UNITED STATES DEPARTMENT OF AGRICULTURE

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NATIONAL ORGANIC STANDARDS BOARD

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TUESDAY
AUGUST 16, 2005

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The above-entitled matter convened at 8:00 a.m. in Oriental Ballroom C of the Mandarin Oriental Hotel, 1330 Maryland Avenue, S.W., Washington, D.C., James A. Riddle, Chairperson, presiding.

NOSB MEMBERS PRESENT:

JAMES RIDDLE	Chairperson
KEVIN R. O'RELL	Vice Chairperson
GOLDIE CAUGHLAN	Secretary
ANDREA CAROE	Member
DAVID CARTER	Member
GERALD DAVIS	Member
BEA E. JAMES	Member
HUBERT J. KARREMAN	Member
ROSALIE KOENIG	Member
MICHAEL P. LACY	Member
NANCY M. OSTIGUY	Member
GEORGE SIEMON	Member
JULIE S. WEISMAN	Member

NOP STAFF PRESENT:

KATHERINE BENHAM
MARK BRADLEY
KEITH JONES
ARTHUR NEAL
BARBARA C. ROBINSON

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

8:09 a.m.

CHAIRPERSON RIDDLE: Okay. Good morning. I call the meeting back to order. And we have two staff members here so we officially exist. We can carry on.

And we have quite a workload before us. And we will resume our work at 4:00 p.m. yesterday as far as the agenda goes with some fairly brief committee chair reports on kind of future agenda items. These would be the discussion items that will not be voted on at this meeting. So they are really just an update of works in progress.

So we'll start off with Policy Development Committee. Dave?

MEMBER CARTER: Okay. Thank you, Mr. Chair.

Policy Development Committee met most recently in July to look over the items that are on our agenda. And the first one was the guidance on temporary variances for research 205.209(a)(3). And I'm going to throw it back to Jim because Jim had

prepared a draft for us to work from based upon some input that he had received. He had done some research and interviewed -- got input from about six agricultural researchers and developed the working draft that we discussed at the meeting. So --

CHAIRPERSON RIDDLE: Okay. Thanks, Dave. Yes, the regulation allows for temporary variances for research purposes. But there really aren't any fence posts set or any guidance as to how those determinations are made, what constitutes a, you know, a credible research project and a variance to certain sections of the rule.

And I did construct an original draft with some input from researchers. That went out for a kind of narrow circulation to the research community, received input from about 20 researchers in that round before constructing the second draft. And then that is what was posted for public comment leading up to this meeting.

And we did receive some substantive comments, notably from Organic Farming Research Foundation. And then USDA's CSREES. And those will

be taken into consideration for the next round.

And in particular, I envision fleshing out the draft to incorporate the whole notion of split operations because a lot of the research projects really functions as split operations similar -- you know we certify organic farms that have part conventional, part transitional, and part organic.

And a lot of research projects really are in a similar situation where part is essentially conventional research. So that hasn't been reflected in the draft. So I anticipate trying to address some of the comments that have come in by incorporating the split operation concept in a future draft.

So anticipate another draft being submitted to the Committee for then posting again for a round of public comment and hopefully action at our next meeting.

MEMBER CARTER: Thank you, Jim.

The other item that we have on the agenda here is determining the commercial availability under 205.606. This is a joint project between the Policy Committee and the Handling Committee. And Plan A was

we were going to meet Monday morning before this meeting. And because of my travel schedule and because of other issues then that Barbara wanted to visit with the Board about, we did not get that accomplished. So that's still a work in progress.

One item that is not on the agenda but is coming from the Policy Committee as a discussion item is some work that we Bea and Rigo have been putting together on orientation or a survival guide for new Board members. We call it NOSB 101.

And this kind of came about from the folks that just came on the Board talking about things that would be helpful to help them get up to speed as they came on. And looking forward to the number of new folks that are going to be coming on in January and trying to prepare that.

So Bea, I'll let you discuss that briefly.

MEMBER JAMES: Well, Rigo and I basically put together some information to help new members. And this was in response to the rotation proposal not going through. Jim had put together some rotation proposals so that we wouldn't have so many members

going out at one time.

And because of the way the Organic Foods Production Act was written for NOSB members to serve five years, and the changes that we would have had to have made in order to have that rotation schedule put into actions, it would have gone against OFPA. So what we've done instead is we put together a survival guide.

And there is probably about three pages of information just to help new members understand exactly how to be prepared for the NOSB meetings, how to understand the different committees, how to understand working with the NOP. And we can have more information on that at the next meeting.

MEMBER CARTER: And then the other item that the Policy Committee has been discussing, we want Everett here because it is an action item for tomorrow. But that is the Board Policy and Procedures Manual.

CHAIRPERSON RIDDLE: And that's actually later today.

MEMBER CARTER: Or later today. Tomorrow

being Tuesday, of course.

CHAIRPERSON RIDDLE: Unless today is yesterday.

MEMBER CARTER: It's still four o'clock on Monday.

(Laughter.)

CHAIRPERSON RIDDLE: Right. Okay. Thanks, Dave.

All right. Livestock Committee? George, do you have your discussion item -- Nancy's not here.

MEMBER SIEMON: Nancy is the leader of the agriculture discussion. She's not here.

CHAIRPERSON RIDDLE: Right.

MEMBER SIEMON: That's the agenda item, right? Agriculture?

CHAIRPERSON RIDDLE: Right.

MEMBER SIEMON: And Nancy -- can we come back to her when she arrives? I don't know where she is.

CHAIRPERSON RIDDLE: Yes, no, I don't either.

But, yes, for an update so we hopefully

don't have to come back to this, the Board did adopt a task force report that contained draft standards. And I think what is needed now is a discussion with the program as far as the status of that recommendation and if that, you know, will move forward, you know, as a rule change or guidance document and if any further action is needed from the Board before that could happen.

MR. NEAL: Which recommendation is that?

CHAIRPERSON RIDDLE: Yes, the Agriculture Task Force Report, the beekeeping.

MR. NEAL: With respect to the Agriculture Task Force Report, what we're expecting to happen is that I think Nancy is going to take a look at it because she's got some concerns about it.

CHAIRPERSON RIDDLE: Yes.

MR. NEAL: And we are going to get some feedback from her on it as well because we didn't have a bee specialist, a honey specialist on board at the time. And now we do. So she's going to take a look at it and give us some feedback on it.

CHAIRPERSON RIDDLE: Okay.

MR. NEAL: And what we'll do is that we'll probably begin the dialogue again on that particular document. We know that there is a lot of concern about how can bees be produced organically. And how can honey be produced organically.

But before we go with guidance on that, we want to make sure that we have at least the specialist on board look at that so that we don't go off in left field with guidance that does not apply.

CHAIRPERSON RIDDLE: Right. Yes. And in the interim, operations are being certified organic, you know, beekeeping operations, and there are products on the market carrying the USDA seal. So in the absence of guidance or rule change.

MR. NEAL: That's understandable.

CHAIRPERSON RIDDLE: Yes.

MR. NEAL: But before we go out with anything, we are going to make sure we've at least got feedback --

CHAIRPERSON RIDDLE: Yes.

MR. NEAL: -- from Nancy.

CHAIRPERSON RIDDLE: Okay. Well, I wish -

– just stay tuned on that.

Anything else from Livestock right now?

(No response.)

CHAIRPERSON RIDDLE: Okay. All right. Rose, Materials?

MEMBER KOENIG: Originally I had a slide show just to show the national sunset Process, which we're undergoing right now. I'll just summarize that verbally by saying that the closing date on the Federal Register notice is coming up really quickly. I guess you have a couple more days. When is the last date? Today? We've got today. And we've gotten some comments. And they are being posted on the Web.

And then the Board will begin the task of sifting through those and the appropriate committees will start viewing the comments and following the procedures that we outlined at the last meeting as far as how committees are supposed to report those back to the Board in recommendation form.

So if anybody has any questions or, you know, wants more information, you can either -- there are two places to look. One is the last meeting book

had the procedures that we voted on for sunset as far as the working document for the Board.

And then this meeting, if you look at the slide show, there are some flow charts there that kind of explain the process, how it goes from the Federal Register notice, through the Board process, through the writing of the regulations which takes quite a bit of time.

And that's why we're under a lot of pressure to at least start the process, get as much as we can accomplished hopefully by the next meeting date.

The second item, in the materials -- in the sunset process that we established by the Board, each committee -- the Board has the ability to look at materials that they know may be problematic or they've heard public comment on or they may know information such that was brought forth yesterday by one of the commenters that, you know, the minutes reflected that it was supposed to be re-reviewed or, you know, there was some indication that the Board had the intention of looking those over.

So I asked each committee chair to identify materials that they would like to send directly for technical review. And the Crops Newspaper was brought up other than recycled without glossy or colored inks. Just because technology in newsprint has changed pretty dramatically, there are a lot of soy-based products out there. So it just needed to be looked at.

Aquatic plant extracts, humic acids, and liquid fish products, these seem to be problematic in terms of some of their annotations may not be clear.

Really the Committee is seeking just some details on the extraction processes and just really how they're made because there are a lot of -- not a lot but some of the petitions, I guess, that come in seem to deal with these different products. And we've heard from folks out there -- certifiers -- that the annotations don't seem to make a whole lot of sense. So anyway, we've decided to look those over as a large group.

And then Livestock, ibermectin and oxytocin have been requested thus far. And then in

handling colors, non-synthetics versus only in flavors, the way it reads in the regulation is non-synthetics sources only must not be produced using synthetic solvents and carrier systems or any artificial preservatives.

So those are the Committee's materials that they are sending for technical review thus far. I hope that the committees will get a chance to discuss any other materials that have come up, you know, as far as things that were in the minutes that you may not have considered that commenters have brought forth.

And I made a note of things that were discussed yesterday were streptomyocin and I think tetracycline in crops. They are antibiotics that are used for fire blake control if I remember.

And then vitamins and minerals in livestock, specifically just looking at technologies because I guess the commenter was concerned about there are some processes that now involve GMOs. So we may want to consider that.

And then chlorine products, since chlorine

and chlorine products are on all three lists, so I guess because of the rates and some of the confusion, there was a suggestion to maybe look at that.

So it is really up to the committees but you have that information. I suggest you try to meet and determine if -- you know go to the minutes and confirm what we have gotten in public comment. And see whether you want to bring forth any more. That's it.

CHAIRPERSON RIDDLE: Any questions for Rose on that?

Yes, I have -- oh, George, go ahead.

MEMBER SIEMON: Just a comment that not necessarily will all those require a new TAP. Like we're not requiring a new TAP for ibermectin.

MEMBER KOENIG: Do you have specific questions that you have forwarded?

MEMBER SIEMON: I think we did.

CHAIRPERSON RIDDLE: Well, we did on oxytocin. I submitted those. I don't know about ibermectin.

MEMBER SIEMON: Ibermectin we just wanted

-- we felt we had enough information. Just need to revisit it so --

MEMBER KOENIG: Well, I suggest if you are going to revisit, if you know ones and you've got the information, go ahead and do it now because once you start getting into looking at it, there may be questions that come up. And now is the time to get additional questions answered.

CHAIRPERSON RIDDLE: Arthur?

MR. NEAL: I guess we need to be clear on this now because what I've begun -- I've already begun to initiate the process. And they're going to be doing full TAP, full-blown TAPs on these. So if there are specific questions -- only specific questions that you want to have answered, let me know those before they start on a full-blown evaluation because we're going to get charged for it.

CHAIRPERSON RIDDLE: Yes.

Hugh?

MEMBER KARREMAN: I think with ibermectin, I think the NOSB has said that if moxydectin comes on, ibermectin can go off. And I think that's the main --

so it would be really sunsetted. And I don't think you need to a full-blown TAP at all.

MEMBER KOENIG: But didn't we hear though that moxydectin was an antibiotic? So all three of them, I think you may need to look at all of those.

MEMBER SIEMON: We discussed that when we did moxydectin.

CHAIRPERSON RIDDLE: Right.

MEMBER SIEMON: Thoroughly. So --

MR. NEAL: That's understandable. But we're still got a dilemma. In May 2004 I think it was or October 2004, we said -- we concurred with the Board that antibiotics could not be used in dairy production. Now we've got three materials -- two on the list and one potentially about to go on the list that are structurally antibiotics but function as parasiticides. We've got a technical dilemma here.

What about any other material that is an antibiotic and functions as an antibiotic, can they be allowed for use in dairy production because we've got two on the list and one that's been proposed for inclusion on the list. They are antibiotics by

structure. So how does that impact the statement that we've gone out with to the public?

CHAIRPERSON RIDDLE: Hugh, what are the two on the list right now?

MEMBER KARREMAN: Ibermectin, oxytocin. Oxytocin is not an antibiotic.

CHAIRPERSON RIDDLE: No, it's a hormone. It's a naturally occurring hormone.

MR. NEAL: Well, definitely ibermectin because we've checked with FDA on that. We've actually had FDA chemists look at the structure of those.

MEMBER KOENIG: Okay. So it sounds like the Livestock Committee -- the other, I guess the final thing that I do want to state, although we'll come back to it in the discussion of the item is that there is a document posted that we will discuss on the OFPA categories, trying to get the listing -- making sure that is what on the list conforms to what was spelled out in OFPA. And hopefully NOP will be able to answer some of the legal questions surrounding those categories to make sure that there are not

materials that are not appropriately placed -- have been inappropriately placed on the list.

So when we get to that, we may have to come back to the sunset discussion. But let's just more forward now.

CHAIRPERSON RIDDLE: Yes, I just have a couple questions myself and that is I want to be clear that now once today is over and the public comments have been received on sunset for this round, that the top priority for Materials Committee and each of the three relevant committees is to first identify any of the more substances that need a review. And exactly what questions need to be asked in that review. And whether it is a full review or just a narrowly focused review with specific questions. So that's top priority, correct?

MEMBER KOENIG: Yes.

CHAIRPERSON RIDDLE: And then --

MEMBER KOENIG: So in other words, what you are identifying now are substances that don't necessarily have to have public comment to trigger the review. So we'd like all those Board materials -- now

there may be some comments on those additionally. But we're trying to, you know, whatever, you know, however many materials there has to be to come forth from the committees.

Now once comments come in, that list may grow. But you have the opportunity now as committees to identify those that --

CHAIRPERSON RIDDLE: Yes, and I think the committees have done that. There may be additional ones triggered by public comments that have come in either verbally yesterday or in the written comments that come in by the end of today. But that should be done in very short order.

MEMBER KOENIG: Yes.

CHAIRPERSON RIDDLE: And then the committees need to focus on essentially the non-controversial items that can be kind of reviewed, set aside for renewal. And then we have to go back to those more controversial or where we're lacking information, where we've requested a review. And decide on their status or recommendation for their status.

Hugh and then Kevin?

MEMBER KARREMAN: Just for clarification, what about something that is on the list now that has an annotation, I need to be a little clearer on that. For instance, the term biologics and in parenthesis right next to it, vaccines. If I were to want to just have the broad category of biologics, how do I work with --

MEMBER KOENIG: That changes the intent of the list. I mean that's --

MEMBER KARREMAN: Well, is that during sunset or not? I'm just curious.

MEMBER KARREMAN: -- really adding.

MEMBER KARREMAN: Those kinds of things. How does that come about if I want to work on that?

CHAIRPERSON RIDDLE: Yes, well, that's a good question. And a good example. You know the Federal Register notice, as I read it, didn't set limit on annotations.

I think we had made a recommendation that kind of annotations were not in play and this process could not be used to extend some things's use. It

would be to renew its existing, you know, item and existing annotation. But that wasn't reflected in the Federal Register notice. I just want to know the rules of the game there.

MR. NEAL: That's still the intent. And the reason why is because it will complicate this process. And the process for amending the national list is always going to be the same, through the petition process.

CHAIRPERSON RIDDLE: Yes.

MR. NEAL: The sunset is a deal that takes every five years for substances. So we don't -- we want to separate amending the national list with renewing the national list.

CHAIRPERSON RIDDLE: Right.

MR. NEAL: Changing the national list with conducting a sunset review of the national list. Whether or not a substance should be continued for use in organic production and handling.

MEMBER KOENIG: One -- I mean one thing the committees could do is that, you know, basically if there is an annotation that just doesn't work, is

not appropriate, I mean the obvious solution is you do not renew it during sunset. But you ask for the review of that so that you have the technical information that you could perhaps use that petition to re-review it with a different annotation. But I guess it is a separate process.

MEMBER KARREMAN: Well, you just do through the sunset, you know, just like anything else. Like ibermectin, oxytocin biologics. And then just go through that. And as it comes through sunset, they may change. It's getting reviewed in other words.

MEMBER KOENIG: I don't -- I mean I'd have to defer to Arthur. I mean that's -- I don't know how these Federal Register notices and what lawyers decide in this. So I don't --

MR. NEAL: If you are looking at broadening the scope of biologics, what you are essentially doing -- unless you decide to hold off on renewing its use until you conclude on that discussion, what you are essentially doing is that you are going to preclude the use of that material just because you want to take on additional work on it that

is not needed through this process. Because the farmers won't be able to use them anymore if it is not on that list. So that's why we're keeping sunset strictly to the continued use of a substance.

Now if we want to take up additional work on it, we can always do it through the regular process. But we don't want to do it through sunset because people are going to need to use these substances.

CHAIRPERSON RIDDLE: Yes, so --

MR. NEAL: And we can always have contractors do work on obtaining information for clarification purposes.

CHAIRPERSON RIDDLE: Yes.

MR. NEAL: That's throughout the entire year. Not just sunset.

CHAIRPERSON RIDDLE: Okay. Everyone clear on that? Kevin?

VICE CHAIRPERSON O'RELL: Just one question. What is the timing for the Board to receive the public comments once they've been submitted?

MR. NEAL: What was etched out in the

outline was 90 days after the comment period closes, which roughly puts us at about November 14th, 15th for the Board to come through with a recommendation. Depending on the meeting date when that is finalized, whatever date is going to be the next meeting, that's the date that we'll be looking for the recommendation to come from the Board.

VICE CHAIRPERSON O'RELL: No. But when will we see the comments? When will the Board see the comments that have been submitted to NOP?

MR. NEAL: Oh, the comments are being posted weekly on sunset. What we can do, we can send out hard copies to the committee chairs. But all of the sunset comments that we are receiving are being posted weekly on the website. On the home page, there is a link that says Sunset Comments.

And we've broken those down into Crops, Handling Livestock, and then Multi-Purpose, Multi-Practice, in general, comments so that you won't have to look for those that pertain particularly to your committee.

CHAIRPERSON RIDDLE: And one thing, I was

reviewing those the other day and I did notice under crops there were a couple of handling substances. So I think every committee chair, when you get your packet, really look through it carefully and redirect it if you find something that is not for your committee. And some of them may be mixed and may have gotten missed by the staff. So we'll need to work together.

MEMBER KOENIG: And the forms, you know, when I get home, I can e-mail it to the chairs and everyone. Again, that process, and there is actually forms and a way you are supposed to present the recommendations. So we voted on it I'm sure. I know how I forget things I voted on, too.

But I'll send those to everybody since you are going to be engaged. But it really is -- you know the chairs have to be really active -- proactive on this thing because, you know, I would like to see at least if we're going to do this November meeting, to have a large list of kind of expedited stuff that there is no controversy.

You know we were all expecting a few but

it would be great to get the bulk of the work done at this November meeting so then we can concentrate on those materials that are more problematic.

CHAIRPERSON RIDDLE: And I had one other question that has come up and that is if there is not public comment one way or another on a substance, what is the Board's authority as far as recommending its continued use?

MR. NEAL: The way that the sunset process was put together is that if no one had commented on it, that meant that there is not a continued need for the use of that substance by the industry. Because the industry was supposed to comment to you to let you know --

CHAIRPERSON RIDDLE: Right.

MR. NEAL: -- whether or not if they needed to continue to use the substances. So for the Board to say we need to continue to use this substance when nobody has commented on it, I think that's why OTA stated that we need to know in the proposed rule what substances have received comments and which ones have not because I think that they were going to go

back out and say look people, these substances have not received any comments and will potentially be removed from the national list. If you need to use it, you need to let the NOSB know.

MEMBER KOENIG: But essentially some of the commenters have said that we agree with keeping the list the same except for. So that kind of has covered them all --

MR. NEAL: Right.

MEMBER KOENIG: -- in the one comment.

MR. NEAL: We have had some comments that virtually say renew the entire national list.

MEMBER KOENIG: Keep it.

CHAIRPERSON RIDDLE: Yes.

MR. NEAL: So everything should be covered.

CHAIRPERSON RIDDLE: Okay.

MR. NEAL: But I was answering your question specifically.

CHAIRPERSON RIDDLE: All right. Yes, Hugh? And then we'll move on.

MEMBER KARREMAN: One thing that I brought

up at one of the Livestock Committee calls was the potential removal of strychnine was a natural prohibited due to certain medicinals that are used now with livestock that are naturally occurring medicinals that happen to have strychnine in it as alkaloid. And there could be some certifiers that say hey, that compound has strychnine.

So I thought that was going to be with the oxytocin and ibermectin. But maybe it doesn't need to be but I just wanted to say that I thought I'd submit it for that.

CHAIRPERSON RIDDLE: Right. And yes currently it is listed as prohibited natural. What I'm understanding from you is you'd like there to be an annotation allowing certain uses.

MEMBER KARREMAN: Certain naturally occurring forms of it.

CHAIRPERSON RIDDLE: Yes, yes. Well, it's a prohibited natural. So its natural form is prohibited and the synthetic form is prohibited by definition currently.

MEMBER KARREMAN: Right.

CHAIRPERSON RIDDLE: So that really is more an issue of adding an annotation and would be more appropriate to be petitioned through the regular year.

MR. NEAL: Yes.

MEMBER KARREMAN: Okay. That's fine. Thanks.

MR. NEAL: And let me make one more comment. The reason why we don't get into the changing of annotations, another reason is because it is going to require a lot more work, a lot more justifications just like a person would petition normally and have to make their case as to why the Board should do such a thing as to change a certain material, it's going to take up more of your time.

CHAIRPERSON RIDDLE: Right. And as a, you know, veterinarian, you are certainly free, even though you are a Board member, to submit that petition. You would just, you know, recuse yourself when it is being considered if you are the one who submitted it.

MEMBER OSTIGUY: Jim, I have a question.

CHAIRPERSON RIDDLE: Yes, Nancy, sorry I've been focusing over here.

MEMBER OSTIGUY: Well, I have a question about what you said in particular.

CHAIRPERSON RIDDLE: Yes?

MEMBER OSTIGUY: If you have no financial interest, you just think it is a good idea -- I'm trying to figure out --

CHAIRPERSON RIDDLE: Yes.

MEMBER OSTIGUY: -- sort of the conflict of interest here.

CHAIRPERSON RIDDLE: Well, right. And I was specifically referencing Hugh as a veterinarian and someone who uses the substance, even though he probably doesn't profit from it. But yes, in that case --

MEMBER OSTIGUY: I could see bringing it up.

CHAIRPERSON RIDDLE: Right.

MEMBER OSTIGUY: It makes sense to say okay, there is a potential here. And then allow the Board to say yes or no.

CHAIRPERSON RIDDLE: Yes, I think it -- yes, it would definitely have to be revealed. And it would just depend on what your interest in getting it reviewed is. If it is just general public good and you see a need, then it may not lead to your --

MEMBER OSTIGUY: Okay.

CHAIRPERSON RIDDLE: -- recusal.

MEMBER OSTIGUY: Okay.

CHAIRPERSON RIDDLE: Case by case.

Okay. And the revisions to petition notification, Rose, did you have a brief update on --

MEMBER KOENIG: That's the one you keep on putting on my work plan but -- no, at our conference call, we determined that that was not a big priority. And so it may come up. It really is going to be triggered whether the NOP needs that because it's really -- you know I don't see that as our job unless it is requested from us. I mean I think we've got other pressing matters we've got to get on.

CHAIRPERSON RIDDLE: Yes, okay. And just for the record, we are still operating off a proposed petition that was posted June 2000 before the final

rule came out. And it does need updated. But maybe the Board will be asked to have input.

MEMBER KOENIG: We have --

CHAIRPERSON RIDDLE: We've submitted --

MEMBER KOENIG: -- two meetings ago, we submitted a copy of one which Arthur has but we can't authorize him to use it.

CHAIRPERSON RIDDLE: And that was before the court ruling as well.

MEMBER KOENIG: Right.

CHAIRPERSON RIDDLE: Arthur?

MR. NEAL: That's the reason why it has been postponed --

CHAIRPERSON RIDDLE: Yes.

MR. NEAL: -- from this meeting because there are some 606 issues that need to be adequately captured.

CHAIRPERSON RIDDLE: Right.

MR. NEAL: The whole commercial availability piece.

CHAIRPERSON RIDDLE: Yes. Okay. Thanks, Rose.

Handling, do you have anything?

VICE CHAIRPERSON O'RELL: No. We had the update for the Pet Food Task Force meeting, which Nancy Cook gave yesterday. I guess the only thing that I may add to that update that she presented was that on the conference calls, we had discussed a timeline that the task force would present final recommendations to the Board at the proposed February/March meeting, 2006.

CHAIRPERSON RIDDLE: Okay. Thanks.

Certification, Accreditation, and Compliance? Andrea?

MEMBER CAROE: We have three items. The first item is the peer review panel process. And we are prepared to -- the procedure --

CHAIRPERSON RIDDLE: Yes, these would be just any discussion. And right now it is blank for yesterday's agenda. But it's just -- we'll come to those in a little bit.

MEMBER CAROE: Right, right. No, but I was just going to -- just presenting just the three items that we will be discussing.

CHAIRPERSON RIDDLE: Yes, sorry.

MEMBER CAROE: One is the peer review panel procedure, which we did receive some comments on. And this item is not for vote. It is just for discussion of the Board right now because based on those comments there will be some reworking of the document to make it stronger.

Next, we do have an ANSI report response from the Board and that is prepared for vote out of efforts with collaboration with the NOP to address those items that were identified during the ANSI audit.

And lastly, we do have the vote on the Q&Ss for retailer and private label recommendation. We didn't receive any written comment on this. I did receive late comment yesterday after the meeting. So I ask that any of the ACAs be around for that discussion. We may call you up to get further comment as we discuss it because I would like to vote on this.

And I also ask any ACAs that have concerns with the document to come prepared with language so that we can wordsmith this and get this voted on. I

1 don't expect there will be any major changes -- some
2 minor changes, clarifications, and plan on moving
3 forward with that.
4 CHAIRPERSON RIDDLE: Okay. Great.
5 Thanks.
6 Crops, Nancy, do you have any -- there's
7 nothing listed for discussion there. We've got plenty
8 of items for action.
9 MEMBER OSTIGUY: Right. No, the only
10 things that we're working on that are currently not
11 there is in theory the hydroponics, which nobody has
12 taken up at the moment. And we're going to be dealing
13 with compost in a little bit but we still have all the
14 Q&As to do which will help clarify things hopefully.
15 CHAIRPERSON RIDDLE: Yes. And just to
16 update you before you got in the room under the
17 Livestock Committee, we did talk about the apiculture
18 and the desire of the program to get your input in
19 particular on the task force report that had already
20 been recommended by the Board.
21 And if that would be appropriate, if there
22 are changes needed, and then if it would move forward

as rule change or as guidance to the existing rule. So just be thinking about that and hopefully we can move that forward.

Yes, Arthur?

MR. NEAL: One thing I left out about that, we have drafted guidance under the current good guidance document practices for apiculture.

CHAIRPERSON RIDDLE: Oh, okay.

MR. NEAL: We have not published it yet obviously because we're still looking at all of the pieces to make sure that what is going to go out covers the major points. So -- but we will be looking for Nancy on some input on the Board document.

CHAIRPERSON RIDDLE: Okay. And yes, I would ask that that input be channeled through the Livestock Committee and at least the Executive Committee to have a chance to review it as well.

I had chaired that task force even though I'm not a beekeeper or a honey expert and I recognize it may have some deficiencies. I look forward to it being improved.

And I did also just remember that under

Livestock, we should just give a brief update on the aquaculture task force.

PARTICIPANT: Let's ask Keith to do that.

CHAIRPERSON RIDDLE: Yes, and Keith just got in the room. I hate to put him on the spot right away. So I'll start going on while he gets himself settled.

There was a Federal Register notice soliciting members for an Aquatic Species Task Force that has two working groups, one for aquaculture and one for the wild aquatic species. The Aquaculture Working Group has been seated. A lot of expertise members who have participated in the NOAG, the National Organic Aquaculture Group that issued a white paper.

And there have been, I think, three conference calls. I've sat in on those calls. And they are making good progress. And really using that white paper as a basis for drafting a report, recommendations to the Board.

Anything to add on that Keith?

MR. JONES: No, Jim. That's an excellent

overview. The last two days, there's been a number of comments that have come in on the white paper. People are now coalescing around that. And I think there's really going to be good work that will arise out of that white paper. Actually probably standards will come out of that which is what we wanted. So I think there is excellent progress being made on that work as well.

The wild fishery side continues to be a dilemma for us. We have not been able to seat the panel. And, in fact, in conversations that I've had with folks who are interested in this particular area, they believe that we actually need to go back out and request again nominees for this particular panel. And be more specific as to the requirements that we're looking for.

It has been suggested that we actually try to find an oceanographer that can look at ocean patterns, water quality, temperatures, migration patterns, things like that, a fisheries manager that can also dovetail into the work of the oceanographer.

It's also been suggested that we really

need a certifier on this wild fisheries panel which we would certainly concur with. We do have a certifier identified through the previous work on the aquaculture side that could be -- that actually has said that they are willing to participate. So I think we've got that pinned down.

We've got some sustainability experts that we've got identified. And then it has also been suggested to us that perhaps a fish geneticist would be useful in terms of working with these wild species. So that's where we're at on the wild side.

It's been much more difficult than I personally ever anticipated in terms of putting that panel together. I think it is a reflection of the -- I guess I should say the kind of convoluted feeling about that particular sector that exists.

What we found is that you are either totally for the sector and believe it could be labeled without a problem as organic or you are totally against the sector and it is anathema to label as organic. And what we're trying to do is to seek enough of a diversity in that group so that we could

at least have a rational dialogue.

It's also been recommended to us that this is probably a task force where we really are going to need some face-to-face meetings, that because of the issues and because of the depth of the feeling on the issues, that a conference call is probably not going to be sufficient to wrestle out some of the details.

So that's really where we're at on both of those.

CHAIRPERSON RIDDLE: And just one question, with all of the high priority items already on, you know, the program's plate and the Boards, is there any chance of kind of setting that aside? Or that still has to maintain focus?

MR. JONES: Well, we would like to move forward with the process because we really think it is needed to meet some of our mandates and things like that. So I don't think that we could ignore it nor would we want to ignore it.

Whether or not it deserves, in the time frame that we're in right now, deserves the priority that one might attach to it I think is actually a call

for the Board. I mean maybe that is something that you want to think about it in terms of how we would -- if we would want to stand down that particular aspect. And then, perhaps, in the spring go back out, you know, once we've got some of this other work behind us.

I don't know that we've actually thought about it at any level in terms of standing down. But it is certainly, I guess, an option for us.

CHAIRPERSON RIDDLE: Okay. So Livestock Committee maybe should think about that -- if there would be a recommendation or a sentiment to convey to the program on that. But, you know, I'm really glad the two are separated and, you know, delays on the one have not prevented the other from making progress because I think there is good progress being made on the aquaculture.

MR. JONES: Yes, I think we are, Jim, quite pleased with the progress that we're making on the aquaculture side. They are an enormously energetic task force as is the pet food group. And so they've really made good progress. The calls have

been quite useful and energetic. And I think we've got a lot to look forward to coming out of that group.

MR. MESH: Do you have a time frame?

MR. JONES: Marty, I don't think we know. I mean they are probably, you know, farther along than certainly the pet food group. And they do have actually a paper -- I mean they've got, you know, some draft standards that they are responding to.

If I had to -- this would be pure speculation on my part so let me preface it that way. You are probably not looking at anything concrete until the spring coming up.

CHAIRPERSON RIDDLE: All right. Thanks, Keith.

Okay. So moving on to the action items. So now we are at today. And Policy Development Committee is up first with some Board Policy Manual revisions. I'll turn it back over to Dave.

MEMBER CARTER: Okay. As I mentioned yesterday, which seems only a little bit ago --

(Laughter.)

MEMBER CARTER: -- Bea has been guiding us

through some updates and some revisions on the Board Policy Manual so I'd just like to turn it over to Bea to kind of walk through that.

MEMBER JAMES: Okay. The first thing I'd like to do is some of the Board members during a conference call asked if we would be able to see the changes that were made to the Board Policy Manual.

And the -- I have it in printed form but I wasn't able to electronically e-mail it out to everybody because I lost it on my computer. But I do have it in hard copy so I'm going to pass this around. And it shows all of the -- these are mostly format changes. It just has to do with just kind of reformatting it, cleaning it up, changing spelling errors and what not. So you can take a look at that.

And then the significant changes to the manual -- I'll just go through the list that's on our agenda for today starting at the top.

The TAP review information is on page 31, inserted on page 31. The sunset review material process, that's inserted on page 45. The collaboration document is inserted on page 18. And

then the Q&A for how NOSB should handle Q&A submitted from the NOP has been consolidated in with the collaboration. And that's on page 20 under Standard Interpretation and Handling Questions and Answers Submitted to the NOP .3, in particular the fourth bullet point down.

The Committee -- I just want to review this so the NOP can hear this. The Committee will receive necessary information from the NOP to help resolve the standards interpretation and questions or will be given the authority to do the research.

So that's something that we discussed at our last meeting is how the NOSB can get more support when questions are submitted to us for information that we might need from the NOP.

And then -- let's see -- that's as much as we have as far as what's been inserted. And then we would like to be able to include the decision tree. And we would like to be able to include the document that Rose put together, Chemistry 101.

And so those are some of the points that we need to discuss.

CHAIRPERSON RIDDLE: Yes, Andrea?

MEMBER CAROE: Which decision tree are you talking about? The one that is in synthetic versus non-synthetic? Or ag versus non-ag?

MEMBER JAMES: Yes.

MEMBER CAROE: That's the one that was put together by I believe it -- was it OTA?

PARTICIPANT: Yes.

MEMBER JAMES: And we've reworked it.

MEMBER CAROE: Okay. But that recommendation hasn't been voted on yet. Okay, so it's kind of simultaneous.

MEMBER JAMES: Yes. And we also haven't voted on what to do with the basic chemistry that Rose put together, which I think is a really valuable document for helping new NOSB members understand a little bit more about basic chemistry.

CHAIRPERSON RIDDLE: And as we proceed with our vote here, I guess I had envisioned that we would have separate votes first on just the collaboration document. And so, you know, if we need a focused discussion on that, let's maintain that.

MEMBER CARTER: If you get that on the table, Mr. Chair, I would move the approval of the collaboration document.

CHAIRPERSON RIDDLE: Okay.

MEMBER OSTIGUY: Second.

CHAIRPERSON RIDDLE: All right. Dave moves. Andrea seconds.

MEMBER OSTIGUY: No, no, I did. Nancy.

CHAIRPERSON RIDDLE: I'm sorry. Nancy, thank you, seconds approval of the collaboration document.

PARTICIPANT: Which page is that on?

CHAIRPERSON RIDDLE: That begins on page 18 through 20. Right. Any discussion? Any discussion on that?

Andrea?

MEMBER CAROE: Dave, what kind of feedback have you gotten from the NOP on this document?

MEMBER CARTER: The feedback that we got was that because we couldn't do it otherwise, that this was the appropriate place to put the collaboration document, was to have it as a part of

our Board Policy Manual. So --

CHAIRPERSON RIDDLE: Yes. And we certainly received feedback, input on the content of the document back and forth a number of times. And then I also note that in the Office of Inspector General Report, the program makes reference to this document as being considered at this meeting and evidence of our collaborative process.

MEMBER CAROE: I guess I just -- I remember a document that Barbara Robinson wrote --

CHAIRPERSON RIDDLE: Right.

MEMBER CAROE: -- on collaboration. Was that the basis for this? I can't remember the whole history of this document.

MEMBER CARTER: Yes, that's the basis for this. And because of running into some roadblocks trying to adopt that otherwise, then it was suggested that it become part of our Board Policy and Procedures Manual.

MEMBER CAROE: Got you. Thank you.

CHAIRPERSON RIDDLE: Great. Any other -- George?

MEMBER SIEMON: Yes, the only input I have is that it says NOB Alerts, NOSB of the issue. I'd like to see NOB encouraged to put forward, you know, drafts for proposals. Just a general collaboration. Here's how we would handle it. Or here is a suggestion. I just don't quite see enough of that in here that NOP could take the lead on some of these issues rather than us always following -- I mean us always leading and them then redoing. So I just don't see that wording clear enough in here. I don't know.

CHAIRPERSON RIDDLE: Okay. Andrea?

MEMBER CAROE: Well, George, to speak on that, I think the whole dynamic may change when we have an NOSB Executive Director because we will have more at our hands in order to start documents and start that. Right now I can understand your point, especially with our action items so lengthy for the committees. But hopefully an Executive Director will make a change to that.

MEMBER SIEMON: And hopefully alerting NOSB of the issue might be the same as putting forward a proposal.

MEMBER CARTER: Well, I think --

CHAIRPERSON RIDDLE: Well, yes, Dave?

MEMBER CARTER: Yes, I think certainly that phrase, you know, is inclusive. It can certainly include some things like that. I think as we've had previous discussion, you know, we've always gone back and forth, you know, at what point does NOP need to make us aware of an issue coming up.

And I think this speaks to the point that when it first comes up, they need to let us know that an issue has arisen even though they don't have something formally prepared on that. So it's sort of the early warning system.

CHAIRPERSON RIDDLE: And also number two gets at that necessary information shall be provided by NOP. Well, necessary information could include a draft for our consideration. It's broad but, you know, that could be read to include that as well.

Any other comments? Any input from the program? Yes, I guess so. All right. Arthur?

MR. NEAL: I think the statement you made a little bit earlier that at what point does the NOSB

need to be engaged at such level is probably one that we need to wrestle with at the program because some of the questions that you wrestled with at the last meeting I think some of you felt were not necessary, that we could have probably handled them at program level.

But we wanted to make sure that we encouraged the collaboration process. First, taking your comments into consideration, NOP providing a draft, does that mean NOP re-framing the question, providing the answer, and then giving it to the Board? Is that what you are saying?

MEMBER SIEMON: I'm not afraid of that.

MR. NEAL: Well, that --

MEMBER SIEMON: That way we can work together instead of us going on the road.

MR. NEAL: It hasn't been beneficial for the program. The reason being is because what happens in such a situation is that if we put our answer on it, then we've sent you down another road. When we give you something framed in a question, that allows the deliberation to take place from the public and

from the Board. And gives us a fully vetted response.

So that's why we do it that way. Because we don't want to frame your thinking with our thinking.

CHAIRPERSON RIDDLE: Dave?

MEMBER CARTER: Well, I would just concur with what Arthur just said. I think that, you know, as I think about the discussions that we've had and some of the train wrecks and getting it back on track through the last few years, it's really come down to that point that the sooner that an issue comes up and at least both sides are notified of it, then we can start working together rather than having, particularly the NOP draft something and then we're just reacting to it.

So I really think that this is a good step forward to make sure that we start the collaborative process right from the get go.

CHAIRPERSON RIDDLE: Okay, Bea?

MEMBER JAMES: We actually have it in the collaboration document that it says the NOP will alert the NOSB as to how NOP would address the incoming

question or situation. So I guess the way it is proposed in the collaboration document that Barbara had put together is that how you want to have the question or the issue addressed will come from you to us.

MR. NEAL: And when we say addressed, we're not saying what the answer will be.

CHAIRPERSON RIDDLE: Right, right.

MEMBER JAMES: You might decide that you want to have your answer. And share that with us. And ask us for our feedback. You might decide that you don't want that.

MR. NEAL: What we would do is provide insight in our thinking but not the answer because that takes the public out of the process. That pretty much puts a bias from the NOP level.

And what we're trying to encourage is a collaborative process that really involves the public because the whole retailer question is a prime example of how the public dialogue impacts the NOSB recommendation. Now if we had come up with a response to that issue, it would have been, you know, beat this

answer up but it may have taken the public's dialogue out of it to where it may not have had more of the positive impact that it is having on this recommendation today.

CHAIRPERSON RIDDLE: I think George was next. And then Kevin. George?

MEMBER SIEMON: Well, I guess my sense of the group is that. But to me, I've never seen a shortage of opinions in this room here and anybody railroading anything through.

And my concern more so is that we've done work and then we've found out there is legal limitation, there are Department limitations. And we've been rolled down the Hill. And I'm talking about making more efficiency, more collaboration.

So me I'm still not satisfied that we don't. So I would suggest in the number two, we have at least something like legal limitations added into that necessary information somewhere. Departmental regulations related -- we need to get some boundaries.

It's great to open up the door and say talk about everything. But when we find out it is

illegal or it's this or it's that, then we're back -- another meeting, another meeting, another meeting, another meeting -- what can we do to streamline this process?

You are not going to limit the opinion of this community, you know. It's more so get the boundaries out first before we go forward. So I think we need something more here about input before we go down the road.

MEMBER CARTER: Are you providing that as an amendment?

MEMBER SIEMON: Legal limitations right after research.

CHAIRPERSON RIDDLE: Or some other legal analysis. It's not --

MEMBER SIEMON: Legal analysis -- I'm thinking on the fly here. But I think we need some input from the Department about issues.

CHAIRPERSON RIDDLE: It doesn't bind them to provide legal analysis every time there is an issue, though. I mean I want to avoid that. These are just examples of the types of information --

MEMBER SIEMON: Exactly.

CHAIRPERSON RIDDLE: -- that could be relevant. Okay. So have you offered that as a --

MEMBER SIEMON: I have offered that.

CHAIRPERSON RIDDLE: -- as an amendment.

MEMBER SIEMON: Legal limitations or analysis.

PARTICIPANT: Where is this to be added?

CHAIRPERSON RIDDLE: Okay. On --

MEMBER SIEMON: Number two after the word --

CHAIRPERSON RIDDLE: -- page 18, General Procedures, Item No. 2, after Research to insert legal analysis -- that implies limitations.

MEMBER SIEMON: That would be fine.

CHAIRPERSON RIDDLE: Okay. Is there a second?

MEMBER KARREMAN: I second.

CHAIRPERSON RIDDLE: Hugh seconds. So we'll stay focused on that for a moment. Okay. Do you have an alternative suggestion?

MEMBER KOENIG: Give me a second.

CHAIRPERSON RIDDLE: No, we had a second.

MEMBER KOENIG: No, give me a second.

CHAIRPERSON RIDDLE: Oh, give you a second.

(Laughter.)

MEMBER SIEMON: Watch your wording here.

CHAIRPERSON RIDDLE: Okay.

MEMBER KOENIG: Give me a minute.

CHAIRPERSON RIDDLE: And this is only on this point.

MEMBER KOENIG: Yes, it is.

CHAIRPERSON RIDDLE: Okay.

MEMBER KOENIG: But the problem with putting that in is the assumption in some ways that you know the path, okay? And if you go to a lawyer and pose that, they may not give you the answer. You have to present something to a lawyer for them to analyze. Okay?

And sometimes, you know, you are giving that power to a legal person. And you actually may be able to come up with innovative ways that they haven't thought of.

So, I don't -- I mean, you know it is unfortunate -- I think that we have the abilities on this Board -- I think a lot of us have learned, you know, it's a learning process and we have to somehow pass that down. I think we're more aware of the legal implications now than we ever were, you know, when we first got on the Board.

But I don't know if you want to tie it up with lawyers where the NOP has to first ask their lawyers and then advise us legally about -- you know you talk about complications.

CHAIRPERSON RIDDLE: Okay. Kevin has been waiting. Then Bea.

VICE CHAIRPERSON O'RELL: Well, I think that the problem is -- and I agree with George -- we have gone down the path on certain answers to questions only to find out that what we're recommending back to the NOP is just going to be kicked back because the OGC doesn't agree with it.

MEMBER KOENIG: Right. But in defense of the NOP, because I remember this early on and I fought it, but they have always advised us that we need to be

specific. And most of the things like the livestock, when things are vague because we, as a group, don't want to make a hard decision, that's when it gets kicked back.

VICE CHAIRPERSON O'RELL: I think it would be helpful up front if there are some legal boundaries or directionally -- and I don't know if analysis is the right word but I do think that there needs to be some -- it's a collaboration effort.

So up front we should be free to be able to at least discuss some of the direction that we might be going. And run it by the NOP and say, you know, do you foresee any pitfalls here from the legal side of it. And I don't know if it is a requirement for the NOP in terms of the direction or analysis that they give us, but as part of the collaboration, I think we're free to have a dialogue with the NOP.

MEMBER KOENIG: I'm not saying that we --

CHAIRPERSON RIDDLE: Rose, would you --

MEMBER KOENIG: I'm sorry.

CHAIRPERSON RIDDLE: -- please.

MEMBER OSTIGUY: I have a question of

privilege. Could the Chair please look in this direction on occasion?

CHAIRPERSON RIDDLE: I'm sorry.

MEMBER OSTIGUY: I have been trying to get your attention for a while.

CHAIRPERSON RIDDLE: Well, speak up. I'm sorry.

MEMBER OSTIGUY: Bea was next. You had called.

CHAIRPERSON RIDDLE: Yes, Bea is next. And then Nancy.

MEMBER JAMES: I was just going to say that we're -- are we still discussing a point that has already been seconded?

CHAIRPERSON RIDDLE: We are. We are on that point.

MEMBER JAMES: Okay. So I think what George is saying is that there just needs to be a friendly amendment to change point two so that when the NOP submits and issue for us to look at or a question, that they have fully taken into consideration that there is not going to be things

that are going to cause us to -- our time and effort that is put into it won't end up going back to the table because they didn't consider certain legal issues that could cause it to be -- need to be reconsidered.

So I think that's what George is say is that the NOP, before they give us an issue, just needs to fully really look at it and analyze it before submitting it to us.

CHAIRPERSON RIDDLE: Nancy.

MEMBER OSTIGUY: I object to the insertion because I think that what this whole process is supposed to be is a collaborative one where we do begin at the beginning and we come out, through the conversations, with what the legal implications are. And we go back and forth. And if we start at the beginning, then we don't end up going down a pathway that is worthless.

