UNITED STATES DEPARTMENT OF AGRICULTURE

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NATIONAL ORGANIC STANDARDS BOARD

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MEETING

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WEDNESDAY,
OCTOBER 18, 2006

The meeting was held in Salons 1 and 2 of the Radisson Hotel Reagan National Airport, 2020 Jefferson Davis Highway, Arlington, Virginia, at 8:00 a.m., Kevin R. O'Rell, Chair, presiding.

BOARD MEMBERS PRESENT:

KEVIN R. O'RELL	Chair
ANDREA CAROE	Vice Chair
BEA E. JAMES	Secretary
GERALD A. DAVIS	Member
RIGOBERTO I. DELGADO	Member
KEVIN ENGELBERT	Member
DANIEL G. GIACOMINI	Member
JENNIFER M. HALL	Member
HUBERT J. KARREMAN	Member
MICHAEL P. LACY	Member
JEFFREY W. MOYER	Member
NANCY M. OSTIGUY	Member
JOSEPH SMILLIE	Member
JULIE S. WEISMAN	Member

NOP STAFF PRESENT:

KATHERINE BENHAM	Board Specialist
MARK BRADLEY	Associate Deputy Administrator
VALERIE FRANCES	NOSB Executive Director
ARTHUR NEAL	Acting Associate Deputy Administrator, Transportation
BOB POOLER	Agriculture Marketing Specialist

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

8:14 a.m.

CHAIRMAN O'RELL: (presiding) If I could ask everybody to please take your seat, we are going to call to order the second day of the NOSB October meetings with the business session today.

We are going to begin this morning with the Policy Development Committee.

Rigo, would you like to lead us?

MR. DELGADO: Yes, sir. Thank you.

Good morning to all.

The Policy Development Committee has been working essentially on two points. The first one is revisions to the Policy and Procedures Manual.

Up there on the screen, you have the summary of the changes. I will just walk you through those.

In the second item we will

present to you the new Board Member Guide. I will ask Bea to give us a brief summary of that.

So going back to the updates to the Policy and Procedures Manual, we updated the format, not very substantial, but essentially in three points.

We formatted the entire document to make sure that it had a consistent layout, making sure the points and the different paragraphs match, and so forth.

Subsection formats were activated. So every time we update the document, the table of contents will be activated as well.

Then we included a nice, what I think is a sexier, cover page; looking at Valerie's cover page for the book, it is not nearly as nice as her work.

Going on to the specific updates involving the content, Section II, we introduce an introductory paragraph.

Section III, we did the same.

Section III, page 14, also page 13, we included the description of the Executive's role.

In Section V, page 19 -- and I realize this document that was printed does not have the page numbers, but bear with me -- in Section V, the description of the Committee Vice Chair role was added.

In Section VIII, we included also an introduction to that section. There's a typo there in point No. 6. It should be Section VIII, page 51.

We updated the Committee recommendations. It is essentially a description on sunset that was added to the subsection on Committee recommendations.

Finally, we created a formal appendices and resources section. You will see that we kept the same components of what was called before the appendix and we relabeled with specific letters A through E.

Okay, so those are the updates to the Policy and Procedures Manual.

Bea, if you will be kind enough to give us the update on the NOSB New Member Guide?

MS. JAMES: Okay.

CHAIRMAN O'RELL: I guess, first, Rigo, are there any questions by any of the Board members on any of the material that Rigo has talked about or addressed?

MR. KARREMAN: Actually, Kevin, I am wondering, is this in our folder? I didn't see it in Section III there.

CHAIRMAN O'RELL: Yes, it is.

MR. KARREMAN: I was reading it off there.

CHAIRMAN O'RELL: It is in Section II.

MR. DELGADO: The numbers are a little off.

CHAIRMAN O'RELL: Any other questions?

(No response.)

Okay, Bea.

MS. JAMES: In Section II, you will also find a new document draft. It is called a New Member Guide, NOSB New Member Guide.

As we all know, the amount of information that needs to be learned by NOSB members is a mess, particularly through the eyes of a new member at their first Board meeting.

Many of the NOSB members that come in for the first time are quite knowledgeable and might even actually have had a hand in helping to develop many of the regulations that we have. However, that is not always the case.

Many members that are newly appointed are unprepared, and not by any fault of their own, but by the lack of guidance that the NOSB has provided as an introduction for new members.

The Policy Committee has developed a draft for new members called the NOSB New Member Guide. This draft is meant to provide basic guidance in preparing new members for their first official Board meeting.

The Guide will be used as an accompaniment to the NOSB Policy and Procedures Manual as well as specific information that can be obtained on the NOP website that is listed in the manual.

Briefly, some of the content of the Guide provides valuable information such as "Read!!!" with three exclamation points after it, and what to read, where to find it, dress code, what to do first, what to do second, what to pack, brief descriptions of the NOP, NOSB, OFPA, and the final rule.

The Guide also gives suggestions on how to organize paperwork, emails, as well as how to keep up with reading and writing materials, travel information,

agencies, supporting organizations in the industry, as well as many other suggested best practices.

The Policy Committee will oversee the New Member Guide and update as needed.

We would like to propose this draft for discussion for this meeting and hope to have this draft as a final document at the next Board meeting for a vote to accept it as an official training material for new members.

Now I open to any discussion or questions on the New Member Guide, which I wish I would have had when I had my first meeting.

(Laughter.)

CHAIRMAN O'RELL: I wish my kids would have had this when they went to school for the first time because it would have been very thorough.

(Laughter.)

Bea, I thank you very much. I

think this is going to be very helpful for new members.

Jim Riddle and I had a conversation the other day, and we talked about how this would even, I think, serve a purpose for people who are considering and putting nominations in for submission for consideration to be on the Board, give an expectation of what is required, because there is a lot of work required. People knowing it upfront would give them a better understanding of putting in a nomination.

I like Jim's suggestion of having a link on it for the nomination process once it has become an official document.

So is there any discussion?

MR. DELGADO: We have a question there.

CHAIRMAN O'RELL: Yes, Nancy?

MS. OSTIGUY: Actually, it is a document, I guess, that is never done. Under E on the New Member Guide, it says

that all airline reservations must be made through the FedTraveler. All reservations, because those of us that have gone by train or rented a car, we may not have done it the right way initially and we were informed of a different way of doing it.

MS. JAMES: Okay, good. Thank you.

MR. DELGADO: Just for the record, what is the page number and section, please?

MS. OSTIGUY: Page 4, Section E. The second paragraph of Section E.

MR. DELGADO: Thank you.

Any other questions? Yes, Bea?

MS. JAMES: Originally, we had collaborated with Valerie on this document. There was some really valuable regulatory information that we actually pulled out of the document.

I would like to propose that we re-evaluate that information as possible

submission to the Policy and Procedure Manual because it is more technical. I just wanted to open that for discussion.

I am not sure if many of you saw the first round that came out on the New Member Guide and if you had a chance to look at that, but I found it to be extremely useful information.

So I am just asking maybe Mark and NOP also how they feel about putting that on the agenda for the Policy Committee to look at inserting into the Policy and Procedure Manual.

CHAIRMAN O'RELL: Is that a question to the program?

(Laughter.)

MS. JAMES: Do you have a problem with it?

MR. BRADLEY: We don't have a problem with that at all, if you want to look at that.

MS. JAMES: Okay.

MR. DELGADO: I guess I would like to clarify that this is a working document, and we should be updating that probably on a yearly basis, like we should be doing the same with the other Policy and Procedures Manuals. It is not complete, but I do want to recognize Bea's work on this, on developing the first pass. It was essential, and Bea has been definitely, no question, the leading light behind the New Member Guide.

MS. JAMES: See, from being so lost, you can actually have positives.

(Laughter.)

MR. DELGADO: Yes.

Any other comments? Questions?

CHAIRMAN O'RELL: Just so everybody's clear, then the revisions that you discussed first this morning will be voted on tomorrow.

MR. DELGADO: That is correct.

CHAIRMAN O'RELL: And what Bea

presented for the New Member Guide was just a discussion item, and at the next meeting -- we plan to make a change or two, and then at the next meeting it will an action item.

MR. DELGADO: Right. That is correct.

CHAIRMAN O'RELL: Does that conclude the discussion?

MR. DELGADO: That concludes the Policy Development discussion, yes.

CHAIRMAN O'RELL: Thank you.

You're still on, I guess.

MR. DELGADO: I'm still on, yes.

CHAIRMAN O'RELL: We are going to move to you and Gerald for the Joint --

MR. DELGADO: That's right. I also want to appreciate all the work that has gone into developing, working on the temporary variances for research. Gerry and the Crops Committee and the PDC members have been generally busy all the time.

But at this point, what we would

like to do is give you an update on what is happening with research variances, our guidance for them.

CHAIRMAN O'RELL: It is Tab 3 in our books.

MR. DELGADO: That's correct.

We, essentially, prepared the letter; just to give you that update, I will read from that. You can see that. It is on the screen.

The update is the following:

"For the past year, the Crops and Policy Development Committees have been working to provide recommendations for temporary variances for the purpose of conducting research.

"One topic of discussion concerns research involving prohibited materials and practices, particularly such research that must be conducted on transitional or certified organic land due to funding stipulations.

“Because NOP rule Section 205.290(e) specifically forbids temporary variances involving practices, materials, or procedures prohibited under 205.105, the Committees are attempting to find ways to accommodate this type of research under the current rule framework.

“The Committees have been working on a document recently that we named `Guidance for Certification of Operations Participating in Research,’ COPR.

“Ongoing work on the COPR document will attempt to outline the procedures to request, maintain, document, and control distinct plots used for such comparative research within the confines of the Certified Organic Farm Plan of a research operation.

“Another major discussion point on temporary variances questions the validity of allowing certifiers to grant variances, acting in place of the NOP

Administrator, that is. This idea has been proposed as a way to streamline the temporary variance process.

"After close scrutiny of the NOP rule, the Committees determined that the Administrator must be the one to grant any variances. The Committees will be discussing ways to streamline the approval process of temporary research variances as part of the work-in-progress on the COPR document.

"This update on the work-in-progress on this topic seeks to inform the public and to stimulate continued input from all concerned parties."

Thank you, and that is signed by both Gerry and myself.

CHAIRMAN O'RELL: Any comments, Gerry?

MR. DAVIS: No. I think that gives an adequate status report of what we're grappling with and why there is no

document for vote.

CHAIRMAN O'RELL: Any questions from any of the Board members? Andrea?

MS. CAROE: It is not a question, but being part of this process, I just wanted to say that we actually did a lot of consideration. We kind of went full circle with this recommendation.

We got very, very complex, and then we brought it back to a very, very safe area. Then we realized that we really didn't have any there and got stuck.

Temporary variances is a very tricky area for us because a variance is a compromise. It is a compromise on the rules in order to promote the technology and the advancement of the industry. That is a very tough call for this Committee to make, for this Board to make.

We will struggle with that as we move forward, finding out where we are willing to let organic food on the market in

small amounts that don’t meet every piece of the regulation, yet they are providing something back to the industry that will actually take it further along.

So I appreciate all the work that Rigo and Gerry did on this. It was an amazing effort.

Seeing this document, you may not understand, actually, all the work that got to where we are, but I think we’ve got a better understanding, and moving forward, I think it is going to be a very good recommendation that you come up with.

So I appreciate the work that you guys did on this.

CHAIRMAN O’RELL: Hue?

MR. KARREMAN: Actually, Andrea, maybe I’m under the wrong impression, but product made under a variance, I thought that will not be sold as organic, but perhaps that plot, or whatever that it said in here, could come back into production.

But during the examination of a practice or product for a crop, let's say, that particular crop that season would not be sold as organic, isn't that correct?

MS. CAROE: Well, there is an opportunity that you could preserve the transition and, in other words, not sell the crop, but sell the following crop as organic.

MR. KARREMAN: Sure.

MS. CAROE: That's one type of variance. The other type of variance is to allow it to be sold as organic.

So, you know, this would be considered by the Committee in granting a variance. So maybe it is a practice, or I'm not even sure which part of the regulation would be varianced. That is the tough part.

But looking at that and moving forward is the issue. But the world is the gamut on this. It is balancing the benefit versus the detriment, the variance. That is

what is ahead.

I think Rigo and Gerry are very good at putting that in perspective.

CHAIRMAN O'RELL: Yes, Hue?

MR. KARREMAN: Another point: I don't see anything in this document here -- it is not a document, just a progress update, I guess -- regarding livestock. I think livestock has to be addressed.

MR. DELGADO: You are absolutely right. This is a working document. We have addressed just these specific points so far.

So the next step will be to continue with questions like, where does livestock fall into all this? So we are not done with this work at all.

CHAIRMAN O'RELL: This remains on the work plan?

MR. DELGADO: Absolutely, yes.

MR. KARREMAN: One last thing: As the Crops and Policy Development Committees -- and I was just wondering if it

is going to include livestock, shouldn't it be the Livestock Committee as well or should it just be the Policy Committee itself, not just Policy and Crops?

Do you know what I'm saying? Should it be just Policy because it is overarching over the whole Board and everything to do with organic research or should it be Policy plus the Crops Committee, the Livestock Committee, and whatever all else, just to be fair to Livestock, I guess, and other groups?

MR. DELGADO: My immediate response is, yes, we should be including Livestock in that sense. I don't know if you have any objections.

MR. DAVIS: I don't disagree with that, no.

CHAIRMAN O'RELL: Well, I would agree. Policy will be the leading driver. So they would have the primary function to make sure that the roles are carried out

through Crops and Livestock.

So if we wanted to add Livestock to that as part, under the umbrella of the Policy Committee --

MR. DAVIS: That's fine.

CHAIRMAN O'RELL: Andrea?

MS. CAROE: I would make a suggestion that you consider developing an ad hoc committee to deal with this that includes Crops, Livestock, a couple of people from each area, instead of trying to get all of these committees together; you'll never get a quorum.

So if you actually get a couple of people that can represent each area, form an ad hoc committee, it will be a lot easier and a lot more tenable to actually get work done.

MR. DELGADO: No, I agree. That will make us a lot more productive, too. Thank you.

MR. MOYER: Kevin?

CHAIRMAN O’RELL: Yes?

MR. MOYER: In fairness to Rigo, there are some of us that sit on Crops and the Livestock Committee. So livestock was discussed from the very beginning of this policy statement right on through. We never separated crops and livestock in the actual discussions.

MR. KARREMAN: The only reason I’m bringing it up, I don’t see anything about livestock per se in this update here.

MR. MOYER: Right, not in this update. In the actual document that we -- we originally had written a document and livestock wasn’t there; we had a lot of problems, not just with livestock, but with the whole thing.

As we re-evaluated it, we just stumbled along and we started to actually regress in our discussion, but livestock was included.

CHAIRMAN O’RELL: Livestock was

definitely included in the -- yes.

MR. KARREMAN: I was part of those discussions.

CHAIRMAN O'RELL: Yes.

(Laughter.)

MR. DELGADO: And, also, Mike Lacy was participating in that. So we did have -- we just have to make it official, I suppose, include the three committees or the ad hoc committee.

CHAIRMAN O'RELL: So I think that is a very good suggestion that Andrea made. So, Rigo, if you would look at putting together an ad hoc committee --

MR. DELGADO: Will do.

CHAIRMAN O'RELL: -- under the Policy umbrella to continue with this, to have representatives of livestock and crops?

MR. DELGADO: Will do, yes.

CHAIRMAN O'RELL: Any other questions or comments?

(No response.)

Okay, Gerald, let’s move on to the Crops Committee rundown of the recommendations that will be presented tomorrow for vote. We have two discussion items, I think, as well.

MR. DAVIS: What’s the best way to structure that, Kevin? I present the petition, then open it up for discussion amongst the Board?

CHAIRMAN O’RELL: Yes.

MR. DAVIS: And that’s as far as we take it for each material?

CHAIRMAN O’RELL: For each material, yes.

MR. DAVIS: Thank you.

CHAIRMAN O’RELL: Just to give some background information and what the recommendation is coming from the Committee for each of the individual materials.

MR. DAVIS: Okay.

CHAIRMAN O’RELL: Then we’ll have discussion.

MR. DAVIS: The first material on the agenda is lime mud, which would be a limestone recovery type of material from various industrial processes. The petitioner is requesting that it be approved for organic use as a liming material. It is calcium carbonate. It is just the problem is that we had with it was that it is industrial byproduct.

The material is synthetic. I mean it begins as a mined material, but it doesn’t stay that way.

So, as far as the criteria, we checked off that it failed all three criteria.

As far as impact on humans and environment, the first criteria, we felt that the lime mud term was very generic and not specific enough.

The petitioner, with their specific version of that recovery-type lime mud, they were presenting that it had

minimal contaminants as far as heavy metals, and so forth, but the term to approve lime mud would open up the door to all sorts of grades of these types of materials that could have vastly different quantities of impurities and heavy metals, and so forth.

Even the material as petitioned, their version of it, it does have some contaminants in it. We felt that, even though they were reasonably low by conventional agricultural standards, that in organic that is not really one of the principles we follow of trying to decide what is an adequate loading rate of heavy metals, and so forth, that should be applied to organic land.

So we thought the potential loading rate of contaminants would be too high with lime muds in general for organic to be compatible -- well, let’s say that, compatibility. It could have an impact on the environment. So it failed that

criteria.

As far as the availability criteria, are there other materials available? There are. You know, mined limestone is generally available and is effective. There is no perceived need for this type of a limestone material because there are no other sources.

I mean limestone is very available in most areas of the country. It is already an approved natural.

The third category, and we felt it failed also, as far as compatibility and consistency with organic agriculture. The rule prohibits the use of material made in lime kilns. So we thought this was related to that and was a problem area.

Again, the loading rate of heavy metals, accumulation over time, repeated use of this, we didn’t think it was compatible with organic agriculture. So we rejected it on that criteria also.

So we voted to deny the petition. The vote was five members yes and zero members no, no abstentions.

Is there any discussion? Andrea?

MS. CAROE: I just have a question. You are evaluating this as a synthetic. Is this not like a byproduct of a grinding process? I mean, how is this synthetic? Is this actually manufactured?

MR. DAVIS: Nancy, can you take a stab at that? I am blanking here on what determination we used on deciding it was synthetic.

MS. OSTIGUY: I am not remembering the petition at the moment. So I really can’t pull that up.

MS. CAROE: I don’t think it changes anything. I think your evaluation is quite complete. I just was curious about the categorization because it just seems like it is a byproduct of some other type of application or grinding or --

MR. DAVIS: I'll have to check the petition and see if I can put together why we determined that.

MR. MOYER: Gerry, my recollection was that what we discussed was that, through the process of the creation of the lime mud, as a byproduct of something else, it actually changed the material through the heating process. So it becomes -- you start out with something mined, but through the process, it actually becomes synthetic because there's so many other contaminants mixed in with it.

MS. CAROE: Oh, so it is like it is binding with metals and things like that in the process?

MR. MOYER: Yes, all sorts of things, right.

MS. CAROE: Okay.

MR. DAVIS: Yes, changing the calcium oxide at one point --

MR. MOYER: Right. Got it.

MR. DAVIS: -- and back and forth in various forms.

MR. MOYER: It actually changes, chemically changes it.

MS. CAROE: Thank you so much.

MR. MOYER: Sort of like taking phosphorous and turning it into triple super phosphate, it becomes a synthetic by the process.

MS. CAROE: I understand.

MR. DAVIS: Seeing no other hands, I guess we will move on to the next material.

CHAIRMAN O'RELL: Yes.

MR. DAVIS: Nancy, do you want to take the sodium lauryl sulfate?

MS. OSTIGUY: Sure. Sodium lauryl sulfate was petitioned for use as part of a material that was to be an herbicide. In our evaluation, adverse impacts on humans and the environment were unlikely.

Sodium lauryl sulfate is, in essence, a soap. So while it can have negative impacts on living organisms, it is relatively benign in that fair quantities are needed.

Primary areas where it is problematic in the environment is near aquatic ecosystems.

So the substance is also biodegradable. It is a food additive. It is grass, so relatively nontoxic.

Like any soap, if you ingest it, it will cause diarrhea.

Category 2, on the question of wholly natural substitute products, there are corn gluten, prevents sprouting of seeds from developing normal roots; acidic acid is considered a natural herbicide. There are also other lists for minimal risk inerts that can also be used such as sunflower oil and citric acid.

Again, on alternative substances,

List 4 minimal risk inerts are available that are natural.

Other practices: cultivation, et cetera, crop rotation, allelopathic plants, et cetera, can be used in place of an herbicide.

So it failed Category 2. It also failed Category 3. The intended use was felt to be beyond the intent of the regulation because the material would be used in crops.

The section under the regulation where this material would be listed is herbicides, soap-based, for use in farmstead maintenance, roadways, ditches, right-of-way, building perimeters, and ornamental crops. That was not the stated intended use.

We felt that it was compatible with sustainable agriculture, with the maintenance as following the regulations as they currently stand, but not for crop

production.

