet laureate, you might be  
3 invited to bring your name in nomination.

4 MR. PIERCE: Tomorrow I think Marty and I are  
5 going to trade comments, so we'll go that way. Stay  
6 tuned.

7 CHAIRPERSON CARTER: Yes, I'm sorry, Rick.

8 MR. MATHEWS: Jim, your concerns about the  
9 fact that they are still using the antibiotics and  
10 other substances. As we work through the equivalency  
11 agreement with the EU, if they are compelled to comply  
12 with our standard, what do you think the impact will be  
13 on them, and will they be able to comply? Or -- just  
14 what is your thought with regard to meat or dairy  
15 products coming to this country through an EU agreement  
16 that would require them to abide by our medical  
17 treatments?

18 MR. PIERCE: Well, I'm very glad you brought  
19 that up because that is the heart of the issue in US/EU  
20 equivalency. Personally, I did not see, despite the  
21 differences we talked about, any -- anything that is so  
22 significant that we could not come to some sort of a  
23 reciprocity agreement, with a plan, an organic farm  
24 plan is what it's all about, with a plan to correct

1 those differences. They'll turn right away and play  
2 the chilean nitrate card or whatever they're going to  
3 accuse us of doing that's different from their  
4 standards -- dehorning, beak tipping, et cetera. All  
5 of those I see as sub-issues, none of them is enough to  
6 make a clear, competitive advantage, except perhaps the  
7 feed -- the 100 percent feed. Full steam ahead on  
8 working out those reciprocity agreements. They want to  
9 comply to our standards as much as we want to do trade  
10 with them. It's a matter of teaching each other how to  
11 do it, and understanding that there will always be some  
12 regional and geographic differences. But I think we  
13 can get over it. I think we can do business with them.  
14 I think we need to.

15 CHAIRPERSON CARTER: George.

16 MR. SIEMON: I was in part responsible for  
17 the tour and getting some money and putting it together  
18 because I knew the exchange needed to happen, and now  
19 we're talking about putting on a conference in the  
20 United States for organic livestock production methods,  
21 just around this -- international coverage, because it  
22 really needs to be some sharing of methodologies.  
23 That's why we went over there because of the beak  
24 tipping and the thiamine and the access outdoors. They

1     need to come over here and see about the medications  
2     and get some faith in 100 percent feed and the  
3     beneficial effect of that, because that's the  
4     foundation, starting with the feed.

5                   CHAIRPERSON CARTER:   Okay, Jim.

6                   MR. RIDDLE:   Yes, just to follow up.  Also I  
7     think this negotiation, like you mentioned, certainly  
8     can drive them, provide the incentive that they haven't  
9     had in the past to get away from antibiotics.  But I  
10    did want to add, on the methionine, the ration that we  
11    found successful without use of synthetic methionine  
12    was using potato starch, potato protein, which is rich  
13    in the essential amino acids, and corn gluten meal and  
14    some yeast derivatives, and field peas as the protein  
15    source instead of soy beans.  But the catch is that  
16    corn gluten meal and the potato starch are  
17    conventional.  They are simply not available  
18    organically, and they're allowed a certain percentage  
19    of conventional feeds.  So as we're in this three year  
20    period on methionine, with a directive from the Board  
21    to develop alternatives, I think it's imperative that  
22    our research start with what's available here, which is  
23    conventional potato starch and corn gluten meal, and  
24    work -- build up these natural sources of methionine,

1 but it may take some time before they're available  
2 organically.

3 MR. PIERCE: They've also done quite a bit of  
4 work with different breeds that have helped them  
5 overcome some of the problems.

6 CHAIRPERSON CARTER: Okay, George.

7 MR. SIEMON: I also heard they have they have  
8 like 60 percent of production in the eggs as we have,  
9 and that's a huge retail item.

10 MR. PIERCE: The final farms we saw were  
11 closer to 90 percent production. They were doing quite  
12 well towards the end.

13 MR. SIEMON: The final part.

14 MR. PIERCE: Yes, the ones that were doing  
15 well.

16 MR. SIEMON: You saw this variation from poor  
17 to well managed.

18 MR. PIERCE: And the same in dairy. We saw  
19 some dairy farms that weren't producing, that were low  
20 input and low production, and the same with the  
21 poultry. I really thought I'd get up here and four  
22 minutes and out, but thank you. I'm glad you're paying  
23 such good attention.

24 CHAIRPERSON CARTER: Thanks, Jim. Okay, Dan

1       Leiterman and Bill Denevan.

2                   MR. LEITERMAN: Good morning. My name is Dan  
3       Leiterman. I'm here with the Crystal Creek Company.  
4       It's always hard to follow Jim with his eloquence and  
5       humor, and I want to thank you for giving me the  
6       opportunity to talk. I'm a little confused, so I'm  
7       coming to you again for guidance. I appreciate the  
8       guidance you gave us at the last meeting. I've got two  
9       topics -- chelates and proteينات is one topic, and  
10      the calcium propionate is the other topic.

11                   As you know Monday we have a deadline and  
12      I've got a lot of producers out there that are relying  
13      on Crystal Creek to come up with alternatives to  
14      antibiotics and drugs for the cattle and livestock.  
15      Seven years ago, the point of our company and mission  
16      statement was to come up with alternative, effective  
17      treatment for cattle so that our producers didn't have  
18      to do what the European community does with using more  
19      antibiotics at will.

20                   In an attempt to try and hedge my bet, as was  
21      mentioned earlier, I saw the discussion on amino acids,  
22      synthetic amino acids, and the potential for that not  
23      to be right for the organic community. Being a  
24      nutritionist, I know that there are alternatives that

1     could be acceptable, one of which is proteinate.  
2     Proteinates are readily available as a non-GMO source  
3     of a chelation item. There's always confusion on the  
4     semantics, but simply put, it's a natural protein  
5     attached to a trace mineral. The process is benign.  
6     Both of these items are AAFCO approved. In hindsight,  
7     I'm wondering if the petition was even necessary  
8     because AAFCO approves them as minerals. So I'm a  
9     little bit confused on where to go with that, and I was  
10    hoping when I came here this weekend that I could go  
11    back and reassure our clients that we can continue to  
12    have our animals on proper therapies. So I need some  
13    help on that.

14                 In the concept of stream of commerce, since  
15    these items have been allowed for use in the past, and  
16    they're AAFCO approved, at least until you can make a  
17    decision, I'll like to have some guidance that we can  
18    continue to use them, particularly to maintain our  
19    stream of commerce so these animals don't have to be  
20    taken off of natural therapies and put back on drugs  
21    and antibiotics.

22                 The calcium propionate is a second topic. At  
23    our last meeting, that was okayed for milk fever  
24    treatment where we give a quart once or twice a day for

1 a couple of days to treat animals for milk fever. The  
2 petition that was submitted also requested that calcium  
3 propionate be looked at as a mold inhibitor for L-  
4 appellates (ph) specifically, so that the L-appelles  
5 (ph) can be applied as a medicinal therapy. The  
6 application of that calcium propionate on average would  
7 probably be measured in the hundreds of an ounce -- one  
8 to five one-hundredths of an ounce in the treatment  
9 period, versus several quarts. It's been approved in  
10 the past or allowed for use in the past, and I'm asking  
11 for guidance on that topic also so that we can maintain  
12 a stream of commerce until you guys make your decision  
13 on that, so that we can keep those animals on proper  
14 therapy also.

15 So my main point here is stream of commerce.

16 If you can make some decisions or give us some  
17 guidance on that at this weekend meeting, that would be  
18 very, very helpful to us. Thank you.

19 CHAIRPERSON CARTER: Thank you, Dan.

20 Questions for Dan?

21 MR. SIEMON: I just want to say that even  
22 though the agenda now says we're not going to be  
23 looking at those things, I hope that the livestock  
24 committee is going to try to clarify some of those

1 things still and see if that -- if they're willing to  
2 make a decision or exactly to present a clear message  
3 before the weekend's over. So I'm going to try to do  
4 what we can here.

5 MR. LEITERMAN: I appreciate that because, I  
6 don't know, waiting five or six months for our clients  
7 who have animals who are on these therapies that are  
8 sick now, it would be devastating for them to pull them  
9 off.

10 CHAIRPERSON CARTER: Okay, other? Right,  
11 thank you. Bill -- how do you pronounce the last name  
12 again?

13 MR. DENEVAN: Den-e-van.

14 CHAIRPERSON CARTER: Denevan, okay, sorry  
15 about that. After Bill we have Jim Cranney.

16 MR. DENEVAN: So, anyway, here I am and --

17 CHAIRPERSON CARTER: Identify yourself.

18 MR. DENEVAN: My name is Bill Denevan. I'm  
19 an apple grower and I'm also been a board rep for CCOF,  
20 and I'm also an advisor and a collaborator with other  
21 organic apple and pear growers, and I've been doing  
22 this for about 27 years, and I grow fuji's pippin's and  
23 bartlett's, and I've never addressed your Board before.  
24 This is a new thing for me. It's a little scary, but

1 here I am.

2           What I wanted to say was that in my job, one  
3 of my jobs -- I do the growing and I also work for a  
4 company, a brokerage company and I go out -- they send  
5 me all over the world and I talk to various growers and  
6 we collaborate and we try to figure out strategies and  
7 how to grow organically and one thing that we all have  
8 in common is dealing with the codling moth, and a lot  
9 of us call it the beast, and a lot of us call it the  
10 thing that just won't go away.

11           I just wanted to bring my experience of  
12 growing organically before the pheromones came up. I  
13 wanted to give my support for the law change -- I mean  
14 to support the class 3 inerts and the pheromones,  
15 that's why I'm here. All my friends that grow, all my  
16 collaborators, we all are really concerned that maybe  
17 the NOSB is not listening to what our concerns are.  
18 After -- I'm probably one of the few people that I know  
19 that's still in business that grew apples when we  
20 didn't have pheromones, and I want to tell you a little  
21 bit about what happens when you try those strategies.

22           The first thing is, and when I started in  
23 1975, we tried to use R. espiciosa (ph), it's a plant  
24 from Trinidad that they don't make any more, they don't

1 process any more, and we'd spray 15 or 25 times. It  
2 would burn up all the nozzles in our sprayers and we'd  
3 have to replace our nozzles every single day because  
4 the material was so sand-like that it -- so coarse it  
5 would ruin our nozzles, and the pumps, and our  
6 sprayers. Everything, it was like running rocks  
7 through your system. And it didn't work. So here we  
8 are, spraying 15 to 25 times and getting 35 to 40  
9 percent worms. I mean, how can you make money on that?  
10 So I dealt with that.

11 Then I did oil, which seemed to work pretty  
12 good, we got 15 percent damage when using an oil -- a  
13 dormant oil, summer oil material, but unfortunately, it  
14 almost killed the trees. All the trees would look  
15 weak, they'd just be drooping over, turning yellow,  
16 begging for relief. That got the codling moth down,  
17 but also made the trees sick. So we did that  
18 organically for a long time. We still use that as an  
19 occasional tool in codling moth -- the beginning of  
20 codling moth control, at the beginning of the season.

21 And then after that we used the granulosis  
22 virus. We worked with the University of California for  
23 years. We were told that was going to be the new  
24 panacea. It was going to take care of our problems.

1 We were out there spraying that 30 times -- I mean  
2 conventional growers typically go through their  
3 orchards about 25 times, or 20-25 times. We're out  
4 there 35 times just on this one item, codling moth, not  
5 to mention all the -- I mean we were just burning up  
6 sprayers left and right.

7 So, anyway I tried the virus for years and  
8 years. I was one of the sponsors of the virus in my  
9 orchard with the University of California. Didn't work  
10 at all.

11 So finally the pheromones came along, the  
12 technology came along around 1990 and some of the reps  
13 that came with the technology told me about sanitation,  
14 picking off the damaged fruit, so with a combination of  
15 the pheromones and that, in one year I was able to get  
16 typical 20 to 35 percent worm damage, 80 to 90 percent  
17 of my fruit had to go to juice -- there's other types  
18 of damage, by the way, besides codling moth damage on  
19 apples, so you know, to get fresh pack in those days  
20 was really tough for my first 15 years.

21 Now, we're able to get two percent -- one to  
22 two percent damage, and we're able to grow a really  
23 commercially viable product. People love our product,  
24 and even the juice does not have worms in it now. I

1 mean in the old days, you got all this free extra  
2 protein with your apples and juice -- it was not really  
3 very good. So now we have this great product, and we  
4 don't have to drive through the orchard a million times  
5 and we are able to concentrate on other things, other  
6 items that we use to grow a good apple. We can thin  
7 good, we can grow good size, we pack it.

8 But you know, us growers don't have a big  
9 research and development department. We can't switch  
10 gears right now. We really need this pheromone  
11 technology and if we had to all of a sudden just drop  
12 out and not use that, there wouldn't be any organic  
13 apple industry. And right now, 100 percent of us are  
14 using this product.

15 In the old days before pheromones, there was  
16 3000 acres of organic, now there's 14-16,000 acres of  
17 organic. It's a very competitive industry, and big  
18 corporations are getting in on it now. Small growers  
19 like myself and my friends need to have this edge. We  
20 cannot have a big disruption in our plan of attack of  
21 taking care of our orchards.

22 MR. RIDDLE: Time.

23 MR. DENEVAN: So, anyway, that's about all I  
24 can tell you.

1                   CHAIRPERSON CARTER:  Okay, questions or  
2  comments?  Jim.

3                   MR. RIDDLE:  Yes, how many -- you use the  
4  twist ties and approximately how many of those do you  
5  put on per acre?

6                   MR. DENEVAN:  Well, it depends on how many  
7  trees per acre, but typically about 400 per acre.

8                   MR. RIDDLE:  400 per acre.

9                   MR. DENEVAN:  If we have a big problem, we'll  
10  put double on the borders, especially if we've got bad  
11  neighbors, like abandoned growers.

12                  MR. RIDDLE:  And how much -- what are the  
13  labor costs or time to apply those?

14                  MR. DENEVAN:  It's about probably -- oh,  
15  about \$200 an acre to put them up.

16                  MR. RIDDLE:  About \$200 an acre.

17                  MR. DENEVAN:  And then the pheromones are  
18  about \$100 an acre.

19                  MR. RIDDLE:  And then removal, how is that  
20  handled?

21                  MR. DENEVAN:  Well, we prune the trees, and  
22  after you prune so many years -- you put them at the  
23  tops, and you're always pruning the tops of the trees  
24  to bring them down, and they work most effectively at

1 the tops of the trees, so we're pruning those off.  
2 You'll see a lot of pheromone orchards where you see  
3 old pheromones, but all the active ingredients are gone  
4 from those pheromones after 120 to 140 days.

5 MR. RIDDLE: So they aren't physically then  
6 removed and disposed of, they just go down with the  
7 prunings, is that --

8 MR. DENEVAN: They go down with the prunings,  
9 yes.

10 MR. RIDDLE: So to remove them would be  
11 looking at the same approximate cost, \$200 an acre,  
12 something like that, labor costs --

13 MR. DENEVAN: Yes, but removing in ten years  
14 worth of them in some of these orchards would be really  
15 expensive.

16 MR. RIDDLE: Well, the first time, but after  
17 that --

18 MR. DENEVAN: Yes, if you think it's  
19 necessary. I mean you'll find other types of things  
20 like plastic or straps for cropping, you'll find all  
21 kinds of other things out there in the trees that are  
22 not organic that have no active ingredients after so  
23 many years as well.

24 MR. RIDDLE: Well, one of the requirements

1 for plastic mulch under the Rule is removal at the end  
2 of the harvest or growing season, so growers have to go  
3 through that labor expense if they choose to use  
4 plastic mulch.

5 MR. DENEVAN: Well, you know, I've never  
6 tried to remove them before. I mean they remove  
7 themselves pretty much, and their little ties are  
8 smaller than a pen. You've got 400 per acre. I mean  
9 if we had to do that, we would, obviously because we're  
10 in a bind otherwise.

11 CHAIRPERSON CARTER: Okay, thanks. Kim.

12 MS. BURTON: Hi Bill. I bought fruit from  
13 Bill -- this is a nice surprise to see him. He used to  
14 grow the worms. I was a fruit buyer for five years  
15 when we first purchased Saniker's Organic (ph) and Bill  
16 and I traveled to his orchards extensively. And Bill  
17 as you were discussing codling moths and that, a flash  
18 went in my brain about the mold. What happens is that  
19 the codling moth bore to the core and they form a mold  
20 which is a toxin, which is patulin (ph) and there is  
21 now a huge FDA push to control patulin (ph) in apple  
22 juice. And I didn't relate the two until recently.  
23 You have to control the patulin (ph) and it's pretty  
24 much coming down to growers and we're saying pretty

1 much we have to have very, very good quality fruit to  
2 control this, so again, I think this is a tool these  
3 growers have to have. It's an FDA mandate.

4 MR. DENEVAN: Yes, the FDA feels that the  
5 codling moth infected cores of the apples actually have  
6 a cancer causing ingredient.

7 MS. BURTON: Yes. 50 parts per billion.

8 MR. DENEVAN: And not only is it that, but it  
9 tastes bad too. I mean that's another by-product. It  
10 tastes metallic, it's really bad. I make juice too. I  
11 compete -- well, I don't really compete, but I made a  
12 little bit of juice, private label for people and I  
13 always try to use codling moth free apples in the  
14 juice. It just tastes so much better, you don't get a  
15 metallic --

16 MS. BURTON: It's not nasty.

17 MR. DENEVAN: Yes, you know. You were in the  
18 quality control -- but anyway, it's just revolutionized  
19 our whole approach to growing. I never would have had  
20 a job if pheromones hadn't started 12 years ago. I  
21 couldn't travel all over the world and meet other  
22 growers and collaborate on new strategies. I couldn't  
23 produce the good quality fruit that I have now. I get  
24 80 percent pack out at my --my apples go everywhere.

1 They don't just go into a juice bottle, or on the  
2 ground.

3 MS. BURTON: Well I guess -- and my point was  
4 that you used to probably sell a lot of those apples to  
5 juice and we could no longer purchase them because of  
6 the restrictions on the patulin (ph) levels. We have  
7 to no longer buy grounders and cull fruits. We pretty  
8 much have to have a pretty good quality apple.

9 MR. DENEVAN: Right, and to me it makes all  
10 the sense in the world to have people doing things --  
11 cultural things out there, not having abandoned  
12 orchards. For years I've railed against juice product  
13 -- people who are selling fruit to juicers that have  
14 the worms inside them, when we go out there and we  
15 prune the trees, we use pheromones, we put sulfur on  
16 it, we disc, we fertilize, we do the whole thing, and  
17 then there's people out there who were selling wormy  
18 apples. And the more pheromones, the less wormy  
19 apples. It's just an easy corollary.

20 CHAIRPERSON CARTER: I'm trying to get myself  
21 up to speed on this particular issue, but the main  
22 thing is that -- to eliminate the degradation from UV.

23 Is that -- do you have any experience from some of  
24 these --

1           MR. DENEVAN: Yes, when I first started we  
2 had 90 day pheromones and there was a competitive  
3 market out there -- Concept and Biocontrol both had  
4 products out there. Biocontrol never missed a beat.  
5 They had these good class 3 inert UV inhibitors in  
6 there that did the job of not allowing this pheromone  
7 to decay, but it did okay at 90 days, but our apples  
8 are 160-180 day product, from bloom to picking, and  
9 their competitor, Concept, had a bunch of bad  
10 ingredients, they didn't have the UV inhibitors and the  
11 products were not dispersed properly. These products  
12 broke down, were not effective, and then I would go up  
13 and pick up these orchards right after they got wormed  
14 to death and go in with my pheromones and be able to  
15 have a product. And this was happening to a lot of  
16 different people that would use -- and there were some  
17 other products too that were not effective.

18           Right now we have a product that we can use -  
19 - there's a couple of different companies that have it  
20 now, and this product is good for 140 to 160 days in a  
21 temperate climate. Maybe in Fresno or Bakersfield it's  
22 not quite as good, but in the northwest and the central  
23 coast where I am, we can use one hanging per season a  
24 lot of times. And that just saves you so much time and

1 money, and like I said, you can focus on other aspects  
2 of growing apples besides chasing worms all over the  
3 orchard, which are kind of hard to see.

4 CHAIRPERSON CARTER: Now you're saying that  
5 there's a 160 -- where's the window where it's really  
6 susceptible to the codling moth?

7 MR. DENEVAN: Well, the first flight is the  
8 most important, and whatever survives that first  
9 flight, it goes -- it'll recane exponentially other  
10 generations. You can go from either -- you can go from  
11 a minimum of one generation and a half, say, in western  
12 Washington where it's like a cold storage, to  
13 Bakersfield where you can have three or four  
14 generations. So you can imagine, and each female can  
15 lay 50 eggs, so multiply it out. You've got a couple  
16 escaped females, you can go from 20 percent damage in  
17 the first generation to 60 percent damage in the second  
18 generation, to 150 percent damage in the third  
19 generation. But you know what 150 percent is? It's  
20 like buckshot. Somebody took a buckshot and shot the  
21 apple full of holes.

22 CHAIRPERSON CARTER: But what I'm asking is  
23 as far as the stage of growth of the apple, when it is  
24 most susceptible?

1           MR. DENEVAN: Well the first -- about a month  
2 after bloom, in May and then -- but it can go all the  
3 way until harvest. You could be out there two days  
4 before harvest and it could just so happen that the  
5 temperatures are right and the populations are right,  
6 that your orchard could be inundated with 50 percent  
7 codling moth from having only five percent only a  
8 couple days before. And what a surprise, to go through  
9 the whole year, put out all that money, thinning  
10 apples, putting the fertilizer out, watering the trees,  
11 getting your pickers ready, and you go out there and  
12 all of a sudden you get these little stings right -- a  
13 couple days before harvest, and it makes it  
14 unmarketable. So these are the kinds of things that we  
15 have to deal with. It's not a native pest to the  
16 United States, and before the 1900's, before we had  
17 mass transportation and people bringing apples all over  
18 the place, there wasn't a problem with this. But this  
19 is only way we can deal with it right now is using  
20 pheromones. These old methods that I talked about with  
21 the oils and so forth, that I used for so many years,  
22 they're a joke. They don't work. And I just can't  
23 farm like that.

24           CHAIRPERSON CARTER: Yes, Owusu and then

1 Rose.

2 MR. BANDELE: Yes, in response to your  
3 question dealing about the main function, it was my  
4 understanding that I think two of your notes were for  
5 UV inhibitions but the big thing was primarily an anti-  
6 aphid -- I think there was more than one function.

7 CHAIRPERSON CARTER: Alright, Rose.

8 MS. KOENIG: Were you part of the  
9 petition..., getting the petition looked at -- and you  
10 were aware -- I mean in your case it also is not -- I  
11 meant these things are not in contact with the product,  
12 right?

13 MR. DENEVAN: Never.

14 MS. KOENIG: So why would you go ahead and go  
15 through that petition process?

16 MR. DENEVAN: Well, the reason why we were  
17 worried about it is because there were class 3 inerts  
18 that were in there --

19 MS. KOENIG: So you knew there was a question  
20 as a producer, correct?

21 MR. DENEVAN: As a producer, all the growers  
22 are concerned about every product that we use in our  
23 little tool box of organic tools, from sulfur, to BTs  
24 to -- especially to pheromones, and every single

1 grower, every day, day in and day out I hear people  
2 saying, what is NOP doing when they ask us growers what  
3 we use, what our tools are? how we operate. You know,  
4 are we going to be able to continue farming? All it  
5 takes is one little misstep and one year and you can be  
6 paying back debt for years and years. I made a mistake  
7 in 1998, I had bad weather, I sold some of my red  
8 delicious late. I lost \$50,000. All it takes is one  
9 little -- not using the material at the right time in  
10 the right place, in the right conditions and you're  
11 out. You know, you can't mess around with these kind  
12 of important issues as far as strategy of growing. And  
13 the growers have been asking me to come here to find  
14 out -- to get a feeling for NOSB. I've never been to a  
15 meeting before. Things come down the pipe, and I get  
16 trickle down of materials that happens at the meetings,  
17 and I got concerned myself, and I thought I'd come and  
18 find out.

19 MS. KOENIG: I'm just asking the question  
20 because I appreciate the fact that you, as a grower,  
21 diligently looking at products that are important to  
22 your operation, and although in this case it's  
23 something that doesn't even come in contact with your  
24 product, but you're going through the petition process

1 to make sure -- to insure that you stay in operation.

2 MR. DENEVAN: Yes.

3 CHAIRPERSON CARTER: Okay, Dennis.

4 MR. HOLBROOK: As a citrus grower, I can kind  
5 of relate to what you're saying. What efforts are  
6 being made as far as biological control?

7 MR. DENEVAN: Well, that's a good question.  
8 Actually what we do is -- I'm working with the  
9 University of California using two different bugs from  
10 China -- they're called terracitoids (ph) -- and they  
11 lay their -- I don't want to get technical, but they  
12 have ovidepositors that lay their legs inside the  
13 cocoons of codling moths. I've been releasing those in  
14 my orchard. These are bugs from China that they  
15 collect, and they have in an insectory in UC and they  
16 work pretty good. I mean, you want to use as many  
17 materials as you can. You can't just go out there and  
18 say pheromones do everything. And these bugs are  
19 really doing a good job of laying their eggs inside of  
20 the cocoons of codling moths at this time a year and a  
21 little later in my area, and they naturalize in the  
22 area. And I think it's fantastic.

23 The other thing that we did is we -- the  
24 other thing you should know is that birds and bats eat

1 -- we have bat houses and bird houses -- we use those  
2 materials. But you know the exponential nature of this  
3 bug -- you're dealing with something that's a monster.

4 It can just infest 200 percent damage in your crop in  
5 a matter of a couple years. You have to have as many  
6 tools, like I said, as many tools as you can get.

7 We also use oil -- we use smothering oil when  
8 we have big populations, and we monitor everything. We  
9 have pheromones that tell us exactly the density of how  
10 much codling moth is living in the orchard, and we have  
11 strategies that go along with whatever that density is,  
12 whatever is needed in that particular climate,  
13 microclimate. So there's a lot to it. It's exciting.

14 I love it. I'm in my element when I'm walking up and  
15 down the orchard, looking for codling moths.

16 CHAIRPERSON CARTER: Okay, other comments or  
17 questions? Thank you, Bill.

18 MR. DENEVAN: Thank you.

19 CHAIRPERSON CARTER: Okay, next is Jim  
20 Cranney followed by David Engle.

21 MR. CRANNEY: Thank you very much. My name  
22 is Jim Cranney, I'm from the US Apple Certification,  
23 and I'm here representing the nation's 8000 apple  
24 growers, including the nation's organic apple growers.

1 I'm here today to communicate with the Board the  
2 serious concern that we have on the issue that you just  
3 heard about, which is the Board's policy on inert  
4 ingredients, and we're very concerned that it will  
5 destroy organic apple production in the United States.

6 I just wanted to outline the problem  
7 somewhat. The problem is that there are 40 insect  
8 species -- over 40 insect species that attack apples  
9 and apple trees. And one of the most troublesome  
10 insects is the codling moth. The way this is a problem  
11 is that the codling moth, the females will lay eggs  
12 either on or near the fruit and then the eggs will  
13 hatch and then very small larvae will burrow into the  
14 fruit. In polite terms, as they feed on the apples  
15 themselves internally, they'll leave behind what we  
16 call apple frat or insect fras, which is essentially  
17 making the apples unwholesome and unfit for human  
18 consumption. Now, that's essentially the problem.

19 Now organic growers and also conventional  
20 apple growers for a number of years have been dealing  
21 with this problem by using something known as mating  
22 disruption. The way that works is these pheromone  
23 dispensers are placed in the top parts of the apple  
24 tree, they're plastic dispensers that release a

1 pheromone, which is a sexual attractant, and the male  
2 codling moths are attracted to the plastic dispensers  
3 instead of to the female moths, and essentially you  
4 have a disruption in the mating pattern, and the  
5 females do not become fertilized.

6           So essentially, that is how industry has been  
7 dealing with this problem. It's been an extremely  
8 effective method of control, and now we have a serious  
9 concern that the Board's policy may actually end  
10 organic apple production as we know it in the United  
11 States by its inert policy.

12           I guess I wanted to just explain and  
13 highlight the serious nature of the policy. It's my  
14 understanding that this issue will be dealt with at  
15 today's meeting and I think there's some possibilities  
16 that some language will be developed that will allow an  
17 exception here for these plastic dispensers.

18           As you've already heard the dispensers, the  
19 inert ingredient is actually enclosed in a plastic  
20 dispenser and the inert ingredient is not coming in  
21 contact with the tree or with the fruit, so it's  
22 contained in the plastic dispenser.

23           So we're just here today to support some  
24 solution to this problem. As just -- it seems that

1 this is an unintended outcome that the Board obviously  
2 wants to promote organic production here in the United  
3 States, but by virtue of this policy, it seems that it  
4 would defeat that purpose by destroying organic apple  
5 production.

6 In closing, in the end, consumer prices for  
7 organic apples could go through the roof. So we wanted  
8 to support the language and the change that will be  
9 probably discussed today, and with that I think I'll  
10 just end my comments. I think you've heard quite a bit  
11 from Bill on the technical aspects of it and what the  
12 problems are. I have some written comments on it that  
13 I'd like to submit to the Board if that's possible  
14 today.

15 CHAIRPERSON CARTER: Okay, Kim. Kim, Jim,  
16 and then Owusu.

17 MS. BURTON: The petitions that we have  
18 received for the pheromone inerts thus far have just  
19 been for the twist ties, and as the TAP review has been  
20 completed, there's also foliar sprays and I guess  
21 sticky trap. Are these just not used as extensively?  
22 That would be my one question, and then second, are  
23 these plastic dispensers in what their use is stand  
24 alone, without these other types of pheromone

1 applications?

2 MR. CRANNEY: To your first question, I don't  
3 know the answer to that, I would have to get back in  
4 touch with you to let you know what the answer to that  
5 is. Secondly, in terms of their stand alone  
6 capability, many -- as Bill already mentioned -- mating  
7 disruption really works very well on its own, but as he  
8 also indicated, it -- you do need certain conditions  
9 for it to be successful. For instance, mating  
10 disruption will not work very well if there are very  
11 high populations of codling moth. Secondly, it will  
12 not really work very well on very small, small areas.  
13 So because of that, growers tend to try to enhance its  
14 effectiveness by not relying on it as just a stand  
15 alone mention of control. As Bill mentioned, it's --  
16 in apple production you need much more of an integrated  
17 approach because for many of these insects there is no  
18 silver bullet that will actually control it.

19 CHAIRPERSON CARTER: Jim.

20 MR. RIDDLE: Yes, thanks for your comments.  
21 I wanted to ask the same question I asked Bill, and  
22 that is, what's your sense in terms of members of your  
23 association ability to support a requirement to remove  
24 the plastic dispensers at the end of the harvest or

1 growing season?

2 MR. CRANNEY: I would have to agree with Bill  
3 that that would be, I think, very difficult to  
4 accomplish. It seems that it would be extremely  
5 expensive to be able to accomplish, and I don't think  
6 today I would be prepared to agree that that would be a  
7 real possibility.

8 MR. RIDDLE: Okay, thanks.

9 CHAIRPERSON CARTER: Let's see, Owusu and  
10 Jim.

11 MR. BANDELE: Jim asked the question I was  
12 going to ask, but I would like to just follow up, you  
13 said if it's not a real possibility, are you saying  
14 then that if the Board decided that the ties had to be  
15 removed that you couldn't -- under what circumstances  
16 could you not do it at all?

17 MR. CRANNEY: Well, what I'm not prepared to  
18 say right now is whether or not that additional cost  
19 would be necessary -- or, not whether the additional  
20 cost -- that the growers would be able to absorb that  
21 additional cost and still be able to produce a  
22 commercial product that would be -- that they would be  
23 able to sell in the marketplace at a reasonable price.  
24 When you add such levels of additional cost, you have

1 to be able to expect that those costs will be passed on  
2 to someone else because I feel pretty confident today  
3 to say that most organic farmers would not be able to  
4 absorb that additional cost in their production and  
5 still maintain a level of profitability that they need  
6 to stay in business as an economic issue.

7 So I wouldn't be prepared today to say yes,  
8 that the industry would be able to, from an economic  
9 standpoint to be able to do that without at least going  
10 into some additional analysis and consulting with the  
11 industry.

12 MR. BANDELE: As a follow up, I understand  
13 that there's a range of sizes, but could you give an  
14 average return per acre?

15 MR. CRANNEY: Well, I can tell you that the  
16 apple industry has been actually in a depression --  
17 conventional growers and organic growers over the past  
18 -- well, since 1996, and the industry has lost  
19 approximately \$1.7 billion dollars since that period of  
20 time. I don't think very many apple growers are making  
21 very much money, if at all. I can't speak for  
22 individual organic growers, but you know, perhaps Bill  
23 would have something to say about that.

24 MS. BURTON: Do you have any comments on

1 that?

2 CHAIRPERSON CARTER: Okay, come on.

3 MR. DENEVAN: Yes, let me --

4 CHAIRPERSON CARTER: Identify yourself again  
5 for the mike.

6 MR. DENEVAN: I'm Bill Denevan, I'm an  
7 organic apple grower, an advisor. I have to say that  
8 the prices we're getting for juice are actually less  
9 than they were 25 years ago for organic apple juice.  
10 25 years ago I was getting \$175 a ton. I'm not getting  
11 that much now. And as far as my pack growing, which is  
12 my main bread and butter, thanks to the pheromones, all  
13 of the conventional growers are in a total depression.  
14 We're getting subsidized from the government right  
15 now. Last year I got \$10,000 from the government.  
16 This year I don't know what else I'm going to get --  
17 we're starting to be subsidized like wheat farmers  
18 because we have lost so much money to Chinese  
19 concentrate, competition. All the conventional growers  
20 are jumping into this market, big corporations are  
21 putting all the little organic growers out. It's a sad  
22 situation. Every penny that we have to spend,  
23 misguided penny, is important to us.

24 MR. RIDDLE: But just to follow up, same

1 question, an acre of organic apples, what would be  
2 reasonable gross value -- dollars?

3 MR. DENEVAN: You know, we do say 15 to 20  
4 tons to the acre. We get about \$400, maybe \$600 a ton,  
5 but the costs are built into that -- incredible costs.