So if the input is going back and forth, as this document is supposed to be outlining, we never get very far before we find out oh, okay, that won't work because Arthur doesn't let us do that.

So the whole document is doing what George is talking about. So I don't think it is necessary. And the implication, by putting it in there, is that we aren't going to get that unless we put that in. And I think we are. It is to the NOP's advantage. It is to our advantage.

CHAIRPERSON RIDDLE: Hugh?

MEMBER KARREMAN: Just -- I agree with that. And I guess I was thinking specifically like the example of the two regulatory changes that the Livestock Committee made last February. Just maybe there ought to be some insertion or some kind of memorandum of understanding that timeliness is critical.

MEMBER OSTIGUY: Well, we're just beginning this process.

MEMBER KARREMAN: Right. I just wanted to say that, that's all.

CHAIRPERSON RIDDLE: Okay. Keith has a point here.

MR. JONES: Yes, I think what you need -- reassurance from the program is that we're not going

to play hide the ball on you, okay? We don't play hide the ball on you, okay?

What we're trying to do is to learn almost with each passing day kind of one, what triggers Board involvement, and two, what is the level of information that you need when we begin to frame the issue so that you feel that there is -- that you have a comfort level that the information is full and complete. And then you can make a decision on that.

Now I think Nancy's point is a good one. And that is this is an evolutionary process. We are continuing to refine it. I think what we see is that the dialogue would begin very early on through the identification of an issue. Okay? And when that dialogue begins very early on, we have an opportunity to flag things that may be problematic, whether it is a legal issue, whether it simply is a broader policy question that has to be addressed.

I mean keep in mind that this is really a dialogue, okay? And I think what you need to be reassured, and it appears to me that the document gives you what you need, you just need some

reassurance that we're not going to play hide the ball, that information will be full and complete when you receive it.

And I think that's my message this morning is that is indeed the case and you have our assurance that it will be the case.

CHAIRPERSON RIDDLE: Yes. And after, you know, listening to the discussion, I guess my position is that by inserting, you know, a legal analysis or legal implications could actually hinder the collaborative process.

Yes, I understand the sentiment. We want to know the legal boundaries or implications. But at the same time, if we're saying the program should do that first, that's going to really limit their ability to engage with us. But -- so I guess -- yes, go ahead.

VICE CHAIRPERSON O'RELL: And I would support that. I think that the sentence we have there now with necessary information is sufficient because this is the start of a collaborative process. And I think that's where we get everything on the table.

And, Keith, what you said, you're not trying to hide anything from us. It's an open collaborative process. We'll discuss these pitfalls in the beginning and get it out in the open. I don't think we need to have the word legal.

CHAIRPERSON RIDDLE: Okay. George?

MEMBER SIEMON: I guess I'm going to disagree still. This is a broad policy statement where we're trying to paint a broad picture for future Boards to know the kind of things you might want. You, yourself, said this is just necessary information. Maybe they will this time. Maybe they won't. It says prior to. It says general procedure.

It's a very broad statement. This is what we're painting for the future group. Why wouldn't we want that in there? We just all agreed we need to have that sometime prior to discussions. Why wouldn't we want it in a broad group?

The second thing is I certainly think implications is a better word after listening to that. So however we can do that.

CHAIRPERSON RIDDLE: Well, that would be

to just accept that as a friendly amendment.

MEMBER SIEMON: I'd certainly accept that.

CHAIRPERSON RIDDLE: If the seconder accepts that, we'll change it to legal implications. And then we'll proceed to vote.

MEMBER SIEMON: Yes, let's call the question.

PARTICIPANT: The second was Nancy.

CHAIRPERSON RIDDLE: And the seconder was Nancy. But right now -- no --

PARTICIPANT: The seconder was Bea.

CHAIRPERSON RIDDLE: Yes, the seconder was Bea on the --

PARTICIPANT: Oh, I'm sorry.

CHAIRPERSON RIDDLE: -- Hugh -- I'm sorry -- on the amendment. Bea tried to. But Hugh got it. I'm sorry. Never mind.

MEMBER SIEMON: Let's call the question.

CHAIRPERSON RIDDLE: Hugh was the seconder. Do you accept that -- implications instead of analysis --

MEMBER KARREMAN: Yes.

CHAIRPERSON RIDDLE: -- yes, as a friendly amendment.

MEMBER SIEMON: Let's call the question.

CHAIRPERSON RIDDLE: So let's vote on -- Bea?

MEMBER JAMES: Are we also inserting George's recommendation that we include some kind of a written draft?

MEMBER KARREMAN: No, no.

MEMBER JAMES: That we would like to have some kind of written draft from the NOP? So we're not including that?

CHAIRPERSON RIDDLE: No, right now this is very narrow. Just insert the words legal implications after research. So we'll proceed with roll call. And I have it set up to start with Gerald. Surprise.

MEMBER DAVIS: No.

CHAIRPERSON RIDDLE: Nancy?

MEMBER OSTIGUY: No.

CHAIRPERSON RIDDLE: Julie?

MEMBER WEISMAN: Yes.

CHAIRPERSON RIDDLE: Andrea?

MEMBER CAROE: No.

CHAIRPERSON RIDDLE: Goldie?

SECRETARY CAUGHLAN: I guess I will vote to retain the original. So I'm voting against this.

CHAIRPERSON RIDDLE: Okay. So that would be no.

Kevin?

VICE CHAIRPERSON O'RELL: No.

CHAIRPERSON RIDDLE: Dave?

MEMBER CARTER: No.

CHAIRPERSON RIDDLE: Rose?

MEMBER KOENIG: No.

CHAIRPERSON RIDDLE: George?

MEMBER SIEMON: Yes.

CHAIRPERSON RIDDLE: Bea?

MEMBER JAMES: Yes.

CHAIRPERSON RIDDLE: Hugh?

MEMBER KARREMAN: Yes.

CHAIRPERSON RIDDLE: Michael?

MEMBER LACY: No.

CHAIRPERSON RIDDLE: And the Chair votes no. So we have nine no and would that be four yes?

Four. So that is defeated.

So we stay with the original language. Any further discussion?

MEMBER CAROE: Yes.

CHAIRPERSON RIDDLE: Andrea?

MEMBER CAROE: On page 18 under General Procedures, numbers three and numbers five, I suggest adding the word may. I make that motion. So it's the issue may be placed on the agenda. And NOSB may make a formal recommendation. These issues may not be at the level that they require either one of those things.

MEMBER OSTIGUY: Second.

CHAIRPERSON RIDDLE: Okay. Nancy seconds. Andrea moves. And Nancy seconds to change item three and five to include the words may and then the appropriate linguistic changes.

MEMBER CAROE: Yes. Thank you.

CHAIRPERSON RIDDLE: Okay. Any discussion of that amendment?

(No response.)

CHAIRPERSON RIDDLE: Hearing none, voice

vote. All in favor say aye.

(Chorus of ayes.)

CHAIRPERSON RIDDLE: Those opposed?

(No response.)

CHAIRPERSON RIDDLE: Okay. That's adopted.

Thank you, Andrea.

Any other discussion of the draft?

Yes, Hugh? Any other part in it?

MEMBER KARREMAN: Yes.

CHAIRPERSON RIDDLE: Okay. On the TAP reviews, okay -- page number --

MEMBER KARREMAN: Page -- I'm looking at it.

CHAIRPERSON RIDDLE: -- nineteen?

MEMBER KARREMAN: I guess 36.

CHAIRPERSON RIDDLE: What? Oh, yes, just on the collaboration. It would be pages 18 to 20. I'm sorry. I thought you meant on any of that draft.

Okay, anything on pages 18 through 20 of the collaboration document, including the Q&As.

MEMBER OSTIGUY: Question.

CHAIRPERSON RIDDLE: Yes, Nancy?

MEMBER OSTIGUY: On page 20, the fourth bullet that Bea talked about, the way she read that sentence, the last part of it read or will be given the authority to do research. We're missing the do in there. At least on the printed copy. Well, I'm just saying that that is how she read it. So I'm wondering if that was the intent.

CHAIRPERSON RIDDLE: Okay.

MEMBER OSTIGUY: And if so, we're missing that.

MEMBER CAROE: Is it research as a noun or as a verb? If it is as a verb, it's perfect the way it is. If it is a noun, it needs do.

MEMBER OSTIGUY: Well, it's --

MEMBER JAMES: It should be do. I think you are right, Nancy.

PARTICIPANT: Conduct research.

MEMBER OSTIGUY: Conduct, yes.

CHAIRPERSON RIDDLE: Oh, so we're inserting conduct as well?

MEMBER OSTIGUY: Instead.

MEMBER CAROE: Instead of do.

CHAIRPERSON RIDDLE: To conduct research.

MEMBER OSTIGUY: Yes.

CHAIRPERSON RIDDLE: Okay. That is on page 20. That's Item No. 3. And then the fourth bullet point down toward the end of that sentence to insert the word conduct so that it reads, "or will be given the authority to conduct research."

And, Bea, you accept that as a friendly amendment?

MEMBER JAMES: Yes, I do.

CHAIRPERSON RIDDLE: And Nancy you accept that?

MEMBER OSTIGUY: Yes.

CHAIRPERSON RIDDLE: Okay. So that -- we'll just go with that.

PARTICIPANT: Do we need a voice vote on that?

CHAIRPERSON RIDDLE: No, not if they accept it. And we could have done the same with may really but we didn't.

PARTICIPANT: You confuse me.

CHAIRPERSON RIDDLE: I'm sorry. We change the rules every time to keep your attention.

Okay. Anything else on the draft now as amended? This is pages 18 through 20 still. Hugh was getting excited.

Okay, well let's take it to a final vote then. So now we go with Nancy first?

MEMBER OSTIGUY: Yes.

CHAIRPERSON RIDDLE: Julie?

MEMBER WEISMAN: Yes.

CHAIRPERSON RIDDLE: Andrea?

MEMBER CAROE: Yes.

CHAIRPERSON RIDDLE: Goldie?

SECRETARY CAUGHLAN: Yes.

CHAIRPERSON RIDDLE: Kevin?

VICE CHAIRPERSON O'RELL: Yes.

CHAIRPERSON RIDDLE: Dave?

MEMBER CARTER: Yes.

CHAIRPERSON RIDDLE: Rose?

MEMBER KOENIG: Yes.

CHAIRPERSON RIDDLE: George?

MEMBER SIEMON: No.

CHAIRPERSON RIDDLE: Bea?

MEMBER JAMES: Yes.

CHAIRPERSON RIDDLE: Hugh?

MEMBER KARREMAN: Yes.

CHAIRPERSON RIDDLE: Michael?

MEMBER LACY: Yes.

CHAIRPERSON RIDDLE: Gerald?

MEMBER DAVIS: Yes.

CHAIRPERSON RIDDLE: And the Chair votes yes. So we have 12 yes, one no. So that's approved.

Thank you very much, Bea, for your work on that.

And thank Barbara and NOP staff for your engagement as well. It was a collaborative process to develop the collaborative document.

(Laughter.)

CHAIRPERSON RIDDLE: Okay. Now we also intended to vote on the Chem 101 on its own, correct?

MEMBER CARTER: That's correct.

CHAIRPERSON RIDDLE: As inclusion of --

MEMBER CARTER: And I would so move approval of that section please.

MEMBER OSTIGUY: Second.

CHAIRPERSON RIDDLE: That's towards the end.

MEMBER CARTER: It's on page --

CHAIRPERSON RIDDLE: Fifty-three, 53 through 57. Before we go to consideration of the rest of the document. So Dave moves and was it Nancy second? Approval of the basic chemistry section, pages 53 through 57. Any discussion?

Hugh?

MEMBER KARREMAN: Just from listening to Barbara yesterday, you know, mentioning the covalent bonds, the ionic forces, I'm not certain I read that in here. Could they be explained?

MEMBER JAMES: It is in there.

MEMBER KARREMAN: It is in there? I didn't see that but okay.

CHAIRPERSON RIDDLE: Good. Okay. Any other discussion?

(No response.)

CHAIRPERSON RIDDLE: Hearing none, we'll go to a vote. And Julie is up first. Julie?

MEMBER WEISMAN: Yes.

CHAIRPERSON RIDDLE: Andrea?

MEMBER CAROE: Yes.

CHAIRPERSON RIDDLE: Goldie?

SECRETARY CAUGHLAN: Yes.

CHAIRPERSON RIDDLE: Kevin?

VICE CHAIRPERSON O'RELL: Yes.

CHAIRPERSON RIDDLE: Dave?

MEMBER CARTER: Yes.

CHAIRPERSON RIDDLE: Rose?

MEMBER KOENIG: Yes.

CHAIRPERSON RIDDLE: George?

MEMBER SIEMON: No.

CHAIRPERSON RIDDLE: Bea?

MEMBER JAMES: Yes.

CHAIRPERSON RIDDLE: Hugh?

MEMBER KARREMAN: Yes.

CHAIRPERSON RIDDLE: Michael?

MEMBER LACY: Yes.

CHAIRPERSON RIDDLE: Gerald?

MEMBER DAVIS: Yes.

CHAIRPERSON RIDDLE: Nancy?

MEMBER OSTIGUY: Yes.

CHAIRPERSON RIDDLE: The Chair votes yes. Unanimous, 13 yes, zero no.

Okay. Now I think the --

MEMBER CARTER: So, Mr. Chair, then I would move approval of the entire document as amended.

MEMBER OSTIGUY: Second.

CHAIRPERSON RIDDLE: Okay. Dave moves, Nancy seconds approval of the entire Policy and Procedures Manual as amended.

Discussion?

Hugh?

MEMBER KARREMAN: Yes, on page 36, under Item B -- actually page 37 -- just flip the page over to No. 7 and 8, basically it's talking about the information that is supposed to be submitted by a TAP reviewer regarding the regulatory authority registration numbers and the CAS numbers and other product numbers of the substance.

PARTICIPANT: What point are you on?

MEMBER KARREMAN: I'm at No. 7 and 8. It's kind of both those sentences together. One thing

I've seen out in the field -- case in point, is the TAP review for calcium borogluconate. That has been a really difficult compound, in a sense, because there are different ways to call calcium borogluconate but they're not necessarily all registered as such with CAS numbers. They may be. But at least in that TAP review, I don't have that in front of me but there's different ways to call calcium borogluconate the same compound.

And also what I'd like to see in addition here would be that the TAP reviewer on whatever the generic item is if possible list all commonly known available commercial products that contain that ingredient.

I know it might be really difficult. But when it comes down to these medicinals used for livestock health, there's been some real problems at the certification level with the farmers. And that goes from Oregon to New York to Pennsylvania to Ohio.

I've talked with many certifiers to kind of clarify what is calcium borogluconate. And, you know, they'll have a trade name. They'll say well

this has calcium gluconate or whatever. And that's not right on the list.

So what I'm saying -- what I'm asking for is that a TAP review has an exhaustive listing of synonyms and other USP or national formulary-type names for a generic substance.

CHAIRPERSON RIDDLE: Okay. Arthur, you have a response?

MR. NEAL: Let Nancy go first.

CHAIRPERSON RIDDLE: Oh, okay. Nancy first.

MEMBER OSTIGUY: Part of the reason for requesting the CAS number, the chemical abstract service number is because it provides us with in essence a legally definable substance. And the common names, as you have described, are all over the map.

And so if a material in a product cannot be linked to that CAS number, that's a problem with the product. We're only approving that CAS number. That actually has been much more the intent in recent years so that we know exactly what material we have put on the list. And we have a CAS number associated

with it.

If you then list all the assorted common names that that CAS number might -- might be attributed to that CAS number, that common name may be attributed to multiple CAS numbers. And that we're not approving.

So it could actually increase the confusion because we're not approving the common name. We're approving only that CAS number if it exists.

CHAIRPERSON RIDDLE: And yes, I would just like to point out that, you know, this section -- well, it's taken -- it is verbatim the statement of work for our technical contractors. And the petition information will be revised. And I think when that comes up for revision is the time to address some of your concerns or your experience in the field.

But right now this is the existing language of the petition instructions. So I don't think it is appropriate to just change it in the Board Policy Manual. We'd have to change it first in the petition notice and then upgrade the Policy Manual to catch up with the revised petition instructions.

MEMBER KARREMAN: When may that occur? Because it is really, truly a major obstacle out in the field.

CHAIRPERSON RIDDLE: Yes.

MEMBER KARREMAN: Major.

CHAIRPERSON RIDDLE: Arthur, do you have a response to that?

MR. NEAL: Concerning CAS numbers, all the dockets that you will see come out of NOP's office will have CAS numbers associated with each material to be amended on the national list. Because TAP -- the technical contractors are not required to search for brand products, they're only looking at the generic ingredient. And they are only looking at what was petitioned.

So if the petitioner petition calcium borogluconate with the specific CAS number, that's all they're looking at. They are looking at, you know, synonyms and common names. But particularly the petitioner who petitions the substance may have petitioned only one particular type.

Now calcium borogluconate raises a

question because that's one of the substances that is in the livestock docket. So you may want to think about that one, too.

MEMBER KARREMAN: Well, I'm just saying --

CHAIRPERSON RIDDLE: Hugh?

MEMBER KARREMAN: -- that when we get to it at some point, I'd like to bring that up again at the appropriate time. I thought it was now. I apologize.

CHAIRPERSON RIDDLE: Yes, Rose?

MEMBER KOENIG: I know she posed that question and somebody answered it quickly on the covalent bonds. But I went through that document and I did not address those because that's not the route took. I was just describing, you know, chemical reactions.

You know talking about all different chemical bonds, I mean then you are getting into a whole other area, you know, another chapter in the chemistry book. So that wasn't the purpose originally of that document.

I don't -- the document could remain in

there if there would -- you know as is and then if we want to make additions to it, we could always add sections on bonds if people really need it. But -- so it's not that the document is wrong or inaccurate.

I just want to point out that -- well, there are disulfide bonds that are talked about. I couldn't find anything that described it. So I just didn't want to be accurate because I know we passed that really quickly and I just went through it.

Nancy?

MEMBER OSTIGUY: Yes, and what I was implying was that the covalent bonds were described and discussed. Not necessary that the word was used because we actually purposely dropped --

MEMBER KOENIG: Right.

MEMBER OSTIGUY: -- most of the chemistry words because that tends to get in the way of understanding on occasion.

Now just as general information, and I mentioned this to Barbara yesterday, for those that are unfamiliar with chemistry terms and would like just an incredibly well done, very basic non-textbook,

there's what is called a Cartoon Guide to Chemistry. And they are very effective for the lay person.

So if you are unfamiliar with the terms, want to get a very quick read background, the Cartoon Guide to Chemistry.

CHAIRPERSON RIDDLE: All right. We might consider that in the future.

PARTICIPANT: Is that a friendly amendment?

CHAIRPERSON RIDDLE: Barbara signs up.

PARTICIPANT: We'd have to copyright it to put it in.

CHAIRPERSON RIDDLE: Okay.

MEMBER OSTIGUY: Yes, I can bring a copy to the next meeting because I have it.

CHAIRPERSON RIDDLE: Sure. Okay.

Further discussion on the entire document as amended? I have one question. And Bea, when you were making your introduction, I was a little distracted getting my voting forms. So I have a question.

You said something about those flow charts

for this --

MEMBER JAMES: The decision tree?

CHAIRPERSON RIDDLE: Yes, decision trees on synthetic. And those are not included, correct?

MEMBER JAMES: Right. We had -- originally we had put those in.

CHAIRPERSON RIDDLE: Right.

MEMBER JAMES: But the committee decided to take them out and leave it as a discussion point for today.

CHAIRPERSON RIDDLE: Right, right, yes. It would really need to be part of the whole synthetics. And then that could be transferred in in the next edition of the manual.

MEMBER JAMES: Right. Exactly. Exactly.

MEMBER CARTER: This is indeed a living document.

CHAIRPERSON RIDDLE: Right.

MEMBER OSTIGUY: I have a question. Does any part of it ever die?

(Laughter.)

CHAIRPERSON RIDDLE: We remove parts.

PARTICIPANT: We don't want to go there.

CHAIRPERSON RIDDLE: We had a whole peer review section in there that died in the past. So anything else? Discussion on the document?

MEMBER JAMES: So are we going to talk about the decision tree to be --

CHAIRPERSON RIDDLE: As part of the --

MEMBER JAMES: Future document.

CHAIRPERSON RIDDLE: -- material? Well, isn't it part of your draft for the synthetics?

VICE CHAIRPERSON O'RELL: Yes. It's going to be part of the discussion when we take the non-synthetic synthetic and the ag-non-ag. But it's not appropriate at this time.

MEMBER CARTER: Yes, it's not germane to this.

VICE CHAIRPERSON O'RELL: Yes.

CHAIRPERSON RIDDLE: Anything else that is germane?

(No response.)

CHAIRPERSON RIDDLE: Seeing nothing, we're going to start the vote. And we go to Andrea.

MEMBER CAROE: Yes.

CHAIRPERSON RIDDLE: Goldie?

SECRETARY CAUGHLAN: Yes.

CHAIRPERSON RIDDLE: Kevin?

VICE CHAIRPERSON O'RELL: Yes.

CHAIRPERSON RIDDLE: Dave?

MEMBER CARTER: Yes.

CHAIRPERSON RIDDLE: Rose?

MEMBER KOENIG: Yes.

CHAIRPERSON RIDDLE: George?

MEMBER SIEMON: Yes.

CHAIRPERSON RIDDLE: Bea?

MEMBER JAMES: Yes.

CHAIRPERSON RIDDLE: Hugh?

MEMBER KARREMAN: Yes.

CHAIRPERSON RIDDLE: Michael?

MEMBER LACY: Yes.

CHAIRPERSON RIDDLE: Gerald?

MEMBER DAVIS: Yes.

CHAIRPERSON RIDDLE: Nancy?

MEMBER OSTIGUY: Yes.

CHAIRPERSON RIDDLE: Julie?

MEMBER WEISMAN: Yes.

CHAIRPERSON RIDDLE: The Chair votes yes. We have unanimity, 13 yes, zero no.

And once again, I really want to thank Bea for taking this on. It is the best manual we've ever had. It just keeps getting better. And I'm glad that someone has adopted it to keep it alive.

(Laughter.)

CHAIRPERSON RIDDLE: Yes, we put it up for adoption.

Okay, Dave, back to you. Is there anything else from your committee?

MEMBER CARTER: No, that is the only action item that we had on the agenda.

CHAIRPERSON RIDDLE: Okay. All right. Well, let's try and move on before break here if that is okay with the Board. It is nine-thirty.

And so it goes to Andrea of the Accreditation Committee.

MEMBER CAROE: As long as we get a break after this.

CHAIRPERSON RIDDLE: Yes.

MEMBER CAROE: All right.

CHAIRPERSON RIDDLE: If we can move through it.

MEMBER CAROE: Okay.

CHAIRPERSON RIDDLE: At least we can get one or two items done before a break.

MEMBER CAROE: Well, that's all we've got.

Okay, well we have a discussion item. The first item is a discussion item. Do you want to do that? Or do you just want to do vote items at this point?

CHAIRPERSON RIDDLE: Well, I -- just a little summary of where that is at, I think.

MEMBER CAROE: Okay.

CHAIRPERSON RIDDLE: Why we're not voting on it today.

MEMBER CAROE: All right. Well, the first item on our agenda is a peer review panel procedure recommendation that we have in a working document at this time. And that document was initiated by or worked on by Michael. So I'm going to ask Michael to do that presentation. With a significant amount of

input from the committee and from Jim in particular, put this document together. So, Michael, if you can summarize?

MEMBER LACY: Thank you. I'll try to be very brief. We've been batting this peer review panel thing back and forth I guess for a number of years before I came on the Board. And with Jim's help and really good input from Keith, Andrea, others, I think that we're coming close to something that we think that will work for this peer review requirement that is part of the OFPA and the organic rule.

Just to sort of tell you where we are and where we're going with it, we are trying to come up with a review process that is thorough and meaningful and that gives NOP and NOSB time to react and make thoughtful changes based on a very thorough review process.

We're very pleased with the way that the ANSI review worked. We think that that's the way that we want to head and have an agency, an organization that is familiar with and expert at conducting audits, do the actual audit.

Then we would have -- we've debated back and forth whether that should be on a one-year basis, two-year basis, three-year basis. Going back to the idea of a very thorough review and a very thoughtful response and action to that review, I think we are thinking a thorough review less often, probably on a three-year basis, rather than on an annual basis where you just go from one audit to another and don't have a chance to really make substantive changes based on thoughtful thinking on the results of the audit.

The last thing, and probably the most important thing, on the direction that we're heading with this audit process is that we really want to make the audit process an opportunity to have collaborative discussion between NOP and NOSB.

And with Keith's help and encouragement, I think we've come up with a process that will improve communication between NOP and NOSB as a result of the audits, which is a goal that NOSB and NOP both are desiring.

As Andrea said, we are not going to take action on this right now. We think we do have a good

draft. We've gotten some good comments that were part of the public comments yesterday. And we'd like to take those into account before we come up with our final draft.

But essentially, just to summarize, we'd like to have an outside organization that is an expert at doing audits conduct the audit. We would like for the results of the audit to be something that is meaningful, that there is time given in to making changes to respond to the audit, and the last thing is that we would like for this to be -- the result of the audit to be an opportunity to engage in very constructive and positive communication between NOP and NOSB.

Thank you.

MEMBER CAROE: Thanks, Michael.

Again, to reiterate what Michael had said, we did receive some very pointed comments in writing, which was wonderful, and they were well supported by the community, so we do want to consider all of those.

Also, the end part of this process is we are working very closely with the program to make sure

that these comments -- and this recommendation, I should say, is a recommendation for a procedure that is meaningful and can be used by the program. And put it into place immediately.

So that's where we're at in the process. We're just smoothing that out and polishing that with the program to make sure that this is a procedure that will be used -- can be used and will be used.

So I think we'll have action to vote on this in the next meeting. But it would have been premature at this point. We did want the organic community to understand though that we are working on this. This is important. We're moving forward with it.

Okay. So --

CHAIRPERSON RIDDLE: All right. Thanks Andrea and Michael for that.

MEMBER CAROE: Okay. The next action -- we do have an action item on the next item on the agenda. And that is the NOSB response to the NOP response to the ANSI Report. And this primarily was worked on by Chairman Riddle. So I'm going to ask him

to present that document. And we are prepared to vote on this document during today's meeting.

CHAIRPERSON RIDDLE: Okay. Well, first as Chair of the Board, I would ask that it be moved before consideration. So --

MEMBER CAROE: Well, I will move to adopt the recommendation for the response to the response to the ANSI Report.

CHAIRPERSON RIDDLE: Okay.

MEMBER OSTIGUY: Second.

CHAIRPERSON RIDDLE: All right. Andrea moves and Nancy seconds adoption of the NOSB response. Okay?

And then I'll just summarize here. This really is a first stab at kind of closure of the audit process where, you know, a professional auditing agency, American National Standards Institute, conducted an audit of the accreditation program. And the NOP did line by line response to the, you know, corrective actions or the deficiencies that were identified in that report.

And then the Board was asked to evaluate

those responses and give some feedback. And as we continue work on the peer review procedures, you know this certainly could be a model for how they function in the future.

But we were encouraged to go ahead and issue a response. And so I will just focus on the recommendations. And there are eight recommendations that are on pages two and three of that document. This is found after your ANSI Audit Report tab in your meeting book.

So Recommendation No. 1, the next audit should explicitly verify assessment of the NOP's adherence to accreditation procedures in Subpart F of the final rule and evaluate NOP's accreditation decisions in addition to adherence with ISO Guide 61 in order to demonstrate that the audit meets the requirements of 205.509.

And just a little background, in the section of the ANSI Report where they discuss scope, they really focused their audit on the ISO 61 requirements. And it was not clear that it covered the rest of the requirements of 205.509. So just

recommending that future audits make sure and cover off all of those requirements.

Yes?

MEMBER CAROE: Jim, is this appropriate to put the new number in for the ISO document at this point? Or since this is historic and already happened, is 61 appropriate here?

CHAIRPERSON RIDDLE: Yes. That is. It is appropriate to keep it the way it is. The 61 is what is mentioned in the rule. That's what the audit was conducted to. So that's what our response is directed to.

I think in the procedures --

MEMBER CAROE: In the next one --

CHAIRPERSON RIDDLE: -- document, we should mention that the ISO Guide 61 has a new number. It has been revised, yes. But right now, it is appropriate to leave it the way it is.

MEMBER CAROE: Okay.

CHAIRPERSON RIDDLE: Recommendation No. 2, NOP should address the need for a quality manual and follow a quality system that fully documents all

accreditation functions, policies, and procedures. This information may be in a quality manual or the quality manual may reference information contained in separate policy and standards manuals.

And this is all something that is underway. This is not new insight at all. But it is just reinforcing work that is already ongoing.

Number three, NOP should document that explanations to the regulation are developed by impartial persons or committees who possess necessary technical competence in the requisite subject matter.

And that was a finding that ANSI noted. And, once again, this is not new information. We are just reinforcing that need.

Number four, NOP should demonstrate how it has established a clear wall described in the quality manual between its accreditation activities and other certification-related functions specified in the rule, including how it handles suspensions, revocations, complaints, appeals, and enforcement actions.

Once again, it is a reinforcement of what is already happening.

The next one is truly a reinforcement where NOSB endorses the NOP's responses that are listed above in Items A through G. And encourages the Secretary to provide adequate support to accomplish the tasks listed above in a timely manner.

Okay, number six, NOP should establish or clearly demonstrate the existence of job descriptions with minimal qualification requirements for auditors and technical experts who provide advice on or verify compliance with organic regulations.

This is just another point from the ANSI audit that we are reinforcing.

In preparation for the next -- number seven -- in -preparation for the next audit, the NOP should demonstrate that the document and data management system being implemented fully complies with the requirements of ISO Guide 61.

And number eight, NOSB acknowledges that NOP and ISO Guide 65 requirements are not identical, which restricts access to international markets and results in increased costs and bureaucracy to certified operators and certifying agents.

So it's more just an acknowledgment there. We're not saying what should be done about it. But it was pointed out in the ANSI Report.

And then in conclusion, we certainly commend NOP for contracting with ANSI to conduct the review and providing thoughtful responses to the findings in the report. And we also understand the creation and operation of the accreditation program are huge undertakings. And we stand ready to continue to collaborate and cooperate.

So, there's a motion on the floor. And it's been seconded. Is there a discussion? Andrea?

MEMBER CAROE: Well, I'd like to further discuss this. I want to also let everybody know that this document was created by the committee but it was vetted with collaboration with the program because we, again, want this to move forward. We want this to be meaningful and it was a good effort.

And I commend Jim for working on it. And, you know, the programs for helping us out with this. I understand Mark was the one that really vetted this with us.

CHAIRPERSON RIDDLE: Mark and Keith, yes.

MEMBER CAROE: Mark and Keith. And so I appreciate that. And we'll move forward in this way on future audits and working with the program. That's really --

CHAIRPERSON RIDDLE: Okay.

MEMBER CAROE: -- really any questions from the Board on this?

CHAIRPERSON RIDDLE: I have Nancy next. And then I think Mark has a question.

MEMBER OSTIGUY: Yes, I have a question that relates to what Andrea asked earlier about the ISO 61 because we are referring here into the future. Do we want -- does that number need to be changed? Or something that denotes that?

MEMBER CAROE: It is in one of the other recommendations that they be prepared for 61. So should we change that language to what is it -- 17011?

CHAIRPERSON RIDDLE: We'd have to look in Lynn Coody's comments.

MEMBER CAROE: It would seem to make sense just to footnote it at least.

SECRETARY CAUGHLAN: She acknowledges it.

CHAIRPERSON RIDDLE: Okay, Mark, do you --

MR. BRADLEY: For the sake of the contract that we worked on with ANSI is that we will close all these audit findings according to the original numbers in ISO 61. But all the new documents that we're developing are to the 17011 document.

PARTICIPANT: And it is footnoted.

MR. BRADLEY: So we're making that transition at that point.

MEMBER CAROE: It is footnoted? Okay. I didn't see that.

CHAIRPERSON RIDDLE: Yes, there is a footnote at the bottom of page two already making a reference --

MEMBER CAROE: You expect me to see that size?

CHAIRPERSON RIDDLE: -- so that would apply to the other point as well. Okay?

Bea, did you have a --

MEMBER JAMES: Yes.

CHAIRPERSON RIDDLE: Yes, Mark made his

point. Or do you have additional input first?

MR. BRADLEY: I do have kind of a response --

CHAIRPERSON RIDDLE: Yes, sure.

MR. BRADLEY: -- to your response to our response.

(Laughter.)

MR. BRADLEY: If I may. We're doing a lot of work at the program level right now. And, in fact, September 30th is the deadline that we've imposed or are working with on some other issues.

And in order to make that response as timely as possible and to get the ball rolling on all this and get some final documents out, we've already, you know, created some final internal working procedures that effect the certifiers directly. Those have been very well received to whatever extent, you know, they have been implemented.

Some of the things that we're having to create, though, for the accreditation program are going to be very invasive as far as accept or reject criteria for certifiers or for the inspectors

1 themselves. And this is not something that we want
2 the program to impose without direct participation by
3 the Board.
4 So even though we may, you know, for the
5 sake of responding in time to these audit findings, we
6 may create some draft documents and this is going to
7 go right to what George was talking about. We're
8 going to create some things and let you comment on
9 them.
10 We won't implement them until, you know,
11 they've been thoroughly vetted through the Board.
12 Whatever changes, you know, are appropriate, that the
13 Board and the certifier communities think are
14 appropriate. But they are going to be very -- they
15 need to be responded to and implemented and finalized
16 before we go into the next round of accreditations.
17 And that's where this is really going to
18 hit the road. We've got -- have we got 100 yet? A
19 100 certifiers actively providing service to the
20 organic community around the world. And when those
21 come up for reevaluation, it's going to be a complete
22 review process. And we'll want to have all these

1 changes completely finalized by that time.

2 So all I'm saying is that we're going to

3 have some things that are going to look very final and

4 invasive that you have not seen by the time that we

5 have -- when we have the next meeting, we'll make sure

6 that these get in front of the conformity assessment

7 committees and --

8 CHAIRPERSON RIDDLE: Yes, well I have a

9 question then, Mark. You are under a timeline, a

10 deadline.

11 MR. BRADLEY: Yes.

12 CHAIRPERSON RIDDLE: It is self-imposed

13 but it is real.

14 MR. BRADLEY: Well, it's -- yes.

15 CHAIRPERSON RIDDLE: Yes.

16 MR. BRADLEY: We agreed to it so I guess

17 it is self-imposed.

18 CHAIRPERSON RIDDLE: So -- but you are

19 wanting some feedback -- input from the Board,

20 specifically the accreditation committee, I would

21 think, on some of those drafts by September 30th.

22 MR. BRADLEY: No. What I'm saying is that

we'll go ahead and create the drafts to meet the September 30th deadline.

CHAIRPERSON RIDDLE: Oh, okay.

MR. BRADLEY: We won't be implementing any of them.

CHAIRPERSON RIDDLE: Okay. All right.

MR. BRADLEY: So we'll begin that process. But like George was saying, he's going to get to see some stuff that we've already done the work on.

CHAIRPERSON RIDDLE: Yes, okay.

MR. BRADLEY: ANSI asked the questions, provided what we think is going to be a good answer.

CHAIRPERSON RIDDLE: Yes.

MR. BRADLEY: But there will be a lot of work -- a lot of comments that we'll need to have from the Board on this.

CHAIRPERSON RIDDLE: Okay. Great. I'm really encouraged to hear that. And look forward to being engaged in that. And it sounds like we will have time to give consideration. I was just thinking about September 30th. We're not going to have a meeting by then. How are we going to comment. But I

was confused.

MEMBER CAROE: And let me ask --

CHAIRPERSON RIDDLE: Andrea?

MEMBER CAROE: Just a point of procedure.

CHAIRPERSON RIDDLE: Yes, we'll stick on this.

MEMBER CAROE: Those comments will come to the committee and the committee will make recommendation. We can vote on that at Executive Committee. We don't have to come to full Board to respond to something like that, do we? I mean I don't see the reason to take this to full Board.

CHAIRPERSON RIDDLE: Well, I wish I could agree. But this would be --

MR. BRADLEY: Wait until you see some of this stuff.

MEMBER CAROE: If that's the case --

CHAIRPERSON RIDDLE: -- we can give preliminary --

MEMBER CAROE: -- then it is going to be very taxing. If they are coming with all of these procedures for Board approval --

MR. BRADLEY: No.

CHAIRPERSON RIDDLE: I understand. But we certainly can give preliminary feedback from the committee. But as far as official advice to the Secretary, that does have to happen at an NOSB meeting.

So even though we've provided input to the program, I would ask that it be ratified by the full Board and posted for public input to follow --

MEMBER CAROE: I'm not saying coming out of committee. I'm saying coming out of the Executive Committee.

CHAIRPERSON RIDDLE: Yes. But the Executive Committee cannot make official actions to the Secretary either. That's my understanding.

MEMBER CAROE: We'll work it out.

MR. BRADLEY: We'll work it out.

CHAIRPERSON RIDDLE: We'll figure it out.

MEMBER CAROE: Okay.

CHAIRPERSON RIDDLE: We'll provide advice. And it will definitely go in front of the public.

MS. ROBINSON: Not necessarily.

CHAIRPERSON RIDDLE: Okay.

MS. ROBINSON: Not necessarily. We are not going to necessarily tell the regular community here's how we intend to do investigative procedures for example. Not everything will be given to the public.

CHAIRPERSON RIDDLE: I see.

MR. BRADLEY: There are just some things that directly effect the certifiers that as far as accept or reject criteria, where the bar is set for these that you will need to comment on.

CHAIRPERSON RIDDLE: Okay.

MR. BRADLEY: But you won't have to go through the whole manual. That's -- most of it is just work instruction, those types of things.

CHAIRPERSON RIDDLE: Okay.

MR. BRADLEY: But we will let you know exactly where we need your comments on this.

CHAIRPERSON RIDDLE: All right.

MR. BRADLEY: And we'll frame that and pose questions to the committee.

CHAIRPERSON RIDDLE: All right, good.

Thanks, Mark.

MEMBER CAROE: Is there any more comments on this document though at this point?

CHAIRPERSON RIDDLE: I think Bea has been waiting. Did you --

MEMBER JAMES: No, actually --

CHAIRPERSON RIDDLE: Okay.

MEMBER JAMES: -- Mark answered my question by saying September 30th.

CHAIRPERSON RIDDLE: Okay.

MEMBER JAMES: And the only other question I had -- it's the quality manual? That's something that the NOP is working on?

MR. BRADLEY: Yes.

MEMBER JAMES: Okay.

MEMBER CAROE: It's their document.

CHAIRPERSON RIDDLE: Not us.

MEMBER CAROE: Should we call the questions?

CHAIRPERSON RIDDLE: Yes, I think we've had enough discussion on this draft. And so let me get back -- this is the NOSB response -- just a second

-- and we start with Goldie.

SECRETARY CAUGHLAN: Yes.

CHAIRPERSON RIDDLE: Kevin?

VICE CHAIRPERSON O'RELL: Yes.

CHAIRPERSON RIDDLE: Dave?

MEMBER CARTER: Yes.

CHAIRPERSON RIDDLE: Rose?

MEMBER KOENIG: Yes.

CHAIRPERSON RIDDLE: George?

MEMBER SIEMON: Yes.

CHAIRPERSON RIDDLE: Bea?

MEMBER JAMES: Yes.

CHAIRPERSON RIDDLE: Hugh?

MEMBER KARREMAN: Yes.

CHAIRPERSON RIDDLE: Michael?

MEMBER LACY: Yes.

CHAIRPERSON RIDDLE: Gerald?

MEMBER DAVIS: Yes.

CHAIRPERSON RIDDLE: Nancy.

MEMBER OSTIGUY: Yes.

CHAIRPERSON RIDDLE: Julie?

MEMBER WEISMAN: Yes.

CHAIRPERSON RIDDLE: Andrea?

MEMBER CAROE: Yes.

CHAIRPERSON RIDDLE: Jim? Yes. Thirteen yes, zero no.

MEMBER CAROE: Thank you. Thank you, Jim, for your work on that.

Okay. And then the last item for this committee is the Q&As for retail and private label. And like I said in my early introduction, this received no comment.

Actually, I'll take a step back. This document originally started in the Handling Committee and was presented at the February meeting. And there was a tremendous amount of public comment on this. And a little bit of panic.

So this was taken back. Handling had many issues and this really was more pointed at Accreditation and Certification. So it came to this committee and we worked on it. And then provided it to Handling for their comment if they had any.

The issue -- the questions that were presented were -- had all kinds of hidden issues

within them. The question is -- specifically they were in regards to which certifier is presented on a private label for a retail firm. And the questions that were hidden within that is what are the implications of a voluntary certification for a retailer who is exempt? That was one of the issues.

And the other issues were related to private labelers. And at what point are you a manufacturer? And at what point are you not? And when do you have responsibility?

So the answer to these questions required a tremendous amount of teasing out of those issues and then answering the questions so that those answers are more pertinent.

Last night after the meeting adjourned, I did receive some concerns from an ACA on this issue. And some dialogue with a private labeler, retail labeler. And, unfortunately, those comments aren't in writing. And they don't have some language suggestions. So it was very difficult to do anything with that.

I say this because moving forward, if you

see something in any of our recommendations, it really is very helpful to the committees if it is provided with substitute language so that we can really vet it through and make those changes. Because we are prepared to vote on this at this time.

The questions that I heard yesterday, and I'll just point them out to you, is in regards to -- on page three, under the Recommendations section, creation of labels. Otherwise manufacturing, which is part of the handling definition, we considered it to be those aspects that are regulated by the regulation. All of those issues related to the creation of this product that are restricted or under the authority of this regulation.

Included in that is labeling requirements. You know is you're making the made with label, the size and text of that declaration, information as far as naming your certifier, the information panel information as far as the ingredients, right. I'm sorry. So there are implications on the label that are regulated within the Part 205.

So creation of the label, this was to

capture those organizations that actually put together a label and are responsible for what is the test and how that is presented. They put themselves into a manufacturing role when they do that because they are participating in these things that are within the regulation.

So that's what we were trying to capture. Apparently that language is concerning to some. We definitely didn't mean the retail organization that asks for an organic manufacturer to make canned tomatoes -- and by the way, make the label purple. That's not creating a label. That is, you know, they are purchasing a finished product and simply selling it. And they are completely in a retail role.

But this would be for a manufacturer that may participate deeper into the process and provide that label that says, you know, super organic tomatoes, you know, or whatever they would put on that label. Then they become responsible for those claims.

I just like -- hopefully the Board has read this recommendation. And I would just like to take questions at this time from the Board.

CHAIRPERSON RIDDLE: It actually needs to be moved.

VICE CHAIRPERSON O'RELL: So moved.

CHAIRPERSON RIDDLE: Kevin moves.

SECRETARY CAUGHLAN: Second.

CHAIRPERSON RIDDLE: Goldie seconds adoption of the recommendation.

Now, discussion? Yes, George?

MEMBER SIEMON: I need one clarification. When we go into the recommendation, it says recommendations at the end of the document with the question/answers. But then it also has the Committee recommends the following clarification regarding otherwise manufacturing. So we're voting on the whole thing?

MEMBER CAROE: The entire document.

MEMBER SIEMON: Okay. So, Andrea, I'm kind of confused by what you just said about a retailer that wants to have a private-label item. They find somebody that manufactures it -- somebody offers it to them. In the long run, no matter what you say, they are responsible for what is on the label

for not only the organic rules but all rules. Because their name is on the label, they are responsible.

So you just said to examples where there was a difference. And I didn't see the difference there. The one where they said I want a purple label -- either way, their name is on the label. They are responsible for what is on the label.

I don't think that means they are responsible -- that they are the ones that are managing the certification or the manufacturing plant. That's a whole other issue. Who is responsible for managing the manufacturer? And the certification of the manufacturing. That's a different process than the retail label responsibility because that's very broad, bigger than organics.

MEMBER CAROE: Well, when I speak of responsibility, I'm speaking specifically of responsibility to meeting the requirements of the regulation. Not responsibility to food and safety, you know, none of those issues. Just specifically who is responsible for meeting the requirements to sell an organic product under this regulation.

MEMBER SIEMON: They are. There is no doubt about it. But why does that mean they have to be considered a handler? Or a certifier?

MEMBER CAROE: I think I'm misunderstanding what you are saying, George. If a retailer buys a product that is not labeled for them and sells it, they are a retailer. They are not responsible -- under this regulation, they are exempt from the responsibility of certification and the responsibility --

MEMBER SIEMON: Sure, of course, yes.

MEMBER CAROE: -- okay. Some situations, private labels act that way. They are purchasing a product that is labeled for them but they are not creating that label.

MEMBER SIEMON: Well, it has got their name on them, so they are putting their name on it. They are taking the liability of that label no matter how they purchase the private label, they are responsible for that label. That doesn't mean they have to be certified. There are two different issues. The responsibility of the legal label and the

1 responsibility for the handling and manufacturing.
2 Those are two different -- I'm seeing a -- I don't see
3 the difference that you are saying here. And I've
4 read this and I've got real concerns with the way this
5 goes and defines otherwise manufacturing.
6 I'm pretty familiar with what retailers
7 want and what their responsibility is so I've got some
8 concerns.
9 CHAIRPERSON RIDDLE: I've got Bea, Gerald,
10 and then Kevin.
11 MEMBER JAMES: Well, I guess I have
12 concerns with the creation of labels being in there at
13 all. I think that it is confusing in that it is not
14 well defined. And that it does lead to the assumption
15 that if you are involved with label making that you
16 have to be certified.
17 And from the person that spoke yesterday
18 who mentioned that, I think that it reads that way.
19 And that that needs to be better defined.
20 I also think that -- I get the feeling
21 that we are trying to answer this question by finding
22 a loophole through defining otherwise manufacture.

Because the real issue is that there is not -- and I know that that is stated in here -- that there is not guidance for retailer certification. There is no documentation or anything that really defines what a retailer's position is as a -- when they become certified.

So that is the crux of really the issue and being able to answer the question. And so I feel like that is really what needs to be addressed in order to answer the question.

CHAIRPERSON RIDDLE: Gerald?

MEMBER DAVIS: My comment is for George to help me understand your objection. I'm thinking of a scenario where a retailer puts their own private label on a product certified by the producer/manufacturer. Everything is done except for the private label they put on the end.