We did find a place for it, if we had wanted to add it to the list, because it is a soap.

The Committee voted that this material was synthetic and that we reject it for listing on the National List because it would violate current regulations in terms of if you look at Category 3, question 2, other materials are also available that are consistent with organic production.

CHAIRMAN O'RELL: Any questions for Nancy?

(No response.)

Okay, Gerald?

MR. DAVIS: Hearing none, the next material is the petition to add sulfuric acid to the National List with the annotation "for use only to stabilize animal manures" in processing of those animal manures.

The first category, the

evaluation criteria, impact on humans and the environment, a lot of the discussion talked about the basic idea that sulfuric acid is a very commonly-manufactured material used in a lot of things.

Different sulfur compounds getting into the air as air pollution and causing acid rain was discussed. Although it is not directly pertinent to this material and its use, the material as petitioned for use would not cause acid rain. The commenter, the petitioner sent in public comments posted on the website stating that. I would have to acknowledge that, that, yes, the material as used would not cause acid rain.

So perhaps we got a little bit off the track on that particular tact.

MS. OSTIGUY: Gerry, can I interrupt?

MR. DAVIS: Yes, please.

MS. OSTIGUY: One of the things

that the Committee was doing, and we did the same thing with sodium lauryl sulfate, is when we list a material, it is listed for any use. So while this particular use doesn't have an acid rain component, a lot of things that were mentioned in terms of its environmental impact probably do not apply for this particular use. That is not what we are doing when we put something on the National List. It could be used in other processes.

So that was the context of our responses for Category 1, was if it was on the National List, what are the possible consequences?

MR. DAVIS: Right. I was going to discuss that in the compatibility area also.

On the availability criteria -- well, first of all, going back to the first criteria on impact on humans and the environment, we felt that the material did

not satisfy that criteria. So we marked it as no.

The second criteria, availability of natural substitutes or practices that would substitute for this, we felt it failed on that also because there are other ways to stabilize animal manures with other materials such as using citric acid, lactic acid, bacteria, or clay or peat materials, various zeolite materials that tend to absorb free ammonia when they are present in the manure or the compost piles.

There’s also just regular composting of animal manures is a practice that would not keep the volatilization of ammonia. I mean that would happen in composting. It would go into the air and, yes, it would be there, but it is still an alternative practice that is commonly used. This we didn’t feel was necessarily needed for the overall organic agriculture fertilizer need situation.

So we felt there were other available materials and practices. So we voted no on that also.

Criteria 3, compatibility and consistency, we also checked that off as a no answer. As Nancy mentioned a minute ago, when we approve, if we were to approve sulfuric acid for use in animal manures to stabilize them in their processing of them, it would open up the door to many other uses that would go beyond the intent of this particular petitioner.

They stress over and over again the small quantity of sulfuric acid it takes in their process on a hog operation to stabilize the manure in their manufacturing process in making pelletized manure for availability to the organic growers.

But if we approve it, it could be used for many, many things. It is a synthetic. Putting it in the manures results in formation of synthetically-formed

sulfate fertilizer.

The principles of organic agriculture in the rule and the original act state that we are not to be allowing synthetic fertilizers for general use in organic agriculture.

So although the amount they put in this particular process is small and it might seem inconsequential, it would open the door to anyone else desiring to use large quantities of sulfuric acid in compost piles or manures for various reasons to get various effects, all in a synthetic fashion.

So, for that reason, we voted no on the compatibility and consistency with organic agriculture and voted five to zero to not grant the petition.

Any questions or comments?

CHAIRMAN O'RELL: Yes, Dan.

MR. GIACOMINI: I would just like a little clarification on you said a couple of times that putting this item on the list

for this use would allow its use in other cases. OFPA, under National List, says, “The list established under Subsection A shall contain an itemization by specific use or application.”

How would putting it on the list for this use allow its use in other cases?

MR. DAVIS: I didn’t say “other cases,” but within the case of manure stabilization, you know, stabilization of ammonia within manures, it is conceivable it could be used in much greater quantities, let’s say in a composting operation, to where they could go beyond just mainly stabilization and would be actually fortifying compost or manure sources with large amounts of sulfate.

MS. OSTIGUY: Yes. Not only that, so even within this use category, it could go to the point that it would be a synthetic fertilizer.

The way in which, at least in my

five years on the Board, materials have been added to the list, the preference by the program has been to not have annotations. We would have to put fairly restrictive annotations in this case.

So while, yes, OFPA allows annotations, in practice they really have not been the primary way that this has proceeded.

MR. GIACOMINI: I see Gerald's point on amounts and volumes. I don't quite see your point on annotation since we put it into a specific category for as use.

MS. OSTIGUY: Once it is in one category, it is opened up for justification for additional categories.

MR. DAVIS: And we have another item on the agenda that will demonstrate that in a few minutes here -- I will point it out when we get to it -- where a material has a very specific addendum, annotation -- excuse me -- and is now being petitioned for

expanded use to change that annotation to give it more usages. So it does happen. It is very routine that that does happen.

Putting it on in a small way tends to lead to more usage that we definitely wouldn't be interested in.

CHAIRMAN O'RELL: Andrea?

MS. CAROE: I think that you're overly worried about an annotation when you have such a clear reason, because if a particular use presents no risk and you are allowing that use with an annotation for that use, and you are very particular about how this recommendation is written, any petitioner that comes after is going to have to reference the previous Board decision. Clearly, in your decision it will say that it was allowed specifically for this use because there were minimal risks because of the method used for application.

So, I mean, you could do that. However, in this case, looking at this

material, it seems like you have a whole lot of alternatives.

So, I mean, I think the point may be moot in that, why go to that level of -- you would do that if you really needed this material for this reason. If you had no other reason, no other alternative to adjust the PH, then I could see doing that.

But to kind of go between, Dan, it can be done, and you would do it if you needed to, but I don't think you need to. I don't think this material has -- or the petitioner has proven that they absolutely need this material.

CHAIRMAN O'RELL: Nancy?

MS. OSTIGUY: I would also argue that this material for this use could, while this petitioner has stressed how small amounts are necessary in their process, it could be used, it could be abused by other individuals.

I am not sure you could write an

annotation that says that you must use the most minimal amount possible, and then how are you going to police that? How are you going to follow that in terms of enforcement?

So we are stuck with a quantity issue anyway.

CHAIRMAN O'RELL: Right, but the rejection of the material is not based on the sole fact that it could be used.

MS. OSTIGUY: No.

CHAIRMAN O'RELL: I mean there are clear criteria for rejecting the material beyond the philosophical point that it could be used in other applications or abused or further --

MR. GIACOMINI: Right, and my comment wasn't as an argument to your decision on this substance. It was just, you know, clarification on the specificity in OFPA of how we are required to put items on that list for specific use. I mean there

are some items that end up being on the list a number of times for different uses.

In some cases, an item has been on the list, resubmitted for a second use, and that second use has been rejected, but it still stays on the list for the additional use.

MR. DAVIS: Right, and the overarching point that we try to always remember is, if we are going to add synthetics to the National List, we need to make sure they are truly, truly needed and there are no good alternatives. We just felt it really failed that category of criteria.

CHAIRMAN O'RELL: That's the clear basis for --

MR. DAVIS: That's the clear basis, that there are other ways to go about this and this is not a justification for adding a synthetic for use that way.

CHAIRMAN O'RELL: Hue?

MR. KARREMAN: I was just going to say this is totally new to me, using something like a synthetic for manure preservation. I don't know many farmers in the Northeast at least that would use anything for cow manure, poultry manure except drying it out naturally and whatnot. It seems kind of odd.

MR. DAVIS: Right. In the natural drying and handling of manure, there is always a nitrogen loss.

MR. KARREMAN: Right, sure.

MR. DAVIS: If you choose to use a sulfuric acid to add it to the manure pile, the compost pile, it drops the PH of the overall pile or the manure to a level where ammonia gas does not form. It stays in the ammonium form and it stays there, rather than volatilizing off.

Any other questions?

(No response.)

So did I finish? The vote was

also five to zero on the sulfuric acid in manure to reject the petition.

Calcium chloride currently has the status of it is nonsynthetic, at least in this form. Synthetic forms of calcium chloride do exist and they are made.

This particular petitioner produces a calcium chloride that their company sells from a natural brine process. So we determined that it is not synthetic.

Calcium chloride exists on the list right now as a prohibited natural with the annotation “for use only to supply calcium as a nutrient in instances of limited calcium uptake in certain crops.”

Checking the history on it, it was primarily added based on a need that apple growers had for a way to treat for a physiological disorder called bitter pit or -- well, bitter pit, where it makes the fruit unsalable due to a late-season calcium deficiency that is not able to be supplied;

the calcium isn’t able to be supplied through soil-applied methods or many foliar-applied methods of other materials.

The petitioner is requesting that the annotation be changed to allow for soil usage of this material, to broaden the usage of it. So we had to evaluate it on that basis.

So Criteria No. 1, impact on humans and environment, the chloride content of the material seemed to be the central issue. Yes, you can leach the chloride out of the soil profile, and it is not in proper soil conditions for where the chloride would not build up in the soil profile where the crops are grown.

You can eliminate environmental contamination in that zone, but the question always remains, where does that chloride go and what are we doing with long-term usage as far as surface and groundwater contamination from the chloride being

leached through the soil layers?

The material is a salt. Everyone knows that salts are dangerous for certain handling by people. It can’t get in your eyes. You know, it is corrosive to the skin, and so forth.

But the main issue on impact on humans and the environment was the chloride issue and the leaching into the lower profiles of the soil.

So the Committee voted on that criteria that it fails, based on that part of it.

Criteria No. 2, the availability of natural alternatives or practices, for soil remediation in the alkaline soils, mainly in the West and Southwest, gypsum is a very, very effective low-solubility material for reclamation of alkaline soils with sodium and/or chloride problems.

So there is already a mined natural on the list that is routinely used

for that purpose.

Limestone is available as a calcium supplement in other areas, acid soil areas, where you would want an alkalizing material.

As a chloride supplement, a separate issue from the calcium, potassium chloride is on the list already as a chloride supplement.

Also, Brian Baker pointed out to me yesterday, reminding me that table salt, sodium chloride, is a natural and has no restrictions at all and could be used as a chloride source, although not desirable.

(Laughter.)

In situations where you need chloride, it is tiny amounts that you need to put on the soil. So a sodium chloride application at very low rates would be adequate.

But the question is, do these materials -- so we answered yes and no on,

are there alternative materials, because in situations, certain phases of crop growth, soil-applied calcium does not translocate to the problem areas of the plant like an apple with a physiological problem or tends to growing-point problems where you have distorted foliage or fruit that don’t have enough calcium.

The limestone and gypsum materials applied to soil tend to break down at some point. So there is often a desire to put on a foliar source of calcium, which was probably why it was originally added as a prohibited natural with the annotation “for foliar use only to correct calcium-deficiency disorders.”

There are other alternatives, calcium supplement sources for foliar use there were pointed out in the TAP. Calcium chelated with humic acids was mentioned. From my experience on our farm, calciums chelated with various amino acid natural

protein derivatives is very effective at correcting these calcium deficiencies.

So we felt there are other available materials. So we voted no on, did it meet that availability criteria?

Criteria No. 3, compatibility and consistency with organic agriculture, we also voted no on that, based on it is a material of high solubility and that is a principle at least contained in the rule. I don’t see it listed in OFPA itself, but it has been stressed. There seems to be a precedent stressing preferably that we use materials of low solubility to eliminate some of the environmental problems associated with high solubility of materials.

What was the other criteria that we talked about? I am blanking a little bit. Jeff, Nancy, anything on that, other criteria that we were -- Kevin?

MR. MOYER: Well, you hit the

important ones.

MR. DAVIS: okay. So we voted no, that it failed the compatibility and consistency with organic agriculture and voted five to zero to reject the petition to change the annotation to allow for soil use.

Any questions?

CHAIRMAN O'RELL: So there were two absent for this vote?

MR. DAVIS: Yes. Yes, we didn't mark that down, but the day that we did this there were only three members present. I believe Nancy and Jeff were absent for this vote, as I remember.

MS. OSTIGUY: Yes, if you add my vote, it is the same as the Committee's.

MR. DAVIS: Joe?

MR. SMILLIE: Yes, I agree with the Committee's decision. But I remember in the old days as a fertilizer dealer that we never allowed potassium chloride, for all of the reasons you have cited.

I just think that it is just a crying shame that we've got this process in place now to deny calcium chloride, but we are sitting there with muriated potash, which to me should never have been on the list. So I think it is organic history rather than science and that we are saddled with it, but I just wanted to note that I just think that is a crying shame.

MS. OSTIGUY: Joe, the Committee did talk about that. We agree with you. But we have to work with the petitions that are in front of us.

MR. SMILLIE: I agree.

MS. OSTIGUY: We felt frustrated, but that was the state of things.

MR. MOYER: Someone could petition to take it off, but they haven't.

MR. ENGELBERT: But that is kind of the message we are hoping to send. We couldn't justify this because of a wrong that was done, in our opinion, that was done

in the past.

MR. KARREMAN: If potassium chloride was petitioned to be removed, you guys think, with the calcium chloride sitting in the wings, that there might be a switch, let’s say? I mean if KCl was not available --

MR. GIACOMINI: The petition would be to change the annotation?

MR. KARREMAN: Yes.

MR. GIACOMINI: Yes.

MR. KARREMAN: Do you think the annotation could change then if potassium chloride was taken off?

MS. OSTIGUY: Well, they could petition to change the annotation or we could choose, if it was petitioned to remove, change the annotation. That argument would have to be made.

There are other wholly natural sources.

MR. DAVIS: Right.

MS. OSTIGUY: So that would be one of the main things that the Crops Committee would have to evaluate before coming with a recommendation to the Board.

CHAIRMAN O'RELL: Andrea?

MS. CAROE: Did that material go through sunset process?

MR. DAVIS: Potassium chloride? No, I think it was added later than that first batch.

MS. CAROE: It was added later. So it is going to be sunset, right? There will be a sunset on it?

Do we know how long it has been on the list and when that sunset is?

MS. OSTIGUY: I don't remember.

MS. CAROE: Okay.

MS. FRANCES: But we'll know soon.

MS. CAROE: I'm sorry.

MS. FRANCES: We're pulling that information together to make sure that we

are on top of the sunset materials.

MS. CAROE: Okay. It may be a message to send to this petitioner that at that time may be the best time to petition an alternative, if it is necessary.

I don’t pretend to know the technical information.

MR. DAVIS: I believe it would still fail on the availability criteria at least and the environmental criteria.

CHAIRMAN O’RELL: Emily, can you provide some insight?

MS. ROSEN: My recollection is at your meeting you talked about changing potassium chloride. Or, actually, it was talked in Committee. But in order to take it off the list during the sunset, that would have been a change in the annotation. You felt like you couldn’t take it off the list or it couldn’t be considered for that.

There was an initial recommendation, I believe, from the Crops

Committee to consider sunsetting it, but then -- so it seems to me a prohibited natural can never be sunsetted, the way you have set up your rules, which is not good, I don't think.

MR. KARREMAN: Strychnine -- oh, no, that was different. That remained on as a prohibited natural that stayed on.

MS. ROSEN: That stayed on, uh-hum.

MR. KARREMAN: Yes, okay.

CHAIRMAN O'RELL: Thank you, Emily.

MR. DAVIS: It probably would have to be petitioned because of that process, Andrea, of not being able to change the annotation.

MS. CAROE: I understand, yes.

MR. KARREMAN: Also, Gerry, you're saying there are other available products out there besides calcium chloride, but it is a natural product. You guys have

said that, correct?

MR. DAVIS: Right, yes. This process produces a natural, yes.

So I mean the debate could go on of whether we should be in the business of prohibiting naturals that don’t have very, very distinct problems with them, such as strychnine or arsenic and stuff like that.

The argument could be made, is calcium chloride to that level to where we really need to tell organic farmers, no, you can’t use this material because it is that bad?

MR. ENGELBERT: But it does have an annotation for use that we think is sufficient.

MR. DAVIS: Right. The annotation for use does mitigate the environmental issues that it has. By restricting it to that level of use, you still have a calcium supplement; you still have a chloride supplement for use certain

ways. You just can’t use it in larger quantities in soil.

CHAIRMAN O’RELL: Any other comments or questions?

(No response.)

Thank you, Gerald. Do you want to go on to compost tea?

MR. DAVIS: Do I want to?

(Laughter.)

CHAIRMAN O’RELL: Do you want to? No, I guess that wasn’t a question.

(Laughter.)

Would you go on to compost tea?

MR. DAVIS: Okay. Compost, vermicompost process manures and compost teas, this one has been on the agenda many, many times for years now, starting with the Compost Task Force years ago and then the subsequent Compost Tea Task Force.

What we attempted to do was to look at those Task Force reports and come up with a guidance document that, rather than

just adopt everything that is in those Task Force reports as what we should do for these materials, I could see myself inconsistencies in some of the material contained in particularly the Compost Task Force document, the older document, that I thought were problematic and didn't want to.

So we put directly in there that this is the guidance document. The Task Force documents are for background and history. They are not guidance in themselves.

How are we doing on time?

CHAIRMAN O'RELL: We're fine.

MR. DAVIS: Okay. I think I had better read this.

"National Organic Standards Board Crops Committee recommendation for guidance for use of compost, vermicompost, processed manure, and compost teas.

"Introduction. Section 205.203(c) of the Soil Fertility and Crop

Nutrient Management Practice Standard in the USDA NOP rule sets forth the fundamental requirement for processing and applying plant and animal materials. The section states that the producer must manage plant and animal materials to maintain or improve soil organic matter content in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, pathogenic organisms, heavy metals, or residues of prohibited substances.

"Subsequently, Section 205.203(c) states that plant and animal materials include raw animal manure, composted plant and animal materials, and uncomposted plant materials.

"The rule in this section also contains management restrictions for crops on which raw manure has been applied and also specifies the composting conditions that must be maintained to produce compost.

"Certain types of compost and

manure-based inputs commonly used in organic farming were not directly addressed in the rule, such that additional information and rule clarification was needed.

"Two different task forces were commissioned to make recommendations on these materials. In April 2002, the Compost Task Force recommendation was presented to the NOSB and subsequently accepted as a recommendation to the NOP.

"In October 2004, a separate report and recommendation was presented to the NOSB by the Compost Tea Task Force. That document was also accepted by the NOSB, and the Crops Committee was directed by the Board to determine the necessary work that needed to be done to clarify these documents to the public.

"The intent of this current document is to point out and summarize the recommendations contained within both reports. So to summarize the information

that are relevant to clear, concise guidance on the production and use of the compost manure materials listed above, the complete reports of the Task Forces are included with this NOSB recommendation as supporting information only in Addendum A and Addendum B."

Definitions -- some of these are directly from the Task Force reports. Some of them are excerpts with very minor changes.

We added a definition for compost because neither of them actually defined compost.

So "Composting is a process in which organic matter of plant and/or animal origin is managed to promote aerobic decomposition and an increase in temperature in order to enhance its physical and nutritive properties as a soil amendment while minimizing pathogenic organisms."

"Compost is the product of the

composting process defined here.”

“Compost Tea, a water extract of compost produced to transfer microbial biomass, fine particulate organic matter, and soluble chemical components of the compost into an aqueous phase, intending to maintain or increase the living beneficial microorganisms extracted from the compost.”

“Process manure, manures that have been treated by heating and drying to reduce pathogenic organisms.”

There were some comments made that we should call these dehydrated manures. I don’t feel that is specific enough because it is not just the drying that is included in the manures; it is the heating. So we had to come up with a term that could be all-inclusive of both processes, not just the dehydration.

“Vermicomposting, a managed process of worms digesting organic matter to transform the material into a beneficial

soil amendment.”

“Additional definitions of words used in this document, see glossary and definitions section of Addendum B,” which is the Compost Tea Task Force report.

Our recommendation: “Producers of any agricultural commodity or product certified as organic under the National Organic Program, NOP, must meet the fundamental requirements for processing and applying plant and animal materials for soil fertility and crop nutrient management practices, as described in Section 205.203(c) of the final regulation.

“Examples of plant and animal materials are described in Section 205.203(c) (i) through (iii).

“This recommendation denotes other materials and practices that would be acceptable under 205.203(c)(ii) which applies to plant and/or animal material mixes.

"One, compost, in addition to that described in Section 205.203(c)(ii), is acceptable if, one, made from only allowed feedstock materials with incidental residues, are allowed only if they will not lead to contamination.

"Two, the compost pile is mixed or managed to ensure that all of the feedstock heats to the minimum of 131 degrees Fahrenheit, 55 degrees Centigrade, for the minimum time of three days."

That section is not intended to mean that we have shortened the amount of time from 15 days for what the rule states to three days. That is just saying that every part of that compost pile needs to be turned, so that every last bit of it has at least three days of heating.

"The monitoring of the above parameters must be documented in the organic system plan submitted by the producer and verified during the site visit. An

explanation of compliance with Section 205.203(c) should also be presented in the plan.