6 I've had years like 1998 where I lost \$50,000 doing  
7 this, and I'm still paying that money back at \$1000 a  
8 month for that mistake of a year. And the premiums  
9 that we're getting organically are like typically only  
10 about \$2 or \$3 a box, over conventional, and that  
11 doesn't really make up for the extra costs we have to  
12 make. I don't see it getting any better with big  
13 companies like -- I won't name their names -- but huge  
14 companies are getting in there with thousands of acres,  
15 just like they have in the vegetable market against the  
16 vegetable growers, and cutting us down to size.

17 You know, I speak for the middle and lower  
18 sized growers, not for the big guys that can work on  
19 margins that are less than profitable and control  
20 market space and not care to lose money, if they lose  
21 money.

22 CHAIRPERSON CARTER: Okay, Nancy and then  
23 Jim.

24 MS. OSTIGUY: This is a question that if the

1 Board wants to consider removing the twist ties, we  
2 really need to look into that. I can't imagine finding  
3 a twist tie when the tree is out there. It's much  
4 easier and much quicker, monetarily, in terms of the  
5 hours you have to pay, to put the tie on, rather than  
6 searching the tree to find it again.

7 MS. BURTON: That was my comment, for Bill to  
8 give us a realistic view of that. I mean I -- you know  
9 I can envision you putting them on, but to remove them  
10 you would also have to wait until the tree is bare  
11 without leaves and fruit, and in that time, you have a  
12 whole season that could pass and some of them could get  
13 blown away and then you've got to go and pick those up.  
14 To me it seems like a logistic --

15 MR. DENEVAN: Yes, they're lightly twisted  
16 on the tree and they -- some of them do fall off, but  
17 most of them -- the vast majority of them stay on. But  
18 when you're talking -- I have both kinds of trees out -  
19 - old fashioned trees that are 20 feet high -- I can't  
20 imagine people hanging out on the limbs to go, oh,  
21 there's one -- it's going to cost a fortune. Now, on  
22 some semi-dwarf trees you could take them off, and  
23 maybe we should be encouraged to remove them after so  
24 many -- five years or so, to remove as many as we can,

1 but not to remove them year after year after year,  
2 because it's just too darned expensive.

3 CHAIRPERSON CARTER: Question is on a mature  
4 tree, 20 foot tree, about how many would be on there?

5 MR. DENEVAN: Well, that's a good question.  
6 On big trees, the pheromones don't work as good as on  
7 the smaller trees. The bigger trees you have to put on  
8 double the amount of pheromones. I put on 800 per acre  
9 -- I put on double the dose on 20 foot trees, but on  
10 the smaller trees I put 400 to 600, depending on what  
11 the pressure of damage is. And it would just -- just  
12 to be up in those ladders -- I mean if you have dwarf  
13 trees your insurance is less than if you have tall  
14 trees. The less times you go up to the top of the  
15 tree, the better.

16 CHAIRPERSON CARTER: No, I have a proud  
17 history of falling off ladders so I understand that.  
18 But I mean as far as the number of actual ties on a  
19 tree?

20 MR. DENEVAN: There's about eight.

21 MS. BURTON: And would you typically prune  
22 those off, or would they sometimes stay --

23 MR. DENEVAN: A lot of them will stay on  
24 there, but you know, if they're on too tight, they'll

1 girdle the tree, so I put them on loose, and they're  
2 kind of like a bread tie, so if you put them on loose  
3 they'll stay on there, but a good chunk of them will be  
4 pruned off. Of course they end up on the ground and  
5 then you disc them under, but I mean I don't know what  
6 level -- I think maybe -- I hadn't thought of this  
7 before, taking them off is kind of a surprising idea.

8 MS. BURTON: This Board loves to do that.

9 CHAIRPERSON CARTER: That's why you're here,  
10 right?

11 MR. DENEVAN: Why did I come here? Make more  
12 work.

13 MS. BURTON: No, we appreciate your comments.

14 CHAIRPERSON CARTER: No, you know, we're all  
15 searching to get resolution on this.

16 MR. DENEVAN: I think after -- but I can see  
17 after ten years of putting them on there, it will look  
18 kind of funny with all that plastic on there -- those  
19 ties on there. I think maybe -- maybe we could try to  
20 remove them every once in a while, but we shouldn't be  
21 required to get every darn one off the tree.

22 MS. BURTON: Could it be part of your  
23 handling plan, versus an annotation that the Rule would  
24 require you to have?

1           MR. DENEVAN: I would think maybe every five  
2 -- four or five years you remove them and get them out  
3 of there, because it does look repulsive. As far as  
4 causing any disease or any kind of effect to the  
5 product, I don't see how it could do that.

6           CHAIRPERSON CARTER: Okay Dennis?

7           MR. HOLBROOK: Just a question as to when you  
8 put the ties on, basically are you looking at just the  
9 outer edges of the tree, the upper -- the tops, sides?

10          MR. DENEVAN: The top 18 inches of the tree  
11 is where we put them.

12          MR. HOLBROOK: Okay, so when you prune, what  
13 do you normally -- how high --

14          MR. DENEVAN: Well, you don't prune that off  
15 all the time. You prune -- we put it right up where  
16 the new growth happens, then we hit it back pretty  
17 much, so -- but then when we're opening up the tree --  
18 a certain -- probably about one -- I'd say maybe one  
19 tenth of them come off, or one eighth of them come off  
20 when we prune, at least. At least. But like I said,  
21 there's no active ingredient after 120 -- 160 days --  
22 up to 160 days, then there's nothing going on, it's  
23 just a piece of plastic that looks ugly on the tree.

24          CHAIRPERSON CARTER: Alright. Other? Okay,

1       thank you very much.

2                   MS. KOENIG:    Could I -- I do have another --  
3       I was thinking in terms of other operations.  I mean if  
4       you think about tomato -- if anybody stake tomatoes,  
5       some people use plastic ties to stake the tomatoes and  
6       we don't require -- there's a provision for mulch, but  
7       there's not a provision for support plastic on  
8       tomatoes.  So even though, Jim, I understand your  
9       reason that mulch is a precedence, there's other, like  
10      you said, forms of plastic that are not within the  
11      rule, so I don't think we should get hung up on this  
12      issue, personally.

13                   MR. CRANNEY:  Yes, if you don't mind, if I  
14      could make just two additional points.  First is I  
15      really came to speak on behalf of apple growers, but  
16      really pheromones are used in the pear industry, and I  
17      believe, although I'm not sure, also in some other tree  
18      fruits, possibly in cherries and peaches.  So I just  
19      wanted to let you know that this problem is not really  
20      just restricted to apple production.  It really would  
21      be a more generic problem with other tree fruits as  
22      well.  So that's one point I wanted to make.

23                   But the second one is there was some  
24      discussion earlier about use of juice apples in

1 processing plants and the presence of worms. To my  
2 knowledge, USDA grade standards do not allow even one  
3 live worm in an apple that's used in a processing  
4 plant. So that's one point, and I wanted to remind the  
5 Board that many apples are rejected on a daily basis  
6 from processing facilities because of the presence of  
7 even one live worm, so that's to say that the tolerance  
8 for live worms in processed products is zero.

9 CHAIRPERSON CARTER: Thank you Jim, and I  
10 would say I have had some contact from peach growers on  
11 this issue. Okay, David Engle, followed by Kelly Shea.

12 MR. ENGLE: Good morning. My name is David  
13 Engle. I'm a dairy farmer from Wisconsin. I'm also  
14 the executive director of the Midwest Organic Services  
15 Association. On behalf of us all here today and that  
16 have come before, I want to thank you for allowing us  
17 to provide comments to you on issues of interest to all  
18 of us. These observations I'm sharing may appear to be  
19 like sour grapes, but they are not meant to be as such.

20 As a way of summarizing my observations and  
21 putting them in a context, I would like to share the  
22 following story with you. There was once a used horse  
23 dealer who was in the process of selling a used horse  
24 to a preacher. The used horse dealer just happened to

1 have a special horse, he explained to the preacher, and  
2 this horse would only respond to the commands "Praise  
3 the Lord" to go forward, and then you had to say "Amen"  
4 to get the horse to stop. He thought this was  
5 something the preacher would like, and indeed, this was  
6 exceedingly pleasing to the preacher who wanted very  
7 much to buy the horse, so he did. He rode off on the  
8 horse and as he was going along just fine, thinking of  
9 what a great horse he had and how impressed his wife  
10 would be when she saw it and how special it was, when  
11 all of a sudden his daydreaming was interrupted as he  
12 came up to a cliff. The preacher immediately hollered  
13 "Whoa" but the horse just kept on going. He pulled  
14 back on the reins to no avail, hollered "whoa" some  
15 more and when the horse continued to ignore him and  
16 kept on going forward, the preacher realized his end  
17 time was nigh and started to pray to the Good Lord as  
18 befit the occasion. It was a short prayer and when he  
19 finished, he said "amen" and the horse stopped, right  
20 at the edge of the cliff. The preacher looked over the  
21 cliff, shaking in his boots, whistled low in his  
22 breath, shook his head and said, "Praise the Lord!"

23 Now, I've only been to four other NOSB  
24 meetings, starting with the NOSB meeting in ... and

1 each meeting since. So I do not have a lot of  
2 experience in the history of these matters, but my  
3 observations based on these few meetings is two-fold.  
4 It appears that the decisions the NOSB makes on  
5 materials are not as consistent as they might be, and  
6 b) it appears that the recent phenomena of the LP  
7 providing interpretations to operators that contradict  
8 something an accredited certification agency has  
9 already decided in that operator's situation does not  
10 reflect well on the process. Indeed it appears to run  
11 counter to the process.

12 The upshot of which, similar to the story  
13 about the special horse and the preacher leaves us with  
14 mixed signals, so to speak, as the NOSB and NOP are the  
15 ones who are responsible for and who are looking to  
16 provide the requisite guidance and direction for us to  
17 -- as to how the NOS will be implemented.

18 Some examples of what I'm talking about. At  
19 both the October 2001 NOSB meeting in DC and the MAY  
20 2002 meeting in Austin, there were several references  
21 to the need to avoid both annotations and sunsets.  
22 Indeed for the copper annotation in October, the vote  
23 was dependent upon a ruling from the OGC, I believe, as  
24 to whether a sunset could be included in the

1 annotation. This was allowed eventually, but the  
2 implication was still that sunsets are not a good way  
3 to carry approval materials forward in general.

4 At the May meeting it was stated the  
5 annotations for calcium oxide were getting too specific  
6 and that it was not good to have a product approved  
7 with such specific annotations. The same concern had  
8 been raised at the October meeting about copper and its  
9 specificity to rice production.

10 However, at the September meeting there was  
11 not any hesitation to use sunsets and no concern  
12 regarding specificity in allocations. There was a  
13 modicum of reference to the automatic sunset for all  
14 materials but the spider ... sodium nitrate has its own  
15 special sunset date notwithstanding.

16 Propylene glycol was approved with the  
17 annotation for treatment of acute ketosis of ruminants  
18 only. What about a subacute prophylactic? She might  
19 have a ketosis, let's try some propylene glycol  
20 situation? What about other medicinals whose use will  
21 also be in acute/subacute situations, but it is not  
22 ketosis? Ditto for potassium sorbate, which was also  
23 approved with an annotation, only for use in aloe vera  
24 production for livestock production. What about other

1 products for livestock production that use potassium  
2 sorbate in a similar manner for which a substitute is  
3 not readily available?

4           Neither of these examples are necessarily  
5 inconsistent, material ones, but they do reflect a  
6 signal being sent, and I can assure you that as a  
7 representative of a certification agency, and one who  
8 has to answer questions from operators about materials,  
9 sure as shooting, the question will come up about why  
10 such and such a product with propylene glycol or  
11 potassium sorbate in it cannot be used. And the answer  
12 is because the NOSB decided to restrict the annotation,  
13 but the result is an inconsistency.

14           ... the tetrasodium pyrophosphate in the  
15 spirulina (ph) decision were specific to an industry  
16 and to a product, and the decisions were positive for  
17 that industry or product. On the other hand, the  
18 calcium oxide/calcium hydroxide decision made in Austin  
19 was negative and had much less specificity attached to  
20 it, even though as is reflected on the petition  
21 process, and is to be expected, there was one company  
22 wanting to get it approved. So that product could  
23 then be marketed in the organic market place.

24           It was also stated in Austin concerning

1 cal/ox that there were substitutes out there. Let's  
2 let them use the substitutes, but, from both the  
3 performance of TSPP and Biocal, it was stated that the  
4 substitutes were no substitute, i.e., it did not do the  
5 same thing. TSPP was approved. Cal/ox, Biocal was  
6 not. An inconsistency or worse.

7           Although it has not happened yet, I have a  
8 concern about mineral oil and that perhaps we will end  
9 up making this material not available to companies  
10 making livestock supplements, even though it is used in  
11 extremely small amounts and substitutes are not readily  
12 available.

13           MR. RIDDLE: Time.

14           MR. ENGLE: I need to wrap this up. I have  
15 other concerns which you can read there, and I  
16 summarize some suggestions for improving the process.  
17 Thank you.

18           CHAIRPERSON CARTER: Okay, great. David,  
19 thank you, and questions? In his written comments he  
20 did give three specific recommendations there, so --  
21 okay, Kelly Shea followed by Emily Brownrosen.

22           MS. SHEA: This is Kelly Shea. I'm actually  
23 on the agenda to present tomorrow, and neither myself  
24 or Katherine DiMatio will be presenting the OTA

1 position on the clarification of livestock. Okay?

2 CHAIRPERSON CARTER: Okay, yes. Alright,  
3 we'll bring you on tomorrow then. Emily followed by  
4 Marty Mesh.

5 MS. BROWNROSEN: Good morning. Nice to see  
6 you all here. I'm Emily Brownrosen with Organic  
7 Materials Review Institute, and I'm glad to be here to  
8 be able to talk to you today. I have a couple of  
9 different issues to talk about, and I have written out  
10 testimony that I'll give to you, and I'm sure I won't  
11 get to talk about it, so I'm just going to give  
12 highlights of each one, and if you want to ask me any  
13 questions about it, fine.

14 First point is chlorine and organic food  
15 production. At the last meeting ... brought this up  
16 and I'd like to stress it again. We are concerned that  
17 the language that's been issued in the preamble and in  
18 the Frequently Asked Question regarding chlorination of  
19 disinfecting wash water misleads processors into  
20 thinking there is no limit on the amount of chlorine  
21 that can contact food. This is clearly different than  
22 the NOSB recommendation which is intended to limit what  
23 was in contact with food, not simply the effluent.

24 There is a good reason to be concerned about

1 environmental impacts of ethylene, but that was not  
2 really the consideration at the time the NOSB reviewed  
3 chlorine for use. There is serious concerns about  
4 carcinogens contacting food. And while we recognize  
5 food safety issues are important, we just urge the NOSB  
6 to review the chlorine annotation, and to review the  
7 additional chlorine compounds that have been  
8 petitioned, and consider to apply, whether you should  
9 apply an upper limit on the amount of chlorine used in  
10 direct food contact. That's point one.

11 My next topic is on excipients and livestock  
12 medication. Excipients is an important issue. I've  
13 been bringing this up. The NOSB has been doing a good  
14 job of starting to review medications that are really  
15 needed for animal production. The Rule requires  
16 synthetics on the list, including livestock health care  
17 have to be on the -- you know, synthetics used in  
18 production have to be on the list. And while this may  
19 seem like a low priority, it shouldn't be entirely  
20 overlooked. Given that excipients may result in  
21 adverse environmental impacts, greater persistence in  
22 the food animal residue in either the active or the  
23 excipients themselves, a comprehensive allowance of all  
24 excipients may not be compatible with organic

1 principles. In many formulations, the amount of  
2 excipients will exceed the amount of the active  
3 ingredient.

4 We had a lot of dialogue with members of our  
5 Advisory Council, so I have kind of a long seven page  
6 thing that I will hand out to you, but you know --  
7 allow them all, allow only some, allow which ones would  
8 be the categories and back and forth and back and  
9 forth. And basically what we came to agreement on sort  
10 of a general policy, like criteria that could be used.

11 We believe that any excipients that are classified as  
12 grass by FDA should be allowed. Any that are approved  
13 as food additives in 21 CFR 171 should be allowed. And  
14 that all others should be reviewed and included in the  
15 context of the TAP review in the future. So when you  
16 do future TAP reviews of generic formulations,  
17 especially the prescription drugs, where the only  
18 information about these additives will generally be in  
19 the new animal drug application -- FDA approves these  
20 often on a case by case basis for use with that drug.  
21 So those, I think, could be included into --  
22 incorporated into the TAP review and then if a material  
23 and along with its excipients is reviewed, it'll be  
24 approved as a package on the list.

1           So, for implementing those, we would  
2 recommend that you -- anything you've currently  
3 approved as a generic material be just approved with  
4 whatever excipients commonly in the formulation, and  
5 that at the sunset period, when you reevaluate those,  
6 you would at that point look at the excipients and see  
7 if there's any problem with any of them. So that would  
8 give time, that would not shut off the drugs that  
9 you've allowed, and then there will be time to take a  
10 little harder look at this more carefully as time goes  
11 on. That's a real simple approach.

12           And one other point was -- I went back into  
13 the old files and found -- talking about livestock  
14 materials in general and the problem with getting good  
15 TAP reviews and what information you're really looking  
16 for. The criteria that are in OP... in 1 through 7 for  
17 review of materials don't have a great deal of -- and  
18 there are some that -- you know, you can talk about  
19 livestock issues, but they're not the best criteria for  
20 reviewing particularly an animal drug. So back from  
21 the old ancient files we have a copy of the 1994  
22 recommendation from Dr. Gary Auswhiler (ph) who was a  
23 veterinarian on the first NOSB with a long list of  
24 suggested criteria, so I've copied that for you and on

1 the back of it, put the 1999 AOS criteria for livestock  
2 -- all livestock materials. So I think this would be a  
3 starting point to look at and consider if you want to  
4 propose some new criteria for reviewing livestock  
5 materials in general. Like you know, you have separate  
6 criteria for processing -- I think it would get you a  
7 more targeted TAP review and better information.  
8 That's it.

9 CHAIRPERSON CARTER: Thank you, Emily. So  
10 we're going to get a copy of that?

11 MS. BROWNROSEN: Yes. I'll hand it out right  
12 now. Questions? Rose.

13 MS. KOENIG: I do want to comment on that  
14 point of Emily's. I think that -- you know, for me,  
15 going through those livestock materials last time I had  
16 a lot of philosophical questions and the reason why  
17 those came up was because I think you're right, Emily,  
18 that the TAP process was answering just general --  
19 general ideas that were not necessarily relevant -- I  
20 mean they're relevant to animal production, but there  
21 certainly could be better questions that would more  
22 specifically give us a better framework for  
23 understanding the impact of those materials.

24 MS. BROWNROSEN: I know a few of those TAP

1 reviews mentioned residues in animals, but it wasn't a  
2 question. And one of the reviewers brought it up and  
3 it wasn't routinely -- you know, it should become a  
4 routine when you look at a review like that.

5 MS. BURTON: I just had a follow up comment.  
6 One of your recommendations is that after we review a  
7 material that it's accepted in its entirety if it's on  
8 the national list, and that has been our intent, and  
9 that's how we have been reviewing materials just as  
10 long as I've been on the Board.

11 MS. BROWNROSEN: Well, this is kind of a  
12 borderline issue with the drugs. You're looking at  
13 generic, but then it's a formulated brand name product  
14 and there could be a range of materials added to it.  
15 So actually an appendix on this list here where we have  
16 -- ... actually went through all those materials and  
17 pulled out what the inerts are there, the incipients  
18 are in there. But in the case of over the counter, or  
19 FDA approved, you know, stuff that's readily available,  
20 that's one thing, but when you're reviewing a new  
21 animal drug application, I think it is more important  
22 to look and see what's in there, just to see if you  
23 want to restrict it and say only forms without  
24 formaldehyde or something like that. There's quite a

1 few things in there.

2 MS. BURTON: Okay.

3 CHAIRPERSON CARTER: Any other comments?

4 Okay, we're not done with public comment yet, but I've  
5 had a request from both sides here for a brief recess -  
6 - from Barbara and Jim, so we'll take a ten minute  
7 break and finish up with the public comments. If  
8 anybody hasn't signed up, you can come sign up here,  
9 also remember we do have public comment tomorrow  
10 morning as well.

11 (Whereupon, a 20 minute recess off the record  
12 was taken.)

13 CHAIRPERSON CARTER: Alright, let's see we're  
14 back for public comment, and now we are to Marty Mesh,  
15 and then we will start back through with those who  
16 weren't here and then Kim also has something -- comment  
17 to read into the record.

18 MR. MESH: Five minutes, right?

19 CHAIRPERSON CARTER: Yes, five minutes.

20 MR. MESH: Good morning, I have just a few  
21 comments. I'm glad that Jim Pierce was here this  
22 morning to read his own comments. I will say from my  
23 participation in international meetings that USDA  
24 should set a goal like European countries of a certain

1 percentage of land in organic production. It seems as  
2 though Europe has set goals -- ten percent by 2002,  
3 Germany higher, other countries higher, and then the  
4 rest of USDA -- I mean not the National Organic Program  
5 -- being able to develop policies that would help  
6 achieve that goal. So you could take that back to your  
7 colleagues.

8 I'm curious to get an update, if anything has  
9 happened on the government-mandated s... programs. I  
10 thought the ball was in y'all's court, and so -- and  
11 then I'm pleased to say that the industry, the  
12 accreditors and certifiers are working on developing --  
13 and I mentioned last time -- the standards  
14 interpretation projects so that we can help take some  
15 of the weight, we hope, off USDA with a limited staff,  
16 by providing consistent interpretations of the national  
17 Rule and having uniform standards in place which is one  
18 of the goals of the ALFA (ph), and so we look forward  
19 to working with USDA in developing that program. I  
20 think it will help -- help provide for consistency.

21 I wanted to say that under 2056012 newspapers  
22 on the national list that the annotation is that  
23 newspapers or other recycled paper without glossy or  
24 colored inks -- and I believe that this is left over

1 from many years ago when maybe lead-based inks were  
2 used, and black inks ... based inks first, and so the  
3 industry at one point in time said black ink's okay,  
4 but colored inks aren't. And as I look at the  
5 Washington Post this morning, seven out of 24 pages in  
6 section one had colored ink -- some colored ink on  
7 them. Three out of ten in another section. And some  
8 other newspapers ... with some four out of ten pages  
9 have some colored ink on it. And so I would think that  
10 the Board or another TAP review or something, should be  
11 relooked at as far as colored inks are. I just don't  
12 see how people can comply with that -- such an  
13 annotation that's so difficult.

14           And speaking of annotations, I'd encourage  
15 again consistency and simplicity in the annotations.  
16 It is very scary to me to hear the possibility of  
17 removing plastic strips from the tops of 20-foot trees,  
18 if that's where the discussion is headed, and I would  
19 urge you to think carefully before you require  
20 something like that, unless Jim really himself is going  
21 to go around to the apple trees.

22           MR. RIDDLE: I could reach, though.

23           MR. KING: Have ladder, will travel.

24           MR. MESH: The compost task force -- probably

1 needs some continual work on -- I think your policy  
2 statements -- the T... and ...T is still under review,  
3 it still doesn't help. I would agree with Emily's  
4 urging of a relooking at chlorine and I think that was  
5 about it for this morning. I'm certainly concerned  
6 that the feed -- I mean that replacement animals that  
7 some consistent policy is made for what medicines can  
8 be used on dairy stock. It seems to me as though it's  
9 all over the field in the certification world, even ...

10 Tomorrow, I think we're going to touch on  
11 packaged products, and again 100 percent organic,  
12 whether or not a fruit wax or coating on that  
13 constitutes -- I asked last time -- egg ... and still  
14 100 percent organic eggs.

15 CHAIRPERSON CARTER: Alright, thank you.  
16 Questions for Marty? You get off easy. Okay. Going  
17 back through, Mark Keating. Welcome Mark.

18 MR. KEATING: Good morning everyone. My name  
19 is Mark Keating. I work with Marketing Services Branch  
20 of the USDA, Agricultural Marketing Service. I'm here  
21 today on my own time, my own time, speaking my own  
22 mind. For those members of the Board that I have yet  
23 to meet, I've been working in organic agriculture since  
24 1988, and I spent my first ten years working in the

1 field, and also in a processing capacity, and the last  
2 five years I've been here in Washington, DC.

3           Definitely the highlight of my years of  
4 experience in organic agriculture was serving as the  
5 Agricultural Marketing Specialist within the NOP,  
6 working with the crops and livestock committee. It was  
7 very inspirational job for me and I did that for two  
8 years and nine months, until April of this year. I  
9 worked on the second proposed rule and the Final Rule.

10           Hugh Karreman's not here today, but he and  
11 Becky have a new daughter, Emily, a week old. But at  
12 one time on a drive down Lancaster County with Hugh and  
13 he turned to me and said, don't tell anybody this, but  
14 I would do this for free. And that's the way I felt  
15 about working the crop and livestock committee. It was  
16 -- I told people when they asked me what I do, I said,  
17 I've got the best job in the world, and it was a real  
18 privilege to work with the people on this Board that  
19 have carried over, and the ones that have gone on  
20 before who have gone to other responsibilities.

21           I'm here today to celebrate with concern.  
22 What are we celebrating? We are celebrating our  
23 organic producers. I think there's 15-20,000 certified  
24 or self-identified -- still -- organic producers around

1 the country and as I mentioned earlier, it's very  
2 inspirational what they've been able to contribute to  
3 our society. They're shattering the myth that  
4 industrial agriculture is either necessary or  
5 desirable. They are giving us the quality, quantity  
6 and safety that we demand in our food supply. And when  
7 you walk out into a diversified organic farming  
8 operation, like the one Mr. Denevan was up here  
9 discussing earlier, it's like walking back into the  
10 garden of Eden, and that is something that really we  
11 must acknowledge everyone who came forward and made  
12 that happen.

13 I'm also celebrating our consumer base -- the  
14 human community that has stepped forward and said we  
15 want real food. One thing the USDA has been clearly  
16 consistent about organic agriculture throughout the  
17 years is that it is no better than conventional  
18 agriculture. Organic food is no better than  
19 conventional food. True statement. But that does not  
20 mean that all food is created equal. There are  
21 differences, and the manner in which a food is produced  
22 and handled contribute to those differences. It just  
23 so happens that the things that we do in organic  
24 agriculture tend to contribute to quality, safety,

1 wholesomeness -- people are drawn to this and people  
2 are getting that message, I like to say one heart, one  
3 mind, one stomach at a time. And I think that's going  
4 to continue. Whatever the rate of conversion, our  
5 attention rate is quite high.

6           Concern. Concern today. I believe that the  
7 USDA has broken faith with the organic community and  
8 turned the implementation of the National Organic  
9 Program into a charade. We've long since missed the  
10 notion of organic production by neglect. But the  
11 Department of Agriculture seems intent on getting an  
12 organic program by neglect. The performance that I've  
13 seen in the recent implementation history of the NOP,  
14 the caliber of the work is disappointing. And when I  
15 look at the attitude and manner at which that work has  
16 been accomplished, I have to say it's disgraceful.

17           I take public service very seriously, and I'm  
18 embarrassed when I look at the manner in which -- the  
19 contempt and the scorn that has been visited upon the  
20 organic community who are citizens and tax payers and  
21 constituents who have come to the USDA to request a  
22 service that the law authorizes them to receive. I've  
23 been embarrassed by my Department's performance,  
24 particularly in the last six months.

1           The performance of the NOP will always be  
2 contingent upon its willingness to learn from, and  
3 respect, and work with the organic community.  
4 Fundamentally, the mentality I've seen at the USDA has  
5 been much too exclusive, and much too unwilling to be  
6 participatory with the organic community -- citizens,  
7 representative democracy -- Dave, how much time do I  
8 have?

9           MR. RIDDLE: Just a minute and -

10           MR. KEATING: Four and a half minutes, thank  
11 you. Couple of quick, quick examples. The scope  
12 policy that was issued on May 2, 2002 strictly  
13 Orwellian. There's no other way to describe it. It  
14 takes -- it says that the standards may be used to  
15 certify livestock and agriculture production, but the  
16 final rule and the regulatory text says that these  
17 standards may not be used for aquatic animals and  
18 aquaculture. This scope policy will tell you that we  
19 can have certified organic manure. We have spent 20  
20 years there's no certified organic manure. This scope  
21 recommendation says that -- policy -- dictated policy  
22 says that over the counter medications may be called  
23 organic. Was there any consultation with the Food and  
24 Drug Administration? I believe that they have some

1 purview over those responsibilities. I don't know if  
2 they were included in this decision-making process.  
3 Maybe, maybe not.

4 Quickly -- OECD conference was held about a  
5 month ago in Rosslyn, Virginia. Prior to leading the  
6 international gathering of regulatory entities  
7 discussing organic agriculture, we talk about the  
8 technical residue levels in pesticides, I can tell you  
9 there was no detectable residue of AMS presence at the  
10 OECD conference -- that was \$1.10 metro fare.

11 MR. RIDDLE: Time.

12 MR. KEATING: Time? Can I have one minute to  
13 summarize?

14 CHAIRPERSON CARTER: You can finish this  
15 thought.

16 MR. RIDDLE: Finish this thought, and then  
17 after that you can only respond.

18 MR. KEATING: Okay, well, I'm open for  
19 questions, so if anyone would care to ask me, I have a  
20 few other things that I'd like to contribute. Martin  
21 Luther King, Junior said, "The more ... the universe is  
22 long, but it bends towards justice. We will get  
23 there." William Brower said, "Don't ever trust  
24 politicians to solve your problems. Politicians are

1 weather vanes. Our job is to make the wind blow."  
2 That's what our Board is here to do for us. Thank you.

3 CHAIRPERSON CARTER: Okay. Comments or  
4 questions? Okay. Uruashi Ranga.

5 MS. RANGA: I think I want to speak tomorrow.

6 CHAIRPERSON CARTER: Okay. If you want to  
7 speak tomorrow, if you spoke today, you also need to  
8 sign up then for tomorrow. Uruashi, I put yours down  
9 for tomorrow. Let's see, Hugh Karreman -- and I did go  
10 through and see and I did not find any statement from  
11 Hugh, so -- recently -- so if we find something, we'll  
12 read that tomorrow. Then that ends all that are signed  
13 up. Kim has got some that she has received.

14 MS. BURTON: Yes. In my cab ride over here  
15 yesterday afternoon or evening -- it was late -- my  
16 cell phone rang, and a food broker was on the other end  
17 and he had just returned back from Europe after 10 or  
18 12 days and he was frantic about the stream of commerce  
19 posting, and most of us are aware of that. But he did  
20 quickly draft some comments and he wanted me to read  
21 those to you.

22 "Kim, in regards to our discussion concerning  
23 the USDA organic seal and the stream of commerce, I  
24 have the following problem. As you know, being a

1 major" -- and this is from Lauren Morbeta (ph) Pure  
2 Foods, President and CEO -- "As you know, being a major  
3 supplier of organic ingredients to food manufacturers,  
4 the stream of commerce is a very important issue. I  
5 have several food manufacturers who spent thousands of  
6 dollars on new labels which are already on products,  
7 waiting for release next week, and some of which will  
8 be put on all of their new productions to comply with  
9 the NOP rule. However, some of these products with the  
10 organic seal have organic ingredients considered stream  
11 of commerce ingredients.

12 "We understand from the NOP website that the  
13 stream of commerce ingredients are no longer allowed in  
14 products with the USDA organic seal. This is a last  
15 minute change that is causing many problems. These  
16 companies have already contracted, in many cases, used  
17 stream of commerce organic ingredients that are already  
18 in the inventoried warehouse, and in some cases, in  
19 their finished goods.

20 "We would appreciate you presenting these  
21 problems to the USDA for their review. We must allow  
22 stream of commerce materials to be used in products  
23 that contain the USDA seal. This will save hundreds of  
24 thousands of dollars to organic food manufacturers in

1 the United States. I have attached another letter from  
2 a food manufacturer explaining the effect of the stream  
3 of commerce issue and how -- and what issue it is  
4 having for them as well.

5 "Thank you for all your attention to this  
6 matter. Lauren Morbeta (ph), Pure Foods."

7 An attached letter is from Organic  
8 Ingredients, Joseph Stern, President.

9 "Attention NOSB regarding stream of commerce  
10 problems and confusion.

11 "Our company has been operating with an  
12 understanding that our ingredients can be used and  
13 placed in retail products, and (bold) that companies  
14 can then use a USDA organic logo as long as the product  
15 in stream of commerce have been produced and purchased  
16 prior to October 21, 2002.

17 "Our company and many others have spent tens  
18 of thousands of dollars relabeling our products. Only  
19 within the last month has the USDA stated that we  
20 cannot use the stream of commerce ingredients and use  
21 the USDA logo. We already have USDA logos on soups,  
22 sauces, pasta sauces and juices on the shelves  
23 throughout the country. Some of those products contain  
24 ingredients that have been accepted by Oregon Til (ph)

1 and comply under NOP, even though some ingredients come  
2 from off shore and from certifiers that are not yet  
3 accredited by the USDA. They are waiting for approval.

4 "This new interpretation of stream of  
5 commerce is both confusing and cannot be adhered to  
6 without a severe negative impact to our existing flow  
7 of business. Our losses would be devastating if we are  
8 forced to take this product off the shelves.

9 "Here are a couple of other examples where  
10 stream of commerce issues become problematic and  
11 confusing as stated for other customers of ours.  
12 Organic Ingredients supplies bulk ingredients to other  
13 major food manufacturers. Our customers have also  
14 developed and purchased labels with the USDA logo to be  
15 placed on approved organic retail products. Some of  
16 the ingredients that we are supplying from non-  
17 accredited certifiers, however the product has been  
18 approved by our certifier as organic prior to October  
19 21st, due to the understanding of the stream of  
20 commerce policy.

21 "We have purchased apple juice concentrate  
22 from Argentina that is certified by an IFOM (ph)  
23 certifier who is under review with the NOP  
24 accreditation process. They have been accepted as

1 organic by our certifier. This product is on the water  
2 presently. When it arrives in America in three weeks,  
3 it will be used in apple juice that will be labeled  
4 with USDA organic logo.