Are you saying that that end private label holder is responsible to make sure that that truly is certified properly? They can't say well, they told it was certified and all that stuff? So is that the responsibility level you are saying that they have?

1 That they are responsible to make sure --

2 MEMBER SIEMON: They are responsible for

3 every aspect of that label is truthful. Every aspect.

4 Organic -- every angle. That doesn't mean that they

5 are the certified handler.

6 MEMBER DAVIS: Right.

7 MEMBER SIEMON: And it doesn't mean just

8 because they buy a private label that they should be

9 certified because they are responsible.

10 MEMBER DAVIS: If there is any problem

11 with that certification that maybe it says it is

12 certified on the label but it really wasn't, that the

13 manufacturer didn't mind their Ps and Qs and there is

14 some problem with it, they become responsible for it.

15 MEMBER SIEMON: But you are saying the

16 manufacturer is the one that was certified.

17 MEMBER DAVIS: Right.

18 MEMBER SIEMON: And I agree with that.

19 There is a dual responsibility there. The

20 manufacturer got certified. They are producing a

21 certified product. They are providing the basis to

22 the retailer who then approves the label and puts it

out there. There is a dual responsibility there.

MEMBER DAVIS: Right.

MEMBER SIEMON: Now we're talking about whose certification covers the plant. And in that case, it is the manufacturer's certification. They are the ones responsible for all the things -- the integrity of the product all the way through. They are the certificate that counts, you know.

The certifier is not the one responsible for the manufacturing and the process. I mean I think that otherwise processing, you are taking a section that defines processing as an action, cooking, baking. All of a sudden you jump in there and have creation of labels.

It is a real stretch to me the lumping together of what was a physical act of manufacturing to going beyond that to labels and formulations. To me that's a whole other input level. I think you've stretched pretty far on that myself.

CHAIRPERSON RIDDLE: And I'd ask people to stay in order. So --

MEMBER SIEMON: Was I out of order? I was

asked a question.

CHAIRPERSON RIDDLE: -- Kevin. And I think Nancy did you have a -- okay. Then we'll go to Andrea.

VICE CHAIRPERSON O'RELL: George I'm trying to understand your position is that the retailer -- you don't want to have the option of the retailer to be able to be certified as a handler if they feel that they have input in terms of sourcing raw materials, specking quality?

MEMBER SIEMON: You are talking about voluntarily?

VICE CHAIRPERSON O'RELL: Yes.

MEMBER SIEMON: Oh, I think absolutely they should have the option voluntarily. But I'm not reading that through this document. I'm reading otherwise manufacturing. And I'm seeing that all retailers could get ensnared by that.

I really agree with the third paragraph under number one that speaks to it very well. It says if they volunteer to, they can. And if they do not volunteer, then certifier is responsible. The one --

the handler. To me that is a great answer.

The first two paragraphs I have issues with. But the third one, which is kind of the summary, that answer I agree with. It is a voluntary responsible that retailers take on.

MEMBER DAVIS: Right. Okay.

MEMBER SIEMON: I agree with that wholeheartedly.

MEMBER DAVIS: Okay.

MEMBER SIEMON: But it is not a required one. But if I go to otherwise manufacturing, I see that anyone that is creating the label, which retailer has to be, now gets ensnared in a certification scenario.

CHAIRPERSON RIDDLE: Okay. Back to Andrea. And then to Arthur or someone from the program.

MEMBER CAROE: I just want to ask a question to the program. An enforcement. If there is a situation where a store private label product is not in compliance and the store private label -- the store -- the retailer is not certified, who is enforcement

1 going to fine for the product?

2 MR. NEAL: I'm going to answer your

3 question. Before I answer it, I'm going to go back to

4 the original question.

5 When we framed this question, we framed

6 the question which certifying agent is required to be

7 on the final product -- required to be on the final

8 product. And what the regs say is that it is the

9 certifying agent of the final handler of the product.

10 Now that took us to otherwise manufacture.

11 And what we -- we communicated our concerns about

12 otherwise manufacture, the way that it is being

13 expressed in this document is that you'd have to

14 change the regulations to define otherwise manufacture

15 as contracting and labeling so that everybody is aware

16 of that.

17 Because what happens is that then would

18 require retailers to be certified as handlers when the

19 act expressly -- no -- when the act expressly exempts

20 them. And the definition of handler exempts retailers

21 from certification.

22 But for them to be captured as an

operation that has to be certified, you are going to have to define otherwise manufacture to say labeling, contracting, and all of these other things. But that then -- it contradicts the act, OFPA, and the definition of handler.

So these were the concerns that we've expressed. Now the original recommendation that came from the Board last February I think reflected our concerns. This was just a tad different. And there is nothing wrong with the thought process.

But we want to share with you the legal implications of it. And the legal implications is that there is going to be, you know, a downward ripple concerning the impact that it is going to have on all retailers who contract for private labeling.

And then what that would then do is put the burden of ensuring that the product was produced according to the regulations on the retailer just as it would the final handler. If they manufacture the product, the burden is going to be on that retailer as being the manufacturer of the product.

MEMBER CAROE: You didn't answer my

question.

MR. NEAL: And the compliance actions would be directed at them.

MEMBER CAROE: At who?

MR. NEAL: The retailer.

MEMBER CAROE: The retailer?

MR. NEAL: Yes.

MEMBER CAROE: Even if they are not certified?

MR. NEAL: If they are going to be -- no. Oh, if they are not certified, it's the final handler. The final handler.

MEMBER CAROE: Even if it is the co-packer.

MR. NEAL: Right. Whoever is the final -- that's why we said required because the regulation says place the certifying agent of the final handler on the label.

CHAIRPERSON RIDDLE: Yes, Keith?

MR. JONES: Jim, I think what we'd like to do on this is this has been a very difficult issue for everybody. This is a very well thought out document,

notwithstanding some of our concerns. I think what we'd like to see is to get this where we could really wrestle with it.

And the only way that we can really wrestle with it is to get it to us in a recommendation. Then we can really then begin to ascertain the implications of what you've got here.

So I think what we'd like to see is that this recommendation go ahead and come to us. It keeps the process moving. We can look at the language -- not that we haven't and not that we don't have some concerns with it. But we may be -- as really focusing on this, we may be in a better position then to come back to you and say we've examined your recommendations. We have these specific concerns.

It may that you don't want to hang your hat on otherwise manufacturing. There may be some other language in here that you can hang your hat on.

But we're going to need some time to really just examine this down at a very minute level. This is a difficult issue. So --

CHAIRPERSON RIDDLE: Thanks for that.

1 That's quite helpful.

2 MS. ROBINSON: Also, I want to add one

3 more thing here.

4 CHAIRPERSON RIDDLE: Barbara?

5 MS. ROBINSON: One thing that keeps coming

6 back to me in this is the hang up between the fact

7 that retailers are exempt from -- well, I don't even

8 quite know how to articulate this.

9 The fact that somebody is exempt and then

10 the fact that someone may get certified. I mean there

11 is this confusion that keeps popping up. Okay,

12 they're exempt. Well, so are small farmers. But then

13 somebody may get certified.

14 Set aside that you are exempt. That never

15 enters into the picture again. Once you become

16 certified, now you are subject to the requirements of

17 the regulations, okay?

18 If you chose to become certified, now you

19 are playing by all the rules. So if I was looking at

20 this question, I would first say okay, you know, are

21 we saying -- are we forcing someone to become

22 certified? No, we were not. The question didn't

hinge on did you have to become certified. We already know what the rules say about that.

But if in this case the company chose to become certified, then the question is what is it they are doing? And, you know, then what must they do to comply with the regs? And then, you know, go on with the rest of the question.

But don't confuse this who is exempt from the parts of the regulation with then what do they have to do. Let's get -- those are separate issues.

CHAIRPERSON RIDDLE: Okay. Last comment.

MR. NEAL: And I think the thing that is confusing that issue, Barbara, and for the Committee as well, is that the definition of handler says that any person engaged in the business of handling agricultural products, including producers who handle crops or livestock of their own production except such terms shall not include final retailers of agricultural products that do not process.

And so they are trying to capture the retailers under the handler definition.

MS. ROBINSON: Once you chose to become

1 certified, the rules begin to change. Once he chose
2 to become certified, he accepted the responsibility of
3 the regulation in its entirety. And from that point
4 on, now you answer the questions is my point.
5 CHAIRPERSON RIDDLE: Okay. Well --
6 MR. JONES: Well, I think you can tell
7 there is a robust dialogue at NOP on this issue.
8 CHAIRPERSON RIDDLE: We're engaging in NOP
9 work now.
10 MR. JONES: That's right. Which is why we
11 would like to have the recommendation fully come to us
12 so that we can really wrestle with it.
13 CHAIRPERSON RIDDLE: Okay. Bea? Well,
14 Bea has had her hand up. And then I would like to
15 move to a vote.
16 Bea?
17 MEMBER JAMES: I have two comments.
18 CHAIRPERSON RIDDLE: Yes.
19 MEMBER JAMES: First of all, I'm not
20 comfortable giving -- I'm not comfortable having this
21 document go to the NOP so they can fix it. I think
22 that we need to do a good job of writing this document

out so that it makes sense what we're saying about labeling, what we're saying about otherwise manufacture. I think it is unclear. So --

And then the second question I have is so from what -- Barbara, what you just said, what I'm understanding then is if I am a retailer and I want to do a private label grocery item, as long as I'm not certified, then I don't have to worry about any liability with that product.

But if I become certified in the grocery area, then I am responsible for the liability of that private label organic product. Is that correct?

MS. ROBINSON: I don't know, Bea. You just told me you didn't trust me to answer the question.

MEMBER JAMES: No, I didn't.

MS. ROBINSON: Yes, you did.

MEMBER JAMES: No, I didn't. I'm asking --

MS. ROBINSON: Didn't we decide that we would like to go back and have a further discussion?

MEMBER JAMES: I would like to understand

how that got interpreted that I don't trust you to answer the question.

MS. ROBINSON: You just said you're not comfortable submitting this back to the NOP.

MEMBER KOENIG: No, she said that we aren't comfortable on voting on it as a Board, as our recommendation.

MEMBER JAMES: That's what I meant.

MS. ROBINSON: Well, what I said was I think that once a handler becomes certified, that once an entity, any entity, whether it is -- anybody that we have said is exempt, once they choose not to become exempt, they decide to become certified, it seems to me that then they become subject to all of the requirements of 7 CFR 205.

Now it is true that even when you are exempt as a retailer, you are still subject to various parts of this regulation. We know that. But once you accept certification, you accept a whole lot more of this.

So, yes, I guess I'm saying if you are a grocery retailer and you are not doing anything, you

1 don't have that liability. You are buying all these
2 products. They have been certified by other
3 companies. They bear ACA's logos. They are, you
4 know, Horizon's products, Organic Valley Products,
5 Sensibility Soaps. You name it. You don't have --
6 what, you don't like that example?
7 (Laughter.)
8 CHAIRPERSON RIDDLE: Let's scrub the
9 record.
10 (Laughter.)
11 MS. ROBINSON: They are certified organic
12 products, I didn't say they have a seal on them. But
13 they are certified organic. But you, as the retailer
14 selling those products, are only subject to the
15 requirements in the act, in the regs that say, you
16 know, commingling recordkeeping, those sorts of
17 things.
18 No, you don't bear the liability for the
19 content of those products. But if you, instead, my
20 interpretation is if you instead say I'm Acme grocer
21 and I am going to go out and put my label on every
22 product in my store, then I have assumed all of the --

and I'm going to get certified -- then I've assumed all the liability because my name is on every single product in that store.

Then my certifying agent and I now assume the liability for the content and for the processes. And what difference is that then if I say I'm Swansons. I make a TV dinner. And I buy chicken from this company, mashed potatoes, mixed vegetables. I put them all in there. And now I'm going to call it the organic Swanson TV dinner.

Now I bought my chicken from Perdue. I bought my mixed vegetables from Birdseye. And I bought my mashed potatoes from Idaho. And they were all certified organic by those companies. You know but I am assembling them. Whose ACA goes on them?

CHAIRPERSON RIDDLE: Okay.

PARTICIPANT: You are handling them.

CHAIRPERSON RIDDLE: I've had Andrea waiting in line. And Rose. I'm sorry. George? Andrea?

MEMBER CAROE: I am going to offer a friendly amendment to drop the words creation of

labels from the recommendation, leaving only formulation of product and procurement of ingredients.

PARTICIPANT: I second.

MEMBER CAROE: Well, it has to be accepted by the motion which --

CHAIRPERSON RIDDLE: Well, it still would need seconded first. But I don't know that it is friendly because it changes the intent.

MEMBER CAROE: Kevin?

CHAIRPERSON RIDDLE: Kevin?

VICE CHAIRPERSON O'RELL: I would agree. I think we need -- it's substantive, too.

CHAIRPERSON RIDDLE: It's substantive. Do you still want to offer it?

MEMBER CAROE: Okay. I motion it.

CHAIRPERSON RIDDLE: Okay. She moves.

VICE CHAIRPERSON O'RELL: I would second.

CHAIRPERSON RIDDLE: Okay. Then, yes, I think it is good to have a clear vote on that because it does change the intent.

Okay, there has been a motion to amend made by Andrea, seconded by Kevin to strike the words

creation of labels in the first paragraph under Recommendations on page three.

Discussion of that point?

Rose, on that point. And we'll get back to your general comment if you have one later. But on that point.

MEMBER CAROE: Let's call the question.

CHAIRPERSON RIDDLE: Well, I guess I have a concern with that myself. I think it is a very substantive issue that should remain in this draft that we submit to NOP. And if there are problems with it, let them wrestle with it and get back to us.

But if we don't include it now, then we're not asking them to look into it. So I would like it to be retained as my own position.

Rose? On this point.

MEMBER KOENIG: Okay. And maybe -- well, it is sort of this point because I think part of the thing that I'm struggling with -- and it is part of the collaborative, new collaborative process, but this document sounds like it's not going to be a final draft that we're presenting. That we're acknowledging

that it needs work.

Is there something -- can we call it an interim draft? I don't know. Something that's a final --

MEMBER CAROE: It's a recommendation. It's just not implemented yet.

CHAIRPERSON RIDDLE: Yes. They may send it back to us. That's part of the process. But for now, this is the work product we're giving them as a recommendation to consider.

MEMBER KOENIG: But if there are work products -- what I'm hearing is that there may be work products that people don't feel are complete. Yet they feel that it's not really -- the Committee can do nothing more with.

MEMBER CAROE: It's still a --

MEMBER KOENIG: I'm just afraid --

MEMBER CAROE: -- recommendation out of this Board.

MEMBER KOENIG: Okay. But if a recommendation goes and it is totally accepted but you feel that it is not complete, how can you vote on it

as what you think should really be a final recommendation?

MEMBER CAROE: I think it is our complete work. I don't think we could do any more with it until we get the feedback -- further feedback.

MEMBER KOENIG: Okay. Because there may be other documents that we're faced with that.

CHAIRPERSON RIDDLE: Sure. That's always the case.

MEMBER KOENIG: Okay. If that's the understanding.

CHAIRPERSON RIDDLE: Yes. Okay. Anything else on this amendment to strike the words creation of labels? George?

MEMBER SIEMON: I think that refers strictly to the top of page two where it says otherwise manufacturing?

MEMBER CAROE: Yes.

MEMBER SIEMON: And I'd like to ask in Recommendations under question one, it also relates to that. So I'm a little worried, you know, is there other parts, you know, I want to make -- is there

other parts where it needs to be included that concern? Like in paragraph one or two after number one? The retailer provides the labels used. Is that not related to this or not? I just need to make sure.

CHAIRPERSON RIDDLE: I think that is a good point. I think it was written in relation to that phrase being included in the first paragraph.

MEMBER SIEMON: So I'm just trying to see what is this motion changing. Just that one section? Or is the last sentence in number one or sooner or later it's going to get --

MEMBER OSTIGUY: Can you call the question?

CHAIRPERSON RIDDLE: Yes. Okay. We will vote. Just on deletion of creation of labels.

MEMBER JAMES: On page three?

CHAIRPERSON RIDDLE: And we --

MEMBER SIEMON: On page two only.

MEMBER CAROE: And page two.

CHAIRPERSON RIDDLE: It's true.

MEMBER SIEMON: All right. Point specifically where we're voting please.

CHAIRPERSON RIDDLE: Yes. At the top of -- very top of page two, second line down.

MEMBER SIEMON: Right.

CHAIRPERSON RIDDLE: And then again on page three right after Recommendations. So it would be deleted in two places.

All right. And I've got Kevin up first.

VICE CHAIRPERSON O'RELL: Actually, Jim, you convinced me. So I'm going to say no.

CHAIRPERSON RIDDLE: Okay, Dave?

MEMBER CARTER: No.

CHAIRPERSON RIDDLE: Rose?

MEMBER KOENIG: I want to abstain.

CHAIRPERSON RIDDLE: George?

MEMBER SIEMON: Yes.

CHAIRPERSON RIDDLE: Bea?

MEMBER JAMES: Reluctantly yes.

CHAIRPERSON RIDDLE: And yes is to delete.

Hugh?

MEMBER KARREMAN: It's only to delete. It's not to send it up to the NOP?

CHAIRPERSON RIDDLE: No, this is just on

this point of deleting this from the draft.

MEMBER KARREMAN: Yes.

CHAIRPERSON RIDDLE: Michael?

MEMBER LACY: No.

CHAIRPERSON RIDDLE: Gerald?

MEMBER DAVIS: No.

CHAIRPERSON RIDDLE: Nancy?

MEMBER OSTIGUY: No.

CHAIRPERSON RIDDLE: Julie?

MEMBER WEISMAN: Yes.

CHAIRPERSON RIDDLE: Andrea?

MEMBER CAROE: Yes.

CHAIRPERSON RIDDLE: Goldie?

SECRETARY CAUGHLAN: No.

CHAIRPERSON RIDDLE: And Chair votes no.

MEMBER CAROE: So it fails, 7-4-1.

CHAIRPERSON RIDDLE: Thank you.

MEMBER CAROE: Oh, 4-7-1, sorry. Oh, 5-7-1, sorry, 5-7-1.

CHAIRPERSON RIDDLE: So we have five yes, seven no, one abstention which then would count with the majority. It fails.

MEMBER OSTIGUY: Call the question.

CHAIRPERSON RIDDLE: So it is retained. So we have no changes then to the draft. And so we'll vote on the draft as presented by committee.

So now we will start with Dave.

MEMBER CARTER: Yes.

CHAIRPERSON RIDDLE: Rose?

MEMBER KOENIG: I want to abstain.

CHAIRPERSON RIDDLE: All right. George?

MEMBER SIEMON: No.

CHAIRPERSON RIDDLE: Bea?

MEMBER JAMES: No.

CHAIRPERSON RIDDLE: Hugh?

MEMBER KARREMAN: Abstain.

CHAIRPERSON RIDDLE: Michael?

MEMBER LACY: Yes.

CHAIRPERSON RIDDLE: Gerald?

MEMBER DAVIS: Yes.

CHAIRPERSON RIDDLE: Nancy?

MEMBER OSTIGUY: Yes.

CHAIRPERSON RIDDLE: Julie?

MEMBER WEISMAN: No.

CHAIRPERSON RIDDLE: Andrea?

MEMBER CAROE: Yes.

CHAIRPERSON RIDDLE: Goldie?

SECRETARY CAUGHLAN: Yes.

CHAIRPERSON RIDDLE: Kevin?

VICE CHAIRPERSON O'RELL: Yes.

CHAIRPERSON RIDDLE: Chair votes yes.

MEMBER CAROE: Eight-three-two.

CHAIRPERSON RIDDLE: Eight yes, three no, and two abstentions. So that does carry. Okay.

MEMBER CAROE: That concludes action for this committee.

CHAIRPERSON RIDDLE: Very good, Andrea. Thanks so much. Thanks for the spirited debate. And we'll look forward to hearing back from the program on this. I'd love to be a fly on the wall.

(Laughter.)

CHAIRPERSON RIDDLE: So we will -- yes, okay. Just a second before we take a break. George has asked Livestock Committee to come over and also I need to talk to Rose, too.

So, Andrea, let's take a 15-minute break.

Be ready to start promptly at a quarter until eleven.

(Whereupon, the foregoing matter went off the record at 10:31 a.m. and went back on the record at 10:50 a.m.)

CHAIRPERSON RIDDLE: All right. So we're making progress. We're catching up with ourselves. So now we'll go to Livestock Committee. George?

MEMBER SIEMON: All right. Well, we are ready to go ahead with the material discussion. But we were going to ask if we could -- and I've already asked Jim if we could delay the pasture until right after dinner -- lunch --

CHAIRPERSON RIDDLE: Fine.

MEMBER SIEMON: -- at one o'clock.

CHAIRPERSON RIDDLE: Okay.

MEMBER SIEMON: And you agreed to that because we got some last-minute inputs that we never got a chance due to public comment last night going so long to review the comments we had. So we'd like to delay the pasture right now.

CHAIRPERSON RIDDLE: Yes. And I've asked

Rose to be prepared on her Item No. 1, National List Categories, if we have time here before lunch.

MEMBER SIEMON: And so that --

CHAIRPERSON RIDDLE: And she agreed.

MEMBER SIEMON: So I'd like to just move into the sucrose material discussion. And Nancy has lead us through that. And I believe Nancy will lead us through that discussion now.

MEMBER OSTIGUY: Okay. The material that we are looking at is sucrose octanoate esters. The committee's recommendation is to approve sucrose octanoate esters for listing on the national list with an annotation of only for use as a miticide in apiculture. And that's the motion.

MEMBER KARREMAN: I second it.

MEMBER OSTIGUY: I'd like to make an amendment --

CHAIRPERSON RIDDLE: Okay. Nancy moved -- just a second -- Nancy moved and Hugh seconded just to be clear on the record. Okay.

MEMBER OSTIGUY: I'd like to make an amendment to delete the annotation, only for use as a

miticide in apiculture.

MEMBER KARREMAN: I second it.

CHAIRPERSON RIDDLE: Okay. So now there is a motion to amend the original motion that was posted, to remove the annotation. So there would be no annotation, correct?

MEMBER OSTIGUY: Correct. The reason that I am recommending -- or made the motion is that -- well, a couplefold -- EPA already -- currently the only approved uses for this material are on mites. The material is unlikely to ever to be able to be used on anything but mites, mites are soft-bodied. The material can go through a mite.

Virtually any other insect, it would be very difficult to get enough of the material into the organism to kill it. So the likelihood that we would ever -- that we will see large-scale use is very small, not allowed at the moment because EPA does not allow it, the use in specifically for livestock would be very unlikely because of the nature of the material.

So it would have to be FDA approved

anyway. Now in this case, it does not have to be FDA approved. These are under EPA. But all other livestock are under FDA.

CHAIRPERSON RIDDLE: Okay. My concern with this with removing the annotation is placing the substance on the livestock list could certainly lead livestock producers astray if it doesn't have the annotation that matches up with the EPA restriction on the label in thinking that the substance is approved by this Board for general use in livestock production.

And, yes, they would be violating the EPA label in doing so. But I just don't want us to give any kind of incorrect or misleading information in how the substance is listed.

And I don't know if someone might use it for flea control or lice. Or attempt to use it even though that is a label violation in doing so. But without the annotation --

MEMBER OSTIGUY: But it has to be in their organic plan.

CHAIRPERSON RIDDLE: I understand.

MEMBER OSTIGUY: And it is not approved

for use in those.

CHAIRPERSON RIDDLE: Well, in reviewing an organic plan, a certifier or inspector typically would look at the organic regulation. They wouldn't necessarily look at all the EPA registration of a substance. They are --

MEMBER OSTIGUY: They would never look at the label?

CHAIRPERSON RIDDLE: I'm not saying they would never. I'm saying they definitely would look at the organic regulation. And if it is on there for any use, it could be misleading. That's just my concern.

And it was petitioned for this use.

MEMBER OSTIGUY: Yet --

CHAIRPERSON RIDDLE: And that's all it is registered for at this time.

MEMBER OSTIGUY: -- yet at the same time, we don't put these kinds of annotations on other materials that we have put on livestock, that it only can be used in sheep, only can be used in cows. We haven't done that.

CHAIRPERSON RIDDLE: Arthur? And then

some other.

MR. NEAL: We could look at saying to be used only as prescribed in the approved label for the use of the substance -- the approved label. So that means that the substance has an approved label. And if the approved label only restricts it to use in mites and an organic producer uses it other than what the approved label says, then they are in violation of the regs -- our regs -- including EPA's regs.

CHAIRPERSON RIDDLE: Yes. That's an option. But that would be an annotation. And a Board member -- it's a good suggestion. But a Board member would have to take that up as an amendment.

But Hugh?

MEMBER KARREMAN: I generally agree with what Arthur said, you know, to not keep it just -- like you are saying. We don't approve things for sheep or cows only. But, you know, have it used according to EPA label, that's all. Just have that as the annotation then perhaps.

MEMBER OSTIGUY: I could take that as a friendly amendment or we could put it as a substitute

amendment. I don't care.

CHAIRPERSON RIDDLE: Okay. Let's have a little discussion before you do so. I've got Rose here. And then we'll come back to you.

MEMBER KOENIG: Well, I mean I guess -- again, after five years on the Board, I'm starting to change my view on annotations these days. But I mean why do we use annotations? It's usually to restrict. But the label restricts. I think it is a redundancy personally.

And I mean we have to have some assumptions here. There are other laws, you know, EPA is a law. And it's not our -- you know, if there is a violation, if they're not clear, they're violating a whole other federal agency's law where we have no jurisdiction.

So in the case of pesticides, I think it is just safer to just -- to list it unless you are limiting it from a label. But in this case, it sounds like the label, if you are 100 percent correct it's only for bees and mites at this point --

MEMBER OSTIGUY: Yes.

MEMBER KOENIG: -- I think we're safe on this. The only precaution would be if other uses came up, if we didn't have that list, you know, that in there. And so it may make sense to just keep the original one if we're doing it precautionary.

Because in the future, you could always add perhaps other uses. And then if we don't specify for honey bees, we wouldn't be covered.

MEMBER OSTIGUY: Yes.

MEMBER KOENIG: And if we just had by label, that we would be actually acknowledging all uses. So it's really up to the Board. I think Nancy's is appropriate for an annotation if you want to make sure that, you know, even with a potential label change by a company, you are restricting it. But right now it is redundant.

MEMBER OSTIGUY: Yes.

MEMBER KOENIG: But, you know, maybe that's -- you know that's something we can't address in sunset so maybe we'd better restrict it now.

CHAIRPERSON RIDDLE: Okay. I'm clear on where you stand.

(Laughter.)

CHAIRPERSON RIDDLE: We've got -- back to Nancy. Did you have a comment first? Then Gerald, then Hugh.

MEMBER DAVIS: The material itself, are we -- as new potential uses come up and are added to said label, is there something we would have a problem with that material on crops, for example?

MEMBER OSTIGUY: Well, it's being petitioned for crops.

CHAIRPERSON RIDDLE: Yes. That's a separate discussion. Right now it would be its uses in livestock.

MEMBER CARTER: Okay.

CHAIRPERSON RIDDLE: And it wasn't considered for other uses by the committee I don't believe. Was it? It was considered as petitioned.

MEMBER OSTIGUY: It was considered as petitioned. But the answers are not going to change. It will become obvious when we look at its petitioned use for crops. The answers don't change.

The material and this -- so I would still

argue for no annotation because the material is sufficiently innocuous -- it is naturally occurring but not in the quantity enough to be able to use it so it is synthetically created in this instance. It is a naturally-occurring material. It's basically a soap, you know.

I wouldn't drink it because I don't want to clean my organs out too much like that. But, you know, it's a soap.

CHAIRPERSON RIDDLE: Yes. All right, Hugh? Well, no, I had already recognized Hugh would be next.

MEMBER KARREMAN: I mean I can understand your concern that you were saying for a certifier or an inspector to see it on a shelf or something and it shouldn't be there. But if it is really clearly labeled and the laws are in place already, then maybe we don't need any annotation.

CHAIRPERSON RIDDLE: Yes. And I'm thinking about clarity to farmers. They look at this list. And this list is all the things they can use. This doesn't say if there is no annotation only for

apiculture, for one. And then only as a miticide in apiculture, two.

So a livestock producer could look at this list and just think oh, here's another tool for my toolbox.

PARTICIPANT: That is true.

CHAIRPERSON RIDDLE: So, okay.

MEMBER OSTIGUY: But it's on the label.

CHAIRPERSON RIDDLE: I understand.

MEMBER OSTIGUY: They are supposed to follow the label.

CHAIRPERSON RIDDLE: I understand. I understand. I think we've had a good discussion. We'll see where the votes fall.

And that is on removing the annotation right now. So let me regroup my own --

MEMBER KARREMAN: It's the annotation which is printed right now?

CHAIRPERSON RIDDLE: Yes. To remove the annotation which currently reads only for use as a miticide in apiculture. So it would be to remove that and have no annotation unless another one is offered

as another amendment. But right now it would be to remove.

And let's see. We start with Rose, right? Dave, did you get your chance first?

MEMBER CARTER: Yes, I did.

CHAIRPERSON RIDDLE: Okay.

MEMBER CARTER: I'm just proud to be the lead off person.

CHAIRPERSON RIDDLE: Okay. Thank you, Dave.

All right, Rose?

MEMBER KOENIG: Yes.

CHAIRPERSON RIDDLE: Okay, yes. I have Rose.

Okay, George?

MEMBER SIEMON: Yes.

CHAIRPERSON RIDDLE: Bea?

MEMBER JAMES: Yes.

CHAIRPERSON RIDDLE: Hugh?

MEMBER KARREMAN: Actually no.

CHAIRPERSON RIDDLE: Michael?

MEMBER LACY: Yes.

CHAIRPERSON RIDDLE: Gerald?

MEMBER DAVIS: Yes.

CHAIRPERSON RIDDLE: Nancy?

MEMBER OSTIGUY: Yes.

CHAIRPERSON RIDDLE: Julie?

MEMBER WEISMAN: Yes.

CHAIRPERSON RIDDLE: Andrea? Absent.

Goldie?

SECRETARY CAUGHLAN: No.

CHAIRPERSON RIDDLE: Kevin?

VICE CHAIRPERSON O'RELL: Yes.

CHAIRPERSON RIDDLE: Dave?

MEMBER CARTER: Yes.

CHAIRPERSON RIDDLE: Chair votes no in a losing cause I think.

(Laughter.)

CHAIRPERSON RIDDLE: So we have nine yes, three no, and one absent. So the annotation is removed.

So now we go back to the original material as amended, which is with no annotation currently.

MEMBER OSTIGUY: Yes.

CHAIRPERSON RIDDLE: So any further discussion?

(No response.)

CHAIRPERSON RIDDLE: Seeing none, we will start with George. And this is to add sucrose octanoate esters to the national list for livestock use.

MEMBER SIEMON: Yes.

CHAIRPERSON RIDDLE: Bea?

MEMBER JAMES: Yes.

CHAIRPERSON RIDDLE: Hugh?

MEMBER KARREMAN: Yes.

CHAIRPERSON RIDDLE: Michael?

MEMBER LACY: Yes.

CHAIRPERSON RIDDLE: Gerald?

MEMBER DAVIS: Yes.

CHAIRPERSON RIDDLE: Nancy?

MEMBER OSTIGUY: Yes.

CHAIRPERSON RIDDLE: Julie?

MEMBER WEISMAN: Yes.

CHAIRPERSON RIDDLE: Andrea? Absent.

Goldie?

SECRETARY CAUGHLAN: Yes.

CHAIRPERSON RIDDLE: Kevin?

VICE CHAIRPERSON O'RELL: Yes.

CHAIRPERSON RIDDLE: Dave?

MEMBER CARTER: Yes.

CHAIRPERSON RIDDLE: Rose?

MEMBER KOENIG: Yes.

CHAIRPERSON RIDDLE: Chair votes yes. We have 13 yes, zero no, and one absent.

MEMBER OSTIGUY: And now we finally have something to use in apiculture.

(Laughter.)

CHAIRPERSON RIDDLE: Even though we don't have standards.

(Laughter.)

CHAIRPERSON RIDDLE: I'm sorry.

MEMBER OSTIGUY: Well, but they are supposed to be -- right now they function under livestock.

CHAIRPERSON RIDDLE: I understand.

MEMBER OSTIGUY: And that's how they're being approved.

CHAIRPERSON RIDDLE: That was a poor comment. Strike that from the record. Chair is getting irreverent.

MEMBER DAVIS: Should it be 13 yes or 12 yes? With one absent.

CHAIRPERSON RIDDLE: Andrea is absent.

MEMBER DAVIS: I think you said 13 yes. But just to --

CHAIRPERSON RIDDLE: Yes.

MEMBER OSTIGUY: Yes, it should be 12. Andrea is not here.

MEMBER KOENIG: Yes, because we're missing two.

CHAIRPERSON RIDDLE: Oh, right. I'm sorry. Boy better check the math on some of these others. All right. Okay.

We're going to suspend the Livestock Committee consideration now and go to Rose in Materials and revision of national list categories.

Rose?

MEMBER KOENIG: Okay. This document came forth before actually even the new Board. It was in

February we presented it as kind of a discussion draft.

And we're bringing it back with a couple of changes. The need for kind of at least an analysis of perhaps reviewing the -- rearranging the national list for clarity was posed to the Materials Committee by the NOP so that we could check to see about the consistency of the materials that are on the list and whether they fall in the categories as designated by the Organic Foods Production Act.

And so that was the basic exercise that we were assigned -- to look both through the livestock and the crops lists to see if, in fact, we've been putting things on that are in line with the OFPA categories that were spelled out in the act.

So that was presented for the crops during the last meeting. And I went through the livestock list as an exercise. And present that to you as one of the appendices on -- I guess it is Appendix Two. I took it through the livestock materials.

And, in fact, livestock did better than crops in terms of fitting well with the categories

that were specified. The big problem with livestock is, you know, it is not likely that, unless I'm wrong, like horticultural oils or treated seed would be used in livestock production. So a lot of the categories are just not appropriate to livestock. And there is not a whole lot of categories they fit in.

But all the substances that are on the list that, at least up to the -- I just went through the -- I'm trying to remember if I did the final rule and I think some of the things that were added on -- but, of course, I couldn't do some of the things that are in the pipeline that are --

MEMBER SIEMON: Did you say Addendum Two?

MEMBER KOENIG: It's Appendix Two.

CHAIRPERSON RIDDLE: Yes, just -- excuse me, Rose, just for a second. So everybody is on the same page, it's under Materials Committee. And then NL Categories tab.

PARTICIPANT: Thank you, Jim.

CHAIRPERSON RIDDLE: I had a feeling we weren't all on the same page just yet.

MEMBER KOENIG: All right.

CHAIRPERSON RIDDLE: Okay.

MEMBER KOENIG: Is everybody there? Okay.

So that is one change. I did go through the livestock.

I've asked Arthur to kind of consult with legal counsel about this kind of proposal that is on the table because one of the ways of getting the materials that we have approved to get within the OFPA categories is to be able to broaden the production aids category as it exists in the OFPA.

Now in OFPA, it says including and it gives examples for what including includes. And it says netting, tree wraps and seals, insect traps, sticky barriers, row covers, and equipment cleaners are what is listed. So our first question was posed was does including mean that we're stuck with just those? Or can we expand them?

And the assumption that this document was written was that there was room for an expansion. And that the production aid category is appropriate for substances that are active in, you know, usually manufactured products like pH adjusters or adjuvants.

1 But they may not specifically be spelled out in OFPA.
2 But the industry needs those to form an active role
3 in a manufactured product.
4 So I'd like to actually perhaps turn --
5 well, certainly if the Board has any questions on this
6 and then maybe we can have the NOP address the
7 questions regarding the document. Because I had asked
8 to legally look it over.
9 CHAIRPERSON RIDDLE: Well, first would you
10 or someone else move for its adoption?
11 MEMBER KOENIG: Well, I'll move for the
12 adoption of the document.
13 MEMBER SIEMON: And I'll second.
14 CHAIRPERSON RIDDLE: Okay. George
15 seconds. Rose moves and George seconds adoption of
16 the national list category recommendation.
17 Now, discussion? Yes, Gerald?
18 MEMBER DAVIS: Right along with what you
19 asked Arthur to evaluate for legal implications and so
20 forth is to me when you look at the production aid
21 category, not one example listed touches the crop.
22 And I see that as a potential problem equating these

other materials, the adjuvants, pH adjusters, and so on and so forth, that will actually touch the crop, contact the crop, being put in this.

I mean I don't disagree that we need this but I see that as I wonder what the answer is going to be about the legal implication.

MEMBER KOENIG: I spoke to one lawyer and, you know, and again, you know, there is going to be legal determinations. And that lawyer did not have, you know, references in front of that person to give me the exact answer. But in general, they felt that it could be expanded. But maybe Arthur can shed some light on it.

CHAIRPERSON RIDDLE: Arthur?

MR. NEAL: We will commit to taking this document and getting legal input from OGC. We've already begun drafting a document that addresses some of the concerns that NOP has.

Some of the concerns we expressed on the call last week. What is an active ingredient because the OFPA Section 6517 pretty much limits it to active ingredients used in production. Before -- then the

next paragraph it goes to EPA inerts. So it doesn't get into non-active ingredients.

MEMBER KOENIG: Yes but in OFPA, and I'll bring it up to you, there are sections of OFPA that state that all ingredients would have to be listed.

MR. NEAL: Right.

MEMBER KOENIG: So there's conflicts within OFPA.

MR. NEAL: We concur. However, there is one section that carves out or creates exemption categories although OFPA says all ingredients must be approved. So the question then how do you get other ingredients on to the list when it does not expressly create an exemption category for such types of substances that are not active? But these are questions that we have to get answered by OGC.

Another question that we're going to have concerning this, too, is some of the substances that have been linked or are included on the production aid category are used in -- sort of natural substances used as fertilizers. And the OFPA has a blanket restriction on fertilizers that contain synthetic

ingredients. So that's another question we've got to have answered.

So there are a lot of questions that have to be answered concerning this draft. But we thank you for the work.

So we're going to move forward with getting clarification from the lawyers.

CHAIRPERSON RIDDLE: And my concern was what you just raised there about the fertilizer language in OFPA. And that's not reflected in this draft. But it is certainly on your radar screen so to speak.

Andrea?

MEMBER CAROE: Well, I just have a question, Rosie, on two things that are listed in there: aquatic plant extracts and fish emulsions. All the rest in that list seem to be things that don't have a function on the crop. But if you could explain how those aquatic plant extracts and fish emulsions are used, I thought they had a direct --

MEMBER KOENIG: Well, wait. There is a category. I put them in two -- well, let's see what I

did. I'm not sure what you are --

MEMBER CAROE: I'm looking at the -- well, these aren't page numbered but the page that has the footnotes four, five, and six. And the paragraph just above it -- the text where you state all the production aid category. And you have aquatic plant extract and fish emulsions listed there.

The rest of them I kind of understand. They really don't have a function on the crop. They have a function on something that is used on the crop. But those two, unless I misunderstand how they're used, they appear to be --

MEMBER KOENIG: Well, what I'm saying is that right now -- and this is part of the confusion, I think, and this is my opinion and, you know, based on going through the minutes from past Boards -- and actually, Richard may be appropriate to bring up because there are folks that were involved in materials decision at that time.

But what I understood is when things were placed on, and there was annotations, that those annotations didn't specifically mean that all

manufacturing processes were allowed. They may have limited it to a certain pH adjuster. But that didn't mean that anything else that would be synthetic was all allowed.

My sense is that anything that was in a -- and, again, a lot of the problem comes into these like fish emulsions that, in fact, most of them are these extracted naturals and that's why we went back to that definition of synthetic. Because they are on the list as synthetics because of the way they are extracted. And what can be left in the presence of that liquid, you know.

And there may be some products that are natural and I'm not meaning those. I am saying those that where the extraction methods left either buffers or pH adjusters so that it could be a usable product on the farm, those were deemed synthetic. And in many cases, they were annotated to limit the types of, you know, pH adjusters that might be in there.

But in reality, if you had a production aids category -- and, you know, I'm not proposing this as this is our process, but what appears to be unclear

is that when those annotations are there, the NOP is interpreting them one way -- that it allows everything else but limits the way the pH can be adjusted.

And that's specified, I think, in the document where some of the confusion is on how the list has been interpreted in the past. So that's why it was in there because there may be production aids in -- okay, so actually the plant -- the aquatic plant extracts and fish emulsions are not processing aids but they may include processing aids which are pH adjusters, stabilizers, buffers --

MEMBER CAROE: Right.

MEMBER KOENIG: blah, blah, blah. And I just want to make it -- the only reason why aquatic plant extracts, you know, some of these I had to be a little bit creative because OFPA says fish emulsion. Aquatic plant extracts -- it is my understanding that they are not fish emulsions. They are aquatic plants.

So that's what I'm saying. I had to even stretch that category to include that. It doesn't fit.

MR. NEAL: And I think at one of the

meetings that we had last year or maybe the year before last, we had all come to concur that the way that some of the substances have been included on the list are wrong. And that aquatic plant extracts probably should not have been included on the list as a synthetic.

But the things that were included in aquatic plant extracts should have been on the list. And that's where the confusion arose. So -- but as a result of that listing and the questions that were coming from petitioners, we had to dig deeper in that now you have other questions concerning soil amendments and fertilizers whether or not they can even contain fillers.

And some of the, you know, some of these areas are lignin sulfonates. Where is the OFPA exemption category for floating agents and post-harvest handling? Plant growth regulators? So there are a lot of things that now, as the result of the questions, are going to have to be looked at very closely against the OFPA exemption category.

So it could have an impact on the current

listing of the national list. But we're going to go back, like we said, to the lawyers to get some input from them.

CHAIRPERSON RIDDLE: Okay. Did we receive any public comments on this? Do you know? Did you make note of any? Pardon?

MEMBER KOENIG: No, I think there was other -- oh, yes, actually Emily did.

PARTICIPANT: No, I didn't actually.

CHAIRPERSON RIDDLE: We had one comment as part of OTA's package of comments in support of the draft?

MEMBER KOENIG: That they supported the general --

CHAIRPERSON RIDDLE: Okay.

MEMBER KOENIG: -- I guess the draft. I mean the reorganization is for two purposes.

One, if it is reorganized this way, I think it will be less likely that the NOSB would get into trouble placing things incorrectly because it only allows you to place it under the OFPA category. And then you create these subcategories that spell out

what the uses are. And it should also eliminate some of the annotations perhaps.

CHAIRPERSON RIDDLE: Andrea?

MEMBER CAROE: Just one more question, Rosie. Do you envision then that these items would show up under this new section with an annotation to what they can be used for so sulfuric acid for the pH adjustment of aquatic plant extracts? Or is it going to be open ended that they can use that?

MEMBER KOENIG: Yes. And what I think would be easier and better for the industry, although again we'd have to do an analysis and probably want a technical review, but it seems to me that certain acids or pH adjusters could be broadly put in and listed. And then if there was some specific objection, you would annotate that.

But the idea of going through every single thing and figuring out if this pH adjuster -- I mean you know there may be certain reasons why a certain substance you wouldn't want to use as a pH adjuster in some kind of a product, you know, or maybe like one of the things that has come out was phosphoric acid

because it could act as a synthetic nutrient. But those are some of the controversies out there.

But I think in general it would be a lot easier just to have these are general -- these are things that you can use to adjust the pH so that we don't have those annotations on naturally occurring.

CHAIRPERSON RIDDLE: Okay. I do have one more question. I think it is probably for Arthur.

And that is, you know, if we adopt this and you'll certainly do the legal review of it and it moves forward, could this be incorporated in the revisions as part of the sunset? Or, you know, would this be a separate -- I mean this clearly would be a separate rule change. But could it happen at that time? Or would that complicate things?

What would you envision for moving it forward?

MR. NEAL: We will have to really consult with OGC on it. This is a pretty complicated matter.

CHAIRPERSON RIDDLE: Right.

MR. NEAL: And just like the moxydectin or well, whatever the substance is, I can't remember

which one it is. We find out that it is an antibiotic by structure. In the process, we're going to have to consult with OGC, you know, what do we do about it now considering that we've got this position concerning the use of antibiotics?

And now we've got the OFPA categories that we have to look at in light of sunset. So we have to consult with OGC.

CHAIRPERSON RIDDLE: Yes, okay. I understand.

Rose?

MEMBER KOENIG: I guess I have one fear. And maybe you've already thought about this but what I don't want you -- I would rather you present the question about production aids category to the lawyers first. And not say we've got these lists and they don't conform, you know because really if those production aids category do not work, then in terms of sunset, it really is not truthful for the Board to renew those as I can see it.

And that's the dilemma because if we are acknowledging that --

MR. NEAL: I wouldn't take this document and say to them let's use this to assess the situation that we are in. We're going to look at OFPA and we'll look at the categories. And then we're going to ask OGC what are our boundaries.

I don't know what their response may be. They may let us go through sunset and deal with this after the fact. They may not. I'm not sure. But we've really got to look at this. This is a pretty serious issue.

MEMBER KOENIG: And will we have -- because we may be considering -- because some of these substances may be one that technically there is no reason why we wouldn't expedite those. So it sounds like no matter how we vote in November, ultimately that's going to be decided.

I just don't know how we should deal with those in committee. Do you want us to identify those? Should we set those aside? What should we do?

MR. NEAL: What we were just talking about is that on those substances that are real clear cut -- and I think you already of that mind -- is that you go

ahead and you make your recommendations on those for sunset.

For those that there are considerable concerns about, you know, we just have to deal with those in the most expedient manner possible to make sure that we make the date. But we have to work closely together.

That will entail, you know, more conversations with particularly you and I, Rose, with these substances in the production aid category. Primarily the ones that you have identified here.

MEMBER KOENIG: Well, the ones I identified in the last document, I creatively kind of got them in on this one. So I will go back and take a very conservative approach, if somebody was to really just look at those categories as written, and I'll present the ones that I think don't fit with that very conservative approach.

MR. JONES: Yes, Rose. I think that would be a useful exercise. The point that Gerald raised earlier in this discussion is a valid one. And that is when you look at statutory construction, you have

to look at the context in which that list appears. And what we don't know is how far the term production aids can be interpreted, how expansive that term can be interpreted, given the context of the paragraph itself and what appears to be some clear limitations on the phrases that follow including, okay?