"Two, vermicompost is acceptable if, one, made only from allowed feedstock materials, except for incidental residues that will not lead to contamination.

"Two, aerobicity is maintained by regular additions of thin layers of organic material at one- to three-day intervals.

"Three, moisture is maintained at 70 to 90 percent.

"And, four, duration of vermicomposting is at least 12 months for outdoor windrows, four months for indoor container systems, four months for angled wedge systems, or 60 days for continuous flow reactors."

There was one or two public comments mentioning that we should define angled wedge systems. We did not do that, probably because we don't have any experts,

the expertise to look that up at the time.

"No. 3, processed manure materials must be made from manure that has been heated to a temperature in excess of 150 degrees Fahrenheit or 65 degrees C for one hour or more and dried to a moisture level of 12 percent or less or an equivalent heating and drying process that produces a product that tests negative for pathogenic contamination by Salmonella and fecal coliform organisms.

"Since processed manures have been treated to reduce pathogenic organisms, applications are not subject to the restrictions placed on raw animal manure applications in Section 205.203(c)(i) -- what's that? -- (i), (ii), and (iii)."

I don't know how you say those "i" numbers.

"To prevent regrowth of pathogens in processed manures, post planting use on crops whose edible portion contacts the soil

must be limited to below-soil-surface applications only.”

“No. 4, compost teas must be made with potable water. Equipment used to prepare compost tea must be sanitized before use with a sanitizing agent as defined by 21 CFR 178.1010."

Public comment on that was received stating that we should add a phrase to there stating that it has to be a material on the National List, not just materials listed from that CFR section. So we can discuss that.

“Compost tea should be made with compliant compost or vermicompost.” Comment was taken on should be changed from “should be made” to “must be made.” I think that is a very important point.

“So compost tea should be made with compliant compost or vermicompost using the NOSB recommendation for compost and vermicompost mentioned above and as defined

in Section 205.203(c)(ii) of the NOP rule for compost tea.

"This applies to 100 percent plant feedstock materials in addition to manure feedstocks because non-manure compost feedstock may harbor high levels of fecal bacteria.

"Compost tea made without compost tea additives can be applied without restriction. Compost tea made with compost tea additives can be applied without restriction if the compost tea production system, the same compost batch additives and equipment has been pretested to produce compost tea that meets the EPA-recommended recreational water quality guidelines for a bacterial indicator of fecal contamination, US/EPA 2000.

"These indicators and the passing criteria are Escherichia" -- however you say that -- "E coli 126 CFU/100ml or enterococci 3 CFU/100ml.

"At least two compost tea batches must be tested using accepted methodology."

I think some of the public comment really objected to the two tests for the compost tea, but they misinterpreted that they had to test their compost, two compost tests each batch.

"At least two compost tea batches must be tested using accepted methodology" -- and I let the readers read that, the citation -- "with the average population of indicator bacteria across compost tea batches used as the measurement of passing.

"Each new batch of compost would require that the system quality assurance pretest be conducted again as indicated. After it passes again, compost tea from the system can be used without restriction, provided that an annual retest is completed."

The Committee added that last statement, "providing that an annual retest

is completed." We thought it was prudent just for the operator, for their own liability purposes, if there's ever a problem such as the one that has occurred with the spinach and lettuce, and so forth.

I mean there are elements of the conventional agricultural world that really disagree with compost tea and immediately point the finger at these sort of organic practices as the culprits for these types of incidents or the potential for these types of problems with using compost tea.

So we felt that an annual retest would just be due diligence to prove that what we are producing is safe, that it is not subjective, like what we are producing in our compost tea has never been a problem and it has always worked for us. We thought in this current environment, this situation, with organic agriculture being scrutinized by conventional ag and every little misstep that they think we are taking is pointed

out, this would be an area we needed to tighten the restrictions a little bit to give us better footing to withstand criticism.

"If compost tea made with compost tea additives has not been pretested for indicator bacteria, its use on food crops is restricted to the 90/120-day preharvest interval," as raw manure would be.

"Crops not intended for human consumption, ornamental plants, and grain crops intended for human consumption are exempt from the bacterial testing requirement and 90/120-day preharvest interval restrictions.

"Raw manure extracts or teas may be applied to the soil with a 90-to-120-day preharvest restriction. Foliar applications of raw manure extracts or teas are prohibited.

"Compost leachate may be applied to the soil with a 90-to-120-day preharvest

restriction. Foliar applications of compost leachate are prohibited.

"Compost extracts resulting from any mixture of compost, water, additives, and agents that are not held for more than one hour before use may be applied without restriction.

"Compost tea or compost extracts are not allowed for the production of edible seed sprouts."

The Committee vote was five to zero yes, no abstentions or absents.

Discussion?

CHAIRMAN O'RELL: Andrea?

MS. CAROE: I have three things. First, under definition of composting, it says, "to promote aerobic decomposition." Is it to promote or is it required that, in order to be considered composting, you're in aerobic decomposition?

I mean my understanding of composting is you have to be aerobic in

order for it to be composting. “Promote” makes it sound like, you know, you’re making an effort, but you may not get there, not reaching the temperatures, not reaching -- I just was wondering if there should be a word change and not “promote,” but maybe to elicit or something is more defined that it actually is happening.

MR. DAVIS: Right. Well --

MS. CAROE: That’s just a suggestion --

MR. DAVIS: Okay.

MS. CAROE: -- to consider by the Committee.

Then the other thing, two other things: One, what is your final recommendation? Are you looking for a rule change or this is a guidance document only?

MR. DAVIS: This is a guidance document.

MS. CAROE: Okay. Okay, that answers that.

The next thing is, in several areas, you say -- and this gets the little hairs on the back of my neck from being a certifier -- “will not lead to contamination.” What does that mean?

I mean, as a certifier, if I were looking at using this guidance or I was trying to not allow this practice, a practice where there is contamination happening, being that that is not defined, it doesn’t really mean anything. Do you know what I’m saying?

So is there a level of contamination? I mean zero tolerance for contamination? Contamination is what? I don’t know what that means.

MR. DAVIS: I see your point. Point well taken.

Jeff?

MR. MOYER: In answer to your one question about the definition, we pulled most of that definition out of the document

that was approved from 2002. So we took that language sort of the way it was.

Then your point on contamination, what we wanted to do was we were thinking about it in terms of a compost site or facility on a farm becomes a point source for contamination. So it is something that can be tested and is generally regulated by either DEP or EPA or some other federal agency that actually looks at that contamination.

So if you've got surface water nearby, they are not going to let you put this site there anyway. That is regulated by a whole other organization.

If you do put a site somewhere and contaminate the groundwater, then it is DEP.

MS. CAROE: So it doesn't even need to be in here. It is already covered under existing regulation?

MR. MOYER: Well, it is, but we

wanted to make sure that we stated that fact that that is a consideration that a composter needs to consider.

MS. CAROE: I would reword it then because it makes it look like organic is going to start looking at other regulatory requirements. I would suggest rewording that and make it a note that you still must comply with existing regulations about contamination or something of that nature.

MR. MOYER: That’s a good point.

MS. CAROE: It is just not written correctly.

CHAIRMAN O’RELL: Hue?

MR. KARREMAN: I’m a little confused on the compost tea. That is obviously not a leachate because that is defined differently. It is not just a little runoff from a compost.

But why is compost tea without additives or treated differently than with

additives if it is a byproduct of the final compost? Am I thinking that right, that compost tea is a byproduct of the final compost?

MR. DAVIS: Right. You would have to read the Compost Tea Task Force document.

MR. KARREMAN: Okay.

MR. DAVIS: And they spent a lot of time talking about the history of compost tea making and testing data that they had showing that, basically, the only time they would run into the bad guy contaminants in compost tea making was if they added these carbohydrate additives. That would allow the pathogenic organisms that might be there in tiny, tiny little fractions to proliferate and grow.

MR. KARREMAN: So then the additives -- I worked on a biodynamic farm originally, and getting an organic agriculture, it is not like biodynamic-type

compost.

It is not the biodynamic preps you are talking about as additives? It is some kind of other -- do you know what I mean on that?

MS. OSTIGUY: The additives that at least were discussed when the report was accepted by the Board are various sugars.

MR. KARREMAN: Okay.

MS. OSTIGUY: Molasses is the primary one, yes.

MR. KARREMAN: It is not the biodynamic preps, okay.

MS. OSTIGUY: And the only microorganism that really increases in a number, if you have just water present, would be E. coli -- well, not E. coli -- cholera. But once you add the molasses, you have the substrate for all of them because now they've got a major sugar source.

MR. KARREMAN: Okay. Thanks.

CHAIRMAN O'RELL: Yes, Bea?

MS. JAMES: I know you guys put a lot of work into this, and it is very well-organized. I also realized, as I was reading it, that I don't think I would have been able to find the document useful if I hadn't had read the recommendation from 2002 and the report from 2004.

So I am confused about this could be submitted as a recommendation for guidance with these two attachments not --

MR. DAVIS: They are being submitted with the attachments.

MS. JAMES: They would be submitted as part of --

MR. DAVIS: Oh, yes.

MS. JAMES: Okay.

MR. DAVIS: They're there for backup. We put that statement in as far as what the purpose of those two addendum were, so certifiers wouldn't think they had to read through all those addendum and start applying each little thing that was

mentioned in those Task Force reports as guidance. But they are very necessary to understand the final recommendation, definitely.

CHAIRMAN O'RELL: Dan?

MR. GIACOMINI: In light of the recent events with spinach and lettuce and various things, I don't remember the exact calendar in my head of the date of this document versus the date of those events, but do you still think that only an annual retest is adequate?

MR. DAVIS: Well, there are many, many people in the organic movement that make compost tea that are adamantly against the testing part of it. They think it is onerous and that they shouldn't need to, that compost tea has a good track record when made properly.

So we put in that annual retest before the E. coli scare came on. We had already decided that, and it was a done deal

before that came up in the media.

I know larger compost tea producers that sell to many growers, it is not a big deal for them to take routine tests, and most of them do, just to document that they are doing a good job.

MR. GIACOMINI: Is compost tea sort of a continuous batch mix or is it separate batching generally?

MR. DAVIS: The tea itself is separate batching. Many times the compost heap that they are using for the innoculant is used repeatedly. They will make a batch of compost and hold onto that for a period of time, and many batches are made from that same compost source before they need to start another pile for their innoculant.

CHAIRMAN O'RELL: I have Andrea and then Bea.

MS. CAROE: Gerry, just asking a question here about, you keep on tying what this work has done in reference to recent

outbreaks of E. coli. From my understanding and uneducated eye, watching the situation, that was a situation of a contaminated irrigation water.

MR. DAVIS: Oh, I understand.

MS. CAROE: I look at this as a controlled system. I mean the manufacturing of compost or the managing of compost and compost tea would seem to be a least-likely contributor to E. coli contamination since it is under control, whereas this irrigation water seemed to be a completely unknown source of contamination that is still under investigation from what I understand.

MR. DAVIS: Right.

MS. CAROE: But I don’t see the tie between the two.

MR. DAVIS: All our work was done prior to that coming up.

MS. CAROE: Yes, I know, but, I mean, when we keep on talking about this, I just don’t see the tie. I don’t see the

necessity of even --

MR. DAVIS: The reason I bring it up is because I think we would be foolish to ignore the opposition that we face from conventional agriculture. They, in many cases, do not appreciate our movement at all. There are paid institutes that have websites that hammer on us all day long with distorted information, trying to, in their view, probably cripple the organic movement and stop the movement.

I think this is an area where the perceived risk is greater than the actual risk, but we have to deal with that perceived risk.

MR. GIACOMINI: Would that irrigation water have qualified as potable?

MR. DAVIS: I'm not familiar with the situation, Dan.

MS. OSTIGUY: I don't believe so. If what I have read is accurate, I do not believe so.

One of the reasons why it has taken so long for this recommendation to come forward to the Board is because of the concerns that Gerry is mentioning. While the risk is low, it still is there. The last thing the organic industry needs is to have a major recall because, oops, this particular batch had a little bit of a problem.

So this is to try to prevent that from occurring. Now it won't absolutely keep it from occurring, but, hopefully, it will make the chance much more rare.

CHAIRMAN O'RELL: I just want to get back on track. Andrea, following her question, I had Bea for a question. So just a point of order, if we can keep the rotation and raise our hands.

MS. JAMES: Jeff, I just want to make sure I understand. It is kind of a clarification of some of the questions that Andrea was asking.

So I am still uncertain, how do you require pretesting? That is part of some other regulatory body that would take place that would require pretesting of the compost tea batches?

The certifier -- so this would be something that certifiers would have to --

MR. MOYER: Yes, I understood Andrea's question to be about composting, not the compost tea. Compost tea is done in batches in brewer. So that's a different thing. That is what we would be testing, pretesting that material.

Then we also have, more importantly, the sanitizing of the equipment, which is where most of the contamination would take place, and then an annual testing of the actual tea.

MS. JAMES: The certifier does that?

MR. MOYER: Well, the process, the farmer of the process or whoever is

doing it would do that, and the certifier would --

MS. JAMES: The certifier requires that?

MR. MOYER: Exactly. Exactly.

MS. JAMES: Okay. Do certification agencies have the expertise to look at those kind of microbial reports on --

MR. MOYER: Probably no more than or less than they would looking at water samples or soil samples which are already required as part of the testing on farms. We require that they test water now. So if they can analyze or at least look at that, they should be able to look at this as well.

Generally, when you get reports back, they highlight problems. So it would be pointed out to you.

MS. JAMES: Would certifiers, then they would look at the facilities that is actually making compost tea, and they

would also look at farms that are using compost tea on their crops?

MR. MOYER: In most cases, it is one and the same because the compost tea can’t be -- it is not like you make compost tea and put it on the shelf and sell it to somebody. It has got to be made and used right away.

So it would be made on the farm. There would be records kept of your sanitizing process, just like you would of any other process that would take place on the farm.

MS. JAMES: Okay. I am just trying to follow this paper trial.

MR. MOYER: Sure.

MS. JAMES: That a certifier goes to a farm. They use compost tea. They require paperwork from that source that they purchase the compost tea from, and then they look to make sure that those reports are, indeed, passed for --

MR. MOYER: If it were purchased, that is correct. If it is made on the farm, then they would have all those records right there on hand.

MS. JAMES: Okay.

CHAIRMAN O'RELL: Andrea?

MS. CAROE: I caution you saying "require." This isn't rule change; this is guidance. There is no requirement.

MR. MOYER: I understand. I'm sorry. Thank you. Good point.

CHAIRMAN O'RELL: Thank you.

Yes, Kevin.

MR. ENGELBERT: Gerry needs to be recognized for the amount of work that he did on this project. When we looked at our work schedule, we decided we couldn't do it, and a day or two later, lo and behold, I got a call and Gerry said, "We're going to do this." He is the one that deserves -- you know, he did a tremendous amount of time into this compost tea issue.

CHAIRMAN O'RELL: Thank you, Kevin, and thank you, Gerald. I know that this has been something that has been an issue on this Board since I came onboard five years ago or started before it. So thank you very much for getting this recommendation to the floor.

MR. DAVIS: There were a lot of comments from the public stressing, "We need to get this done."

CHAIRMAN O'RELL: Absolutely.

MR. DAVIS: I was just responding to that.

CHAIRMAN O'RELL: Thank you.

Any other questions or does that wrap up the compost tea discussion?

(No response.)

Gerald, before we go on, I just want to let the Board members know we are a little bit behind on a break, but that is okay. But Katherine has provided all of these at your seats for a menu, that if you

choose to order something from the bistro, she will collect these at 10 o’clock and get them over there, so that your order will be pre-ordered, and at least Board members will be able to expedite lunch and be back on time for continuing with the public comments.

So if you wouldn’t mind filling these out kind of as we are having discussion, and then, Katherine, why don’t you give us 10 minutes and you can come by or we can just funnel them down, start passing them down here and get them over to Mike. Mike, you can give them to Katherine, so that we get these out of the way.

It would probably be a good idea to put your name on it. So if everybody has one, just do that as a little bit of housekeeping here, so we can keep going.

MR. DAVIS: Next item?

CHAIRMAN O’RELL: Yes, Gerald.

MR. DAVIS: The next item is

pertaining to organic seed availability.

CHAIRMAN O'RELL: This is just a discussion update?

MR. DAVIS: Discussion item update discussing response to comments received following the August of 2005 organic seed availability document.

The National Organic Standards Board Crops Committee's response to public comment concerning commercial availability of organic seed recommendation, which was adopted by the NOSB August 16th, 2005.

Background: "The NOSB issued a formal recommendation regarding commercial availability of organic seed on August 17th, 2005 in the form of a guidance statement. The Crops Committee agreed to reassess the recommendation in response to additional public comment on certain sections of the document.

"The issues raised were the validity of maintaining a database

containing a list of non-organic crop varieties permitted by certification agencies.

"Two, certification agencies have objected to the amount of additional burden placed on them to collect, maintain, and report the information required by the recommendation.

"And, three, the final recommendation did not include a previous requirement stating that a producer who did not meet the commercial availability requirements for organic seed could not be certified organic."

"Crops Committee conclusions: The National Organic Program may lack the capacity and does not have the obligation to maintain a list of non-organic crop varieties permitted by certification agencies. If so, an alternative clearinghouse for the information would need to be identified, preferably a non-fee

public benefit entity.

"Two, the Crops Committee agrees that the additional time and expense invested by certifiers to collect and report the known organic seed information would be substantial. The producers using non-organic seed varieties should bear the cost of any such requirement," through, I guess, additional fees assessed to them by their certifier.

"Three, the statement that an operation did not meet commercial availability requirements for organic seed, could not be certified organic, was not included in the final guidance statement because it was deemed by the Board to be a restatement of what is already required in the rule." I'm referring to the NOSB meeting transcript from August 16th, 2005.

"Discussion: The Crops Committee does not believe that recent public comments warrant changes in the NOSB recommendation

regarding commercial availability of organic seed. The Committee believes that the guidance document states clearly under what circumstances non-organic untreated seeds may be used and the procedures and documentation required.

"While the Crops Committee understands the concern of the industry over the apparent slow growth of the organic seed market, we believe that care must be taken when trying to influence commerce with the writing of rules.

"A primary goal is to encourage the growth and development of the organic seed industry without harming organic producers. Organic certification remains an integrity-based endeavor, and accountability among growers at the local level is a key element in encouraging adherence to the rules.

"All producers are encouraged to report instances of abuse of the organic

seed requirement to their certifier so that appropriate enforcement action may be taken.

"The guidance statement on the commercial availability of organic seed seeks to influence producers to use organically-grown seed. The sourcing of organic seed remains the responsibility of the producer. Availability and quality disparities between conventionally- and organically-grown seeds should shrink as the knowledge and growing skill of organic seed producers increases, minimizing the incentive for producers to choose non-organically-grown seed."

The Committee vote was four yes, zero no, one absence.

Discussion?

(No response.)

Seeing none, we also wanted to give an update on the hydroponics issue. We have a proposal to send out a bit of survey, I guess you might call it, to get an

information search on what certifiers are doing with hydroponics in general. Are they certifying hydroponics, are they not, and various questions to give us more information, so we know how we might proceed.

The proposed correspondence would read, “The National Organic Standards Board Crops Committee is seeking input from USDA-accredited certifiers of organic producers regarding the certification of hydroponics operations. Specifically, the NOSB wishes to survey all organic certifiers regarding their policies and interpretations of the NOP rule for hydroponics operation. This is an opportunity for certifiers to provide their input to help shape any NOSB recommendation to the NOP for rulemaking on hydroponics.

“Your response to this survey is greatly appreciated.”

We have a spot for name and title

of the agency or name and title of the person -- excuse me -- filling out the form, the certification agency they represent, and their region of operations.

Question one: “How many hydroponics operations do you currently certify?” I think we have a typo there. “How many hydroponics operations do you currently certify?” The word “any” should not be in there. “If any,” is that the problem? “If any,” okay. So we are missing the words “if any.”

“Do you currently certify, if any, as organic? If none, why not?”

That gives the certifier the opportunity to state, if they are not doing it, justification why don’t they do it, which I think is one of the most important parts of the whole survey.

Question Two: “Do you think that organic certification of hydroponics is appropriate?” Again, another opportunity to

answer that same question.

No. 3: “In your opinion, where is clarification in the NOP rule needed pertaining to practices used in hydroponics operations?”

“If you answered no to Question No. 2, you may skip Questions 4 through 6. This is not questions for operations that do not certify any hydroponics operations.”

No. 4: “Do you maintain a list of allowed/prohibited substances for use in hydroponics?”

No. 5: “In general terms, what are the main fertilizer inputs that hydroponics operations use?”

No. 6: “Please list any potential certification issues with hydroponics that could arise in the future and should be addressed in any proposed guidelines?”

“Thank you for your participation in developing organic standards for

hydroponics.

"Sincerely, Gerald Davis, NOSB Crops Committee Chair."