5 "We have ordered onions from Europe, a  
6 European company that was certified by an accredited  
7 EEC certifier. Their certifier has applied for  
8 accreditation and is in the "ARC branch" (ph) status.  
9 They have been accepted as organic by our certifier.  
10 This product has been produced and is waiting for  
11 shipment from Europe. It will arrive in America in  
12 about a month, and will be used in soup that will be  
13 labeled with the USDA organic logo.

14 "We believe that these situations fall under  
15 a reasonable stream of commerce policy, yet as the USDA  
16 recently made changes to the interpretation of not  
17 allowing the USDA label to be used, this presents a  
18 very serious problem for us and many other food  
19 manufacturers that have spent many, many months  
20 developing new labels with the USDA logo at a  
21 significant cost.

22 "We insist that the stream of commerce must  
23 allow us to use ingredients that are pending  
24 accreditation from the USDA and have been approved

1 prior to October 21st by our certifier. Without this,  
2 the losses we would experience would be devastating and  
3 quite frankly, we would contest that it would be a lack  
4 of clarity on the issue from the USDA for the cause of  
5 this loss.

6 "Your consideration would be graciously  
7 appreciated."

8 CHAIRPERSON CARTER: Alright, with that, then  
9 let's move on to an NOP update and discussion, and we  
10 call on Barbara Robinson and Richard Mathews.

11 MS. ROBINSON: Well, we haven't been doing  
12 too much lately.

13 CHAIRPERSON CARTER: Been pretty slow, huh?

14 MS. ROBINSON: Yeah. In case you haven't  
15 been to our website recently, we invite you to click on  
16 it as soon as possible, as soon as you can. It's brand  
17 new, been totally revamped and I think you'll find it a  
18 whole lot easier to use, and a lot easier to find what  
19 it is you're looking for. There are pop up menus all  
20 over the place, so whenever you go to click on  
21 something, it'll tell you what window you're about to  
22 enter. So we've done that.

23 Yes, we've been working on stream of  
24 commerce, and I'm going to let Rick talk about that.

1           The other thing we just recently become  
2 involved in is the Center for Food Safety has filed a  
3 petition for legal action with the Secretary because,  
4 as they allege, we have consistently refused to  
5 establish a peer review panel. So that is with the  
6 lawyers in USDA now. I don't exactly know what happens  
7 at this point because we've been a little busy trying  
8 to get to implementation, so other than answering  
9 questions from press and explaining myself to the  
10 Administrator and the Associate Administrator and the  
11 Secretary, I haven't really had time to ask what do we  
12 do now.

13           We're looking forward to Monday. We'll be up  
14 at the Whole Foods Market on P Street -- I think it's  
15 2121 P Street with -- oh, that's where we are now --

16           PARTICIPANT: Between the 13th and 1400  
17 block.

18           MS. ROBINSON: Well, somewhere. I'll find it  
19 by Monday. And the event is on the Secretary's  
20 calendar, so I'm hopeful that she'll be able to attend.

21           I guess that's about all I have to say before I turn  
22 it over to Rick. We're in a new fiscal year. Budget  
23 starts over, budget's no bigger. So that's where we  
24 are. Rick, you want to add something.

1           MR. MATHEWS: For -- in the area of  
2 accreditation, we have six new certifying agents that  
3 are being accredited. The letters have been signed for  
4 three of them, two of them are on the Administrator's  
5 desk for signature as of late yesterday, and we'll be  
6 getting at least one more first part of next week. So  
7 we'll probably be somewhere in the neighborhood of 66  
8 accredited certifying agents at the start of the next  
9 phase.

10           Stream of commerce. The issue for a lot of  
11 people was what do you about product that was not  
12 produced to the NOP? Only two kinds of products out  
13 there. There's that which is produced to the NOP and  
14 that which is not produced to the NOP. Everything that  
15 is produced to the NOP has to be labeled in accordance  
16 with the NOP. Things that were not produced to the  
17 NOP, we consider to be in the stream of commerce at  
18 whatever stage they're at. They were not certified as  
19 produced to the NOP. Many of those products are  
20 produced by certifying agents who are not accredited to  
21 certify to the NOP, and what we have said is that all  
22 product may continue to carry the designation of that  
23 word organic until used up. We expect that to be  
24 relatively quickly, hopefully anyways.

1           Certifying agents should be inquiring as to  
2 how much stock is on hand, how long will it take them  
3 to get rid of it, and then monitoring that.

4           Product that was not produced to the NOP  
5 never was indicated that it could be labeled as  
6 produced to the NOP. The regulations are very clear on  
7 what you have to do to be labeling it and carrying the  
8 organic seal.

9           I can sympathize with those manufacturers and  
10 producers who have old product, but the old product  
11 cannot claim that it was produced to the NOP and it  
12 cannot carry the organic seal of the USDA. However,  
13 that does not prevent them from using the new labeling  
14 scheme. In fact, it's a good idea that they use the  
15 new labeling scheme. What they cannot say is that we  
16 produced it to the NOP and here, by the way, is the  
17 USDA seal. And that's what we've tried to convey  
18 through our policy statement on stream of commerce.  
19 That's all I have, Dave.

20           CHAIRPERSON CARTER: Okay, thanks Rick.  
21 Questions for -- or comments for Rick or Barbara?

22           MR. SIEMON: Well, Kim is the one who's got  
23 the clarity, but it's been my understanding that  
24 there's been a declaration that was quite recent of

1 this and that that's where the basic challenge is. A  
2 lot of these products are certification groups that are  
3 presently being applied to be accredited. I mean I'd  
4 like to have a good discussion on it. I'm not the one  
5 who's been on in the discussions, but --

6 MS. BURTON: I believe the confusion was that  
7 up until September 12th, we were told we had to be in  
8 compliance with the NOP rule and that we were told that  
9 we could use stream of commerce raw materials. So most  
10 manufacturers had new labels made under the same -- on  
11 the 21st you have to use new labels, before the 21st  
12 you can use up your old labels, and you can't use the  
13 seal until the 21st. So nowhere in the rule or in  
14 clarification documents or anywhere did it say that you  
15 couldn't use the seal with raw materials that were in  
16 stream of commerce. So maybe it was just negligence on  
17 manufacturers' part but the only -- the only link to  
18 the seal was the position on the label and that it  
19 couldn't be used until the 21st. So it never -- never  
20 did we -- did anybody really think you couldn't use it  
21 with raw materials that weren't in the stream of  
22 commerce. And that change is affecting hundreds and  
23 hundreds of manufacturers.

24 MR. MATHEWS: The best I can offer is that

1 we'll take the concerns back. We ask that you provide  
2 us with copies of the letters and we'll enter into  
3 further discussion on the issue, with the attorneys on  
4 it. But the position that we have taken is that in  
5 order to be an organic ingredient in a multi-ingredient  
6 product produced to the NOP, it had to have been an  
7 ingredient produced to the NOP. And that's where we  
8 are now. You're telling us that that's a problem, and  
9 the best I can offer now is to look at the letters and  
10 sit down again with the attorneys and discuss it  
11 further.

12 CHAIRPERSON CARTER: Rose?

13 MS. KOENIG: No, I just had -- you know, in  
14 terms of the needs -- again, I'm not a processor or  
15 using these types of things, but in terms of urgency,  
16 it seems like it's going to have a large short term  
17 impact.

18 CHAIRPERSON CARTER: Rick.

19 MR. MATHEWS: I've stated previously, most  
20 recently at the September meeting publicly, and  
21 actually after that at the Expo-East, I publicly stated  
22 that we fully expect to make mistakes. We fully expect  
23 certifying agents to make mistakes, and we fully expect  
24 certifying agents' clients to make mistakes. We are

1 more than happy to work with people.

2 I can tell you for an example that I got  
3 information yesterday or maybe the day before, about a  
4 certifying agent who is allowing waxes on fruit. The  
5 certifying agent sent out a letter to the clients  
6 saying well, the two waxes listed on the national list  
7 are only examples, so you can go ahead and use rice  
8 wax. That certifying agent is clearly wrong, and we  
9 will have to tell that certifying agent that no, the  
10 substances on the national list are not examples, they  
11 are the substances than can be used.

12 So everybody is going to be making some  
13 mistakes. We're going to get off to a rocky start, but  
14 I think if everybody is willing to work with everyone  
15 else, we're going to be able to get there.

16 MR. SIEMON: And that means ... the minor  
17 compliance type farm plant, handling plant --

18 CHAIRPERSON CARTER: Okay, Barbara.

19 MS. ROBINSON: George, we've been talking  
20 about this. We realize we're going to have to come up  
21 with some better guidance or definition of what's a  
22 minor non-compliance or a major non-compliance. Let me  
23 tell you what our thinking is right at this moment. We  
24 would consider a minor non-compliance to be something

1 on the order of an action that does not affect the  
2 organic integrity or the characteristics of the organic  
3 ingredient, food, product, what have you. So minor  
4 non-compliances could be things like you've got too  
5 many twist ties up there in the trees; your record  
6 keeping isn't up to date; something like that. We also  
7 wouldn't anticipate that certifying agents would be  
8 knocking people in the heads for minor non-compliances,  
9 suspending certification, and doing things like that.  
10 Minor non-compliances, as I read the Rule, can be  
11 carried over from year to year when a certifying agent  
12 is doing subsequent on site reviews of the operation.  
13 There has to be a demonstrable effort to correct some  
14 minor non-compliances.

15 But I have read places in the Rule under the  
16 certification section, where it actually says "and the  
17 certifying agent should note the minor non-compliances  
18 that have not yet been addressed." So there's no -- so  
19 what I'm saying is there's -- we don't find anything in  
20 the Rule that says there's a time limit. I think we'd  
21 all employ sort of what's a reasonable expectation, a  
22 reasonable approach. Anyway, that's kind of where  
23 we're going on the minor versus -- well, it never  
24 mentions major non-compliance, it just says minor.

1 CHAIRPERSON CARTER: Okay, George follow up?

2 MR. SIEMON: I agree with the organic  
3 integrity criteria, but another criteria might be areas  
4 where there's vagueness and lack of clarity in the  
5 community that people should not be held accountable if  
6 they've been told something is right and all of a  
7 sudden they're told not. You know, we're going to have  
8 to work through this.

9 MS. ROBINSON: I consider myself a minor non-  
10 compliance very many times.

11 CHAIRPERSON CARTER: Okay. Dennis -- oh, go  
12 ahead, Rick.

13 MR. MATHEWS: We recognize that George, and  
14 it's -- as I mentioned at the September meeting, I  
15 think that really the people that the NOP needs to be  
16 working with the most is the certifying agents, to get  
17 them on board, to get them applying the standards, get  
18 them to apply them appropriately.

19 Where we identify problems, we work with them  
20 to get those problems fixed. I think we've already  
21 demonstrated that because with a rare exception,  
22 everybody was accredited with conditions, and so we  
23 have said, you know, you're not there yet, we're going  
24 to work with you. But they've got to work with us too.

1 I mean let's be honest about this. I mean we've said  
2 we're going to work with you, but they have to  
3 reciprocate in that and work with us.

4 If we can get the certifying agents to where  
5 they're doing it properly, that automatically  
6 translates into compliance. And that's where we are.

7 MR. SIEMON: And to that note, and since  
8 Marty didn't mention it, OTC is going through a process  
9 now to identify all the areas that are not clear, to  
10 bring forward the points, the questions. So that's  
11 just what needs to happen as far as I'm concerned, what  
12 are the real sticky issues.

13 MR. MATHEWS: Yes, but one thing everybody  
14 has to remember, though, is that when it comes to  
15 interpreting the regulations, we interpret the  
16 regulations most often with input from the attorneys  
17 and it is the Department of Agriculture that interprets  
18 regulations. It's not certifying agents. Obviously,  
19 they have to implement them and obviously they're  
20 making interpretations in order to implement them, but  
21 when we make a determination as to what that regulation  
22 means, that is what everybody will have to comply with.

23 CHAIRPERSON CARTER: Okay, George --

24 MR. SIEMON: I've got another question.

1                   CHAIRPERSON CARTER: Is this on a different  
2 line?

3                   MR. SIEMON: Yes.

4                   CHAIRPERSON CARTER: Okay, then you're going  
5 to have to wait your turn, okay?

6                   MR. SIEMON: Okay.

7                   CHAIRPERSON CARTER: Jim, then Rose.

8                   MR. RIDDLE: I think this issue of minor non-  
9 compliance and the development of guidance is a perfect  
10 opportunity for collaborative work with the certifiers  
11 because numerous certifiers and state programs already  
12 have matrix defined on what is a minor non-compliance  
13 and examples of that. So I certainly encourage  
14 collaborative effort on that.

15                   But my question is totally different subject,  
16 and that is the status of materials approved by the  
17 NOSB since March of 2000. It's my understanding that  
18 there's not a Federal Register notice to officially --  
19 and how are producers and certifiers to know with  
20 certainty, that the materials that the Board has  
21 approved are indeed allowed with certain annotations?

22                   MR. MATHEWS: Arthur is the one assigned to  
23 that but is -- maybe some of you in this room know,  
24 Arthur has been pretty busy with telephone calls. I

1 know that he gets an ungodly number of telephone calls  
2 every day and last number I knew, he had -- he was up  
3 to 50 to return. So he hasn't been able to devote as  
4 much time to the assignment that he was given. But the  
5 issue is that we are creating a listing that will go up  
6 on the website. This is going to have a statement with  
7 it that says that these are the materials that the NOP  
8 has recommended for addition to the national list.  
9 They are not sanctioned until they go through the rule-  
10 making process.

11           However, certifying agents who have clients  
12 who use them can use them as a minor non-compliance  
13 until the rule-making process is complete. That, by  
14 the way, would be an example of a minor non-compliance  
15 that is only allowed during this transitional phase  
16 from the old system to the new system. You know, at  
17 some point down the road that kind of minor non-  
18 compliance would become a major non-compliance because  
19 you would be using a prohibited substance. But that's  
20 how we plant o do it.

21           CHAIRPERSON CARTER: Okay, now -- Rose, you  
22 were next.

23           MS. KOENIG: And it kind of follows up to  
24 what -- to the general conversation, and really I mean,

1 in all due respect to the -- understanding the labor  
2 constraints and the amount of phone calls that you all  
3 are getting into the offices, I think -- hopefully,  
4 we're all sympathetic to these constraints.  
5 Nevertheless, my big concern, and this is as a  
6 producer, and it's not just calling the USDA, it's the  
7 same as calling your extension service to try to get  
8 information. Most growers concerns have to be answered  
9 the day that they call. You know, a policy three  
10 months down the road means that your crop is gone. So  
11 unfortunately -- I don't know how to resolve this kind  
12 of conflict, but I think that's why there's a bit of a  
13 stress, I guess, out there, in terms of growers and  
14 certifiers because your problems are immediate, your  
15 solutions are not -- have to take a process.

16 And I don't know how to reconcile -- what I'm  
17 understanding is you're giving us the assurances that  
18 these things are going to be so, and I think what I'm  
19 gathering from the community is they're saying they're  
20 not trusting that for some reason. And I think it's  
21 just -- and I'm not saying it's because you're bad  
22 people. It's because commonly they're out there -- not  
23 people who work for the USDA -- you're federal  
24 government employees, and I'm sure this would be in any

1 Division. Washington is not Florida. Washington is  
2 not Washington State. Washington is not California.  
3 We don't think a lot of times like federal employees.

4 So our big thing is -- we don't trust you --  
5 you in general, I'm saying. So this is why you're  
6 getting this kind of public insecurities.

7 And I don't know what the solution is, but it  
8 seems to me that there needs to be some time or written  
9 -- I think a lot of people are much more comfortable  
10 with some kind of written word. Because you can hang  
11 your hat on the piece of paper that has something  
12 written on it. By you just saying at a meeting, well,  
13 this is going to be a minor non-compliance, the  
14 industry means a farmer in my operation, I'm just not -  
15 - you know, I'm not comfortable. I don't do business  
16 that way. When I work with people, I usually -- if  
17 it's something that important that can make or break my  
18 operation, I'm going to write it down. I'm going to  
19 have some kind of proof.

20 And that's why -- don't feel like people are  
21 attacking you, it's because it's our livelihoods that  
22 are on the line.

23 CHAIRPERSON CARTER: Well, okay, go ahead. I  
24 would just -- wanted to add -- because you know, one of

1 the things that -- and I think is an issue, and I think  
2 Rose is exactly right. I mean there is immediate  
3 issues, and the federal government by its nature is not  
4 designed, a lot of times, to give immediate answers.  
5 There's a process and all of that.

6 And then the other thing, I think, just as we  
7 go into implementation that stuff being written down is  
8 great, but there are all these -- everybody is wanting  
9 somebody to come out and talk at this and that and the  
10 other, so there's a lot of -- so there's, just by  
11 necessity, if you're going to communicate, there's  
12 going to be a lot of questions and answers and thinking  
13 on your feet -- and I think that's creating a lot of  
14 confusion. Sorry, Rick, I didn't mean to interrupt,  
15 but I think --

16 MR. MATHEWS: No, that's okay. Rose, we face  
17 the same dilemma. I mean we don't know how to do what  
18 we do in a way that satisfies everyone. It's -- if we  
19 answer one person's questions, somebody else is upset  
20 with us for not answering their question. If we take  
21 positions, somebody is happy with it, somebody can live  
22 with it, and somebody is mad about it. We get  
23 telephone calls. We get faxes. We get e-mails. We  
24 get letters. We get visits. We're asked to go out

1 different places.

2           We understand that the importance is to get -  
3 - with the hot button issues -- down in writing. The  
4 problem is that the hot button issues are really the  
5 tough issues. The easy stuff has been pretty much  
6 taken care of. And a lot of the questions that we get  
7 are the easy stuff, because it's people who haven't  
8 bothered to read the regs. What we are doing, and we  
9 welcome suggestions on how to do it better, but when  
10 you've got the sheer volume of what needs to be done,  
11 you kind of try to do a little bit of everything.

12           For example, you guys had an executive  
13 committee call on Thursday. Barbara and I were not in  
14 the executive committee call because the Center for  
15 Food Safety sent in this -- essentially what it is is a  
16 letter demanding that we go on with the peer review.  
17 Well, the reason why we weren't in the call is because  
18 we were meeting with the attorneys on that issue. We  
19 were also meeting with the attorneys on the material  
20 scope issue. We've also had meetings on the stream of  
21 commerce issue because we knew it was causing problems  
22 for some people. But we make those meetings, sometimes  
23 you just can't get the stuff down on paper yet.

24           One of the things that we're doing now is

1 that we meet every lunch hour. We will bring our lunch  
2 into Barbara's office and we eat at her conference  
3 table and we discuss questions that have been submitted  
4 to us by certifying agents. Some of those questions  
5 get just an email answer back to them. Some of those  
6 questions that are the kinds of questions that we feel  
7 need to be turned into Q&A, so we turn them into Q&As  
8 verbally at that meeting. We have one person who takes  
9 the notes, and then we meet again the next day to  
10 discuss the written version of that Q&A, or the  
11 response back to the certifying agent.

12 So, there's a lot of things we're doing.  
13 It's just that this thing is huge. And all I can ask  
14 for is patience -- it will get us there. I promise  
15 that. And I know no one trusts the government, and  
16 there are some people who think we can't do this job.  
17 But I can guarantee you, you can trust us and we can  
18 get the job done. It's just going to take us a little  
19 time.

20 CHAIRPERSON CARTER: Okay, Goldie and then  
21 George.

22 MS. CAUGHLAN: Rick, I appreciated your  
23 comments about the materials --

24 CHAIRPERSON CARTER: Speak more into the

1 mike.

2 MS. CAUGHLAN: I appreciated your comments  
3 about how you feel the -- that treating the materials  
4 that the Board has reviewed and made recommendations  
5 on, treating them, as I understood it, in this interim  
6 phase as a minor non-compliance issue one way or the  
7 other, but that would be a one time only, or a strictly  
8 during the interim phase. And I think that we face an  
9 ongoing problem in terms of the ongoing rereview as  
10 well as the new review of new materials. I think that  
11 being the one area that the NOSB has designated to it,  
12 which states that our recommendations on materials are  
13 different than our recommendations on practices and so  
14 on.

15 It would seem to me that though you may not  
16 be able to answer this right now, I think that we need  
17 to address that, that that's something that needs to go  
18 to the lawyers, that we need to have a firm  
19 understanding. Because we know that it takes something  
20 like 18 months from the time that we made these  
21 materials recommendations, as it does for other things,  
22 for a minimum of 18 months before it can plow through  
23 rule-making. And that if, in fact, this is in our  
24 purview to make the recommendations on materials as I

1 interpret this, reinterpret it, it seems to me we do  
2 need to have a plan so that we do not continue to face  
3 this situation. People understand that we made a  
4 recommendation. Perhaps that is a permanent way to  
5 deal with it, that those recommendations can be worked  
6 with. Maybe it remains a non-compliance issue that we  
7 certifiers work with, but I think that's something that  
8 is quite critical. We need to, not just for the  
9 interim, but for down the line, we need to know.

10 MR. MATHEWS: Goldie, I don't necessarily  
11 disagree with you, however, I think some things -- this  
12 becomes a more complicated issue after the 20th,  
13 because starting on the 21st, no one is allowed to use  
14 a synthetic that is not on the list, or that we're  
15 going to put up this other list that says can be  
16 treated as a minor non-compliance. Anything not on one  
17 of those two lists is absolutely prohibited.

18 So materials that you work on in the future  
19 would be materials that are banned and your saying that  
20 they should go on the list is at that point saying you  
21 can take a banned substance and put it on the list  
22 before it has gone through the public comment period of  
23 rule-making.

24 MS. CAUGHLAN: No, I don't think that -- that

1 is not what I said.

2 MS. ROBINSON: Here is my understanding.

3 CHAIRPERSON CARTER: Okay, Barbara.

4 MS. ROBINSON: I'm ont sure Rick and I are  
5 hearing the same thing, so let me try my version.  
6 Whenever the Board makes a recommendation -- let me  
7 back up half a click -- when Rick said this was a one-  
8 time non-compliance, what I understood that to mean is  
9 that for these materials only, let's say there was a  
10 material that you decided to prohibit -- okay -- that  
11 it really shouldn't be used. It's considered a minor  
12 non-compliance if somebody is using it. Once it  
13 actually goes through the rule-making process and is  
14 formally -- we formally closed all the loops, it would  
15 be a major non-compliance. It would be grounds for  
16 diverting the product and suspending certification if  
17 somebody used a prohibited material.

18 Now, when we get to the next round, when  
19 we're in May and you guys go through this again and you  
20 vote on more materials, and you say okay, these five  
21 materials, we believe can be used, I would say -- and  
22 Rick can disagree with me here -- we can talk about  
23 this -- my understanding was we do the same thing.  
24 Because it takes us some time to get it through the

1 rule making process, again, those materials that you  
2 approved, people who use them would be committing a  
3 venial sin, not a mortal sin, and then when we finish  
4 the rulemaking, you know, they're --

5 MR. MATHEWS: Now they're blessed.

6 MS. ROBINSON: Yes, they're forgiven.

7 They've done penance and all that sort of stuff.

8 MS. KOENIG: What I'm asking is --

9 MS. ROBINSON: You don't go with that?

10 MR. MATHEWS: No, I'm not saying -- I'm not  
11 saying that I don't like the idea. What I'm saying is  
12 that even the approach we're taking with materials now  
13 is a problem with the attorneys. Okay? Now.

14 MS. ROBINSON: Well, that's what keeps --

15 MR. MATHEWS: Because they haven't gone  
16 through the rule making process, and offering the  
17 public an opportunity to comment on what the Board is  
18 recommending. So, my concern -- it's not that I don't  
19 like it -- I'm not saying I wouldn't try to convince  
20 the attorneys, but what I'm saying is that come October  
21 21 that material, other than what's already in the  
22 petition process -- anything in the petition process  
23 that you would act on in May we could probably treat  
24 that way, as we've done with the ones that you've

1 already reviewed. But let's say a material comes in  
2 with a petition to have it added to the list say, in  
3 February of 2003 --

4 MS. ROBINSON: Or review ...

5 MR. MATHEWS: Or the review ... and so you've  
6 got one that's coming in that's been approved or has  
7 been allowed to be used, we couldn't really stop  
8 allowing it until the end of the rule making process,  
9 even on the recommendation of the Board. Or, or, if  
10 you had a material that on October 21 was not allowed,  
11 on February 1st was still not allowed, so you get a  
12 petition on it on February 2nd, then you acted the  
13 following October. I'm still hesitant to say we could  
14 allow you to treat it as a minor non-compliance because  
15 at that time you're taking something that was  
16 prohibited, the Board makes a recommendation to allow  
17 it, but the public hasn't gone through federal rule  
18 making process to put it onto the list.

19 So I'm not comfortable with saying that we  
20 can treat it as a minor non-compliance, especially if  
21 it was a manufacturing product, a product used in  
22 manufacturing that we said to the manufacturer, okay,  
23 you can use it, and then we turn around and some day in  
24 the future say no, you've got to stop using it because

1 while the Board recommended that it be added to the  
2 list, the public has disagreed with the Board and we're  
3 now not going to allow it.

4 MS. CAUGHLAN: Alright, I prefaced my remarks  
5 by saying I don't expect you necessarily to have the  
6 decision here today. I do understand that. But I  
7 think that this is an ongoing, critical issue that is  
8 not going to go away, and I don't think it's  
9 necessarily -- I don't necessarily -- I mean I don't  
10 agree, I think, with what you just said, but I think it  
11 deserves a public input to what we're talking about  
12 rather than the -- rather than just saying, well, we  
13 would always have to have the public input after the  
14 Board had spoken. Because I think there we get into  
15 what is the Board responsibility and charge, and I  
16 think the Board's responsibility and charge is stronger  
17 than what would be implied by -- I don't expect it to  
18 be settled today.

19 MS. ROBINSON: We have to go to the lawyers  
20 to that too, Goldie --

21 MS. CAUGHLAN: Yes.

22 MS. ROBINSON: -- because my argument to the  
23 attorneys was, we go to all the trouble to thrash out  
24 the materials at public meetings where people can come

1 and have the input. We now live in the electronic age  
2 where people can talk to us in real time, practically.

3 So, can we -- can't we just put a note on this in the  
4 Federal Register, which is a lot shorter process. You  
5 put a notice in and say, here's what the Board  
6 recommended. Boom. I mean that's all. And you can  
7 write us if you want, but it doesn't matter. Don't  
8 bother -- use a stamp.

9 But the attorney said no, the law requires  
10 you to go through the public comment process, that's an  
11 OFPA (ph). So -- so we couldn't ditch that. And I  
12 agree with you, it's a problem. We continually go to  
13 the attorneys and say, we're going to be in perpetual  
14 rule making. This is ridiculous. I mean how are we  
15 going to be able to do this? So I just want you to  
16 know, we are still talking with them about it because  
17 it's going to be a real problem. There's just no way  
18 to shorten up the process on the other end.

19 Now, I will say one thing. We're hopeful  
20 that, like with this rule making docket that we're  
21 going to go out with for these materials, that we can  
22 just take that and every time the Board reviews new  
23 materials and makes a decision, the old one is our  
24 template, we've got it electronically, all we do is

1 delete the old and insert the new, and so then it's a  
2 matter of the bottleneck in the system is frankly just  
3 getting relevant agencies to clear off on it and get it  
4 to the Federal Register. So that should help some.

5           And we'll -- as we think up ideas, or as you  
6 think up ideas, send them into us and we'll thrash them  
7 out, we'll see what the legal counsel is willing to  
8 live with.

9           MR. MATHEWS: I'd just like to add that we  
10 have to remember that the Board is a backup committee.

11          It's a committee that makes recommendations to the  
12 Secretary. It is not a rule making body. It does not  
13 establish standards. It does not publish documents in  
14 the Federal Register where standards are published.

15          The Secretary has appointed the Board members to  
16 solicit their input and the act provides for that body  
17 and for the input of that -- for making that input.

18                 What it does not convey to the Board is rule  
19 making authority -- that stays with the federal  
20 agencies. We are not, in NOP or in AMS, establishing  
21 those rule making laws or regulations. We are only  
22 following them. And so when we say it has to go  
23 through a rule making process, it's not that we want to  
24 ignore the recommendations of the Board, it's just that

1 that's what federal law requires. And so -- it has to  
2 go through the rule making process. That's the way  
3 it's set up.

4 CHAIRPERSON CARTER: George, then Jim then  
5 Mark.

6 MR. SIEMON: Okay. Just in response to that  
7 conversation, maybe we need to have -- I think Goldie  
8 brought up a great point, long-term, and I don't know  
9 how long it will take once you do a material in the  
10 future to get the Federal Register process, but  
11 certainly if it's going to take three years, we'd  
12 better figure out a way to shorten that up, and maybe  
13 some blanket statement about that could go through the  
14 Federal Register that would deal with all this in the  
15 future -- you know, how to deal with that. But I'd  
16 really like to see it because it is a problem, ongoing  
17 that we're going to face and what -- is there any  
18 authority we can get from the Federal Register along  
19 that long-term to have an interim status.

20 MS. BURTON: I believe we've made a  
21 recommendation already on the subject a couple meetings  
22 ago, so we'll have to pull that back out and resubmit  
23 it.

24 MR. SIEMON: Because it does -- I understand

1 the Federal Register part. I just want to make sure on  
2 the 20th at midnight, there is going to appear on the  
3 website these materials saying they are now going to be  
4 -- understood that they can be used and be considered a  
5 minor non-compliance. It will be in writing somewhere.

6 MR. MATHEWS: On the 20th?

7 MR. SIEMON: Twenty-first, midnight. We do  
8 work here today and tomorrow -- I'm serious.

9 MR. MATHEWS: It won't be done today. It  
10 won't be done tomorrow, and with Monday's schedule what  
11 it is, it won't get done Monday.

12 MR. SIEMON: Alright.

13 MR. MATHEWS: But what we will do is we will  
14 send an e-mail to all of the certifying agents, telling  
15 them, on Monday, what we plan to do.

16 MR. SIEMON: We have a real communication  
17 issue -- there's a whole field out there, or people out  
18 there, so if the web --

19 MR. MATHEWS: Well, the key is to send the e-  
20 mail to the certifying agents and the certifying agent  
21 reads it and applies it.

22 MS. ROBINSON: We did create a listserve of  
23 all the certifying agents and so that's one way it  
24 looks like every day at lunch, we just all get together

1 and answer questions, and we get those back out to  
2 certifying agents. Of course having the unintended  
3 effect of encouraging people to ask more questions.  
4 And to that listserve, I think what we'll probably do  
5 is add the Board and OTA, just so that those two bodies  
6 also know what we're sending out to all the certifying  
7 agents.

8 MR. SIEMON: Okay, and my next question is  
9 the methodology you're using now. I notice we're not  
10 using the word interim. Is there some real problem  
11 with using the word interim in your -- from the  
12 lawyer's standpoint as compared to the minor compliance  
13 -- is that something that has been -- I mean it's a  
14 word that we throw around in our conversations, but I  
15 notice you're not using those words.

16 MR. MATHEWS: That is a term that we use in  
17 reference to the rule making docket. We were still  
18 planning to call it an interim final rule.

19 MS. ROBINSON: That means it's as good to go  
20 -- the normal rule making --

21 MR. SIEMON: That's the stuff that has to be  
22 going to the Federal Register.

23 MS. ROBINSON: Yes.

24 MR. SIEMON: Is the interim --

1 MS. ROBINSON: Interim final means unless you  
2 hear otherwise from us, this is as final as it gets.

3 MR. SIEMON: And those will be the non -- the  
4 minor non-compliance issues?

5 MS. ROBINSON: Yes.

6 MR. MATHEWS: Yes.

7 MR. SIEMON: So they are interim?

8 MS. ROBINSON: Yes.

9 MR. SIEMON: Okay.

10 MS. ROBINSON: Normally when you do a rule,  
11 George, first you do a proposed rule. Then you do a  
12 final rule to get your comments on the proposed rule.  
13 A long time ago, I don't even know when, the government  
14 figured out a variation on this, and it was called the  
15 interim final rule, which means you skip the proposed  
16 rule and go directly to an interim final rule. You  
17 give the public 30 days to comment. If you -- and what  
18 you're saying is, under an interim final rule, this  
19 rule becomes in effect upon publication in the Federal  
20 Register -- see and under a proposed rule it wouldn't  
21 be in effect until we got the comments, reviewed them,  
22 went back out to the Federal Register with a proposed  
23 final rule. So interim finals is like you're good to  
24 go.

1           MR. SIEMON: Unless the comments come back  
2 and you reverse your position.

3           MS. ROBINSON: Yes, unless for some reason we  
4 reverse our position.

5           MR. SIEMON: It actually takes into effect  
6 right then?

7           MS. ROBINSON: Yes.

8           MR. SIEMON: And that leads me to my next  
9 question about the NOSB guidelines and work that we've  
10 done the last few years, and the status of them now in  
11 this interim docket, and in October 21st forward, I was  
12 -- I had asked the executive committee to get a  
13 clarification for the community so they know exactly  
14 that work is just strictly a recommendation, has no  
15 effect, or has an effect, I mean, clearly, in writing  
16 and the status of an interim rule.

17           MR. MATHEWS: The documents that come out  
18 from the Board, we have stated that some of them can be  
19 used as guidance, some of them we haven't ruled on,  
20 some of them that you have sent really require rule  
21 making. Rule making has to go through the rule making  
22 process with the Federal Register, and the attorneys  
23 have told us that anything other than a materials list  
24 will not be able to go as an interim final rule. So in

1 a cursory look at what OTA has said about the  
2 replacement animals, and what the Board has said about  
3 the replacement animals, it looks to me like it  
4 requires a rule change. Rule change would have to go  
5 through the Federal Register process. The comments  
6 that you made about access to the outdoors at the last  
7 meeting, didn't require a rule change, so the couple of  
8 nuggets that are in there that help certifying agents  
9 is provided out as guidance.

10 MR. SIEMON: But not enforceable?

11 MR. MATHEWS: Well, no, they're not  
12 enforceable.

13 MR. SIEMON: I just wonder how --

14 MS. ROBINSON: The rule is enforceable.

15 MR. MATHEWS: The rule itself is enforceable,  
16 the fact that the chicken producer has to put the bird  
17 outside is enforceable. The -- what -- there is  
18 nothing there that says that it has to be on grass.