So the point that Gerald raised is valid. That's the kind of questioning that we are going to go to OGC with. It is, you know, really what are the limits of this term production aids given the context of its usage as seemingly an active synthetic ingredient.

I mean that seems to be the context that it flows out of. And then the limitations that Gerald has identified. So it's -- Arthur said it very well. It's a very complicated issue.

CHAIRPERSON RIDDLE: And just a final point, you know, in looking at the examples, though, of production aids, those are not necessarily active synthetic substance. You know tree wraps, netting, row covers. So it's got to be in the context, I think, of the examples given.

MR. JONES: Yes, one of the things I think you need to realize though, Jim, is that if you look at the context of the paragraph, it is a natural -- it is a very logical conclusion that all of those things that are listed contain active synthetic ingredients. In other words, a pheromone could be -- okay? So that's what I'm saying is that you can't ignore the context in which those exemptions get talked about because what you've got is an absolutely prohibition.

Then you've got what we call at the program doors being opened -- certain doors being opened. And you can't ignore the context in which those doors get opened, okay?

CHAIRPERSON RIDDLE: Okay. Andrea?

MEMBER CAROE: Just a quick question. Maybe I missed it in here but are you suggesting that a definition for production aid to be put into the regulation as well?

MEMBER KOENIG: No. It's in -- I'm not -- I mean it is OFPA. We're not -- we're seeking clarification on what is already in OFPA.

MEMBER CAROE: The definition for

production aid is in OFPA?

MEMBER KOENIG: Well, not the definition but it says including blah, blah, blah, blah, blah, blah, blah, blah, blah, blah. And that's the question. What is the legal ramifications of how that is written? How it appears in OFPA.

MEMBER CAROE: So are you opposed to creating a definition for production aid?

MEMBER KOENIG: I don't think we -- I'm not sure that's the next step. I mean what we're hoping to find out is the legal -- you know what the legal entities would say about that. I don't -- I mean -- you know and I hate to say it but as writing it, I realized that what we're creating is a catch all category in production aids.

But that's really up to the industry. I mean you know if there are restrictions in crops and in livestock with just the actives of those that are listed in OFPA, there are some real -- well, I don't want to say there's some real problems because there aren't that many that don't conform.

But I'm saying it does certainly limit

what types of materials that are potentially available. Now, for example, today the materials that have been posed to the Board fit into soaps. So I'm not saying -- I think that that is really the question. How far do you want to stretch production aids?

And I, in this exercise, there are disease control materials in crops such as like baking soda, I think it is sodium bicarbonate that don't -- well, actually I think I put that under a mineral. So I got it in.

But I'm just saying you have to do a lot of creative figuring. Sort of the way methionine was put under sulphur. It's the same thing. And I think that also may be stretching the intent. So it's a legal issue.

MR. NEAL: One more comment?

CHAIRPERSON RIDDLE: Yes, Arthur?

MR. NEAL: To show you how complex this is, for the longest, the industry has been of the mindset that the national list is not for formulated substances. And just to show you, if you turn to OFPA

6517, paragraph (C)(a)(b)(I) --

MEMBER KOENIG: Hold on a moment.

PARTICIPANT: Can you give that reference again?

MR. NEAL: 6517(C)(1)(b)(I) -- it says, and I'm not saying that you are wrong, but these are the questions that we've got to wrestle with. For the exemption categories it says these substance is used in production and contains an active synthetic ingredient in the following categories. So we've actually got a substance that we're looking at that contains an active synthetic ingredient in the following category.

So to me, it's depicting that -- I'm not saying that the substance is an active synthetic ingredient. But the substance contains an active synthetic ingredient.

So these are questions that we have got to wrestle with. Have we been doing it right or wrong?

CHAIRPERSON RIDDLE: Okay. Any further discussion?

(No response.)

CHAIRPERSON RIDDLE: Seeing none, we'll move to a vote. There have been no amendments to it so it is as presented by the committee and by Rose.

So I have Bea up first.

MEMBER JAMES: Yes.

CHAIRPERSON RIDDLE: Hugh?

MEMBER KARREMAN: Yes.

CHAIRPERSON RIDDLE: Michael?

MEMBER LACY: Yes.

CHAIRPERSON RIDDLE: Gerald?

MEMBER DAVIS: Could you clarify for me what the vote is?

CHAIRPERSON RIDDLE: Yes. Well, the vote is to submit the document as a recommendation to the program for the restructuring of the national list. I mean it's at the end of the narrative what the recommendation paragraph.

MEMBER DAVIS: Yes.

CHAIRPERSON RIDDLE: Okay. Was that an over-explanation. Okay, yes.

Nancy?

MEMBER OSTIGUY: Yes.

CHAIRPERSON RIDDLE: Julie?

MEMBER WEISMAN: Yes.

CHAIRPERSON RIDDLE: Andrea?

MEMBER CAROE: Yes.

CHAIRPERSON RIDDLE: Goldie?

SECRETARY CAUGHLAN: Yes.

CHAIRPERSON RIDDLE: Kevin?

VICE CHAIRPERSON O'RELL: Yes.

CHAIRPERSON RIDDLE: Dave?

MEMBER CARTER: Yes.

CHAIRPERSON RIDDLE: Rose?

MEMBER KOENIG: Yes.

CHAIRPERSON RIDDLE: George?

MEMBER SIEMON: Yes.

CHAIRPERSON RIDDLE: Chair votes yes. So we have 13 yes, zero no. And everyone is here.

And I really want to thank you. And Rose, I want to thank you for the work you did on this. You really took it on. That's a lot of time that is reflected in the document. And I think it certainly gives the program something to work with.

MEMBER KOENIG: You are welcome.

CHAIRPERSON RIDDLE: So thank you.

SECRETARY CAUGHLAN: And you have not had enough to do.

(Laughter.)

CHAIRPERSON RIDDLE: Well, you can check this off your list.

SECRETARY CAUGHLAN: It keeps you out of mischief.

CHAIRPERSON RIDDLE: Okay. It is eleven-thirty. And I've asked Nancy if she would be prepared to move a Crop Committee recommendation forward before lunch at her discretion.

So what have you come up with, Nancy? She agreed to do this.

MEMBER OSTIGUY: We have plenty of time.

Let's see.

CHAIRPERSON RIDDLE: Let's do something that we can wrap up that's fairly noncontroversial. Let Nancy --

MEMBER OSTIGUY: Let's go ahead and do the sucrose octanoate ester just because we've already done it once. And we might as well look to see what

we have again.

The petitioner --

CHAIRPERSON RIDDLE: Okay. Let's make sure everybody gets on the same page. Let's give us a chance since we're shifting gears so under Crops --

MEMBER OSTIGUY: Yes, CC-SOE Eval is the tab you are looking for.

CHAIRPERSON RIDDLE: Eval, right. Okay. Do you want to give a little background? Or you want to just move it and then --

MEMBER OSTIGUY: Well, I'll move it and then we can talk.

CHAIRPERSON RIDDLE: Okay.

MEMBER OSTIGUY: The motion is to approve sucrose octanoate esters for use in crops.

CHAIRPERSON RIDDLE: Is there a second?

MEMBER CAROE: I'll second.

CHAIRPERSON RIDDLE: Andrea seconds. Nancy moves, Andrea seconds to approve SOE for crops. No annotation recommended by committee, correct?

MEMBER OSTIGUY: No annotation.

CHAIRPERSON RIDDLE: Okay.

MEMBER OSTIGUY: The evaluation of the material is very similar to what we did for livestock. As I indicated, the material basically acts as a soap as much as we understand it, has no toxic breakdown products, is effective on soft-bodied insects, is on the rather innocuous side. But that, of course, is my opinion.

CHAIRPERSON RIDDLE: Okay. Any -- can you provide just a little background? The summary of the EPA registration for this use?

MEMBER OSTIGUY: EPA registration currently is for mites.

CHAIRPERSON RIDDLE: So it's the -- okay.

MEMBER OSTIGUY: And, you know, one of the other important EPA items which is sort of amusing to bring up is it is non-toxic to bees which is, of course, important if you are going to be applying any material to a crop.

CHAIRPERSON RIDDLE: Okay.

MEMBER OSTIGUY: It actually biodegrades rapidly, photo-biodegrades usually within one to two days.

CHAIRPERSON RIDDLE: Okay, any -- yes, Andrea?

MEMBER CAROE: It is registered in a wide range of crops?

MEMBER OSTIGUY: Yes. I don't remember right now all of the crops.

CHAIRPERSON RIDDLE: We might ask --

MEMBER OSTIGUY: The representative is here.

CHAIRPERSON RIDDLE: Petitioner is here.

MEMBER OSTIGUY: We can ask.

CHAIRPERSON RIDDLE: If you'd approach the --

MEMBER OSTIGUY: Tony?

CHAIRPERSON RIDDLE: -- mike and identify yourself. And then the question is what crops is it registered for?

MR. BARRINGTON: Thank you. Tony Barrington, the principle of AVA Chemical Ventures, the registrant. It's registered for -- I can't -- I'm not going to give you the whole list off the top of my head but a wide range of crops, fruit trees,

vegetables are the primary ones.

It's also got an exemption from tolerance for use on all food commodities. And it is also registered for mushrooms separately from crops based on the way EPA classifies registrations.

Offhand, I would say the crop list, there are about certainly 20 to 30 crops listed on the label as we speak, which I'm sure will add more.

MEMBER OSTIGUY: And one that is actually very difficult to work with is the thrips that it is effective on. In greenhouse situations, thrips can wipe out everything.

CHAIRPERSON RIDDLE: Okay. So it's not limited to mites?

MEMBER OSTIGUY: No, not limited to mites.

MR. BARRINGTON: I can clarify that. It's --

MEMBER OSTIGUY: Soft-bodied insects.

MR. BARRINGTON: -- soft-bodied insects including white flies, aphids, thrips, and a number of others.

CHAIRPERSON RIDDLE: Yes.

MR. BARRINGTON: So it is a fairly broad spectrum of insects and a large list of -- long list of crops on the current crop label.

CHAIRPERSON RIDDLE: Right. Thanks.

MR. BARRINGTON: Thank you.

CHAIRPERSON RIDDLE: Any other discussion? Yes, Rose?

MEMBER KOENIG: I just wanted to point out for the audience because I didn't -- I realized with this and the others that in past meetings, we've had more debate and, you know, conversation about materials. And one of the reasons that I think we've had a really smooth process was that the new contractors -- this is an example of some of the technical reviews that the new contractors are producing.

And I would like to say for both materials, they did an excellent job. The process really worked. There were some concerns that -- through the committees we voiced with the contractor who got us the information. So the process worked really well.

And the lack of discussion is not because we're complacent now and we're just adding things to the list. It's because we actually have gotten good products from our contractors.

And, you know, I'd like to commend NOP on really kind of getting that process right and making the process better.

MEMBER OSTIGUY: And on that same note, I'd like to commend the NOP on our evaluation document because it really does smooth this process. It gets all of the questions asked in advance.

And so then when we post the information for public comment, you have our responses to what we have to answer in order to be able to say yes or no, this material belongs on the list.

CHAIRPERSON RIDDLE: And while we're at it, I'd like to commend Nancy for taking the lead in filling out those forms for both of the committees on this substance, truly.

Any other comments?

MEMBER OSTIGUY: Thank you.

CHAIRPERSON RIDDLE: Any other thank yous

while our arms are bent backwards?

(No response.)

CHAIRPERSON RIDDLE: Okay. Seeing none, proceed to vote. And this is to approve SOE for crop use with no annotation.

Hugh is first.

MEMBER KARREMAN: Yes.

CHAIRPERSON RIDDLE: Michael?

MEMBER LACY: Yes.

CHAIRPERSON RIDDLE: Gerald?

MEMBER DAVIS: Yes.

CHAIRPERSON RIDDLE: Nancy?

MEMBER OSTIGUY: Yes.

CHAIRPERSON RIDDLE: Julie?

MEMBER WEISMAN: Yes.

CHAIRPERSON RIDDLE: Andrea?

MEMBER CAROE: Yes.

CHAIRPERSON RIDDLE: Goldie?

SECRETARY CAUGHLAN: Yes.

CHAIRPERSON RIDDLE: Kevin?

VICE CHAIRPERSON O'RELL: Yes.

CHAIRPERSON RIDDLE: Dave?

MEMBER CARTER: Yes.

CHAIRPERSON RIDDLE: Rose?

MEMBER KOENIG: Yes.

CHAIRPERSON RIDDLE: George?

MEMBER SIEMON: Yes.

CHAIRPERSON RIDDLE: Bea?

MEMBER JAMES: Yes.

CHAIRPERSON RIDDLE: Chair votes yes. We have 13 yes, zero no. And really one absence for the entire meeting. I stand technically corrected.

MEMBER OSTIGUY: Okay.

CHAIRPERSON RIDDLE: Well, we have some time. Is there another item --

MR. NEAL: Question, Jim.

CHAIRPERSON RIDDLE: -- that you'd like to bring forward before lunch?

MR. NEAL: Jim, I've got a question.

CHAIRPERSON RIDDLE: Yes?

MR. NEAL: A question on this substance.

CHAIRPERSON RIDDLE: Yes.

MR. NEAL: Considering that the crops list includes insecticidal soaps, do we want to list

sucrose octanoate esters on the national list positively? Or do we want to consider it already covered under the category insecticidal soaps? That's a question.

MEMBER KOENIG: What do you mean? It has to be on both, livestock and --

MEMBER OSTIGUY: Well, it already has to be livestock but the question really is on crops. Do we want to list it separately?

MR. JONES: Right. We've got a broad heading for insecticidal soaps.

MR. NEAL: That's the question.

CHAIRPERSON RIDDLE: Right. Well, my response is that for clarity of producers and certifiers, it certainly is better to list this particular item. It was petitioned. It has an EPA registration.

Emily has -- I recognize you from the audience, but please approach the mike and identify yourself.

MS. ROSEN: This is a new material. And I would recommend --

PARTICIPANT: Please identify yourself.

MS. ROSEN: Oh, sorry. Emily Brown Rosen, Organic Research Associates. This is a new material and it is kind of a hybrid soap oil. And I mean we actually reviewed it in an upcoming publication I have. It's very promising for white flies and other soft-bodied insects.

But since it is a sucrose ester-type of soap and the previous soaps that were reviewed in your previous TAP were all fatty acid -- potassium salts of fatty acids, they're really a different kind of soap.

And I think it would be beneficial to list them so we know we're not only talking about the old soaps.

MEMBER OSTIGUY: Yes. And I would agree with that because of its oil properties.

MS. ROSEN: Yes.

MEMBER OSTIGUY: It's hard to tell on some of the insects --

MS. ROSEN: Sometimes they are sold as oil --

MEMBER OSTIGUY: -- which one is working.

MS. ROSEN: -- soaps. They sort of categorize them as that. So --

CHAIRPERSON RIDDLE: Thanks for your input. Okay.

MEMBER OSTIGUY: Okay. Then let's go to the previous material, chitosan, also known as poly-D-glucosamine. And some of us may know of glucosamine from other activities since people do take it for arthritis.

The committee's recommendation was to add poly-D-glucosamine with the national list with no annotation.

CHAIRPERSON RIDDLE: Okay. Would you like to make that as a --

MEMBER OSTIGUY: That is a recommendation.

CHAIRPERSON RIDDLE: -- motion.

MEMBER OSTIGUY: Yes, motion. Excuse me.

MEMBER KOENIG: I'll second.

CHAIRPERSON RIDDLE: Okay. Nancy moves and Rose seconds.

MEMBER OSTIGUY: Oh, excuse me. There is an annotation. It wasn't written in two places. I'm

sorry. As an adjuvant only is the annotation.

CHAIRPERSON RIDDLE: Okay. So the complete motion is to approve chitosan to be placed on the national list for crop use with an annotation to read as an adjuvant only.

MEMBER OSTIGUY: Yes.

CHAIRPERSON RIDDLE: Okay. And that was moved by Nancy and seconded by Rose.

Discussion? Gerald?

MEMBER DAVIS: In the TAP review, it talked about the differences in rates of use as an adjuvant versus other uses, EPA-registered uses that non-organic crop practitioners would use this material as.

When we say that we're approving it as an adjuvant only, does that automatically restrict to only that low rate? Is that set in stone with label considerations? Or how do we ascertain whether that is truly the case?

CHAIRPERSON RIDDLE: Good question.

George?

MEMBER SIEMON: Same question. Can

someone support why there was an annotation versus none? Why the annotation?

MEMBER OSTIGUY: The annotation is because we did not want it to be used as an insecticide itself. So it's current -- excuse me -- yes, I'm sorry, it's a plant growth regulator. We did not want it to be used as a plant growth regulator, which it is in high quantities. But it is not in low quantities.

And so as an adjuvant, you would only use as much as necessary, which then necessitates that it is a small quantity that is not a plant growth regulator.

So that is how we were restricting quantity was for its use as an adjuvant produces that result.

MEMBER SIEMON: In my reading, it has antifungal, antibacterial functions. It is actually an approved feed additive. We can feed it to our animals. It's approved for human use. So when you eliminated the antifungal and antibacterial as well.

MEMBER OSTIGUY: Yes.

MEMBER SIEMON: Was that your intent?

MEMBER OSTIGUY: Yes.

MEMBER SIEMON: Because that's not a growth regulator, is it?

MEMBER OSTIGUY: No. No it is not. Well, yes, there are things -- it actually works as an antifungal because of its growth regulating ability.

CHAIRPERSON RIDDLE: Okay. We'll have Andrea and then back to you.

MEMBER CAROE: Just I have a question. In category two, number seven on the second page of the committee report, it seems like you are addressing alternative practices for those functional uses, not as an adjuvant. Because you talk about IPM practices. IPM practices wouldn't have anything to do with this as an adjuvant.

MEMBER OSTIGUY: Correct.

MEMBER CAROE: So I would suggest a correction to this report to reflect that yes or no, is there practices that would -- I think that was confusing to me because I looked at this and tried to figure out what we were considering this for. That indicates to me we are considering it for more of a

functional use other than as an adjuvant.

CHAIRPERSON RIDDLE: Okay. Could everybody -- could you point out exactly where you are at?

MEMBER CAROE: Category two, number seven.

CHAIRPERSON RIDDLE: Category two, number seven. And then to mark both yes and no. Is that what I'm hearing? I just want to hear what is being proposed. Is that correct?

MEMBER CAROE: Well, I am just looking for a correct because the comment section in there indicates alternative practices for functional uses it is not being considered for. Correct?

MEMBER KOENIG: Yes, but the thing is, again, it is inactive as an adjuvant. That's why we are suggesting it is in the production aids. But adjuvants are used in formulations to stick.

So the reason why we gave that as the alternatives was because IPM practices are alternatives to applying a pesticide. So the assumption is that the adjuvant is not going to be used in and of itself. It's used in a, you know,

formulated product as an adjuvant.

MEMBER CAROE: Right. I understand what you are saying. But I don't think that this question is reflected on the use of those functional ingredients. It's only in use of this product as an adjuvant.

So I think you've taken it one step further by talking about the use of the materials that it is included with. I mean I think specifically here we should be talking about is there -- are there practices -- could you apply these things without an adjuvant is, you know, would there be a reason why you wouldn't need to use this product?

MEMBER KOENIG: I mean it is more effective if you use an adjuvant.

MEMBER CAROE: Right. So there is no alternative. So what I'm suggesting is that this answer is no because it would not -- you don't have another way of applying the materials.

MEMBER OSTIGUY: But you might be able to use another adjuvant.

MEMBER CAROE: But this is about

practices. This one is about practices. This is not a substitute material. This is about practices instead of using the material. That's what the question says.

You know it would like if this was something that allowed for pelletizing a material and the answer is well, you don't have to pelletize it. You can apply it as a dust. Or you can apply it as a liquid.

MEMBER KOENIG: You're saying -- I see what you are saying. So if there is a way through physical force that you could spray a chemical on and stick it to a plant, that would be your alternate --

MEMBER CAROE: Right. So that's what this question should address. I mean it's not a change to --

MEMBER KOENIG: Right.

MEMBER CAROE: -- it's more of a procedural --

MEMBER KOENIG: So you're talking about --

MEMBER CAROE: -- change to how this document was filled out.

MEMBER KOENIG: Because we were looking at its secondary -- I mean there's -- you know we were looking at it more generally rather than specifically.

CHAIRPERSON RIDDLE: So an alternative practice would be to adjust the rate of spray or the nozzle?

MEMBER CAROE: I don't know the technical aspects of this material and how it is used.

CHAIRPERSON RIDDLE: But it would be to accomplish the function without the adjuvant --

MEMBER CAROE: Exactly, exactly.

CHAIRPERSON RIDDLE: Yes. That would be the practice.

MEMBER KOENIG: Well, there are definitely alternative adjuvants to this.

CHAIRPERSON RIDDLE: Yes. And that's under number four above. And that actually is a point I wanted to make is there are wholly natural substitutes available. And some of those are listed here. Why should we add this when there already are natural adjuvants available?

MEMBER DAVIS: What -- where are you

referring to?

CHAIRPERSON RIDDLE: Okay. Also on category two, item four.

MEMBER KOENIG: Is it possible -- can I make a motion to defer this until after lunch because I wasn't ready. I was going to look over -- I mean we made decisions and if you're going to start asking -- if people are getting into details, I think we need to --

MEMBER DAVIS: It is more complicated.

MEMBER KOENIG: -- I think we need to go back. I don't want to --

CHAIRPERSON RIDDLE: Sure.

MEMBER KOENIG: -- put the wrong answer out.

CHAIRPERSON RIDDLE: Okay. How to best handle this?

MEMBER KOENIG: Can we table it?

CHAIRPERSON RIDDLE: Yes.

PARTICIPANT: Does there have to be a motion on the floor?

CHAIRPERSON RIDDLE: There could be two

ways of approaching this as I see it. One is for the time being, for the makers of the original motion is just withdraw that. And then re-propose later when we bring it up. That would be the simplist.

MEMBER OSTIGUY: I withdraw the motion.

CHAIRPERSON RIDDLE: And the seconder was -- and you seconded it. And that's fine. Okay. So then we don't have to vote. You'll just bring it back up again.

So maybe that is a sign that it is lunch time. Good effort.

MEMBER WEISMAN: Question.

CHAIRPERSON RIDDLE: Yes, sorry.

MEMBER WEISMAN: So do we come back to this after lunch? Or do we go to --

CHAIRPERSON RIDDLE: Either way is fine. Okay. That's good to get that clear. Thanks.

MEMBER WEISMAN: Will that work for you two?

VICE CHAIRPERSON O'RELL: Can I ask for the Handling Committee to stay here for five minutes?

CHAIRPERSON RIDDLE: Okay. Kevin asks the

members of the Handling Committee to stay here for five minutes right now. And Livestock, we're going to eat together, okay, at the café upstairs.

All right. So we will reconvene at 1:00 p.m. and we'll start off with chitosan again.

(Whereupon, the foregoing matter went off the record at 11:52 a.m. to be reconvened in the afternoon at 1:11 p.m.)

CHAIRPERSON RIDDLE: Yes, we'll resume our discussion of chitosan. And we did withdraw the motion. So I guess if you would reintroduce, just to be official here. Just a second, Nancy.

Could you take your seats please? Thanks.

Okay, Nancy. Oh, and okay -- while they're talking -- I was asked to make an announcement. There will be an Accredited Certifier Association meeting immediately following the NOSB meeting today in the lobby lounge. And non-ACA members who are interested in joining may attend. That's it. Okay.

Yes, so if you could turn your tabs back to the chitosan again and you'll be ready. And

Nancy's ready. Ready now?

MEMBER OSTIGUY: Yes.

CHAIRPERSON RIDDLE: Okay. Go ahead.

MEMBER OSTIGUY: The Crops Committee recommends, and I move, that chitosan be added to the national list with the proposed annotation of as an adjuvant only.

CHAIRPERSON RIDDLE: Okay. Is there a second again?

SECRETARY CAUGHLAN: Yes, I'll second it.

CHAIRPERSON RIDDLE: Okay, Goldie, thank you.

Okay, Nancy moves, Goldie seconds to add chitosan to the national list in the crop section with the annotation as an adjuvant only.

Nancy?

MEMBER OSTIGUY: Okay. Back to the question about wholly natural substitute products. At least -- is Brian in the room?

CHAIRPERSON RIDDLE: Brian Baker?

MEMBER OSTIGUY: Yes. There he is.

CHAIRPERSON RIDDLE: Yes, he is around.

MEMBER OSTIGUY: I'll start with this. The first adjuvant that's listed as a wholly natural substitute, the lactose bentonite encasing, that is available.

And Brian could you tell us what is going on with the pine based? And any -- you know, help inform us?

CHAIRPERSON RIDDLE: And your name, for the record?

MR. BAKER: Brian Baker, Organic Materials Review Institute.

MEMBER OSTIGUY: Or is this something that you can't speak of?

MR. BAKER: Oh, yes, well, that hasn't stopped me before has it? So anyway, the pine tar derivatives are an example of why we needed the synthetic/non-synthetic guidance long ago. We thought heck, the stuff comes out of a pine tree. It just, you know, gets bubbled around and spit out. It's natural, right?

We made that decision in 1986 or 1987 when Lou Falcon of the University of California, Berkeley

approached California Certified Organic Farmers for a research variance to do with Codling Moth Granulosis Virus. It was the best ultraviolet inhibitor he had found.

So we said it's natural. It's okay under California Organic Foods Act. And we went on the next 10, 15 years not knowing about the polymerization steps that took place. Don't want to go into too much detail but they are clearly synthetic under the guidance that's out there.

And, you know, we were in communication with the company and communication with the EPA. The other thing is that these pine tar derivatives are not all on list four. They are in the process of being reclassified. The person you need to talk to at EPA about that is Kathy Boyle.

Four different pinalene derivatives have been reclassified from list three to list four in the past month. CAS numbers were published in the Federal Register. Whether or not those match commercial products that are currently on the market and have been accepted for a long time in organic production, I

can't say.

MEMBER OSTIGUY: So what we have then is actually only one wholly natural material that is available because the pine-based functional agents are not.

CHAIRPERSON RIDDLE: But you listed three others.

MEMBER OSTIGUY: No, that's all one.

MEMBER DAVIS: That's one product. It's a mixture.

MEMBER OSTIGUY: It's a mixture.

CHAIRPERSON RIDDLE: Oh.

MEMBER DAVIS: Yes, it's one product that is a mixture of three.

CHAIRPERSON RIDDLE: I see.

MEMBER DAVIS: I mean I can say the name of it if you want it. But, you know --

CHAIRPERSON RIDDLE: No need. Then I do have another question. And that is are inerts -- list four inerts available to use as adjuvants? They would still have to be on the list for that use. I mean on our national list to be used as an adjuvant because

that would not be --

MEMBER OSTIGUY: Correct.

CHAIRPERSON RIDDLE: -- being used as an inert in a pesticide formulation, right?

MEMBER OSTIGUY: Yes. So that is -- yes, that's my assumption also is that if it is a list four but not being used as an inert in a pesticide, then we would have to list it as a synthetic if it was, et cetera.

CHAIRPERSON RIDDLE: And Brian, you have --

MR. BAKER: All right. Again, speaking when maybe I should keep my mouth shut, historically tank mixes that have been made by operators, by pest control operators and by farmers, they have been viewed -- when tank mixes of EPA-registered actives are mixed with adjuvants that are on list four, that's been considered consistent with the list for inerts that is currently on the list.

That's been one way that we've been able to deal with all of these formulated products that have all list threes instead of buying -- you know,

the option for the farmers was to either go without something that was already being used but had a list three inert or to buy the technical and formulate one's own products on the farm that have all minimum risk inerts.

CHAIRPERSON RIDDLE: So I just want to make sure I'm clear, you said some of these pine tar derivatives have now been classified as EPA as list four inerts. And list fours have been allowed in tank mixes as adjuvants.

MR. BAKER: That's right. Our understanding from talking with our subscribing certifiers is that they have allowed the use of those adjuvants that are on EPA list four for farmers to make their own formulations on the farm using technicals that are either non-synthetic or synthetic and on the national list. And then EPA list four adjuvants.

CHAIRPERSON RIDDLE: Okay. And this is not on list four, the chitosan?

MR. BAKER: I don't know. I talked with the petitioner at break. I would defer to what he

said so you get it directly from him.

CHAIRPERSON RIDDLE: Is the petitioner in the room? Gerald?

MEMBER DAVIS: These pine-based materials, the list four thing is an issue but it comes back to if it is determined for organic certification purposes, if they are synthetic, then they would have to be re-petitioned wouldn't they? Because now they are allowed -- that would be an example of good material that has to be sunsetted out as it stands now and re-petitioned? Because it's not a natural anymore.

MEMBER KOENIG: I'm sorry. What was the question?

MEMBER DAVIS: The pine-based adjuvants, which would be an option supposedly to this chitosan that we're considering, before they could be used again now that it has been determined, you know, probably that they are synthetic, they would have to -- they were added to the list before because they were assumed to be a natural, but now that they are a synthetic, they would have to be re-petitioned or

something to get on the list, wouldn't they?

MEMBER KOENIG: I mean I guess the way I looked at maybe Brian, adjuvants have to be specific. They are registered with EPA, correct? If it is labeled an adjuvant?

MR. BAKER: No, they're not. Adjuvants are not registered with U.S. EPA. They are registered with Cal. EPA and also the State of Florida requires registration of adjuvants. But they are regulated at the state level and generally most states leave them unregulated.

MEMBER KOENIG: Okay. So -- and then you are saying that EPA, if they formulate -- if they are on list four, they are within formulations that already exist in pesticides. So they would, in a pesticide formulation according to the reg, they would be allowed as inerts.

MR. BAKER: That's correct.

MEMBER KOENIG: But -- and what were you saying? I wasn't sure. What EPA's view of it is that if they are on list four, they can be used as adjuvants? I didn't understand that part.

MR. BAKER: It's OMRI's opinion and it is an opinion shared by a number of certifiers out there, we have provided our generic materials list to the National Organic Program and this is one of many other issues that we've presented to the NOP for discussion.

The question of whether for use with an EPA-registered pesticide, it's not necessarily limited to formulated products only. And so one could take a technical-grade active that is NOP compliant and is also EPA registered and blend with it, on the farm, a list four adjuvant.

And one would be using with an active that is NOP compliant an inert ingredient that is prepared there right on the farm.

CHAIRPERSON RIDDLE: Regardless of whether it is synthetic or natural?

MR. BAKER: That's correct.

CHAIRPERSON RIDDLE: Right.

MR. BAKER: Yes. And so it doesn't seem to differentiate whether that mixing is done at an EPA-registered facility or it is done on the farm. But it has to be with an EPA-registered active

substance.

MEMBER KOENIG: If the petitioner --

CHAIRPERSON RIDDLE: I asked if the petitioner is in the room and --

MEMBER KOENIG: There are a few extra people.

CHAIRPERSON RIDDLE: -- and no response.

Arthur has a comment?

MR. NEAL: I don't know if I'm clear on all the issues. Based on the information that I think I recall, this particular substance poly-D-glucosamine is considered an active ingredient by EPA, right? As a result, under our regulations, it would not allow it to be considered an inert. Therefore, it would have to be on the national list to be used in combination with another active. Am I right?

MEMBER KOENIG: Although we still have it listed as production aid category. But what I hear you saying is that the active role is as an adjuvant.

MR. NEAL: Right. I'm asking for clarification.

MEMBER KOENIG: Oh, all right. I thought

you were making a statement.

MR. NEAL: I mean I think -- I'm just trying to think through the regs as they are set up. And inerts, EPA list four is set up as inerts to be used in conjunction with a non-synthetic or synthetic active that is on the national list.

And if this is not considered to be an inert in the capacity that it is going to be used, and it is an active, then we have to treat it as an active as it was petitioned.

MEMBER OSTIGUY: Arthur, I have a question.

MR. NEAL: Yes?

MEMBER OSTIGUY: A good number of the inerts are actually active. And it is only the circumstances of the formulation that classifies that material as an inactive.

MR. NEAL: Yes.

MEMBER OSTIGUY: And I don't know if we can hang our hat on that definition then because inerts aren't always inert.

MR. NEAL: True. But in this capacity,

how does it function?

MEMBER OSTIGUY: Well, no, no. I'm talking generically.

MR. NEAL: No, generically we do understand that the circumstances impact the performance of a substance. And all inerts that appear on EPA's list four are not always active in a non-active capacity.

MEMBER OSTIGUY: Okay. So then if we were going to be evaluating a material that its use was going to be as an inert, then we would not have to evaluate it if it was a list four? Okay. I'm just trying to clarify how we handle this.

MR. NEAL: And if I'm not mistaken, this particular petitioned use has an EPA-registered active ingredient use.

MEMBER OSTIGUY: Oh, yes.

CHAIRPERSON RIDDLE: Myself, the other problem I see with the annotation is kind of an inspector's nightmare. When it is a registered active under EPA but we are putting a restriction only as an adjuvant, so if it gets approved, then it is okay to

have on the farm and have listed in the plan and what the inspector then has to verify is rate of application on every use to verify that it is only being used as a adjuvant.

MR. BAKER: That's a problem because that's different than just checking that the substance is approved but you also have to check its use when it could easily be abused, I guess. So in other words, they could be used on a farm that has multiple crops. They could not use it on most of the crops and be putting on way too high of a concentration to get the other benefits of the active. And the inspector would have no way to really determine that unless --

CHAIRPERSON RIDDLE: Yes. I mean what level constitutes use as an adjuvant versus use as an active? Is there a threshold? And is it dependent upon crop, insect, weather, all the variables?

Nancy?

MEMBER OSTIGUY: I'm going to make a motion to delete the annotation.

CHAIRPERSON RIDDLE: Is there a second?

(No response.)

CHAIRPERSON RIDDLE: Hearing none -- good try. No.

Andrea, and then Julie.

MEMBER CAROE: I hear what you are saying but we're dealing with split operations, too. And they're going to have a multitude of things that they'll use on conventional crops. So I mean I don't understand. I mean it's not like we're going to solve that problem. This product could already be there. A lot of these farms are not fully organic.

So, you know, it may take the edge off but it is not going to solve the problem if we worry about that issue with the inspector. Because products that are prohibited in organic production very well may end up in the storage shed of an operation that is doing split operation work.

CHAIRPERSON RIDDLE: I understand that.

MEMBER CAROE: I'm just pointing out that, you know, you have to open your mind to the fact that -- it is an issue but it is not an issue that can completely be solved anyway.

CHAIRPERSON RIDDLE: Yes. But it is

actually an issue that is being created as a problem. I mean it is a new problem that is being added. But that's just my simple way of looking at it.

Julie?

MEMBER WEISMAN: What is the worst case scenario if the annotation is removed and people can use it at whatever rate they want? Do we know like --

CHAIRPERSON RIDDLE: Okay, Rose respond.

MEMBER KOENIG: Well, because specifically the TAP dealt with the specific uses as an adjuvant. And because it is a registered pesticide that is used as a plant growth enhancer and a plant defense booster, we really didn't have the technical information provided. I mean that was not -- but -- so basically that's it.

I mean the one thing that I did want to point out in the petition that according to the TAP is they wanted to use this in a mixture with just copper to really see the effectiveness on late blight in potatoes. So they have a really -- and I -- which was not clear to me as if was -- it almost sounded like they wanted to test it to see if it would work in

organic systems.

You know if the petitioner was here, we could find out was it their intent down the road to look at other applications. But it was pretty specific. So --

CHAIRPERSON RIDDLE: Arthur, did you have a comment? I saw your hand a moment ago.

MR. NEAL: No, I pretty much had a question. And that was whether or not the other registered -- was it registered for other uses? I can't remember -- I can't recall if EPA had it registered for uses other than an adjuvant.

MEMBER KOENIG: Yes, that's what I just said. Yes.

MR. NEAL: It is registered for use --

MEMBER KOENIG: Well, it says it in the TAP that it is a registered pesticide that is used in crop production as a plant growth enhancer and a plant defense booster.

Target tests included early and late blight, downy and parity mildew and grain mold. They're all fungal. So it's pretty much a fungicide.

CHAIRPERSON RIDDLE: Okay. And, you know, I just want to be clear that in my line of questioning, I'm not opposed to it. I just see some problems verifying compliance with the annotation. And I'm always leery about adding a synthetic when we already have naturals available to us. So --

Jerry?

MEMBER DAVIS: We have -- this TAP -- we have -- or actually on the only product that is listed as a sticker is a combination of the bentonite casing and lactose, which is a white powder that renders it impossible to use on any crops that can't tolerate a white residue.

Our farm has tested this material and it is problematic. It's not something we could use because it sticks and it stays. And it's white. It is innocuous materials but you don't want that on vegetables --

CHAIRPERSON RIDDLE: Sure.

MEMBER DAVIS: -- for example.

CHAIRPERSON RIDDLE: Andrea?

MEMBER CAROE: Well, I mean I think that

should be noted in the report then because then it is -- there isn't a substitute. There's only a substitute for some uses and not all uses. It's apparently not available for all crops. And I don't know if this is consistent with all materials -- all actives it might be used with, the alternative I mean.

If that is included, I mean I think we can move ahead pretty confidently that this is a material that is needed. And then based on the other criteria that we've reviewed, that it is consistent with organic practices. And vote on it.

CHAIRPERSON RIDDLE: Okay. Jerry?

MEMBER DAVIS: From my point of view, using this as an adjuvant, the only other option is the one material that for many crops is not an option. It doesn't matter on citrus or something where eventually it would probably be able to be washed off and things like that. Or portions of the crop where you don't sell the part of the plant that has had this material applied to it.

So for many crops, the casing and bentonite combination material is not an option. And

the pine-based materials, it looks like they're going to be determined as synthetics. And they are in the same category as this.

There are effectively no naturals other than the one that is rendered ineffective because of its residue nature.

CHAIRPERSON RIDDLE: So I think that is valuable information. And you'll amend the report before it is submitted to reflect that? Thanks, Nancy.

Okay. Any other comments? Oh, Bea?

MEMBER JAMES: A friendly amendment to category three, point number two, third sentence, removal of the word if. I think it doesn't need to be in there. It got in there by mistake.

CHAIRPERSON RIDDLE: Pardon? Oh, yes. Okay. So you're saying that sentence as an adjuvant, it is expected to reduce the number if and quantity --

MEMBER JAMES: Remove the word if, yes.

CHAIRPERSON RIDDLE: Yes -- number and quantity by application of copper sulfate. I think maybe it is number of, isn't it?

MEMBER OSTIGUY: I'm still not seeing that.

CHAIRPERSON RIDDLE: Okay. Category three, item two --

MEMBER OSTIGUY: Third sentence? Documentation?

CHAIRPERSON RIDDLE: Under Documentation. Can you find the sentence?

MEMBER OSTIGUY: Number of.

CHAIRPERSON RIDDLE: Number of, yes. Okay.

All right. Anything else on this?

MEMBER OSTIGUY: You accepted the amendment, right?

CHAIRPERSON RIDDLE: Yes. That was just a typo.

Okay. We're ready to vote. And this is to approve chitosan for addition to the national list in the crop section with the annotation as an adjuvant only. So we will start -- is there a question? Confusion? Nothing? Good.

PARTICIPANT: Always confusion.

CHAIRPERSON RIDDLE: That's not a good question to ask.

(Laughter.)

CHAIRPERSON RIDDLE: We will start with Michael.

MEMBER LACY: Yes.

CHAIRPERSON RIDDLE: Gerald?

MEMBER DAVIS: Yes.

CHAIRPERSON RIDDLE: Nancy?

MEMBER OSTIGUY: Yes.

CHAIRPERSON RIDDLE: Julie?

MEMBER WEISMAN: Yes.

CHAIRPERSON RIDDLE: Goldie? I mean Andrea?

MEMBER CAROE: Yes.

CHAIRPERSON RIDDLE: Goldie?

SECRETARY CAUGHLAN: Yes.

CHAIRPERSON RIDDLE: Kevin?

VICE CHAIRPERSON O'RELL: Yes.

CHAIRPERSON RIDDLE: Dave?

MEMBER CARTER: Yes.

CHAIRPERSON RIDDLE: Rose?

MEMBER KOENIG: Yes.

CHAIRPERSON RIDDLE: George?

MEMBER SIEMON: Yes.

CHAIRPERSON RIDDLE: Bea?

MEMBER JAMES: Yes.

CHAIRPERSON RIDDLE: Hugh?

MEMBER KARREMAN: Yes.

CHAIRPERSON RIDDLE: Chair votes yes. So we have 13 yes, zero no. And one absent.

Okay. Thanks for filling in there Nancy with the Crops. And we'll go back to Livestock now. Are you ready George?

MEMBER SIEMON: Yes, I'm ready.

CHAIRPERSON RIDDLE: All right.

MEMBER SIEMON: First of all, I'm going to try to use the PowerPoint now for some small changes we have in the guidance document. So I'm going to set that up. But we have been having some discussions about the rule changes. And Hugh was going to lead that while I set this up I hope.

MEMBER KARREMAN: Yes. Since the Livestock Committee needs to rework the two rule

changes we submitted back in March -- that's what Keith mentioned we have to do -- it's coming back to us to work on. And taking into account the public comment and input, the Livestock Committee is proposing a rule change at 205.239(a)(2), not to be voted on today. It's just we're going to be working on it back and forth with the NOP.

But at 205.239(a)(2), to reflect the public input, it seems that raising is a prominent and one of the most distinctive visible features of organic dairy farming -- 205.239(a)(2), we would propose that it should say ruminants over six months of age shall graze growing pasture no less than 120 days per year.

And we're going to be working on that, I guess, in conference calls and whatnot with the NOP and hopefully have some action item at our -- probably meeting in March I guess it would be. Unless November but whatever. That's what I wanted to say.

CHAIRPERSON RIDDLE: Yes. And wouldn't the committee also be considering the additional text that was sent back to us, the stage of life change --

MEMBER KARREMAN: Right.

CHAIRPERSON RIDDLE: -- as part of the package?

MEMBER KARREMAN: Right. Absolutely. The stage of life we have to reconsider. But --

CHAIRPERSON RIDDLE: Yes.

MEMBER KARREMAN: -- right at that 205.239(a)(2), that was what was sent back to us also.

CHAIRPERSON RIDDLE: Yes.

MEMBER KARREMAN: That was one of the two points.

CHAIRPERSON RIDDLE: Yes. Okay. Thanks for that briefing there.

And now George, are you ready for what we are actually considering as an action item?

MEMBER SIEMON: Exactly. So unfortunately I put up there -- my computer is stupid. Instead of tracking changes, it adds all those boxes to the side. So I've elected to make the blue what we're deleting. So I apologize. I couldn't get the strikethrough. And the red is what we're replacing it with.

More or less what we've done is replace

all the shalls with should. There was four shalls. We put should in.

PARTICIPANT: You missed one.

MEMBER SIEMON: Well, I could have missed one.

(Laughter.)

MEMBER SIEMON: Where at? All right. There I missed one. That's fine. Just take it out. Anyway, I'm sorry the track changes didn't work.

And then we took from the input we got, we added the significant portion of the -- sorry, I hate those little boxes -- anyway, let's keep to the gist of it. A significant portion of the last feeding requirements, which we had originally and we replaced with the 30 percent, putting in there just reemphasizing the 30 percent. And the committee agreed to the input we got there.

So it says both significant portion and not less than 30 percent now. And then added per year after 120 days, which is a little bit redundant but it was felt that that was needed to make sure people didn't read it on some other context of the growing

season, which is a year -- one growing season to me.

But anyway, that is the other addition. So --

CHAIRPERSON RIDDLE: Yes.

MEMBER SIEMON: -- I think those -- and then we made maximize into optimize, which we had talked about before. And we couldn't remember why we didn't have optimize in the final draft because we thought that was what our objective was.

So those are the changes here. Now I have some more changes in the next paragraph but let see if there is any discussion on these before we move forward.

CHAIRPERSON RIDDLE: Sure.

MEMBER SIEMON: Or do we need to make a motion?

CHAIRPERSON RIDDLE: Yes, that would be good. Yes, we don't even have it on the floor yet.

MEMBER SIEMON: I'm sorry.

CHAIRPERSON RIDDLE: So --

MEMBER SIEMON: I would like to move that we adopt this.

CHAIRPERSON RIDDLE: Okay.

MEMBER KARREMAN: I second that.

CHAIRPERSON RIDDLE: Okay. George moves and Hugh seconds to adopt the pasture guidance recommendation, as amended --

MEMBER SIEMON: As amended.

CHAIRPERSON RIDDLE: -- brought forth by the Livestock Committee.

MEMBER SIEMON: Right.

CHAIRPERSON RIDDLE: Okay.

MEMBER SIEMON: So should and shall was related to the guidance versus a requirement.

CHAIRPERSON RIDDLE: Yes.

MEMBER SIEMON: And the other things are just refinements, you know maximize -- some were feared that everybody would have to put all their land in pasture. So optimize means, of course, in relationship to the number of animals you have, et cetera, et cetera. So I think they are all pretty small adjustments.

CHAIRPERSON RIDDLE: Any other discussion from Board members? Questions? Concerns? Comments?

(No response.)

CHAIRPERSON RIDDLE: I think it's pretty clear. Oh, Jerry?

MEMBER DAVIS: I wasn't quite sure yet, does that allow an operator to not follow these guidelines with no penalty?

MEMBER SIEMON: The guidelines are a map to where we -- kind of the path we think you should go on. They're not a requirement. You could go on a different path. And that's why should and shall -- should seemed to be the better approach.

CHAIRPERSON RIDDLE: Yes. And a penalty would really apply if you violate the standards. This is a way to achieve compliance with the standards but there may be alternative ways as typical for guidance.

And I think, you know, the Committee will be proposing some enforceable rule change at a future meeting.

MEMBER SIEMON: Okay.

CHAIRPERSON RIDDLE: Hugh?

MEMBER KARREMAN: To answer your question, Gerald, the rule change that I had mentioned when

George was setting up, that will be the regulation in black and white. This kind of colors it in, okay? So you can't have a guidance without a regulation for it. Isn't that correct? That's what I'm understanding.

CHAIRPERSON RIDDLE: Well, right. But this is also just guidance on our understanding of the existing regulation.

MEMBER KARREMAN: Absolutely.

CHAIRPERSON RIDDLE: Right.

MEMBER KARREMAN: Right.