We voted four yes, zero no, and one absence to approve the correspondence.

Discussion?

CHAIRMAN O'RELL: Dan?

MR. GIACOMINI: I believe we had a question yesterday regarding adding the crops that were being approved. Would that be a reasonable thing to list, to include on the list?

MR. DAVIS: It would be interesting, but I am not sure that it would be necessary to get after the foundational information we are trying to get which is, do we make guidelines or not, or do we decide maybe that hydroponics are outside the scope of organic agriculture and should not be there?

One certifier has already answered the questionnaire ahead of time

because they are coming from the viewpoint that it shouldn't be; it does not belong.

CHAIRMAN O'RELL: Andrea?

MS. CAROE: One of the things that I would suggest, as you move forward in this, is define what you are talking about when you say, "hydroponics," because there are a lot of sprouting operations. I don't think people generally consider that hydroponics because it is just using the nutrient from the seed to create the initial sprout.

MR. DAVIS: Right.

MS. CAROE: But when you are talking about hydroponics, you are talking about sustaining growth through inputs of nutrients, and that is a whole different situation.

I was curious why the question about, do you maintain a list of allowed and prohibiteds? Because the National List lists allowed/prohibiteds. I mean, do you

feel certifiers are out there kind of creating their own standard for hydroponics?

MR. DAVIS: No, that was based on -- I mean there is always a little bit of interpretation. An agency like OMRI would look at the -- they would take the National List information and apply that information to products.

MS. CAROE: So formulated products and branded products are --

MR. DAVIS: Yes. Maybe that could be more clear on what we meant by that.

MS. CAROE: Okay. That makes sense. Okay.

CHAIRMAN O'RELL: Yes, Jennifer?

MS. HALL: On Questions 4 through 6 where it says, if you answered no to Question 2, you can skip those, it doesn't quite follow for me in the sense that whether or not you think it is appropriate doesn't mean you may not be certifying it at

this time and should go ahead and --

MR. DAVIS: Oh, no, that's a typo. It should be Question 1.

MS. HALL: Okay.

MR. DAVIS: Thank you. Because if you don't certify any organic hydroponic operations, you wouldn't need to answer these other questions.

CHAIRMAN O'RELL: Yes, Joe?

MR. SMILLIE: I commend you. I think this is a really good place to start. I think it is really important that we get the database before we move forward. I think that as much pressure as we can bring to bear on ACAs to answer this fully is important.

Also, I think it is really important that state organic programs are also involved in this loop because there are certain states that have already made noises about this and are setting up their own systems of enforcement and interpretation.

So we would definitely want to bring our dear brethren in the state agencies in this discussion.

It is going to be a complicated one, and it is going to be a very interesting one. I think, basically, what our current interpretation is that, if we are going to consider hydroponics, then the idea is it is not a materials issue. The technical difficulty in hydroponics is being able to qualify under the current regulations as far as materials go. This is really a materials-driven industry.

That is becoming more and more possible through technology. In the early days of hydroponics, they couldn’t meet the current NOP regulations as far as fertilizer inputs. But now technology is improving, and we are seeing operations that are able to meet the specific material input fertilizer situation.

But the organic plan and the

improvement of soil and all of those issues are going to be where the crux of the issue is. Because as the regulation -- you know, it is clearly a soil-based agricultural system, and this is without soil. So we have a contradiction to deal with.

So I think this is a perfect way to start. Rather than coming out with a recommendation, I think let's go and gather the information about what is currently happening now, and ACAs and state organic programs are the place to go for that information.

So I really support this approach and look forward to participating.

CHAIRMAN O'RELL: Okay, thank you, Joe.

I have Nancy with a question, then Bea, and then Kevin. Nancy?

MS. OSTIGUY: I remember in the Committee discussions of this, I believe I was the one to suggest that Questions 4, 5,

and 6 be placed where they are because that way some people could skip them.

Looking at it again, I am wondering if Question 6, “Please list any potential certification issues with hydroponics that could arise in the future and should be addressed in any proposed guidelines,” if that shouldn’t be open, more clearly open, to anybody who answers the survey, whether they currently register or currently certify hydroponic or not.

Because if you are not, you still may have information that we might be very interested in that you would get through Question 6.

MR. DAVIS: I think the Question 2 and 3 would tend to elicit the response that we are looking for. Certifiers that choose not to certify hydroponics operations would answer those, and their objections would include the same information.

What I thought Question 6 applies

more to is certifiers that are already certifying certain operations, but they have a problem with -- philosophically, they don't object to it; they are doing it, but the mechanics of this area is a problem, for example.

That is a little bit different slant on the question than Question 2 and 3.

MS. OSTIGUY: No, and I agree that one is more of a philosophical response and the other one is more practical, but those that are not certifying hydroponics might have pertinent information about practical.

CHAIRMAN O'RELL: I think, Jeff, do you want to respond to Nancy's question?

MR. MOYER: Yes, just to help answer that question, when we wrote the survey, we really felt that most certifiers would read the entire survey and fill out whatever they wanted. But some certifiers may feel yet another survey. So we wanted

to give them an easy out if they wanted it. That was the only reason for that.

CHAIRMAN O'RELL: Bea?

MS. JAMES: Would you consider adding another question? I think it would be valuable to have a question in here asking, what these surveys -- what the people that read this consider to be the definition of hydroponics.

Because there are certain products that grow naturally in water, and then there's controlled products that are grown in hydroponics. I think that we are going to have to come out with a definition just because of the way OFPA is written. So it would be useful, I believe, to include in the survey.

MR. DAVIS: The opportunity at least to give their definition.

MS. JAMES: To get feedback on what they consider to be the definition of hydroponics.

MR. DAVIS: Does someone want to make a motion on that idea?

CHAIRMAN O'RELL: Well, I think it is a Committee document. So you can take these suggestions back to your Committee --

MR. DAVIS: All right.

CHAIRMAN O'RELL: -- and vote on them there and put forth a recommendation.

MR. DAVIS: Okay.

CHAIRMAN O'RELL: Because it is just a Committee recommendation to the program for a survey.

MR. DAVIS: Right.

CHAIRMAN O'RELL: Kevin?

MR. ENGELBERT: Yes, Joe's comments reminded me that we are also looking for input from other NOSB members, your thoughts on this entire situation. I don't know how we proceed.

CHAIRMAN O'RELL: Any further discussion on the survey?

(No response.)

MR. DAVIS: Seeing none, that is all the Crops Committee has.

CHAIRMAN O'RELL: Thank you, Gerald.

We are not too bad on time. In looking at the agenda, I think there are areas here where we will catch up after the break.

It is just about 10 o'clock now. I would ask Board members to be back at 10:15. We will take a short break and then we will continue with the Joint Materials and Handling Committee discussion.

Thank you.

(Whereupon, the foregoing matter went off the record at 10:02 a.m. and went back on the record at 10:24 a.m.)

CHAIRMAN O'RELL: Board members, please take their seats. I would ask the audience to please take your conversations outside or take your seats.

Before we get moving with the

agenda, I would like to throw something out for consideration by the Board. In the public comments, we had the public comments signup sheet out yesterday for most of the day, I think all day. We had it there very early this morning. I think it was pulled off maybe a little before 8:00 or eight o'clock.

We have 36 people signed up. During the break I have had a couple of people come up to me, and they really have legitimate comments that they want to make concerning materials and recommendations that we are voting on tomorrow.

My feeling is, and I know the Board had a function this evening for a dinner together, but I really think we are here for -- I bought drinks last night; I will buy them again tonight.

(Laughter.)

Even though we have a function planned this evening, my feeling is we are

here for -- I hear the sighs of the Board -- but we are here for the public. I really don’t want people who have traveled here and have things to say that are relevant to our agenda not be able to have the time to do it.

I think most of us would agree we are here committed to hear them. So what I am going to do is, Valerie, if you would take the signup sheets, and we will put them outside for one hour. If you want to sign up, sign up, and that will be, after an hour, they will be taken away.

MS. CAROE: Just remember it is our dinner you’re making us miss.

(Laughter.)

CHAIRMAN O'RELL: Yes, please make your comments on pertinent issues that we are voting on. If you have something, you know, information that you want us to consider in the future, we will take those in writing. I promise that we will review

them at Committee level.

MR. SMILLIE: And my understanding, Kevin, is a working dinner. We have work to do at dinner.

CHAIRMAN O'RELL: Yes. Yes, it is a working dinner. It is not a total social event. But we work until late into the night, I guess.

Next on our agenda is the Joint Materials and Handling Committee report. In the agenda books, in the agenda, you will see a bullet point which is "National List: Clarification of Definition of Materials." I would just like to give a brief explanation of that.

That was our placeholder for synthetics/non-synthetics that we were hoping that there may have been something back from the court, and that we would have been able to proceed. As Barbara Robinson discussed yesterday in the NOP update, because of the pending court ruling, the

program has advised us that we really couldn't move forward on synthetic/non-synthetic material issues. That was the placeholder in that agenda, just to explain that item.

So we are going to go on to the ag/non-ag recommendation with Dan and Julie.

Julie, would you like to begin?

MS. WEISMAN: This, as most of you know, has been an ongoing project of the Handling Committee and various other committees on the Board for a long time. Its need is as urgent as ever.

We have heard a lot of comment on it in the last day, and I imagine we will be hearing some more. But I am going to forge on and present it as we wrote it.

The purpose, of course, is the need for clarity and consistency about what are agricultural and what are nonagricultural substances.

In this document, as a companion

to the text, we have also presented a decision tree, proposed a decision tree, to aid in deciding on the classification of substances as agricultural or nonagricultural.

In regards to determination and classification of substances as agricultural or nonagricultural, the definitions found in the NOP final rule can be vague and sometimes even conflicting. Also, the rule does not provide a definition for agriculture.

The net result of this has been inconsistent application and possible -- well, not even possible. We have seen misclassification of substances incorrectly either as agricultural or nonagricultural.

The distinction between agricultural and nonagricultural originated with the NOSB. The Organic Food Production Act was approved by Congress as part of the 1990 farm bill. USDA published the first

proposed rule in 1997.

Between OFPA becoming law and the first proposed rule being published, the NOSB was organized, functioning, and by 1994 already developed the first proposed National List.

It was at that time -- oh, my God, that’s 12 years ago -- that the NOSB introduced the distinction between agricultural products and nonagricultural substances.

The NOSB adopted this distinction based on its understanding of OFPA requirements; specifically, that inclusion on the National List was required for any substance that is used in handling and is non-synthetic but is not organically produced.

The NOSB did not believe it was necessary to send materials for a Technical Advisory Panel review that were merely non-organic agricultural products. Therefore,

the NOSB recommended that non-organic agricultural products appear on the National List as a general category rather than requiring TAP reviews for each specific agricultural product.

NOSB also recommended that non-synthetic ingredients that were nonagricultural did not need to appear on the National List, although this was later refuted, as explained by the NOP in the preamble to the second proposed rule of March of 2000.

I have a question. Should I read all the background?

CHAIRMAN O'RELL: Just a summary maybe.

MS. WEISMAN: Yes, I think, in the interest of time, I am going to -- I think people are aware; I am going to skip to the actual recommendations that we have made.

There are three recommendations.

One is a rule change for the definition of a nonagricultural substance.

So I have to find a place in the rule. Yes, we are skipping down there. Good. Okay.

The second is going to be assistance in defining nonagricultural substance by use of a decision tree. The goal of these recommendations are for a more uniform, transparent system for decisionmaking related to agricultural or nonagricultural determinations.

Then the third part of this recommendation is a technical correction, the idea being that dairy cultures and yeast were examples of things whose classifications are now no longer what they were. They would be moved from 605(a) to 606, and that non-organically-produced agricultural products allowed as ingredients in or on processed products labeled as organic or made with organic ingredients.

So the text that gets changed in Section 205.2, “Terms Defined,” where it lists nonagricultural substance: “A substance that is not a product of agriculture such as a mineral” -- and then striking out “or a bacterial culture” -- “that is used as an ingredient in an agricultural product.”

The rest of that definition would also be struck, the part that reads, “For the purposes of this part, a nonagricultural 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.”

There are many products that have been -- I am thinking organic alcohol, for instance, which is certainly, if it was distilled from corn, is not recognized from

corn, but I don’t know that anybody has questioned that that product should be sold as an agricultural product and organic when it is produced that way.

Recommendation No. 2: “The Joint Handling Committee and Materials Committee recommends the adoption of the attached decision tree as a guidance in determining a substance’s agricultural or nonagricultural status.”

This is a practical solution which could work with both the current or a modified definition of nonagricultural substance. The decision tree should be used in conjunction with NOSB clarification regarding the definitions of synthetic and non-synthetic which are currently in development.

Do we need to skip to the decision tree? Okay.

“The Joint Handling Committee and Materials Committee recommends the moving of

dairy cultures and yeast from 205.606(a) to 205.606 as non-organically-produced agricultural products that are allowed as ingredients in or on processed products labeled as organic or made with organic ingredients."

Our conclusion: "The organic industry is an innovative industry with continued opportunities for growth and change. The modification of the definition of nonagricultural substance and providing guidance for what is agricultural will provide greater consistency and clarity in application, and will allow the final rule to accurately serve this growing and innovative industry without compromising effectiveness of the definition.

"The decision tree will be used as a tool to help strengthen the consistency of the National Organic Standards in regards to nonagricultural substances, and it will provide a basis for certifying agencies,

certified entities, and the NOSB to verify a substance's agricultural or nonagricultural status."

Now I did do a tally of the comments that have been received during the comment period and heard so far in this meeting. By my count, I have seen 16 comments in support of this recommendation and 10 comments opposing it, for a variety of reasons.

I think that although we had more comments in support, that the issues raised in the opposing comments had a great deal of merit, particularly the issue about yeast being moved, that you move things from one list to another as a technical correction.

So, with that, I guess I open this for comment.

CHAIRMAN O'RELL: Andrea?

MS. CAROE: I think this is a good recommendation in a lot of ways. I definitely think it is time to put a fence

around this.

Prior Boards from 1992 to present day have kind of felt around in the dark on this issue. Because of that, we do have some conflicts within the document.

However, even though this Committee's work was done in time for a sufficient posting, or a 30-day posting, the required posting, for whatever logistical reasons and challenges, it did not get posted allowing for 30 days' comment. I don't think that we can ignore that.

Also, the issue of yeast in feed and the challenges that presents is one that was not addressed by this Committee and I think needs to be investigated into -- and I don't feel that this is a challenge that can't be met with a good solution. I think the recommendation should be expanded to perhaps allow some real changed language that would address that challenge.

Also, as we have heard here,

there is a demand from the commenters that we provide some guidance on standards for non-plant life/non-animal life requirements. So I think addressing when that will happen and giving some clarification to what happens in the interim is important.

The technical corrections, I think we need some advice from the program and from the departments on whether we are within our rights to do that or whether we need to elicit some industry petitions to have those materials listed on 606, and also making sure that that list is complete.

The Committee did know towards the end that we had inadvertently missed microorganisms, which was in the process of getting put on the list as we were considering this, and it was an oversight. So that was one, but, obviously, there’s others that were brought up in this meeting that this Committee needs to understand.

Further, I believe that we have

gotten fabulous input from the industry. I thank everybody that made comments on that.

I think this was a very productive discussion, and I would like to continue that with the trades and get some organized input and good solutions from the folks that are going to be using this.

So, for that reason -- and I know that sounds long-winded -- for those reasons, I motion that we defer the vote on this to take this back to Committee for further work and further input from industry.

MR. KARREMAN: Second.

CHAIRMAN O'RELL: We have a motion from Andrea to defer this recommendation back to Committee for further work, with a second by Hue. So we have this motion on the Board. We will entertain discussion.

Joe?

MR. SMILLIE: Andrea, you summed

it up very, very well. That is, I think, a very good and complete listing of the issues we need to face with this.

I think that in a certain sense we have achieved the purpose of the recommendation, which is twofold: to elicit more comment and flesh out and put some meaning behind the direction we are heading.

I think, also, we have communicated where this Board, or at least our Committee at this point in time, wants to head with this, to really encourage the organic production of these materials.

One question I have is -- and we haven't prediscussed this, so tell me if I am out of order -- but would it be possible to move forward with Recommendation No. 1 and refer 2 and 3 back to Committee? Is that a possibility?

MS. CAROE: That would be creating a new recommendation. At this point, I don't see the merit to that, Joe.

MR. SMILLIE: Okay.

MS. CAROE: I just see that it is too mixed. I'm sorry, I kind of jumped in.

CHAIRMAN O'RELL: No, Joe, we've entertained that discussion in some sidebar comments. I think to pull something out of this, even though there certainly is a justification to do that, I think this is so important going forward as a full piece of an ag/non-ag recommendation, and needs to be tied together and woven a little bit more with some of the input that we are receiving from the public, that my feeling would be that it would be better to keep this intact and put it back in Committee as one than to piecemeal it. But that is one opinion.

MR. SMILLIE: I have no problem accepting that.

CHAIRMAN O'RELL: Dan and then Julie.

MR. GIACOMINI: I agree with Andrea's comments. I do just want to make

one slight correction.

While there were a tremendous number of conference calls and email exchanges and things that went on in putting this document together, just for the record and the public, there was -- maybe it was a call that Andrea could not have made, did not make, but there was a tremendous, fairly good discussion of the feed issue part of this document, the relevance to it with yeast on the feed issue. That was discussed fairly well.

CHAIRMAN O'RELL: Julie?

MS. WEISMAN: Yes, I also do agree with Andrea and I do agree that this, obviously, needs some more work. But I also, along the lines of Joe's question, wanted to point out that the one piece of this recommendation on which there was no comment, negative or positive, was the change in the terms defined.

I understand what you say. I do

understand the idea of having things woven. But I just did want to also point out that was a piece of the recommendation that was apparently not controversial.

CHAIRMAN O'RELL: Is there any other discussion?

(No response.)

MS. CAROE: Call the question.

CHAIRMAN O'RELL: The question has been called. We will have a vote.

This is a vote to defer the ag/non-ag recommendation that was proposed by the Joint Handling and Materials Committee back to the committees for further work.

MS. CAROE: Is it appropriate to be doing this today or tomorrow? Did I just jump over procedure?

CHAIRMAN O'RELL: That is a point of order on that. The question has just been asked to me if it is appropriate to have this vote now or to defer.

MS. JAMES: I don’t think it is. I think we should wait until tomorrow.

MS. CAROE: I rescind the motion.

MS. JAMES: I think that we should do it tomorrow because there still is public comment and there might be some really good issues.

CHAIRMAN O’RELL: That is a good point.

MS. CAROE: I rescind the motion.

CHAIRMAN O’RELL: There’s the procedural guy back there who is nodding his head.

MR. GIACOMINI: Kevin, I don’t know that the motion is out of order at this time. It is just a matter of when the vote is taken.

CHAIRMAN O’RELL: Yes.

MS. WEISMAN: You don’t finish the motion until you vote.

CHAIRMAN O’RELL: Andrea has rescinded the motion.

Hue?

MR. KARREMAN: Fine.

CHAIRMAN O'RELL: Okay. So I guess the public is well aware of the direction we are thinking at this time.

(Laughter.)

Did we show our hand or what?

Is there any further discussion on this? I know we are going to get some additional public comment directed to this issue. I think that that is a good time for us, then, to be able to really have a dialog with those individuals who bring up points again for consideration. Again, we are looking for constructive input and direction as to how we can proceed with this recommendation.

So Kevin?

MR. ENGELBERT: It's a moot point, but on Recommendation 3 you have a typo, 205.605(a).

CHAIRMAN O'RELL: Okay, thank

you, Kevin.

Okay, we made up a lot of time on the agenda.

(Laughter.)

Let’s move on, then, to the Handling Committee report. Julie, will you take us through the Committee reports?

MS. WEISMAN: Yes. I think in the interest of time, I am going to skip some of the more detailed background.

“By way of introduction, although the issue of commercial availability is another one that has been kicked around for a long time, the urgency of it became heightened in light of the June 9th, 2005 court final order and judgment arising from Harvey v. Johanns.

“The NOSB has been asked to review petition procedures for adding materials to 205.606 of the National List. In particular, the NOSB is proposing further clarifications to the terms of commercial

availability as it will be used by the NOSB, certifying agents, and the industry to assist in the petition for placement or removal of materials on or from Section 205.606 of the National List."

Now the regulatory citations background is as follows:

Section 205.2 -- and I'm skipping down to the next page -- "Commercial availability defined. That is the ability to obtain a production input in an appropriate form, quality, or quantity to fulfill an essential function in a system of organic production or handling, as determined by the certifying agent in the course of reviewing the organic plan."

And also Section 205.201(a)(ii), "The producer or handler of a production or handling operation, except as exempt or excluded under Section 205.101, intending to sell, label, or represent agricultural products as 100 percent organic, organic, or

made with organic specified ingredients or food groups must develop an organic production or handling system plan that is agreed to by the producer or handler and an accredited certifying agent.