19 MR. SIEMON: I'm just wondering if we need to  
20 -- I understand your position -- if we need to  
21 communicate it to the web and to the creditors where  
22 exactly these things are at -- these guidelines, these  
23 things. In other words, they're not enforceable, which  
24 is what I understand. A clear, black and white

1 statement is what I think is needed here.

2 MS. ROBINSON: We can do that.

3 MR. SIEMON: I think that should be done.

4 CHAIRPERSON CARTER: Okay. Jim, then Mart.

5 MR. RIDDLE: Two questions. First a follow  
6 up on this discussion, and then a new topic. I  
7 understand that the technical corrections docket has  
8 been drafted for over a year and that's still not  
9 posted and that has to go in the Federal Register, and  
10 with the materials, it just -- I know that there is a  
11 shortage of staff and all these other priorities, but  
12 are there some obstacles to moving something forward to  
13 the Federal Register beyond that, and is there anything  
14 the Board can do to help with that?

15 MS. ROBINSON: No.

16 MR. RIDDLE: There's no other obstacles, just  
17 lack of --

18 MS. ROBINSON: No. No lack of anything  
19 except time. I mean that's all --

20 MR. RIDDLE: I just wondered if there was any  
21 other obstructions to something.

22 MS. ROBINSON: No.

23 CHAIRPERSON CARTER: Can we have Arthur's --

24 MR. MATHEWS: Well, I would also state that

1 in reality, the docket is not done. It has not been  
2 finished.

3 MR. RIDDLE: They said draft.

4 MR. MATHEWS: It's a draft -- in progress  
5 draft.

6 MR. RIDDLE: Then the other question is about  
7 soy milk and there was a press release put out and some  
8 communication about the calculation of soy milk being  
9 the moisture content based on 35 percent moisture of a  
10 green soybean. Can you kind of fill us in or clarify  
11 what's up with that?

12 MS. ROBINSON: Yes. I got part of the story,  
13 so I thought I was trying to make something more  
14 understandable, and I was wrong. So I have sent out  
15 another e-mail to the parties that had asked for that  
16 clarification and explained to them that as far as I'm  
17 concerned, the calculation of the percent organic with  
18 respect to added water and salt remains as is posted on  
19 the website. I don't have any problem changing my mind  
20 when I think somebody's only told me part of the story,  
21 and so -- the policy remains as it is.

22 MR. RIDDLE: Thanks.

23 MS. BURTON: Thank you very much.

24 MS. KOENIG: Dave, I had one --

1           CHAIRPERSON CARTER: Rose, I'm trying to go  
2 in sequence here, so I've got Mark, Owusu, Rose, you  
3 haven't spoken on this yet, and then George.

4           MR. KING: Yes, I just wanted to attempt to  
5 tie a couple things together. Kim you had made a  
6 comment -- we had a formal recommendation concerning  
7 this process and looking at materials, and I'm just  
8 curious if there are other positive list examples from  
9 a regulatory perspective that can be referenced through  
10 as we look at approval of certain things. In other  
11 words, if the Board makes a recommendation on a  
12 material, okay, I understand you, Richard, when you say  
13 well, we can't just say it's okay to use it the next  
14 day, and yet then we have perhaps at least this 18  
15 month period. Are there other examples of how  
16 industries have dealt with that to somehow find a  
17 middle road?

18           MS. ROBINSON: We can actually ask the  
19 attorneys to research that and see if there is some  
20 other model out there, but that's one that would come  
21 to my mind, sort of off the top of my head, would be --  
22 would be whatever kind of process FDA uses in  
23 consultation with drug industries or food manufacturing  
24 industries. I don't know -- and I don't know exactly

1 what the process is, but we can look into that.

2 MR. KING: Yes, I know it's done in the  
3 pharmaceutical industry when they try to fast  
4 track certain things, so --

5 MS. ROBINSON: This is an unusual -- this is  
6 very unique in the 23 years I've been in USDA I don't  
7 think I've come across an advisory committee that had  
8 this particular charge and actually has something  
9 written into law that says the Secretary cannot add a  
10 substance to the list that the Board hasn't approved.  
11 So it's been kind of a unique beast to wrestle with --  
12 not the Board. I didn't mean that. But we -- I'm sure  
13 -- it can't be that unique. There must -- somebody  
14 must have thought of this someplace, and so it must be  
15 somewhere else in government. We'll look into it.

16 CHAIRPERSON CARTER: Unique is one of the  
17 nicer things said about the NOSB from time to time, so  
18 -- Owusu.

19 MR. BANDELE: It may be that nothing can  
20 possibly be done about this, but I just didn't like the  
21 stigma, you know, based on producers saying that they  
22 are non-compliant when in fact we've done everything we  
23 could, and I was just wondering since we had an interim  
24 final rule, maybe we could have an interim compliance

1       rather than --

2                   MS. ROBINSON: Traffic violation as opposed  
3       to a felony?

4                   CHAIRPERSON CARTER: Okay, Rose.

5                   MS. KOENIG: Well, I had said the same thing  
6       to Nancy, that as far as I know, I, the grower, would  
7       not -- it's vocabulary again, and it's just something I  
8       think we're going to have to get used to, but you have  
9       to realize the resistance there's going to be. People  
10      don't like to think that they have a non-compliant as a  
11      grower, you know, because you're working diligently to  
12      try to be compliant. But that's again -- you know, it  
13      looks like a learning process and we have to learn to  
14      deal with it.

15                   It just seems to me, as far as -- as we go  
16      through this conversation that it became really  
17      apparent that I remember it, and I still sit here  
18      sometimes forgetting the processes and the procedures  
19      as a Board member. So I would like to maybe have a  
20      motion that you know, when Jim says there isn't  
21      anything that we can do, I think that there is  
22      something that the Board can do, at least in terms of  
23      clarification for us and for further Boards, and that  
24      is to either have an addendum to our policy manual, or

1 as a separate document, really somehow outline the  
2 steps in terms of our actions and the implications.

3 Like, for example, we've done -- you know,  
4 we've developed task force. What are task force for?  
5 We've -- we do, like with the compost, it's a -- I  
6 forget what you call that word again -- I can't even  
7 remember what our terms are -- but the term -- and what  
8 did you call the compost document, it's not a rule,  
9 it's a --

10 MS. ROBINSON: A policy.

11 MS. KOENIG: -- it's a policy thing. Anyway,  
12 if we can just have like what we're calling all these  
13 things and then the definitions, and then the  
14 implications in terms of time and implications to  
15 growers, I think again, it's a communication piece, I  
16 think it would clarify for new Board members -- I think  
17 it could be an addendum maybe to the policy manual  
18 since that would be the most logical place to go. Part  
19 of the -- the biggest problem here, and its continual,  
20 is that communication. I think the more we can make  
21 things clear, the more that we can define things for  
22 new Board members and for existing Board members and  
23 the public, the less confusion there is. So I would  
24 make up that motion and --

1           CHAIRPERSON CARTER: Well, I would ask you  
2 hold off that motion until we get to the point where  
3 we're talking about the policy manual -- I think it  
4 would be appropriate then. I think it's a good idea,  
5 but that would be the appropriate part of the meeting.

6           MS. KOENIG: Okay.

7           CHAIRPERSON CARTER: Okay. Yes, its coming  
8 out -- but we've got a good discussion going here and I  
9 really don't want to cut this off because this is very  
10 helpful. So -- the -- let's see, George?

11          MR. SIEMON: This is about the  
12 communications. I really sympathize with all the phone  
13 calls. I just -- you know, the soy issue, all the  
14 issues brings up the whole question of people going  
15 directly to NOP instead of the certifiers, and it seems  
16 to me that the certifiers are now government agents.  
17 Why don't you just tell people to call their certifier.  
18 I know you're a public service and all that, but  
19 aren't they now? It seems to me you can download a lot  
20 of this work, because they're basically going around  
21 their person.

22          MR. MATHEWS: We have done that with some,  
23 but you need to know that some of the certifying agents  
24 are sending their clients to us.

1           MR. SIEMON: It seems like this is a  
2 dysfunctional situation for you, to be constantly  
3 answering every individual call when you've got 90  
4 agents out there. Put them to work.

5           CHAIRPERSON CARTER: Give them a badge, huh?

6           MR. SIEMON: Then they come back to you with  
7 the unified questions. And then you get an answer  
8 that's unified instead of one person, you deal with the  
9 whole works. It seems like it would be really helpful  
10 for you.

11          MR. MATHEWS: When the phone rings, we have  
12 to pick it up and we have to answer. I mean we don't  
13 have the choice of saying, sorry, we're not going to  
14 talk to you. Yes, we have caller ID -- but only the  
15 telephone number and that doesn't always help. Some of  
16 them come through unidentified, you know. Then they're  
17 kind of like telemarketers. But the bottom line is,  
18 when the phone rings, we have to pick it up and we  
19 either get somebody to talk to that person right then,  
20 or if they're already tied up on another call or in a  
21 meeting someplace, then Katherine or Lani take a note  
22 and it gets distributed to somebody on the staff. We  
23 don't have the luxury of saying we can't talking to  
24 you. We do have the luxury of saying have you

1 discussed this with your certifying agent, and a lot of  
2 times they say, yes, and he told us to call you. And  
3 that may be true; it may not be true. What we try to  
4 do is we try to talk to both. And sometimes it works  
5 and sometimes it doesn't.

6 MS. ROBINSON: As many calls as we get,  
7 George, I am sure that there are hundreds, if not  
8 thousands of people who aren't calling us, who are  
9 talking to their certifying agents, and that's fine.  
10 But you know, even if you only have one or two or 300  
11 folks out there who are picking up the phone, they can  
12 get in the building, you know. We try to make it as  
13 difficult as possible to find us -- you know, I moved  
14 the staff so then they go to the old office, and we  
15 have all these great security agents and we make them  
16 wait downstairs and things like that, but they still  
17 manage to get in there and they just take up time. It  
18 only takes, you know, a half a dozen in a day, the day  
19 is gone. That's all.

20 So we're doing that, and we're going to get  
21 there, but it's just going to take a while. I mean  
22 this -- the bird's coming out of the nest and trying to  
23 fly here, and there's just going to be a lot of weeping  
24 and gnashing of teeth and screaming and yelling, and

1 stuff like that.

2 MR. MATHEWS: The real interesting thing  
3 about this is that for the first six months after the  
4 rule came out, we heard very little. And then there  
5 was a little bit going along the way, and in the last  
6 few months, it's -- it's like suddenly there's this  
7 great awakening, and it's -- I mean we've always had  
8 plenty to do and lots of questions, but the lots of  
9 questions have been a landslide over the last six  
10 weeks.

11 You know, we're still getting calls from  
12 people that say what in the world are you doing to me  
13 -- and I'm cleaning it up -- but they're really upset  
14 with us because they never heard about any of this, and  
15 I'm thinking, where have you been? What planet you  
16 from? Because how can you be saying you don't know  
17 anything about this if you've got a certifying agent?  
18 But we're still getting those calls.

19 CHAIRPERSON CARTER: Alright, anybody else?  
20 Comments, questions? Now I just had a quick question  
21 on the issue you talked about, the legal petition that  
22 was filed, and I know what a petition is, and I know  
23 what a law suit is, what -- where does a legal petition  
24 fit in in that spectrum?

1 MR. MATHEWS: It's a letter.

2 MS. ROBINSON: It's kind of like a letter  
3 except that it is legal -- you know, a lawyer prepares  
4 a document and what it is is it's kind of like somebody  
5 coming to USDA and saying, I asked you a question and I  
6 want an answer now. That's kind of what it's like. So  
7 what this legal petition calls on the Secretary to do  
8 is immediately establish the peer review panel.

9 Now, even if we wanted to do this it could  
10 not be done immediately because I don't know any other  
11 shortcuts around this process. I tried the ones that I  
12 thought would work, and --

13 MR. MATHEWS: And this document actually asks  
14 us to do what we've already tried to do.

15 MS. ROBINSON: Yes, we did -- for those of  
16 you who are not members of the Board -- when the peer  
17 review panel issue -- when we first tried to address  
18 it, my first thought was that we could create a  
19 subcommittee under the auspices of the Board, as a peer  
20 review panel. So that's what I was going to try and  
21 do, because that's the most expedient way to get  
22 something like that up and going.

23 But OGC, the Office of General Counsel, said  
24 no you cannot. It is a separate advisory committee.

1 So that throws a whole bunch more obstacles in our way.

2 That means I have to get approval from the Department  
3 because Congress just passed a law that there's a limit  
4 to the number of advisory committees any agency in the  
5 federal government can have. And then there's a limit  
6 on the amount of money that a Department can use to  
7 fund an advisory committee -- and that's a limit set in  
8 USDA, not AMS, not our agency, but throughout the  
9 entire Department. So if you add another one, you've  
10 got to take one away someplace, or if you say I need  
11 money for this, you've got to take it out of some other  
12 place because the money doesn't grow.

13 I realized that was going to be a problem,  
14 and I knew it was going to take us a lot of time so  
15 what I proposed to the Board instead was in the interim  
16 -- and the reason we didn't do anything at the time,  
17 frankly, was we -- we discussed it. We said, well,  
18 really what we ought to do is get past October 21st,  
19 that was like the most important thing to do. So I  
20 offered to the Board to be -- comply with the spirit  
21 and the intent of what was in both the law and the  
22 regulations, and said how about if you, the  
23 accreditation committee members, serve as an informal  
24 peer review panel. We will send you all of our

1 documents that we use to evaluate applications for  
2 accreditations -- we'll send those to you so you know  
3 how we're making our decisions, and I'll put you in  
4 touch with Jim Riva who runs the ARC branch where the  
5 applications are being reviewed, you can talk to him.  
6 You can ask him any questions that you've got. And so  
7 i thought that was sort of agreeable, but it wasn't.  
8 And we got hit with a FOIA request and now we're  
9 getting hit with this petition.

10 So, you know, we never refused to establish a  
11 peer review panel. We simply didn't have the time  
12 before October 21st.

13 MR. MATHEWS: I'd like to add something to  
14 that. The -- I think there's some misunderstanding of  
15 what, kind of like, is this? Those situations or maybe  
16 it's with the word all, but what we provided was nine  
17 documents. Nine documents in no way represents all of  
18 the documents that are used through the accreditation  
19 process and neither does it represent all of the  
20 manuals and other things that are used. If we had  
21 provided that, without providing any of the 120  
22 applications, we would have still been brought you a  
23 grocery shopping cart full of paper. So you need to be  
24 understanding that that's only one small segment.

1           You're going to hear a lot of criticism  
2 probably, later today about our accreditation process,  
3 but I just want to point out that what was provided was  
4 only a small portion.

5           CHAIRPERSON CARTER:  Alright, now Barbara,  
6 you said you had another couple items.

7           MS. ROBINSON:  Just one.  I did have two, but  
8 we already talked about one of them.  There's been a  
9 considerable amount of e-mail traffic and faxes and fan  
10 mail letters and all sorts of things, and a fair amount  
11 of discussion of how we comport ourselves and that sort  
12 of thing.  And I just wanted to say to everybody here,  
13 both on this Board, and to anybody that we ever have a  
14 conversation with, that you have the right to expect  
15 that you will be treated fairly, that you'll be treated  
16 cordially, that you will be treated in a civil manner.

17          I have those expectations, and I won't tolerate  
18 anything less than that either from myself or my staff.

19           So I want you to know that that's just the  
20 way that we will behave.  But I've also got to tell you  
21 sometimes, you know, I mean occasionally we do lose our  
22 tempers.  We'll try to do it with a smile on our face  
23 and that still does not permit us to behave in any way  
24 less than respectful.

1           On the other hand, I would like to offer up a  
2 suggestion. And I know that this industry is kind of  
3 new at the federal government thing, you know, it's not  
4 like an old time interest group that's been around for  
5 years and years, working the system. But when USDA  
6 does finally make a decision, I really think it's  
7 important for you guys to understand something because  
8 of the way we work, because of how slowly we actually  
9 do work, that reflects. When we make a decision,  
10 finally, you can assume -- and we should be able to  
11 tell you -- all of the people, all of the views we  
12 considered, all of the factors that went into our  
13 making this decision. And we don't even mind  
14 explaining ourselves. We don't mind explaining  
15 ourselves once, and we don't mind answering the  
16 question, the follow up question.

17           But at some point, I've got to tell you, is  
18 there have been times when the questions come back 20  
19 months later, the same questions, and it begins to look  
20 not like we want to have an honest discussion about  
21 this, but gee we never got the answer that we liked, so  
22 we'll just keep asking the same question. And after a  
23 while it does sort of feel like badgering, or just  
24 nagging, and sometimes we get frustrated with that.

1           Having said that, you're allowed to do that.

2           I wish you wouldn't, but you're allowed to, and we  
3 will answer all your questions respectfully.

4           CHAIRPERSON CARTER: Thank you, Barbara.  
5 Well, we were supposed to adopt a Board Policy manual  
6 here before lunch, but I think we're ready for lunch  
7 and the discussion -- I mean the discussion we had with  
8 NOP here, I think reflects there's obviously ongoing  
9 issues and the like, but I thought this was helpful.

10           MR. SIEMON: I just want to make sure that  
11 livestock committee was trying to go to lunch together  
12 --

13           PARTICIPANTS: Yes.

14           MR. SIEMON: Some of the members, namely Mike  
15 I don't think knew that.

16           CHAIRPERSON CARTER: Okay, livestock  
17 committee meet at the feed troughs.

18           MR. RIDDLE: And the accreditation committee  
19 members -- Mark, Mike and Dave can just meet with me  
20 right now, I've got paper for you.

21           CHAIRPERSON CARTER: Alright, so we will  
22 recess, be back here at one o'clock.

23           Oh, one second before we recess. I meant to  
24 do this earlier. I just want to acknowledge two folks

1 from NOP that are here as part of this meeting on a  
2 Saturday, and that's Katherine Beneman (ph) and Bob  
3 Pooler, so we appreciate them.

4 (Whereupon, at 11:56 a.m., the hearing was  
5 recessed, to reconvene at 1:00 p.m., this same day,  
6 Saturday, October 19, 2002.)



1 "Decisive votes", and one of the things that we did  
2 discuss was a need to clarify the status of abstentions  
3 and recusals. So there's language there. I'll just  
4 read it since this one's pretty short.

5 "Two-thirds of the votes cast at a meeting of  
6 the Board at which a quorum is present shall be  
7 decisive of any motion. All abstentions will be  
8 recorded as such; however, they will be tallied with  
9 the majority vote. All Board members who are absent  
10 and/or who recuse themselves due to conflicts of  
11 interest shall be recorded as such; their votes are not  
12 counted towards the total number of votes cast."

13 Any questions about that? Alright. The next  
14 section where there's some new language is on page 12.

15 MS. BURTON: Just a point, quick.

16 MR. RIDDLE: Sure.

17 MS. BURTON: Would there be any other reason  
18 for somebody to recuse themselves, other than conflict  
19 of interest? Do we need to have that in there because  
20 it's so specific as far as linking it with recusing? I  
21 would -- if somebody wants to recuse themselves for  
22 another reason, then they could just do that without --  
23 I would hate to limit ourselves.

24 CHAIRPERSON CARTER: Goldie?

1 MS. CAUGHLAN: Well, it occurred to me that  
2 if that were the case, by just recusing themselves it  
3 could be used as a dodge such that they would be able  
4 to block their vote from being counted with the  
5 majority vote. You understand what I'm -- and it seems  
6 to me that that would not be a good. I think a recusal  
7 as being -- I mean if you think about it in the  
8 judiciary, sitting judges recuse themselves, as far as  
9 I'm aware, because of conflicts of interest. Because  
10 otherwise this would be a problem.

11 MR. RIDDLE: They could choose to abstain  
12 otherwise.

13 MS. CAUGHLAN: That's correct, understanding  
14 that they might not want that vote to be cast with the  
15 majority, they might use the recusal for, and I don't  
16 think that would be appropriate.

17 MS. BURTON: I'm just not real familiar with  
18 Roberts Rules of Order. Leave it.

19 CHAIRPERSON CARTER: Okay, continue.

20 MR. RIDDLE: Okay, page 12. Coming out of  
21 last month's meeting, we had a directive to develop  
22 outline for committee recommendations and we had a good  
23 working draft examples submitted by the processing  
24 committee that helped me here, and so I'll just read

1 through this.

2 "NOSB committees and task forces shall use  
3 the following format to present draft policy and/or  
4 material recommendations for consideration by the  
5 Board:

6 "Introduction -- The 'introduction' shall  
7 summarize the issue.

8 "Background -- The 'background' section shall  
9 explain the issue in sufficient detail and provide  
10 rationale for the proposed recommendation. It shall  
11 explain why the recommendation should be adopted,  
12 provide historical context, and describe the regulatory  
13 framework pertinent to the issue."

14 Then the "Recommendation -- This section  
15 shall contain the concise text of the committee or task  
16 force's recommended action."

17 Then the "Committee vote -- The actual vote  
18 of the committee or task force shall be reported.

19 "Minority opinion -- If applicable, the  
20 opinion of committee or task force members who voted in  
21 opposition shall be summarized."

22 And then a "Conclusion -- The recommendation  
23 of the committee or task force shall be summarized" at  
24 the end.

1           So this is the template to follow for future  
2 committee recommendations. Discussion? Changes?

3           CHAIRPERSON CARTER: Yes, Owusu.

4           MR. BANDELE: I can see in the task force  
5 situation you need the conclusion, but in the case of  
6 materials where the recommendation is usually  
7 relatively short, do you really need to restate that  
8 again in the conclusion?

9           CHAIRPERSON CARTER: I think just for process  
10 and just for clarity, yes, I think that's helpful. And  
11 I think one of the things and particularly trying to  
12 get minutes done expeditiously, you know that's helpful  
13 for whoever's doing that.

14           MR. RIDDLE: It may be redundant, but with a  
15 computer it's easy to cut and paste. Any other  
16 questions about that? Seeing none, keep moving on to  
17 page 30. And the second item there -- the executive  
18 committee has already recommended, I guess, and that is  
19 "NOSB policy for surveys conducted on behalf of NOSB  
20 committees" and,

21           "1. All written surveys, including  
22 electronic surveys, that go out in the name of any NOSB  
23 Committee, must be approved by the NOSB Executive  
24 Committee before they are sent out; and

1           "2. A written report summarizing the results  
2 of the survey must be submitted to the full board and  
3 the NOP as soon as possible after completion."

4           So if we adopt the Board Manual as presented,  
5 we will be ratifying this policy on surveys. Any  
6 questions, comments on that?

7           CHAIRPERSON CARTER: Okay, proceed.

8           MR. RIDDLE: Okay, then the next one does not  
9 appear in the draft, and that is the amendment that I'd  
10 like to offer, and it will come on page 30 as well or  
11 actually turning to page 31, but it comes under the  
12 "Section VII, Miscellaneous Policies". And that is to  
13 add the following new policy, and I'll read this and I  
14 have it in writing for Katherine to submit.

15           "NOSB policy for public comment at NOSB  
16 meetings" -- and this is what Dave summarized this  
17 morning.

18           "1. All persons wishing to comment at NOSB  
19 meetings during public comment periods must sign up in  
20 advance.

21           "2. Persons will be called upon to speak in  
22 the order that they signed up.

23           "3. Unless otherwise indicated by the Chair,  
24 each person will be given five minutes to speak.

1           "4. Persons must give their names and  
2 affiliations for the record.

3           "5. A person may submit a written proxy to  
4 the NOP or NOSB requesting that another person speak on  
5 his or her behalf.

6           "6. No person will be allowed to speak  
7 during the public comment period for more than ten  
8 minutes."

9           CHAIRPERSON CARTER: Everybody understand?

10          MS. BURTON: Just a comment on this. We do  
11 have a public speaking policy, that if anybody really  
12 feels strongly they want to address the Board with an  
13 issue with processing, crops or livestock, then you  
14 could ask that Chair -- it has to be within 45 days or  
15 something, but we do have a policy on public speaking.

16          CHAIRPERSON CARTER: Okay, and actually  
17 before we start discussion on this, is that in the form  
18 of a motion to add --

19          MR. RIDDLE: Yes, let's deal with this  
20 separately, so I move to amend the Board Policy Manual.

21          MR. HOLBROOK: I second it.

22          CHAIRPERSON CARTER: Okay, so it's been moved  
23 by Jim, seconded by Dennis to add the proposed language  
24 concerning public comment, and essentially in summary,

1 it allows you to have a proxy, but essentially no more  
2 than one proxy is what it's all about. Okay, Goldie?

3 MS. CAUGHLAN: Just want to be sure that it's  
4 clear in here that when it goes into the Q&A period  
5 from the Board that the time does not -- this allotted  
6 time does not include the Q&A period.

7 MR. RIDDLE: You think that should be added,  
8 a specific reference that questions from the Board are  
9 allowed, or --

10 MS. CAUGHLAN: I can see where somebody might  
11 want to cut off something that didn't seem to be  
12 pleasing to their particular perspective, but if the  
13 Board -- it seems to me that when the Board begins --  
14 or the Board wants more information, they're literally  
15 on their time when they begin questioning.

16 MS. BURTON: You could add "7. Any NOSB  
17 member may call upon a person in public for additional  
18 comment." or something.

19 CHAIRPERSON CARTER: Well, why don't we say  
20 "People providing public comment may respond to  
21 questions from the NOSB beyond the allocated time  
22 limit."

23 MR. RIDDLE: Okay, I accept that as a  
24 friendly amendment.

1           CHAIRPERSON CARTER: Okay, as a friendly  
2 amendment, is that okay with the seconder?

3           MR. HOLBROOK: Okay. Need to get it in  
4 writing.

5           CHAIRPERSON CARTER: Okay. So Katherine is  
6 looking at me, she's ready to type. I would say,  
7 "Individuals providing public comment to the NOSB may  
8 respond to questions from the Board beyond the  
9 allocated time limit."

10           Okay, and I don't think we will -- we will  
11 just include that with the original amendment, so we  
12 won't have to go through votes on both. So further  
13 discussion?

14           MR. RIDDLE: Yes, that's it. That summarizes  
15 my report --

16           CHAIRPERSON CARTER: Okay, well, first of  
17 all, let's vote on the amendment. The amendment  
18 concerning public comment. Are we ready to vote?

19           CHAIRPERSON CARTER: Bandele.

20           MR. BANDELE: Yes.

21           CHAIRPERSON CARTER: Burton.

22           MS. BURTON: Yes.

23           CHAIRPERSON CARTER: Caughlan.

24           MS. CAUGHLAN: Yes.

1 CHAIRPERSON CARTER: Cooper.

2 MS. COOPER: Yes.

3 CHAIRPERSON CARTER: Goldberg.

4 MS. GOLDBURG: Yes.

5 CHAIRPERSON CARTER: Holbrook.

6 MR. HOLBROOK: Yes.

7 CHAIRPERSON CARTER: King.

8 MR. KING: Yes.

9 CHAIRPERSON CARTER: Koenig.

10 MS. KOENIG: Yes.

11 CHAIRPERSON CARTER: Lacy.

12 MR. LACY: Yes.

13 CHAIRPERSON CARTER: O'Rell.

14 MR. O'RELL: Yes.

15 CHAIRPERSON CARTER: Ostiguy. Absent.

16 Riddle.

17 MR. RIDDLE: Yes.

18 CHAIRPERSON CARTER: Siemon.

19 MR. SIEMON: Yes.

20 CHAIRPERSON CARTER: Chair votes yes. Okay,

21 amendment carries. If you're done with your report on

22 the rest of the --

23 MR. RIDDLE: Actually I didn't -- on the very

24 last page, 35, just wanted to call to people's

1 attention, if you haven't noticed this yet, that  
2 there's a very handy chart, "Parliamentary Procedure at  
3 a Glance", that's just there as a tool for us to use.  
4 I just wanted to call that to our attention. That's  
5 it.

6 CHAIRPERSON CARTER: Okay, first discussion,  
7 and then a vote on the Board Policy Manual with the  
8 amendment. Yes. Rose.

9 MS. KOENIG: I just wanted to make that  
10 motion again that I made earlier. It probably would be  
11 -- I don't know if it would be a section or an  
12 addendum, and that would really be to the discretion of  
13 maybe Jim, who put the Policy Manual together. But it  
14 would basically be an addendum or a section that would  
15 define terms that are commonly dealt with on the Board  
16 pertaining to rule making, organizations that we create  
17 like task forces, documents that -- you know, anything  
18 that we do to our job that is not necessarily clear --  
19 an overview and definition of terms.

20 CHAIRPERSON CARTER: What I would prefer to  
21 do here is let's go ahead and adopt the document that  
22 we have, and then the table would be open for the  
23 addition to -- begin to develop some additional  
24 materials. So then we have an approved document to

1 operate under, but we're going to be adding to that.

2 MS. KOENIG: Okay.

3 CHAIRPERSON CARTER: So let me ask you to  
4 hold off on that for just a minute. Any further  
5 discussion on the motion that's on the table? Okay,  
6 see that you're ready to vote.

7 CHAIRPERSON CARTER: Burton.

8 MS. BURTON: Yes.

9 CHAIRPERSON CARTER: Caughlan.

10 MS. CAUGHLAN: Yes.

11 CHAIRPERSON CARTER: Cooper.

12 MS. COOPER: Yes.

13 CHAIRPERSON CARTER: Goldberg.

14 MS. GOLDBURG: Yes.

15 CHAIRPERSON CARTER: Holbrook.

16 MR. HOLBROOK: Yes.

17 CHAIRPERSON CARTER: King.

18 MR. KING: Yes.

19 CHAIRPERSON CARTER: Koenig.

20 MS. KOENIG: Yes.

21 CHAIRPERSON CARTER: Lacy.

22 MR. LACY: Yes.

23 CHAIRPERSON CARTER: O'Rell.

24 MR. O'RELL: Yes.

1 CHAIRPERSON CARTER: Ostiguy. Absent.

2 Riddle.

3 MR. RIDDLE: Yes.

4 CHAIRPERSON CARTER: Siemon.

5 MR. SIEMON: Yes.

6 CHAIRPERSON CARTER: Bandele.

7 MR. BANDELE: Yes.

8 CHAIRPERSON CARTER: Chair votes yes. Okay,  
9 the Manual is adopted. Now, Rose, the table is open.

10 MS. KOENIG: Third time.

11 CHAIRPERSON CARTER: Just gets better with  
12 time.

13 MS. KOENIG: Really. Okay, I motion to have  
14 an addendum included in the policy manual which would  
15 be a section with the principal purpose of defining  
16 terms that are commonly used in the NOSB process and  
17 also terms and I guess action items that NOSB takes in  
18 the course of their functioning. That would help both  
19 the public and future Board members understand the  
20 process under which this whole group functions.

21 CHAIRPERSON CARTER: Okay, so a motion to  
22 essentially develop a glossary of terms --

23 MS. KOENIG: Glossary of terms, but also not  
24 just a glossary -- on some things you're going to

1 actually either have diagrams, like flow charts, so it  
2 might go beyond just a simple glossary.

3 CHAIRPERSON CARTER: Okay, a glossary and  
4 explanation of terms used.

5 MS. KOENIG: Yes.

6 CHAIRPERSON CARTER: I'm trying to make it so  
7 that Katherine's job is just a little easier here.

8 KATHERINE: Terms and procedures, Rosie?

9 MS. KOENIG: Yes, procedures is okay.

10 CHAIRPERSON CARTER: Okay, so if I hear the  
11 motion right, the motion is here to direct the Board to  
12 develop a glossary of terms and explanation of  
13 procedures to be used by the Board. Is that a way to -  
14 -

15 MS. KOENIG: Typically used by the Board.

16 CHAIRPERSON CARTER: Okay. Is there a second  
17 to that?

18 MS. CAUGHLAN: I'll second it.

19 CHAIRPERSON CARTER: Goldie has seconded it.  
20 Now it's on the table for discussion. Owusu.

21 MR. BANDELE: I would like to see that  
22 include acronyms, because a lot of time abbreviations  
23 are used so often it makes it difficult to follow.

24 CHAIRPERSON CARTER: Okay, I would think that

1 would be included in a glossary of terms and acronyms.

2 Okay, Jim.

3 MR. RIDDLE: I'm just wondering who's going  
4 to do this.

5 PARTICIPANT: You know the rule, you make a  
6 motion, you --

7 MR. RIDDLE: That was Rose, yes. I'm glad I  
8 didn't make it. No, I think it's a good idea, and I'd  
9 be willing to help pull it together, but what I would  
10 ask is that all Board members e-mail a list of your  
11 favorite terms and definitions and acronyms and  
12 definitions to begin with.

13 MR. KING: Do they have to pertain to  
14 organics?

15 MR. RIDDLE: Pertain to the functioning of  
16 the Board. But also terms you may not have the  
17 definition for but would like to make sure are  
18 included. I really don't feel comfortable just  
19 creating this out of thin air on my own, just because  
20 I'd really like to have the guidance from the rest of  
21 the Board on that.

22 CHAIRPERSON CARTER: Okay. Rose?

23 MS. KOENIG: I also -- you know, some of it  
24 too you'll probably have to get input from NOP because

1 some of it may -- I'm looking at some of the technical  
2 federal steps that things have to follow that we don't  
3 -- at least I don't have time to understand.

4 CHAIRPERSON CARTER: Okay. Alright, so, yes,  
5 Rebecca.

6 MS. GOLDBURG: I think it's a fine idea to  
7 develop such a list. I wonder if it shouldn't be  
8 separate from the Policy Manual, though, if a large  
9 part of its purpose would actually serve as information  
10 for the public, it might be more evident to the public  
11 as a stand alone document with a name like  
12 "definitions" and so on on the web. Not that I feel  
13 strongly about, but --

14 CHAIRPERSON CARTER: I think that's a good --  
15 the Board Manual is kind of an inside baseball, the  
16 glossary could be much more useful for --

17 MR. RIDDLE: Is that the purpose?

18 CHAIRPERSON CARTER: Uhm --

19 MR. RIDDLE: Is that the purpose, Rose, of  
20 your motion? I thought it was really to be guidance  
21 for the Board.