CHAIRPERSON RIDDLE: But it in and of itself is not enforceable.

MEMBER KARREMAN: Right.

CHAIRPERSON RIDDLE: We're looking to propose recommendations to strengthen the enforceability of the regulation, too.

MEMBER KARREMAN: Yes.

CHAIRPERSON RIDDLE: Andrea?

MEMBER CAROE: My question on this -- it is very specific with, you know, 30 percent dry matter and 120 days. Based on the fact that certifiers can only ask questions as they relate to the standard and

this is not the standard, are they going to be able to ask for this information?

This is not part of the regulation. This is guidance. So certifiers legitimately under their operation can't ask for this information. It can be provided but --

MEMBER SIEMON: They need to see that they are reaching to the same goal that this points to. Whether it is asking these questions or different questions --

MEMBER CAROE: Right.

MEMBER SIEMON: -- this is the goal. This is the path that we're saying --

MEMBER CAROE: I understand that. But you can't use these as -- if somebody is not meeting 30 percent, a certifier cannot not certify them because this is --

MEMBER SIEMON: Right.

MEMBER CAROE: And they can't make it part of their criteria for certification.

MEMBER SIEMON: But they need to find like criteria that defines pasture like this. That's what

the guidance documents are. This is one path to get there. You can use another path to get there.

MEMBER CAROE: They can ask questions about pasture but not these specific. Is --

PARTICIPANT: They could.

MEMBER SIEMON: They could.

MEMBER CAROE: I ask for the program to answer this because I'm not sure whether the certifiers can ask for this specific information or not.

CHAIRPERSON RIDDLE: Is there a response yet?

MEMBER CAROE: Based on where it is, where it sits. And what kind of --

CHAIRPERSON RIDDLE: Just to clarify your question, you're really talking about those five items that the organic system plan should describe.

MEMBER CAROE: Right, right.

CHAIRPERSON RIDDLE: The amount of pasture per animal, the amount of time, et cetera.

MEMBER CAROE: Yes, this shouldn't be on a certifier's checklist to go out there and look for

these items --

CHAIRPERSON RIDDLE: No.

MEMBER CAROE: -- because it is not part of the regulation. It's guidance.

Now this is great guidance for a producer to meet the requirements for a pasture. But it is not the requirements for pasture.

CHAIRPERSON RIDDLE: Right. But as far as the information requested by a certifier on an organic system plan, I look at those five items and those are all relevant pieces of information for compliance with the existing standard --

MEMBER SIEMON: Yes.

CHAIRPERSON RIDDLE: -- that allows a certifier to assess compliance once you know how many animals, how much pasture per animal, the amount of time, what criteria for temporary confinement, et cetera. Those are already relevant for assessing compliance.

MEMBER SIEMON: I would agree with that, too.

CHAIRPERSON RIDDLE: Yes. Okay. Thanks.

That makes us all feel cooler for the moment.

Okay, Nancy?

MEMBER OSTIGUY: Andrea, I think -- well first off, this is guidance. So no, they cannot hold an operator to these exact questions. But it does provide information that the certifier might use. They might use something different. That's all it is for.

MEMBER CAROE: I'm just making that point, you know, because we've been talking about the inspectors going out and verifying these amounts. But it can't be part of the criteria for the certifier because it's not in the reg.

CHAIRPERSON RIDDLE: Okay. Any other comments?

(No response.)

CHAIRPERSON RIDDLE: All right. If we can scroll on down.

MEMBER SIEMON: And then we look at temporary confinement, we got some feedback looking for more specificity -- a word I can't say -- so we looked through this and the only changes we made were

to make the lead line, instead of being a plural into a singular line. So instead of when ruminant livestock are denied to when a ruminant is denied pasture.

So, again, we were trying to get this to be individual livestock -- individual animal and not something you would do, for example, on a stage of production. Oh, I'll keep this whole group in at this stage. This is more so that each -- temporary confinement relates to each individual animal.

And then the last piece was because it was a guidance document, the committee felt that the word only was too prescriptive and should be broader than that. So they wanted to take the word only out.

Is that correct?

CHAIRPERSON RIDDLE: That's correct, yes. And actually there is one more shall in the paragraph --

MEMBER SIEMON: There it is.

CHAIRPERSON RIDDLE: -- the top paragraph, the second to last line -- all instances --

MEMBER SIEMON: The three shalls, oh boy.

CHAIRPERSON RIDDLE: Yes, should be --

MEMBER SIEMON: Nobody mentioned those shalls, all right.

CHAIRPERSON RIDDLE: Oh, there's more than one? Oh, yes. There's another one.

MEMBER SIEMON: I see two so far.

PARTICIPANT: There are three of them.

MEMBER SIEMON: Three?

CHAIRPERSON RIDDLE: You should have done a word search.

MEMBER SIEMON: Yes, word search.

PARTICIPANT: Second to last.

PARTICIPANT: In no case should --

MEMBER SIEMON: Yes, there's three. Okay, that's the end of the changes we made. Otherwise, the document stands as it was put forward. Sorry about the -- okay.

CHAIRPERSON RIDDLE: So any further discussion?

(No response.)

CHAIRPERSON RIDDLE: Did you catch all those shalls to shoulds or? Yes.

MEMBER SIEMON: Everybody has got it.

CHAIRPERSON RIDDLE: All right. I think people get the drift anyway just to be clear what we will be voting on here. Okay?

MEMBER SIEMON: Okay. Any other discussion?

(No response.)

CHAIRPERSON RIDDLE: No other discussion.

MEMBER SIEMON: Well, then I'd say we call the question.

CHAIRPERSON RIDDLE: Yes. We're starting at the top here again. And that would be Jerry.

MEMBER DAVIS: Yes.

CHAIRPERSON RIDDLE: Nancy?

MEMBER OSTIGUY: Yes.

CHAIRPERSON RIDDLE: Julie?

MEMBER WEISMAN: Yes.

CHAIRPERSON RIDDLE: Andrea?

MEMBER CAROE: Yes.

CHAIRPERSON RIDDLE: Goldie?

SECRETARY CAUGHLAN: Yes.

CHAIRPERSON RIDDLE: Kevin?

VICE CHAIRPERSON O'RELL: Yes.

CHAIRPERSON RIDDLE: Dave?

MEMBER CARTER: Yes.

CHAIRPERSON RIDDLE: Rose?

MEMBER KOENIG: Yes.

CHAIRPERSON RIDDLE: George?

MEMBER SIEMON: Yes.

CHAIRPERSON RIDDLE: Bea?

MEMBER JAMES: Yes.

CHAIRPERSON RIDDLE: Hugh?

MEMBER KARREMAN: Yes.

CHAIRPERSON RIDDLE: Michael?

MEMBER LACY: Yes.

CHAIRPERSON RIDDLE: And I vote yes. So we have 13 yes, zero no, one absent.

MEMBER SIEMON: And that's all that I had.

CHAIRPERSON RIDDLE: Okay.

MEMBER SIEMON: I'm done with the Livestock Committee.

CHAIRPERSON RIDDLE: Well, thank you.

Where are we? Back to Materials. And so --

MEMBER SIEMON: Synthetic versus Non-Synthetic.

CHAIRPERSON RIDDLE: Okay. Synthetic versus Non-Synthetic.

MEMBER SIEMON: We did the national list category, right?

CHAIRPERSON RIDDLE: Yes.

MEMBER SIEMON: We completed that.

CHAIRPERSON RIDDLE: We did the national list category.

So, Rose, are you ready to -- if you need to have a conversation, if you could please take it outside or give it just a moment for the rumble to die down.

MEMBER KOENIG: Okay. On the document on page two, I would -- do you want me just to --

CHAIRPERSON RIDDLE: Okay. Let help us find it again.

MEMBER KOENIG: Oh, I'm sorry. Tab --

CHAIRPERSON RIDDLE: Materials Committee.

MEMBER KOENIG: -- Syn versus Non-Syn.

CHAIRPERSON RIDDLE: Syn, Non-Syn.

MEMBER KOENIG: Okay. I couldn't get the two committees together that were the original ones --

CHAIRPERSON RIDDLE: I'm sorry. I can't hear you.

MEMBER KOENIG: Syn versus Non-Syn.

CHAIRPERSON RIDDLE: Yes.

MEMBER KOENIG: Okay.

(Laughter.)

CHAIRPERSON RIDDLE: Would you say that again? I really like it when you say that.

(Laughter.)

MEMBER KOENIG: Okay. So I couldn't get both -- since it really was a document by both committees and people were kind of in and out of different meetings, we did not get a chance to meet on, you know, this draft.

I have a couple of friendly amendments to add. And then --

CHAIRPERSON RIDDLE: Okay.

MEMBER KOENIG: -- so I'd like to just modify it with a couple of friendly amendments and then maybe move it to the floor.

PARTICIPANT: Don't we need to get it on the floor?

MEMBER KOENIG: Yes.

CHAIRPERSON RIDDLE: Yes, you should.

MEMBER KOENIG: Okay. All right. I'll submit it as a recommendation.

CHAIRPERSON RIDDLE: Okay. Rose moves.

VICE CHAIRPERSON O'RELL: Second.

CHAIRPERSON RIDDLE: Kevin seconds. Since it is a joint committee, we'll get the chairs of both on record. Kevin seconds approval of the synthetic, non-synthetic recommendation. Okay?

MEMBER KOENIG: Okay. So what I'd like to -- on page two under formulation or manufacturing shall be understood to mean, I'd like to accept the recommendations of the OTA document where -- I guess it's one, two, three, four, the fifth sentence. Basically wherever it says of food in these two sections, these two paragraphs, the intent is to change that to of an agricultural product by handling operation or food.

So in other words -- and their comment was

saying that food was not defined in the regs but agricultural products are. And handling are.

So it just adds a reference to the reg. So basically keeping food in but describing it a little bit more.

CHAIRPERSON RIDDLE: Okay. So could you be precise since we don't have it up on the screen?

MEMBER KOENIG: Okay. Formulation or manufacturing as defined in this section is not intended to address the processing of an agricultural product by a handling operation or food.

It doesn't change the intent. It just clarifies that.

Okay and then in the next paragraph in the second sentence --

CHAIRPERSON RIDDLE: Okay. Excuse me. Just slow down.

MEMBER KOENIG: Okay.

CHAIRPERSON RIDDLE: I just want to make sure everybody has it right now. And you would be inserting an agricultural product by a handling operation between processing and of food.

MEMBER KOENIG: Yes, right. And then or food.

CHAIRPERSON RIDDLE: What?

MEMBER KOENIG: Or food.

PARTICIPANT: Say it again.

PARTICIPANT: Say it again.

MEMBER KOENIG: Okay. After the of, okay, an agricultural product by a handling operation or food.

CHAIRPERSON RIDDLE: Okay. All right. Everyone have that? Does Kevin accept that as the seconder?

VICE CHAIRPERSON O'RELL: I'll accept it now for discussion.

CHAIRPERSON RIDDLE: Okay. All right. Okay. I think we're all caught up now.

Rose?

MEMBER KOENIG: Okay. And the same thing, in the second paragraph, the second sentence after the 205.601-606 reference, processing of an agricultural product by a handling operation or food.

And let me know when you are ready again.

CHAIRPERSON RIDDLE: Okay.

MEMBER CARTER: Just grammatically, it would read better if we said processing of food or an agricultural product by handling operation.

MEMBER KOENIG: Okay.

MEMBER CARTER: Because the way it's in there, it sounds like you are processing an agricultural product by food.

MEMBER KOENIG: Okay. Well, that is what their -- I mean I didn't have time -- I looked at kind of what -- I mean the intent that I understand but I guess it should have been proposed as -- that's a --

CHAIRPERSON RIDDLE: Okay.

PARTICIPANT: Can you say that again, Dave?

MEMBER KOENIG: Yes, why don't you?

MEMBER CARTER: Well, just it should be processing of food or an agricultural product by a handling operation.

MEMBER KOENIG: Yes.

CHAIRPERSON RIDDLE: Okay. I'm glad we've got someone with a journalism degree.

MEMBER CARTER: Finally it comes in handy.

(Laughter.)

CHAIRPERSON RIDDLE: An English major.

MEMBER KOENIG: Okay. So then --

CHAIRPERSON RIDDLE: Okay.

MEMBER KOENIG: -- all right so that would be -- so we all understand that that would be that first and second correction.

CHAIRPERSON RIDDLE: Yes.

MEMBER KOENIG: And then finally the third would be the sixth sentence starting with below is the section. If you go to the last -- again, we're processing a food. It's the end of that sentence. And it would say processing of food or an agricultural product by a handling operation.

CHAIRPERSON RIDDLE: Okay. Everybody follow that? Catch that?

All right. Kevin accepts that. Okay.

MEMBER KOENIG: And that --

CHAIRPERSON RIDDLE: Okay. Do you see the sentence that begins below is the section? And go all the way to the end of that line and you see in the

processing of food. And then you just insert or an agricultural product by a handling operation. Okay?

All right. Rose?

MEMBER KOENIG: And that's the only changes I see --

CHAIRPERSON RIDDLE: Okay.

MEMBER KOENIG: -- that I'd like to offer.

CHAIRPERSON RIDDLE: All right. So it's been moved, seconded, and amended. Now any discussion?

MEMBER WEISMAN: I have one.

CHAIRPERSON RIDDLE: Okay. Julie?

MEMBER WEISMAN: I have a concern about the fact that extraction is mentioned separately. And that it would benefit from having the same clarification as in the second section. That we're not talking about extraction that occurs as part of handling an agricultural -- extract -- is everybody -- okay --

CHAIRPERSON RIDDLE: Okay. You are back to page one?

MEMBER WEISMAN: I'm back to page one.

CHAIRPERSON RIDDLE: All right.

MEMBER WEISMAN: First thing under the recommendation is extraction shall be understood to mean. And I feel like this would benefit from the same kind of clarification that we just put in to formulation or manufacturing.

CHAIRPERSON RIDDLE: Okay.

MEMBER WEISMAN: In other words, that we're not talking about extraction that is the processing an agricultural product --

CHAIRPERSON RIDDLE: During handling.

MEMBER WEISMAN: -- during handling.

CHAIRPERSON RIDDLE: Okay. Do you have language to propose to capture that?

MEMBER KOENIG: It's in -- excuse me.

CHAIRPERSON RIDDLE: Okay. Rose?

MEMBER KOENIG: I don't know if it covers it, Julie, but under processing, extracting is listed.

MEMBER WEISMAN: I had comments not during session where concern was expressed. Why is extraction being singled out in this document.

MEMBER KOENIG: Because that's -- if you

go back to the original definition of chemical change, extraction is in that definition. So we were trying to define -- see the substance -- synthetic is a substance that is formulated -- all right, a substance is formulated or manufactured by a chemical process or by a process that chemically changes the substance extracted from a naturally occurring.

And because many of the substances that create, you know, some controversy is the extraction methodology. So we wanted to be specific in that definition that we understood that, you know, that clarification from extraction, again, it has nothing to do with the processing of food but the extraction during the taking it out of a biological.

CHAIRPERSON RIDDLE: The manufacturing.

MEMBER KOENIG: The manufacturing of substances for the list.

MEMBER WEISMAN: Right. Could we note that at the end of that paragraph by just simply stating this does not refer to extraction that occurs in the processing of food or an agricultural product handled by a handling operation. Can we tack that in

there one more time?

CHAIRPERSON RIDDLE: Would you like to make a motion to amend?

MEMBER WEISMAN: I make a motion to amend recommendation one to include after the word national list at the end of the paragraph, extraction here does not refer to extraction that is -- how does this read -- used in the processing of food or an agricultural product by a handling operation.

VICE CHAIRPERSON O'RELL: Julie, would you accept a little help in that?

MEMBER WEISMAN: Sure.

VICE CHAIRPERSON O'RELL: I wonder if we say extraction for substances petitioned for addition or prohibition to the national list?

MEMBER WEISMAN: What? Say it again.

VICE CHAIRPERSON O'RELL: If we say extraction for substances petitioned for addition or prohibition to the national list shall be understood to mean, would that --

MEMBER WEISMAN: Well --

VICE CHAIRPERSON O'RELL: I understand the

sensitivity for clarification in that from the processing side.

MEMBER KOENIG: I guess that what I don't understand is -- and you can educate me, Julie, on this one. If you're -- this is stating that -- because the definition extraction -- in the definition of synthetic, extraction deals with naturally-occurring plants, animals, okay.

So if you are extracting something from a plant, it would -- the definition would apply.

MEMBER WEISMAN: Yes. But my concern is that when you extract say vanilla beans in an approved solvent, an organic ethyl alcohol, you have -- the extracteds contain about 250 to 300 aromatic compounds --

MEMBER KOENIG: Right.

MEMBER WEISMAN: -- that will react and change during that process.

MEMBER KOENIG: Right.

MEMBER WEISMAN: Now as long as we're talking -- so I have a concern that anywhere in this rule will be language that says the change -- chemical

changes that occur during the extraction process will make the product synthetic.

MEMBER KOENIG: But it acknowledges here that extraction -- you know it acknowledges that changes can be made as long as the final -- provide that any substance used in the extraction process does not remain in the final product above insignificant levels and so not have a technical functional effect.

MEMBER WEISMAN: What is insignificant?

PARTICIPANT: What reference were you reading?

MEMBER KOENIG: Okay. Go back to page one, I'm sorry, under extraction.

MEMBER WEISMAN: I'm not talking about the solvent that remains. In fact, that solvent has to stay there because of 21 CFR which is the FDA. That alcohol --

MEMBER KOENIG: Okay.

MEMBER WEISMAN: I'm talking about the compounds, many of which are not even identified that do undergo -- they do react with each other under heat.

CHAIRPERSON RIDDLE: Yes. I just want to step back a moment. You made a motion and Kevin offered some changes to it but it was not seconded yet. So I'd like --

MEMBER WEISMAN: Kevin, could you repeat your recommendation?

CHAIRPERSON RIDDLE: I'd like to know if we have a motion to amend here.

VICE CHAIRPERSON O'RELL: I just suggested after extraction in that line extraction or substances petitioned for addition or prohibition to the national list shall be understood to mean so that it is specific to substances.

MEMBER WEISMAN: I would accept that.

MEMBER CAROE: I'll second if you don't have a second on the floor.

CHAIRPERSON RIDDLE: Okay. We didn't. Thank you.

MEMBER CAROE: Well, then I'll second it and I'll accept the amendment. And we're all square?

CHAIRPERSON RIDDLE: Well, I don't know that. That's jumping to conclusions. I think we

still need to get the exact text down but it has been moved and seconded.

And, Arthur, have you captured it? Or no?

MR. NEAL: No. I can't.

CHAIRPERSON RIDDLE: Okay. Comment? Whatever? Arthur?

MR. NEAL: I understand if we want to limit it to petitioned substances. The only problem with that is that there are naturals that are not on the national list that go through extraction processes. And however we characterize extraction in this document impacts all other materials that are going to be used in organic production and handling, regardless if it is petitioned or not.

As we talked yesterday, the way that we're looking at this list, there are a lot of things that are going to shake out. Things that have been considered natural probably won't be natural any more after this document is done.

MEMBER KOENIG: I don't -- again, I mean we can go through that analysis. But the -- as long as those -- basically what it is saying is that at the

end, as long as there's not -- if you are extracting a specific chemical out of your plant, you know, one specific chemical in your extraction process, when you finish that extraction, you can use solvents.

If that is not chemically changed -- now you may have isolated it but the question is have you chemically changed it. And that's where the fish comes in. Okay? It's extracted. The aquatic plants haven't -- the extraction hasn't changed the -- the plant material hasn't changed. But because of the buffer, it falls within a chemical change because of the way that we've defined -- you know the buffer is in there at significant levels. It's present.

MR. NEAL: The best thing for you to -- I guess the best example to use is a soy protein.

PARTICIPANT: I'm having trouble hearing you. You're speaking very low.

MR. NEAL: The best example for you probably to use is a soy protein isolate.

MEMBER KOENIG: Okay. Right.

MR. NEAL: Because what you're doing is you are isolating a protein and at the end of the

extraction -- I mean you start out with a soy bean but you want the protein in the bean. So you'd use a solvent to extract the protein.

MEMBER KOENIG: Right. And that wouldn't --

MR. NEAL: Right.

MEMBER KOENIG: Right.

MR. NEAL: The question is is after the extraction taken place, has the protein been changed?

MEMBER KOENIG: The thing is, Arthur, on that, the extraction procedure -- this is going to take me a little bit -- the extraction itself -- let me go back to what soy protein isolate is because I know it pretty well in my head.

The extraction procedure doesn't change -- well, if you consider the -- you can extract the protein and that's what is done in soy processing. We had the big flowchart. And I used soy as an example when I was writing this document. This document was triggered by soy protein isolate, which is in our packet, which we're deferring because we have to figure this thing out first.

And I don't know if that flowchart is still available and it might be instructive for people to look at. Was that included in our --

PARTICIPANT: Yes.

MEMBER KOENIG: Okay.

MR. NEAL: You want to look at it?

MEMBER KOENIG: Yes, what page is that on? Oh, is it under --

PARTICIPANT: Page nine or page ten.

MEMBER KOENIG: Hold on, I've just got to figure out where it is in my -- what color is it?

PARTICIPANT: (Speaking from unmiked location.)

MEMBER KOENIG: Right. Okay. So if everybody can turn to page nine of the flowchart on the soy protein isolate.

CHAIRPERSON RIDDLE: Okay. So soy protein isolate, CC soy protein isolate.

MEMBER KOENIG: So when I looked at the definition of extraction and the chemical processes that we would call synthetic, when you go through those things, the spelt flakes away even though you

are using buffers, basically it is a series of bases and then acids and centrifugations.

But basically you're just isolating different components of the soy. You are fractionating. And the soy protein isolate is the last stop of this whole chain where it says soy protein isolate, 90 percent protein, okay?

So all the other forms of soy that typically would be used in food like the whey and the spelt flakes and also like soy bean meal that you use in crops, all that would be considered non-synthetic based on -- I'm talking about now the chemical reaction part of this document which talks about the chemistry.

So that extraction doesn't change those proteins until you come to the last part of this, the soy protein isolate. And what makes soy protein isolate chemically changed is if you go into the chemical reactions part of our document, which I'm going to have to get to --

CHAIRPERSON RIDDLE: In which document now?

MEMBER KOENIG: Now back to the synthetic/non-synthetic document, if you look at the chemical reactions, number four is a protein configuration changes as the result of a physical association of an added substance. Okay?

And I've been telling everyone that all along. The most controversial part of this document, as far as what food technologists should consider, and I brought this up on the phone call for those in Handling who were in it, that some of these really highly processed proteins would probably be impacted.

So most of the soy that we're dealing with -- and when I talked to the soy expert when we were looking at the review of soy protein isolate, the common use of that isolate is actually in creamers, soy creamers because it is a -- there is a -- there's actually a base. Even though it is not on this diagram, clearly that base stays in association with the protein.

And it basically changes the configuration from the native protein. If that base was not there, that protein wouldn't look the same. So it's what

they consider a physical change in the protein.

And that's why when I went through the description, I said proteins are in a lot of way different. And that's in our document if you read it.

And these are the ways that proteins change. They can be denatured. And we're not, you know, denaturing is fine. But I said well, I'm going to propose that we consider physical changes because of association of other things in a product, like buffer agents, because to me that is in contradiction to this concept of insignificant levels because now you have something that is impacting the chemical physical structure of that protein.

CHAIRPERSON RIDDLE: Okay.

MEMBER KOENIG: So I think in your case, Julie, you know, and that's why you have this document, you know I was hoping that maybe you would be able to show it to some of your chemists there. And, you know, I think the extraction is fine on these other naturals.

MR. NEAL: The only other question, too, that you're going to have to wrestle with is the

language -- I'm not sure of the page -- page one --

CHAIRPERSON RIDDLE: Okay.

MR. NEAL: -- it's going to Julie's issue.

CHAIRPERSON RIDDLE: Okay.

MR. NEAL: Any synthetic substance used the extraction process that remains in the final extract above insignificant levels and any synthetic substance that has a technical or functional effect must be on the national list.

Okay. Because you were saying that what it was extracted with, there were some levels left over.

MEMBER WEISMAN: Right. But my only concern is the things that --

CHAIRPERSON RIDDLE: Yes, speak into the mike. We can't hear you.

MEMBER WEISMAN: Okay. My concern was the reaction that happened between the things that are naturally occurring in that agricultural product. If something synthetic has been used to process and that remains behind, that should be petitioned. That should be on the national list. I don't see that as a

problem.

CHAIRPERSON RIDDLE: Okay. Now I'd like to get us back to the amendment and act on that. We've had far-ranging discussion that is relevant to it. But I'd like to get a narrower focus here.

So I didn't capture the exact language of the amendment. Does anyone?

VICE CHAIRPERSON O'RELL: Well, in discussion Arthur did bring up a point that what we discussed would have been specific only for those materials that are petitioned for the national list and so --

MR. NEAL: They would have an impact beyond those materials --

VICE CHAIRPERSON O'RELL: They would. It would.

MR. NEAL: -- in the petition.

VICE CHAIRPERSON O'RELL: This would have an impact beyond.

CHAIRPERSON RIDDLE: So do you withdraw the amendment?

MEMBER CAROE: No, I would like to offer

that we change this to say -- instead of a positive when it is used, let's do the negative and say except for processes included in an organic handling operation. Exclude it from that and then you include all the naturals and those materials coming out to the list.

MR. NEAL: The question is what is a soy bean -- a company that handles soy beans for the purpose of making soy bean meal, they use an extraction.

MEMBER KOENIG: Right. And that's fine.

MR. NEAL: Okay.

MEMBER KOENIG: That's what I'm saying. When the soy --

MR. NEAL: So for a company that uses soy beans to extract soy protein isolate for coffee creamer as a food, that's fine, too.

MEMBER KOENIG: No, but I'm saying is that final -- if you take our definition of chemical reactions in combination with extraction, extraction is not -- the protein comes out at the end, okay?

The problem with soy protein isolate is

not the fact that -- well, it is an extraction problem in the sense that within that isolate, one of the buffers is there in a significant enough level that it changes the configuration of that protein.

MEMBER OSTIGUY: But it's not there in previous soy proteins.

MEMBER KOENIG: Yes so all the other soy proteins -- and it is because soy protein isolate is the most highly processed part of the soy bean. And if we can't acknowledge -- okay -- that there may be manufacturing of some foods, you know soys or whatever, there may come a point where you have to process it so highly, you know, as an ingredient -- the problem is that they are petitioning it as an ingredient.

MR. NEAL: For fertilizer.

MEMBER KOENIG: For fertilizer.

CHAIRPERSON RIDDLE: Okay. I've got Barbara and then Bea. Microphone.

MS. ROBINSON: You only want this to be referring to materials related to crop and livestock production?

CHAIRPERSON RIDDLE: No, it's petitioned substances.

MS. ROBINSON: All right. Extraction for substances being considered for use in organic operations -- in organic crop, livestock, and handling operations?

MEMBER WEISMAN: Can you repeat that Barbara? I'm sorry.

MS. ROBINSON: Extraction, for substances being considered for use in organic crop, livestock, and handling operations.

CHAIRPERSON RIDDLE: To me that's too broad because that could include ingredients being used. I guess petitioned to be placed on the national list.

MS. ROBINSON: Being considered for use.

CHAIRPERSON RIDDLE: Yes, I've got Bea. And then back to Julie.

MEMBER JAMES: Okay. I'm wondering if we looked at the submission from the OTA on extraction. They did a further clarification to your document, Rose.

Extraction, according to NOSB 1995, Austin, Texas, the concentration, separation, and removal of substance from a plant, animal, microbiological, or mineral source, minerals used in a plant, crop, and animal production may be extracted in a way that does not result in synthetic reaction as defined in 20103.1. The products of any other methods of extraction shall be considered on a case-by-case basis and reviewed for compatibility under OFPA Section 2119(M)(1-7).

CHAIRPERSON RIDDLE: That's the footnote.

VICE CHAIRPERSON O'RELL: That's the footnote to our draft.

CHAIRPERSON RIDDLE: On page one.

VICE CHAIRPERSON O'RELL: On page one of our draft.

CHAIRPERSON RIDDLE: But I guess -- it's Julie -- I'm trying to keep --

MEMBER WEISMAN: Okay. Are you asking or am I coming after Bea now?

CHAIRPERSON RIDDLE: Yes.

MEMBER WEISMAN: Okay.

CHAIRPERSON RIDDLE: If you'd like.

MEMBER WEISMAN: My needs would be completely taken care of if at the end we just added a sentence that says extraction as defined in this section is not intended to address the processing of food or agricultural products by a handling operation. That would do it.

VICE CHAIRPERSON O'RELL: Do you want to withdraw your other motion and make a new motion?

CHAIRPERSON RIDDLE: Substitute.

MEMBER WEISMAN: Oh, I'll get used to this Roberts stuff. Sorry.

Okay. I would like to make a motion --

CHAIRPERSON RIDDLE: You'd like to withdraw --

MEMBER WEISMAN: I would like to withdraw --

CHAIRPERSON RIDDLE: -- and offer a substitute.

MEMBER WEISMAN: -- I would like to withdraw -- I forget what I'm even calling it now --

CHAIRPERSON RIDDLE: Your previous motion.

MEMBER WEISMAN: -- my previous motion and I would like to substitute it with the following motion. That at the end of this paragraph on extraction, after the word national list, we add a sentence that says extraction as defined in this section is not intended to address the processing of food or agricultural products by a handling operation.

VICE CHAIRPERSON O'RELL: I would second that.

MEMBER KOENIG: Can I get it -- because I was talking to George for a second.

CHAIRPERSON RIDDLE: Yes, just read back through it slowly. I think we're getting there. Extraction as defined --

MEMBER WEISMAN: Extraction as defined in this section is not intended to address the processing of food or agricultural products by a handling operation.

PARTICIPANT: One more time.

MEMBER WEISMAN: Okay. Extraction as defined in this section is not intended to address the processing of food or agricultural products by a

handling operation.

CHAIRPERSON RIDDLE: Okay. Julie moves, Kevin seconds, with a new substitute language. Is there further discussion on just that language?

MR. NEAL: Question.

CHAIRPERSON RIDDLE: Arthur?

MR. NEAL: Give me an example of what that would include.

MEMBER WEISMAN: Well, I gave the example of extracting -- making vanilla extract from vanilla beans where the extractives contain between 250 and 300 aromatic compounds that can react with each other under heat but should not render vanilla extract synthetic.

It's not much different than when you pasteurize a multi-ingredient dairy product and changes occur during that process.

MR. NEAL: I'm just trying to differentiate between that type of process from a vanilla bean and the type of process from a soy bean.

MEMBER WEISMAN: It's a one-step process. And the process that Rose is describing for soy bean

isolate sounds like there is extraction and then there is fractional distillation. I mean it gets --

CHAIRPERSON RIDDLE: The big difference is that is in the manufacture of a petitioned substance. This is in the manufacture of --

MEMBER WEISMAN: Manufacturing of a food.

CHAIRPERSON RIDDLE: -- a food item that's allowed.

MR. NEAL: Because you can use that same product in a food.

MEMBER KOENIG: Yes, I think I figured -- I know where you are getting at, Arthur, and the conflict -- what Arthur is saying and I understand what he is saying, is that -- because something like soy -- you know, soy is a unique case because unfortunately it is a food ingredient that somebody wants to apply to a crop. Okay?

And what he's saying is that if we're saying that we are excluding them in the extraction process, okay, we're saying that you are allowed to handle food any way you want, you know, once it hits the processing mode, as long as you are in compliance

with synthetics or whatever is on the list.

MR. NEAL: Everything is captured.

MEMBER KOENIG: But just answer this one question, okay? Because I can't -- I'm not in the food industry so I'm not sure how the list is always applied to processing. But in the food industry, if you were extracting something, you have your extracting.

If then you were adding the buffer, would the buffer have to be on the list?

MEMBER WEISMAN: Yes.

MEMBER KOENIG: Okay. So we're covered with soy, okay, because the buffer is a synthetic that has to be usually on the list. So there is an acknowledgment that that buffer has now made that soy -- not made the soy but the buffer is the synthetic.

You know in our case, we're saying the soy is okay but it's that buffer that was present in a significant level -- we're not saying that the protein is.

MR. NEAL: What you're saying is just like we've clarified with aquatic plant extracts --

MEMBER KOENIG: Exactly.

MR. NEAL: -- fish emulsions that -- it's a natural.

MEMBER KOENIG: Right.

MR. NEAL: But if a synthetic is going to be added to it, it's got to be on the list.

MEMBER KOENIG: Right.

MR. NEAL: So that's a huge clarification from this document. Because right now it's saying that it's synthetic. So I think what we're saying is that everything is covered, everything is captured by this document. The extraction process is allowed for agricultural products.

When you get further down into the document, you'll then have to talk about reactions.

MEMBER KOENIG: Okay.

MR. NEAL: But if something is going to be added to the substance, the extracted substance to adjust anything, that synthetic has to be on the national list.

MEMBER KOENIG: Right.

MR. NEAL: Okay.

MEMBER KOENIG: Or because in the case of these weird natural things that can be applied to plants, that -- and the same thing -- that's why our annotation for aquatic plants, we're not questioning that the plants are not natural, it's the manufacturing of it because of the presence of that. And that's why the annotation is for the buffer.

MR. NEAL: Right. But we didn't have the understanding then that we have now.

MEMBER KOENIG: Okay. Got you. All right.

CHAIRPERSON RIDDLE: All right? So let's get back to the motion to add in the language that Julie presented. Should I read it again or dos everyone have it? I'll read it.

Okay. And this is to add at the end of the paragraph about extraction the following sentence. Extraction as defined in this section is not intended to address the processing of agricultural products by a handling operation. Correct?

MEMBER WEISMAN: I had of food or --

CHAIRPERSON RIDDLE: Oh.

MEMBER WEISMAN: To be consistent with the

rest of what we just did.

CHAIRPERSON RIDDLE: Food or --

MEMBER WEISMAN: Food or agricultural products.

CHAIRPERSON RIDDLE: Okay. Thanks. I'm glad I read it. All right. So we'll go ahead and vote on that amendment. Just a minute.

PARTICIPANT: Mr. Chair?

CHAIRPERSON RIDDLE: Yes?

PARTICIPANT: Point of order. Just to protect the Board and to protect Julie if there is a conflict of interest --

CHAIRPERSON RIDDLE: Oh, that's -- yes, I've been remiss. The point is that I should have all along on each item as they come up be asking if anyone has any conflicts. And if so, to please declare them and we can determine whether they are sufficient to, you know, warrant recusal.

So on this topic, does anyone have any conflicts to declare? Or interests to declare, I guess.

MEMBER WEISMAN: I'm a manufacturer of

extracts.

CHAIRPERSON RIDDLE: All right.

PARTICIPANT: Should she recuse herself?

CHAIRPERSON RIDDLE: Well, no, she shouldn't have moved. It's up to us to determine. Are you in a unique position to benefit from this at all? We understand that you are a manufacturer of flavors and extracts.

Board members, do you feel that --

MEMBER KOENIG: On this particular section of it, yes. Not on the entire document. I just think it would be cleaner.

SECRETARY CAUGHLAN: I think it would be much better if you would recuse.

MEMBER WEISMAN: I recuse myself.

CHAIRPERSON RIDDLE: Okay.

MEMBER CAROE: And I'll make the motion.

CHAIRPERSON RIDDLE: Then let's step back and the motion previously made by Julie has now been taken off the floor and is substituted by the same language, moved by Andrea. Is there a second?

VICE CHAIRPERSON O'RELL: Second.

CHAIRPERSON RIDDLE: Still Kevin seconds. Thanks for that reminder. I will try and keep that front and center as we move on.

Okay, back to the text. And Julie will be recusing when we vote.

MEMBER JAMES: Jim, I have a question.

CHAIRPERSON RIDDLE: That's fine.

MEMBER JAMES: If the public wants to make comment on this issue and they've been asking -- raising their hand or whatever to make comment, can we allow them to do that?

CHAIRPERSON RIDDLE: It's really at the discretion of the Chair. So yes, we can.

MEMBER JAMES: Okay.

CHAIRPERSON RIDDLE: I know and I've been trying to say when she really needed to. And when she needed to, it wasn't time. And then when it was time, she didn't need to.

(Laughter.)

MEMBER JAMES: We must be doing our job.

CHAIRPERSON RIDDLE: Anyhow, so I'm tuning in. Yes, I'm sorry. Okay, so this is on the -- just

on that amendment that is now offered by Andrea. And we start off with Nancy.

MEMBER OSTIGUY: Yes.

PARTICIPANT: Did you read Andrea's?

CHAIRPERSON RIDDLE: It's the same language.

PARTICIPANT: Okay. It's the same language.

CHAIRPERSON RIDDLE: Yes, it's just a --

MEMBER CAROE: Different voice.

CHAIRPERSON RIDDLE: -- voice, motion. Okay, so all right, Nancy?

MEMBER OSTIGUY: Yes.

CHAIRPERSON RIDDLE: Julie recuse.

Andrea?

MEMBER CAROE: Yes.

CHAIRPERSON RIDDLE: Goldie?

SECRETARY CAUGHLAN: Yes.

CHAIRPERSON RIDDLE: Kevin?

VICE CHAIRPERSON O'RELL: Yes.

CHAIRPERSON RIDDLE: Dave?

MEMBER CARTER: Yes.

CHAIRPERSON RIDDLE: Rose?

MEMBER KOENIG: Yes.

CHAIRPERSON RIDDLE: George? Absent. Bea?

MEMBER JAMES: Abstain.

CHAIRPERSON RIDDLE: Abstained.

Hugh?

MEMBER KARREMAN: Yes.

CHAIRPERSON RIDDLE: Michael?

MEMBER LACY: Yes.

CHAIRPERSON RIDDLE: Gerald?

MEMBER DAVIS: Yes.

CHAIRPERSON RIDDLE: Chair votes yes. So we have -- okay, 10 yes, zero no, two abstentions -- no, one absent, one abstention, and one recusal.

PARTICIPANT: Do you go with the majority? Or is it nonexistent?

CHAIRPERSON RIDDLE: It's nonexistent but it needs to be recorded.

PARTICIPANT: Arthur?

CHAIRPERSON RIDDLE: So, okay, back to Arthur.

MR. NEAL: I know that you voted.

CHAIRPERSON RIDDLE: Yes. We can't hear

you.

MR. NEAL: I know that you voted. But I'm going to let you know right now that everything is captured by this extraction if it is agricultural products regardless if it is handled by a handling operation or a producer.

MEMBER WEISMAN: What do you mean now?

MR. NEAL: If you go to the definition, naturally occurring plant, animal, mineral sources. It doesn't differentiate between the production or handling operation.

CHAIRPERSON RIDDLE: Julie?

MEMBER WEISMAN: Then what about the part of OFPA and the rule that for organic handling operations, the mechanical or biological methods, including but not limited to -- and there is the whole list there, cooking, baking, curing, and extractions is on that list.

MR. NEAL: What about it? That's a processing function.

MEMBER WEISMAN: Maybe I misunderstood the point that you were making.

MR. NEAL: We're talking about natural versus synthetic.

MEMBER WEISMAN: Right.

MR. NEAL: Okay. And let's take that point. Extraction is included in the definition of process. Okay? So I guess the question is now at what point does extraction become handling? At what point would it ever be captured under OFPA to be excluded by the regulations for the processing function?

CHAIRPERSON RIDDLE: Kim? And your name for the record?

MS. DIETZ: Okay, Kim Dietz. And thank you all for taking your time with this one. Look at apple juice. You know apple juice is extracted from a naturally-occurring plant, so to speak. Or even botanicals are extracted. You have a steam extraction. You have heat extraction. You have centrifusion.

And, Arthur, all we're trying to protect is if you take this back to the chemical change, that does cause a chemical change. But is that synthetic in a handling operation? And no, it would not be

1 based on what they just passed.

2 So a handling operation deals with food and

3 agricultural products. It does not necessarily deal

4 with inputs that need to be petitioned for the

5 national list. They're not a certified entity to make

6 ascorbic acid or to make something that is non-organic

7 on the national list. So they're not a certified

8 entity.

9 Okay? So it's not a certified handler.

10 It's not a certified handling operation. So really

11 all the recommendation did was say if you are a

12 certified handling operation and you use extraction as

13 a method of processing, it does not turn it -- it does

14 not mean it is synthetic if you use an approved

15 processing method.

16 MEMBER KOENIG: All we're saying is that

17 we're differentiating between -- just like in the

18 other section where we were talking about formulating

19 in manufacturing, we're talking about the inputs that

20 are in the system. We're not talking about -- that

21 handling is allowed, processing is allowed. And we're

22 acknowledging that.

CHAIRPERSON RIDDLE: Arthur?

MR. NEAL: But do you understand that everybody -- every operation that extracts is a processor. So that means that no one that extracts would be covered by this document?

MEMBER KOENIG: No, I don't understand what you're saying. So you're going to have to say it in a language that --

MR. NEAL: What example then -- what example would be captured by this document provided on the motion that you just passed?

MEMBER KOENIG: Just what we said in terms of the soy protein isolate.

MR. NEAL: Why? If I'm using it in food?

MEMBER KOENIG: What do you mean why? I don't understand. We're saying that if you take that soy and use it -- use soy bean as an ingredient and you make soy protein isolate. It's a food. You can use it.

MR. NEAL: What if I use the same soy in baby food?

PARTICIPANT: (Speaking from unmiked

location.)

CHAIRPERSON RIDDLE: And I'd just like to suggest maybe we should add the word organic so it is an organic handling operation. Terms which are defined by the rule makes it clear what it doesn't apply to. Just an idea.

MEMBER CAROE: I think I know what Arthur is trying to get it.

CHAIRPERSON RIDDLE: Andrea?

MEMBER CAROE: I think I know what Arthur is trying to get at. What Arthur is trying to get at is if you are making an ingredient, a non-organic ingredient, that is allowed. If you're extracting benzaldehyde for a natural flavor, whether you are doing it there inside or outside the handling facility, if I'm making cherry-flavored yogurt and I'm extracting my own benzaldehyde in my operation, it should be held to the same degree as if somebody else is extracting benzaldehyde.

The way that we have it covered right now puts -- gives a benefit to the operations that do more of the processing of their ingredients than those that

procure ingredients. Is that what you're trying to get at Arthur?

MR. NEAL: That's part of it. You've got to treat everybody the same.

PARTICIPANT: What?

MR. NEAL: You have to treat everybody the same. There's no -- I mean you look at a non-organic ingredient. You've got a category that says naturals. But now if I don't do it on an organic operation, if somebody is doing it organically, then they're not covered here under this document.

But if I'm doing it for sale as a non-organic ingredient, then mine could potentially be synthetic.

CHAIRPERSON RIDDLE: Kevin and then Kim.

VICE CHAIRPERSON O'RELL: I guess I wonder if we're trying to go too far to protect because I know what the intent is, that we don't want a handling facility in the processing of an organic product to be labeled as a synthetic because we have a chemical change through extraction.

And maybe we're going to far. And with the

addition of these, now we're carving it out and actually opening the door.

So are we not covered just by stating in the processing as we had it originally that extraction is a method that is allowed by OFPA.

MR. NEAL: It's allowed. Bottom line, it's allowed. And after the extraction process, it can still be considered a natural ingredient.

MEMBER KOENIG: Well, that's what I said first. But I was convinced.

MR. NEAL: But the additional "clarification" then creates a distinction that doesn't need to be created.

MEMBER KOENIG: Can we take a break, Jim, because I need to go to the bathroom?

MEMBER OSTIGUY: Not yet. Don't break when we're right at -- I'd like to move that we delete the most recent addition, extraction as defined, et cetera.

MEMBER KOENIG: Could we hear from Kim first?

CHAIRPERSON RIDDLE: Yes.

MS. DIETZ: You know remember you are trying to help yourselves define synthetic. And extraction is a manufacturing process but, again, what Bea had read -- you're going to be reviewing things on a case-by-case basis. And clearly there is going to be a simple extraction like manufacturing of a juice or a very complicated extraction process that has all these different inputs. And you're going to have to determine whether something is synthetic or not.

By taking that language out, you know, it's my belief that, again, extraction is covered under an allowed process. But if you have heat and a chemical change in the extraction, you're going to go the other way and truly cause something to be synthetic that really shouldn't be.

So I think what you're doing is you're trying to -- you know I also see from the audience, you're trying to pinpoint a soy protein -- you're trying to review a material at the same time you're trying to make a recommendation. And it's kind of confusing out there. But as an example --

PARTICIPANT: When we're using vanilla as an

example --

MS. DIETZ: Right. Right.

CHAIRPERSON RIDDLE: Okay. Board members? Andrea?

MEMBER CAROE: Well, my question is actually directed at Kim.

CHAIRPERSON RIDDLE: Okay.

MEMBER CAROE: Kim, if there are processes -- extraction processes that happen in handling operations that change chemically the extracted material, why would that be considered differently that products on the outside? Why would you --

MS. DIETZ: Well, you -- then you're going back to a definition of the chemical change. And heat is a chemical change. So --

MEMBER CAROE: Well, that's where I think maybe lies the problem is that we do allow chemical changes.

MS. DIETZ: Right.

MEMBER CAROE: And we should allow them perhaps in the consideration of whether a material is synthetic or non-synthetic that are presented for

petition in that same way. So perhaps heat is an allowed treatment of a material and still keep it as non-synthetic. Maybe that's where our problem lies is that we're not being -- we're being too aggressive on those materials in considering them synthetic.

MEMBER KOENIG: You know the heat --

CHAIRPERSON RIDDLE: Rose?

MEMBER KOENIG: Sorry. I don't want to get mixed up with heat because even with proteins, you can use heat. It denatures it. If it comes back together, it's not synthetic. You know so heat is just a -- you know, it's like a buffer, you know it could be like one of these acids or, you know, certain things can take things away.

We're showing that in those -- that's why you can't -- in a way, you have to look at the document in its entirety. These were definitions. But they're also based on those -- to help understand those chemical reactions. But sometimes when you start picking apart, you know talking about chemical reactions and extractions, we're getting mixed up.

We're not saying that heat isn't allowed.

You know we're not saying that.

MEMBER CAROE: What is on the table at this time? Are we voting on --

CHAIRPERSON RIDDLE: Well, the entire motion as amended is what's on the table.

MEMBER CAROE: Okay. Well, I have another issue with this and I don't even know if this is the appropriate time to bring it up because we seem like we're revisiting the last motion.