"An organic system plan must meet the requirements set for in this Section for organic production or handling. An organic production or handling system plan must include" -- and (ii) is "a list of each substance to be used as a production or handling input indicating its composition, source, location or locations where it will be used, and documentation of commercial availability as applicable."

The statutory background that is relevant is from OFPA Section 2119 regarding the National Organic Standards Board and Subheading (k), the responsibilities of the Board is that (ii) "The National List. The Board shall develop the proposed National List or proposed amendments to the National

List for submission to the Secretary in accordance with Section 2118."

"To add or remove substance from 205.606, any person may submit a petition to the NOP and NOSB. The NOP will review the petition for completeness before the petition is considered by the NOSB.

"Complete petitions will be posted on the Petition Substances Database and submitted to the NOSB for consideration. The NOSB will review the petition and all supporting information and make a draft recommendation which will be posted for public comment prior to the next scheduled NOSB meeting.

"The NOSB will consider the petition, all supporting documentation, and all public comments and then make a recommendation to USDA regarding the status of the substance. If the substance is to be added to or removed from 205.606, the USDA will issue a proposed rule in The Federal

Register, receive public comments, and issue a final rule in The Federal Register to establish legal status of the substance.

"Section (c) of the recommendation below proposes standardized criteria to be used by ACAs when making commercial availability determinations for substances on 205.606."

Does that make sense? Okay.

This is the recommendation: We felt that the petition that is currently posted and recommended for use needed a little amending in order to accommodate having agricultural products be petitioned.

So, therefore, the petitioning process needed to be revised in the following way. Under information to be included in a petition, the following additions to this document are recommended:

No. 1, to add the following bullet into Item A, "an agricultural (non-organic) materials allowed in or on

processed products labeled as organic." That is adding a new category to Item A.

No. 2, adding the following bullets to Item B(12), "When petitioning for the inclusion of the National List of non-organically-produced agricultural material, the petition must state why the material should be permitted in the production or handling of an organic product.

"Specifically, the petition must include current industry information regarding availability of and history of unavailability of an organic form of the material.

"Industry information includes but is not limited to the following: regions of production, including factors such as climate and number of regions; number of suppliers and amount produced; current and historical supplies related to weather events" -- that would be events such as hurricanes, floods, droughts -- "that

temporarily halt production or destroy crops or supplies; trade-related issues" -- examples would be war, trade barriers, civil unrest, evidence of hoarding -- "that may temporarily restrict supplies, and any other issues which may present a challenge to consistent supply."

As a note, we felt it important to emphasize that in this case the global market is the universe supply. Commercial availability does not depend on local market conditions, except in the specific instances that were already addressed in those bullet points.

Another addition under B(12) is that, "When petitioning for the removal from the National List of non-organically-produced agricultural materials, the petition must state why the materials should be prohibited from use in an organic form. Any information acquired since the original petition to add the material to the National

List should be provided."

Now the second part of this recommendation describes the NOSB and the NOP's role in reviewing these petitions.

"In recommending that an agricultural material should be placed on 205.606, the NOSB shall review the petitioner's claim that no organic substitutes are commercially available in the appropriate form, quality, or quantity needed to fulfill an essential function in a system of organic handling."

I don't know if this is the appropriate place to clarify. I think it may be because I think there's been a lot of confusion.

We are collecting the additional information that I described in those bullet points that will be added to B(12). We will be reviewing it.

We will not be making decisions about whether those are commercially

available. The purpose is not to -- well, we will review the information as more of a risk assessment to look at, where do we see possibility that this item, even though it may be available or it may be being used organically in certain specific forms and specific places, now what are the possibilities that the supply could disappear?

I think there’s been a little bit of misunderstanding that the NOSB is not going to replace the role of the ACAs in making commercial availability decisions for specific products and uses that we (a) do not have the technical expertise to make and (b) I cannot imagine the amount of time it would take for this Board -- it would just simply not be appropriate. That is the feeling of the Handling Committee so far on this.

Would that be accurate?

CHAIRMAN O’RELL: Yes.

MS. WEISMAN: Okay. So, with that said, “The NOSB and appropriate committee -- Livestock, Handling, whatever -- would confer with the NOP regarding any modification to the NOP procedures that are made necessary as a result of this recommendation and throughout the petition process for any nonagricultural products that are petitioned for 606.”

The third part of this recommendation describes the ACA’s role in determining commercial availability. This will sound very familiar to you all.

“The ACA, in determining that an agricultural material that is on 205.606 is not commercially available in the organic form, shall, one, evaluate the applicant or certified operator’s documented claim that no organic substitutes are commercially available in the form, quality, or quantity needed by the operation to fulfill the required function, including test data

demonstrating that organic forms of the material do not meet functional requirements for the form or quality necessary to the operation."

Again, we are noting that the global market is the universe of supply.

"The ACA will validate that the applicant or operator has credible documentation that the material is not commercially available in an organic form by reviewing available information listing known sources of organic materials."

I know there was a comment on this next point.

"Notify the certification applicant or certified operator of sources of information" -- I'm emphasizing it is the sources of information that the ACA would notify the applicant -- "which list available organic materials, if the certifying agent finds that such materials exist."

So we are not asking the ACAs to tell people who to go to to buy the organic ingredient. We want to refer them to whatever databases do exist where the applicant can find the information.

And, five, “Require that certified operators update commercial availability information in each organic system plan update.”

Oh, I’m sorry, I skipped something, four.

“The ACA will maintain and submit to the NOP annually an up-to-date list of materials that have been granted allowances in non-organic form.”

This is a list that will be maintained -- it will maintain the confidentiality of material suppliers and parties granted allowances.

“The reporting requirement shall be implemented through the accreditation process by providing ACAs ample notification

and time to adapt data management systems."

I think the idea with all of this is not to impose a burden, but I think part of the value of having agricultural products listed on 606 is that they are going to serve as kind of a to-do list for the industry, as to what organic ingredients are required.

By having ACAs provide information regularly about what organic materials allowances have been granted to use the non-organic ingredient will, I think, aid in that process.

In conclusion, "The NOSB recommends the above three modifications to petition procedures to be adopted to establish acceptable criteria and procedures to determine commercial availability."

Then, just quickly, I made a summary of the comments that have come in during the comment period, including yesterday. There were five comments in

support of this recommendation and two opposing.

I want to note that one of those opposing was opposing it because the commenter thought that we were recommending that the Board make commercial availability determinations and replace the ACA's role, and that is not the case. So that opposing comment, actually, I count as a support comment in favor because we agree with what they were saying.

So any discussion? Are we up to that?

CHAIRMAN O'RELL: Andrea?

MS. CAROE: I think that, again, this is another area where we received excellent comments from the public.

I think, for me, there were two areas that were pointed out that this recommendation needs wording changes. I don't think that they can't be done at this meeting. I think it is imperative that we

have this in place, based on the impending deadline of June 2007.

First, in the (B) section, I think the Committee needs to take this back and reword it so that it is very clear that we are assessing risk of supply, and that is the only function of the NOSB at this point, is that we are reviewing the information provided by the petitioner and assessing vulnerability in that supply chain. That's it, and that the detail work is happening on the certifier level.

So I don't have wording right now to suggest for including there, but I think we can have it by tomorrow.

CHAIRMAN O'RELL: We will have the Committee work this evening.

MS. CAROE: Then, secondly, in Section (C), and I think there is a valid point, (C)(iii) may be crossing the line of what a certifier can do.

I do have a suggestion that in

(iii) we reword this to say, “make available sources of information which list available organic materials,” period, and just make that requirement that certifiers do have something across the board that they make available to all their entities that provide sources of available information, whether that is from the trades or private entities or whatnot.

CHAIRMAN O’RELL: Bea?

MS. JAMES: First of all, I have to say great job, Julie, on both this and the other recommendations that you worked on. You put a lot of work into it.

(C)(iv), my concern is not so much with what you are recommending here, but the NOP’s ability to be able to staff at the hours needed to help keep this information updated. I would imagine it would be a lot of paperwork that would be coming into the NOP. So I am just pointing that out.

MS. CAROE: Well, I thought we were tying this to the annual reporting requirements that the certifier has. There is already a requirement that certifiers provide information to the program. This would just be information they would be providing at that time. Certifiers are doing that in a variety of different ways at this point.

CHAIRMAN O'RELL: Nancy?

MS. OSTIGUY: Actually, if it was a large amount of information specifically on the number of substances that are not organically-produced, that would actually be very important information to know that it was a large volume. I am not sure it is, but --

CHAIRMAN O'RELL: Julie?

MS. WEISMAN: I will tell you that it is.

MS. OSTIGUY: Okay.

MS. WEISMAN: I will tell you

that it is.

MS. OSTIGUY: That is important information.

CHAIRMAN O'RELL: Andrea?

MS. CAROE: Well, also, this information collection, at this point we may not be able to access the information the way we would want to for commercial availability function, but we are still hopeful that E-cert is on the horizon somewhere, maybe in the distance. But this information would feed into some tool in the future to perpetuate where there is supply problems and where there is an opportunity for an enterprising organic producer to create these things.

But, you know, it is really not looking at the present day, but three steps ahead of where we are at and how we want to set ourselves up.

CHAIRMAN O'RELL: Bea?

MS. JAMES: Okay. C(2),

“Validate that the applicant or operator has credible documentation,” I think that we open a possible interpretation for credibility based on whoever is submitting the document.

So I am wondering if there is some way that we could clarify what we mean by credibility.

CHAIRMAN O’RELL: Joe?

MR. SMILLIE: Yes, I would like to answer that.

I think that, as far as our job in creating this recommendation, I think that is appropriate. I don’t want to go any farther.

I think at that point I would defer to the NOP ACA Training Program to really put into place a very clear list of criteria by which all ACAs must do that, perform that function.

Trying to define it now in a recommendation, I don’t think is our role.

I think that I would rather place that in the hands of the NOP.

There's going to have to be -- and maybe this should be in the recommendation; I'm not sure -- that clear and consistent application of this by ACAs is the role of the NOP Training Program.

CHAIRMAN O'RELL: Bea?

MS. JAMES: I just want to respond to that, since Joe is delegating to the NOP. I understand the timeliness of this issue, but I do think that it is very important to make sure that the credibility issue is explained expeditely, so that -- expeditiously. Yes, I sound like George Bush up here.

(Laughter.)

Strike that from the record.

(Laughter.)

I think it is very important to make sure that we define the credibility issue because I see down the road, if we

don’t, the possibility of then looking at problems that we would have because the credibility issue is not defined.

CHAIRMAN O’RELL: Andrea?

MS. CAROE: I just want to point out that certifiers are doing this right now. The only difference is that these things aren’t on the list.

Also, in how a certifier does its work, I don’t think it is for us to prescribe. I think it is for the ARC Branch through their accreditation process to look at how they do their work. I really feel this is inappropriate for us to dictate that level of detail on the performance of certifiers.

CHAIRMAN O’RELL: Barbara, did you want to weigh-in?

MS. ROBINSON: Well, haven’t you already touched on this somewhat in your criteria?

CHAIRMAN O’RELL: Yes.

MS. ROBINSON: So isn’t that -- I mean I thought this was what we kind of discussed. It would seem to me that anybody who is doing the due diligence is going to go back to things like the numbers of suppliers and the amount produced. They are going to come up with, if they are doing due diligence, the credible documentation is going to be solid business information and the lack thereof. That is what an ACA is going to evaluate. That is what they are going to make their decision based upon.

I mean I don’t know that you are necessarily going to say, “Hey, I know that the civil war in Madagascar is going to last for the next 18 months and, therefore, vanilla won’t be available.” But, you know, they are going to say, “I’ve checked the supplies, and because of this event, I know that such-and-such commodity won’t be available.”

You’ve got the criteria already.

I guess I don’t understand why you’re getting hung up on this credible documentation when you’ve already built the criteria over here in the first place.

CHAIRMAN O’RELL: I agree.

Julie?

MS. WEISMAN: Yes, I’m kind of a little bit reiterating, but I’m going to try not to repeat. But I just want to point out that, actually, certifiers, because of this, will now have better documentation and more credible documentation than they have had before. Because by collecting this information as part of the petition process, that information is now a matter -- everyone knows where to find it; whereas, up until now, it was really depending on what particular certifiers happen to know or not know, because we don’t have a database.

So this will actually make -- this is already built into this. It is going to make for much more consistent

decisionmaking than has been possible in the past.

CHAIRMAN O'RELL: Anything further? Rigo?

MR. DELGADO: I just have a question. So the role of the NOSB is to validate that the work of the ACAs was correct?

MS. WEISMAN: Uh-uh.

MR. DELGADO: You're saying it is evaluating the risk. So what would be --

MS. WEISMAN: We are evaluating the information that is being included in these petitions that describes what are the potential threats to a supply. Some of these products, there may not be organic -- they may not be produced organically. Then that is a clear issue.

In other cases, there may be some organic available, and maybe right now there is a sufficient supply, so exemptions wouldn't be granted. But if we see that it

only comes from a certain part of the world that is prone to typhoons, then there's a risk that that supply could be cut off that no one has any control over. So it is really assessing the risk that a currently-available supply could be cut off.

MR. DELGADO: And if it is cut off --

CHAIRMAN O'RELL: Barbara to respond, and then I have Andrea.

MS. ROBINSON: I don't know that you necessarily would call it a risk. You were doing what you always do with materials. What you are doing here, it seems to me, is refining the petition process in the case of materials you want to put on 606 related to commercial availability.

So you are just asking people to flesh out -- you are fleshing out the petition in this particular case and asking people to do better jobs of coming before

you with a petition or coming to us with a petition, with more detail.

In this case, I mean people aren't going to be able to assess risk, and neither are you, neither are we. But they are going to be asked to do better homework about variability in supply, what it is subject to. You are going to be given just, you know, more robust evidence to look at and then be able to make a determination of whether or not a material or a commodity, in this case perhaps, should be placed on 606.

Then, from time to time, that material may become commercially unavailable. An ACA will be able to have the discretion to determine that, based on business conditions or trade conditions, as you have described, weather conditions, political conditions as they may arise, that cause a trade disruption, something like that.

That is basically the way I read

this recommendation, is that you have put a more robust set of petition procedures in place. That is what you are recommending, right?

CHAIRMAN O'RELL: Yes.

MS. ROBINSON: That's it.

You are asking people to do a better job before you come before this Board of asking us to put something -- before we put something on 606. We are giving you good guidelines to do it.

CHAIRMAN O'RELL: Andrea?

MS. CAROE: Rigo, I just want to clarify something. Maybe you know this, but I just want to make sure you do.

A certifier will not be able to consider any material for commercial non-availability unless it has been listed. So our work is the preliminary work to just look at whether there is vulnerability in supply. Then the detail work happens after.

We are not actually looking at

what the certifier is going to do, but they can’t do their work unless we have done ours and put it on that list. So we are not double-checking them, as you had indicated.

CHAIRMAN O’RELL: And, Rigo, there is another part to the process, which is the public comment period. Because this is asking the petitioner to do their due diligence to put enough information in a petition to justify the rationale for putting it on 606.

The Board will review that justification. If they decide to go forward with a recommendation for a material on 606, it will come to a Board meeting. It will be given public comment. That is when the public can input and say why they would object to something being on 606 because it is commercially available.

Then we get that information in a public forum before we make our final decision on putting it on 606.

MR. DELGADO: So in the case of vanilla, for example, if we get that petition and there is enough evidence to show that vanilla does have cyclical problems, then it will go on and be listed.

So when the case comes --

CHAIRMAN O'RELL: It could be considered for listing.

MR. DELGADO: It could be considered for listing, and so forth.

So that is approved and the process takes place?

CHAIRMAN O'RELL: The process takes place. It would be considered for listing. If it did come on a list, then that is where it would come to the public forum for comments as to why Madagascar vanilla, there is not going to be another hurricane prediction in the future. You know, for whatever reason, we listen to the public, and then we make that decision.

MR. DELGADO: I am just trying to

move --

CHAIRMAN O'RELL: Yes, understandable.

MR. DELGADO: So if all this is approved, the material is listed, and so forth, and that typhoon takes place, and so forth, the producer or the handler, or whoever is using that material, will simply report that to the ACA correctly? Is that the whole idea?

MS. CAROE: Yes, they'll --

MR. DELGADO: Because this material has been listed as potentially facing those cycles?

CHAIRMAN O'RELL: Yes. Then the challenge would be on the certified handler wanting to use the material to work with their certifier to justify, for the reasons we have listed -- and we have given the criteria -- to fulfill that criteria needs, that they can use a non-organic form of that material.

MR. DELGADO: Okay, thanks.

CHAIRMAN O'RELL: Any other questions? Oh, I'm sorry, Dan.

MR. GIACOMINI: On Item C, should we, once an item has been included on 606, an event has happened, and a certifier has issued, has allowed it to be used according to 606, should it be included in C or is that mechanism somewhere else that specifies the frequency of reconsideration on when a certified entity operation has to go back, and has to go back and use an organic form?

CHAIRMAN O'RELL: Andrea?

MS. CAROE: It is innate in the regulation that annually you update your organic system plan. Every year they will have to show this kind of information, as they do right now.

MR. GIACOMINI: Okay.

MS. CAROE: This is not out of order from what the standard operation --

MR. GIACOMINI: As long as it is

somewhere. I just wanted to make sure that that would be something that they would be re-reviewing.

MS. CAROE: Every year.

MR. GIACOMINI: At least annually.

CHAIRMAN O'RELL: Julie? Is there any further discussion or questions, or are you ready to move to the next --

MS. WEISMAN: We are ready to move on, I think.

CHAIRMAN O'RELL: Thank you.

MS. WEISMAN: Yes. So I believe that the next item up for the Handling Committee is a recommendation that we made regarding the interim report of the Pet Food Task Force.

It is more for formality. The bulk of their report was given at the April meeting. This is just the lag time.

Although, on behalf of the Pet Food Task Force, Emily Brown Rosen did

present a description of some additional work that had been added to the report since the April meeting, those are all posted.

Therefore, our recommendation of the Handling Committee is that the NOSB, as a full Board, officially receive the interim report from the Pet Food Task Force of April 7th of 2006.

The Pet Food Task Force did an unbelievable amount of work and are really to be commended for the excellent work that is reflected in the document they produced.

Therefore, the Handling Committee, this will now be handed to the Handling Committee's work plan to begin to consider this document and to prepare it for the NOSB to consider it fully.

We would like the Pet Food Task Force to continue to be available as needed for clarification, advice, and counsel, as we consider their proposal.

CHAIRMAN O'RELL: Any discussion?

(No response.)

Just as a point I would like to make for the record, Nancy Cook did come yesterday. She missed the slot. She had some traffic issues. She apologizes for not being able to be here to give the update, but certainly knows that it was handled well by Emily.

The one thing she did want to add and make sure that the Board and the public knows that she really gave kudos to the Task Force and the work that they have done to progress to this point, to be able to give us a report, to go on forward for further Board action.

Julie?

MS. WEISMAN: I think if there’s no other discussion on the Pet Food Task Force report, then we can move on to sunset materials. We are down to two.

Do you want me to wait until you get it up?

We are going to look at the final recommendation for colors, non-synthetic. I think that is next on the agenda.

This was deferred at the April meeting. So this is a recommendation for colors that have been listed under 205.605(a) as allowed non-synthetics, as ingredients in or on processed products labeled as organic, made with organic.

The Committee is this: There were many comments recommending the continued allowance of non-synthetic colors in organic handling.

The Federal Register notice regarding sunset review asked the public to provide evidence and address concerns for any substance they believe should be discontinued.

There was a comment addressing the concern that colors and flavors were added to the National List without a technical review by the NOSB. The Handling

Committee requested and received a technical overview of food color additives on October 14th of 2005. This technical review did not offer any information that would suggest that non-synthetic colors are inconsistent with organic practices, but this was also not a full TAP, which would not be possible on a broad group that contains many, many, many different specific substances.

There were also numerous comments opposing renewing the listing of non-synthetic colors. A few commenters requested that they be moved to 205.606, an action which cannot be taken as part of sunset, but we will be looking later -- we actually have quite a few petitions, but I guess I am getting ahead of myself.

Several commenters cited that non-synthetic colors have been placed on the National List without ever being petitioned and without the recommendation of the NOSB.

The Board finds merit in this

observation. Colors, non-synthetic, can't be renewed through the sunset process because there was never an NOSB recommendation for its placement on the National List. This is just the facts.

So, therefore, the Handling Committee recommends not renewing the following substance in this use category, effective the sunset date of October 22nd, 2007, colors, non-synthetic sources only.

The Board vote was yes. There were no no votes. There was one absent.

Is there any discussion?

CHAIRMAN O'RELL: Hue?

MR. KARREMAN: Just a thought: If we can't renew them, how can we sunset them? I mean, if we can't take action to renew them, how can we let them go?

I mean, how can we take action? If we can't take action to renew them, if we never had the TAPs, how can we take any action on them whatsoever?

CHAIRMAN O'RELL: Well, they are on the list. They were put on the list. As being put on the list, they will sunset in five years unless we were to renew them.