22 MS. KOENIG: Well, I think there's two  
23 purposes, and I don't see why you couldn't do it in  
24 both places. I think it belongs in the Policy Manual

1 because when you -- especially with new Board people,  
2 it would be nice that everything is in one document.  
3 But I do think that there is the same need out in the  
4 public, so whether that same section is put on the web,  
5 or in some other format I think is fine, but I think we  
6 should do it in both -- because I see a need not only  
7 for myself, but I assume maybe some people in the room  
8 that that would be helpful for growers and certifiers  
9 to understand the whole process, help communication.

10 CHAIRPERSON CARTER: Alright -- Jim.

11 MR. RIDDLE: Yes, one thing also, Kim  
12 reminded me to point out that the manual, even though  
13 we have finally adopted it, now it is a work in  
14 progress and always will be, so --

15 CHAIRPERSON CARTER: It's not the U.S.  
16 Constitution, it's a policy manual. It'll always be --  
17 okay. Then, Rose's motion is on the table to develop a  
18 glossary of terms and an explanation of procedures to  
19 be used by the Board. Everybody understand the motion?  
20 Ready to vote? Caughlan.

21 MS. CAUGHLAN: Yes.

22 CHAIRPERSON CARTER: Cooper.

23 MS. COOPER: Yes.

24 CHAIRPERSON CARTER: Goldberg.

1 MS. GOLDBURG: Yes.

2 CHAIRPERSON CARTER: Holbrook.

3 MR. HOLBROOK: Yes.

4 CHAIRPERSON CARTER: King.

5 MR. KING: Yes.

6 CHAIRPERSON CARTER: Koenig.

7 MS. KOENIG: Yes.

8 CHAIRPERSON CARTER: Lacy.

9 MR. LACY: Yes.

10 CHAIRPERSON CARTER: O'Rell.

11 MR. O'RELL: Yes.

12 CHAIRPERSON CARTER: Ostiguy. Absent.

13 Riddle.

14 MR. RIDDLE: Recuse.

15 (Laughter.)

16 CHAIRPERSON CARTER: Inner conflicts do not

17 count.

18 CHAIRPERSON CARTER: Siemon.

19 MR. SIEMON: Yes.

20 CHAIRPERSON CARTER: Bandele.

21 MR. BANDELE: Yes.

22 CHAIRPERSON CARTER: Burton.

23 MS. BURTON: Yes.

24 CHAIRPERSON CARTER: Chair votes yes. Okay,

1 so it's adopted. Alright. And thank you for the work  
2 on that too. Jim did most of it, with the work on  
3 that, we appreciate that very much. With that, we are  
4 going to move into the presentations of committee  
5 discussion items, and we call on Kim Burton.

6 MS. BURTON: Okay, I'm going to move things  
7 around a little bit on the agenda, because part of it  
8 is where I get up and speak and a lot of you have seen  
9 that, it's a very redundant presentation, but I'll do  
10 it anyway. The first item under the Materials  
11 Committee is reporting on the Materials Task Force, and  
12 I'm not going to go into a lot of depth in this, other  
13 than the Committee formed two separate Task Forces to  
14 look at material review to see if we could come up with  
15 specific recommendations to the NOP on kind of  
16 establishing bench posts, so to speak, on material  
17 review. So we felt the need particularly in processing  
18 and livestock, and the Committee -- we divided  
19 ourselves up such that the processing committee was  
20 part of the task force, along with some of the  
21 committee members from crops, along with some members  
22 from public, past NOSB members that have historical  
23 perspective to assist us in that process.

24 The same thing went along with the livestock

1 committee where they formed a task force, and you will  
2 hear separately from both of those chairs of those  
3 committees on the results of those documents that  
4 they're going to present today. That's just about it  
5 in a nutshell.

6 The other thing that we just wanted to  
7 briefly touch on was the report on EPA lists three and  
8 four inerts, and Rosie, I'd ask if maybe you could  
9 brief us on that. If there's anything additional to  
10 comment?

11 MS. KOENIG: I guess a couple of meetings ago  
12 I was asked to be the liaison between the EPA and the  
13 Board. One of the issues that came up last meeting,  
14 among others, but the one we're more immediately  
15 addressing, is the inerts policy, more specifically are  
16 formulated pesticides that have commonly been used in  
17 organic systems that contain these list three inerts.  
18 So Nancy also is on this rather quickly put together --  
19 we're calling it a task force, but only in the sense  
20 that it's not as comprehensive as some of these other  
21 task forces that have been there, but we're really  
22 helping serve as a larger liaison between EPA and the  
23 NOP, hopefully getting information that EPA may need,  
24 but as you heard before that NOP is a lot of times

1 bogged down with so many other things that it's not  
2 getting done in a timely fashion. So hopefully we're  
3 there to serve both federal bodies in getting them  
4 information and kind of being the sounding board for  
5 their organizations.

6 Nancy has been on that group, Zia (ph)  
7 hopefully giving information from CCOS, Miles MacEvoy  
8 (ph) from Washington State, and then Emily Brownrosen  
9 has officially been on and Brian Baker has been helping  
10 also quite a bit from A...y. Most specifically, they  
11 were asked because they were state and organizations  
12 that have had active lists of materials within the  
13 industry, so they're probably the most aware of the  
14 products through their materials processes that would  
15 fall into this group where you have ... list threes  
16 that either need to be reformulated or some other  
17 policy considered or adopted.

18 So those groups, I asked them all to get  
19 their lists of known products that they know have list  
20 three to EPA so that they can at least compile a larger  
21 group, maybe not a full consensus, but close to what's  
22 being used out there historically, and then now EPA can  
23 kind of look at those formulated products and products  
24 case by case and figure out which list threes are in

1       them, and then hopefully make some recommendations to  
2       NOP as to what their future status may be.

3                 And hopefully our group, again, is going to  
4       just help in that process, help facilitate it, perhaps  
5       give some more information and hopefully, again, make  
6       things happen.

7                 So where it stands now is that the lists have  
8       been given to EPA and EPA has been communicating with  
9       individuals on the group, just making sure that they've  
10      got the right products, and we hope that by, perhaps  
11      the next meeting, to have a more spelled out policy on  
12      those products being questioned.

13                I'll ask Emily to comment on this. You said  
14      there were about ten to 15 products or so that are kind  
15      of in that gray zone that we're aware of. And again,  
16      some manufacturers have chosen to reformulate, and of  
17      course, that's the most ideal situation possible.

18                MS. BROWNROSEN: Emily Brownrosen. Yes, I  
19      think it's only, I would say less than 20 amongst all  
20      the ones that have been submitted. There's a lot of  
21      overlap. I'd need to look at oils, especially  
22      sprayable oils because those have some problems. But  
23      ... we've -- we look down a lot of products have  
24      reformulated so we only have a couple that are

1 outstanding that don't have other alternatives  
2 available.

3 MS. KOENIG: And that ultimately -- at least  
4 the task force's goal is to identify, especially with  
5 products where there's nothing out there available that  
6 would not exist in a formulation. If don't know if  
7 that's clear. Because some -- you know, there's going  
8 to be a number of brand names. Some manufacturers may  
9 have already changed to list fours, they're available  
10 on the market. Whereas some may not be able to get the  
11 brand that they're accustomed to, but there is an  
12 alternative.

13 And then there's going to be products, some  
14 of which we'll talk today about, in ... materials  
15 processes where there are no alternatives available.  
16 Some of those, hopefully, will be just solved in the  
17 materials process through review.

18 CHAIRPERSON CARTER: You'll expect  
19 confessions from all of us.

20 (minor comments while setting up)

21 MS. BURTON: Again, I apologize for  
22 redundancies for those of you who attend every Board  
23 meeting, but for those of you who are new and have  
24 never have actually seen the materials review process,

1 we developed this flow chart with an attempt to help  
2 explain the time line on material review.

3 At our last meeting we had established that  
4 we would have a May 2003 NOSB meeting. That will be  
5 the next meeting, at least as far as we know, on  
6 material review. Given that we allow a minimum of 145  
7 days, the cut off date for new TAP or a new petition to  
8 be submitted would be December 1st of this year so that  
9 we have adequate time to get the TAP reviews ... for  
10 the next meeting.

11 How it works, is a petition is received by  
12 the NOP office -- you know, Bob Pooler and Tony gets  
13 the petitions. They go through it to make sure that it  
14 is complete, in other words, that it's got all the  
15 adequate information on it that is required from the  
16 petition process before it's submitted to the Material  
17 Chair.

18 Once it passes through their desk, they FedEx  
19 a copy to me. I then take it and send a copy to the  
20 appropriate chair of the proper committee, being crops,  
21 livestock, or processing. We try to get all of that  
22 done within three weeks of a petition being received,  
23 so that we move that along pretty timely.

24 The committee chair, along with myself, will

1 try to go through the petition to make sure that it is  
2 something that has everything that we need -- aqua  
3 criteria, what have you, it doesn't have any other  
4 place that its currently listed on the national list.  
5 We go through it and make sure that it actually does  
6 need to be forwarded in for a TAP review. At that  
7 point we would forward it to a contractor for review.

8           There's some other little kind of thoughts  
9 there where if a petition is received, it's supposed to  
10 be posted on the website, the NOP website within 30  
11 days saying that it's been received. If something is  
12 wrong with the petition, then the NOP office has 45  
13 days to return that petition to request further  
14 information.

15           And really there's -- the lull period in  
16 between the actual NOSB meeting and the time that the  
17 petition is submitted for a TAP, and that's where the  
18 contractors need to have that good timeliness to do  
19 sufficient review for us. And what we've been having  
20 is -- recently we've been trying to get things pushed  
21 through without enough adequate time to complete them,  
22 so we've been seeing some problems in the process. No  
23 fault to anybody specifically, or anything, but overall  
24 we've had a really tough time with good TAP, adequate

1 petitions, that whole thing.

2 We also, from a Board aspect, we want for us  
3 to have the TAPs in our hands 30 days prior to a  
4 meeting. You see that? So we do what we can do. We  
5 do the best job that we can do. We actually did  
6 receive one last night, so -- you know, our eyes are  
7 red and sore, but we do the best that we can. So we  
8 try to at least get 30 days prior to a meeting to have  
9 lots of time for committee meetings and recommendations  
10 and what have you. Any questions on this?

11 PARTICIPANT: Is this posted anywhere?

12 MS. BURTON: It's posted on the website, and  
13 it's updated after every meeting so that you know --

14 These are the materials that we are going to  
15 be reviewing at this meeting. There are six of them:  
16 1,4 Dimethylnaphthalene, Potassium sulfite, BHT,  
17 Mineral oil, Atropine, and Flunixin. This format of  
18 the spreadsheet is something that's an ongoing format.

19 You'll see the name of the material, the category that  
20 it's in -- petitioned for, the use of that material --  
21 how the actual petitioner is requesting the use, the  
22 date it goes to the materials chair, the date the TAP  
23 was requested, who the contractor is, and then the last  
24 two columns -- one is what meeting it is scheduled for,

1 and then the status of it. And I continuously keep  
2 this spreadsheet updated and forwarded to the Board so  
3 they have an idea of the materials that we're  
4 reviewing.

5 CHAIRPERSON CARTER: Kim, the mineral oil,  
6 though, we did vote on the bloat and the compaction.

7 PARTICIPANT: Right.

8 MS. BURTON: Yes. Materials that we have  
9 slated for May: Tetrahydrofurfuryl alcohol -- and all  
10 of these are in the process of TAP being conducted  
11 currently -- 2-(2-Hydroxy -- I'm not going to keep  
12 going on with that -- it's an inert. Again, it's a  
13 twist tie, a pheromone inert. Potassium silicate, and  
14 then the three livestock materials that we did not get  
15 our recommended supplemental TAP information on.

16 Now this list -- these are all of the  
17 petitions that I currently have sitting on my desk  
18 slated to either be forwarded or clarification somehow  
19 needs to be done by the materials chair and the  
20 committee chair. Some of those we've received two  
21 petitions on, and then you can see a comment on the  
22 Potassium carbonate -- that's already on ... so we'll  
23 need to just send that back and tell the petitioner  
24 that it's already on the national list. And then

1 Sodium chloride is the same way. We've had two  
2 petitions on that.

3 So again we -- I have been holding those  
4 until the 21st, just to see if we have any new  
5 clarifications made before that date that would affect  
6 materials review.

7 MS. CAUGHLAN: We don't have a copy of this,  
8 right?

9 MS. BURTON: You should have a copy in the  
10 book. I think Katherine provided you with a  
11 supplemental copy. And I do want to note on the date -  
12 - they kind of gotten cut off, but the last petition I  
13 received was July 30th, so we are not getting any more  
14 petitions through. So for whatever reason, whether  
15 people are not sending them in, or we're done. I doubt  
16 that. Last one I received was from July. And these  
17 are current and up to date.

18 (Discussions off mike)

19 CHAIRPERSON CARTER: I'm sorry, you've got to  
20 speak into the mike.

21 MS. BURTON: What she said was, just to  
22 double check that it was for processing because she  
23 thought that it might be for crops to extract kelp for  
24 seaweed production. Okay. Comments? Questions?

1                   CHAIRPERSON CARTER: Bob, do you -- I'm  
2 looking over Bob is furrowing his brows. Do you have -  
3 - you've got to come to the mike.

4                   MS. BURTON: He said -- actually Bob called  
5 me right before the meeting and said that the aloe vera  
6 folks had submitted a petition for Potassium sorbate in  
7 processing, so we'll probably see that one.

8                   MR. BANDELE: For the benefit of the new  
9 people, could you tell us a little bit about the  
10 relationship between the contractors and the reviewers  
11 themselves? Could you explain that?

12                   MS. BURTON: Yes, particularly -- it would be  
13 UC Davis? -- we have had a number of petitions and TAPs  
14 -- TAPs, particularly -- that have not come back to the  
15 board because of the length of time that some of the  
16 reviewers are taking to conduct these TAPs, whether the  
17 materials are very difficult materials or whether  
18 they're having problems contracting with reviewers, for  
19 some reason or other, we're going to have a material at  
20 the meeting to review, and we'll all get the TAP, so  
21 the contractors are having a very difficult time with  
22 their reviewers getting their information back to them  
23 on a timely basis. And again, a lot of that is because  
24 we really tried to push this -- a lot of material at

1 the end of the last minute so we could review them.

2 CHAIRPERSON CARTER: Okay, other comments?  
3 Questions? Anything else on yours, Kim?

4 MS. BURTON: No.

5 CHAIRPERSON CARTER: Okay. Any questions for  
6 Kim on any of the stuff of the materials committee?  
7 Okay, then let's move on to processing. Mr. King.

8 MR. KING: Thank you, Mr. Carter. He  
9 respects me, George, unlike you. Well, I'm sure it's  
10 no surprise to anyone in this room the processing task  
11 force and committee has been working on a  
12 recommendation concerning the scope of the review  
13 process as it relates to materials that are used in  
14 products that are processed labeled as organic or made  
15 with organic. We are, I don't know, I think this is  
16 our ninth, maybe tenth draft of this. I'm going to  
17 tell you sort of what we came up with in a nutshell,  
18 but before saying that I will say to you that we still  
19 have some additional language to consider, and so that  
20 this may change between --

21 MS. BURTON: Ten percent.

22 MR. KING: What did you say? Ten percent --  
23 exactly. -- between today and tomorrow, but in essence  
24 what we've recommended to date is that all direct and

1 secondary direct food additives are subject to NOSB  
2 review. And that indirect food additives are not  
3 subject to NOSB review. The committee, or in this  
4 case, the task force, has done extensive work. So  
5 that's basically it in a nutshell. It is an eight page  
6 document currently. It references a lot of different  
7 areas in the industry, so we will be discussing that in  
8 some detail with our recommendation tomorrow.

9 We also have looked at ion exchange, which  
10 does sort of tie into this document as well, and  
11 whether or not that is essentially -- if review is  
12 required in this particular case -- if the resins would  
13 be required. If you look at our recommendation that I  
14 just stated in a literal sense, as it stands right now,  
15 one could argue that they should be reviewed. But  
16 again, we've got some additional information to review  
17 there.

18 And then two other things. One which I have  
19 a very rough first draft, and another that's still a  
20 work in progress, and that is when you see on the  
21 agenda, it says, "When handling becomes processing for  
22 producers and retailers". We've been very challenged,  
23 as many people in the industry and certainly the Board  
24 have been, over the last month, to try and get a lot of

1 things accomplished in less than 30 days. This first,  
2 which I have in front of me is a post harvest handling  
3 versus processing document, specifically focused on  
4 organic production operation. It is the first draft.  
5 It's rough, it's intended to be forwarded for further  
6 exploration and comment.

7 I have also -- I briefly talked to Jim Riddle  
8 who allowed me to use an older document that he, and I  
9 believe you told me Joyce perhaps helped you with that,  
10 Jim. We will be submitting that as an attachment.  
11 Some of that document deals specifically with on-farm  
12 processing and the goal here is to attempt to clarify,  
13 when possible, certain situations where it's clearly  
14 handling and clearly processing.

15 And then we'll be hopefully forwarding  
16 something in rough form tomorrow too that will deal  
17 with those same two issues at the retail level. Just  
18 again, looking at certain tasks that could be  
19 considered handling and that that could be considered  
20 processing. These will both be, as I said, first  
21 drafts, and there is a lot more to consider, but I  
22 think it starts the dialogue. So that's basically  
23 where we're at.

24 CHAIRPERSON CARTER: Jim.

1           MR. RIDDLE: Mark, on this guidance of when  
2 post-harvest handling becomes processing or where the  
3 lines are, once we have a draft to circulate, I would  
4 suggest that we circulate it out to the accredited  
5 certifiers who have been making these calls for years.  
6 So just the support of the committee for that.

7           CHAIRPERSON CARTER: Yes, Rebecca.

8           MS. GOLDBURG: Forgive my ignorance, but  
9 what's a direct secondary additive?

10          MR. KING: Well, it comes from 21 CFR, and if  
11 you pull from 21 CFR -- and I can't remember the  
12 section off the top of my head -- thank you -- that is  
13 -- I guess one of the things I should say, in looking  
14 at this particular project, Rebecca, is that the task  
15 force really sought to not only further define the  
16 materials review process, but then as you know, we were  
17 looking at how do we fit into the larger or whole food  
18 industry, you know, from a regulatory perspective? And  
19 this was one area where we felt that based on the  
20 language that we've seen in OFPA, in the Rule, and  
21 things of that nature, is that we could have the  
22 authority -- well, there you have it --

23          MS. BURTON: I have just a comment too on  
24 that. On page five, Becky, are exactly some examples

1 of secondary direct food additives that this Board has  
2 reviewed in the past, and in a nutshell, they are food  
3 additives that are exempt from labeling --

4 MS. GOLDBURG: Okay, so they have no  
5 technical or functional effect or whatever it is --

6 MS. BURTON: As long as they meet the  
7 criteria of ... additive.

8 MS. GOLDBURG: Right.

9 CHAIRPERSON CARTER: Okay, are there any  
10 questions? Kim.

11 MS. BURTON: Looking at someone -- from a  
12 comment -- they would like to know what would classify  
13 as an indirect food additive, and that's mainly your  
14 packaging materials, processing equipment, that sort of  
15 thing -- anything that does not have direct contact  
16 with the food is an indirect. And I would suggest that  
17 tomorrow when we are ready to present this that we at  
18 least speak about it so that the public can know a  
19 little bit more in depth what we're talking about.

20 MR. KING: Like going through it section by  
21 section in terms of the CFR. Yes, that's fine. I just  
22 wanted to know that we still have some language to  
23 consider. I didn't want to be as specific as maybe we  
24 can tomorrow.

1           CHAIRPERSON CARTER: Just as a point of  
2 procedure, as specific as we can be today, so that  
3 everybody can kind of -- yes -- digest it tonight.

4           MR. KING: Yes, well, you certainly have the  
5 eight page draft in front of you and I don't expect --  
6 I don't want to speak for the committee without talking  
7 to everyone, but I don't expect that there are going to  
8 be pages of changes here. I think that there will be  
9 some language changed here and there, and some inserts,  
10 but I think you get the gist of it. I think one of the  
11 things that has been added to the former draft, thanks  
12 to Jim, in the end, what we're looking at ... in this  
13 case, chlorine, as it relates to being used as a  
14 surface sanitizer and looking at that as a material in  
15 terms of it were used as a surface sanitizer, that it  
16 wouldn't require national list approval. However, if  
17 you looked at it in terms of chlorine in water, that it  
18 would fall under the context of review.

19           CHAIRPERSON CARTER: Okay?

20           MR. KING: Yes, that's it.

21           CHAIRPERSON CARTER: Okay, so that's it on  
22 processing. We're catching up. We did not have our  
23 guest speaker as was previously announced this morning,  
24 so Owusu, the crops.

1           MR. BANDELE:  Alright, and I'll do the best I  
2   can to get us back off track.  We'll start with the --  
3   I'm sorry, the materials review of this committee and I  
4   passed out a sheet with the three materials that we  
5   reviewed.

6           MS. BURTON:  Where?

7           CHAIRPERSON CARTER:  I think they all look  
8   the same that --

9           MR. BANDELE:  It says "Crops committee  
10  recommendations concerning BHT and other inerts used in  
11  pheromone formulations."

12          CHAIRPERSON CARTER:  Okay, yes.  It got kind  
13  of stalled here while we were looking at the Board  
14  Manual Policy.

15          MS. BURTON:  Oh, okay.

16          MR. BANDELE:  Keep it going.

17                   (Minor discussion while papers are passed  
18  around.)

19          MR. KING:  Well, it was just brought to my  
20  attention, and I apologize for not noticing that there  
21  were perhaps a pertinent comment from the audience  
22  concerning the scope of our project, and maybe we  
23  should recognize that now.

24          MS. KOENIG:  I wanted to say it, but I

1 thought you recognized him.

2 MR. KING: I didn't see him and I'm sorry.

3 CHAIRPERSON CARTER: That's okay, since we're  
4 all digging around for the crops stuff anyway, let's go  
5 back, and Mark, go ahead and take care of that.

6 MR. KING: I apologize fellows, I got off the  
7 beaten path here, but I guess one of the things I just  
8 say in intro is that Mr. Siegel and Mark who I just  
9 talked to briefly the other day, have done an extensive  
10 amount of work in this area. It appears not just  
11 necessarily to represent Colorado Sweet Gold, but also  
12 just in general, and comments and information that you  
13 have that you feel would be helpful concerning the  
14 legal background of Food, Drug and Cosmetic Act and how  
15 it could relate to this could be helpful, so feel free  
16 if you'd like to make some comments.

17 MR. ITZKOFF: Just wanted to speak briefly on  
18 the differences -- my name is Mark Itzkoff, I'm an  
19 attorney with Olsen, Frank, and Weaver here in  
20 Washington, DC. As you mentioned, I've been working  
21 with Colorado Sweet Gold. I've also been working for  
22 about 20 years now in the FDA regulation of food and  
23 food packaging, other food ingredients. I just wanted  
24 to give you some background.

1           In 1956 when the current version of the  
2 federal Food, Drug and Cosmetic Act was enacted, FDA  
3 was first given jurisdiction, not only over food  
4 ingredients, what we term food additives, but also over  
5 some materials that are expected to migrate into food  
6 under the intended conditions of use.

7           MS. CAUGHLAN: What year?

8           MR. ITZKOFF: 1956. Okay, and at that point,  
9 not only were ingredients such as BHT or BHA, which are  
10 added directly to food subject to FDA jurisdiction for  
11 the first time, but also materials like polyethylene,  
12 PVC, that are used in food packaging and food contact  
13 applications. Along with that, materials used in ion  
14 exchange and other applications on that order, came  
15 under FDA jurisdiction.

16           Under legislation, there is no difference  
17 between direct and indirect or secondary direct  
18 additives. They are all food additives. The  
19 definition -- the classifications are only for the  
20 purpose of ease of using the regulation, -- or this was  
21 in the following -- '56 -- there came the separations  
22 172, which is the direct additives; 173, which is  
23 called secondary directs; 175 through 178 are the  
24 indirect additives. The only difference between those

1 is the physical location in the Federal Register.

2 In 1996, Congress passed FDAMA, the FDA  
3 Modernization Act, and that for the first time, created  
4 a separate category. It created -- it kept the old  
5 category of direct additives, and created a new  
6 category of food contact substances, and set up a  
7 separate regulatory scheme for many of the food contact  
8 substances, in which no longer are they part of the  
9 federal regulations. Now they are subject to food  
10 contact notification.

11 What that means is that someone who is  
12 planning a new packaging material or a new ion exchange  
13 resin submits to FDA, a notice that says in 120 days  
14 this will be on the market, and FDA has a very limited  
15 scope as to what it can object to. If it doesn't have  
16 anything in that limited scope, 120 days later the  
17 material is legally marketable for that application.

18 So I just wanted to explain -- you mentioned  
19 food labeling. Food labeling came about actually it  
20 was 1989 -- I don't remember when the Food Labeling  
21 Education Act was enacted, but the secondary direct  
22 definition had nothing to do with the food labeling, it  
23 was in place long before FLEA. Wasn't affected at all  
24 my FLEA. It's strictly a regulatory division for

1 classification within the Federal Register -- I'm  
2 sorry, within the CFR.

3 MS. BURTON: These food contact substances,  
4 is it only then for indirect materials that you had  
5 petitioned under this new --

6 MR. ITZKOFF: Actually last week --

7 MS. BURTON: -- or is it all food substances?

8 MR. ITZKOFF: No, it's not all substances.  
9 It's -- FDA had a meeting last week and they clarified  
10 at that meeting that it is packaging material,  
11 processing surfaces, cutting boards and the like, ion  
12 exchange resin they have classified as a food contact  
13 substance.

14 MS. BURTON: So it's similar to indirect,  
15 it's just now they're going under this new petition  
16 process.

17 MR. ITZKOFF: Right. Notification, yes.

18 MS. BURTON: Notification.

19 MS. CAUGHLAN: So where is that accessible --  
20 that -- what you just said?

21 MR. ITZKOFF: Which part of it? There was a  
22 final rule --

23 MS. CAUGHLAN: On notification -- whatever  
24 they printed, whatever they said.

1           MR. ITZKOFF:    The minutes of last week's  
2 meeting should be available shortly.  The slides I have  
3 copies of and can provide to the Board if you want.  Or  
4 you can get them from Dr.  --

5           MR. SIEGEL:    That was handed out this  
6 morning.  There is a clarification on that specific  
7 question that we provided.

8           MR. RIDDLE:    This isn't something from FDA.

9           MR. ITZKOFF:    No.  FDA is publishing the  
10 minutes of that meeting.  I don't know exactly when  
11 they will be available, but you can get the slides that  
12 were presented by FDA from the -- from Mr. Mitchel  
13 Cheseman (ph).

14          MS. BURTON:    Just one other -- and the reason  
15 we want to take our document back is to actually  
16 looking and maybe incorporating this.  This is  
17 something that we weren't aware of.  We're trying to  
18 look at the scope and set those boundaries, and our  
19 recommendation is not to review packaging materials or  
20 processing equipment, so those are our boundaries and  
21 if this is additional lists or different processes that  
22 need to be included in our document, then we'd like to  
23 look at that.

24          MS. GOLDBURG:  I just want to ask a basic

1 question. Have FDA promulgated implementing  
2 regulations of the 1996 amendment for contact  
3 substances?

4 MR. ITZKOFF: They were promulgated this May.

5 MS. GOLDBURG: This May, okay.

6 MR. ITZKOFF: They are final now.

7 CHAIRPERSON CARTER: Any other questions?

8 Yes, Rose.

9 MS. KOENIG: I just had -- I'm trying to  
10 understand what you're saying. So in the case of a  
11 recommendation such as the one that we put forth based  
12 on those categories, what are you saying -- what's the  
13 implication of that?

14 MR. ITZKOFF: Essentially I'm saying that the  
15 categories need to be updated to conform with FDAMA.  
16 Rather than have the indirect, secondary direct, and  
17 direct categories, you probably should have a direct  
18 and a food contact substance category, because FDA is  
19 no longer going to be looking at new materials and  
20 classifying them as indirects or directs. They're only  
21 to be regulating them, to the extent possible, as food  
22 contact substances. So now if one of your packagers  
23 comes up with a new material and says that this is a  
24 packaging material and it's clear that it's a food

1 contact substance, then you'll know where to put it.

2 CHAIRPERSON CARTER: Okay, go ahead Becky.

3 MS. GOLDBURG: I wanted to ask another basic  
4 question, just thinking about the document that Mark  
5 distributed that says the NOSB will not review indirect  
6 food additives or food contact substances -- can you  
7 tell me under the 1996 amendments, what are the limited  
8 criteria you mentioned under which FDA can object to  
9 food contact substances? I just want to get an idea of  
10 what it is that FDA will be looking at in this process  
11 and whether that -- conforms to the sort of concerns we  
12 would have on the Board.

13 MR. ITZKOFF: I don't have the exact list  
14 here, but basically they -- yes but that doesn't --  
15 yes, it should be there -- I'm sorry. Basically,  
16 there's a toxicology question, where there is any  
17 question where there will be materials migrating from  
18 the food contact substance that will have a potential  
19 for human health contact. There's an environmental  
20 section, whether there's going to be anything from a  
21 processing, the production of the material, or food  
22 disposal that will adversely affect the environment.

23 MS. BURTON: Is it the same criteria that was  
24 used for indirect packaging?

1 MR. ITZKOFF: Exactly.

2 MS. BURTON: I have that.

3 MS. GOLDBURG: So it's the same, okay.

4 CHAIRPERSON CARTER: Is it?

5 MR. ITZKOFF: It's almost identical. They're  
6 actually, as part of the whole modernization act,  
7 there's been some changes in toxicology data they're  
8 looking at, but that's not actually in response to  
9 FDAMA, that's just bringing things into line with  
10 modern toxicology.

11 MS. GOLDBURG: So basically the criteria are  
12 food safety and environmental and reasonably broad.

13 MR. ITZKOFF: Right.

14 MS. BURTON: And percentage levels of toxic -  
15 - it has to be under one percent or one part per  
16 billion or something -

17 MR. ITZKOFF: No, not quite. Well, there are  
18 different levels of toxicology that are required for  
19 different dietary concentrations. If it's less than  
20 half a part per billion, FDA doesn't require any new  
21 toxicology data, they just require literature search,  
22 demonstrating that there is no carcinogenicity or  
23 mutagenicity concerns.

24 If it's between 0.5 and five parts per

1 billion, they require some basic toxicology. It's an  
2 Ames test, and an in vivo mutagenicity test. If it's  
3 above half a part up to one ppm, they may require 28  
4 day studies in two different species. But they still  
5 are subject to the food contact notification. There is  
6 a limit, if you get too close to the upper bound of  
7 what toxicology will permit, and FDA wants a chance to  
8 take a closer look at it, and then they will pull it in  
9 as a full food additive petition and they won't allow  
10 the 120 day limit.

11 MS. BURTON: And potentially be on the label  
12 at that point as a direct food additive -- or the level  
13 of migration would --

14 MR. ITZKOFF: Well, no, no.

15 MS. BURTON: No?

16 MR. KING: It still wouldn't be a part of the  
17 label.

18 CHAIRPERSON CARTER: Rick first and then  
19 Nancy and then Mike.

20 MR. MATHEWS: The FDA regs,  
21 101.100(A)(3)(ii), deals with processing eggs.

22 MR. ITZKOFF: Right, food labeling.

23 MR. MATHEWS: The direct and the food  
24 contact. Am I correct in assuming that all processing

1 aid would fall under direct, and not under food contact  
2 under this new scheme?

3 MR. ITZKOFF: As defined by 100, what they  
4 consider a processing aid, that would be considered  
5 direct. But under this -- what is subject to labeling  
6 under 100 as a processing aid is sometimes different  
7 than what is regulated as a processing aid under 173 --  
8 172 through 178. The definitions don't always mesh.

9 MR. MATHEWS: Can you describe the  
10 difference?

11 MS. BURTON: It's in our document. I have  
12 both definitions in there.

13 CHAIRPERSON CARTER: Okay.

14 MR. MATHEWS: I know there's two different  
15 definitions, but can we get some clarification as to  
16 what makes one term have two different definitions?

17 MR. ITZKOFF: If you're asking me to tell you  
18 why FDA did it that way, I'm not sure I can. But --

19 MR. MATHEWS: And the reason why this is  
20 important is because processing aids are defined in  
21 regulations for the NOP, and the definition that is  
22 used is what is seen in USC 101.100(A)(3)(ii).

23 MR. ITZKOFF: In that case, a processing aid  
24 is something which is added or dissolved into the food,

1 and usually it's removed later, but I'm not sure that's  
2 a requirement.

3 MS. OSTIGUY: You mentioned that -- I think  
4 your level was five parts per million -- below that the  
5 FDA only requires a literature search?

6 MR. ITZKOFF: A half a part per billion.

7 MR. RIDDLE: 0.05 ppm.

8 MS. OSTIGUY: 0.05.

9 MR. ITZKOFF: No, no. Not 0.05, 0.5 ppb.  
10 0.5 ppb. That's a carry over from the threshold of the  
11 regulation.

12 MS. OSTIGUY: What do they do when there are  
13 no data?

14 MR. ITZKOFF: The 0.5 ppb is based on an FDA  
15 survey of the Gold database of carcinogenicity and  
16 mutagenicity, and they came to the conclusion -- it  
17 actually was a part of Cantox (ph) study, that anything  
18 present in the diet one part per billion or below, even  
19 if it were a carcinogen, at that concentration is --  
20 you can say with a 95 percent confidence level that it  
21 will be -- the risk of increase cancer is less than one  
22 part in a million. So the literature search is really  
23 just to isolate those things that are known  
24 carcinogens. But the one ppb level is based on the

1 assumption that it is a carcinogen, and even at that  
2 level it's not going to cause a problem. And then FDA  
3 took that one ppb and just as an added measure of  
4 safety, let's cut it in half. So they're assuming that  
5 it essentially is a carcinogen and it's still going to  
6 be safe. But on the ... they can't go ahead and prove  
7 anything isn't a carcinogen, that's why they need the  
8 literature search.

9 CHAIRPERSON CARTER: Mark.

10 MR. KING: When you talked about moving  
11 forward with the CFRs and FDA, and in this case,  
12 looking at a direct food additive versus the food  
13 contact substance, in your opinion, in looking at the  
14 food contact substances, surely they will look to  
15 categorize and further, perhaps, break those down.  
16 Could you speak to that?