PARTICIPANT: You need to be on the mike.

CHAIRPERSON RIDDLE: Well, no. Yes, right now what's on the table is the --

MEMBER CAROE: The entire document.

CHAIRPERSON RIDDLE: -- the entire document as amended.

MEMBER CAROE: Okay. Well then I have another.

CHAIRPERSON RIDDLE: Okay.

MEMBER CAROE: In that same section on extraction, the sentence that is any synthetic substance used, that sentence may not be appropriate if we're talking about crop extractions where you have

allowed synthetic extract solvents.

PARTICIPANT: What?

MEMBER CAROE: If you have a solvent that is allowed as a synthetic.

PARTICIPANT: Right.

MEMBER CAROE: So this says any synthetics. It doesn't say any prohibited synthetics. It says any synthetics. If they're --

CHAIRPERSON RIDDLE: I see what you're saying.

MEMBER CAROE: So all I would like is the addition of the word prohibited.

CHAIRPERSON RIDDLE: Okay. Would you so move?

MEMBER CAROE: I move.

CHAIRPERSON RIDDLE: Okay. Is there a second?

PARTICIPANT: Could you show me and read the sentence there?

CHAIRPERSON RIDDLE: Okay. It's the last sentence in the extraction paragraph. And Andrea is proposing adding the word prohibited right after the

first word any. So it would be any prohibited synthetic substance to make it clear that if it is an allowed synthetic, it's okay to remain in the product.

So is there a second to her motion?

MEMBER CAROE: Julie seconds.

MEMBER WEISMAN: I second.

CHAIRPERSON RIDDLE: Okay. Julie seconds. Well, the only thing so far the Board determined that she had a direct conflict was on that sentence she proposed which really was relevant to her business. This is a general topic as I see it unless someone challenges that.

MEMBER KOENIG: Yes. And I understand where Nancy is coming from. Yes, I do.

CHAIRPERSON RIDDLE: Pardon?

MEMBER KOENIG: Are we challenging the motion or are we discussing the motion?

CHAIRPERSON RIDDLE: Well, neither. We're just establishing whether Julie can second the motion.

MEMBER KOENIG: Oh, I'm sorry.

CHAIRPERSON RIDDLE: Okay. No one challenges that. Julie can second. And we're going

to now discuss inserting the word prohibited.

Nancy?

MEMBER OSTIGUY: I think it is redundant because we're -- it has to be on the national list. It wouldn't be on the national list if it wasn't prohibited if it was on the national list. It's circular.

MEMBER CAROE: No, it's not.

MEMBER OSTIGUY: It is.

MEMBER CAROE: We're talking about the solvent.

CHAIRPERSON RIDDLE: Okay. One at a time.

MEMBER OSTIGUY: Great. But the solvent has to be on the national list. If it is synthetic, it has to be on the national list to be able to use it.

MEMBER CAROE: No, it doesn't.

MEMBER KOENIG: But that means remains the same.

MEMBER OSTIGUY: Right. If it remains. This doesn't remain. It says that remains in.

MEMBER CAROE: What I'm saying is that by saying prohibited, you're going back to what we just

said in the beginning that nothing is prohibited as long as it doesn't remain.

MEMBER OSTIGUY: Yes.

MEMBER CAROE: Okay. We just stated in the first thing that go ahead, guys, use whatever you want as long as you don't change the chemistry and it's not in the final product in significant levels.

MEMBER OSTIGUY: Then it's okay.

CHAIRPERSON RIDDLE: Okay. Andrea?

MEMBER CAROE: So what I'm trying to establish is that allowed synthetics may remain. And right now the way it is written, any synthetics may not remain.

MEMBER KOENIG: No, no. Let me explain.

CHAIRPERSON RIDDLE: Okay. Rose?

MEMBER KOENIG: The ones that are on the list are on the list because they have remained. Okay? Those that are listed is because they have remained and they, therefore, have made the substance synthetic.

CHAIRPERSON RIDDLE: Yes, anyone else? Nancy? And Jerry?

MEMBER DAVIS: Well, I agree with Nancy that Andrea's problem with this in saying you would need to put any prohibited synthetic, you don't need that. When you read the end of the sentence, it says if that synthetic remains, it must be on the national list.

MEMBER OSTIGUY: Right.

CHAIRPERSON RIDDLE: Yes.

MEMBER KOENIG: Do you understand, Andrea?

MEMBER DAVIS: It takes care of the problem.

MEMBER CAROE: I withdraw the motion.

CHAIRPERSON RIDDLE: Okay. And the seconder withdraws. Okay. So resolved. Thank you.

Okay, so we're back to the full document as amended. Any further discussion? Concerns?

Rose?

MEMBER KOENIG: I just wasn't quite sure where we were on what we voted on. We never changed our vote.

CHAIRPERSON RIDDLE: There's been one amendment accepted and that's the sentence at the end of the extraction section.

MEMBER WEISMAN: And what about the

amendments to Section Two?

CHAIRPERSON RIDDLE: Oh, well, the ones that -- those were already -- yes, I'm sorry -- so, yes, those were friendly presented by the presenter.

PARTICIPANT: This is guidance, correct?

CHAIRPERSON RIDDLE: Yes, this is guidance to the Board and TAP and petitioners probably. Right.

Okay. Bea?

MEMBER JAMES: I guess I'm just wondering if we really fully addressed Arthur's concern. I'm not sure if we did.

MR. NEAL: I think -- get me if I'm wrong -- we all agreed that extraction is allowed whether it be a handling operation -- really extraction is a handling function so all of them -- anybody who performs an extraction is going to be a handler. So there's no need to create a distinction between handlers who do extracting because all of them are handlers. All extractors are handlers.

So we can't create a distinction that says handling operations that extract food ingredients, this document does not cover them because anybody who

is going to be performing an extraction is going to be a handler.

And just because they're extracting -- I mean they're extracting an agricultural product so they're going to be covered by this document regardless if you create a distinction or not legally.

So I'm just saying I know that you voted but we won't be able to do much with what you've amended.

CHAIRPERSON RIDDLE: With that sentence.

MR. NEAL: Right.

CHAIRPERSON RIDDLE: Okay, Jerry?

MEMBER DAVIS: I would make a motion then that upon clarification from Arthur that we remove the inserted language in that last sentence.

MEMBER OSTIGUY: Second.

CHAIRPERSON RIDDLE: Okay. There's now a motion to -- we've got the second already -- that's Nancy, yes. So motion to remove the sentence we just added. And Nancy seconded.

Any further discussion of that? Rose? And then Kevin.

MEMBER KOENIG: I mean since I've written

this document and I don't understand it, I still -- I really need somebody to -- I just don't -- I don't get it, Goldie. I just don't understand what you're implying. If you could explain it because -- you know, and again, I'm not taking it to the level you are. And I know that's why I can't figure it out.

But this was meant to state that for substances that would be petitioned to the list, that they could be extracted, you know, in any manner, blah, blah, blah. Whether they're used on the crops list, the handling list, and the livestock list, okay?

CHAIRPERSON RIDDLE: Arthur, a response?

MEMBER KOENIG: Now --

MR. NEAL: Well, the problem isn't with the document. The problem was with the amendment to your document.

MEMBER KOENIG: Okay. Now I understand -- how does that amendment impact it? That's what I don't understand. That amendment, what does it actually do? Because I can't understand the baby food thing.

MR. NEAL: The amendment attempts to create

an exclusion for people who only extract food ingredients. And food ingredients are agricultural products. Am I right?

So if the definition in OFPA says that synthetic is a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from a naturally-occurring plant, animal, or mineral source, how can I then create an exclusion through a document for an operation who is extracting a food ingredient from a naturally-occurring plant or animal or mineral source just because they desire to use it food? I can't.

CHAIRPERSON RIDDLE: Okay. I'd like us to -- Kevin, did you have a comment?

VICE CHAIRPERSON O'RELL: Arthur, do we have the same scenario with number two where we have formulation and manufacturing. And we also say formulation or manufacturing as defined in this section is not intended to address the processing of food? I'm trying to understand the distinction between that phrase there and having it in the

extraction section as well.

MR. NEAL: What paragraph?

CHAIRPERSON RIDDLE: Page two, item two, first paragraph.

MR. NEAL: Right here?

CHAIRPERSON RIDDLE: Middle of the paragraph.

VICE CHAIRPERSON O'RELL: It was added. Formulation or manufacturing as defined in this section is not intended to address the processing of food or an agricultural product by handling operation.

MR. NEAL: I'm not sure if that --

VICE CHAIRPERSON O'RELL: And, again, we're talking about to produce agricultural or handling inputs. So I'm just trying to get the clarification if we have the same issue with extraction. Is this also an issue in your mind?

MR. NEAL: Yes.

VICE CHAIRPERSON O'RELL: I mean.

MR. NEAL: It is but I'm thinking, too, that the sentence right behind it contradicts it as well. This definition applies only to the individual inputs

used in crop handling and livestock operations because the sentence right above it, formulation or manufacturing as defined in this section is not intended to address processing of food. So it's a double -- it's a contradiction.

What I think you're trying to do is you are trying to prevent the processing of food from being considered synthetic.

VICE CHAIRPERSON O'RELL: Or the outcome of processing --

MR. NEAL: The outcome.

VICE CHAIRPERSON O'RELL: -- to be conceived as synthetic --

MR. NEAL: Right, so --

VICE CHAIRPERSON O'RELL: -- because of a chemical reaction that may --

MR. NEAL: -- so from pasteurizing apple juice, from pasteurizing milk --

VICE CHAIRPERSON O'RELL: Pasteurizing milk --

MR. NEAL: -- it would not become --

MR. JONES: -- denaturization of milk

protein, it's not synthetic.

MR. NEAL: Right. That gets into the processing section. Number three. And it gets into the chemical reaction sections. And I think that's where some of the other elements that are really of concern have to be worked out.

It's not necessarily -- I think that we all agree, like I said earlier, that extraction is allowed. And that once I extract something, as long as I haven't changed what I intended to extract, I'm non-synthetic.

What I do with it after that is where the rubber then meets the road. So if I'm talking about through the extraction process I'm trying to extract soy protein but when I extract it, I really -- I've got another substance. I don't have soy protein.

I have got something different than what I intended to extract from the bean. Then I've got -- I've violated OFPA's definition of synthetic. Or I've now made a synthetic substance because I've created a chemical change through the extraction.

We agreed that if I'm going to add something

else to the ingredient that I've extracted, it's got to be on the national list. It's as simple as that.

It doesn't get you into synthetic or non-synthetic. It's just simply I've got to put the substance on the list.

Now for processing, I would suggest we continue to go through the document because I think, just like with apple juice, if I'm going to add anything to it, it's got to be on the list. If I'm going to extracts, it's got to be on the list.

So let's continue to move. But extraction is allowed. Anything you add to the extracted substance has to be on the list. It doesn't make it a synthetic. But it just means that the synthetic substance that has been added to it has to be on the national list.

CHAIRPERSON RIDDLE: Okay. Well, we have a motion to remove that sentence on the floor. So I'd like to proceed with the vote. And since Julie recused on adding the sentence, she should recuse on removing the sentence as well. And you were going to be the first in line.

MEMBER WEISMAN: Do I have to say I recuse? Is that important?

CHAIRPERSON RIDDLE: It wouldn't hurt.

MEMBER WEISMAN: I recuse.

CHAIRPERSON RIDDLE: Okay.

Andrea?

MEMBER CAROE: Now the motion is for the removal, so I say yes.

CHAIRPERSON RIDDLE: That's true. Yes means remove.

Goldie?

SECRETARY CAUGHLAN: Yes.

CHAIRPERSON RIDDLE: Kevin?

VICE CHAIRPERSON O'RELL: Yes.

CHAIRPERSON RIDDLE: Dave?

MEMBER CARTER: Yes.

CHAIRPERSON RIDDLE: Rose?

MEMBER KOENIG: Yes.

CHAIRPERSON RIDDLE: George?

MEMBER SIEMON: Yes.

CHAIRPERSON RIDDLE: Bea?

MEMBER JAMES: Yes.

CHAIRPERSON RIDDLE: Hugh?

MEMBER KARREMAN: Yes.

CHAIRPERSON RIDDLE: Michael?

MEMBER LACY: Yes.

CHAIRPERSON RIDDLE: Gerald?

MEMBER DAVIS: Yes.

CHAIRPERSON RIDDLE: Nancy?

MEMBER OSTIGUY: Yes.

CHAIRPERSON RIDDLE: The Chair yes. So now we've got 12 yes, and zero no, well, one absent, and one recusal.

Okay. So we're really back with the original document.

(Laughter.)

CHAIRPERSON RIDDLE: But as amended with those friendly amendments that Rose presented in the beginning. So we've extracted -- we've added and extracted and subtracted.

PARTICIPANT: Have we made a chemical change though?

CHAIRPERSON RIDDLE: We're going to if we don't get a break. We're going to make some physical

changes.

Yes, okay. Can we move to a vote on -- okay. Nancy?

MEMBER OSTIGUY: Do we still need to -- we still need to so something with the remainder of it before we move on.

MR. NEAL: I thought you were working section by section.

MEMBER CAROE: Yes, we're working section by section.

PARTICIPANT: So are we just going to take a ten minute?

CHAIRPERSON RIDDLE: Well, okay. Are there more significant concerns that it is going to take a lengthy discussion you think? You never know.

MEMBER KOENIG: Well, I think four is -- I mean we need to go over four.

CHAIRPERSON RIDDLE: I hate to take a break in the middle of discussion.

MEMBER KOENIG: Well, like I said, we're going to see some chemical reactions on the floor.

CHAIRPERSON RIDDLE: It sounds like we need

to.

MEMBER KOENIG: I need to.

CHAIRPERSON RIDDLE: All right.

MEMBER KOENIG: I drank too much iced tea.

CHAIRPERSON RIDDLE: I feel the pressure also. All right. We will take a 15-minute break and then resume our discussion. So ten after three please.

(Whereupon, the foregoing matter went off the record at 2:58 p.m. and went back on the record at 3:17 p.m.)

CHAIRPERSON RIDDLE: All right. Let's resume consideration of the synthetics, non-synthetics document. And right now it is as presented by Rose with those few amendments that she presented. And that's it.

So what additional concerns or comments are there? We took a break and we were just reconvening. There is nothing new. That was defeated or removed.

PARTICIPANT: What paragraph are we --

CHAIRPERSON RIDDLE: Well, we would be, I believe, at number two or three -- three, good.

That's better than two. Three. What's that? So three is really restating what is in the rule. I don't know if there are any concerns with that? That's just to reinforce that approved processing methods are allowed by organic handling operations.

Okay, number four, the chemical reaction or chemical change shall be understood to mean -- any concerns with that paragraph? Arthur?

MR. NEAL: Based on our previous discussions, I think that we need to talk about ionic transfers with respect to chemical reaction from the extracted substance. Because if we're talking about allowing extraction and agreeing that synthetics can be added to it after the fact but the synthetic has to be on the national list, then it is an okay process.

So we don't want to get into the situation that any agricultural ingredient that is extracted that has a synthetic added to it now becomes a synthetic substance. That gets into your food ingredients.

Any food ingredient that is extracted but has a synthetic added to it would become a synthetic

substance. That's why I think a lot of attention was focused on trying to protect processing because processing, you know, you take agricultural ingredients but you add additives that are on the national list, you may add, you know, some other things.

And that would get you into chemical reactions. But if you look at the definition of synthetic in the act, that's two tiered. The first one talks about -- let's go here real quick -- a substance that is formulated or manufactured by a chemical process.

And I think purely that's talking about you starting out with chemicals. And you're creating a substance using chemicals.

Then you've got the second tier that talks about or by a process that chemically changes a substance extracted from a naturally-occurring plant, animal, or mineral source.

The act allow for extraction but it wouldn't be feasible for the act to allow for extraction of an agricultural naturally-occurring product but then say

if you add a synthetic to it, now it is synthetic as well. It wouldn't make sense for you to even allow extraction. But you can't combine the extracted substance with anything that is synthetic.

PARTICIPANT: Come again?

MR. NEAL: Comment?

CHAIRPERSON RIDDLE: Nancy?

MEMBER OSTIGUY: Yes. That ends up opening up the door to too many things. Well, we'll use our protein isolate as an example again. The extractant material, the base which reacts then with the protein chemically changes that protein. As long as that base was on the national list, it could be used and the product of that reaction would be non-synthetic by what Arthur is describing.

And the difficulty with that is there is a point where if you take a non-synthetic, react it with a food, it's not non-synthetic any more.

MR. NEAL: Okay. And I'm talking here -- if you are using soy protein as an example --

MEMBER OSTIGUY: Well, and that's not the one that I'm necessarily concerned about at all.

MR. NEAL: Okay. So let's look at then -- and this gets the industry into its issue of chemical reaction because cake goes through chemical reaction. Bread goes through chemical reaction.

And just as processing is allowed in the definition -- I mean extraction is allowed in the definition of processing in the regulation, so is baking.

MEMBER OSTIGUY: Correct.

MR. NEAL: And heating.

MEMBER OSTIGUY: Correct.

MR. NEAL: And those are allowed in the act. So now we're back in the dilemma of cooking food and food becoming a synthetic substance. They are in the act, right. So it's hard to create a distinction between extraction for the purposes of petitioning a substance for inclusion on the national list and extracting just in day-to-day handling functions.

MEMBER KOENIG: Why? Because specifically they're two different sections.

CHAIRPERSON RIDDLE: Can you speak into the microphone?

MEMBER KOENIG: Oh, sorry. Even though they are both in the act, they are in two different, separate sections, one dealing with -- well, I'd have to go back -- I don't know the act inside and out but if I recall, one deals with materials. The other specifically deals in the section of handling.

And the act, as I understand it, you either -- you know you're talking about handling or you're talking about materials or you're talking about crops. Just because something is allowed in crops doesn't mean that it is allowed in -- you know even your standards, you know, standards -- those sections are for specific uses.

So what you are implying is that anything that is written there is fine in any application within your act. I don't think the act is written that way. But I'm not a lawyer.

MR. NEAL: No. I'm talking about processes right now from the standpoint of the same ingredient that a handling operation would process in the handling facility could be used as a food ingredient and it could be used as a crop amendment or it could

be used feed ingredient. But the process is the same.

So what we have to do is make sure that our thinking and logic concerning chemical change is consistent as well because the same way a chemical change takes place in creating a substance for crops, the same way a chemical change takes place in baking food or creating a substance for livestock.

So you have to apply chemical change consistent across the board.

MEMBER KOENIG: No, you don't.

MR. NEAL: Well, what we're trying to do right now is acknowledge the fact that extraction is allowed. And what Nancy brought up was that just because a substance is extracted, it does not automatically mean that a synthetic can be added to it and that's okay.

MEMBER OSTIGUY: No. If you extract a substance with a synthetic, you were saying that that -- an extracted non-synthetic is extracted with a synthetic, the product, you were saying, is still non-synthetic even though that synthetic extractant remains chemically bound to the material that now is

the product.

MR. NEAL: If it has been extracted and has undergone a chemical change just through the extraction process, it would then violate the definition of synthetic. But if I've extracted the substance -- if I've extracted a substance and I still have that same substance, it's okay.

But if I've added something to it after I've extracted it, it doesn't mean that the substance now is synthetic. It means that the substance that I've added to it may be synthetic and has to be on the national list.

MEMBER OSTIGUY: Right, right. So that's what I'm saying. That you have a substance that is used as the extractant that is on the national list. You extract a food product. So you're starting with a food, you extract --

MEMBER KOENIG: I know what you're getting at.

MEMBER OSTIGUY: Well, then you explain it to him.

MEMBER KOENIG: Well, I think what you are

specifically talking about was -- and correct me if I'm wrong. I don't want to bring it up if we don't want to talk about it. But it is the sodium lactate concept and the way you interpreted that, is that what you're trying to get at?

MR. NEAL: That's a different issue.

MEMBER KOENIG: Okay. All right. Another issue. Okay, so all right. Then I don't know what you're talking about with this issue.

MEMBER OSTIGUY: Okay. We start with a food product and we want to extract it. That is non-synthetic. We then take a synthetic that is on the national list because it has to be because it is going to be in the product of that extraction. So there has been during that extraction a chemical reaction that has occurred that has embedded that solvent, the extractant, into the original food item.

And you're saying that that's then a non-synthetic?

MR. NEAL: No. If it has not been attached to anything -- if you don't have any of that solvent --

MEMBER OSTIGUY: Okay.

MR. NEAL: -- in the extracted material. Let's say I've only got the extracted material.

MEMBER OSTIGUY: Okay. So what you're doing --

MEMBER KOENIG: I know what you're saying now.

MEMBER OSTIGUY: So what you're doing --

MEMBER KOENIG: There are some -- okay, sorry.

MEMBER OSTIGUY: What you are doing is you are taking then a non-synthetic, using a synthetic on the list as the extractant. There is a chemical reaction that happens but the end product in that molecule of the end product, the natural still remains a natural.

MR. NEAL: Intact.

MEMBER OSTIGUY: It has nothing from the solvent itself.

MR. NEAL: Right.

MEMBER OSTIGUY: Okay.

MR. NEAL: Now, the second part is this.

I've extracted it. The extracted substance is still intact. Now I add something to it.

MEMBER KOENIG: Right.

MR. NEAL: Now, chemical reaction should not be associated with the adding something to --

MEMBER KOENIG: Right.

MR. NEAL: -- the extracted substance. It should be considered that I'm adding a synthetic substance to the extracting material. And that added synthetic substance has to be on the national list.

Because if you don't look at it that way, that means that I've got flour and I'm adding I guess you could say milk to it. I've got a mixture. Then I bake it. It's going through a process that is now having a chemical reaction.

So now I'm calling bread synthetic.

MEMBER KOENIG: No, no, no.

MR. NEAL: No?

MEMBER OSTIGUY: No.

MEMBER KOENIG: I think we have a multi-step process.

MEMBER OSTIGUY: No. I think what we have -

-

CHAIRPERSON RIDDLE: One at a time. Nancy?

MEMBER OSTIGUY: Yes, I think I finally understand.

We have several processes now. Okay if we start with the original. For simplicity's sake, the soy protein isolate. We have a non-synthetic that we add a synthetic material to it. There is a chemical reaction.

And that chemical reaction then results in the non-synthetic being bound to the non-synthetic. That end product then would be synthetic. If you start then -- that's number one.

If you start with a synthetic -- non-synthetic food. So we're taking your bread and milk idea -- or, excuse me -- wheat and milk idea. So if you add wheat to milk and you get bread, yes, there's a chemical reaction. But both of your precursors are naturals --

MEMBER KOENIG: And allowed.

MEMBER OSTIGUY: Yes, and the baking is one of the approved things that are allowed to do.

MEMBER KOENIG: In processing.

MEMBER OSTIGUY: And then the one that I think is in question is if you take then a non-synthetic, let's say again flour, and you are going to be using a synthetic. You're deciding that you are going to use baking soda -- not baking soda, excuse me, baking powder.

PARTICIPANT: Say you bleach the flour.

MEMBER OSTIGUY: Okay, okay, bleach the flour. So you do have a chemical reaction that is happening there because the bleaching process is a chemical reaction. Then the question is is that product, which is just bleached flour, is that a synthetic and, therefore, has to be on the list in order for us to --

MEMBER KOENIG: No, it doesn't. The bleach has to be on the list.

PARTICIPANT: How was it bleached? How was it bleached?

MEMBER KOENIG: The bleach does, not the --

MEMBER OSTIGUY: The bleach, right.

MEMBER KOENIG: That's consistent with what

we're doing. So what's the issue though in that chemical reaction.

CHAIRPERSON RIDDLE: Use your microphone, Rose.

MEMBER KOENIG: I follow what you're saying. But so where is there conflict? I don't understand where the conflict is in our --

MR. NEAL: There wasn't necessarily a conflict. But we need to clarify because here in number four, the last sentence talks about protein configuration changes as the result of physical association of an added substance.

MEMBER KOENIG: Right.

MR. NEAL: This needs to probably be stricken due to the fact that we acknowledge that a synthetic can be added to an extracted substance. But the synthetic would have to be on the national list.

But if we consider it to be a chemical reaction, then it makes the extracted substance a synthetic substance just because I've added a synthetic to the extracted substance.

CHAIRPERSON RIDDLE: We, I'm sure, aren't

catching this on the transcript. I'm sorry.

PARTICIPANT: Can't hear you.

MR. NEAL: Barbara said then we would be making the flour a synthetic substance because I've added bleach to the flour and caused a chemical reaction.

MEMBER KOENIG: No, because with the --

CHAIRPERSON RIDDLE: Rose?

MEMBER KOENIG: Well, because you were bringing up protein isolate and that's the example for this, the physical changes.

MR. NEAL: But the principle still should be applied across the board.

MEMBER KOENIG: Right. But the difference is that in the protein isolate, okay, what we're saying is that the isolate, the thing that we're extracting, the last stage is, in fact, chemically changed. That the buffer isn't coming in after. We're not adding something after.

It's the presence of that buffer that has changed that protein. It has changed as an isolate. That particular extraction product has chemically

changed if you agree with number four.

MR. NEAL: Well, then one of the things that would have to be clarified then what is the level of insignificant? What is the insignificant level? And the technical or functional effect?

MEMBER KOENIG: Okay.

MR. NEAL: Because that has to be applied consistently as well.

MEMBER OSTIGUY: I would actually argue that the chemical reaction that has occurred is number one. Not the protein configuration for the soy protein isolate because we have added --

MEMBER KOENIG: No, but they're not -- well --

MEMBER OSTIGUY: You know yes, the protein configuration has changed. But what makes the difference between a protein configuration change that is acceptable and a protein configuration change that is not acceptable is, you know, cooking an egg, frying an egg changes the protein configuration.

MEMBER KOENIG: Yes, it is an added substance. You're saying --

MEMBER OSTIGUY: It's the added substance. Not the protein configuration.

MEMBER KOENIG: Right.

MEMBER OSTIGUY: So I suppose we could delete --

MEMBER KOENIG: But it's from --

MEMBER OSTIGUY: -- protein configuration and we still would -- we would get to our intent without, I hope, messing up making bread.

MEMBER KOENIG: But the thing with the protein, it's not really -- it's an ionic reaction. Okay, that's fine. It would be covered.

MEMBER OSTIGUY: Does it work?

MEMBER KOENIG: Well, I think so.

MEMBER OSTIGUY: Okay.

MEMBER KOENIG: I mean you'd have to argue that it's an addition --

MEMBER OSTIGUY: Right. It is.

MEMBER KOENIG: -- reaction to that protein. And that ion. It's an ionic charge that is causing the protein configuration.

MEMBER OSTIGUY: Yes.

MEMBER KOENIG: All right.

CHAIRPERSON RIDDLE: So do you have some changes to the language to propose?

MEMBER OSTIGUY: I would move that we delete and for protein configuration changes as the result of a physical association of an added substance. And that's, in essence, repetitive is my argument.

MEMBER KOENIG: Let me just check one -- I need to look at one thing though before we -- I've got to go back to my Chemistry 101.

(Laughter.)

CHAIRPERSON RIDDLE: Good thing we have it. It's actually right there at that document.

Okay. So there's a motion and a second. Moved by Nancy. Second by Julie to strike and for protein configuration changes as the result of a physical association of an added substance.

MEMBER OSTIGUY: And I would argue --

CHAIRPERSON RIDDLE: I assume we would move the and in front of three as a part of that.

MEMBER OSTIGUY: Oh, we actually put an and after -- or before three. So we'd have one, two, and

three. So there is going to be an and inserted before the number three.

CHAIRPERSON RIDDLE: Yes.

MEMBER OSTIGUY: And a period after the parenthesis.

I would argue that protein configuration changes -- well, the way that this sentence is written, the added substance is covered under number one because you are either adding or combining reactions. Actually it would also include deletion reactions.

CHAIRPERSON RIDDLE: Okay. So we have the motion and a second. Is there further discussion?

MEMBER KOENIG: Yes, I just have a --

CHAIRPERSON RIDDLE: Rose?

MEMBER KOENIG: Something we just have to think about. You know -- and again, I don't have a vested interest in protein isolate. We just brought it up.

CHAIRPERSON RIDDLE: Rose, it's hard to hear.

MEMBER KOENIG: Oh, sorry. I'm sorry that

these things are kind of far. Denaturation is really the -- in proteins is really where you get the change.

MEMBER OSTIGUY: Yes.

MEMBER KOENIG: It's where you lose activity.

MEMBER OSTIGUY: Yes.

MEMBER KOENIG: What that last one, four, did was say that you can -- you don't have to necessarily denature a protein. You can just change the configuration, which actually changes its physical properties.

MEMBER OSTIGUY: Yes.

MEMBER KOENIG: Okay. And that's what happens to soy protein isolate. You are changing the physical solubility of that protein with association of those ions, okay? And that's why four is in there because we can all see that denaturation causes it.

And you're right. In a lot of the denaturation reactions, it might be with things that actually cause a chemical change as in these other -- and the reason why -- like true denaturation could come in by addition and combination, I guess,

decomposition. There may be a lot of ways that protein changes.

MEMBER OSTIGUY: Yes.

MEMBER KOENIG: That fourth one was to show that there can be physical changes. And that's why I said it's controversial. Some chemists feel that chemical changes are, in fact, chemical changes.

MEMBER OSTIGUY: Yes.

MEMBER KOENIG: Where some chemists say that physical changes are not chemical changes.

MEMBER OSTIGUY: Right.

MEMBER KOENIG: And that's why I said that last one is the most contentious. And that is what we have to -- that's where if there's going to be a fight in this document, that's where -- the only argument I see.

MR. NEAL: The principle, though, impacts everything else.

MEMBER KOENIG: Right.

MR. NEAL: Yes. The principle of it impacts everything else. So I wouldn't want to take this down the road of going there because it's not worth it.

MEMBER KOENIG: What do you mean you wouldn't take it down?

CHAIRPERSON RIDDLE: Nancy and Julie had their hands up.

MEMBER KOENIG: I'm sorry.

MEMBER OSTIGUY: Okay. I'll give an example --

CHAIRPERSON RIDDLE: Andrea, I'm sorry.

MEMBER OSTIGUY: I'll give an example of just a configuration change that is significant and why I would actually agree with the chemists that argue that a configuration change is important.

Hormonal activity. You still have exactly the same components. All the carbon, all the hydrogen, et cetera, is identical. And if you change that configuration at all, it's no longer active. So configuration alone can determine activity.

Now it may not be important for what we want to do. I don't know.

CHAIRPERSON RIDDLE: Okay. Andrea?

MEMBER CAROE: My question is a little bit broader than just the motion on the table. But it

impacts the motion on the table.

CHAIRPERSON RIDDLE: Thanks for the warning.

MEMBER CAROE: I'm just warning you. Okay. So I have some understanding of chemistry but not food and food processing to this degree. But if you caramelize onions, are you not chemically changing and developing sugars when you do that?

MEMBER KOENIG: But we're not talking about --

MEMBER CAROE: No, no, no.

MEMBER KOENIG: All right.

MEMBER CAROE: What I'm getting at is these definitions, would that become a synthetic because you are chemically changing --

MEMBER KOENIG: We're not talking about --

MEMBER CAROE: But cooking, you know, you can say --

MEMBER KOENIG: What I'm saying --

MEMBER CAROE: -- adding heat in a laboratory is cooking.

MEMBER KOENIG: Yes, but what I'm saying is in the case of -- we're talking about, again,

extracted substances. And what I'm saying is why -- you know and why I'm using soy protein isolate as an example is because it is before its -- like Arthur said, we can all agree, once it is extracted, you can do -- you can, you know, process it in food.

But what I'm saying, in the case of some of these proteins, we're talking about as the extraction goes on, there may be a chemical change in proteins called -- you know, that are result of a physical association with a buffer.

MEMBER CAROE: Okay. Then I would suggest that this section four is actually a subsection under section one because it only applies to extraction. It does not apply to synthetics in general. It is only applying to extracted materials.

Because right now the way it is formatted, it's talking about any chemical reaction forms a synthetic.

MEMBER KOENIG: No because the preamble says what the purpose of it is. And we're defining it based on that definition. I mean it could be -- I'm not opposed to -- if people think they want to

reorganize it. But I don't think it's -- I think the document tells you what it's trying to do.

CHAIRPERSON RIDDLE: So we have -- you made a motion to delete number four. You still want that to be deleted?

MEMBER KOENIG: Yes.

CHAIRPERSON RIDDLE: Okay. Yes?

MEMBER OSTIGUY: What we're actually discussing is part two of the synthetic definition. So the first part is the substances formulated or manufactured by a chemical process. It's the second part that is hanging us up because we're taking materials, substances, from plants, animals, or mineral sources. So that gets us messed up in processing.

So -- and extracted deals with that second one, not with the first one. So if removing four from number four helps us not interfere with processing, I don't think it is going to substantially change our overall intent with materials. I think we're still going to be able to capture the things that we should be able to capture.

CHAIRPERSON RIDDLE: Okay. Any other discussion on the motion to delete number four? Rose?

MEMBER KOENIG: Well, just to -- I don't personally have a problem with it. I mean I'd rather get resolution on protein. The only thing that I wouldn't mind if anyone out -- because I know there are a few chemists out there because I'm not sure of the implications of it. I mean keeping it in is safer because it just gives you -- I don't know. Is there anybody in there that has come forth?

CHAIRPERSON RIDDLE: And you'll be doing --

MEMBER KOENIG: I'll put it out to the audience.

CHAIRPERSON RIDDLE: -- a detailed response. I really appreciate your engagement in this. But he'll be looking at it again, I hate to say.

MR. NEAL: Yes. And it will be important because the question is going to be at what point in the extraction process of a natural process has a chemical change taken place.

CHAIRPERSON RIDDLE: Right.

MR. NEAL: So it will still be important

because if I'm extracting protein and I've still got the same protein that I've extracted, we'll have to identify at what point will a change have taken place if we're trying to clarify the definition of synthetic in OFPA.

CHAIRPERSON RIDDLE: Yes.

MR. NEAL: A change takes place when the protein has an ion added to it. A chemical change takes place if the protein is attached to the solvent. That's going to have to be clarified.

MEMBER KOENIG: Well, see attachment -- well --

MR. NEAL: Or the solvent is attached to the protein.

MEMBER KOENIG: Can I?

CHAIRPERSON RIDDLE: Yes.

MEMBER KOENIG: The only thing is that as long as I guess -- and that comes back to the -- see, that's the whole thing is I just think that four, in some ways, has to be in there based on that presence of a solvent that makes -- see, I still think whether it's there or not, I think protein -- something like

soy protein isolate, based on our definition, still becomes synthetic because it does have a functional effect. But --

CHAIRPERSON RIDDLE: Nancy? And then I would like to vote on this.

MEMBER OSTIGUY: Yes. I know I made the motion. I'll give you another example of a situation where you change the protein configuration and you don't have a chemical reaction as far as we know.

There are macromolecules that can insert themselves into DNA so that you read the DNA improperly. So it structurally changes the DNA molecule so that it is not readable, you know. You get a mutation.

MR. NEAL: And it may just need to be looked at closer.

MEMBER OSTIGUY: Yes.

CHAIRPERSON RIDDLE: Now what's that?

MR. NEAL: It may need to be looked at closer.

CHAIRPERSON RIDDLE: Well, right. And by keeping it in there, it stimulates a closer look.

So we still want to take a vote on removing it?

MEMBER OSTIGUY: You really don't have to.

CHAIRPERSON RIDDLE: Well, we don't have to if you withdrew.

MEMBER OSTIGUY: Oh.

CHAIRPERSON RIDDLE: But that's fine. We will. We will vote. Okay. So the motion is to remove that item -- sentence number four at the end of section number four on chemical reaction. So everyone is clear on that.

And we start with Andrea. So to vote yes is to remove.

MEMBER CAROE: I'll abstain.

CHAIRPERSON RIDDLE: Abstain.

Goldie?

SECRETARY CAUGHLAN: I just don't have enough information. I will abstain.

CHAIRPERSON RIDDLE: Okay.

Kevin?

VICE CHAIRPERSON O'RELL: I'll go yes.

CHAIRPERSON RIDDLE: Yes to remove?

VICE CHAIRPERSON O'RELL: Yes.

CHAIRPERSON RIDDLE: Okay. Just wanted to be clear.

Okay, Dave?

MEMBER CARTER: I'm going to abstain.

CHAIRPERSON RIDDLE: Rose?

MEMBER KOENIG: No.

CHAIRPERSON RIDDLE: No.

George?

MEMBER SIEMON: No.

CHAIRPERSON RIDDLE: Bea?

MEMBER JAMES: Abstain.

CHAIRPERSON RIDDLE: Hugh?

MEMBER KARREMAN: I decided a little while ago to abstain.

CHAIRPERSON RIDDLE: Oh, yes. You're not just joining the trend.

(Laughter.)

CHAIRPERSON RIDDLE: Okay, Michael?

MEMBER LACY: No.

CHAIRPERSON RIDDLE: No.

Gerald?

MEMBER DAVIS: No.

CHAIRPERSON RIDDLE: Nancy?

MEMBER OSTIGUY: No.

CHAIRPERSON RIDDLE: On her own motion.

(Laughter.)

CHAIRPERSON RIDDLE: That's okay.

Julie?

MEMBER WEISMAN: Yes.

CHAIRPERSON RIDDLE: Julie sticks with it there. Oh, boy. This is -- I mean it is defeated. The language is retained.

Oh, the Chair votes no. I'm sorry.

So that's one, two, three, four, five, six -- whoops, I did the nos first. One, two yes. Six nos. Five abstentions. And one absent.

PARTICIPANT: How do the abstentions go?

CHAIRPERSON RIDDLE: They go with the majority. And the majority is no. The motion fails and so we're back with the language as presented.

Okay. Anything else on number four?

(No response.)

CHAIRPERSON RIDDLE: Moving on, number five,

substance. Any problems with that? Concerns? Comments?

(No response.)

CHAIRPERSON RIDDLE: Seeing none, six? The substances created by naturally-occurring biological processes. Comments on that? Rose?

MEMBER KOENIG: Yes. I just wanted, I guess, to make it clear that we're -- what's allowed is that direct product from the natural substance. It's not a combination of natural substances that then produce another product. So we're saying, you know, the direct byproduct, you know substance created by natural process is allowed.

But that doesn't mean that by -- if you had somebody that came up with a substance that was a combination of all these things, that's a different identity. And I think it's understood. But I just want to make that statement.

CHAIRPERSON RIDDLE: Okay.

MR. NEAL: That's the issue.

CHAIRPERSON RIDDLE: Arthur?

MR. NEAL: One of the questions that is

1 going to have to be answered, where is that prohibited
2 in the regulations or the act?
3 MEMBER KOENIG: It really would be a
4 separate INS number. That goes back to the sodium
5 lactate.
6 MR. NEAL: But where is tank mixing
7 prohibited in the regulations or the act if all
8 ingredients are approved for use in that production
9 category? Say crops, for instances, all of the
10 ingredients are allowed for use. Tell me how can USDA
11 tell a producer that they cannot tank mix those
12 ingredients if they are mixed.
13 MEMBER KOENIG: But I agree in crops and in
14 livestock, it is somewhat an exception in food because
15 of the fact that everything has to be petitioned. Any
16 new substance, any new synthetic.
17 MR. NEAL: I understand.
18 MEMBER KOENIG: And so that is your case
19 right there because it does have a separate chemical
20 abstract, you know.
21 MR. NEAL: That's not recognized in the
22 regulations or the act.

MEMBER KOENIG: Yes, it is because it said every substance must be petitioned. And because you -- that's what I'm saying, you know you have one substance and you have another substance. It's true if it was processed, you know we'll go back to processing versus an ingredient, okay.

We're acknowledging that the process aspect of handling allows the cooking. And those things can happen. But when you combine Ingredient A, B, C, and D, each one of those ingredients have to be on the list because you're not --

MR. NEAL: They're on the list.

MEMBER KOENIG: -- when you combine -- if you combine A and B, okay, and they make that reaction in your plant through your processing, it's okay.

But if you buy it already made as a separate substance that now you are adding, that has to be petitioned.

CHAIRPERSON RIDDLE: Yes, that's a new substance.

MEMBER KOENIG: It's a new substance.

MR. NEAL: I understand what you're saying.

If you take that to the court, it's the same product. Ingredients are individually listed on the national list. And the regulations do not prohibit it. I'm just trying to be real with you here.

I understand the concept and the philosophy. I do. Legally, I don't see how you prevent it.

CHAIRPERSON RIDDLE: Keith?

MR. JONES: You know I think what Arthur is really getting at is that when you're out in the field and you have this regulation in front of you and you have substances that are on the list, as he said, there is no legal prohibition against tank mixing those substances.

Whether or not once tank mixed those substances create an additional synthetic material is beyond the knowledge base of the user of this regulation. Okay. You just don't know, okay?

MEMBER KOENIG: Agreed.

MR. JONES: And you wouldn't know.

MEMBER KOENIG: Agreed.

MR. JONES: And so because you don't know and because there is not a prohibition, then it is an

allowed practice to use those substances, tank mix them, and be in compliance.

MEMBER KOENIG: I don't disagree with that. But what we're saying is -- what I'm saying, Keith, I totally agree with you. We're in agreement on that.

But what I'm saying is that so -- and that's what I'm saying, if somebody was making Product A, okay, and they took individual things on the list that were approved and, you know, mixed them and created either a spray for their crop or a food, it would be okay.

But if they went and purchased them already mixed together in a formulated substance that wasn't those original two, it's a whole different substance. It's -- because -- it is, Barbara -- it's just -- that's -- you know, there's --

MR. JONES: Yes, I think our response to that, Rose, is that's an interesting argument. It probably, though, wouldn't hold up, okay? Because you're allowing -- I mean the flaw in the argument is that you are allowing the practice to go essentially within a facility. I step off the facility and I

can't do it? That -- you got a problem there, okay?

MEMBER KOENIG: No. All right. This one just seems -- I would beg to disagree and I think that it's pretty straightforward in that how can something -- if chemistry -- if chemists and the way chemists classify their own chemicals acknowledge that, you know, sodium lactate, that one thing is separate and another thing is separate.

I'm saying that as long as those two separate things are placed as ingredients, we acknowledge that we're allowing processing and it's being processed. That if through that processing you have changes, that's okay.

But I'm saying if you started with that ingredient as a separate ingredient, it is not lactic acid as you are adding it. And it is not -- well, whatever the other one was. It's sodium lactate, which is totally different. It's not on the list.

MR. NEAL: This is where the problem comes in to play. The petition process states in the Federal Register that I cannot petition a formulated substance. It says that I must only petition

individual ingredients, individual active ingredients.

If my individual active ingredients are on the national list and the petition process says that this is not for the review of formulated substances, we're sending that message that if the individual ingredients are already looked at and approved, and you buy a product that contains all approved active ingredients, you are okay.

MEMBER KOENIG: No, but what I'm --

CHAIRPERSON RIDDLE: Yes, if I can say something.

MEMBER KOENIG: Okay.

CHAIRPERSON RIDDLE: I mean these are chemical compounds. These are not formulated substances.

MEMBER KOENIG: Right.

CHAIRPERSON RIDDLE: And there are numerous chemical compounds on the national list. They aren't single elements. And, you know --

MR. JONES: The point that Arthur is trying to make is that if I had -- if Compounds A, B, and C are on the national list and I go buy a commercially-

available product that contains Compounds A, B, and C --

MR. NEAL: It's been formulated.

MR. JONES: -- and nothing more, in other words, nothing more --

MEMBER KOENIG: Right. I agree with you.

MR. JONES: -- no violative inerts, okay. We would not be able to take an enforcement action against that individual. That is just a straight up and down fact, okay?

CHAIRPERSON RIDDLE: Yes, Nancy?

MEMBER OSTIGUY: I agree. But you are talking about different things. If what you have purchased is A, B, and C, and it's A, B, and C in that bottle, absolutely.

MEMBER KOENIG: Right.

MEMBER OSTIGUY: That is --

MEMBER KOENIG: We're in agreement.

MEMBER OSTIGUY: -- okay.

MEMBER KOENIG: We agree.

MEMBER OSTIGUY: But if you've purchased A, B, and C and they've reacted to make Q, Q is a new

molecule.

MEMBER KOENIG: Yes.

MEMBER OSTIGUY: It's a new substance. So --

MEMBER KOENIG: And that's our point.

MEMBER OSTIGUY: -- and we can argue about this but no chemist is going to say that if you've reacted them that it is not Q.

CHAIRPERSON RIDDLE: Kim?

MS. DIETZ: Okay. We've done this before. We've talked about CAS numbers. And if you're talking about --

MEMBER KOENIG: Right. That's what I'm saying.

MS. DIETZ: -- right. If it has a new CAS number, then past Boards and this Board has agreed that it needs to be petitioned because it is a new substance.

MEMBER KOENIG: Right.

MS. DIETZ: And we've tried to incorporate that into the petition process but if A, B, and C is on the list but it produces a new CAS number because

that's a recognized chemical, it has its own MSDS sheet, it has its own chemical abstract number, then that material does need to be petitioned.

It doesn't mean -- it doesn't prevent you from making that in your plant by using A, B, and C. I could make it and not have to petition it.

MEMBER KOENIG: In your product.

MS. DIETZ: But --

MEMBER KOENIG: In your product.

MS. DIETZ: -- in my plant in my product, right.

MEMBER KOENIG: In your product.

MS. DIETZ: Right. Correct. But if I bought that from a supplier, it has a separate entity because it has a separate MSDS sheet.

CHAIRPERSON RIDDLE: I've got Andrea then Kevin.

PARTICIPANT: So why are okay to make it but not okay to buy it?

MS. DIETZ: Because I'm not buying it as a finished product. I'm buying it as individual -- I am buying A, B, and C individually. Let's -- I mean --

MS. ROBINSON: And you are making Q?

MS. DIETZ: Yes.

MS. ROBINSON: Okay. So why are you okay when you make Q but I've violated the regs when I bought Q?

MS. DIETZ: When I buy A, B, and C, I receive MSDS sheets from my chemical supplier.

MS. ROBINSON: No, no, no, no, no. Kim, you make Q.

MS. DIETZ: Right. But I'm not selling Q. I'm using Q in my plant.

MS. ROBINSON: I don't care. It doesn't matter.

MS. DIETZ: Okay.

MS. ROBINSON: This program isn't about selling or buying.