The justification is that we would -- if we did nothing, they would sunset. We are making a formal request, because of the rationale that they were put on the list without the NOSB recommendation. It is a formal process to say we want it to sunset.

I understand the technical question you are asking, but because they are on the list, we can take action to sunset them, to allow them to by taking no action.

MS. WEISMAN: I also wanted to point out to you that there's nothing to stop the industry from submitting a petition now that would, obviously, have to be TAP reviewed, although given the number of 606 petitions that have been -- I think a third

of the 606 petitions that we have received already are for colors as agricultural products.

So I predict that it would be moot. I predict that if someone were to -- well, maybe this is not my place to say right now. I will just leave it at that.

CHAIRMAN O'RELL: Andrea?

MS. CAROE: Part of our original reason for deferring this was to elicit that type of response. The industry did step up and submit those petitions. So, again, I feel this has been successful in the actions that we have taken. Now it is just time to put it to bed.

The Committee is recommending that we don't allow this to renew or sunset -- that we allow it to sunset.

CHAIRMAN O'RELL: We got it. We allow it to sunset.

MS. WEISMAN: Any other questions?

(No response.)

CHAIRMAN O'RELL: Okay, I think we move on.

MS. WEISMAN: Okay. The next item on our agenda for the Handling Committee is lecithin, bleached. It was brought to the attention of the NOSB Handling Committee around the time of the April meeting that -- we had already voted to not renew lecithin, bleached, on 605(b), a synthetic. It was brought to our attention that in our summary in April of that decision that we had overlooked comments that had been made before the August 2005 meeting that opposed the sunset of this product.

So the Handling also became aware that liquid forms of lecithin, bleached, are available as certified organic. However, as the commenters stated, there are no dry forms of this organic ingredient available at this time.

The commenters suggested that these available liquid forms are not appropriate for dry products. As a result of this comment, the Handling Committee investigated these organic alternatives through consultation with food manufacturers.

In doing this, it has come to the attention of the Committee that the organic liquid forms can be used in dry products. Therefore, the Committee confirms its original recommendation of the 20th of April, 2006.

The Handling Committee continues to recommend the removal of the following substance in this use category as published in the final rule: lecithin, bleached.

We have received a lot of comment during the public comment period on this point of clarification. There were two in support, and there were six opposing.

I want to open this up for

discussion because I think that, since even the time that this point of clarification was written, there's been a lot of discussion, a lot of information presented to various members of the Committee, either individually or as a group.

So anyone?

CHAIRMAN O'RELL: Just to be clear on this, this is a sunset material that in the last meeting we voted not to renew, as a Board. There was question about some material and comments that were made that the Committee consider those.

This has gone back to Committee. The Committee has said, yes, we've looked at those. The recommendation coming forward is that we stay with -- it is just a recommendation for clarification that we did consider all aspects of comments that were made to the Board. So that is what Julie is proposing and asking for any additional comments and discussion.

Joe?

MR. SMILLIE: Yes, it is a real tough issue because what we would have liked to have done would have been to create an annotation which would have clarified what could be available in this area and what couldn't be available. It would have been a very elegant solution to solve the problem.

However, because it is a sunset material, special rules apply and we couldn't create what we considered a compromise solution to the issue. So we were sort of handcuffed by the fact that it is a sunset material and you can't have an annotation to a sunset material.

CHAIRMAN O'RELL: Nancy?

MS. OSTIGUY: You mentioned that liquid forms can be used in dry products. Has there been additional information saying that that is not the case sometimes or?

MS. WEISMAN: We had comments that came in during the comment period from

manufacturers. I think this is really actually a demonstration of why this is a good process, because it elicited -- what we really needed to hear from was not a manufacturer of synthetic bleached lecithin and a manufacturer of organic lecithin. We needed to hear from manufacturers who use these products.

What did come back to us were several different uses of dry, de-oiled, synthetic bleached lecithin for a number of uses having to do with making dried fruit, organic dried fruit. I am not remembering right now, but there were manufacturers who came forward and said, “We need this.”

I think the reason why Joe was suggesting this elegant solution is that there’s plenty of liquid lecithin out there, organic and non-synthetic. So from the point of view of liquid lecithin, there is no need for synthetic bleached liquid lecithin.

It is also another demonstration where you've got something on the list, and people come forward and they make alternatives; they make non-synthetic alternatives. Then they make organic alternatives.

I think that is a demonstration of how putting something on the list doesn't cut off the development of new alternatives. It actually stimulates that development. This is a really great example of it.

But I do have concern about those particular manufacturers who need dry, de-oiled, bleached lecithin. I think they do have a legitimate problem.

There is a little bit of a quandary at how to handle it as part of sunset.

MR. SMILLIE: There were some options presented for the use of liquid that would be -- and, again, I am not a food scientist, so correct me if I am wrong --

but you could use the liquid and mix it with a dry material, thereby creating a dry bleached organic lecithin. But, once again, the manufacturers pointed out that the substrates, or whatever that material you would be mixing with, wouldn't be appropriate to their type of manufacture.

We did get very in-depth reviews of the material. Once again, the ideal solution would have been to say, okay, we're sunsetting liquid bleached lecithin, but still allowing an annotation for powdered, dry bleached lecithin, but we are not allowed to do that under the constriction. I personally think that we will eventually have that available.

One of the problems with the dry unbleached lecithin is that it is a fairly chemical process because it has to be de-oiled, and we get our old friend hexane showing up again in that process. We are really uncomfortable with hexane, and it is

needed to de-oil. To create a dry bleached lecithin, it has to be de-oiled.

In the future we will see technologies that can create the product without the use of hexane and other solvents. So we are still somewhat reluctant to change our recommendation, even though we believe that these manufacturers -- and, again, the manufacturers who are using dry bleached lecithin do have a case that they don’t have anything else they can use to create organic products.

They have a case, but the question is, what’s the greater good, short-term suffering and pain for a few manufacturers in organic products and the farmers who sell to those manufacturers or really pushing this industry to create the product that we would all feel comfortable without the solvent extraction for de-oiling?

I think that is as close as I can

come to it anyhow.

CHAIRMAN O'RELL: Any other comments or discussion?

MS. WEISMAN: I want to float an idea. I can't believe that I am doing it because I really liked our point of clarification.

But -- oh, God, I can't believe I'm doing this (laughter) -- it seems like for the manufacturers for whom this is the only alternative, we would have to renew the old kit and kaboodle. I guess my fantasy is that someone in the industry would come forward immediately and petition for an annotation that only dry forms of synthetic bleached lecithin be used.

Is that something that anybody on this Board could live with or think would be possible or reasonable?

CHAIRMAN O'RELL: Nancy?

MS. OSTIGUY: Well, we certainly have precedence for putting it on the list.

One could assume that we have sufficient information, that we wouldn't have to go through the full TAP process. So it would be a shorter process.

So it actually might be a very reasonable solution that could be fast, as fast as bureaucracy can run. But since it would not include a TAP, that probably would drop six months off of it.

CHAIRMAN O'RELL: The Chair would like to recognize Kim Dietz, as former Materials Chair of the NOSB, for maybe some point of clarification.

MS. DIETZ: I'm going to help Julie out here. You were right on.

CHAIRMAN O'RELL: To help her get her fantasy?

(Laughter.)

MS. DIETZ: Yes. Go back to your flowchart on sunset. You have comments that give valid reasons not to remove it. So you need to consider that, and your

recommendation to probably keep it on is the right thing to do, and then urge a petition for somebody to take it off or change the annotation. Because you really shouldn't remove a material for sunset if you have commentary to keep it on, and there is no evidence enough to support it to take it off with the annotation that currently exists.

Does that make sense to you? I mean so the right thing to do is for somebody to keep it on, petition to remove it or to change the annotation for only the certain type of -- that is the thing that you need.

CHAIRMAN O'RELL: It doesn't currently have an annotation.

MS. DIETZ: Correct.

CHAIRMAN O'RELL: Yes, okay. Kim, if you want to stay here, because there may be a followup?

But I would like to recognize Arthur.

MR. NEAL: Arthur Neal.

The difficulty that I am hearing now -- and I wasn't under this assumption from the last meeting. The last meeting I was under the assumption that there was an alternative to this product. But if there is no alternative for this product, which is part of the sunset review criteria, then we've got an issue.

MS. WEISMAN: Yes, I think the problem that we have -- oh, I'm sorry.

CHAIRMAN O'RELL: No, it's fine, Julie.

MS. WEISMAN: The problem we have, Arthur, is that the information that has come in, the quality of it has been excellent, and it should not continue all bleached lecithin. There are plentiful substitutes for liquid bleached lecithin. It is only the dry form for which the problem exists.

But we don't have the opportunity

during sunset to make an annotation and sunset the liquid but allow the dry, do we? I don’t know. I don’t think so.

CHAIRMAN O’RELL: No. No, we don’t, but Arthur’s point, I mean Arthur is saying that, part of sunset, if there are legitimate -- there are people who are commercially using it, that this would be a problem that could be an issue under the sunset.

MR. NEAL: And the option that was explored or that was expressed earlier about renewing it, petition to restrict the annotation, is still viable.

MS. WEISMAN: Would it be equally viable to let it sunset and encourage a petition to -- no. Okay.

CHAIRMAN O’RELL: Barbara?

MS. ROBINSON: The less costly way to do it to the industry would be to let it continue, but what you should do is get a petition to remove -- is it lecithin or

“leckithin”? --

CHAIRMAN O’RELL: Lecithin.

MS. ROBINSON: -- lecithin; I hate this word (laughter). Get a petition to remove the one you don’t want.

MS. WEISMAN: Right now it is listed as one thing, bleached lecithin.

MS. ROBINSON: I know. I know.

MS. WEISMAN: Oh, okay.

MS. ROBINSON: So under sunset, let it continue, but get a petition to restrict going separately, okay, but let sunset -- don’t kill it under sunset because then you are harming the industry. So just continue it under sunset because you have a valid reason. In other words, don’t throw out the baby with the bath water.

But you know that you have a problem, that you know you do have substitutes available for -- which is it, the dry?

MS. WEISMAN: The liquid.

MS. ROBINSON: The liquid, all right. So get a petition going so that you can write an annotation to restrict on the liquid, so that you will only have dry.

CHAIRMAN O'RELL: Andrea and then back to Arthur, and then Gerry.

MS. CAROE: Originally, as I was looking at this on Committee, I was under the understanding that only the liquid was available, but the liquid could be used where dry lecithin is being used, in which case we wouldn't have had that availability issue because you could use it in everything.

Since then, and with the very detailed comments that we have received for this meeting, that is not the case.

Now I think, to Julie's point, by taking it off, the industry is motivated to get it on in the right way. However, I agree that that causes an economic impact to the manufacturers that are using the dry

form and cannot use the liquid form.

So I guess what I am saying is that the information that I was working under, and I think the Committee was working under, has changed since then, and that we should reconsider based on the information or based on the criteria, as Arthur has pointed out.

CHAIRMAN O'RELL: Arthur?

MR. NEAL: And just from a procedural standpoint, to let you know, while we are really concerned, if you cannot justify the reasoning for dismissing this argument, OMB is really going to come down on us hard, and that docket may not move in enough time to make our date, because they read and assess all of the comments that we receive to see how we have addressed those comments.

CHAIRMAN O'RELL: Okay. I have Gerald and then, Kim, if you want a follow-up comment.

MR. DAVIS: How would one -- if the idea is proposed, like Joe mentioned in your comments, that hexane-processed dry lecithin is inappropriate for use in organic products, how do you ever get rid of it? I'm hearing like, whoa, leave it on sunset and then change it around, but am I hearing it wrong, that that does allow the continuation of something that maybe doesn't fit organic --

CHAIRMAN O'RELL: Kim?

MS. DIETZ: The first thing is the supplier, the person who's got a vested interest in the liquid lecithin, should petition to remove the liquid lecithin. So if anybody is out there, that's probably what I would suggest that you do. That is my personal opinion.

That will then cause an issue for this Board, which will request a TAP review. Supposedly, the people who want the dry lecithin could then input their comments,

and you could request the TAP for the dry lecithin.

It is at that time when your questions are going to get answered and your concerns are going to get answered, and you are going to have to put it through TAP review. Then you vote and decide whether or not you should continue its use for the National List.

CHAIRMAN O'RELL: The issue, Gerald, is that this is not a material that is up for consideration for being put on the list. It is a material that is on the list that is going through sunset.

MR. DAVIS: I understand, but the question is, do we get so tied up in the process that there is no way to remove a material once it has been on there, even though people are saying, "Hey, there's a problem with this material."?

We went through that with some of the crops materials and people wanted them

off.

CHAIRMAN O’RELL: Okay, I have Joe, then Andrea, then Arthur. If you can make your points brief and to the point?

MR. SMILLIE: I agree with Kim, and I do have faith that, once we go through that process with the annotation, that we will see shortly thereafter an organic dry product appear, at which point in time we move again to sunset.

CHAIRMAN O’RELL: Andrea?

MS. CAROE: You know, I think this has come up so many times and frustration in this sunset process. But, again, sunset is considering the existing regulation for continuance.

In our sunset document that Kim worked on, we are talking about new information about the product. This isn’t new. The Board that put this on the list considered these things. We are not here to reinvent or revert that decision.

So if you had a problem with their decision, you had to be there at that date making that comment to that Board, but it is on the list.

Unless there are alternatives available, which would be a change to what existed when that was put on the list, or the technology for creating that material changed, it is not for review during sunset.

CHAIRMAN O'RELL: Arthur?

MR. NEAL: Well, it can be reviewed, but it has to be reviewed against a criteria which we all agree. Is it harmful to the environment? Is it not consistent with organic principles and practices, and things of this nature?

You have to look at the manufacturing process to see; with this material, you don't have a petition. So you really don't know how it is manufactured about which to make a decision on.

So you would be making a decision

based on people's feelings, which is what we do not do, to codify. So we want to base our decisions on actual research.

Comments may be fueled by some feelings, but we want that to support the data that we have looked at. We did not have that for this particular material.

CHAIRMAN O'RELL: Nancy?

MS. OSTIGUY: Pass.

CHAIRMAN O'RELL: Thank you, Kim.

MS. WEISMAN: I just have a question. From a procedural point of view --

CHAIRMAN O'RELL: This can go back to Committee for discussion, and the Handling Committee will be meeting this evening.

MS. WEISMAN: Okay. So, in other words, we could be on track to vote on something tomorrow, to revise our recommendation and vote tomorrow?

CHAIRMAN O'RELL: Absolutely. We

could come -- the Handling Committee can come with a revised recommendation to the Board tomorrow for vote, based on discussion. That is the purpose of today.

MS. WEISMAN: All right, last but not least is --

CHAIRMAN O'RELL: Do you have anything that is less controversial?

(Laughter.)

MS. WEISMAN: I don't know. I don't know. This Committee is pretty much a hotbed of controversial things.

I just want to review petition substances, if I can find my summary.

Now I believe the list that was circulated to the Board yesterday is an internal list.

MS. FRANCES: Yes, it is based on what's on the website.

MS. WEISMAN: Right. So it's okay if I summarize what was on that list?

MS. FRANCES: Yes.

MS. WEISMAN: Okay. There is a very long list of items that are petition substances under the purvey of the Handling Committee. That would be for Sections 605(a), 605(b), or 606.

There are three items that were previously recommended for listing on 606 by the full Board, but have not yet been published. Those would be the de-waxed flake shellac, the gelatin from fish, and the konjac flour.

Does anyone at the program want to -- are those ag/non-ag? Are they being held up for other decisions to be made or do we know?

MR. NEAL: If I am not mistaken, Julie -- Arthur Neal -- that will be a 606 issue. The konjac flour, right?

MS. WEISMAN: Uh-hum.

MR. NEAL: What was the other?

MS. WEISMAN: The gelatin from fish.

MR. NEAL: 606.

MS. WEISMAN: And the shellac, the de-waxed --

MR. NEAL: 606.

MS. WEISMAN: Okay.

MR. NEAL: And as we explained yesterday, when those recommendations were made, the petitions were submitted under the assumption that these materials were synthetic.

Then the Board, in the midst of the review, said this doesn’t appear to be synthetic; it’s agricultural.

So they made a declaration. We did not at that time have a process by which to amend 606. So we did not.

So the industry operated with the assumption that those things are agricultural and could be used. Then the Harvey case came; 606 procedures changed.

In addition to that, we had to come up with a 606 process.

So now those three have to go through the 606 process to be listed on the National List.

MS. WEISMAN: So once we have voted on the previous recommendations about commercial availability, we will have in place the tools that we need, and then these come back to the Handling Committee? They come back to the Board? Is that correct?

MR. NEAL: Right. Right. Right.

MS. WEISMAN: Okay. So we have three items that are about to come back to the NOSB for the Handling Committee's work plan.

We also have three items that were petitioned for listing on 605 that have been reviewed by the NOP and are currently on the Handling Committee working plan. These are carbon dioxide, magnesium carbonate, and natamycin. But they were not considered -- there was not time spent on these because we were -- I don't know, I

feel terrible saying this, but we really felt like we had our hands full with commercial availability and ag/non-ag and the crisis that was created regarding materials for 606 as a result of the Harvey suit. But those are definitely on our work plan as well, those three.

There were also two recent petitions that are under review by NOP right now, sea salt for listing on 605(a). I am really glad to hear that that is at the OGC right now because I think that is where it belongs.

I'm obviously getting more relaxed in this role because comments are coming out of my mouth now that I realize like I shouldn't be saying these things. I'm sorry.

(Laughter.)

Can they be stricken from the record?

The other recent petition for

605(a) is for the removal of yeast.

We also have one item that was out for TAP, fructooligosaccharides. The TAP that was requested is complete. So that is now going to move back onto the Handling Committee work plan.

Finally, there were 32 petitions received since May for materials to go onto 606. I know that this Board probably feels like that is an overwhelming number of materials, but I assure you that it is the tip of the iceberg.

(Laughter.)

Twenty-one of these petitions are under review by the NOP and 11 of them have already been returned; the petitioners have been notified for additional information. So 11 of those have been returned to petitioners asking for additional information.

Now I also wanted to point out that, of those 32 petitions, nine are for

colors. I really think that the industry is to be congratulated because when we knew that we could not renew colors as part of sunset, we encouraged the industry, please, please, please, you know, petition your agricultural colors onto 606. I'm sure there's more to come, but I was very glad to see these here.

Also, there are three petitions for flavors. Three of those 32 were for flavors. I am wondering if the program can give an opinion about not only with regard to flavors, but also sea salt. If something is already on 605(a), why would we be considering it for 606?

CHAIRMAN O'RELL: A question, first, to the program; Arthur and then Joe and then Andrea.

MR. NEAL: For flavors, if there is a company out there that wants to have their flavor on 606, they want to clearly define that my product is agricultural.

You would look at those, particularly as well, because of the issue that many have expressed through the sunset process, just because of manufacturing processes, clearly delineate which flavors are agricultural and which ones are not. Because we've got that group called flavors on 605(a). Which ones are synthetic, which ones could be non-synthetic. So this clarifies that as well.

It also gives clarity to the certifying agent so that they know exactly what it is that is approved for use and they don't have to search for it.

CHAIRMAN O'RELL: Joe and then Andrea.

MR. SMILLIE: Yes, a couple of technical questions. No. 1, I see a number of materials, three or four, that say 205.605 or 205.606. Whose role is it to clarify where they are going? I can't see how you can have it in both categories.

CHAIRMAN O’RELL: Arthur, you can respond.

MR. NEAL: Arthur Neal.

I think this may be set up that way because it is going to depend upon the outcome of our discussions on synthetic versus non-synthetic, ag versus non-ag. So we did not pre-determine what the outcome would be for these things, but we are saying it would really depend upon what’s the outcome of the Board’s discussions.

MR. SMILLIE: A followup: Also, when the same material is petitioned twice, is that dealt with -- how do you deal with that?

MR. NEAL: We deal with it in one fell swoop. You have to acknowledge the fact that two people did petition the same substance.

MR. SMILLIE: Right.

MR. NEAL: But that substance will only be dealt with one time.

MR. SMILLIE: So you will take both petitions into account at the same time?

MR. NEAL: Right, because each petition may present different information.

MR. SMILLIE: Okay, good.

CHAIRMAN O'RELL: Andrea?

MS. CAROE: With regard to flavors being on 605(a), the heading for that category is nonagricultural/non-synthetic. So nonagricultural/non-synthetic flavors are allowed.

Agricultural flavors are not listed, which is why it is important that if concord grape essence gets deemed agricultural, and somebody wants to use it, it is not listed for use. It is an agricultural material, not a nonagricultural material.

MS. WEISMAN: I would argue that orange essence is not the same thing as orange flavor. Orange essence is an

agricultural product.

MS. CAROE: Exactly, and that is the point. That is the point why we need to look at it as both the agricultural and the nonagricultural.