17 MR. ITZKOFF: Actually, no, they're not going  
18 to further categorize them. Food contact substances  
19 will not be in the CFR. They are strictly limited to  
20 listing them on the web -- FDA has a website where  
21 they're all listed, and basically what they are doing  
22 is they are saying that the listings there are company-  
23 specific, so that if Roman House has a new product,  
24 just to pick some names -- Roman House has a new food

1 contact substance they produce and they market it to  
2 several companies, Dupont can not now go and make the  
3 same material and rely on the Roman House listing.  
4 They have to get their own. If each supplier has to  
5 have his own listing, then they're not worried about  
6 where it fits in the CFR, because the supplier can just  
7 say, well on the website we're number 176 -- it's a  
8 very simple two clicks to check and there it is.

9 So rather than separate things out so that  
10 you can find out which is where, it's just going to be  
11 on the website.

12 MS. BURTON: Question as we're talking about  
13 these notifications -- you would submit to the FDAMA a  
14 letter or recommendation that you want this substance  
15 to be now a food contact substance, and it's my  
16 understanding that there's -- that 120 days if you do  
17 not hear back from them, then it's considered approved.

18 Is that how it works?

19 MR. ITZKOFF: Correct. In practical terms  
20 what happens is you submit the notification. FDA  
21 performs a two phase review. The first phase, which  
22 they call phase I is done within six weeks, and at that  
23 point they will send you -- what they are required to  
24 do is send you a letter of acceptance which says they

1 have -- that you have submitted the review, that they  
2 have given it an initial perusal and that it meets the  
3 format requirements of the regulation. And that --  
4 Phase I letters establishes the initial submission  
5 date. And you do not have to hear back from them.  
6 It's not a requirement -- this came up last week -- FDA  
7 does, as a courtesy, intend to submit letters telling  
8 you that as of such a date you are approved -- or  
9 rather your notification becomes effective and here's  
10 how it will appear on the website.

11 The problem that they're having right now is  
12 that they are not updating their website as quickly as  
13 we would like, so you have materials that have actually  
14 been --

15 MS. BURTON: Gee, what a surprise.

16 MR. MATHEWS: We can sympathize.

17 MR. ITZKOFF: I'm sure you can. But you have  
18 materials that are out there that have an effective  
19 notification that aren't listed as of yet.

20 MS. BURTON: So if this were a recommendation  
21 and a certifier needed to validate that they had  
22 something from the FDA saying yes, this is a food  
23 contact substance, you would have the letter of  
24 acceptance at least?

1           MR. ITZKOFF: You would have at least a  
2 letter of acceptance, right, and if you needed to  
3 confirm that, the letter of acceptance is signed by a  
4 CSO who would be able to confirm that the notification  
5 is effective and is just waiting for the website  
6 update.

7           MR. KING: And so -- hold on -- thanks for  
8 the distraction. To build on Kim's question, this  
9 would essentially happen after the 120 day period, so  
10 that would be a common time frame if it was a food  
11 contact substance.

12           MR. ITZKOFF: The 120 days is statutory. You  
13 get the letter -- usually it's four to six weeks --

14           MR. KING: After.

15           MR. ITZKOFF: -- after you submit. Okay, so  
16 you have the letter and it says that we have reviewed  
17 the material and have accepted your notification for  
18 filing. It doesn't state specifically but what it  
19 means is that they have looked at it and they have even  
20 done an initial review and seen that all the data you  
21 need is there. There were some statistics at last  
22 week's meeting, in practical terms, what happens is  
23 that when they're doing that Phase I review, if they  
24 find that that is missing, they will notify you and you

1 have ten days to submit the missing data or withdraw  
2 your notification.

3 CHAIRPERSON CARTER: Okay, yes, Kevin.

4 MR. O'RELL: Just so we're very clear on  
5 this, or I'm very clear on this, when you submit the  
6 material for the FCA, within four to six weeks you'll  
7 receive a letter back saying, from the FDA, it's a  
8 letter of acceptance.

9 MR. ITZKOFF: Correct. It's acceptance of  
10 the notification.

11 MR. O'RELL: Correct, and then during that  
12 period yet, they still have 120 days -- they could come  
13 back after that letter and tell you it's not approved?

14 MR. ITZKOFF: They have 120 days from the  
15 date of acceptance, not from the letter, but from the  
16 date of acceptance. If they come back after that --  
17 after the letter comes, what they have to do is either  
18 outright reject it, in which case it would be posted on  
19 the web. They can ask for more data. Practical terms,  
20 they're still very quick, they're still limited by that  
21 120 days. If they do ask for more data, practically  
22 what they would do is they would tell you that they  
23 have an objection, that if you don't respond with the  
24 data that they will reject your notification, and most

1 likely will ask you to withdraw it, rather than have it  
2 rejected.

3 7 MR. O'RELL: Okay, so just because you would  
4 have that letter of acceptance of notification, doesn't  
5 mean that it's approved.

6 MR. ITZKOFF: That's right. But if they  
7 don't do anything after 120 days, it is approved. It  
8 is deemed accepted.

9 MR. O'RELL: So the only real way to verify  
10 that is when it is posted on the FDA website, or if --  
11 is that correct?

12 MR. ITZKOFF: That's if you don't get the  
13 second voluntary --

14 MR. O'RELL: However, that's not required --

15 MR. ITZKOFF: It's not required.

16 MR. O'RELL: -- by the FDA, so --

17 MR. ITZKOFF: But most likely you will have  
18 that second voluntary letter, and you can submit that.

19 MR. O'RELL: But it's not a requirement.

20 MR. ITZKOFF: No, it's not a requirement.

21 CHAIRPERSON CARTER: Rose.

22 MS. KOENIG: My total ignorance question.

23 What happens -- say for example, NOP is -- sort of back  
24 -- going back to that 100 ... because that, to me, is

1 the crux of what we're dealing with. What happens is  
2 FDA is saying, as I understand it -- again, a lot of  
3 this is new information to me -- but as I understand  
4 from what you said, although we haven't seen it on the  
5 FDA website -- ion exchange can be reclassified into  
6 this area, yet what happens if we, as a Board, feels  
7 that it's a filtering device and applied -- ... what we  
8 see in the scope of how our rule has been written --  
9 how do you resolve that? And what's that relationship?  
10 You know what I'm saying?

11 MS. BURTON: Rosie, if it's actually deemed a  
12 packaging material and this Board is recommending not  
13 looking at indirects -- materials or packaging -- and  
14 that is recognized under that CFR or that FDA term,  
15 their law supersedes ours.

16 MS. KOENIG: That's the question.

17 MS. BURTON: So we -- that's it. That's  
18 done.

19 MS. KOENIG: So based on this new  
20 information, we need to go back then and see what we  
21 were thinking in the light of this new information, we  
22 need to rethink what we're -

23 MS. BURTON: Right, and that's why we were  
24 going to take it back to the committee and look at this

1 new information and see where it fits in our  
2 recommendation. And, Richard, did you want me to read  
3 those two definitions you were asking about?

4 MR. MATHEWS: No -- I've read them, I just  
5 wanted to know if whether or not the attorney knew why  
6 there were two different definitions for the same term.

7 MS. BURTON: Well, one is under labeling and  
8 one is under the CFRs, so --

9 MR. ITZKOFF: Right. The other point is that  
10 some of the processing aid terms used in the 170 -- 173  
11 to 178 section of the food additive regulations,  
12 precede the labeling regs, and at that point they were  
13 looking at some industry technology. Then when the  
14 food labeling regs came out, they started using  
15 different technology and never reconciled the two.

16 PARTICIPANT: The food labeling regs have  
17 three kinds of incidental additives --

18 CHAIRPERSON CARTER: Please identify  
19 yourself.

20 MS. BURTON: That's redundant too, we all  
21 know that. It's all in our report, so we're informed  
22 on that.

23 MR. KING: I guess one thing I would bring up  
24 while the two of you, three of you are still here --

1 this is totally up to the Board -- if you have  
2 questions about ion exchange that you would like to  
3 specifically ask, Mark does have somewhat of a  
4 background, as I understand, in chemistry, and this is  
5 not to say it's the definitive word or anything, but if  
6 anybody had additional questions on that particular  
7 technology, then perhaps you could ask him.

8 MS. KOENIG: I had a question.

9 CHAIRPERSON CARTER: Okay, Rose.

10 MS. KOENIG: It has come up and you were  
11 here, is it argued that in fact ion exchange -- the  
12 reason why it's called that way is because it actually  
13 -- I mean I read your -- I don't know if it's your  
14 argument, but I read the Colorado Sweet Gold position  
15 in terms of what the process is doing, but an  
16 alternative position is that it is in fact, that ion  
17 exchange is to chemically serve a function. I mean  
18 that's why you're using it.

19 MR. ITZKOFF: It doesn't chemically alter the  
20 material. If you look at --

21 MS. KOENIG: I mean, I have a science  
22 background -- why do you say chemically alter? I'm  
23 saying the change -- I mean it's there to attract --

24 MR. ITZKOFF: Ionic impurities.

1 MS. KOENIG: -- in the product -

2 MR. ITZKOFF: Ionic impurities, right.

3 MS. KOENIG: So that is a chemical --

4 MR. ITZKOFF: It's more a physical than a  
5 chemical. A chemical reaction is where you break  
6 chemical bonds. There are no chemical bonds broken in  
7 the ion exchange reaction. All you're doing is taking  
8 the ionic materials which are dissolved in the water  
9 phase, and they get attracted to the ionic resin, and  
10 hydroxyl and hydrogen ions, which were a part of the  
11 solution, are then -- and part of water -- are then  
12 take that place in the solution. But there's no  
13 breaking of chemical bonds.

14 MS. KOENIG: But that reaction is not  
15 physical, it's chemical.

16 MR. ITZKOFF: No, it's physical. It's  
17 magnetic attraction. It's not chemical.

18 MS. BURTON: Well, I just wanted to read the  
19 definition of synthetic in our rule. "A substance that  
20 is formulated or manufactured by a chemical process or  
21 by a process that chemically changes a substance  
22 extracted from naturally occurring plant, animal or  
23 mineral sources, except that such term shall not apply  
24 to substances created by naturally occurring biological

1 processes."

2 MS. KOENIG: Can you read that one more time?

3 MS. BURTON: "A substance that is formulated  
4 or manufactured by a chemical process or by a process  
5 that chemically changes a substance extracted from  
6 naturally occurring plant, animal or mineral sources,  
7 except that such term shall not apply to substances  
8 created by naturally occurring biological processes."

9 MR. ITZKOFF: Yes, I would say that from that  
10 definition, if you take -- if you take fructose and you  
11 hydrolyze it, then you have a synthetic substance. But  
12 if you take a solution of fructose and you pass it  
13 through a filter that removes, let's say, particulate  
14 matter, and what comes out through the other end of the  
15 filter is essentially the same fructose solution but  
16 without the particulate matter, and you haven't  
17 chemically changed it. And ion exchange is more  
18 similar to the filter than it is to hydrolyzation --  
19 hydrolysis, excuse me.

20 CHAIRPERSON CARTER: Okay, Rick.

21 MR. MATHEWS: Maybe as an example -- let's  
22 cite an example. Law 101.100(A)(3)(ii)(a) talks about  
23 a substance that is put into the -- it's used as a  
24 substance that's added, and then it's removed --

1 MR. ITZKOFF: Right.

2 MR. MATHEWS: Totally. The -- could a  
3 parallel be drawn that this processing aid is inserted  
4 into the solution, it passes through the ion exchange  
5 and the ion exchange is what extracts out what was put  
6 in there as a processing aid previously, or some part  
7 of that processing aid? Is that an example?

8 MR. ITZKOFF: I don't think so because what  
9 the ion exchange is removing is not something that has  
10 been added to the solution. What it's removing is a  
11 natural impurity that's in the solution.

12 MR. MATHEWS: Okay, but if you were to add a  
13 processing aid and then you were trying to take that  
14 processing aid out --

15 MR. ITZKOFF: You could do it with ion  
16 exchange.

17 MR. MATHEWS: Okay, that's what I was asking.

18 MR. ITZKOFF: Yes, that could be done through  
19 ion exchange.

20 CHAIRPERSON CARTER: Rose.

21 MS. KOENIG: But wouldn't you have the same -  
22 - after you go through the ion exchange column that the  
23 resulting product had been chemically altered?

24 MR. ITZKOFF: I don't think so. I don't

1 think so. Because all you have done is physically  
2 remove the impurities. You haven't -- the basic  
3 compound, again getting back to that fructose, is  
4 fructose and water. When it comes out the other end of  
5 the ion exchange column, you still have the same amount  
6 of fructose, that hasn't changed, and water. What  
7 you've done is remove the impurities that are dissolved  
8 in the water, not the fructose.

9 CHAIRPERSON CARTER: Okay, Nancy and --

10 MR. ITZKOFF: In fact, ion exchange is used  
11 just to purify and desalinate water.

12 CHAIRPERSON CARTER: Nancy, Kevin, and then  
13 Jim.

14 MS. OSTIGUY: I think maybe what's going on  
15 here is there's a difference in language in terms of  
16 how different fields use the same words. If you're  
17 looking at the material that goes in in the first  
18 place, you have a complex mixture of chemicals. You  
19 have a different mixture of chemicals that come out the  
20 other end.

21 MR. ITZKOFF: Correct.

22 MS. OSTIGUY: I think that's what Rose is --

23 MR. ITZKOFF: But that's not a chemical  
24 change.

1 MS. OSTIGUY: Why --

2 MR. ITZKOFF: If you look at distillation --

3 MS. OSTIGUY: ... is what is being said, and  
4 I still contend we have a difference in language  
5 between chemistry and biology.

6 MR. ITZKOFF: Well, I can only look at it as  
7 a chemist.

8 MS. OSTIGUY: And I'm actually a  
9 toxicologist, so I have both sets of languages running  
10 around in my head. I think that's what's going on  
11 here.

12 CHAIRPERSON CARTER: Kevin.

13 MR. O'RELL: In the resins that you're using  
14 in the ion exchange process, you're replacing -- the  
15 ionized materials or substances that are in the  
16 fructose solution, you're exchanging those with  
17 hydrogen and hydroxyl ions from the resins.

18 MR. ITZKOFF: Right.

19 MR. O'RELL: And usually that's done in a  
20 proportion that the end result of a hydrogen and  
21 hydroxyl ions come back as water?

22 MR. ITZKOFF: Right. You have to remember  
23 that water is naturally a blend of H<sub>2</sub>O, H<sup>+</sup>, and OH<sup>-</sup>,  
24 and the ratio between the hydrogen and hydroxyls is

1     what gives you your pH.  The amount that's going in  
2     from the ion exchange column, is not enough to  
3     appreciably change pH of the food that's coming -- of  
4     the solutions coming out.

5             MR. O'RELL:  Is this always the case in using  
6     hydrogen ions for the cation exchange resin, or could  
7     you use sodium ions, and then end up with sodium in the  
8     process.

9             MR. ITZKOFF:  You could use sodium, yes.  
10    That all depends -- what happens -- this is all under  
11    the control of the processor.  What happens is they  
12    actually charge the columns before they use it, and  
13    they charge it by running a high acid, high base, or  
14    salt solution through the column to dislodge whatever's  
15    in there and get it set for the ion exchange process.

16            MR. O'RELL:  But in one case you would have  
17    water, essentially coming back, and in the other case  
18    you would have sodium --

19            MR. ITZKOFF:  You would have sodium.  That's  
20    what started household water softeners.  You have a  
21    sodium chloride solution that exchanges for the calcium  
22    carbonate, I believe, that's dissolved in water.  The  
23    calcium is replaced with sodium, makes the water  
24    softer.

1           MR. O'RELL:  It's just a function of the  
2 resin, but in terms of the application, does it matter  
3 which you use?

4           MR. ITZKOFF:  I'm not sure what you're  
5 asking.

6           MR. O'RELL:  Could you -- would the same --  
7 in all applications, would the resins that just have  
8 hydrogen and the hydroxyl ions work?  Or would there be  
9 applications where you want a sodium -- a resin that  
10 had a cation that was sodium -- contains sodium for  
11 exchange?

12          MR. ITZKOFF:  I would imagine there are some  
13 where you'd want the sodium salt, or perhaps even  
14 another ion, but I don't know which applications those  
15 would be.

16          CHAIRPERSON CARTER:  Jim.

17          MR. RIDDLE:  Yes, I understand that the  
18 fructose is not chemically changed itself.  But the  
19 question about the impurities that are removed -- are  
20 those also -- I guess what happens to them and would  
21 they be intended as an organic product as well, with  
22 this particular Colorado Sweet Gold?

23          MR. ITZKOFF:  The impurities?

24          MR. RIDDLE:  Yes.

1           MR. ITZKOFF: Generally, the impurities are  
2 minerals, and what happens is, the columns are used in  
3 rotation, because as the columns are used, they get  
4 saturated with the impurities. And typically you'll  
5 have a situation where you'll use them in sets of  
6 three, and you'll rotate the sets, and when the column  
7 is inactive, you recharge it by running an acid  
8 solution or a basic solution through, and basically you  
9 discard the impurities. They're not used in anything.

10           MR. RIDDLE: Okay. Yes, when there was an  
11 overview of this processing plant, there were several  
12 different products manufactured there, but those are in  
13 different steps of the refining or the breaking down,  
14 not running out of the ion exchange itself.

15           MR. ITZKOFF: Right, they don't --

16           MR. RIDDLE: Okay.

17           CHAIRPERSON CARTER: Mark.

18           MR. KING: You talked a lot about the process  
19 and I just had a very basic question about it --  
20 someone said earlier, and I'm not sure who it was, the  
21 brand of the resins that you're using -- I don't know  
22 if they're a type or something -- Dow 66, 88 -- can you  
23 speak a little bit about resins, just specifically so  
24 that we understand that?

1           MR. ITZKOFF: Okay, sure. Basically the  
2 resin acts as a support system for the function groups.  
3       You have to look at the resin as a superlarge  
4 molecule, or as a cage, lattice-work. And attached to  
5 the cage are these acid groups or other functional  
6 groups which supply the hydroxyl or the hydrogen atoms  
7 -- ions, rather -- that will replace. Now what you  
8 want in a resin is something that will have a lot of  
9 pores so that you get a lot of surface area for the  
10 exchange contact. You also want something that is  
11 relatively insoluble, so that the aqueous solution does  
12 not go through and wash it away. And what they do  
13 generally is they use -- they crosslink these materials  
14 so they take the polymers with the functional groups on  
15 them, they react them with in general, divinylbenzene,  
16 DVB, to get a crosslinked material. So essentially you  
17 have something which in many ways looks like the  
18 structure of a rubber tire. It's a giant  
19 macromolecule. That way you don't get the resin itself  
20 extracting into the solution. It stays in the column,  
21 and only the counterions are released. I'm not sure  
22 that's what you were asking.

23           MR. KING: No, I think that's helpful. And  
24 then if you can talk about the regeneration process and

1 typically -- just a little bit more about that?

2 MR. ITZKOFF: What happens when an ion  
3 exchange column is used is that there is an equilibrium  
4 that's reached between the counterions and the  
5 impurities, and as the material flows through the  
6 column, you start to use up the capability of the  
7 column to exchange. And generally what happens is  
8 after a period of time, the column is taken out of  
9 production and a fluid -- recharging fluid is forced  
10 through in the opposite direction, and this fluid is  
11 generally either a strong acid or a strong base. And  
12 now what this does is it forces the equilibrium in the  
13 opposite direction. When initially you're running the  
14 fluid through, the resin has zero impurity and the  
15 liquid has all the impurity, so it equals out as it  
16 goes through. Now, when you regenerate, you've got the  
17 liquid with zero impurity, the resin has all the  
18 impurity, and it reaches a new equilibrium going back  
19 through the other way, taking the impurity out for  
20 discharge, regenerating the column to be available for  
21 use when its turn comes up again.

22 MR. KING: Can you talk specifically about  
23 variation that might happen within the column from day  
24 one to say, I don't know -- day 200 or something -- in

1 terms of the efficiency and effectiveness of the ion  
2 exchange process?

3 MR. ITZKOFF: Well, any food contact surface  
4 has some solubility in water. This goes all the way  
5 back to 1978 case of Monsanto v. Kennedy, where FDA  
6 looked at the plastic beverage bottle for the first  
7 time. Anything is going to dissolve somewhat. Water  
8 is deemed to be the universal solvent. What happens as  
9 the column is in use -- and most of these are in use  
10 for five or even eight years -- some of the functional  
11 groups eventually do break off -- more of a physical  
12 reaction than anything else, they're soluble in water,  
13 they get carried away. And this again, is very low  
14 concentrations -- in the fractional part per billion.  
15 It's even less than you would get from the polyethylene  
16 bottle -- your PET water bottle over there. But it's  
17 just a physical function of water, solubilizing the  
18 surface. When you're talking millions of gallons  
19 flowing through the column over its useful lifetime, so  
20 just like eroding away Niagara Falls, eventually you  
21 get some of it coming out. As the functional groups  
22 wear off, the ability of the column to hold new counter  
23 ions decreases and eventually the resin has to be  
24 dumped and replaced.

1           MR. KING: Can you give us, in your  
2 experience, specific examples of measurement techniques  
3 and at which point those measurements are taken?

4           MR. ITZKOFF: It's usually a measure of the  
5 electrical conductivity of the column.

6           MR. KING: I mean as an indication of  
7 efficiency and effectiveness so that you would know at  
8 what point needing to regenerate, because --

9           MR. ITZKOFF: No, it's not regeneration --  
10 regeneration is done on a daily basis. It's a matter  
11 of when you actually have to replace the column, and  
12 that's done on a yearly, or hopefully five to ten year  
13 basis, because these are not inexpensive. You don't  
14 want to replace them. But you would test the column  
15 typically every three months, three to six months to  
16 see that it's still retaining enough ions to perform  
17 accurately.

18           MR. KING: And is this part of GMPs? I mean  
19 is that something --

20           MR. ITZKOFF: Uh-huh.

21           CHAIRPERSON CARTER: Alright, I think we need  
22 to move on from here, but thank you -- Mark will be  
23 around and we'll have some discussion after this too.

24           MR. ITZKOFF: We'll be here.

1           CHAIRPERSON CARTER: We appreciate that.

2           MR. ITZKOFF: Thank you.

3           CHAIRPERSON CARTER: Yes, very quickly.

4           MR. SIEGEL: Very quickly. To go back to the  
5 way the discussion opened, your proposal, I gather, in  
6 its present form, tries to draw a line between direct  
7 additives, secondary direct additives and indirect  
8 additives, and what we've brought you today is  
9 information that these don't really serve the organic  
10 community as hard and fast categories. That the --  
11 what you're looking for is what the potential of the  
12 material is to have a food contact that is not  
13 deliberately placed in the food but may be placed in  
14 the food. The FDA has looked at that, and the FDA has  
15 said on the one hand are food additives that require a  
16 food additive petition before they can be adopted and  
17 used. Food contact notifications are this whole other  
18 category, and that's where equipment surfaces are,  
19 that's where packaging surfaces are, and they have now  
20 put ion exchange into that category, rather than in the  
21 food additive.

22           MR. KING: Yes, and we'll be considering that  
23 too.

24           CHAIRPERSON CARTER: Okay. Goldie --

1 MS. CAUGHLAN: I just wondered, the fact that  
2 they put ion exchange in that category, you had  
3 requested them to do so?

4 MR. SIEGEL: No.

5 MR. ITZKOFF: No, they had said --

6 CHAIRPERSON CARTER: Come to the mike, and  
7 then we have to close this off, because we've got to go  
8 on. Okay?

9 MR. ITZKOFF: It's been FDA's position for  
10 about four years now that they wanted to move ion  
11 exchange resins into the food contact substance. It  
12 had nothing to do with Colorado or any other petition.

13 CHAIRPERSON CARTER: Alright. With that,  
14 Owusu, before we get into the crops, we're going to  
15 take a ten minute break.

16 (Whereupon, a 20 minute recess off the record  
17 was taken.)

18 CHAIRPERSON CARTER: Okay, Owusu.

19 MR. BANDELE: Alright, basically the crops  
20 committee reviewed three materials that had been  
21 petitioned. The first one was BHT, and I've outlined  
22 the key points in the document that I've passed on to  
23 you, and I think a few of the presenters this morning  
24 gave a lot of additional background, so I won't spend a

1 lot of time on that. Just to remind folks that BHT is  
2 a EPA list three inert that is present in the  
3 formulations of pheromones used for mating disruption.

4 These disrupters have been reported to be crucial for  
5 production of organic fruits including apples, peaches.

6 They also are some uses in cotton, with the boll worm,  
7 and some other uses there as well.

8 Two other petitions have also been submitted  
9 but -- for TAP reviews, but those TAP reviews have not  
10 been done at this point. The major difference with the  
11 two other inerts is that where the BHT is used  
12 primarily as an antioxidant, the other two, which have  
13 pretty long scientific names -- but I have those if  
14 anybody wants to grill me on that -- are used primarily  
15 for the preventing of ultraviolet photodegradation.

16 The current annotation that's listed in the  
17 rule regarding pheromones only mentions them to be used  
18 as attractants, and not necessarily as mating  
19 disruptors. This may be a matter of interpretation for  
20 some, because the pheromones, they are, in a sense,  
21 attracting, but they're also more confusing. So there  
22 may be some differences of interpretation in that  
23 regard.

24 All three TAP reviews recommended approval of

1 BHT to be used as pheromones for mating disruption, but  
2 restrictions, and the primary restrictions were that  
3 they would be used only with the polymer dispensers.  
4 There was a lot of discussion this morning about the  
5 feasibility of getting ties -- collecting the ties at  
6 the end of the season. The review, I think, pointed  
7 out that since this only amounted to maybe a quarter  
8 pound per acre of actual materials, and even though  
9 growers have to remove the plastic, there's a lot more  
10 plastic than that, and growers probably leave greater  
11 than a quarter pound when they do have to remove things  
12 like drip tubes, plastic mulch, et cetera.

13 So basically, the crop committee, tried to  
14 address all of these issues by a recommendation to  
15 amend the current annotation regarding the pheromones.

16 We did find that BHT was a synthetic, so it voted four  
17 to zero on that.

18 I think the other reviewers mentioned  
19 possible uses in livestock. We did not take up that  
20 issue in this recommendation -- didn't really know of  
21 any uses, but folks here see fit to amend that based on  
22 additional information, we can certainly consider that.

23 I'd like to -- even though she's not in the  
24 room, I'd like to thank Emily for assisting the crop

1 committee. She basically drafted the recommendation  
2 that I'm about to read. Kim also sat in on the crops  
3 committee conference call. And when it was suggested  
4 that we broaden the recommendation to include other  
5 list three inerts, there was some hesitancy on the part  
6 of the committee to just blanketly approve materials.  
7 So I requested that the crops committee be supplied  
8 with copies of the other petitions which were available  
9 for review before we voted to change it.

10 The language here is somewhat technical and  
11 complex, but this was done in collaboration with folks  
12 at EPA, and it reads as follows:

13 "Pheromones, including --" -- it concludes,  
14 "Only EPA-exempt pheromone products" -- this is the  
15 recommendation that we're making to amend 205601(F).

16 "Pheromones that includes only EPA-exempt  
17 pheromone products, EPA-registered pheromone products  
18 with no additional synthetic toxicants are listed in  
19 this section, and any inert ingredients used in such  
20 pheromone formulations that are not on EPA list one" --  
21 which is the inerts of toxicological concern" -- or EPA  
22 list two" -- which are essentially toxic -- providing  
23 the pheromone products are limited to plastic polymer  
24 dispensers. Pheromone products containing only

1 pheromone active ingredients listed in this section and  
2 list four, may be applied at any time and in any form."

3 That's a mouth full, I know.

4 As far as the additional explanations for the  
5 above recommendation for annotation change, the crop  
6 committee did not recommend the -- removing the  
7 dispensers at the season's end. The committee  
8 refrained from using the word "plastic", instead it  
9 preferred the word "polymer" because hopefully maybe  
10 in the future, there may be some other material rather  
11 than plastic that could be used for dispensers that  
12 would be more biodegradable.

13 It should be pointed out that EPA regulates  
14 pheromone products with some pesticidal action, which  
15 includes mating disrupters, but pheromone products used  
16 for monitoring are exempt from EPA, but cannot contain  
17 toxins. And the provision as stated would not allow  
18 for spraying dispensers which would spread the  
19 pheromone more than it would be in the case of attached  
20 dispensers.

21 So there in a nutshell is the committee's  
22 recommendation on BHT, and the other inerts.

23 CHAIRPERSON CARTER: Okay. Discussion or  
24 questions? Okay, Michael?

1           MR. LACY: One quick question. The last  
2 sentence in the proposed change --

3           MS. BURTON: Use the microphone.

4           MR. LACY: I'm sorry. The last sentence in  
5 the proposed change -- is that saying that there are no  
6 EPA labeled instructions for those types of pheromones?

7           MR. BANDELE: That's my understanding. Maybe  
8 somebody can help clarify that, but those are really  
9 exempt from EPA --

10          MR. LACY: Maybe Nancy could answer that. Do  
11 you know, Nancy?

12          MS. OSTIGUY: I'm trying to figure out what  
13 you're referring to.

14          MR. LACY: The very last sentence from the  
15 committee recommendation --

16          MS. OSTIGUY: That they could be used at any  
17 time?

18          MR. LACY: At any time and in any form sort  
19 of implies that there are no EPA label --

20          MS. OSTIGUY: List four.

21          MR. LACY: -- that there is no EPA label  
22 instructions for those? And I was just not sure if  
23 that was correct or not.

24          MS. OSTIGUY: That I don't know.

1           CHAIRPERSON CARTER:  Rose.

2           MS. KOENIG:  You might just want to consider  
3 saying -- applied without restriction -- apply without  
4 restriction.  I think that would --

5           CHAIRPERSON CARTER:  Owusu, suggestion here  
6 is that -- is when you bring that forward tomorrow for  
7 action "without restrictions" rather than "at any time  
8 and in any form".

9           MS. CAUGHLAN:  Will that truly respond to his  
10 question which was whether or not those are regulated -  
11 -

12          MR. BANDELE:  From what Emily was saying is  
13 that they're not regulated by EPA.

14          MS. OSTIGUY:  The monitoring materials are  
15 not regulated by EPA, so if you're doing -- if the  
16 purpose is mating disruption, yes, they are.

17          MR. BANDELE:  Right.  That's right.

18          CHAIRPERSON CARTER:  Kim.

19          MS. BURTON:  I know there's examples in the  
20 positions and TAP reviews of the actual labels, perhaps  
21 we have to just go back and look at those to see if  
22 there are any restrictions or recommendations.

23          CHAIRPERSON CARTER:  Rose.

24          MS. KOENIG:  I think in general, I agree,

1 it's kind of ... and I think it's -- you know, a label  
2 there can really set parameters. We don't want to, I  
3 think have language that would be ... so if we just say  
4 "without restrictions" and that's in regards to our  
5 rule rather than stating the time or form. I think  
6 "without restrictions" is just a better language.

7 CHAIRPERSON CARTER: Jim.

8 MR. RIDDLE: Yes, you know, I had brought up  
9 earlier today about the removal of the twist ties, and  
10 the reason I had is two of the reviewers had brought  
11 that up as a concern. And also in that general  
12 discussion, in the TAP review, it says "The pheromone  
13 labels supplied by the petitioner suggest that the  
14 depleted dispensers be either burned or buried in  
15 landfill." And which also would imply that the label  
16 is saying that they should be removed. And you know,  
17 it's clear to me that if we did require removal, I'd be  
18 the one removing them nationwide --

19 (Laughter.)

20 MR. RIDDLE: -- and I'm comfortable not doing  
21 that. But I guess, you know, hearing what Bill had to  
22 say that -- yes, you just keep adding them to a tree,  
23 it certainly becomes unsightly and they are getting  
24 pruned off and disked in. There is an issue here that

1 good management, I think, should address, and I don't  
2 know if this can be built into an orchard's ion organic  
3 system plan or somehow covered without us including it  
4 as an annotation, certainly. So I'm glad I asked the  
5 questions, we had good discussion.

6 CHAIRPERSON CARTER: Dennis? I thought you  
7 had your hand up. Okay. Other questions -- okay, now  
8 there was some -- you were looking around for Emily --  
9 oh, there she is -- so Owusu, sort of simple language  
10 or --

11 MR. BANDELE: I think Mike had the question.

12 MR. LACY: Rose's language is fine.

13 CHAIRPERSON CARTER: Okay. Owusu.

14 MR. BANDELE: The second material was  
15 potassium sulfate. The key thing here was that the  
16 petitioner argued that the product was derived from  
17 natural products. The petitioner had the form  
18 potassium sulfate that was ... was clearly synthetic.  
19 The methodology for the manufacture of potassium  
20 sulfate was not clearly stated, because of  
21 confidentiality considerations. Most of the reviewers  
22 found no problem with the product as far as agriculture  
23 usage is concerned, but two reviewers felt that it was  
24 not compatible with organic production.

1           There are alternatives or naturally mined  
2 sources of potassium sulfate are available and are  
3 allowed in organic production. OFPA, though, prohibits  
4 the use of synthetic fertilizers, so, as pointed out,  
5 two of the reviewers voted not to allow the substance  
6 to be used, and one recommended that potassium sulfate,  
7 the synthetic form, should be allowed for materials  
8 only cases where the crops were sensitive to chloride-  
9 containing potassium sources, such as potassium  
10 chloride.

11           The committee voted, after reviewing all the  
12 information, voted four to zero, that the product was  
13 synthetic, and the committee also voted not to add the  
14 product to the national list. The vote also was four  
15 to one for this -- to zero.

16           CHAIRPERSON CARTER: Okay, discussion? Jim.

17           MR. RIDDLE: Okay, my concern in reading  
18 through the TAP was just making sure that naturally  
19 mined potassium sulfate -- well, it is available, and  
20 it continues to be approved by definition. So  
21 prohibiting this particular formulation that is a  
22 synthetic material, has no impact and doesn't send a  
23 message that now potassium sulfate is prohibited by the  
24 NOSB.

1           CHAIRPERSON CARTER:   Okay.   Nancy.

2           MS. OSTIGUY:   My thoughts was that was  
3   because we started off by saying that it was a  
4   synthetic, we distinguished it from the natural  
5   product, and here we're specifically talking about the  
6   synthetic material.