MS. DIETZ: Okay.

MS. ROBINSON: You're talking about the end result of something. And we both got to the same end result. The only difference is I went and bought Q. You made Q.

MS. DIETZ: Yes.

MS. ROBINSON: You said that by making Q, you're all right.

MS. DIETZ: Right.

MS. ROBINSON: When I went and bought Q, I violated the rules. How?

MEMBER KOENIG: I'll tell you that. Okay.

CHAIRPERSON RIDDLE: Well, okay, actually I'll let you answer that if it is just limited to that.

MEMBER KOENIG: Well, I'm trying to answer that.

CHAIRPERSON RIDDLE: But then I have Andrea and Kevin waiting.

MEMBER KOENIG: Okay. Because if Kim is making -- if she's just doing A and B with no food involved, if she's a chemical manufacturer and making it, no, she is in violation.

But what Kim is trying to say is that she's got an ag product, you know --

CHAIRPERSON RIDDLE: An organic product.

MEMBER KOENIG: An organic ag product and she's adding A and she's adding B. And in the

processing, because processing is allowed, if those happen to combine as you are processing to form Q, that's okay. But if you're purchasing that ingredient as Q, Q has to be on the national list.

MS. ROBINSON: You changed my question.

MEMBER KOENIG: No. You asked what Kim --

CHAIRPERSON RIDDLE: Okay. We've got Andrea. I'm sorry. Maybe we'll regroup.

MEMBER CAROE: Okay. Well, let me just -- I know exactly where Barbara is coming from.

CHAIRPERSON RIDDLE: All right.

MEMBER CAROE: So if I'm a small operation and I'm only making the end product, I'm a two-person operation and I have to buy pre-prepared ingredients, I'm held to a different standard than the larger operation that has the capacity to make their ingredients.

MS. ROBINSON: You are?

MEMBER CAROE: If I am a small operation and I cannot combine A, B, and C and make Q and I'm forced to purchase Q, I can't do it. But if I'm a large operation with the resources to do that on my

facility, then I can.

CHAIRPERSON RIDDLE: Kevin?

VICE CHAIRPERSON O'RELL: Well --

MS. DIETZ: Look at CO2 as an example. If I buy CO2 -- I'm sorry, if I buy CO2, it's on the national list and it has to be on the national list because it is a substance and it has a CAS number. If I make CO2 in my plant, if I combine ingredients to make CO2, I don't have -- it does not -- and those two things are allowed, they're naturals, then I don't have to have that on the national list. It's the same substance.

PARTICIPANT: Good question.

MS. ROBINSON: Again, I think you've confused my question.

MS. DIETZ: Okay.

MS. ROBINSON: My question is you are hinging this -- the question that I believe I asked because the question -- the issue you posed, A, B, and C are all on the national list, agreed?

MS. DIETZ: Right.

MS. ROBINSON: A, B, and C are approved.

MS. DIETZ: Agreed.

MS. ROBINSON: Keith makes A, B, and C in his plant together and comes up with viola -- Q.

I am very poor. I can't put A, B, and C together in a tank because I don't have the tank. I go down to Walmart and buy Q. It contains A, B, and C, all on the national list.

Now you think the certifying agent should come after me. But because he has the tank and he can mix it, we both have Q. We both actually --

All right. Let me just do this differently. Now I'll be the mathematician. Q equals A, B, and C.

MEMBER KOENIG: Right.

MS. ROBINSON: Wait, Rose. If Q equals A, B, and C and A, B, and C are on the list, then by definition Q is also on the list. I'm sorry, folks. But take me to court over this. And I think I'll win if I just bought Q. And I don't think you're going to prevail in that. I think that's the bottom line.

Come at this another way then.

MS. DIETZ: As a handler, we do that all the time. If they're on the national list and you make

it, you justify why you did what you did. And those materials on are on the national list.

CHAIRPERSON RIDDLE: Kevin? You've been very patient.

VICE CHAIRPERSON O'RELL: Actually I've been waiting so long to say this but Barbara actually said what I was going to say. I mean I don't see the distinction from a compliance issue. I mean I understand we're trying to chemically say that it is a different component. We all agree that it is a different component.

But when somebody can do it in a plant and they have a two-step process in their plant and they have a tank here and Tank A and B, and they mix those components and then pump that over into the next tank -- they pump Q over from putting A, B, and C -- from a compliance -- I get it from a compliance side. I don't know how you can differentiate that.

CHAIRPERSON RIDDLE: Rose?

MEMBER KOENIG: The only thing is that -- and again I think it is similar to the way annotations are on the list, I don't think when people add -- when

we ask for petitions on the list, okay, they're usually for a specific purpose, okay, for leavening of bread.

And so some of those with annotations would mean that the use would only be in bread. That you couldn't take now sodium bicarbonate -- you know, they're not all -- everything is not equal.

So what you are basically saying is -- because what I'm hearing and I don't think that was how people added things to the list -- but you are basically saying if you want to limit ingredients on that list to specific purposes and you have to annotate it -- just like the fellow -- he probably did us a favor with annotating it for us when he came up with those annotations of what they were for but you're saying if we want to control how something is utilized in processing for specific uses, we have to annotate it for those specific uses.

Or they can be combined to make anything.

MS. ROBINSON: That's correct, Rose.

MEMBER KOENIG: Okay.

MS. ROBINSON: I think you are right. I

think that's where you would have to go. If you don't want to see A, B, and C combined in any kind of way because you've got concerns about C -- A and B are perfectly fine with you. You don't care if people roll them, smack them, burn them, you know, whatever. But C is the one that gives you heartburn, then you annotate that C cannot be combined with any other this or that.

But that's what you do is you do it through your annotations or something like that. But you can't just blindly put things on the list and then come back and say hey, wait a second. Because we can't -- we just can't enforce on that basis.

MEMBER KOENIG: So we have come -- sorry.

CHAIRPERSON RIDDLE: Goldie?

SECRETARY CAUGHLAN: We've come pretty well full circle. We're now being advised to indulge in a lot of annotating where as we have been told by NOP, and I'm not being sarcastic, I'm simply saying maybe this is a joint learning.

But four years, five years, we've gone down the road of being told to severely limit all of our

annotations. We've had them cut from many of the things that we've passed on.

MR. NEAL: And I don't think that's Barbara's intent.

SECRETARY CAUGHLAN: I said I wasn't trying to be sarcastic. I'm asking --

MR. NEAL: No, I understand.

SECRETARY CAUGHLAN: -- if we --

MR. NEAL: I understand.

SECRETARY CAUGHLAN: -- base this, that's true.

MR. NEAL: Right. But it is impossible to do anyway because there is no technical evaluator out there that can possibly imagine all combinations that exist. There's no way you could do it.

MEMBER KOENIG: Yes, but's why --

CHAIRPERSON RIDDLE: Rose?

MEMBER KOENIG: -- that's why we'll have to change the petition process because the only way you can get around that is by petitioning for a specific use. Period. If it is so discomforting to the industry, that's the only solution which means it has

to be annotated. There's no way -- or, you're going to have to do an extensive review of any combination that could possibly use. And that's impossible.

CHAIRPERSON RIDDLE: Okay. Nancy? You okay?

All right. So I take it we were talking about number five there, substance.

MEMBER OSTIGUY: No, six.

CHAIRPERSON RIDDLE: Six? To me it's really relevant to number five.

MR. NEAL: We're talking about six but it was relevant to number five.

CHAIRPERSON RIDDLE: Yes, yes. The use of separate identities of substances in order to be used.

MEMBER OSTIGUY: But we've been talking about six is what I'm saying.

CHAIRPERSON RIDDLE: Yes, I know. But I did have a comment on number five once I reread it. And wonder if there is an oversight at the very end where it says must be separately listed for use in organic production or handling. Shouldn't that -- and it's not limited to production here.

We're talking about either kind of substance -- or substances used in production or handling. Correct?

MEMBER OSTIGUY: Number six you're saying?

CHAIRPERSON RIDDLE: No, number five. The very end of the paragraph just -- shouldn't the words or handling be included there?

MEMBER KOENIG: Yes.

CHAIRPERSON RIDDLE: Okay. If you'd -- I can't make that as a motion. But if you would just suggest it as an addition to you --

MEMBER KOENIG: Yes, I'll suggest to add --

CHAIRPERSON RIDDLE: -- original --

MEMBER KOENIG: -- or handling to number five.

CHAIRPERSON RIDDLE: Okay. And Kevin accepts that?

VICE CHAIRPERSON O'RELL: Yes.

CHAIRPERSON RIDDLE: Okay. All right.

Arthur, back to you.

MR. NEAL: Unfortunately, on number five, if you go to 6517 and you look at that particular

characterization in light of 6517(C)(1)(b)(I), it says the substance contains an active synthetic ingredient.

PARTICIPANT: (Speaking from unmiked location.)

MR. NEAL: Right. But even -- Barbara was saying the synthetic substances are impacted by Harvey. But still even for made with products in crops and in livestock, it still is a relevant issue.

And we're going to try to get clarification from OGC on that.

CHAIRPERSON RIDDLE: Yes. And I agree that the words active synthetic apply to crops and livestock.

MR. NEAL: It's the substance contains.

CHAIRPERSON RIDDLE: Yes, contains, okay. Yes but this still captures it. I mean --

MR. NEAL: Well, no.

CHAIRPERSON RIDDLE: -- it needs to be broader, doesn't it?

MR. NEAL: This says --

CHAIRPERSON RIDDLE: Because it applies to the processing.

MR. NEAL: This narrows it. This is saying that a substance -- well, it says includes compounds and elements.

CHAIRPERSON RIDDLE: Right.

MR. NEAL: But it doesn't limit it to compounds and elements, okay.

CHAIRPERSON RIDDLE: So --

MR. NEAL: You're okay?

CHAIRPERSON RIDDLE: -- you're okay?

MR. NEAL: Yes.

CHAIRPERSON RIDDLE: We're okay? Okay. All right.

So there was no change to number six? We had a robust discussion but no change. Okay.

And number seven, non-synthetic. And that's taken directly out of the rule, correct?

MEMBER KOENIG: Correct.

CHAIRPERSON RIDDLE: Any discussion of that?

(No response.)

CHAIRPERSON RIDDLE: Seeing none, any further discussion of either the conclusion or the document as amended? Diane?

MS. GOODMAN: If you don't mind. Thank you. And I really --

CHAIRPERSON RIDDLE: Approach the mike and state your name for the record.

MS. GOODMAN: I'm Diane Goodman. I'm a consultant to the industry. And I appreciate your taking my question all of you.

I have a concern about the public comments that were submitted to you by the OTA and other commenters that added substantial suggestions for changes.

And I know that you said, Rose, your committee hasn't had an opportunity to meet yet. But before this Board votes on this particular document, I have a genuine concern from the industry's perspective that you may all not have a handle on what's in this document. You know?

And I feel like even though the comments that may have been submitted, they may not be right on but there were substantial comments and time and energy put into all those comments.

And I would request that you either table

the vote on the entire document until the committee has had an opportunity to meet or even if you think it might be appropriate to call in an expert to help you understand and get your hands around some of this stuff.

So I just wanted to bring that up.

CHAIRPERSON RIDDLE: Okay. Thanks for the reminder.

MS. GOODMAN: Thank you.

CHAIRPERSON RIDDLE: Rose?

MEMBER KOENIG: I just want to say that those comments -- some of those comments and I didn't look through the documents to see if they were the exact same comments but OTA had submitted similar documentation because this is the second time we're looking at it. We were looking at it -- February we got those comments with similar suggestions

PARTICIPANT: (Speaking from an unmiked location.)

MEMBER KOENIG: Well, I mean I personally looked them over and it goes in a total different direction than -- well, but it's not consistent with

the way that the Board has been functioning since the inception of materials. And I'm not saying this is 100 percent consistent because, you know, there may be some analysis.

But that, like I said, would drop so much stuff off of crops and livestock. I mean essentially large groups would go away because you are looking at bonds now. You're not even looking at chemical reactions.

I mean I'm not saying that bonds aren't involved but --

CHAIRPERSON RIDDLE: So I'm hearing that those comments were taken into consideration. And yes, they are different, but this is the draft that is before us. But thanks.

Nancy?

MEMBER OSTIGUY: On that same topic, Rose was not the only one --

CHAIRPERSON RIDDLE: Your mike is not working or something. Can you speak up? You've got to get closer.

MEMBER OSTIGUY: Rose wasn't the only one

that looked them over. So it's not that the committee didn't look at them. But for where we were going --

MEMBER KOENIG: They don't take us there.

MEMBER OSTIGUY: -- they didn't take us there.

CHAIRPERSON RIDDLE: Okay. Thanks. Thanks for the response.

Okay. George?

MEMBER SIEMON: How many changes did we make?

CHAIRPERSON RIDDLE: Pardon?

MEMBER SIEMON: How many changes did we make?

(Laughter.)

MEMBER SIEMON: Who has kept track of this?

CHAIRPERSON RIDDLE: Well --

MEMBER SIEMON: And I just wanted to ask -- nine people, so both committees voted for this draft and put forward?

CHAIRPERSON RIDDLE: Yes.

MEMBER SIEMON: And there was nine people on the Board that supported this draft?

CHAIRPERSON RIDDLE: Right.

MEMBER SIEMON: We've just got to be clear on this.

CHAIRPERSON RIDDLE: Right. And the only changes that have been made have been quite minor.

MEMBER SIEMON: Quite minor?

CHAIRPERSON RIDDLE: Yes.

PARTICIPANT: Can you review those for us?

CHAIRPERSON RIDDLE: Sure, what I have -- and make sure that I have them, there ended up no changes on page 1. Right?

And then really three changes at the top two paragraphs of page 2, inserting the words or an agricultural product by a handling operation in three different places. Do I need to point out exactly where? It was after the word food each time. Okay?

And then the only other change was on number five at the end of the paragraph to add the words or handling.

We voted on others but they were rejected. So those are the only -- those are the amendments that have been accepted.

Yes? Bea?

MEMBER JAMES: Before we vote, I wanted to ask the NOP if they are comfortable with this document as it is now?

MR. NEAL: Is it useful --

CHAIRPERSON RIDDLE: Well, they're not -- they're busy right now.

MEMBER JAMES: It's a question for Arthur.

CHAIRPERSON RIDDLE: Yes. Arthur, there is a question for you. If you are comfortable with us voting to submit this to you as it has been amended slightly?

MR. NEAL: It's still probably going to generate some dialogue from our end.

CHAIRPERSON RIDDLE: Yes.

MR. NEAL: Yes, I mean if you submit it, we probably won't accept it from the standpoint of adopting it. We're going to come back to you with more questions.

CHAIRPERSON RIDDLE: Right. This isn't the end of the story. But you have no problem with us voting on it --

MR. NEAL: Nope.

CHAIRPERSON RIDDLE: -- recommending it to you at this point?

MR. NEAL: Collaboration.

CHAIRPERSON RIDDLE: Right.

Kevin, were you trying to get my attention? Okay. Yes.

Okay. We will vote on the amended synthetic/non-synthetic draft as presented by the Materials and Handling Committees. And on this, as a whole document, we have no one with interests to recuse. Is that correct? If so please speak up.

(No response.)

CHAIRPERSON RIDDLE: Hearing none, we'll proceed.

And the first up is Kevin.

VICE CHAIRPERSON O'RELL: Yes.

CHAIRPERSON RIDDLE: Dave?

MEMBER CARTER: Yes.

CHAIRPERSON RIDDLE: Rose?

MEMBER KOENIG: Yes.

CHAIRPERSON RIDDLE: George?

MEMBER SIEMON: Yes.

CHAIRPERSON RIDDLE: Bea?

MEMBER JAMES: Yes.

CHAIRPERSON RIDDLE: Hugh?

MEMBER KARREMAN: Yes.

CHAIRPERSON RIDDLE: Michael?

MEMBER LACY: Yes.

CHAIRPERSON RIDDLE: Gerald?

MEMBER DAVIS: Yes.

CHAIRPERSON RIDDLE: Nancy?

MEMBER OSTIGUY: Yes.

CHAIRPERSON RIDDLE: Julie?

MEMBER WEISMAN: Yes.

CHAIRPERSON RIDDLE: Andrea?

MEMBER CAROE: No.

CHAIRPERSON RIDDLE: Goldie?

SECRETARY CAUGHLAN: Yes.

CHAIRPERSON RIDDLE: The Chair votes yes. So we have 12 yes, one no, and one absent.

Okay. And that was --

MEMBER SIEMON: Let's do something simple like Ag versus Non-Ag.

(Laughter.)

MEMBER SIEMON: Let's do something simple.

CHAIRPERSON RIDDLE: Well, that is next.

PARTICIPANT: Do you want to check the audience and see if there are any tomatoes out there or anything?

CHAIRPERSON RIDDLE: And before we start, and this really is what I prefer to do is ask if there are any interests to declare before we start on something? Any particular interest relevant to this draft? Ag, non-ag from the -- we're shifting to the Handling Committee.

PARTICIPANT: Jim, will that get posted, every written draft of your recommendations?

CHAIRPERSON RIDDLE: Yes.

PARTICIPANT: Arthur said yes.

CHAIRPERSON RIDDLE: The question is will the revised draft of the synthetic/non-synthetic be posted. And yes. I don't know exactly when. But after every meeting now, the committee chairs submit to me and there is an official cover sheet that goes in. And then once that's happened, then they get

posted.

Okay. So we are to the Handling Committee. And it's ag/non-ag. And before Kevin introduces it, I'll just ask if there are any interests to declare.

PARTICIPANT: You already did.

CHAIRPERSON RIDDLE: Well, I didn't. I got interrupted. I didn't get a look around and sense if there were. Okay. I see none.

All right. Kevin, please proceed.

VICE CHAIRPERSON O'RELL: Okay. If we thought we had a lot of fun on syn versus non-syn, I think this is a great segue into ag versus non-ag. So we're prepared for a lot of lively debate and discussion, which is good.

The Handling Committee was asked to take a look at the agricultural/non-agricultural definitions for substance. It was found, for some background information, that in regards to the determination and classification of substances as agricultural/non-agricultural, it was felt that the definitions found that in the National Organic Program final rule were sometimes vague and there were conflicts.

And one missing area was that there was really no rule or guidance for the definition of what is and what makes a product agricultural. What is agriculture?

The definition of an agricultural product in OFPA and in the NOP rule is consistent, 7 CFR Part 205, Section 205.2, Terms Defined, Agricultural Product. Any agricultural commodity or product, whether raw or processed, including any commodity or product derived from livestock that is marketed in the United States for human or livestock consumption. And this is consistent both in OFPA and the rule.

However, OFPA did not define non-agricultural. The rule defines non-agricultural substances, again, in the same Terms Defined, Non-Agricultural substance is a substance that is not a product of agriculture such as a mineral or bacterial culture that is used as an ingredient in an agricultural product.

For the purposes of this part, an agricultural ingredient also includes any substance such as gum, citric acid, or pectin that is extracted

from, isolated from, or a fraction of an agricultural product so that the identity of the agricultural product is unrecognizable in the extract, isolate, or fraction.

It was felt that this definition of non-agricultural products was conflicting because there are many processed agricultural products which have been extracted, isolated, or fractioned during processing to a point where they no longer resemble the starting agricultural material.

Example, evaporated cane juice. The evaporated cane juice, organic sugar doesn't resemble sugar cane. And by that definition would appear not to be agricultural.

The Handling Committee had many meetings and discussions around these issues. One discussion centered around the removal of the non-agricultural definition. But we came around full circle to deciding the best thing to do was to recommend a change for the definition of non-agricultural substance.

That definition that was proposed is a

substance that is not a product of agriculture such as mineral or bacterial culture, period, striking the remaining portion of that definition, making it more simple and adding clarification.

The Handling Committee made three recommendations. The first recommendation is the adoption of a guidance document for defining agriculture as it applies to agricultural products.

We felt this was necessary to get some definition and we wanted to look at historical decisions that were made by past Boards in drawing the lines and determining existing substances and where they were placed on the national list. And coming up with a definition that would accommodate the past history.

The second recommendation was for a rule change to the current definition of non-agricultural substance which is, as I previously mentioned, was a shortened version of the existing non-agricultural substance definition.

The third recommendation, the Handling Committee recommended was the adoption of a decision

tree as guidance in determining a substance's agricultural or non-agricultural status. And this went hand and hand with the recommendation number one in terms of the guidance document.

We heard a lot of public comment, mostly centering around yeast. And we understand that there is a lot of passion for yeast being non-organic.

In the public comment, most of all of the commenters talked about a process in defining organic yeast. And they take yeast, and then using organic inputs, come out with a product that is more along the handling guidelines.

Our concern was, and the commenters who were in favor of yeast being agricultural, didn't really address our issues in their comments in terms of how do we classify yeast? If we say it is agricultural, how does it fit in with the current standards guidelines. How do you do an organic systems plan for yeast?

There have been previous questions, two commenters saying that they feel that they can provide this information. And certainly in our discussion, we

want to take all of that public comment in consideration for the full Board discussion here.

Rose, I don't know if you want to walk through just a brief explanation of the guidance document as we -- do you mind taking us through that for kind of a background of how we got --

MEMBER KOENIG: Well --

CHAIRPERSON RIDDLE: Before you get started, Rose, I do have a question for Kevin.

VICE CHAIRPERSON O'RELL: Yes?

CHAIRPERSON RIDDLE: And that is is your intent here to move this for a vote? Or are we just having a discussion?

VICE CHAIRPERSON O'RELL: Actually our intent, and we talked to the committee before this session, and we decided that we would like to move to put this on the floor for a vote for the full Board to be able to have dialogue. The public is here. They've expressed their comments.

So -- and although we voted on this document and it was a five yes to zero nos, I'm sure that there are some people who voted yes for this, thinking maybe

differently based on some public comment. So I think it is proper for us to put it up for debate.

CHAIRPERSON RIDDLE: Okay.

MEMBER SIEMON: Just for clarification. Does that mean we expect it to come back? Or do we expect this to be the final day?

VICE CHAIRPERSON O'RELL: If we can come to an outcome --

MEMBER SIEMON: Okay.

VICE CHAIRPERSON O'RELL: -- we would hope to come -- to get there. If we have to table it and take it back based on discussion of the Board, we'll go that route.

MEMBER SIEMON: Okay. Well, sometimes we passed -- like we passed the pasture guidance last time just to get it out in the public and get feedback --

VICE CHAIRPERSON O'RELL: Well --

MEMBER SIEMON: -- because we had made some changes. So I'm just trying to clarify this. We're not doing it just to get more feedback. We're doing it to send it forward today.

VICE CHAIRPERSON O'RELL: We may decide that we've changed the document enough that --

MEMBER SIEMON: But we're not done changing it. Oh, I get it.

VICE CHAIRPERSON O'RELL: We might take that approach, George.

MEMBER SIEMON: Okay. Yes.

CHAIRPERSON RIDDLE: But right now, you are just presenting it.

VICE CHAIRPERSON O'RELL: We're just presenting it.

CHAIRPERSON RIDDLE: And then once Rose is finished --

VICE CHAIRPERSON O'RELL: We're just presenting it and then we'll make a motion to move to --

CHAIRPERSON RIDDLE: Okay. Yes? Andrea?

MEMBER CAROE: Based on that fact, I think it might be prudent to set a time limit for a discussion on this. And at the end of the time limit, make a decision on whether we're going to move it for vote or --

CHAIRPERSON RIDDLE: Yes.

MEMBER CAROE: -- or actually vote or table.

VICE CHAIRPERSON O'RELL: Sure. I think that would be good.

CHAIRPERSON RIDDLE: But if you just finish presenting it --

VICE CHAIRPERSON O'RELL: And then we'll make a motion.

CHAIRPERSON RIDDLE: Yes.

VICE CHAIRPERSON O'RELL: Rose, if you'd just give some background on the --

MEMBER KOENIG: Okay. So I was asked to come into the process to help in the definition because when the committee was going to source various definitions, none of them seemed to be complete. Because if you look at ag, in an ag Department, they tend to look at major commodities and they miss out things like mizzuna and bok choy and, you know, all the little weird things.

So, you know, by simply, if you started listing every single agricultural product, you are bound to miss some, okay? So I was striving to take

an approach that would be not biased and arbitrary basically.

And the only other way that I know, you know, having a plant background and background in taxonomy is using the way that taxonomists, whether they are classifying animals or plants, I mean there is a system of classification that exists out there in science that is based on traits. Or different characteristics that distinguish among, you know, different entities, whether they are within a species or not.

So anyway, I thought well, why don't we take this approach. Maybe we could grasp these broad groups and use, you know, again, the scientific classification so it is very clear what groups we're talking about.

It was quite easy and I think, you know, we all would agree on them. And that is what this documents is basically saying, that historically in agriculture, people have harvested plants and animals for sure. I don't think there is a debate on that.

And the reason why plants are harvested and

utilized by people is because they go through photosynthesis. They are capable of producing their own energy.

So then I looked at other kingdoms where organisms have the ability to produce their own energy, okay? And that's where -- and then I started looking at those and saying well, which one of these produce things that would be considered, you know, either raised or managed or farmed and that have historically been certified, you know, by certifiers.

And, in fact -- so what I was afraid to miss out would be things like spirulina because we had already put cyanobacteria on our materials list for a particular material. Of course, that meant that we were in agreement that these were certifiable types of organisms.

So the plant kingdom -- so the definition reads that the plant kingdom is allowed, the cyanobacteria -- and those are in a kingdom and they're specific because there are others in that kingdom but those are the only ones that photosynthesize. Okay? So that's the distinction.

1 That's the characteristic.

2 The same with the multi-cellular algae. The
3 kingdom Protista, you know, there are single-celled
4 algae. But the multi-cellular algae are the ones that
5 typically are harvested, the ones that have been
6 recognized on the list as agricultural, as byproducts
7 or agriculture ingredients, or, you know, the noris
8 and the stuff that you might eat in sushi. Those
9 cover those.

10 Then you come to the animal kingdom. And,
11 again, we have livestock standards. So obviously the
12 animal kingdom is allowed.

13 And then you come to the fungi which are
14 similar, you know, they're problematic because fungi
15 are similar to animals in the type of the way that
16 they get their energy. They absorb their energy just
17 like you absorb food in your gut, you know. Fungi
18 absorb energy. They're non-photosynthesis -- they
19 don't photosynthesize. Okay?

20 So one of the issues you have, you know when
21 you look at the fungi is okay, are they plants or
22 crops? Or are they animals? What standard have you

used? So when I looked at those, since many folks have come up and said we need mushroom standards, they're talking about edible mushrooms, mushrooms have historically been certified.

And they fit because as in the definition, they have fruiting bodies, ascocarps and basidiocarps, which are multicellular, that you can pick up, you can harvest. You know you can see them with your eyes. They're not microscopic. They have to utilize compost and they can be incorporated in a farming system.

So that was -- the reason why they were included was because of their higher fungi. Mushrooms have a distinct name, you know it's a common name for the edible fungi. And the ascocarp and the basidiocarp are the things -- the fruiting bodies similar to an eggplant that you pick or harvest, okay?

Now when we looked at other areas of the fungi, and we had folks presenting that they wanted yeast to become agricultural, I looked at the classification system and tried to figure out, you know, how are they harvested? How could -- you know is there a way that fits kind of in the concept of

agriculture.

Well, presently on the list, again I was looking at the historical perspective, you know if they are in existence in the program, where do they lie? Well, they happen to lie as a non-agricultural ingredient.

So that was one of the impetus of this document was to kind of figure out -- it wasn't to necessarily change things but it was to present a justification as to why past Boards have decided that they were non-agricultural.

And some of the reasons they're non-agricultural, in my opinion if you use this system of division, was because they tend to be, you know they tend to be single cell. You know they don't have mycelium. They do not produce -- they produce ascus, which one of the mycologists came up with.

And, again, my intention in this document was not to go through yeast biology. It was to try to simplify the matter as much as I could. But they don't produce ascocarps or basidiocarps which are actually the fruiting bodies.

Instead, they are manufactured. The spores are generated. They are manufactured. They're grown in vats. They're usually centrifuged. They produce colonies in a day or two. And they don't photosynthesize. You have to give them all their food. So that was the basis of trying to take existing regulation and grouping things so that we could be consistent with our definition as it stood in the present regulation.

VICE CHAIRPERSON O'RELL: Okay. Thank you, Rose.

Since we have with this full recommendation from the Handling Committee to the Board, we have three separate recommendations. It's probably going to be easiest if we take this as three separate recommendations for voting.

So the first recommendation -- I would so move that the first recommendation from the Handling Committee for adoption of the attached guidance document for defining agriculture as it applies to agricultural products that Rose was explaining.

MEMBER SIEMON: I'll second.

CHAIRPERSON RIDDLE: Okay. Kevin moves adoption of recommendation number one. George seconds.

All right. Discussion? George?

MEMBER SIEMON: Yes. Kevin, I'm just concerned that your first recommendation is the guidance to define agriculture.

Your second recommendation is a rule change to change non-agriculture. And I'm just concerned that you are relying on a guidance to define -- you're saying since non-ag is so hard to define, let's define ag in the guidance. But it's in the guidance and the non-ag is in the rule.

And, of course, there is a definition of agriculture in the definitions of the present rule, which you all referred to that's quite -- so I'm just concerned about the layout if this guidance would help us with the rule. I'm just concerned about the way you've laid this out.

VICE CHAIRPERSON O'RELL: Well, okay. The guidance document as it was laid out, the first question that kept coming up to the committee was we

have a definition for agricultural substances. We don't have a definition for agriculture.

MEMBER SIEMON: It's agricultural product is what the definition is.

VICE CHAIRPERSON O'RELL: Yes, agricultural products, yes. But we use the word agricultural as part of that definition. And that was problematic.

If you look at the definition of agricultural product, it says any agricultural commodity. So you're back to defining --

PARTICIPANT: Or product.

VICE CHAIRPERSON O'RELL: Yes.

MEMBER SIEMON: So it's defined itself.

VICE CHAIRPERSON O'RELL: It's defined itself. And so that's where we felt we needed guidance first on where we draw the lines for agriculture.

Okay. So the second recommendation, which we're not going to get into now but just a quick explanation is just to give some clarification for what a non-agricultural substance is.

CHAIRPERSON RIDDLE: Jerry?

MEMBER DAVIS: I'm trying to understand what you just said. In other words, the agricultural definition is just kind of there. We have to deal with it. It's defined itself, you know agriculture is defined as production of an agricultural product. So we can't really change that because that's in the industry. It's nomenclature. We can't deal with it?

VICE CHAIRPERSON O'RELL: That's --

MEMBER DAVIS: So we're going to work on non-ag instead?

VICE CHAIRPERSON O'RELL: That's the -- it's both in the law and the rule.

MEMBER DAVIS: Right.

VICE CHAIRPERSON O'RELL: For -- well, non-agricultural substance is not in the law. It's just in the rule. But yes, the agricultural product definition is in both the rule and the law. And any agricultural commodity or product.

So it's using the word agricultural to define itself, which is why we went down the route of trying to get some kind of guidelines as to what is agriculture. What defines agriculture with organic

handling.

MEMBER DAVIS: Okay. And you also mention in here non-agricultural substance --

CHAIRPERSON RIDDLE: Speak into the mike a little more.

MEMBER DAVIS: -- you mentioned bacterial cultures. Is the problem perceived about yeast not being agricultural because it's too much like a bacterial culture? And we don't want to go there as far as making bacterial cultures agriculture also?

VICE CHAIRPERSON O'RELL: Well, there were a couple of reasons. One, historically the past Boards had voted that yeast, by putting in 205.605(A) was a non-synthetic, non-agricultural product. So it was the placement of yeast currently on the list.

And two, is that bacteria is carved out in the definition of a non-agricultural substance and bacteria is a single-cell microorganism as is yeast.

CHAIRPERSON RIDDLE: Andrea?

MEMBER CAROE: I just wanted to clarify, too, one of the reasons why we eliminated language on non-agriculture is because we were trying to avoid a

conflict where something didn't fit in either category. The present -- the proposed definition for non-agriculture, as it exists now, is kind of when it's not -- when it doesn't meet agriculture, it becomes non-agricultural. So that we didn't get something that didn't fit into either category.

CHAIRPERSON RIDDLE: Dave?

MEMBER CAROE: Which is why we were considering eliminating it completely.

CHAIRPERSON RIDDLE: Dave?

MEMBER CARTER: I've been dazed and confused on a great many issues that have come before this Board before but nothing to this level.

(Laughter.)

MEMBER CARTER: Because trying to draw this line and, you know, everything that we do is we're trying to create a threshold of what falls in on one side and on the other.

And I really, in trying to go through all of this, part of this number one is definitions based upon the past Board action is always a good indicator. But a lot of the folks that have filed comments are

noting that production practices and the ways of making yeast have changed since a lot of that was developed.

CHAIRPERSON RIDDLE: I think Rose disagrees.

(Laughter.)

MEMBER CARTER: Okay.

MEMBER KOENIG: No, that's not what they're saying. I mean yeast -- production of yeast has not changed that -- I mean there's different ways you can produce it.

MEMBER CARTER: Practices, no that shouldn't --

MEMBER KOENIG: No, but the practices haven't changed. What they're saying is that they believe the practices of essentially industrial manufacturing are agricultural.

Now I'm not saying that there couldn't be some folks out there that are harvesting, you know, opening their bread and, you know, natural stuff is falling from the air. But that's not what we're talking about. We're talking about, you know, industrial production in usually zoned industrially

areas, not in -- you know you're not going to get an ag exemption for a yeast facility, okay?

MEMBER CARTER: So if we develop access to pasture for yeast --

(Laughter.)

MEMBER CARTER: Okay. Then the other aspect is that -- in one of the comments here that -- let me find it -- from Paul Stamets is talking about certain ones --

MEMBER KOENIG: Coreopsis?

MEMBER CARTER: -- coreopsis --

MEMBER KOENIG: Coreopsis, yes.

MEMBER CARTER: -- that exist in both a fungi or a mushroom form and in a yeast form.

MEMBER KOENIG: Well, what he's saying is that some, you know fungi before they produce those basidiocarps, you know some fungi, you know, that are higher fungi can do -- they can have different life cycles. Some life cycles can be yeast-like but when -- it's the life cycle when they go into that sexual phase -- getting warm --

(Laughter.)

MEMBER KOENIG: All of a sudden everybody is interested. Get that in there. No, but when they get into their sexual phase, which is the fruiting body, that sexual phase is not a yeast anymore. The sexual phase is actually a fruiting body.

And like I say, there was science out there -- I'm not disputing the science, you know, necessarily that was presented. But it wasn't -- they did not challenge the ascocarp/basidiocarp definition which, you know, I don't dispute that there -- you know that some things can have yeast-like lifestyles and also can produce an ascocarp.

But what I'm saying is if they produce an edible ascocarp, then hey they could be -- and you could raise them in compost and you could pick them, then yes, I think the industry has always identified that type as an agricultural product.

But that yeast-like form, if they were doing it in a laboratory and making single cells, I don't think that's the way most folks have been historically thinking of as an agricultural product. And that's the distinction.

CHAIRPERSON RIDDLE: Okay. Hugh? You've got Dave straightened so --

MEMBER CARTER: Well, yes, Dave is still shaking his head. Dave is still dazed and confused.

CHAIRPERSON RIDDLE: Okay. All right. Well, you think about it while Hugh --

MEMBER CARTER: Yes.

CHAIRPERSON RIDDLE: All right.

MEMBER KARREMAN: Just a question on the cultural practices on how yeast or bacteria -- just wondering if there are different cultural practices in how the yeast is reared. If it is in asexual or sexual reproduction?

And would that determine anything? I mean like if it is stressed, it is under asexual production? Or if it is cultivated, well, you know, then it is in sexual reproduction. You get the fruiting bodies and all that. I don't know.

SECRETARY CAUGHLAN: We need humane treatment.

MEMBER KARREMAN: You need humane treatment of yeast.

(Laughter.)

MEMBER KARREMAN: But are there stressors that make go one way or the other?

MEMBER KOENIG: Well, I mean -- well, if -- once they go in and they form an ascus, which is their sexual phase, they are -- and, you know, people said are they -- they go through sexual reproduction. I'm not doubting that. But they produce an ascus which is just a structure that has asco spores.

You know these are all microscopic things that, you know, I can't show you a single yeast cell without giving you a microscope, okay? But I can show you an ascocarp because it is visual. You know you can't individually harvest, you know, a yeast cell by hand but you can pick a mushroom, okay?

CHAIRPERSON RIDDLE: Okay. Kevin?

VICE CHAIRPERSON O'RELL: You know I think that the commenters that were talking about organic yeast and wanting yeast to be agricultural so it could be organic describe mostly an organic systems handling plan of taking yeast and raising it or growing it on organic substrates, which is great.

But it doesn't draw the line of distinction of the yeast itself being agricultural. And that's where we struggled with it. And we're looking for help and comments from the Board as to, you know, what is the direction people feel we should go.

CHAIRPERSON RIDDLE: George?

MEMBER SIEMON: Yes I guess that's the part I'm a little confused about. I don't know anything about this. But if you raising anything in confinement, you've got to have a disease program. You've got to have a pest program. You've got to have nutrients.

So I don't know that I understand why it's more like a handler versus a farm plan. It seems to me they've got to deal with all the same components that you would in a farm plan. You've got to feed it. You've got to water it.

MEMBER KOENIG: No, no.

MEMBER SIEMON: You've got to have the right conditions.

PARTICIPANT: You've got to have the substrate part.

MEMBER SIEMON: You've got to have the substrate. You got -- there's disease. I just don't --

CHAIRPERSON RIDDLE: We have Goldie next.

MEMBER SIEMON: Yes.

CHAIRPERSON RIDDLE: Goldie?

SECRETARY CAUGHLAN: And by -- in the proposed guidance, it talks about, Rose, that one component of designating it as being an agricultural product then is that it is managed by humans. The intentional act of gathering, producing, raising, or growing.

And I would submit that it's not, you know, to me it fits there then that these are very much -- can be accommodated under the -- they are coming from a wild source originally. They can be produced and managed domestically as it indicates.

I mean this has troubled me a great deal since we first talked about it. But as we began to get the comments, I wasn't being swayed because somebody wants to have a product out there that is certified organic. That's not the issue.

To me I think that we are closing ourselves off in a very -- we're narrowing the whole awareness of what is a living organism that has historically -- several of these types of living organisms, including the cultures that go into dairy to make beneficial substances that we take in like acidophilus or things like the cheese-making.

I mean to me there is a continuum or certainly a relationship there that if we begin talking about things as not -- I don't know. This narrowing of the framework that we've come up here with that's making me more and more feel that this is not the direction to go.

CHAIRPERSON RIDDLE: Rose?

MEMBER KOENIG: Okay. I just want to say that first of all, you know, another useful document is the Principles of Organic Farming because whether you're growing yeast or you are growing plants, if it is truly an agricultural product, it should meet the principles of organic farming, okay?

Now not everything is going to meet it to a T, okay? But it doesn't -- Goldie, when they take a

spore, okay, and you put it in a substrate, you first -- you know what an autoclave is?

SECRETARY CAUGHLAN: Yes.

MEMBER KOENIG: Okay. The substrate is autoclaved, okay? And basically you essentially kill any of the biodiversity that might exist in the air, you know. And in a lot of cases in regular yeast production -- and, again, a TAP review would be nice. Maybe we want to prohibit antibiotics and such. But a lot of times they use antibiotics in that substrate so that only those particular strains of yeast grow.

SECRETARY CAUGHLAN: I'm suggesting that it's the classification of saying that these things are beyond the scope of what we should be granting any kind of status here that is really what's troubling me on a much more generic basis.

I would, you know, if I take -- going back to the wild -- gathering of your wild yeast, any time a baker who bakes consistently bakes, the wild yeast come. And you culture them. And you continue to feed them. You feed them every week. You give them more flour. You give them more water. And they do the

rest.

So there's all kinds of levels of intentional producing. And, of course, different kinds of levels of that need to be examined and looked at in this regard just like everything else in the realm of what we're here to talk about.

MEMBER CAROE: Rose?

CHAIRPERSON RIDDLE: Andrea?

MEMBER CAROE: Rose, I hear your argument. And I know you are very passionate and very --

MEMBER KOENIG: I'm not -- I'm passionate about agriculture.

MEMBER CAROE: Okay.

MEMBER KOENIG: I'm not -- I mean --

CHAIRPERSON RIDDLE: Okay.

MEMBER KOENIG: -- I'm not passionate about microorganisms.

CHAIRPERSON RIDDLE: Andrea has the floor.

MEMBER CAROE: But my question to you is show me -- cite to me where in the regulation or in OFPA it prevents these practices that you are opposed to because I don't see it.

MEMBER KOENIG: Exactly. Because there are no standards for microorganisms.

MEMBER CAROE: But it doesn't prohibit it. It doesn't prohibit it.

MEMBER KOENIG: Well, this --

MEMBER CAROE: And this -- hold on one second -- by allowing these practices to be considered as agricultural, we allow those practices to be defined by further regulations and rulemaking.

MEMBER KOENIG: Which is my point.

MEMBER CAROE: We do not -- we don't have any premise to not allow this in the regulation and in the statute.

CHAIRPERSON RIDDLE: Nancy? And then Kevin.

MEMBER OSTIGUY: Does anyone know the original reason for excluding -- this is not working.

CHAIRPERSON RIDDLE: You've got to really get closer.

MEMBER OSTIGUY: I just don't think it is live.

MEMBER KOENIG: I don't know why.

PARTICIPANT: Tap it and see if it works.

MEMBER OSTIGUY: Does anyone -- it's not working. No, it's off.

CHAIRPERSON RIDDLE: Okay.

MEMBER OSTIGUY: So there it goes.

CHAIRPERSON RIDDLE: Okay.

MEMBER SIEMON: Does anybody know why it originally was -- well, I think Rich Stuart might be able to answer that.

MEMBER OSTIGUY: Why were yeast originally excluded?

MEMBER KOENIG: Not excluded. Classified as non-agricultural.

MEMBER SIEMON: I'll just take a stab at it because organic yeast weren't allowed. And they were trying to find a way to have yeast allowed. That's a --

MEMBER OSTIGUY: Organic --

MEMBER SIEMON: -- organic yeast was not available.

VICE CHAIRPERSON O'RELL: Was nonexistent.

MEMBER SIEMON: But then it did not exist.

CHAIRPERSON RIDDLE: Bea, just on this

1 question.

2 MEMBER SIEMON: And we heard testimony that

3 commercial yeast uses synthetics in its process to

4 make it available and, therefore, I know that doesn't

5 help because it is not in the synthetic section. It's

6 called a non-synthetic.

7 CHAIRPERSON RIDDLE: Just on this --

8 MR. BAKER: Brian Baker, certifier

9 representative, 1995, Orlando, Florida.

10 The petition and the petitioners said that

11 it was non-agricultural. And the NOSB concurred.

12 MEMBER KOENIG: Thank you.

13 CHAIRPERSON RIDDLE: Okay.

14 SECRETARY CAUGHLAN: And Brian, do you have

15 any recollection of a TAP? What was the TAP? What

16 was the quality of it?

17 MR. BAKER: It was not very well developed.

18 But we went mainly into various substrates. And we

19 looked at substrates from a negative rather than a

20 positive perspective. Rather than requiring organic,

21 we prohibited various petrochemicals and synthetic

22 sources. And that is contained in the annotation in

the current NOP rule.

MEMBER KOENIG: Exactly.

CHAIRPERSON RIDDLE: All right.

MEMBER KOENIG: Thank you.

CHAIRPERSON RIDDLE: All right, Bea?

MEMBER JAMES: Did that TAP review talk about production methods or different ways to culture microorganisms?

MR. BAKER: In a very broad brush sense.

VICE CHAIRPERSON O'RELL: I have them here.

MR. BAKER: You do? Yes. And it's not in any great depth.

VICE CHAIRPERSON O'RELL: No, no.

CHAIRPERSON RIDDLE: Bea, continue?

MEMBER JAMES: Well, it just seems like that is vital information to be able to make a decision about microorganisms being agricultural or non-agricultural is to have information on how they're -- all the different varieties and ways that they are cultured.

CHAIRPERSON RIDDLE: Kevin?

VICE CHAIRPERSON O'RELL: I would have to

say going back to the 1995 TAP, that information would not be helpful in getting us to that point. And if we needed to do that, that's a direction we could go.

Just one -- I guess for me, I'd just like to know the people who support yeast. Then where do we draw the line? Do we go to bacteria because they are single cell. And even though the definition explicitly carves out bacterial culture as an example of a substance that is not a non-agricultural substance, if you include yeast, a lot of the same production methods are going to be applied to bacteria.

And I'm not opposed to saying that if we go that direction, we're going to have to handle it and develop standards. But --

CHAIRPERSON RIDDLE: And I've got Dave next. Did you have your hand up?

MEMBER CARTER: Yes.

CHAIRPERSON RIDDLE: But first I'm going to organize myself because I do just want to remind the Board that we did have a petition and a TAP on microorganisms with in the last two years. Right?

VICE CHAIRPERSON O'RELL: Yes.

CHAIRPERSON RIDDLE: And those were seen as non-synthetic, non-agricultural.

VICE CHAIRPERSON O'RELL: Correct.

CHAIRPERSON RIDDLE: So just -- and there was an in depth TAP on the microorganisms there.

MEMBER KOENIG: From what year?

PARTICIPANT: Look at your book.

MEMBER OSTIGUY: You were on the Board as I recall.

MEMBER KOENIG: Yes.

MEMBER OSTIGUY: Microorganisms.

CHAIRPERSON RIDDLE: It was probably 2003 would be my recollection.

MEMBER KOENIG: Okay.

CHAIRPERSON RIDDLE: Dave?

MEMBER CARTER: Well, that's -- I guess that's where I struggle is, you know, if you draw the line here or if you erase the line here, where do you go? And I always look for -- and, again, you know, using my vast knowledge of food science based upon training in journalism --

(Laughter.)

MEMBER CARTER: -- you know, it just -- there's certain logical points that if it is a living organism, there's a big distinction between non-living and living organisms. And that's a pretty easy threshold. And when you cross that threshold and you get on the side of living organisms, then you can discuss and debate the nuances of production systems and all of that.

It's a lot easier for me to understand that distinction than it is between fruiting bodies and non-fruiting bodies and single cell, you know? So that's why I'm struggling with this.

CHAIRPERSON RIDDLE: George? And then Jerry.