So those folks that are moving ahead and certifiers that are approving agricultural materials as allowed, agricultural flavors as allowed, are actually not completely correct because it is the nonagricultural flavors that are allowed, unless they are organic, and then it is a different situation.

CHAIRMAN O'RELL: Joe?

MR. SMILLIE: Yes, point of clarification. One of the tools that can be used is how they are claimed on the label. In other words, you could have the exact same material claimed differently on a label. One manufacturer could claim it as a flavor; another manufacturer could claim it as an extract, for example.

Orange is a good example. One manufacturer using the identical materials could claim it as orange flavor, and another manufacturer could claim it as an orange extract.

So I agree we need to move it on both lists.

MS. WEISMAN: I want to also throw out a practical consideration. I feel like at this point it would be appropriate to identify the fact that I am involved in manufacturing flavors.

We have to think very carefully about whether we want to entertain petitions for every individual formulation that every single flavor manufacturer has to put out there as an agricultural product, because if we suspect that there’s a huge volume of materials to go on 606 without those, that is going to be a whole other order of magnitude.

I would like to ask people to

consider the idea that, given what we are up against in terms of working through the 606 process quickly enough, so that we do not have a train wreck in the processed foods industry, that things that already have a home elsewhere on the list could be not the first things considered perhaps.

CHAIRMAN O'RELL: Well, I think that that certainly could be handled between the Handling and the Materials Committee on setting prioritization to this long list of materials, one of the points to consider, not the only point.

Dan?

MR. GIACOMINI: Just for clarification, I don't know if this is Valerie's question or someone else on the program. On the 606 list, Item 23, natural colors, there's a 15 there that looks like a footnote item, but yet there is no footnote. Is that a reference to anything?

MS. FRANCES: It could be a typo

of mine.

MS. WEISMAN: Or it could mean that there are 15 colors that this manufacturer is petitioning --

MS. FRANCES: Oh, okay.

MS. WEISMAN: -- which actually goes to my point about flavors as well.

MS. CAROE: Bob is giving thumbs up.

MS. FRANCES: Right, okay.

MR. GIACOMINI: So there's 15 colors on that list?

CHAIRMAN O'RELL: Contained in that petition.

MR. GIACOMINI: In that petition, okay.

CHAIRMAN O'RELL: As Julie said, it is the tip of the iceberg.

Thank you, Julie.

We are going to stay on program here and continue before lunch break with the Livestock Committee report. Michael?

MR. LACY: Thank you, Kevin. We will move quickly on this. We will condense a 45-minute report into five minutes for the good of the cause here.

(Laughter.)

I would like to, first of all, say if the Livestock Committee could sort of sit together at lunch today, we will discuss a few items of business, assuming that we don't have other business that is going to be done at lunch.

CHAIRMAN O'RELL: That's fine.

MR. LACY: Okay, great.

I want to thank Barbara for bringing us up-to-date on where we stand on the pasture process yesterday. We really appreciate NOP's efforts in bringing the pasture issue to an appropriate conclusion. We certainly understand the difficult circumstances that have been imposed upon NOP.

I just want to say that the

pasture issue remains a very high priority for the Livestock Committee, one of our highest priorities. We will continue to offer any and all assistance to NOP as they work on that issue.

The acquisition of dairy livestock also continues to be one of our highest priorities. We are committed to doing our part to bringing logic and fairness to that issue.

Almost all of our efforts since the April meeting have gone toward analyzing the Aquaculture Working Group interim final report and beginning to draft an organic aquaculture standard.

Although the entire Livestock Committee has been engaged in that work, along with a few additional NOSB members -- Joe and Andrea and Bea -- Dan, Andrea, and Joe have taken on the task of taking the Aquaculture Working Group's report and rewriting it into a standard.

The input on the aquaculture draft proposed standards has been intense, voluminous, passionate, incredible. That is a compliment, a very sincere and high compliment, to those that have been interested in the organic aquaculture issue, and especially to those that have served on the Aquaculture Working Group Task Force.

I know that we thanked them at the April meeting, but I would like to do that again today. Their work continues, and their professionalism, thoroughness just really continues to be exceptional.

I would like to talk a little bit about where we stand now. In our deliberations, we came across about a half dozen issues that were either contentious or there were varying opinions or we weren't just sure how to move forward.

Technically, the Aquaculture Working Group's report was extremely thorough. These were more philosophical

questions. We have requested or invited some additional public comment. We have received some very thorough and excellent comments related to that invitation.

I think, in the interest of time, I will just briefly go over the six questions that we asked and then also ask that, if there is still time for additional comment to be turned in on those, we will continue to look at that.

The six things that we asked for or invited input on were specific sections of the interim final report that might require species or production method-specific standards.

No. 2 was how organic aquaculture might meet the requirement of maintaining or improving the environment, including the use of integrated net pen systems.

No. 3 was expectations and explanations of the differences between organic aquaculture and conventional

aquaculture methods and products.

No. 4 was further input on feed ingredients for organic sources of fish oil and fishmeal, and whether it would be possible to develop alternatives to that within the timeframe that had been suggested by the Livestock Committee.

No. 5, we asked for suggestions for appropriate sustainable criteria for sources of fishmeal and fish oil and methods to verify that those sources met such criteria.

And, No. 6, should byproducts from processing of terrestrial organic livestock now prohibited in feeds for organic terrestrial mammals and poultry be allowed as ingredients in organic aquaculture feeds? It is similar to how fishmeal is allowed in poultry diets, in particular.

As I said, we have received good input on that and would like additional

input, if there are still folks out there that would like to respond to that.

I want to say quickly that we want to continue to move forward on this in drafting the standards. I am very optimistic -- very optimistic -- that Joe, Andrea, and Dan will have those ready by our spring meeting.

These standards will be for fin fish only. The Aquaculture Working Group continues to work on recommendations for shellfish and bivalves.

Kevin, I will turn it over to you for whatever questions we might have time for.

CHAIRMAN O'RELL: We have time for any questions the Board will entertain.

(No response.)

Apparently, they're hungry.

(Laughter.)

Joe?

MR. SMILLIE: I just really feel

I want to second Mike’s remarks in that the Aquaculture Working Group that we work with is an absolutely amazing group of people. All function very well as a group with a real divergence of opinion and position, but work very well together. We have been really privileged in working with the Aquaculture Working Group and their work.

It is one of the more complex issues that I have ever really had to deal with. It is very complicated. But we have boiled it down. We think we’ve got the differences down.

Now with the further round of public comment, we are going to have to make some tough choices and come up with a recommendation for a standard. But if any group of people deserve to get a standard, I think it is this group. They have really bit the bullet and they have really come down and worked in the spirit of compromise to come up with something that will be good

for an entire new industry.

I also believe it is a very important industry in the organic field that we are going to have to get clarification on because these people have also suffered some prohibitions on their ability to market their product now in certain states.

It really behooves us to get this recommendation to the NOP as quickly as possible. We look forward to everyone's support and comment on these issues.

CHAIRMAN O'RELL: Thank you, Joe.

Andrea?

MS. CAROE: I just want to say, from working both with the Livestock Committee on this and the Task Force, and these set of questions that were put out there to elicit some information, the balance and the challenge right now is between -- we are faced with two challenges.

One, to maintain the integrity of the organic label, and, two, to allow for

reasonable capacity-building within this new industry, within this new segment of the organic industry.

So, as you look at the questions that we pose, we are trying to get input from the industry to help us draw that line.

But I think that the work that has been done, I mean the description that Mike gave, I think the word that I always use is “overwhelming.” I mean I probably on my work on the Board spend two-thirds of my time on aquaculture, and I am on quite a few committees.

It is just these folks are engaged and they are on two, three conference calls a week and copious emails with big attachments, and kudos to every one of them. I mean it is just amazing the work that has been done.

CHAIRMAN O’RELL: Dan?

MR. GIACOMINI: I just want to reiterate my support for this group, which

has been incredible. I appreciate Mike's optimism in our projection to have this ready for a spring meeting.

I just would also like to note that, in addition to the interim report, the Aquaculture Working Group also presented for posting their comments in relation to these questions. I think as much as the interim report and these questions, a lot of additional public comment -- we would be very well-served for you to review those documents in consideration when putting your public comment together. I think that would be a very positive step.

CHAIRMAN O'RELL: Any additional comments, questions?

(No response.)

Mike, thank you for your report. I know the Aquaculture Task Force has done an amazing job. I have seen all the emails and read all the correspondence, and it was certainly a very good conversation, debate

back and forth on a number of issues. So we thank those individuals on the record for their strong effort and support.

MR. LACY: Kevin, we probably do need to name one individual in particular. That is George Lockwood.

CHAIRMAN O'RELL: Yes. Yes, thank you, Mike.

Okay, we are going to recess for lunch. It is 12:07. I would ask 1:10, let's try. We are not too bad on time. So 1:10.

Thank you.

(Whereupon, the foregoing matter went off the record at 12:11 p.m. for lunch and went back on the record at 1:24 p.m.)

A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

1:24 p.m.

CHAIRMAN O'RELL: We are going to resume our meeting and pick up with the

Compliance, Accreditation, and Certification Committee report on the recommendation items and discussion items. Andrea is Chair.

MS. CAROE: Yes, we have three items for recommendation at this time and one discussion item.

The first item for recommendation, just to frame this out, is a somewhat old item that was brought to us by the program over some confusion and work with private labelers and with retailers acting as private labelers.

We were presented with questions for Q&A to answer. So we have been working on fulfilling a recommendation or a guidance document to the program addressing these Q&A.

This was a bit of a challenge because, as we delved into the issue a little bit, the questions don’t reflect the full scope of the issue. So this was a little bit difficult in that it would have

been better if we were able to create our own questions to put the answers and really fully get at the issue. Be that as it may, we did the best with what we could.

I am going to ask Bea James to present that recommendation at this time. Bea?

MS. JAMES: Okay. All right. In 2004, the NOP received a question or several questions listed as one paragraph question.

Before I get started, I want to thank Emily Brown Rosen for trying to make sense of those questions in the comments that she had yesterday. They were very useful.

So they basically ask what accredited certification agency should be identified on the label of a co-packed or commissioned or private label product. To briefly summarize the recommendation, I would like to point out that, as stated in 205.100, all processing operations that

manufacture organic products must be certified as a processor. As a processor, the accredited certification agency’s name would be revealed on the label of any certified organic product. This includes products that might be commissioned as private label products.

In the case of a commissioned merchant or retail establishment that has obtained voluntary certification as a handler, Section 205.100(a)(ii) of the rule states, “A handling operation that is a retail food establishment or portion of a retail food establishment that handles organically-produced agricultural products but does not process them is exempt from the requirement of this part."

However, voluntary certification can apply to retail establishments and is vaguely described in The Federal Register as follows:

“This regulation establishes

several categories of exempt or excluded operations. An exempt or excluded operation does not need to be certified. However, operations that qualify as exempt or excluded can voluntarily choose certification.

"Therefore, the Accreditation and Certification Committee concludes in its guidance document the following clarification which summarizes the answer to the submitted question."

It is a long document, and that is a summary of the document. I am going to page 3, the bottom of page 3 of the four-page clarification.

Our guidance is, "The Committee wants to emphasize the statements above," which I'll read shortly, "which clarify that the voluntary certified handler or private labeler uses the name of its certification agent on the package and, therefore, it assumes responsibility for the product.

Otherwise, the manufacturer or processor of any final said product is the responsible party and assumes all liability for compliance with the regulation.

"A retailer that is not involved in the processing of the final product is not required to undergo mandatory certification as a processor or voluntary certification as a handler. If the retailer who commissions the organic product chooses not to be certified, then the co-packer or processor would become the entity responsible for compliance with the regulation in full, and their certifier's name would be indicated on the final product and would also be the first point of contact in the event of an investigation."

That concludes the summary of the retailer Q&A, and I open it for question or comment.

CHAIRMAN O'RELL: Andrea?

MS. CAROE: At this time, I want

to point out to the Board that there is an existing recommendation that was approved by this Board in July of 2007.

CHAIRMAN O'RELL: 2001.

MS. CAROE: 2001.

(Laughter.)

CHAIRMAN O'RELL: That's okay.

MS. CAROE: It is a little time warp thing I did.

(Laughter.)

CHAIRMAN O'RELL: Fast forward.

MS. CAROE: That's bad.

In 2001, July, this Board did pass a recommendation that is contradicted by this guidance document. That was a rule change document that requested the insertion of the word "certified" in the regulation where it declares the name of the processor.

Part of the regulation that says that the manufacturer and the certifier need to be named, the word "certified" was put in there. So, essentially, a co-packer would

be recognized on private labels.

It is not very clear what I just said.

However, the Committee considered this recommendation, and the Committee did not agree with this prior Board recommendation. It has not been presented to this Board. So we can't take action today on that recommendation, but the consensus of the Committee is that in the next meeting we will be presenting a recommendation to rescind that prior recommendation, so that we can move forward on this guidance document.

At this time, we will not be able to move forward and accept this recommendation because we didn't dot that "i". So as far as the content of that recommendation, I wouldn't worry about. We are going to provide it to everybody, give the Board ample time to look at that with the recommendation that it is rescinded.

CHAIRMAN O'RELL: And back to the Committee for rework, I guess.

MS. CAROE: Yes.

CHAIRMAN O'RELL: Joe?

MR. SMILLIE: I would still like to have a discussion on our document today.

CHAIRMAN O'RELL: Perfectly, it is on the table; you can have discussion around that document or the previous document since it is for discussion.

MR. SMILLIE: Andrea, would you like me to explain the difference between the two?

MS. CAROE: Yes, because I fumbled all over it. Please, Joe.

MR. SMILLIE: Our document is very similar to the 2001 document in most respects. The respects in which it differs is that in the 2001 NOSB recommendation it states that, if the private labeler -- I'll call it that -- the commissioned merchant chooses not to be certified, then the name

of the certified co-packer has to be on the label, not the name of the certification agent of the co-packer, but the actual name of the co-packer. The company that produced the product would have to be on the label.

Our recommendation says that the name of the certification agent of the co-packer would have to be on the label. There is a difference there. It is a difference that we don’t feel we can move forward with our recommendation unless we deal with the previous recommendation, which required the name of the handler on the label.

That is the difference between the 2001 document and our document. If the commissioned merchant or private labeler chooses to be certified, then there is no difference between the documents. The voluntary certification is regarded as full and complete with all the rights and responsibilities of a mandatory certification, but there is a difference

between the two documents as to what is listed on the label in the case that the commissioned merchant/private labeler chooses not to be certified, which is their right. They don't have to be certified under the regulation.

CHAIRMAN O'RELL: I would like to ask a question to the program, to Mark. Mark, sorry. I would just like to address the program in terms of this recommendation for a rule change that was adopted by the Board in 2001 and submitted to the program. What is the status of that with the program?

MR. NEAL: If I recall correctly, the program has not responded on that. In order for us to do so, we would probably -- we will have to consult with OGC.

There are a number of issues with it. This is the one for requiring the name of the handler.

No. 1, it is not required by OFPA.

No. 2, it is not required by FDA.

No. 3, you are going to have to have OMB review it because it is going to be another burden on the handling operation.

So there are going to be a number of hurdles to go through, to jump over, before we can accept that one. I will let you know that upfront.

Do you want to rescind it?

MS. CAROE: Yes.

MR. NEAL: That is not an issue.

(Laughter.)

MS. CAROE: Well, that is not an issue.

MR. NEAL: No, that is not an issue. You’ve got to remember I walked in halfway between the discussion.

MS. CAROE: That will teach you to be late.

(Laughter.)

CHAIRMAN O’RELL: Bea has a comment. Did you have a comment?

MS. JAMES: I think we still need some clarification.

MR. GIACOMINI: I don’t understand that’s not an issue.

CHAIRMAN O’RELL: I would like to recognize Jim Riddle, who is past Chair of the NOSB, to come up because I know he is familiar with the issue, just to get it out on the table, so we can understand.

MR. RIDDLE: Yes, I was on the Board and actually was the author of this recommendation that was adopted unanimously by the Board at the urging of Joe Smillie and the Organic Trade Association in 2001.

What it was was an attempt, or is, and I think quite an elegant solution to the issue that you are continuing to wrestle with and really I don’t think your recommendation addresses.

Because it would basically just continue the way things are, which requires the name of the certifier to be on the

label, and that can then be on a label of an operation that they did not certify. That is the current situation.

So a commissioned merchant/private labeler, the co-packer has to be certified. That doesn’t change. But the name of that certifier appears on a label connected to an operation, then, that is not certified. That is the current status.

With that, the audit trail can easily be broken because oftentimes that private labeler buys ingredients and actually manages the sale, manages the formulation, but yet they are not inspected; they are not part of the audit review.

This was a way to let the free market decide who is going to be identified on the label. The private labeler could choose to be certified, and then the name of their certifier would be identified and they wouldn’t reveal who the co-packers are, but,

yet, the audit trail would be complete. Or they could choose to reveal the name of the co-packer, identify the co-packer, along with the certifier of the co-packer, which is already required -- that wouldn't change at all -- if that is their choice.

It allows the free market to decide, but it maintains the audit trail, just by simply inserting the word "certified" in front of the handler or distributor who is identified on the product.

CHAIRMAN O'RELL: I have Andrea and then Joe.

MS. CAROE: Just a point of information on here: It is required in the organic system plan that manufacturers that are applying for certification have their labels as part of their organic system plan.

So if a manufacturer is labeling under a private label, that is part of their organic system plan. Their certifier should

be able to reference the fact that they are packing in that label. So the audit trail is there. I would dispute that.

MR. RIDDLE: Well, reviewing labels is not reviewing the audit trail. You have to look at the ingredient purchases and the product sales.

The co-packer will have quantities delivered, but will not have the information necessarily on sales and purchases. It is just simply not the case.

I inspected many such operations where the co-packer is paid for doing a custom fee, and that’s it. They don’t control anything.

I agree that they should have copies of the certificates, but oftentimes they don’t even have those because those go to the private labeler who purchased the raw ingredients.

MS. CAROE: So you are making a case for the private labelers -- this

recommendation that we have today in front of us, you just made our case.

MR. RIDDLE: Yes, I don't think they are inconsistent whatsoever. I think this actually addresses and solves the problem in the long-term.

CHAIRMAN O'RELL: Joe?

MR. RIDDLE: The 2001 recommendation gets to the heart of the matter.

MR. SMILLIE: Well, Jim and I have already debated this, as you might have guessed. So we will replay in public the debate.

My response is that there's a couple of issues at stake here.

The first issue is, is there a break in the audit trail? I don't believe that there is a break in the audit trail because I believe that that co-packer that produces that product for a private label must -- not should, and if they don't,

they're out of compliance -- must have those certificates for those ingredients.

Regardless of who purchased the ingredients, the person that made the product must have those documents. And if it means also having the complete purchase information, if we believe that to be required, then they must get it. That would be the responsibility of the commissioned merchant to provide those documents. But that is the responsibility of the co-packer to have those documents. Otherwise, they are out of compliance.

To say that they don't have them, I'm not disputing that may have been the case or it may still be the case, but, clearly, they are out of compliance if that is the case. It is not the responsibility of anyone else other than that co-packer regardless of whether they are the total processor. Whether they purchase their ingredients themselves, or got them from the

commissioned merchant, they still are responsible for it, period. So I don’t believe that there is a break in the audit trail.

No. 2 is it is a commercial issue, in my mind, not a regulatory issue. By forcing, with the implementation of the 2001 document, it would give the private labeler three choices.

The first choice, which I believe is the correct choice, but it is not my decision, is to get certified themselves. That way, they are on top of their own business. There’s a lot of benefits other than packaging benefits.

I think most private labelers are seeing that it is really wise to get certified because they don't have to go through patching nightmares. Also, in the process of certification, they discover, hey, I'm getting more on top of my organic business, which is where they should be in

the first place.

That is the best choice. We both agree with that. The documents don't differ in that area.

The second choice is, then, if they decide not to be certified, then they are forced to put the name of the co-packer on the label, which they are just not going to do it. It is just not an industry practice. Whether it should be or not, I can't get into that debate, but they are not going to do it because, basically, it is their commercial interest not to.

So then I think they are forced between two positions: either get certified or don't come out with an organic product. I think our job is to convince the food industry and agriculture to go as organic as possible. So I believe that their insistence on -- this is what I have seen anyhow, that they are not going to put the name of the co-packer on their product.

They are just not going to do that.

So if that forces them not to go organic, I believe that that is not our position because I don't think the countervailing argument that there's no audit trail is accurate.

CHAIRMAN O'RELL: I will allow Jim to give a brief response, if you have one.

(Laughter.)

Then we are going to take a question from Bea, and then I think we need to sum up where we are at, if there is no other comments.

MR. RIDDLE: Well, yes, and I disagree with Joe, that the audit trail is broken in many instances. I think that it is very difficult to have the enforcement capability in the rule without this change that you and others advocated.

We listened to the stakeholders at that time. But the other thing -- and

this was a compelling argument at that time -- was that the certifier's name is being used on a product that they did not certify, on a label of a company that they did not certify.