7           MR. SIEMON:   Could we add a description  
8   somewhere that says synthesized -- or potassium sulfate  
9   synthesized -- that kind of process?

10          MS. KOENIG:   Well, you would not be adding  
11   it.

12          MR. SIEMON:   I understand, but --

13          MS. KOENIG:   There is nothing to --

14          MR. SIEMON:   But that's why we can over-  
15   communicate ... It really is a question -- natural or  
16   synthetic. I think it will be clear to the certifiers  
17   --

18          MR. BANDELE:   But would this be something  
19   that Q&A possibly could clear up?

20          PARTICIPANT:   You want to write the question  
21   and the answer -- okay.

22          CHAIRPERSON CARTER:   Emily.

23          MS. BROWNROSEN:   Emily Brownrosen. This  
24   question came up recently with the fertilizer control

1 officials, so it would be nice to have a clarification  
2 from the Board that natural potassium sulfate is  
3 allowed without restriction, because they're reading  
4 the language and they're going -- highly soluble  
5 substances are only allowed if they appear on the  
6 prohibited list. So they were assuming -- the -- I'm  
7 telling you, the state of Illinois assumed that  
8 limestone, potassium sulfate, analogous materials are  
9 prohibited because they don't appear on the prohibited  
10 natural list. So, a clarification -- it's in 203 -- I  
11 understand as I read -- the first time I read it, too,  
12 I questioned whether some of these things are  
13 prohibited because there's no really definition of how  
14 soluble substances -- uh --

15 MS. KOENIG: Emily, it would have to be  
16 listed as a prohibited natural substance, would it not?

17 CHAIRPERSON CARTER: Rose, you've got to lean  
18 into the mike.

19 MS. KOENIG: It would have to be labeled as a  
20 prohibited natural not to be okay, just like chilean  
21 (ph) nitrate is on there for 20 percent.

22 MS. BROWNROSEN: Well, I'll tell you why they  
23 -- ... okay, it's 203(D)(3). It says, "Producer may --  
24 In addition to crop rotation and ... materials, a

1 producer may apply three -- no, it's not three -- no,  
2 (2) a lime substance of high solubility when justified  
3 by soil crop analysis" -- shoot, I can't find it right  
4 now -- well, I'll come back to it. I know it's here.  
5 I think my book has lost a few pages is what's  
6 happened.

7 MS. KOENIG: However, do you -- I mean if we  
8 find it and we feel that there is a -- do you think  
9 that a question and answer, Emily, would be --

10 MS. BROWNROSEN: Okay, (3), it is (3). He's  
11 right. "Provided the substance is used in compliance  
12 with the conditions on the national list of non-  
13 synthetic materials prohibited for crops production."  
14 So it sounds like you could only use a mineral  
15 possibility if it's on the national list and has a  
16 restriction allowing its use. Well, like, sodium  
17 nitrate, for example.

18 MS. BURTON: The materials process we could  
19 actually go through and vote that there is a natural  
20 form and then it could go on like our materials  
21 database.

22 MS. BROWNROSEN: Yes.

23 MS. BURTON: It is there, but --

24 MS. BROWNROSEN: These guys don't know about

1 that.

2 CHAIRPERSON CARTER: Rick.

3 MR. MATHEWS: What's the number again, so I  
4 can go back in the record --

5 MS. BROWNROSEN: 203 (D) (3).

6 MR. MATHEWS: Using wording --

7 MS. BROWNROSEN: Yes, that's -- that's --  
8 well, I'm not quite sure because -- you know, oh (3)  
9 means potassium sulfate's not allowed -- and then I was  
10 assured, no, no, that's not what it means. Other  
11 people read it that way too, so --

12 MR. MATHEWS: Well, I'll review it and we'll  
13 determine whether or not it's supposed to be ...  
14 correction to fix it. Thank you.

15 CHAIRPERSON CARTER: Okay.

16 MR. MATHEWS: And just to follow up with  
17 that, Owusu has already said that he'll prepare the  
18 draft Q&A that we can put up to help clarify this.

19 CHAIRPERSON CARTER: Okay. Any other  
20 discussion on this. Okay, Owusu.

21 MR. BANDELE: The following material is 1,4  
22 dimethylnaphthalene or 1,4 DMN. It's a plant growth  
23 regulator that occurs in natural form. The petition is  
24 for a synthesized product to be used as a plant growth

1 regulator. Product primarily is used to delay  
2 sprouting in storage of white potatoes. The  
3 manufacturing process was treated as confidential  
4 information by the petitioner, so that was not  
5 available.

6 Two TAP reviewers cite potential  
7 environmental concerns with the product. Two TAP  
8 reviewers recommended not to allow the substance, while  
9 one reviewer recommended adding it to the list.

10 The committee put a lot of weight on the fact  
11 that one of the reviewers had 30 years of experience in  
12 organic potato production. That reviewer stated that  
13 there were indeed several alternatives available. He  
14 pointed out that part of the strategy was to keep the  
15 potatoes at a low enough temperature so that sprouting  
16 would be delayed. He also used a commercially  
17 available product called "Biox" which is a clove -- a  
18 compound containing clove. There was some concerns  
19 about the odor, but he pointed out that washing was not  
20 a problem.

21 There were several other possible  
22 alternatives listed as possibilities, including  
23 carbone, which is an essential oil compound found, I  
24 think, in caraway. I know it's found in dill as well,

1 and mint. The committee voted against, four  
2 to zero, that the petition for 1,4 DMN products was  
3 synthetic and also voted not to add it to the national  
4 list for the reasons cited.

5 CHAIRPERSON CARTER: Okay, Kim.

6 MS. BURTON: I just wanted to -- for the  
7 Board to note that you have public comments under Tab 2  
8 of your book that have been sent in to the Board, so  
9 you might want to just check those. We have a number  
10 of public comments on this material, although looking  
11 at them, none of them currently use it, they're all  
12 hoping to use it. So I just wanted to point that out,  
13 to make sure the committee looks at those public  
14 comments.

15 CHAIRPERSON CARTER: Okay, George.

16 MR. SIEMON: Are we sure that the alternative  
17 is natural and accessible, or is that a material that's  
18 also -- it includes clove, but that doesn't mean --

19 MR. BANDELE: I think that was on the list.

20 MR. SIEMON: This Biox, brand name --

21 MR. BANDELE: Yes.

22 MR. SIEMON: So in order to be an  
23 alternative, it's got to be an alternative that would  
24 be natural or be on the list. If I understand what

1 you're saying, you've got an alternative, you're  
2 depending you decision on an alternative that contains  
3 clove, but that doesn't mean it doesn't have a  
4 synthetic active substance -- I don't know. I'm asking  
5 the question.

6 MS. OSTIGUY: Could you all speak into the  
7 mike, or try to. It's hard to hear.

8 CHAIRPERSON CARTER: Okay.

9 MR. BANDELE: I'm just checking one point.

10 CHAIRPERSON CARTER: Yes, that's fine.

11 MR. BANDELE: Okay, uhm -- it mentioned that  
12 Biox is on the approved list. It is my understanding  
13 that if it's on the approved list, you can use it in  
14 organic production, that it's allowed.

15 CHAIRPERSON CARTER: B-I-O-X. Eugenol? E-U-  
16 G-E-N-O-L.

17 MS. BROWNROSEN: (comment off mike)

18 CHAIRPERSON CARTER: Okay, Biox is the brand  
19 name, eugenol is the technical name.

20 CHAIRPERSON CARTER: Alright, further  
21 discussion on this?

22 MR. BANDELE: Okay, as far as the other  
23 agenda items are concerned, next is the compost tea. I  
24 think Barbara mentioned this morning how there are

1 certain things that just keep coming back because  
2 people want the right answer, -- that's true.

3 (Laughter)

4 MR. BANDELE: I don't want to go into a long  
5 discussion about the reasons why the committee strongly  
6 feels that we need to really not give up on this  
7 compost tea issue. The decision, as I understand it,  
8 was not based on scientific data -- at least scientific  
9 data that many of us have seen. So what I'll propose  
10 tomorrow as an action item is to reactivate the compost  
11 task force with the specific charge to look at the  
12 compost tea issue and I'm going to recommend that Eric  
13 Sideman (ph) who shared the task force will serve as  
14 co-chair along with Dennis Holbrook. So I'll reserve  
15 that until tomorrow.

16 CHAIRPERSON CARTER: Okay, Rose.

17 MS. KOENIG: And just for clarification, I  
18 guess for Richard and Barbara maybe it'll be a little  
19 bit more palatable. Some of the discussion is that --  
20 that according to what is stated on the website, it  
21 just nullifies the use of any kind of compost tea and  
22 it's argued in the field that many compost tea products  
23 don't use manure. And so we want to make sure that the  
24 compost task force looks at this again, and at least

1 breaks out the products that would not, in the compost  
2 -- they would like to examine all the types of products  
3 that would fit within that category, and see if they at  
4 least could not be looked at separate entities, because  
5 there may be some that are -- it's such a general term  
6 within the field, that many of them may not even  
7 include manure products, and those especially may not  
8 have a problem. That's the background.

9 CHAIRPERSON CARTER: So it's not exactly  
10 asking the same question.

11 MS. KOENIG: No, it's not.

12 CHAIRPERSON CARTER: It's a new compost tea.  
13 It's compost coffee.

14 MR. BANDELE: I just have a question at this  
15 point. I think in one of my discussions with Emily, I  
16 think she pointed out that there were several compost  
17 tea products that are on recertified at this time.  
18 What would be the state of ...

19 (several speak at once.)

20 MR. BANDELE: No I said ... I had a couple  
21 conversations with Emily, and she stated that there are  
22 a few compost tea formulations that are almost approved  
23 at this time. What would be the status of those that  
24 have ... approval?

1 MR. MATHEWS: They're not approved.

2 MS. KOENIG: And that was where some of the  
3 question lies, because on some products, as I  
4 understand, they don't even have -- they just have a  
5 plant component, that the compost is actually made out  
6 of a plant with no --

7 CHAIRPERSON CARTER: Okay, then -- Mark and  
8 then Barbara.

9 MR. KING: Well, and Barb may go into this,  
10 but I guess one of the things that -- and not that I'm  
11 a regulatory reviewer -- but compost is a process, and  
12 I think that when you put that word in any product,  
13 that you lend yourself to certain things, shall we say.  
14 So -- and so -- go ahead.

15 MS. ROBINSON: I just want to say it's not --  
16 it's not just -- you focus on manure and that's -- that  
17 is an issue, but manure is narrowing the issue. The  
18 issue is really pathogens. It's not whether -- and  
19 pathogens can be caused -- I'm no scientist, but my  
20 understanding is pathogens are not limited just to  
21 manure. So that's part of the issue. Now, I also  
22 thought that we had decided to tell people that you had  
23 to treat compost tea like raw manure. So we're not  
24 saying you can't use it, we're saying you've got to use

1     it with those restrictions in terms of time before you  
2     apply and harvest from the ground.

3             MR. MATHEWS: That's correct, that's what we  
4     did say.

5             PARTICIPANT: ... tea ...

6             MR. MATHEWS: Yes, that's the other thing.  
7     Don't call it compost tea.

8             MR. MATHEWS: Plant-based foliar spray.

9             MS. ROBINSON: I mean at the end of the day,  
10    see you've got to come back to 205203(C). I can do  
11    that too, Rick. Which says that you can't -- which  
12    says that no producer should apply things or do things  
13    to the soil that da-da-da. So that's the binding  
14    constraint that producers operate under. We don't  
15    really care where it's coming from, but you can't  
16    contaminate the soil or cause increase in pathogens and  
17    that sort of thing.

18            MR. MATHEWS: Or a food safety crisis.

19            MS. ROBINSON: Right.

20            MR. MATHEWS: Which kills --

21            MS. ROBINSON: Or a food safety crisis which  
22    would cause devastation in the program overall. This  
23    is not a food safety program, and we aren't going  
24    there.

1                   CHAIRPERSON CARTER:   Emily.

2                   MS. BROWNROSEN:   So let me get this straight.

3           So you're saying it's not allowed because it doesn't  
4 meet 203(C).   Now our position has been that the  
5 compost we review meet the regulation as written for  
6 compost, and we require pathogen testing, and we say  
7 they do meet 203(C) on the terms of contaminating the  
8 crops with pathogens.   In order to be on the list they  
9 have to have pathogen testing and they have to be  
10 composed and reach the temperature and turned five  
11 times, and et cetera, the whole nine yards.   So when  
12 the guidance says it's not eligible to meet 203(C), is  
13 that what you meant?   Or do you mean to say that it  
14 must meet 203(C) to be eligible to be compost tea?   Am  
15 I talking too fast?

16                  MR. MATHEWS:   We have said no to compost tea.

17                  MS. BROWNROSEN:   Right.

18                  MR. MATHEWS:   If the Board wants to  
19 reactivate it -- task force, and come back with  
20 additional information, we'll be glad to review it.

21                  MS. BROWNROSEN:   Okay, because I just thought  
22 I heard you say in September -- in September there was  
23 some -- Barbara mentioned, I believe, that if they had  
24 pathogen testing, that wouldn't be a problem, or if

1       were treated like raw manure it wouldn't be a problem.

2               MR. MATHEWS: I think she just told you not  
3       to call it compost tea.

4               MS. ROBINSON: Don't call it compost tea.  
5       The problem is that there are people --

6               CHAIRPERSON CARTER: Use the mike.

7               MS. ROBINSON: The problem is that we know  
8       that there could be an inappropriate or an  
9       indiscriminate use, or somebody's not paying any  
10      attention, and what we wanted to get -- the point we  
11      wanted to get across to people is it doesn't matter  
12      what you call it, but you can't contaminate the soil or  
13      the food. I don't care if you call it marshmallows. I  
14      mean it doesn't matter. A soil amendment. It's a soil  
15      amendment.

16              MR. MATHEWS: We have said that it could be  
17      used in the same way that you would raw manure. But  
18      what you have to -- but part of the problem that we  
19      have is that for every farmer who is using a  
20      manufactured product that went through a real, rigorous  
21      process that guaranteed not to be a problem, there's  
22      probably a hundred of them out there making it in their  
23      own back yard, who are not going through that rigorous  
24      testing, and that are the ones who could lead to food

1 safety crisis, and one we want to protect you from.

2 MS. ROBINSON: The only way that we can give  
3 certifying agents the ability to ask the questions and  
4 enforce the regulations is to say it like this, and  
5 basically say -- what we're saying to certifying agents  
6 is you have every right to expect that this stuff is  
7 being -- whatever it is -- that it's being made  
8 appropriately and applied appropriately. That if there  
9 are questions in your mind, it should be tested -- that  
10 sort of thing. Because --

11 MS. BROWNROSEN: But they do have the ability  
12 to do that?

13 MS. ROBINSON: Yes, certifying agents have  
14 that right. They have that ability. Do they not?

15 CHAIRPERSON CARTER: Okay, sounds like a task  
16 force issue. Marty, did you have something you needed  
17 to add? You were pacing --

18 MR. MESH: No, I'll wait for the task force.

19 CHAIRPERSON CARTER: Okay. Owusu.

20 MR. BANDELE: Planting stock document --  
21 originally we had talked about -- the committee dealt  
22 with a guidance document based on the decision with the  
23 strawberries, because of the discussion, we realized  
24 that other crops were involved in this particular

1 issue, and other vegetatively propagated crops. Rose  
2 was to draft a document, but with further discussion,  
3 Rick decided to go the route of a question and answer  
4 thing, so I think Rose will present that tomorrow.

5 MS. KOENIG: Yes, the committee -- again, we  
6 submitted a document on May 7th that was posted -- we  
7 submitted it on May 7th, which was a further  
8 clarification of the planting stock rule, and where  
9 strawberries fit within that practice. Upon a  
10 discussion, we were given the clarification that  
11 questions in the case of strawberries, if they were  
12 treated as an annual, and that in annual plants if  
13 organic is not available, then it would go under the  
14 commercial availability clause. And according to what  
15 we understood from the NOP was that prohibited  
16 substances then could be used on commercial  
17 transplanting stock up until the point that the farmer  
18 takes possession of that planting stock, and then it  
19 becomes -- it has to be treated under the rule. And  
20 that's what we are going to base our question and  
21 answer upon. Because we still feel, even with our  
22 statement of clarification, there are still questions  
23 out there on the ground.

24 CHAIRPERSON CARTER: Mark.

1           MR. KING: Two things concerning -- I guess  
2   it's seed ones that I wanted to address. One is, is  
3   there currently commercial availability language and  
4   how would a certifier deal with that if there is, and  
5   if there's not, how would they deal with it? And  
6   secondly, if indeed there hasn't been a seedling that's  
7   commercially available, whether it's strawberries or  
8   any other seedlings to a farmer, consequently they've  
9   had to use conventional, and yet all of their  
10  management practices are organic aside from that, is it  
11  a major or a minor non-compliance?

12           MR. BANDELE: In our discussions I was under  
13  the impression that as far as the annual seedlings -- I  
14  think the analogy that Rose was talking about was ...  
15  in terms of treated --

16           MR. KING: No, I understand that part of it.  
17  You don't need to go over that.

18           MR. BANDELE: Well, the other part, I  
19  understood Rick to say that in terms of the  
20  transplants, that they had to be organically grown.

21           MR. KING: I just bring it up. I mean it's  
22  an issue that's come up --

23           MR. RIDDLE: ... seedlings, unless there's a  
24  natural disaster.

1           MR. KING: That's the way the language  
2 currently reads, and I'm just bringing up some examples  
3 of things I've seen.

4           CHAIRPERSON CARTER: Rose.

5           MS. KOENIG: When we went back -- when we  
6 discussed this issue back in May, we brought the  
7 example of where producers said they're buying  
8 strawberry plants from a commercial production. Those  
9 plants are likely going to be treated with prohibited  
10 substances. And we were under the understanding, and  
11 we clarified this multiple times, that up until the day  
12 that that grower picks those strawberries or any kind  
13 of transplants up, that whatever they were treated with  
14 prior to that day, that was okay, as long as when the  
15 grower took possession, it was then, from that day on,  
16 treated as organic.

17           MR. KING: This --

18           MS. KOENIG: That was the explanation that we  
19 were given.

20           MR. BANDELE: I wasn't -- I didn't remember  
21 it that way. I remembered it for those types of crops  
22 that were vegetatively propagated. I don't think it  
23 stated that we expanded that to include annual  
24 seedlings.

1           MR. KING: This brings up another point, and  
2 that is one of legal title --

3           MS. KOENIG: Well, annual --

4           MR. KING: -- if I buy it from somebody, then  
5 I'm off the hook in her example. But if I raised it on  
6 my own farm, I'm not.

7           MS. KOENIG: But --

8           CHAIRPERSON CARTER: Go ahead, Rose.

9           MS. KOENIG: In terms of a -- if it's a --  
10 it's basically considered annual planting stock versus  
11 perennial planting stock. And the justification is  
12 that if farmer A has a greenhouse and is buying the  
13 seeds and producing it on the farm, your next door  
14 neighbor, they're available if you don't want to invest  
15 in doing it that way. So the idea is that growers --  
16 the exception is on crops like strawberries where  
17 conventionally there's only a few growers that are  
18 producing them in that fashion because of either  
19 seasonal problems in certain areas or --

20           MS. BURTON: Could we perhaps bring the  
21 document that we voted on --

22           MS. KOENIG: I have it here.

23           MS. BURTON: Could you make copies for us,  
24 because we're down here not knowing really what we're

1 talking about, or at least for discussion tomorrow?

2 MS. KOENIG: Yes.

3 MS. BURTON: Thank you. I can read it, but  
4 let's just wait until tomorrow.

5 CHAIRPERSON CARTER: Let's make copies of it.  
6 So, Owusu, go ahead.

7 MR. BANDELE: That's it except for the last  
8 item, application of the 20 percent sodium nitrate  
9 annotation and we did not discuss this as an  
10 annotation, but I had asked Dennis to look into the --  
11 how that was being interpreted. I don't recall  
12 actually saying that we would bring forth an  
13 annotation.

14 MR. HOLBROOK: There was ah -- some issues  
15 brought up last month when we were here, concerning how  
16 that 20 percent was being evaluated, whether it was 20  
17 percent of the total nitrogen required for that plant,  
18 or 20 percent of total nitrogen being applied. So  
19 we're -- I'm still looking into that. I've had  
20 conversations with a couple different farmers in  
21 different areas; talked to some former Board members  
22 when this was originally put into effect, and their  
23 opinion was they didn't get into it. They didn't  
24 really qualify that. So we're still looking into it.

1 If we feel that there is petition violators out there,  
2 how that -- what the intent is, and we may come back  
3 again in May or something, but at this time, no.

4 MR. MATHEWS: Then what you're saying,  
5 Dennis, is that as of this time, you're unsure as to  
6 what the real intent is? I mean -- because the -- the  
7 amount used is very different under each scenario, and  
8 that is going to be important to us as far as providing  
9 guidance to certifying agents to actually do an  
10 enforcement. Because without that clarification as to  
11 what -- what it is really intended to do, I could argue  
12 that either one is okay.

13 MS. BURTON: I think what the intent was to  
14 bring back a clarification document to you with a  
15 recommendation, and we have received some public  
16 comments, and I think that what Dennis is saying is  
17 that at the next meeting we can bring back to you a  
18 document showing what some examples are and what we  
19 would recommend.

20 MR. MATHEWS: That's okay. I'm just trying  
21 to get clarified in my own mind, that if Marty sends me  
22 a notice of intent to suspend somebody for using 20  
23 percent of the Cooperative Extension Service published  
24 needs, versus 20 percent of what was actually applied,

1 then I've got a problem as far as processing that  
2 complaint. So I would have to turn to Marty and say,  
3 it looks to me like the Board hasn't ruled yet as to  
4 what they really mean on the 20 percent, and so it's  
5 okay. At least from now until May.

6 CHAIRPERSON CARTER: Owusu.

7 MR. BANDELE: See, I interpret that, I don't  
8 know we had to have further clarification on that, but  
9 see I interpret that as a form of what you said in  
10 terms of 20 percent of the crop's nitrogen requirement,  
11 because you're assuming, for example, that the person  
12 ... in all his practices, some of that nitrogen that is  
13 needed is coming in the form of compost, some of it's  
14 coming in the form of a cover crop residue, and to me,  
15 it would be unfair to say just 20 percent of what you  
16 apply, because you may only applying 20 pounds of  
17 nitrogen, period, which could be in the form of  
18 ammonium nitrate, if in fact, the other is dealt with -  
19 -

20 MR. MATHEWS: Or already present in the soil,  
21 because of crop rotation practices. Which is -- is the  
22 way that the people are alleged to be doing that,  
23 and the certifying agent felt that was wrong, and  
24 that's why we're asking for clarification.

1                   CHAIRPERSON CARTER:  Dennis.

2                   MR. HOLBROOK:  The reason I don't feel like  
3 I've had an opportunity to talk to enough different  
4 growers in different areas to make sure that we're on  
5 the right track, but I can assure you this much, from  
6 the people that I've already talked to, the 20 percent  
7 is based on the total nitrogen needs, and taking into  
8 consideration cover crops, chicken manure or whatever  
9 else that they may -- that that 20 percent is based on,  
10 the 20 percent of the total nitrogen that's being  
11 utilized in that particular plant.  That's the way  
12 that, so far, everybody I've talked to has indicated  
13 that that's the way it's being used.

14                  MR. MATHEWS:  Okay, then my interpretation on  
15 what you've just said, Dennis, is that if the needs are  
16 100 pounds to the acre, and you as the producer feel  
17 that there's enough already there, that all you have  
18 to do is add another 20 pounds to the acre in order  
19 to meet that 100 pounds.  Then it doesn't matter how  
20 you get there, including meeting that 20 pounds just  
21 through chilean (ph) nitrate.  Which is fine with me.  
22 I just -- you know, we were getting the questions and  
23 we were just asking for clarification that that's okay.  
24 I mean that's saying it --

1           MR. HOLBROOK: And I think ultimately that's  
2 what we're trying to find out, that's what we're trying  
3 to determine, because the people that I've talked to  
4 already have indicated that they analyze basically so  
5 many pounds of ground cover that they made that's  
6 nitrogen fixation, they take into consideration that  
7 percentage, plus the percentage of whether it be  
8 pelletized chicken manure or poultry pellets or  
9 whatever the sources are, that they're taking that  
10 total amount of nitrogen, and the 20 percent that  
11 they're entitled to use is made up of the chilean (ph)  
12 nitrate. That's the way it's set up right now. From  
13 the people I've talked to anyway.

14           MR. MATHEWS: Which could be argued as only  
15 fair since they've already done a super good job of  
16 already supplying 80 percent of their nitrogen needs  
17 through other methods.

18           MR. HOLBROOK: There you go.

19           CHAIRPERSON CARTER: Owusu.

20           MR. BANDELE: There are two things. You can  
21 always quantify that, at least estimate it. For  
22 example, as far as cover crops are concerned, they ...  
23 by the time ... cover crops gives as far as nitrogen in  
24 concerned -- they always deal with that.

1                   CHAIRPERSON CARTER:  Alright.  Any other  
2   discussion on this?

3                   MR. BANDELE:  Oh, I know what it was -- the  
4   problem -- the only problem with using the cooperative  
5   extension data is oftentimes they err, not on the side  
6   of conservatism, but excess.  So that would be the only  
7   problem with taking their recommendations.

8                   MR. KING:  I'm sorry, but I've never had any  
9   problem with a cooperative extension not being on the  
10  side of conservatism.

11                  MR. HOLBROOK:  The state cooperative  
12  extension are the regional differences based on one  
13  plant in different growing zones, or is it the same?

14                  MR. KING:  I'm sure there would be some  
15  difference.  I haven't been able to get enough people  
16  from different areas to really quantify that.

17                  CHAIRPERSON CARTER:  Okay, Jim.

18                  MR. RIDDLE:  Once you have a draft, will this  
19  be posted for public comment -- anticipate -- or, I'm  
20  just saying it sure would be nice to get it circulated  
21  to the certifiers for feedback as part of this process.  
22  Is that possible, or just what is the plan here?

23                  MR. HOLBROOK:  Well, originally the plan was  
24  to come back to the committee, the crop committee,

1 since they're the ones who have asked to give this  
2 clarification. At that point, it could be disseminated  
3 to everybody else.

4 MR. RIDDLE: It would be good if it could be  
5 posted for further --

6 CHAIRPERSON CARTER: Alright, anything else  
7 on -- okay, Owusu, is that it with crops?

8 MR. BANDELE: Yes, it is.

9 CHAIRPERSON CARTER: Okay. Let's move on to  
10 the --

11 MR. RIDDLE: Question about hydroponics.

12 CHAIRPERSON CARTER: Oh, hydroponics.

13 MR. BANDELE: Yes, we will have -- we have  
14 done some preliminary work on that as far as background  
15 information, so we'll share the background information  
16 tomorrow, although there will not be a recommendation  
17 for that policy at this time, and I'll explain that  
18 tomorrow.

19 CHAIRPERSON CARTER: Okay. Let's move on  
20 then to accreditation. Jim.

21 MR. RIDDLE: Okay, Tab 7 is the next item on  
22 the agenda, and I'll try and be lively because I sense  
23 a little lag in the audience here. Maybe it's just me.  
24 But "Criteria for certification of grower groups", and

1     there has been a draft circulating since May.     And  
2     there were public comments received and then this is  
3     the outcome of incorporating those comments and this is  
4     -- has been approved by the committee and will be  
5     brought for a vote tomorrow.

6             There's a little introduction there, and then  
7     the background -- and I'm not going to read all of that  
8     at all, but clearly OFPA and the Rule did not really  
9     anticipate the certification of grower groups, but did  
10    not prohibit it either, and the definition of person  
11    includes cooperatives, corporations, associations and  
12    it's really a person who is certified, and it's their  
13    system plan.    So it's quite common that a lot of  
14    products sold in this country are produced by grower  
15    groups, and it's their quality system -- these grower  
16    groups contain anywhere from 100 to possibly thousands  
17    of very small producers, all producing using the same  
18    methods, same inputs, producing the same crops for the  
19    same marketing stream.

20            We've broken the recommendation into two  
21    pieces on page two, and the one being the actual  
22    criteria themselves -- and these have been developed  
23    consistent with international criteria of IFOM (ph) and  
24    I will read this.

1           "NOSB recommends that, in order to be  
2 certified as a grower group, the following conditions  
3 must be met:

4           "The producers must be located in close  
5 geographic proximity to one another.

6           "Crops and farming practices of the producers  
7 must be uniform and reflect a consistent process or  
8 methodology, using the same inputs.

9           "The group must be managed under one central  
10 administration.

11           "Participation in the group is limited to  
12 producers who sell all of their organic production  
13 through the group.

14           "Producers who are certified as part of the  
15 group do not possess individual certificates. Rather,  
16 the grower group is certified as a unit.

17           "Grower groups must establish and implement  
18 an internal control system or quality system, with  
19 supervision and documentation of production practices  
20 and inputs used at each producer's operation to insure  
21 compliance with the USDA's National Organic Standards.

22           "Grower groups must have a program of  
23 education to insure that all members understand the  
24 National Organic Standard.

1           "And grower groups must utilize centralized  
2 processing, distribution, and marketing facilities and  
3 systems."

4           And then, following on -- "The certifying  
5 agent shall have policies and procedures for  
6 determining how many growers must receive an annual  
7 inspection by the certifying agent. For each grower  
8 group it certifies, a certifying agent must document  
9 its method for determining the number of growers to be  
10 inspected, and that determination must include  
11 consideration of:

12                   "The number of operations participating.

13                   "The size of the average operation in the  
14 group.

15                   "The degree of uniformity between the group's  
16 operations.

17                   "The complexity of the group's production  
18 system, and

19                   "The management structure of the group's  
20 internal control system."

21           And instead of setting a specific percentage,  
22 kind of a cookie cutter approach that applies, we're  
23 providing some criteria requirements for how the  
24 certifier determines what percentage are inspected, but

1     there's a combination here -- the grower group itself  
2     has, in its internal control system, their own internal  
3     inspector that visits every operation as part of the  
4     quality system, and then the certifiers sends the  
5     inspector to a -- using the guidelines here -- to  
6     follow up the actual inspection by the certifier. So  
7     that's the -- yes, comments or questions on that part?

8             MS. BURTON: Jim, you said that this was IFOM  
9     (ph) -- that these are IFOM (ph) standards. I guess I  
10    would question, has our certification agents seen this  
11    and commented, and is this something that's currently  
12    been actively --

13            MR. RIDDLE: Yes, these actually -- I may  
14    have misled -- these aren't -- they aren't verbatim  
15    IFOM (ph). They're based on and consistent with IFOM  
16    (ph) criteria. But they go further and -- yes, the  
17    primary comments we received were from OTA and the  
18    accreditation committee of OTA.

19            MS. BURTON: Alright, thank you. That's  
20    good.

21            MR. RIDDLE: Anything else? And then the  
22    second part of the recommendation is also based on the  
23    comments we received from OTA, and the -- the remaining  
24    material here was originally presented as an addendum

1 and the comments said, this has such value it actually  
2 should be added to the NOP accreditation manual, and so  
3 that's how we've now restructured the recommendation.  
4 So it's how these operations are expected -- this gives  
5 a whole lot more details.

6 CHAIRPERSON CARTER: Under the first  
7 recommendation, I'm just going through here, thinking,  
8 in terms of the accredited certifier that spoke in  
9 Austin, for example, what was it -- 130 operations --  
10 is that kind of -- this type of thing, is there any  
11 real limit to the number? I guess there isn't, is  
12 there? Of operations that can join together?

13 MR. RIDDLE: No, so long as they meet all of  
14 the criteria, that's true. And it's not limited to a  
15 certain economic size, you know, small holder typically  
16 is what it is, but this is not -- this is scale neutral  
17 in this recommendation.

18 CHAIRPERSON CARTER: Discussion. Yes.

19 MR. KING: In your experience in the  
20 certification standards, not just here, but globally,  
21 to add to Dave's point -- in terms of -- I'm not trying  
22 to make the language skill ... in any way -- but  
23 understanding the ... use of scale at some point it may  
24 become cumbersome for a certifier to look at a grower

1 group, perhaps, and make a definitive statement about  
2 that. And have you see that? Because we could talk --  
3 and adding to Dave's comment -- thousands of growers in  
4 a group, perhaps.

5 MR. RIDDLE: Yes, and it's not unusual that  
6 an inspector spends two or three weeks just doing a  
7 percentage of the visits on site. So yes, I mean, it's  
8 a huge undertaking. I don't know if there are any of  
9 the certifiers who would want to comment on that. AT  
10 times they become too large and need to be broken up,  
11 or what your experience has been?

12 CHAIRPERSON CARTER: Marty, you want to  
13 respond to that?

14 MR. MESH: Not particularly. Pete's going to  
15 respond to that.

16 CHAIRPERSON CARTER: ... identify yourself?

17 MR. MESH: -- about close proximity --

18 CHAIRPERSON CARTER: Identify yourself.

19 MR. MESH: I'm me, Marty Mesh. Your -- on  
20 your word "close proximity" is or why that's there,  
21 that wasn't in the OTA's comments, I don't think, and  
22 we discussed that.

23 MR. RIDDLE: It's in the draft, and there  
24 were no comments received in objection to it. That's

1       been part of it all along.

2                   MR. MESH:   And you'll defining close  
3       proximity, I reckon.   And then the other one is is the  
4       accreditation committee going to give guidance on --  
5       you know, if there's 100 growers and two of them are  
6       found in violation, how does that affect all the rest -  
7       - the other 98 producers?

8                   MR. RIDDLE:   Well, if you -- you would read  
9       the procedures yourself as a certifier, we're basically  
10      recognizing that this type of certification does occur,  
11      and it is valid.

12                  CHAIRPERSON CARTER:   Okay, Pete.

13                  MR. GONZALEZ:   My name's Pete Gonzalez from  
14      Oregon Trust Incorporated.   I'd be glad to answer any  
15      questions.

16                  CHAIRPERSON CARTER:   The question was at what  
17      point does it become too cumbersome?

18                  MR. RIDDLE:   Do you certify grower groups?

19                  MR. GONZALEZ:   Yes, Oregon Trust certifies  
20      grower groups, and currently I guess the maximum size  
21      is in the range of 200 individual growers.   Previously  
22      we had certified groups in the range of 2000.