MEMBER SIEMON: It's just so -- if yeast was removed from the list, just to go the other way around because we're talking a lot about yeast, then organic would be required? Or not? I guess -- no, it wouldn't, would it? I heard that said.

MEMBER KOENIG: Say that again.

MEMBER SIEMON: If yeast was removed from

the national list --

CHAIRPERSON RIDDLE: As a non-synthetic --

MEMBER SIEMON: -- then it would be required on a commercially available basis.

MEMBER KOENIG: Right.

MEMBER SIEMON: Is that correct?

CHAIRPERSON RIDDLE: Right. It would have to be organic unless it gets petitioned to add to 606.

MEMBER SIEMON: So there is another way to go at this specifically -- yeast -- you know because I mean it does seem like it is a real hard subject to get clear.

CHAIRPERSON RIDDLE: I got Jerry next. Then Andrea.

MEMBER DAVIS: I'd like to kind of reiterate in a different way what David just said. It seems to me the distinction between mushrooms and yeast is fairly arbitrary based on size mainly. Yes, they are more multicellular but I think that's pretty arbitrary to say well single cell is less important or living than something that has a few more cells.

CHAIRPERSON RIDDLE: Andrea, then Rose.

MEMBER CAROE: I just wanted to speak on George's point about removing it from the national list.

It doesn't really correct the problem if you remove it because if we threw this -- carve it out as non-agricultural, it will remain non-agricultural. You can't consider it agricultural just because it's off the list. I mean this codifies that position on the list.

PARTICIPANT: And conversely.

MEMBER CAROE: And conversely if we take it -- if we amend this to allow yeast to be included, then its position on the present list is in conflict and it will have to be removed.

MEMBER SIEMON: I agree with you. That's why I was asking. I was told there was another solution. There is no other solution then?

PARTICIPANT: Yes, there is.

CHAIRPERSON RIDDLE: And Rose, would you like to explain?

MEMBER KOENIG: I just want --

MEMBER SIEMON: Okay.

MEMBER KOENIG: -- to go back to Gerald's comment.

CHAIRPERSON RIDDLE: Oh.

MEMBER KOENIG: That is not an arbitrary distinction. That's why we use taxonomy. Those --

MEMBER SIEMON: I'm not --

MEMBER KOENIG: -- I'm just saying that that's -- if you think that you are as similar as, you know, yeast are further from edible mushrooms as humans are to dogs. I mean it is the same analogy.

MEMBER SIEMON: Right. I understand.

MEMBER KOENIG: So they are very different. They're not even in the same genus or species.

MEMBER SIEMON: I understand. I know the biology really well. That was my training --

MEMBER KOENIG: Okay.

MEMBER SIEMON: -- in school. I guess what I'm saying I support what David says as far as living versus non-living. I think that's an appropriate thing to consider as the dividing.

CHAIRPERSON RIDDLE: Kevin?

VICE CHAIRPERSON O'RELL: So, Gerald, just -

- so then you would include bacteria? It's living.

MEMBER DAVIS: One of my initial comments when we first started, I think that's the problem that we're grappling with is this opens up things we're not really -- that's going to cause problems -- opening up the bacteria to --

CHAIRPERSON RIDDLE: Goldie. Then Andrea. Okay. Then Andrea.

MEMBER CAROE: I'm not quite sure it does cause us problems. It changes the landscape. But it does not necessary cause problems. I mean just think about what you're doing. Even if -- I don't even know where bacteria would be used but even if bacteria became allowed -- considered agricultural and was allowed to be organic, it allows for organic bacteria. It allows for that in processing.

It's a different thing. But I don't think it is necessarily all to the detriment. There are benefits.

MEMBER DAVIS: I wouldn't disagree with that. I didn't mean to say -- to use the word problem. It does change things greatly. But not

necessarily problems.

CHAIRPERSON RIDDLE: Yes, Kevin?

VICE CHAIRPERSON O'RELL: You know one of the areas that we have to consider if we draw the line and go in and like I say, maybe that's a landscape we want to go to with microorganisms. But we have to be very careful because we're saying that yeast is available grown on organic substrates and can meet -- there is certified organic yeast in Europe by European standards. But as far as I know, there is no certified organic bacteria in Europe.

So we have dairy cultures. We use cultures that are approved in a lot of the processes that we have today. And if we all of a sudden say they are agricultural, then we're going to have organic bacteria. And I don't see where that exists anywhere else.

CHAIRPERSON RIDDLE: Rose?

MEMBER KOENIG: Okay. If we go back to the -- if you go into your policy manual under our principles of organic production and handling that we've adopted, the first principle is organic

agriculture is an ecological production management system that promotes and enhances biodiversity, biological cycles, and soil biological activity.

It emphasizes the use of management practices in preference to the use of off-farm inputs, taking into account the regional conditions require locally-adapted systems.

These goals are met where possible through the use of cultural, biological, and mechanical methods as opposed to using synthetic materials to fulfil specific functions within the system.

Okay? Can we all get by -- and then that is referring to a farm. Okay? Do we agree that the principles are based on farm-based systems?

PARTICIPANT: That sounds like a farm to me.

MEMBER KOENIG: Okay. Can we at least go there? That our principles are that agricultural products are produced on a farm? Okay.

MEMBER CAROE: Jim? I --

MEMBER KOENIG: Now I'm not denying that --

MEMBER CAROE: I don't agree. I don't think that that is solely what it says. It talks about

practices. It talks about the use of systems that don't rely on synthetics.

I mean I still think that you can be consistent with that with a process such as the production of spirulina or the production of yeast. But I can see a spirulina farm. I'm ready to -- I give that concession, okay? I cannot see a yeast farm. You cannot have a yeast farm, okay? You can't have it.

You can have a yeast industrial production facility. You can grow it in autoclaves. I mean you can autoclave it. You can grow it in vats. You can centrifuge it. You can handle it. I'm not saying that.

But fundamentally, organic agriculture has to have some connection to a farm to be classified as agricultural.

CHAIRPERSON RIDDLE: Okay. We're going to wrap up this discussion.

MEMBER CAROE: Just one more.

CHAIRPERSON RIDDLE: Yes, Andrea?

MEMBER CAROE: One more. Enoki --

CHAIRPERSON RIDDLE: You wanted to set a time limit.

MEMBER CAROE: I know. Enoki mushrooms are not grown on a farm. We recognize them as agricultural. They are grown in jars. There's nothing in the rule that says you can't use autoclave. I think the argument is completely emotional. I don't think it is based on statute. I don't think there is statute.

CHAIRPERSON RIDDLE: Well, there have been no motions to amend the draft. There's been a very lively debate. And I guess I would like to see us move to a vote if that's still the will of the Handling Committee Chair.

MEMBER OSTIGUY: I move to defer.

VICE CHAIRPERSON O'RELL: I would move to table this.

MEMBER OSTIGUY: Well, can we defer because it's easier parliamentarily?

VICE CHAIRPERSON O'RELL: Okay.

MEMBER CARTER: Yes. And I second Nancy's motion.

CHAIRPERSON RIDDLE: Okay. So there is a motion to defer and essentially hold the item at committee is what would be the function. It doesn't reject it. So -- and Dave seconds.

Let me see where we're at. And so everyone is clear, this is a motion to defer recommendation number one. Or would we defer the entire thing? Kevin?

Nancy is clarifying that the motion is to defer the entire document.

VICE CHAIRPERSON O'RELL: Yes. Yes.

CHAIRPERSON RIDDLE: Okay. And Dave accepts that.

MEMBER CARTER: Yes.

CHAIRPERSON RIDDLE: Okay. So everybody is clear, motion is to defer the entire draft as presented.

Dave is first.

MEMBER CARTER: Yes.

CHAIRPERSON RIDDLE: Rose?

MEMBER KOENIG: Yes.

CHAIRPERSON RIDDLE: George?

MEMBER SIEMON: Yes.

CHAIRPERSON RIDDLE: Bea?

MEMBER JAMES: Yes.

CHAIRPERSON RIDDLE: Hugh?

MEMBER KARREMAN: Yes.

CHAIRPERSON RIDDLE: Mike?

MEMBER LACY: Yes.

CHAIRPERSON RIDDLE: Gerald?

MEMBER DAVIS: Yes.

CHAIRPERSON RIDDLE: Nancy?

MEMBER OSTIGUY: Yes.

CHAIRPERSON RIDDLE: Julie?

MEMBER WEISMAN: Yes.

CHAIRPERSON RIDDLE: Andrea?

MEMBER CAROE: No.

CHAIRPERSON RIDDLE: Goldie?

SECRETARY CAUGHLAN: Yes.

CHAIRPERSON RIDDLE: Kevin?

VICE CHAIRPERSON O'RELL: Yes.

CHAIRPERSON RIDDLE: Chair is yes so we have 12 yes, one no, and one absent.

I want to acknowledge all of the effort that

has gone into creating that document. It is quite thought provoking obviously. And it is obviously not the last time we'll hear it either or see it.

That concludes for the Handling, right?

And so we have three items still from Crops, correct? The two materials at the top of the list, soy protein isolate and ammonium bicarbonate are being continued to be deferred. Is that --

MEMBER OSTIGUY: Yes, both soy protein isolate and ammonium bicarbonate --

CHAIRPERSON RIDDLE: Microphone.

MEMBER OSTIGUY: -- are deferred waiting for the decision on synthetics.

And then we are -- the next three items are compost tea -- the next one is compost tea. The committee wishes to take this back to incorporate comments and to hopefully increase the amount of agreement that we have on the topic. So we actually would like to defer this in addition.

CHAIRPERSON RIDDLE: Okay. So item number five, the compost and compost tea is being held at committee.

MEMBER OSTIGUY: Correct.

CHAIRPERSON RIDDLE: Okay.

MEMBER OSTIGUY: Then guidance on the commercial availability of organic seed requirements, I'm trying to remember what we decided.

CHAIRPERSON RIDDLE: We met yesterday and made an amendment to it to bring it forward with the amendment.

MEMBER OSTIGUY: Okay. Yes. Let me find -- if you look at the current -- what is in the Board handbook, the committee first voted to change a couple of things. I have to remember what we were doing.

CHAIRPERSON RIDDLE: Do we need a little break for you to get reorganized? I hate to let people out.

MEMBER KOENIG: I can -- Nancy, I'll start.

MEMBER OSTIGUY: Sure.

MEMBER KOENIG: Then if you want to add -- the document was similar to the document that you saw on the last meeting except some of the comments -- well, comments that came in were incorporated into the document. D was -- we put in -- they are in bold.

In the first section, if you go under -- everything is the same on page one as what we saw in February. There were no comments that came in on the first part of the recommendation.

Under three, D, wherever you see bold, an and was incorporated and an or was incorporated. I don't remember what the original changes were.

And then D, a written description of research comparing organic and non-organic seeds or planting stock if such information is available.

And what the change was that in other words, I think -- we just said research provided should be conducted using scientific methods. We basically beefed up that section to say that if you're going to do research, it has to be done in a way that reflects real research, you know, using scientific methods.

And say that you are providing proper controls in replications. Research supporting the justification of using non-organic seeds should address the form, quality, and genetic attributes of specific varieties.

When a producer makes a claim that the

varieties of organic seed are not equivalent to a non-organic seed that producer prefers to use, supporting documentation must be provided to the certifying agent. And documentation of on-farm trials should be recorded in the operations organic farms systems plan.

In other words, if you were going to use research for verification of that, we wanted to make sure that it was, in fact, research that was replicated and done via the scientific method. You couldn't just put a thing out and say well, I tried this. I'm doing research because I'm growing three plants. Therefore, I don't have to use organic. So that was the change in that section.

And we didn't get any comments on this new round about changing any of that.

The comments that came in, we deleted sections (c) and (e) from the original document. And that was the comments that -- that was based on comments actually generated from one of the commenters last time.

And we now -- we're considering some of the additional comments that came in after the initial

incorporation. And those were to -- as stated yesterday, to bring back the language in those two sections.

So, Nancy, are you ready to --

MEMBER OSTIGUY: Yes.

MEMBER KOENIG: Okay.

MEMBER OSTIGUY: Okay. So what the -- when the committee met yesterday, what we discussed was -- and voted on was reinserting what was (c) previously in the old version. And the insertion, which would now be (d) is maintain and annually submit to the National Organic Program an up-to-date list of specific non-organic crop varieties permitted by each agency.

So the idea was that then each certifier would have the opportunity to basically collect the information in an organized fashion such that if there was one producer who had diligently searched for organic seed source, didn't find one, but a second producer had been able to, you'd be able to cross reference that information.

Whereas that may not be as easily seen if

you didn't assemble the information. So that was the goal there.

CHAIRPERSON RIDDLE: And this would not be the names of the operators or the names of the companies. It would be a general list of the varieties. --

MEMBER OSTIGUY: The idea would be --

CHAIRPERSON RIDDLE: -- the specific varieties.

MEMBER OSTIGUY: -- the varieties, yes.

CHAIRPERSON RIDDLE: Yes. Okay.

PARTICIPANT: Do we have a motion?

MEMBER OSTIGUY: Yes, that was a motion to insert that.

CHAIRPERSON RIDDLE: Nancy was still presenting it so now is there a motion to adopt the amended recommendation from the committee?

PARTICIPANT: Who seconded it?

MEMBER OSTIGUY: Nobody has.

CHAIRPERSON RIDDLE: No, I'm asking is there a motion?

MEMBER OSTIGUY: Yes.

CHAIRPERSON RIDDLE: Okay. Nancy moves. Is there a second?

MEMBER KOENIG: I second.

CHAIRPERSON RIDDLE: Rose seconds. Okay. It's on the floor, open for discussion.

Andrea?

MEMBER CAROE: Is there any way of capturing geographic feasibility? So -- I mean say there is a particular corn seed available organically in, you know, someplace that is very -- you know, I mean this could be grown in Mexico. And if, you know, the grower is actually in Wisconsin or something like that --

MEMBER OSTIGUY: It's not an applicable corn variety actually in that case because you don't necessarily grow corn -- but I know what you mean. But --

MEMBER CAROE: Yes, don't use my example because I don't know the technical aspects of this. But I'm just thinking, you know, you are talking about anonymity when you're listing these and so you may -- it would show up as there is organic seed available

but it doesn't necessarily mean seed that I can get because --

MEMBER OSTIGUY: Okay. I'm not requiring -- this statement does not require anonymity per se. It doesn't require that you keep track of that.

Now depending on the usefulness that you wish to make of it, you might want to keep track of region. Something so that you could deal with legitimate concerns of that sort.

Because yes, you are right. What is okay in Maine isn't okay in Florida in terms of varieties of tomatoes that can be grown.

MEMBER CAROE: Well, I'm not even just talking about varieties. I'm just talking about logistics of getting that seed, you know.

MEMBER OSTIGUY: Oh, sure, even logistics. But, you know, all of that because that is -- part of commercial availability is being able to obtain it. But --

CHAIRPERSON RIDDLE: The form, quality, quantity, and equivalent variety. And so we provide some guidance on equivalent variety, meeting the

operations required, site specific, agronomic, and marketing characteristics.

Goldie?

SECRETARY CAUGHLAN: Did you say -- were you intending this to be mandatory or voluntary? I didn't catch it when it went by.

MEMBER OSTIGUY: This would be mandatory to collect this list.

SECRETARY CAUGHLAN: And zone? I mean I think the word was zone, whatever -- or there must be nomenclature that are preferred within the seed industry as to capturing information.

MEMBER OSTIGUY: We did not specify nor did the recommendation that came from public comment specify exactly what data would be most useful.

CHAIRPERSON RIDDLE: I think they used the same terms variety, not zone or anything like that.

MEMBER OSTIGUY: Yes.

CHAIRPERSON RIDDLE: Rose?

MEMBER KOENIG: And the reason why it was taken out and now reconsidered to put in -- and it's, you know, the benefits -- well, the problems with it

is it puts extra work on the certifiers. The certifiers are actually the ones that are required to compile the list from all of their certified entities, okay?

And then -- so we want to limit that work yet kind of provide some substantial information. So what Nancy was referring as far as other data can be collected, so in house a certifier may want to use the names or keep track so that they can kind of check the way they do business.

But what would be forwarded would solely be lists of what varieties were non-organic that growers used, which ones were organic. It's simply a qualitative kind of a list that doesn't give numbers. It just is a description of varieties.

And then the only thing this says is it goes to NOP. It doesn't say NOP is required to make a database. It doesn't tell NOP what to do with that data. But it does require the information to go to NOP.

CHAIRPERSON RIDDLE: And information on the varieties are records that are required to be kept at

this time. They're just not then compiled and forwarded on to NOP.

MEMBER JAMES: Since this a guidance, how would that be regulated or mandated at the certification level?

CHAIRPERSON RIDDLE: Well, I think that's -- I think we'll receive some feedback from NOP if we forward this recommendation to them. There are annual reporting requirements already for all accredited certifiers. And this, you know, hopefully could be rolled into those. But we'll see.

MEMBER OSTIGUY: Jim?

CHAIRPERSON RIDDLE: Yes?

MEMBER OSTIGUY: One of the original recommendations on the change to this was to make the reporting even as often as monthly.

CHAIRPERSON RIDDLE: Right.

MEMBER OSTIGUY: And that was way too excessive. You know yes, there's going to be a lag time as a result. You'll have last year's data now. But at least you have the opportunity to possibly have that data.

CHAIRPERSON RIDDLE: Yes.

MEMBER KOENIG: And I guess what I was alluding to in my comment was that we may -- unless the information is used for some purpose -- that's why I'm saying the purpose hopefully because you're putting the certifiers to work is going to be within office. It's going to be useful so they can record keep.

But we're not guaranteeing any release of that information from NOP. So it may not create the purpose that the commenters have suggested.

So I just want you to realize that we're not suggesting it to go any further, to be used for any other purpose. So to me, it has a very limited application. But I may not be seeing the -- you know, the extreme usefulness. But we decided that -- it was asked and it seemed reasonable.

CHAIRPERSON RIDDLE: Yes. And I can certainly see how it has usefulness to the accreditation process to ensure that this information is being tracked and help bring consistency to the enforcement or compliance with this requirement.

Any other comments on the draft as proposed or as presented?

Hugh? Then George.

MEMBER KARREMAN: On 3A, it says, you know, where an organic producer can receive an allowance to use non-organic seed. And you have to provide written evidence of that for us to locate the source of organic seed. Should there be some kind of -- at least in my experience from the farmers I work with, you know, sometimes they'll just wait too long to look for organic seed. And it's all gone.

And then I think sometimes they're almost planning on that.

(Laughter.)

MEMBER KARREMAN: Sorry, but, you know, and then it might become a problem with the certifier later on. So I'm just wondering should there be some temporal type notation in here that they need to be trying at some point, you know, early in the season or whatever. Something like that. It's not a big thing but I know it happens.

CHAIRPERSON RIDDLE: Response to that?

Because otherwise I have George in line.

MEMBER CAROE: Oh, my response to that is that sometimes the growers don't know what they're going to be planting until the last minute. I mean it's not always that far in advance.

CHAIRPERSON RIDDLE: Right.

MEMBER CAROE: So, you know, there are legitimate situations where, you know, they're going to have trouble sourcing the seed because they're dealing with, you know, a food processor that's buying their crop. And so they're waiting to find out what they're going to plant from the processor, what they want.

And so, you know, I hear what you are saying. And you are absolutely right. I've seen it happen, too. But there are legitimate reasons why they wait to the last minute as well.

MEMBER KARREMAN: Can I respond to that just quickly?

CHAIRPERSON RIDDLE: Yes.

MEMBER KARREMAN: I mean I'm thinking for dairy farmers that have a crop rotation over seven

years or whatever. And they know what they're probably going to be planting.

CHAIRPERSON RIDDLE: That's true but this isn't standard, you know.

MEMBER KARREMAN: Yes, right.

CHAIRPERSON RIDDLE: It encompasses all kinds of production zones, too.

George. And then Julie.

MEMBER SIEMON: Well, I'll just respond to that. The truth is you buy enough seed for what you have. And you may plow a little more land. It's the day you are planting you are out of seed often.

So people have to overbuy is the bottom line. And that's not easy to do always because then the day you are needing it, your written evidence gets right down to desperate phone calls. So that's a whole other issue.

But I was concerned about (D). It seems that, you know, your average farmer is going to try a new type of broccoli. They're going to get some of the organic seed available. See how it works. If it doesn't work, they're going to stick with their old

variety.

To me, this written description with controls and replications, that's not what -- I mean it just sounds awful scientific compared to I'm going to plant a row of this and see how it goes this year. Is it going to be satisfactory to plant a row of it and see how it goes this year? It's right next to the other. That's the right control replications?

Because that's what people are saying is they just can't get the quality of seed for this quality of end product. And I know there are people who are cheating or whatever you want to call it -- fudging. But --

So I'm concerned about (D) being too -- is it too scientific? Or is it okay? I mean you all have thought about this obviously. And that's what you're trying to say there. You've got to try some of these seeds. Don't just say they don't work. Try them.

I mean I agree with the purpose. I'm just worried it's wordy or too scientific.

CHAIRPERSON RIDDLE: Yes. I've got Julie

next. And then I'd like to comment.

MEMBER WEISMAN: Now I have a response to Hugh and to George. Am I allowed to do that?

CHAIRPERSON RIDDLE: Yes, you've got the floor.

MEMBER WEISMAN: All right. For Hugh, if a farmer, by waiting long enough intentionally, is not going to have organic seed available, it seems like a moot point to me because if he bought earlier in the season, then some other farmer -- I mean if there is not enough for everybody, there's not enough for everybody.

You know someone is going to get that --you know, someone is going to get that letter. Someone is going to get that approval from their certifier. And that still points to the need that more needs to be available. And we do need to keep track of that.

Now, I'm forgetting --

CHAIRPERSON RIDDLE: George's comment about the on-farm research.

MEMBER WEISMAN: Oh, yes. In Handling, in manufactured food products where it often comes up

with flavors the issue that well, you know, there is an organic flavor available but it doesn't quite, you know, taste the same. And it's not codified.

But I know that there are certain -- many, many -- there are customers who I know are required by their certifiers to conduct panel tests with consumers and show research that consumers could taste the difference.

And, you know, if those panels don't prove that out, then they are required to use the organic.

CHAIRPERSON RIDDLE: Yes, and I just -- I don't have a copy of the previous draft. Jerry, do you have that? Or Nancy?

MEMBER OSTIGUY: Yes.

CHAIRPERSON RIDDLE: Because I share George's concern on the strengthening of the research requirements to determine what works on the farm. And didn't our previous language allow more flexibility? Or did we -- we did have language addressing on-farm research.

MEMBER OSTIGUY: Yes. The old wording was written descriptions of trials comparing organic and

non-organic seeds or planting stock. If the producer makes a claim that the varieties of organic seed are not equivalent to non-organic seed that the producer prefers to use, supporting documentation must be provided to the certifying agency.

Then in parenthesis, certifiers may grant an allowance from the organic seed requirement if an applicant or operator conducts on-farm trials comparing organic and non-organic seed varieties. If so, documentation of on-farm trials should be recorded in the operator's organic system plan.

CHAIRPERSON RIDDLE: Okay, so --

MEMBER OSTIGUY: It's basically the same thing.

CHAIRPERSON RIDDLE: Yes, it's not significantly different. It's just reordered and put in bold.

MEMBER OSTIGUY: Yes.

CHAIRPERSON RIDDLE: But, yes, Rose?

MEMBER KOENIG: The thing that this states, and that's what I was trying to just -- when you're doing the trial -- when somebody is doing research for

the -- when you're doing -- let's assume there's availability but you are claiming an exemption because you say it's not the right function or quality or, you know, it's a measurable difference that you can see.

Okay? And you're going to prove it because you've measured -- you can prove that. That's what I'm saying, to me that brings you in a higher -- that means you're actually conducting sort of the panels or the research.

When you say research in that sense where you're trying to actually say this one has produced -- you know, this reason, you know, you're doing numerical values, then you have to do replicated research with proper controls. It's beyond just a -- this one looked good so, therefore, I think it's better.

Because, you know, if you don't have that in -- and I believe that most farmers -- I'm not saying the farmers have to do it. Maybe they may have to find an extension person or somebody to help them set those things up, but if you're going to say -- you're allowing them to conduct research and you're going to

give them an exemption on the research, then I feel it has to have -- set up like a research plot.

MEMBER SIEMON: But they're not -- they're using organic seed. So there's no exemption. Well, if you're going to use that it didn't work --

MEMBER KOENIG: Here's they're using -- I'm saying the example where the organic seed is available --

MEMBER SIEMON: And they try it.

MEMBER KOENIG: -- there's plenty of supply and they're saying I don't like it because I didn't get good germination, okay? Then they would have had to have done germination tests in a way that they had proper replications and --

MEMBER SIEMON: And not hearsay.

MEMBER KOENIG: -- standard conditions to show that. It couldn't be okay, well, I threw -- you know, I think I put out like 50 seeds and I think 20, you know, it can't be that way. It's got to be scientific, replicated, with controls research.

CHAIRPERSON RIDDLE: Or if they just look at the germination results on that package and the

organic seed is germinating at 80 percent --

MEMBER KOENIG: Right, then somebody else provided that research documentation.

CHAIRPERSON RIDDLE: Right, right.

Andrea?

MEMBER CAROE: So would this allow them to accept somebody else's research?

MEMBER KOENIG: Yes.

MEMBER CAROE: A neighboring farm did this work?

MEMBER KOENIG: As long as that was conducted as research replicated but it doesn't have to --

CHAIRPERSON RIDDLE: No, the first sentence really covers that. So that just limits their own.

Bea?

MEMBER JAMES: Friendly amendment to 3(A).

CHAIRPERSON RIDDLE: 3(A).

MEMBER JAMES: Written evidence of efforts, I think that should be work or labor instead of efforts. I don't think efforts is direct or strong enough. To locate and source organic seed, blah,

blah, blah, blah, blah, and then written evidence many include -- that's a typo. It should be written -- I'm proposing that we change it to written evidence includes, comma, but is not limited to, comma, letters, faxes, e-mail correspondence, and phone calls.

CHAIRPERSON RIDDLE: You lost me.

MEMBER JAMES: Okay. You see where it says --

CHAIRPERSON RIDDLE: Let's start one at a time.

MEMBER JAMES: Okay.

CHAIRPERSON RIDDLE: You started at the beginning.

MEMBER JAMES: (A) Written evidence of efforts -- I'm proposing that we change the word efforts to work or labor because --

CHAIRPERSON RIDDLE: How about attempts?

MEMBER JAMES: Attempts?

CHAIRPERSON RIDDLE: I mean work or labor don't work for me. I prefer efforts. I'm not the maker of the motion.

MEMBER JAMES: Efforts made or attempts. Effort doesn't seem strong enough. It seems optional. It seems like it should be --

MEMBER DAVIS: Does attempt sound more like you actually did something rather than just think about it?

CHAIRPERSON RIDDLE: I think those are -- attempts works.

MEMBER JAMES: Well, those pretty much mean the same thing. So if we're not going to make that change, then we can just leave it as it is.

CHAIRPERSON RIDDLE: Okay.

MEMBER JAMES: And then where there is a dash after organic seed, it says written evidence many include.

CHAIRPERSON RIDDLE: Yes, got that. That should be may.

MEMBER JAMES: Okay. It could be may or you could strike many. And it could be includes comma but is not limited to comma and then go on with the list.

MEMBER OSTIGUY: Yes. I think those are friendly.

CHAIRPERSON RIDDLE: Okay. So it would be strike many and --

MEMBER OSTIGUY: Put the S in there.

CHAIRPERSON RIDDLE: -- written evidence includes comma --

MEMBER JAMES: But is not limited to comma and then your --

CHAIRPERSON RIDDLE: -- but not limited to and then remain the same. Does Nancy accept that?

MEMBER OSTIGUY: Yes.

CHAIRPERSON RIDDLE: Rose?

MEMBER KOENIG: It's fine either way.

CHAIRPERSON RIDDLE: All right. Okay. So it's amended in a friendly manner.

Any other comments? Discussion? Yes, Jerry?

MEMBER DAVIS: Section four, buyer's organic agricultural products that contractually requires organic growers to grow selected varieties should require or provide organic seed or planting stock. Again, that's a should so it's not mandatory.

And -- but at the end, it says if they don't

do that -- if they can't find organic seed or it does not work, the producer must receive written documentation from the buyer describing. So that effectively -- it does bring the buyer in and get them involved. And gives them extra work to do instead of laying it all on the grower.

And I reading that correct?

CHAIRPERSON RIDDLE: Yes, that's the intent. I mean you've picked up on a must versus should there in the same paragraph. But the intent of that is to kind of hold the buyers who contract -- to hold them accountable. Because the grower, it's out of their hands here.

But that buyer typically is also certified and so the certifier could be checking those attempts of the buyer who is actually sourcing the seed.

But we could change both of those to should to be consistent.

MEMBER DAVIS: I don't have a problem with that. I'm just trying to picture the reality of what would happen in the real world if this is put in place.

What avenue would it be documented -- I'm trying to think this through -- on the buyer end that they are actually fulfilling this must?

CHAIRPERSON RIDDLE: That would be in their certification, their organic plan that they are documenting their efforts to source organic seed for their growers.

MEMBER DAVIS: So it essentially just bumps it up to a different level and the grower is no longer the only one on the hook then.

CHAIRPERSON RIDDLE: Right.

MEMBER DAVIS: Okay. So both of them are going to have to be documenting the same --

CHAIRPERSON RIDDLE: Well here the grower has nothing to do with the selection of seed. It's just provided to them. So they wouldn't have to --

MEMBER DAVIS: All right. This is the if the buyer requires something --

CHAIRPERSON RIDDLE: Yes. When it's contracted --

MEMBER DAVIS: Okay.

CHAIRPERSON RIDDLE: -- and the buyer is

supplying the seed, the grower has no choice, then somebody needs to still be attempting to source organic.

MEMBER DAVIS: Okay.

CHAIRPERSON RIDDLE: And that is a real life problem out there right now.

MEMBER DAVIS: Oh, no, I understand.

CHAIRPERSON RIDDLE: All right. Anything else on this document?

Yes, Julie?

MEMBER WEISMAN: Can someone just remind me where we went -- we talked before about the original (C) of this section in terms of the requirements of certifiers to give back that information -- to report that information to the NOP. But there was no motion ever made to restore that, right? To its original form?

CHAIRPERSON RIDDLE: That's actually part of the motion from the committee.

MEMBER WEISMAN: Okay. Right. Okay, good.

CHAIRPERSON RIDDLE: It includes the restored paragraph --

MEMBER WEISMAN: Okay. I just wanted to make sure. I think that should cover it.

CHAIRPERSON RIDDLE: -- that Nancy read.

MEMBER WEISMAN: Good. Okay.

CHAIRPERSON RIDDLE: Okay? Any other discussion?

PARTICIPANT: I'm looking for the comments.

CHAIRPERSON RIDDLE: Well, yes, I think the comments we received were those from eight seed companies presented by Dick --

MEMBER KOENIG: Yes, the only thing that we didn't add -- I mean (C) we amended, (E) we decided not to include --

CHAIRPERSON RIDDLE: Yes, because it was redundant.

MEMBER OSTIGUY: Right. The only other comment that came in during yesterday's public testimony was requesting that we, in essence, put back (E), which was require that operations not meeting commercial availability requirements not be certified organic and that products produced by such operations not be sold or labeled as organic.

The decision by the committee was that that was redundant because that is already the case.

CHAIRPERSON RIDDLE: Okay. So we proceed to vote. And we've got Rose. We're voting --

MEMBER KOENIG: Yes.

CHAIRPERSON RIDDLE: -- on -- all right.

George?

MEMBER SIEMON: Yes.

CHAIRPERSON RIDDLE: Bea?

MEMBER JAMES: Yes.

CHAIRPERSON RIDDLE: Hugh?

MEMBER KARREMAN: Yes.

CHAIRPERSON RIDDLE: Michael?

MEMBER LACY: Yes.

CHAIRPERSON RIDDLE: Gerald?

MEMBER DAVIS: Yes.

CHAIRPERSON RIDDLE: Nancy?

MEMBER OSTIGUY: Yes.

CHAIRPERSON RIDDLE: Julie?

SECRETARY CAUGHLAN: Yes.

CHAIRPERSON RIDDLE: Andrea?

MEMBER CAROE: Yes.

CHAIRPERSON RIDDLE: Goldie?

SECRETARY CAUGHLAN: Yes.

CHAIRPERSON RIDDLE: Kevin?

VICE CHAIRPERSON O'RELL: Yes.

CHAIRPERSON RIDDLE: Dave?

MEMBER CARTER: Yes.

CHAIRPERSON RIDDLE: Chair votes yes. And we've got 13 yes, zero no, one absent.

Okay. I think there is one more item for consideration.

MEMBER OSTIGUY: Yes.

CHAIRPERSON RIDDLE: And we're only five minutes after five-thirty.

(Laughter.)

MEMBER OSTIGUY: This item is, in essence, a carryover from February where we agreed in principle to delineate the natural resource component of the organic system plan on biodiversity management to expand that.

Now I'm not going to remember all the people that helped. Can you help me remember the people that helped us put this together.

CHAIRPERSON RIDDLE: Well --

MEMBER OSTIGUY: Oh, I'm sorry. It's there. It's there.

CHAIRPERSON RIDDLE: You got it?

MEMBER OSTIGUY: The work, the primary work that was done in order to get this to us was done by the Wild Farm Alliance and the National Center for Appropriate Technology. So credit really does need to go to them.

Lots of iteration. Lots of public comment in order to get it to this point. The decision was made fairly early on last spring to go for check boxes because what was found was that the farmers understood more clearly what the goals were.

And part of the reasoning is if the question was asked without the check boxes, the farmers didn't necessary recognize initially what they were doing.

So not only did the check boxes, as currently structured, improve the reporting of what is being done, but it also, of course, provides additional items that they might consider doing.

So it has both the educational aspect of

what else one can do to increase farm biodiversity. But also makes sure -- increases the chance that the farmer is going to get credit for what he or she is actually doing already.

So I'd like to move that we accept these additions to Part D of the Organic System Plan on Natural Resources on Biodiversity Management.

MEMBER SIEMON: I second the motion.

CHAIRPERSON RIDDLE: Okay. Nancy moves. And George seconds to adopt the biodiversity amendments to the Model Organic System Plan.

Discussion? George?

MEMBER SIEMON: I guess maybe a dumb question. It says recommend requirements be added to organic system template?

MEMBER OSTIGUY: That is -- the template is what we --

MEMBER SIEMON: But is there such a thing?

CHAIRPERSON RIDDLE: Yes, yes. We adopted that several years ago.

MEMBER SIEMON: Okay.

CHAIRPERSON RIDDLE: And those are posted on

the ATTRA website, among others, and many certifiers have adopted them and put their own logos and modified them slightly.

MEMBER SIEMON: But the farmers -- the certifiers who have not, how will this get out to them is what I'm trying to -- because if it is not in common use, I mean how will this get to all the farmers evenly?

CHAIRPERSON RIDDLE: Well, that is a good question with organic system plans in general. This will be available to any certifier to work from to use to upgrade how they're addressing biodiversity requirements.

MEMBER SIEMON: Yes.

CHAIRPERSON RIDDLE: But they aren't mandatory. And they're --

MEMBER SIEMON: The farm plan is not mandatory.

CHAIRPERSON RIDDLE: Right. The farm plan is mandatory but the model is not.

MEMBER SIEMON: Their template is not.

CHAIRPERSON RIDDLE: Yes, right.

MEMBER SIEMON: All right.

CHAIRPERSON RIDDLE: And we did, just to point out, as Nancy indicated, we received a lot of comments on this from quite a few different groups. And they are in your folder. And all were in support. And none suggested any amendments.

MEMBER OSTIGUY: And it wasn't just groups. It was also a lot of farmers.

CHAIRPERSON RIDDLE: That's true.

Goldie?

SECRETARY CAUGHLAN: Would it not be possible to actually just go ahead also and publish it prominently? I know it's not necessarily for -- you're not asking for -- it's not okay, here's the recommendation. But in some way put it up on the web?

MR. JONES: Yes, the problem, Goldie, is that these are not our documents. They are the Board documents that have been presented to ATTRA. ATTRA has taken them and posted them on their website as examples of farm plans that at least contain all of the elements.

SECRETARY CAUGHLAN: If we endorse this,

could it not be placed on our portion of the website?

MR. JONES: We don't have any way to force -- to require its use, okay?

SECRETARY CAUGHLAN: No. But for information, for education, or dissemination --

MR. JONES: Well, I think the problem is, and as you know yesterday we had a similar recommendation that came to us where our response to you was that -- essentially there was no response because this was directed to a non-USDA agency. Okay?

I suppose we could put it on our website. I don't think we'd have a problem with that. But you need to understand that it is there, you know, for information purposes. And that's about as far as it --

SECRETARY CAUGHLAN: It could state so. It could state so. My point is -- another thing, Keith, is because just as during our collaboration and just as the two audits and so forth on NOP have, I think, sort of underscored is that there needs to be, I think, creative ways of communicating information that is helpful, that is maybe -- maybe somebody comes

there and looks at something that is not going to go to these other sites.

But they go there seeking more information about the Board, about the role, about -- and if that is a way to do it, then that maybe is a good thing to consider in your overall re-looking at your website --

MR. JONES: Yes, we --

SECRETARY CAUGHLAN: -- because I know that that needs --

MR. JONES: Yes, we wouldn't have any problem with posting the information. It would have to go up with a disclaimer saying this is an example. It is not binding.

SECRETARY CAUGHLAN: The Board has endorsed this and blah, blah, blah. And you could even --

MR. JONES: Yes.

SECRETARY CAUGHLAN: -- say this is not, you know --

MR. JONES: One of the things that we've run into, Goldie, though -- I mean it's been a problem in terms of the uniform application of -- when a Board makes a recommendation such as this and it goes up on

our website, it is seen in many cases by certifiers as binding.

And we've had situations where certifiers would use certain recommendations as a binding requirement. And we'd have to go back and say no, that's not, you know that not the case.

My suggestion would be to get the recommendation to us. I think one of the questions we do have is when the recommendation is really directed to an non-USDA agency such as ATTRA like we talked about, whose responsibility is it to get the recommendation to the non-USDA agency?

Are you expecting us to do that?

SECRETARY CAUGHLAN: I'm only personally speaking about this because I see it --

MR. JONES: No, I understand.

SECRETARY CAUGHLAN: -- as a way to reflect the Board's thinking. Simply that.

MR. JONES: Yes but it does raise a larger question as to is the recommendation actually coming to the Secretary? Or is the recommendation simply going to another non-USDA agency that you have a

relationship with? Okay?

SECRETARY CAUGHLAN: It's a bulletin board. It's a community bulletin board. There should be a section for that, it seems to me, in one of the friendly ways of letting the public know what is happening. I don't know. That's just my thinking. And it's what I've thought for quite some time.

MR. JONES: Okay. Well, your point is well taken. We're not opposed to it. It is not quite as simple as --

SECRETARY CAUGHLAN: It never is.

MR. JONES: Yes. So --

CHAIRPERSON RIDDLE: And at any rate --

SECRETARY CAUGHLAN: I appreciate your consideration.

CHAIRPERSON RIDDLE: -- if we adopt this, it will be submitted to the program as a final recommendation of the Board and appear on the website as a final recommendation of the Board. And other groups can access it from there. And work further with it.

And I do anticipate continuing to be engaged

with ATTRA and Wild Farm to, you know, if this is adopted, to then actually insert it in the existing model so that it is a full package.

So it is re-posted on their websites and can be submitted back to the program because both things have been adopted by the Board. And you can do with it as you may basically.

Andrea, did you --

MEMBER CAROE: Yes, I did.

CHAIRPERSON RIDDLE: Okay.

MEMBER CAROE: I'm just a little unclear on the purpose of this document in that, you know, what constitutes compliance? And is there -- I mean what is this used for by certifiers? And, you know, if a grower fills this out and does all the check marks, is there a pass or fail on the requirements of the regulation? I mean what does this do? I don't understand.

I mean this obviously gives more information. But it is not clear what you do with that information.

CHAIRPERSON RIDDLE: Yes. Well, the

regulation, as it states in that under (D) on page 1 at the bottom there --

MEMBER CAROE: Right.

CHAIRPERSON RIDDLE: -- a couple sections require that producers maintain or improve natural resources of the operation. And --

MEMBER CAROE: Right. I just don't know how this connects to this.

CHAIRPERSON RIDDLE: Right. This gathers the information during the organic planning process that then a producer can document how they complied with those existing requirements. And then the inspector has the information in hand to go to the farm and assess their compliance and file their report.

So it's, you know, a tool for the producers to document their compliance. And it's a tool for the inspector and certifier to assess the compliance with those existing requirements.

MEMBER CAROE: I mean I understand this is a tool for the producers. And I think it is a very valuable tool because it does guide them to those

practices that are positive.

But what I don't understand is how is this consistently applied? I mean if a grower only checks off one practice on this whole sheet that they do, are they in compliance or not? And if they are with one certifier, are they with another one? I mean what does that all mean?

You know this is information. But what you do with the information is not defined. It's not, you know, being a tool for growers, I appreciate that. And I think that is valuable in itself.

But using this as a tool for assessment, I think is a bit of a stretch.

CHAIRPERSON RIDDLE: Well, unfortunately, I think there is inconsistency on a whole lot more program requirements than just this one. But this is a step to bring consistency just like the model plan was a step to bring consistency in how that is being assessed.

You know right now they are all over the map if not ignoring this requirement. So I think this has raised the visibility of the existing requirement.

And is a step towards more consistency.

George?

MEMBER SIEMON: It is a farm plan tool that --

MEMBER CAROE: I appreciate it in that way.

MEMBER SIEMON: That's what it is all about.

CHAIRPERSON RIDDLE: Any further --

SECRETARY CAUGHLAN: Well, hopefully it will stimulate discussion among the farmers, among the certifiers themselves. And be something that could become part of a continuing ed workshop thing, for example, that goes on at some of those educational bodies.

MEMBER CAROE: I just --

SECRETARY CAUGHLAN: I see a lot of opportunities.

CHAIRPERSON RIDDLE: Okay. Andrea?

MEMBER CAROE: I just see if a farmer only does one of these practices and a certifier says you're not complying with that, I think they have a reason to appeal the decision because it is not defined. There is no guidance that suggests that you

must, you know, participate at some level.

SECRETARY CAUGHLAN: It doesn't say 10 points or 10 of 30 or something. But then that would be too proscriptive and restrictive. And people would have a hissy fit over that. I think this is a start.

MEMBER CAROE: Okay.

SECRETARY CAUGHLAN: Call the vote.

CHAIRPERSON RIDDLE: Well, we've got a comment from Hugh?

MEMBER KARREMAN: I like the document. And it would make a farmer look to see how he could improve his operation just as kind of a philosophical --

MEMBER CAROE: And, again, I appreciate it for that.

MEMBER KARREMAN: -- self, you know, report.

MEMBER CAROE: I do appreciate it for that quality.

MEMBER KARREMAN: I don't see it as any kind of a thing from certifier that you are going to be out of compliance with this. It's kind of more philosophical, I think, than it is a regulatory thing.

SECRETARY CAUGHLAN: Well, no, there are real --

CHAIRPERSON RIDDLE: Yes, there are requirements. But yes, it usually would be in combination with other violations in my experience.

MEMBER KARREMAN: It's like a self-assessment guide. That's the way I see it. And how can you become better at these questions if you only have a few checks? It's part of the organic system plan, I guess.

CHAIRPERSON RIDDLE: Okay. I've heard no amendments to change it. And we've had a nice discussion of it. Let's move to the vote. And George is up.

MEMBER SIEMON: Yes.

CHAIRPERSON RIDDLE: Bea?

MEMBER JAMES: Yes.

CHAIRPERSON RIDDLE: Hugh?

MEMBER KARREMAN: Yes.

CHAIRPERSON RIDDLE: Michael?

MEMBER LACY: Yes.

CHAIRPERSON RIDDLE: Gerald?

MEMBER DAVIS: Yes.

CHAIRPERSON RIDDLE: Nancy?

MEMBER OSTIGUY: Yes.

CHAIRPERSON RIDDLE: Julie?

MEMBER WEISMAN: Yes.

CHAIRPERSON RIDDLE: Andrea?

MEMBER CAROE: Yes.

CHAIRPERSON RIDDLE: Goldie?

SECRETARY CAUGHLAN: Yes.

CHAIRPERSON RIDDLE: Kevin?

VICE CHAIRPERSON O'RELL: Yes.

CHAIRPERSON RIDDLE: Dave?

MEMBER CARTER: Yes.

CHAIRPERSON RIDDLE: Rose?

MEMBER KOENIG: Yes.

CHAIRPERSON RIDDLE: Chair is yes. So we're ending the day on a unanimous, positive note. Thirteen yes, zero no, one absent.

So before we close for the day, committee chairs are encouraged to put your work plans together before tomorrow morning. And let's just look at the agenda here quickly for tomorrow.

We're actually caught up and only a little late.

So we start off the day with public comment at 8:00 a.m. So if you want to comment and have not signed up, you could do it before you leave or you can -- it will be out there again in the morning. But that will be first thing up.

And then when that concludes, we'll move on to the discussion of committee work plans and timelines. And meeting dates, et cetera. So --

MEMBER JAMES: Has there been any --

CHAIRPERSON RIDDLE: Quiet please. We're still in session.

Bea?

MEMBER JAMES: On the committee -- discussion of committee work plans, if we have things that we want to propose that are in addition to what we already have on our work plans, should we discuss that with the chair of the committee? Or can we propose it --

CHAIRPERSON RIDDLE: Yes.

MEMBER JAMES: Okay.

CHAIRPERSON RIDDLE: Yes, pull the chair aside and help them think through their planning. And if you are a new chair coming on to committee, talk with the old chair and kind of pass the baton on on work plans as well.

Anything else?

PARTICIPANT: We don't have a new chair.

CHAIRPERSON RIDDLE: Well, there's -- yes, I think Michael is taking over Livestock. That was the plan coming out of here.

SECRETARY CAUGHLAN: Are we going to call a meeting? And if not, are they going to be here?

CHAIRPERSON RIDDLE: Okay, okay. I'll just ask them afterwards instead of yelling.

Okay, we recess for today. Thank you.

(Whereupon, the above-entitled meeting was concluded at 5:53 p.m.)