23                  MR. KING:   Can you provide more detail?   I  
24      mean 2000 growers.   What is the advantage for them all

1       having a grower group in this particular case? I  
2       understand if it could be a brand or a product like  
3       that, but what challenge -- it seems to me --

4                   CHAIRPERSON CARTER: You faded off there.

5                   MR. KING: Sorry, it seems to me that would  
6       represent some interesting challenges for the  
7       certifiers -- 2000 growers in one group, and what  
8       percent would require an onsite inspection, and --

9                   MR. GONZALEZ: Oregon Trust -- I believe  
10      there may have been one or two exceptions in their long  
11      history -- but Oregon Trust has ... got a policy of 100  
12      percent inspection prior to certification. We  
13      completed that with these groups. It took a team of  
14      inspectors a number of weeks to achieve that. In  
15      subsequent years we fell back more on the type of  
16      guidelines that are being described here to choose an  
17      appropriate number for ongoing monitoring.

18                   CHAIRPERSON CARTER: George than Owusu.

19                   MR. SIEMON: What about geographic  
20      concentration? What do you feel about that? I heard  
21      that being said. I know some of them are spread out  
22      over a large region, but they're in that same unified  
23      umbrella.

24                   MR. GONZALEZ: I think that would have to be

1 left to a custom decision, and it would be very hard to  
2 put a definition on what that geographic size region  
3 is, and it would fall back to the similarity of  
4 practices and common management aspects so that  
5 conceivably could be spread across hundreds of miles,  
6 very similar and well organized system.

7 CHAIRPERSON CARTER: Owusu?

8 MR. BANDELE: Yes, that was the gist of my  
9 question, and just to follow up, in your experience,  
10 how wide a range of geographic area do coops cover, the  
11 ones that you deal with?

12 MR. GONZALEZ: The ones I deal with are --  
13 they would probably fall within 100 miles, the ones  
14 that we're currently certifying, at extreme ends. But  
15 in the center group, probably 200 miles full spread of  
16 the ones that we do not still certify.

17 CHAIRPERSON CARTER: Andrea, you want to come  
18 add some things, and then I'll go down -- continue to  
19 go down the list with questions.

20 MS. CAROE: The certifications -- Andrea  
21 Caroe with QAI and also the co-chair of the  
22 certification subcommittee of the QAC for OTA. We  
23 discussed this, the proposal, and the question as far  
24 as proximity did come up. We understand that proximity

1     could lend an issue as far as management of the group,  
2     but it strictly is a symptom, not the problem. The  
3     problem is the management. So we've never looked at  
4     proximity as long as the group is effectively managed.

5     We've seen situations where farms have been very close  
6     proximity, within a couple miles of each other, and not  
7     been managed properly; and we've also been in  
8     situations culturally, Latin America, we see a lot of  
9     operations that are quite spread out, and may be  
10    managed very properly. So I don't understand the  
11    actual reason for close proximity. I understand the  
12    reason for effective management and capitalizing on  
13    those, and they may be more of a challenge with a  
14    further spread out unit, but the unit being spread out  
15    does not necessarily mean that they can't manage as a  
16    group.

17           We've managed -- we do grower groups into the  
18    thousands, and we have sent teams of inspectors down  
19    for ten days -- seven or eight inspectors -- doing  
20    numerous inspections. We do 20 percent, typically, at  
21    a minimum, and more if we feel that it's necessary, if  
22    we feel that there's an error that's problematical or  
23    further spread out from the rest of the group, we do  
24    profiling, I guess you would say, and select based on

1 those things.

2 I had another point to make and I can't  
3 remember -- any questions?

4 CHAIRPERSON CARTER: Okay, let's go on down,  
5 Nancy and then Rose, and then Marty.

6 MS. OSTIGUY: The question was asked by I  
7 guess, Marty, if you didn't have -- some of the  
8 individuals were not in compliance, how many would have  
9 actually triggered you to say that the whole group was  
10 not in compliance?

11 MS. CAROE: Well, we've always handled them  
12 on a case by case basis. We look at the effective  
13 management as a whole. It's not an easy decision to  
14 put down into a matrix -- like I said, evaluating that  
15 case by case. Is this a random error? Just like if  
16 you went into a processing plant and you found an error  
17 in paperwork. Is it a random error or is it systematic  
18 problem? We evaluate it kind of in the same light.

19 But I do want to draw an analogy here. We  
20 certify some of the large farms too, and we don't look  
21 at every acre. Looking at a grower group is  
22 essentially looking at one operation, and we do look at  
23 a percentage of it like we would look at a percentage  
24 of a field that's very large, or a farm.

1                   CHAIRPERSON CARTER:   Rose.

2                   MS. KOENIG:   It's the same question, I guess.

3                   So say you had 50 growers and you found one grower  
4                   that was applying Round-Up.  I would think that that  
5                   would be a major non-compliance.  So does that nullify  
6                   the whole group?

7                   MS. CAROE:   Actually the grounds for non-  
8                   compliance would not be that one grower was using  
9                   Round-Up, but that the system group didn't realize that  
10                  one grower was using Round-Up and didn't educate that  
11                  grower.  It's a system problem, and they would have to  
12                  -- yes, that would be something we would consider a  
13                  major non-compliance, because of pre... material was  
14                  used, and to get the group back into compliance, there  
15                  would have to be a corrective action done by that  
16                  grower group, which may mean that they reevaluated or  
17                  reeducated or pared down their group based on what they  
18                  found.  There would be that sort of management that  
19                  would have to come back to us.

20                  MS. KOENIG:   But I guess I don't --

21                  MS. CAROE:   We don't consider one grower the  
22                  whole problem if we find one grower that's doing that.

23                  There's a problem, it's bigger than that.  We're not  
24                  fooling ourselves to believe that we caught the one in

1 the group.

2 MS. KOENIG: I guess my concern, the way I  
3 understood it, when we were talking about a group of  
4 producers who were US producers, where there would be  
5 one compliance, I thought Rick said that the whole  
6 group would have to be recertified. It's the way I  
7 understood it.

8 MS. CAROE: That's exactly correct.

9 MS. KOENIG: But there's got to be just -- I  
10 mean there's got to be a disadvantage or I'll become a  
11 grower group, because you know, what you're telling me  
12 is that it's somebody in the group -- I assume if one  
13 person in a group had a major non-compliance, they  
14 would then be brought forth with action to be  
15 decertified.

16 MS. CAROE: I guess the misconception is that  
17 a grower group is a set of growers that are doing  
18 independent things. A grower group is not set up that  
19 way. A grower group is -- is a single unit. These  
20 growers are growing for a single marketing effort.  
21 It's not let's -- they all have to be under the same  
22 system of management. They all have to have the same  
23 input records. They all have to be inspected by the  
24 internal control system. They're all part of that

1 single unit. Just like --

2 MS. KOENIG: So you're saying you should look  
3 at it as a farm that had multiple sites?

4 MS. CAROE: Exactly. Exactly right. It's  
5 not -- they're not individual. And the advantage is  
6 purely economic and we see a lot in economically  
7 depressed areas where this is the way that a small  
8 grower can do organic.

9 CHAIRPERSON CARTER: Okay, Mark.

10 MR. KING: I have a question for you and it  
11 builds on Rose's point. Say you've got 100 growers,  
12 find I don't know, let's use the example of one person  
13 and it's a major non-compliance -- I don't care if it's  
14 Round-Up or whatever it is. Describe a corrective  
15 action in the context of a grower group in that  
16 situation.

17 MS. CAROE: Okay, say it was 100 growers in  
18 the grower group, and we inspected 25 in this  
19 situation. We find one grower that hasn't a clue.  
20 They've got major problems.

21 MR. KING: Let's further assume that that  
22 grower's not one of the 25.

23 PARTICIPANT: Well how would you find him?

24 MS. CAROE: Well, that's like saying that an

1 inspector goes into a processing plant and looks at  
2 every single piece of paperwork.

3 MR. KING: How would you have found it?

4 MS. CAROE: Well, again, it goes back to the  
5 same situation. If you went into a processing plant as  
6 an inspector, you don't look at every piece of paper in  
7 the whole entire plant. You are sampling, and you are  
8 looking for systematic errors. If you see repeat  
9 errors, they're not random any more, it's system  
10 problems. Similarly, when you look at a grower group,  
11 yes, we many not -- you may not catch that one that has  
12 the problems, but it's based on 95 percent confidence  
13 in statistics, you know. If the group is being managed  
14 properly, that's a limited risk.

15 PARTICIPANT: Yes, but each grower is a  
16 variable, though, and --

17 CHAIRPERSON CARTER: I think there is a  
18 difference in one grower managing 1000 acres and  
19 several growers -- there you have different human --

20 MS. CAROE: But you shouldn't, because if you  
21 have one systematic control, and one inspection group  
22 that is part of that, you still have one person or one  
23 entity that is responsible.

24 MR. RIDDLE: And there also have to be

1 records of the internal control system. You spend a  
2 lot of time reviewing the records of the control  
3 system.

4 CHAIRPERSON CARTER: Okay, Goldie, Nancy.

5 MS. CAUGHLAN: Would you say that it's more  
6 typical that these grower group certifications systems  
7 exist for single commodity --

8 MS. CAROE: Absolutely. Absolutely, in fact,  
9 almost exclusively.

10 MS. CAUGHLAN: Right, that would be my  
11 understanding. And then a follow up to that, which  
12 I've heard from consumers who've been somewhat aware of  
13 that has been the fact that you -- let's say that it's  
14 something that's been treated with a substance of real  
15 concern. And those -- that single commodity is then  
16 joined together and it's been shipped. Now it goes  
17 beyond just looking at the system, it also goes to the  
18 heart of how widespread? Was that one grower's  
19 product? How much of that -- that's been totally  
20 treated with the substance?

21 MS. CAROE: Right, and I can say the same for  
22 a processing plant with a new employee that makes  
23 mistakes and takes a day's worth of batches that are  
24 out there. I just -- I guess you reach a point of

1       diminishing returns. We could inspect all 2000 growers  
2       in a grower group, and see it on that day, and see that  
3       everything looks fine --

4               MS. CAUGHLAN: But consumers are telling me  
5       that they have this -- this is their greatest concern  
6       in the first place, and it's heightened by the grower  
7       group concept, is in the other country -- it's always  
8       the other country -- do we know that that could be  
9       domestically done too? Consumers are fearful that  
10       things that are produced elsewhere aren't quite as  
11       organic as when they're produced here. Consumers  
12       further are concerned, understanding now that under our  
13       system, agents who are not domestic are being -- are  
14       going to be certifying those products, that it will not  
15       be in most or many instances, it won't be the ... or  
16       the QAI traveling to another country. How would you  
17       respond to a consumer or people --

18              MS. CAROE: Well, I don't know that that's a  
19       grower group concern. It's more of a foreign  
20       accreditation concern, perhaps.

21              MS. CAUGHLAN: We're asking for ... I guess,  
22       part of your safeguards that you, as an inspector, --  
23       you know, if you're in an area where you're grower  
24       group and it's really large, and it's mountainous and

1 it's ... have a depressed economy and you have -- it  
2 seems to me that there's a heightened likelihood of  
3 problems developing.

4 MS. CAROE: Actually, in the truly depressed  
5 areas -- I think Jim probably could speak to this as  
6 well -- organic and ... organic is less of a problem  
7 because they can't afford --

8 MS. CAUGHLAN: -- or not telling on your  
9 neighbor down the road that perhaps ... when so much is  
10 depending upon -- I'm just expressing a very deep  
11 concern.

12 CHAIRPERSON CARTER: Okay.

13 MS. CAROE: I'm not quite sure how to address  
14 that.

15 CHAIRPERSON CARTER: Okay, Nancy -- and I  
16 would ask Board members too, when you phrase a  
17 question, try to phrase it as succinctly as possible  
18 here so we can --

19 MS. OSTIGUY: This might get into some of  
20 what Goldie was after, sort of how is the sampling  
21 actually done? If you are -- I have no problem with  
22 sampling. I very much think we're insane for trying to  
23 do a census of the US population, rather than a  
24 sampling. So coming from that point of view, how do

1 you actually know that you are going to be addressing  
2 the variables that are inherent in having a large  
3 operation, multiple locations, irrespective of whether  
4 or not we're talking about a single farmer that's in  
5 charge of those multiple locations, or multiple farmers  
6 that are being controlled by a single plan? How do you  
7 deal with that variability such that you know that when  
8 you go to do the sampling, you have a good chance of  
9 catching the problems that might exist there?

10 MS. CAROE: The way that I can answer that is  
11 when we receive an application and we receive a  
12 description of what the operation is. We will take  
13 into any variables we see in that. If they say that we  
14 have different sectors that we look at, or we have  
15 different teams that go out and evaluate, or we have  
16 separated into different regions, or whatever the tone  
17 in the plan that's slightly different, we make sure we  
18 hit each of those areas. And then we'll try to hit the  
19 small ones, and we'll try to hit the large ones.  
20 Anything that we can feel is a variable, we try to  
21 accommodate both sides of it and in regional diversity  
22 as well.

23 I can only speak from what QAI does on this,  
24 but we do that -- again, it's a minimum of 20 percent,

1 but if -- if it's 100 growers, and we have the  
2 inspectors down there and they can actually get more  
3 than that done, they'll do more. We'll try to get  
4 more.

5 Also in an interim monitoring situation, if  
6 anything that we have seen in the past has raised a  
7 flag, we'll make sure that that grower is included in  
8 our sampling -- any evidence we have will be taken into  
9 account when we do our sampling.

10 MS. OSTIGUY: As a follow up, so you're  
11 telling me that the minimum is 20 percent, that's your  
12 given, and that is not influenced by the number of  
13 variables that exist within that grower group? So you  
14 would not have grower group A that is less complex than  
15 grower group B, both of them are going to start with  
16 that minimum 20 percent?

17 MS. CAROE: Both of them will be a minimum of  
18 20 percent. The situations that we have with grower  
19 groups are very -- they're single commodity growing  
20 situations and typically they're all quite simple.

21 CHAIRPERSON CARTER: Alright, then let's wee,  
22 we had Mark, Jim, Owusu, and then we're going to close  
23 it off.

24 MR. KING: Alright, when you say 95-5, I

1     assume you're talking about 95 percent assured that it  
2     actually is organic, and representing it as organic.  
3     And yet, you say a minimum at 20 percent, can you  
4     describe how you're 95 percent assured of your model?

5             MS. CAROE: Well, we're not verifying the  
6     farms, we're verifying the system.

7             MR. KING: I understand.

8             MS. CAROE: We're verifying the system with  
9     the 20 percent sampling. We're not verifying 20  
10    percent of the farms. It's -- you can't look at --  
11    it's bigger than looking at just 20 percent. We're not  
12    just looking at 20 percent. We're verifying a system  
13    that covers 100 percent.

14            MR. MESH: Each producer gets inspected by  
15    the internal control system.

16            MS. CAROE: That is another point that I  
17    should be making, is that the sampling is rotated and  
18    then you are monitoring -- the next year you go into a  
19    monitoring situation, you're looking at another 20  
20    percent. So in five years' time, everybody is covered.

21            MR. MESH: To answer your question, part of  
22    the internal control system's policies is to do an  
23    internal inspection of every single member, every year.

24    So 100 --

1           MR. KING: ... document review perspective  
2 and a system analysis perspective.

3           MR. MESH: So 100 percent of the growers are  
4 inspected every year.

5           MR. KING: By their internal --

6           MR. MESH: Yes, by their internal control  
7 system.

8           MR. KING: Their internal control, right, but  
9 not by yours.

10          MR. MESH: Correct.

11          CHAIRPERSON CARTER: That was Marty Mesh.

12          MR. KING: And just a quick follow up, I see  
13 you nodding, so you're agreeing with this from an  
14 organic TIL perspective too.

15          MR. GONZALEZ: Pete Gonzalez with Oregon  
16 TILs, yes.

17          MS. BURTON: My comment was that I know that  
18 these grower groups have been around for a very long  
19 time, and the justification that we've got, OTA's  
20 accreditation committee, the certifiers validating this  
21 process, and I guess the sense of the Board is we're  
22 just unsure of how it works, so we're questioning it,  
23 and I totally accept that, but I think that we're kind  
24 of spending a little bit too much time on this, that

1 this is a recommendation that's fully supported by the  
2 industry.

3 CHAIRPERSON CARTER: Okay. Owusu and then --

4 MR. BANDELE: I'm assuming that -- you  
5 mentioned that most of these are single commodity  
6 operations. I'm assuming that most of these are  
7 perennial crops? And if not, how do you account for  
8 crop rotation, if you're annual as a part of the  
9 organics?

10 MS. CAROE: I think -- Andrea Caroe, QAI,  
11 Accreditation subcommittee. Perennial crops seems to  
12 be -- comes to mind only perennial crops right now.

13 MR. KING: But they have to meet the  
14 standards.

15 MS. CAROE: Everything has to meet the  
16 standard, yes. I mean you could have -- you could have  
17 a grower group of tomatoes as long all the tomato  
18 growers are using the same organic farm plan, and it's  
19 verified at 20 percent that indeed they are following  
20 that, you do make an assumption, the same as you make  
21 an assumption when you go to a plant that the way  
22 they're operating is the way they operate.

23 CHAIRPERSON CARTER: Okay, I'm just going to  
24 call on Jim to summarize then.

1           MR. RIDDLE:  Yes, well the one issue that I  
2 heard some serious objections to was about the close  
3 proximity, and I would like the accreditation committee  
4 to meet briefly and see if that should be deleted  
5 before this comes back up for a vote.  And if there are  
6 other comments and members of the audience have, please  
7 let us know that, if there's some serious errors or  
8 concerns with this.

9           CHAIRPERSON CARTER:  Alright, any other  
10 discussions on certification programs, if not, let's  
11 move on.

12           MR. RIDDLE:  Okay, then the only other item  
13 for accreditation committee was something that Barbara  
14 mentioned earlier today, and that is the accreditation  
15 committee functioning as the -- as an interim peer  
16 review panel and reviewing some documents and we have  
17 begun that process.

18           We had received six blank documents from Jim  
19 Reeva at the audit review branch, and then I also  
20 downloaded the three that are publicly available: the  
21 application form, and then the two letters that go out  
22 -- decision letters.  And so there's a total of nine  
23 documents which have been reviewed and a preliminary  
24 report was just circulated to members of the

1 accreditation committee and to Jim Reeva for his  
2 feedback. It's really an internal working document of  
3 the committee yet, so there's nothing to vote on.

4           There's just a few things I'd like to  
5 highlight in the report here. One of the interesting  
6 things, the audit review instruction form describes a  
7 program review and approval committee that actually  
8 reviews all of the accreditation reports coming in from  
9 the auditors, and that that will include a  
10 representative of the NOP, the ARC, and an independent  
11 third party. And then the records that I saw of the  
12 committee report, even though the content was blank, it  
13 had the names of the committee members and at this  
14 point it only had the NOP and ARC representative, and  
15 no independent third party sitting on that committee  
16 yet, so that seems to be a deficiency.

17           Another very interesting thing that was  
18 revealed is in that same instruction form, there is a  
19 section on confidentiality, and it states that "all  
20 materials submitted by the applicant and maintained by  
21 the NOP or ARC branch, are available for public  
22 inspection and are subject to complete disclosure under  
23 Freedom of Information Act. Any portion of the program  
24 documentation that the applicant considers proprietary

1 must be identified at the time the information is  
2 submitted, along with written justification why the  
3 document should not be released or reviewed by the  
4 public."

5           And I don't know if all applicant certifiers  
6 have been informed of that, but if they have, then that  
7 -- the fact that this has occurred should greatly  
8 streamline or facilitate the FOIA request as currently  
9 underway. So it's just a matter of photocopying and  
10 getting those documents out if the proprietary  
11 information is already been designated by the  
12 applicants. So that was really good news to come  
13 across that.

14           And then the charge of the committee, if  
15 we're functioning as a peer review panel, is to both  
16 review the accreditation program against the rule , but  
17 also against ISO guide 61, which is the international  
18 norm for accreditation bodies. So I did that, and  
19 there's just a summary of these preliminary findings  
20 and just a few items I'd like to highlight which NOP  
21 program may or may not be in compliance with ISO guide  
22 61.

23           A few of those are: "ISO guide 61 requires  
24 that sufficient explanation be provided to applicants

1 on the accreditation requirements.

2 "That the system enable the participation of  
3 all parties significantly concerned in the content and  
4 functioning of the accreditation system.

5 "That the accreditation program itself must  
6 have a quality system and a quality manual.

7 "That the accreditor must not be involved,  
8 either directly or indirectly in the certification  
9 decision making process.

10 "The accreditor must have policies and  
11 procedures for the resolution of complaints.

12 "Must have procedures for document control.

13 "On site evaluations must be conducted before  
14 initial accreditation is granted.

15 "The applicants must be promptly provided  
16 assessment reports and given the chance to respond to  
17 those reports prior to accreditation."

18 So those are just a few of the items that  
19 have been identified of potential concern, and those  
20 will be continued on and in the analysis as we move  
21 forward. That's all.

22 CHAIRPERSON CARTER: Okay. Discussion.  
23 Dennis, are you just pondering, or do you have your  
24 hand up?

1 MR. HOLBROOK: No, I'm pondering.

2 CHAIRPERSON CARTER: Okay.

3 MS. KOENIG: Can you tell me who again is on  
4 this committee?

5 MR. RIDDLE: The accreditation committee,  
6 which is Mike Lacy, Dave Carter, Mark King and myself.

7 CHAIRPERSON CARTER: Okay, other discussion?

8 MS. BURTON: I just -- do we have  
9 documentation on that -- what you just read?

10 MR. RIDDLE: Yes, I just have two extra  
11 copies right now. It just went out to the committee  
12 members --

13 MS. KOENIG: Okay, that's all -- I just  
14 wanted to know.

15 MR. RIDDLE: Yes, I didn't want to provide  
16 them yet, I just wanted to summarize it until the  
17 committee had a chance to really digest it and then  
18 release it as a committee document. Just to let you  
19 know that work is proceeding.

20 CHAIRPERSON CARTER: Okay, other items on  
21 accreditation? No. Okay. Then, George, off the  
22 livestock.

23 MR. SIEMON: Alright. The livestock -- the  
24 first issue is our materials, and we had sent back a

1 total of six TAPs to get information on --

2 MS. KOENIG: Can you speak up, please?

3 MR. SIEMON: Okay. Six TAPs that we sent  
4 out, we got three of them back that we just got last  
5 night, so we have not altered our previous  
6 recommendation that you all received, and I hope you  
7 all got handed out the supplemental information today  
8 on the three. So we, unfortunately didn't get these  
9 ourselves until today or last night, so we're going to  
10 sit tonight and try to revisit it -- this has changed  
11 our previous recommendation.

12 The other three that we did not get any --  
13 our supplemental information back, we're going to look  
14 and see if we're going to pass and wait, which is what  
15 it looks like we'll do, or to try to clarify the  
16 statement. ... they are now, so we don't really have  
17 any new information or new recommendations until we go  
18 through those that we just received.

19 MS. BURTON: Can you tell us what materials  
20 you will be going through?

21 MR. SIEMON: Yes, flunixin, atropine and  
22 mineral oil -- those are the three that I hope you all  
23 got today. I've got some extra ... here.

24 MS. BURTON: I don't know that we --

1 MR. SIEMON: Here's just a few --

2 MS. BURTON: Got the mineral oil.

3 MS. KOENIG: I don't think we got anything  
4 down here.

5 MR. SIEMON: Really?

6 MR. RIDDLE: No.

7 MR. SIEMON: Well, let's pass them along.  
8 Here's some more mineral oils. Anybody know where the  
9 piles of these other two -- atropine and flunixin?  
10 Somebody have them? Katherine, you gave me a pile --  
11 flunixin and atropine?

12 KATHERINE: Yes, that should be in there.

13 MS. BURTON: It should be where?

14 MR. RIDDLE: Yes, they were at our places  
15 when we arrived this morning --

16 MR. SIEMON: Except for mineral oil which  
17 just came out just now. So we're going to review those  
18 three and make recommendations on them.

19 MR. RIDDLE: Here's the mineral oil, got  
20 stuck at the Chair again.

21 MR. SIEMON: After that, the dairy  
22 replacements is the other one that we hope ... and  
23 we've got a lot of feedback, and just getting it right  
24 this minute, so again, we're meeting this afternoon to

1 see if we want to change our recommendation and  
2 basically there's been a lot of feedback, agreeing a  
3 lot with ours, but wondering if we need to have any  
4 phase-ins for certain parts of it. The medication for  
5 young calves is one of the primary concerns. There's  
6 definitely as sense of a consensus that people want one  
7 standard for all organic dairy herd replacement  
8 animals. So, again, unfortunately we're just getting  
9 this feedback now, so we haven't got a new  
10 recommendation for the Board, but we hope to work on  
11 that tonight. So we just haven't gotten this feedback  
12 until right now.

13 The third one is the excipients and Nancy's  
14 taken the charge on that and we've that passed out as  
15 well, so Nancy, you want to make comments on that? The  
16 document's gone out -- everybody have the excipient  
17 document as well? Somewhere, I understand that. You  
18 want to or you want me --

19 MS. OSTIGUY: Go ahead.

20 MR. SIEMON: Well, basically this is part of  
21 our task force about the materials and the ones that  
22 need to be addressed yet, and this is about excipients  
23 in medications which are non-active. The document we  
24 have explains it pretty well what it is and we've made

1 a recommendation that's pretty broad, to allow them. I  
2 don't have it in front of me right now. Go ahead,  
3 Nancy.

4 MS. OSTIGUY: The first thing that I did on  
5 this was to actually summarize what the use of  
6 excipients are since I was completely clueless about  
7 what the word was. The general definition is that they  
8 are carriers, inerts and antimicrobials, not intended  
9 to have any effect on the animal being treated.  
10 There's some disagreement as to whether or not they are  
11 inerts or not, but that's the definitions that I  
12 encountered.

13 The recommendation is to allow the use of  
14 excipients used in manufacturing and found in the  
15 finished product of drugs used in livestock treatment,  
16 unless they are specifically prohibited. So that was  
17 the first recommendation.

18 The second recommendation was to actually  
19 provide a definition of excipient so that we knew what  
20 we were working with.

21 MR. SIEMON: As we have heard in public  
22 testimony, a lot of medications we've passed so far are  
23 not available because we haven't dealt with this issue  
24 of excipients, so in order to enable all the materials

1 -- many of the materials, synthetic materials  
2 especially, that have been passed in the last 12 years,  
3 we need to have this excipient piece of the puzzle as  
4 part of our material list.

5 CHAIRPERSON CARTER: Rose.

6 MS. KOENIG: I've got a question on the  
7 recommendation. When you say allowed unless it's  
8 specifically prohibited, what would be the process of  
9 determining what might be prohibited? Because -- with  
10 that verbiage -- I mean right now they have a petition  
11 process where it precludes somebody to -- if they're  
12 synthetic ... organic market place as an input ... why  
13 .. no incentive for manufacturing companies to apply to  
14 be prohibited. So who's going to be that watchdog?  
15 Who's going to ...

16 MR. SIEMON: Well, we have -- I think we have  
17 some other recommendations with the same kind of a  
18 phrase. I'm not sure which they are. I guess the feed  
19 additives was one. I don't know about the inerts, but  
20 I think that's up to the industry to police themselves,  
21 so I don't have a good answer.

22 MS. OSTIGUY: My thought is similar to what  
23 we have going on with chilean nitrate, except that  
24 there will be individuals who have opinions on all

1 sides, even assuming more than two sides, such that if  
2 someone perceives that there is an issue on excipients,  
3 they can petition to have it removed.

4 CHAIRPERSON CARTER: Any other comments?  
5 Questions?

6 MS. KOENIG: Did you guys -- I just had a  
7 question. I know Emily has provided us documentation,  
8 we got it this morning, that -- has the committee  
9 looked at that to see a different proposal or have they  
10 considered it or not.

11 MS. OSTIGUY: That actually came in to my  
12 email yesterday morning, so no, this was after the  
13 committee had met.

14 MS. KOENIG: Could -- I mean is it alright to  
15 ask Emily to summarize that? I know she didn't review  
16 it -- just because we're talking about that. I just  
17 want to understand maybe a different alternative.

18 CHAIRPERSON CARTER: True, okay.

19 MR. SIEMON: We had gotten some of that  
20 information through some of the email feedback we were  
21 getting -- Hugh Karreman had sent some up for us.

22 MS. KOENIG: Well, maybe just Emily and --  
23 based on recommended version maybe if that's similar to  
24 what you're recommending and ....

1 MS. BROWNROSEN: Well, I think the problem  
2 saying someone could look at it and petition and have  
3 it removed is -- what are you actually putting on the  
4 list? Are you putting just excipients allowed, so how  
5 would someone identify it? Because if they wanted to  
6 have it removed to an individual one, they'd have to --  
7 you know, because you can petition is to add a  
8 synthetic. You can petition, of course, to remove a  
9 synthetic. I suppose you could petition to remove the  
10 whole class.

11 Our suggestion is more that you should  
12 generally allow excipients now either in the context of  
13 the TAP review of the individual drug so that it should  
14 be added to the TAP reviews in the future, and then  
15 it's a needed to be -- when you looked up the  
16 formulation have materials in there other than -- you  
17 know, criteria would be grass or ... food additive, and  
18 if there was other materials in there you would look at  
19 those closely and see if you want to say a list,  
20 furosemide except for formulations containing  
21 formaldehyde or something -- stuff that is specifically  
22 prohibited somewhere. But that's just sort of a  
23 difference in wording.

24 MR. SIEMON: So the real addition was in the

1 future --

2 MS. BROWNROSEN: Look at it ... and I would  
3 say, the wording here I ask you to look at the way ...  
4 because there's also a problem with the wording on  
5 inerts in livestock. I don't know -- that's really a  
6 technical correction that needed to be made anyway, and  
7 that's why we suggested putting these two things next  
8 to each other. It makes sense, I think, the way we  
9 wrote it out here, that you make a new category 603(E)  
10 as non-active substances for use with disinfectants,  
11 medications, and parasiticides. Then number one, you  
12 move the synthetic and inert ingredients that are used  
13 in pesticides used in livestock there, and then number  
14 two, you would have the excipients language. And to me  
15 that's the right place to put it.

16 Because the way the inerts language is there,  
17 looks like it can be used in all products for  
18 livestock, and what is meant for it to cover is  
19 registered pesticides used in livestock. So it's just  
20 a numerical wording. Were you aware -- was that on  
21 your technical corrections, ever? No? Oh, he doesn't  
22 know. Okay.

23 MS. OSTIGUY: Emily, do you have another copy  
24 because I cannot find what you passed out.

1                   CHAIRPERSON CARTER:  Okay, other comments or  
2  questions?

3                   MR. SIEMON:  I didn't read the recommendation  
4  because everybody's got it in front of you, the  
5  different ones.

6                   CHAIRPERSON CARTER:  Rose.

7                   MS. KOENIG:  I would just hope that maybe the  
8  committee could take a look at that ... and just look  
9  at what you're recommending and look at that  
10  documentation and see if there's any modifications that  
11  you need to make.

12                  MR. SIEMON:  Sure.  So I guess we've got more  
13  to do before we have -- if we're going to modify our  
14  recommendations, because we already have  
15  recommendations on the table on all these subjects.

16                  CHAIRPERSON CARTER:  Okay, livestock  
17  committee will be meeting after this meeting.

18                  MR. SIEMON:  Right.

19                  CHAIRPERSON CARTER:  Okay.

20                  MR. SIEMON:  Tirelessly.

21                  CHAIRPERSON CARTER:  Tirelessly, we all know  
22  that.  Very tired -- tiredly, we will be meeting.  
23  Okay, then the international committee.

24                  MS. GOLDBURG:  This will be the shortest

1 report. Yes, the international committee has been  
2 working on a recommendation on US/EU equivalency. We  
3 are finding that we need to have more discussion of the  
4 recommendation with the NOP, and therefore we have  
5 chosen to defer for now the recommendation. It's  
6 certainly not a matter that -- with a deadline of  
7 October 21st ...

8 CHAIRPERSON CARTER: Okay. Everybody  
9 understand? Okay, nothing else on international?

10 MS. GOLDBURG: No.

11 CHAIRPERSON CARTER: Alright. Then we have  
12 gotten to 6:30 on Saturday. Before we recess, are  
13 there any other announcements, items for the -- go  
14 ahead, George.

15 MR. SIEMON: ... livestock and we just got  
16 Hugh Karreman -- I don't know if we need to read this  
17 or not.

18 CHAIRPERSON CARTER: I was going to read that  
19 tomorrow.

20 MR. SIEMON: Fine.

21 CHAIRPERSON CARTER: If we got it. Okay.

22 MR. SIEMON: I thought I just handed it down.  
23 Did everybody get it?

24 CHAIRPERSON CARTER: If you just handed it

1 down, I haven't seen it, so -- okay, I have it. My  
2 guardian angel here made sure I had a copy.

3 Okay, so any other announcements before we  
4 recess tonight?

5 MR. MESH: We have a question.

6 CHAIRPERSON CARTER: Yes, Marty.

7 MR. MESH: I assume, to the crops committee,  
8 that the recommendation tomorrow will be on planting  
9 stock in general, not just strawberries specifically.  
10 It sounded like it was from the strawberry grower  
11 maybe, I don't know, but -- onion sets, sweet potatoes  
12 -- they're all issues.

13 MR. BANDELE: That was the intent of it,  
14 Marty.

15 CHAIRPERSON CARTER: Mark.

16 MR. KING: I just -- several members of the  
17 processing task force who want to know what recess  
18 means. They don't feel they've had one for the last  
19 few days.

20 CHAIRPERSON CARTER: A good recess means  
21 going out and drinking beer tonight. Okay.

22 MR. SIEMON: Anybody got any extra of these  
23 from Hugh? Do they know where they are?

24 MS. KOENIG: We didn't have enough.

1                   PARTICIPANT: I've not received one yet.

2                   CHAIRPERSON CARTER: Okay, we are recessed  
3 until 8:00 o'clock tomorrow morning.

4                   (Whereupon, at 5:00 p.m., the hearing in the  
5 above captioned matter was adjourned, to be reconvened  
6 tomorrow morning, Sunday, October 20, 2002, at 8:00  
7 a.m.)