I believe that is a bit of a an exposure issue, that any certifier's name is appearing on a product of a company that was not certified by that.

The thing about revealing the co-packer, as we discussed, in the dairy industry that is standard practice, that the plant number has to appear on a product for any dairy, and that can be tracked without much difficulty at all. So there already is a precedent for revealing co-packers in the dairy sector.

Thank you.

CHAIRMAN O'RELL: Thank you, Jim. Thank you for the input.

The Board will have the last word, I guess.

(Laughter.)

MR. SMILLIE: I'm on the Board and you're not.

(Laughter.)

I get the last word this time.

CHAIRMAN O'RELL: So Joe is going to respond.

MR. SMILLIE: It's not personal.

CHAIRMAN O'RELL: Bea has a comment, and then I really want to sum this up and move on.

MR. SMILLIE: As Michael Corleone said, this is not personal; it is just business.

(Laughter.)

The label that that co-packer packs for, their name is going on that label. They have to submit that label to their certification agent for approval. They are connected with that product. There is no divorce there. They are connected with that product.

I still believe that the audit trail is intact and that it is a doable project.

CHAIRMAN O'RELL: Bea?

MS. JAMES: Okay. I want to make a comment about the idea of the co-packer's information being on the final product. I am speaking on behalf of the retailer sector, that the reason it is called private label is because it is private.

This is an opportunity for a retailer to brand an organic product that represents their particular company, so that they can have that privacy of searching out that product, having it branded underneath their name, and being able to represent that to consumers.

If we were forced to put co-packing information -- and I'll just use Trader Joe's as an example -- that that would disclose a lot of what they have built their business on, and I think it would

really hurt the retail industry if we did that.

I also think that private label is called private label for a reason. It is a program that was built by the retail industry so that they could have a marketing opportunity for products that they feel brands their name.

Secondly, I just want to point out that there is another piece of the audit trail that we haven't really discussed that is not even a part of what we have to -- I mean the USDA doesn't regulate, and that has to do with the FDA regulation 21 CFR 101.5. It is listed in this document.

Labeling regulations clearly state that food labels must list the name and address of the manufacturer, packer, or distributor. So the name of that retailer or private label co-packer is also going to be on that final product to help with the audit trail.

I can speak from experience that there is no private label organic product that the company I work for has been able to move forward with without getting that label signed off on by our certification agency that we work with. That is just part of the protocol, that our co-packer has to have approval from their certification agency that the label is acceptable as part of the audit trail.

CHAIRMAN O'RELL: Okay, thank you, Bea.

I think where we are at, to sum it up, is that the particular recommendation that was passed in 2001 was considered at the Committee level during the discussion of this recommendation. Perhaps it didn't dot the "i's" and cross the "t's" and address that recommendation in the text and background information of that recommendation, which will go back to Committee, and that will be done. There

will be a new recommendation coming out for the next meeting.

So thank you.

MS. CAROE: Moving on to the next recommendation that we have, it is standard format for certificates. I am not going to read through this entire document. Based on the comments that we received, you folks actually did. So thank you for that.

(Laughter.)

We were approached by the program based on questions that they have received. So this document was created in order to assist and facilitate the certification process, commerce of organic products, and improvement of compliance and enforcement. It is the Wild West of certificates out there.

We all know that the regulation has few requirements for these documents. Our recommendation does reference those requirements. It does reference where the

establishment of a certificate is in the regulation.

However, it has become increasingly difficult for operations, especially processing operations that use many different ingredients, to keep track of these certificates and was the product, indeed, certified to the National Organic Program Standard. Who was the entity? Who is the certifier? The information is all over these, and especially with so many foreign certifiers now accredited, it has become very difficult.

So we did make a recommendation. Skipping to page 3 of the recommendation, Section B, we included that this certificate must say that the products are in compliance with the USDA Organic Standard.

To just frame out why this is important is we do have foreign certifiers that are certifying to other standards. They are accredited to the USDA, but it

needs to be very clear that the operation that received the certificate did receive it for this standard and not the other standards that that certification agent does issue certificates for.

We also included that the crops and products should be included on that certificate. We have heard many comments about the vagueness of what is a crop and what is a product and how detailed you get.

But at this point, that is the way the language is. Without consulting my Committee, my opinion is that we let the industry figure out what that means, let the certifiers determine what best works for their entities. Many certifiers are including this information on the certificates.

But, indeed, for a buyer and for a manufacturer that is trying to maintain their own certificate, having a verification that the product they're buying is included

in the scope of that certification is of value.

We have received some recommendations from industry on changes to that terminology. We can consider those as well.

Also, one of the other things that was suggested that we add, we actually had two suggestions. One, that the certificate be in English. I have no problem with making that addition. That was, again, valuable input, and I think the Board should consider that addition.

Also is the categories of certification, whether that is 100 percent organic and made with organic product. That, too, is a very important addition to this recommendation that I believe we should consider.

The next part of our recommendation was the C Section, which also elicited robust comments in our attempt to

structure what this standardized format may or may not look like.

We have heard many comments saying the suggestion that an 8.5x11 paper and the requirements for margins are too prescriptive. We've heard that message.

At the same time, interestingly enough, we've gotten the message that industry wants a template, which to me seems more prescriptive, but I understand that there would be merit to that.

So this Committee should consider perhaps coming up with a block format or something for this information to make it easy reference for these new certificates.

The Board did vote on this recommendation. It was seven in favor, none opposed, no abstaining, and none absent on this vote. We had no minority opinion on this recommendation.

Based on the fact that we have received so much information, there is the

opportunity, and we should consider tomorrow deferring this because it is not immediately needed in order to satisfy the industry or other actions moving forward. So just putting that ahead, that that is an option. That is a real option for this recommendation because there is no apparent immediate need.

With that, I open for discussion.

CHAIRMAN O'RELL: Any questions, comments from the Board?

Nancy?

MS. OSTIGUY: I have a question about -- and this would be for the program. Do we, when we interact with other countries, have a requirement that anything that they send us is in English? Is that ever done?

MR. BRADLEY: Mark Bradley.

We have not required that they submit documents in English unless they want us to work on them.

(Laughter.)

We can charge for the processing of documents that they have sent over, and that would include a translation fee. So we have been very successful in saying that, if you would like for us to work on this right away, that we will require that they be in English.

The certificates, I think we could require that they at least have National Organic Program written in English, so that would be clear.

But as far as the whole document being in English, we have required that the certifiers translate those for us, if we request them for clarification.

Does that answer your question?

MS. OSTIGUY: Uh-hum.

CHAIRMAN O'RELL: Joe and then Andrea.

MR. SMILLIE: Yes, I agree with Andrea on this document, that the phrase

"certified" is compliant with USDA's National Organic Program, as required. That is one of the really confusing issues in the organic industry because oftentimes we will see certificates from accredited certifiers, and the people say, "No, my certifier is accredited by the USDA." We have to continually say, "Yes, we do understand that, but the certificate itself has to say `in compliance with the USDA.'" That has been a big issue.

At one point in time it was complicated because the program did say they could not require under the regulation that compliance statement. So I take it that you are in agreement with the fact that it is within our -- you know, that we can require that on a certificate.

CHAIRMAN O'RELL: Andrea?

MS. CAROE: I'll just pass on my comment at this point.

CHAIRMAN O'RELL: Okay. Hearing

no further discussion, let's move to the next item.

MS. CAROE: Okay. The next item is expiration dates on certificates for organic operations.

Again, when this rule was first implemented, there were numerous comments on the need for expiration dates on certificates, which was the standard method that certifiers were users prior to the implementation of the rule.

The program advised us on the life of a certificate or certification, and that this is likened to a license. Unless it is taken away, it is in good standing, and that expiration dates were not appropriate.

Also, the program was very optimistic that there would be at some point a real-time tool in order to maintain a verification that certificates were good.

Because of numerous logistical

challenges, that is not going to be a reality anytime soon. Until there is some type of tool, it is very difficult for operations that are purchasing organic ingredients to easily and comfortably show that they are in compliance with what they are, indeed, purchasing.

For that reason, the program has come to us and suggested that perhaps an expiration date should be investigated. We do know that the certification does not expire. However, we don't know necessarily that the certificate, the document that expresses the certification is in good standing, can't expire.

I will say that we have made this recommendation for expiration dates to be added to the list of required information on certificates. We have also offered an allowance for letters from certifiers to extend in periods of -- you know, where the certifier can't finish the evaluation

process, which is allowed under the regulation. It is allowed that you could slip, depending on the stage of production for a particular farm or various other issues. So there is in the recommendation allowances to have that time slip.

We also have addressed that, if it isn't an extension or renewal of that certification process, an annual renewal, if it actually is a re-entry into organic, that it would be looked at as a new certification.

We have heard comment on it. It has been interesting. We have heard comment from everything from Jim giving us a big "Yahoo" on that to some of the original testimony folks that wanted this in the beginning saying, "You know what? We got really comfortable without it."

However, I do believe we should move forward with this recommendation. I think it is a service to the processors that

are using these ingredients to have some verification that these products and their vendors have done what they were supposed to do to maintain their certification.

I think this is very important. I see at some point in the future, when the program has bandwidth to create that real-time tool, that we will be offering rule change to pull this back. But at this time, I think this is an important piece in compliance and enforcement. For that reason, we will, hopefully, be voting on this document tomorrow.

CHAIRMAN O'RELL: Discussion?

MS. WEISMAN: Just one point.

CHAIRMAN O'RELL: Yes.

MS. WEISMAN: Clarification: that when Andrea was talking about it, in our recommendation we actually didn't change; the allowance for continuation already existed, that what we are recommending that is new is that there would

be an issuance of a letter to state that allowance.

MS. CAROE: Correct.

MS. WEISMAN: So just that.

MS. CAROE: Just for the extensions, you are talking about?

MS. WEISMAN: Right.

MS. CAROE: Uh-hum.

MS. WEISMAN: That the opportunity already existed.

CHAIRMAN O'RELL: Thank you.

Okay?

MS. CAROE: Okay.

MR. KARREMAN: One other thing on that: Rigo and I were just talking about it a little bit. How about like an update sticker, you know, like you get for your license plate up in the corner?

(Laughter.)

Seriously. Less paperwork.

MS. CAROE: Where were you six months ago, Hue?

(Laughter.)

You know, that is another tool that could be used. I believe that this is something that certifiers are familiar with. They were using this as a tool before. I mean that is a possibility.

CHAIRMAN O'RELL: Bea?

MS. JAMES: Andrea, I think one of the problems that you might face with that is people peeling off the sticker. That, unfortunately -- I just don't see how that -- that's the reality, you know. Peel it off and stick it on something else.

CHAIRMAN O'RELL: Stick it on something else.

MS. JAMES: A good idea though.

MS. CAROE: That's thinking out of the box or out of the pasture.

MR. KARREMAN: It was Rigo's idea, actually.

MS. CAROE: All right, so hearing no more discussion --

CHAIRMAN O'RELL: Yes, move on.

MS. CAROE: Okay, moving on to our last item, which is a discussion item, just to frame this out, I am going to give this to Joe Smillie who has worked on this for the Committee.

Joe graciously took up the charge of working in collaboration with the program to create or to work on a procedure, a standard procedure for satisfying peer review requirements.

Michael Lacy did work on this for us in the past, but with the onset of the Aquaculture Task Force, Michael's time was at a premium. So Joe took this up for us.

So having that, I will turn this over to Joe.

MR. SMILLIE: Well, the Compliance, Accreditation and Certification Committee is now in the exploration phase of looking at options for the Organic Food Production Act mandated Peer Review Panel.

The establishment of a Peer Review Panel allows the formal participation of the organic community in the auditing of the NOP accreditation system.

There is a long, if not recent, history of real concern about this issue in the organic community. In fact, if I recall -- and Lynn Coody will serve as institutional memory on this for me, I trust, and for the NOSB -- that was one of the absolute hottest issues coming from OFPA and the regulation. I mean I remember the stir it caused, the debate, and the insistence of some of the pioneers of the organic movement in that Peer Review Panel.

Since then, it has sort of run a course. Let's start at the beginning, and, basically, the citation from the Organic Food Production Act of 1990 is Section 21.17, which isn't that long, so I will read it in full.

It is Section 21.17, "Peer Review

of Certifying Agents.

"(A) Peer Review. In determining whether to approve an application for accreditation submitted under Section 21.15, the Secretary shall consider a report concerning such applicant that shall be prepared by a Peer Review Panel established under Subsection (B).

"(B) Peer Review Panel. To assist the Secretary in evaluating applications under Section 21.15, the Secretary may establish a panel of not less than three persons who have expertise in organic farming and handling methods to evaluate the state governing official or private person that is seeking accreditation as a certifying agent under such section. Not less than two members of such Panel shall be persons who are not employees of the Department of Agriculture or of the applicable state government."

Then we move along to the

regulation, the regulatory text, which is Section 25, you know, 7 CFR, Part 205.509, Peer Review Panel.

"The Administrator shall establish a Peer Review Panel pursuant to the Federal Advisory Committee Act, FACA, 5 USC AP2 and sequential. The Peer Review Panel shall be composed of not less than three members who shall annually evaluate the National Organic Program's adherence to the accreditation procedures in this Subpart (F) and ISO/IEC Guide 61," although I believe that is Guide 17.11 now, "General Requirements for the Assessment and Accreditation of Certification/Registration Bodies and the National Organic Program's accreditation decisions.

"This shall be accomplished through the review of accreditation procedures, document review, and site evaluation reports, and accreditation decision documents or documentation. The

Peer Review Panel shall report its finding in writing to the National Organic Programs Program Manager."

Those are the two legal interpretations. That is where we are now.

The recent work that was done on this was commissioned to ANSI, who added to their professional auditing staff a person well-versed in organic regulations and in ISO 61.

I think, in general, the community was satisfied by the results of that audit. It certainly was -- you know, it pointed out a number of deficiencies in the program, to which the program has responded and is correcting.

So, my opinion only, but I don't think there was a great concern or discomfort in the community that this function wasn't done properly, that the evaluation of the accreditation was thorough and rigorous, but that the process whereby

it was done may or may not have been in line with what was mandated in OFPA.

So we are at the point now of looking at what was mandated in OFPA, what the regulation says, and where we want to go to, I guess, bring back the original concept of the Peer Review Panel, which our Committee feels is important to the organic community, that it is time to move along and institute the Peer Review Panel which was mandated by OFPA.

So in notifying my fellow Board members that we are embarking on this, we are looking for any input you have. If we do enable the CAC Committee to pass the previous three recommendations, this, then, will become, as far as I can see, Andrea, our top-priority item for the Committee in the future and will be on our work plan.

CHAIRMAN O'RELL: Thank you, Joe.

MS. CAROE: That's all for CAC unless there is discussion.

CHAIRMAN O'RELL: Any discussion on Joe's comments?

(No response.)

Hearing none, thank you very much, Andrea, for the CAC Committee presentation.

Valerie, you are looking at me like I am supposed to do something now.

MS. FRANCES: I have this little message here for someone in the room.

CHAIRMAN O'RELL: For someone in the room.

MS. FRANCES: And I can't guarantee the spelling or the pronunciation. Is there a Ms. Kua Ellen? You're supposed to call your office.

(Laughter.)

CHAIRMAN O'RELL: Okay, good.

It is 2:06. We are not too far behind schedule. At 1:45 we were going to get into public comment. We will start public comment now at 2:06.

I will just let everybody know that everybody will have just five minutes. There may be some proxies in here. No questions from the Board.

(Laughter.)

I'm not saying the Board can't ask questions. That is, obviously, not what I am saying.

(Laughter.)

But it is four-and-a-half hours. So we are here for four-and-a-half hours of public comment without questions.

So what I would ask the public commenters, because we have indicated that we want to accept the time here to open up and not have anybody say that they didn't get to give their just do. So we are here; that is what we are here for. We welcome the public comment.

If somebody has previously stated everything that you want to say, you might get up there and just kind of back their

recommendation and maybe be a little more succinct in your comments to help us along the way. But, obviously, you will get your full five minutes. We are not cutting anybody's time short.

With that, before I begin public comment, let me again address the NOSB policy for public comment at NOSB meetings while we are getting the stage set.

All persons wishing to comment at NOSB meetings during public comment periods must sign up in advance. That has taken place.

Persons will be called upon to speak in the order that they sign up. Unless otherwise indicated by the Chair, each person will be given five minutes to speak. Persons must give their names and affiliations for the record.

A person may submit a written proxy as a written proxy to the NOP or NOSB requesting that another person speak on his

or her behalf.

No person will be allowed to speak during the public comment period for more than 10 minutes.

Individuals providing public comment will refrain from any personal attacks and from remarks that otherwise impugn the character of any individual.

With that, I will ask if we are set up. We're set.

Our first commenter will be David Cox, followed by Richard Vento. David?

Just if there are any new commenters, Bea will be timing you. She will hold up the one-minute sign. But, again, it is not her obligation that you see it. You will hear the buzzer go off.

No David Cox?

Okay, we will go to Richard Vento. On deck, Jim Riddle.

MR. VENTO: My name is Richard Vento. I'm affiliated with St. Gabriel

Laboratories in Orange, Virginia. I am the petitioner for asking sodium lauryl sulfate to be listed on the National List as an herbicide.

I believe that when NOP regulations were written, that they could not be all-inclusive. Although sodium lauryl sulfate is listed as a soap and falls under a category of ornamentals and roadways, I believe that the Board has discretion of extending the usage for those materials.

The petition that I filed, and confirmed by the TAP report, indicates that sodium lauryl sulfate is unlikely to cause harm to humans, animals, and environment.

I am going to kind of paraphrase and kind of go a little quickly there in the comments.

Sodium lauryl sulfate is unlikely to cause environmental contamination. It is rapidly degraded. It is not expected to

persist in the environment when applied as an herbicide. When applied according to the petitioned use, it is unlikely to cause harmful environmental effects. Breakdown of sodium lauryl sulfate is not surface active or toxic, and it is unlikely that it will cause adverse health or environmental problems.

Sodium lauryl sulfate is a very safe ingredient. It is recognized by the FDA as a grass, generally accepted as safe, and is used in marshmallow manufacturing, soda manufacturing, drug capsules, shampoo, toothpaste, and a whole bunch of other things.

It also has an exemption from tolerance from the FDA. It has an exemption from tolerance from the EPA.

So when used as an other ingredient, it not only can be sprayed near crops, it can be sprayed on crops.

The NOP reports -- sodium lauryl

sulfate is much safer than a lot of other ingredients that are allowed. For example, vinegar, sulfuric acid, sodium hydroxide, pine oil are all on the 4(b) list. Also, careful application of manure as a fertilizer allowed.

The CDC lists 24 causative agents that can be found in that substance. Other references list 40 or more specific causative agents.

The NOSB Committee response to one of the questions was that 4(a) inerts like citric acid and safflower oil could be used. This comment is actually a strong case for allowing sodium lauryl sulfate. Seeing that the NOSB does not discriminate between 4(a) and 4(b), the comment that is in the report that they make is actually a strong indication that you should approve it.

If sodium lauryl sulfate were listed as an other ingredient on a label and

not an active ingredient, it already would be allowed.

The product that we sell is an herbicide called Burnout. If sodium lauryl sulfate were listed as an other ingredient and not as an active ingredient, it already would be allowed. So, intuitively, it is hard to figure out why it makes sense that being listed in one place on the label, it shouldn't be allowed in another place, that it should be denied.

As far as comments from the Committee on aquatic organisms, I concur with the comments, and there should be some concern. The product we sell called Burnout II has on it environmental hazards, "avoid spraying directly into water."

I would suggest that the Committee accept the substance for the National List and possibly as on the front page, listed as herbicides with a restriction that it not be used in lakes,

streams, ponds, and other bodies of water.

Thank you. Any questions?

CHAIRMAN O'RELL: Thank you.

Any questions from Board members?

Hue?

MR. KARREMAN: So right now it is allowed as like an incipient in formulations, is that right?

MR. VENTO: It is allowed as an other ingredient.

MR. KARREMAN: As an active ingredient or an incipient?

MR. VENTO: Oh, we have active ingredients and --

MR. KARREMAN: Or whatever the other --

MR. VENTO: -- other are inerts. The EPA has actually asked that the inerts be changed to other. So when listed as an other ingredient, it is acceptable because it is on the 4(b) list.

So I don't know; it doesn't make

sense that it is listed in one place and not another; that it should be okay.

Again, the Committee recommendation to use other ingredients that are on the 4(a) list is tantamount to saying that it is all right to use ingredients that are on the 4(b) list.

So I am not sure what you are saying.

CHAIRMAN O'RELL: Yes, Gerald?

MR. DAVIS: The main difference between the two, when you say citric acid, vinegar, safflower oil, is these four ingredients -- why is SLS different? The difference between those three and SLS is SLS is synthetic and those are naturals. Yes, they are all on list 4, but that's the difference. That is where the distinction is being made.

CHAIRMAN O'RELL: Barbara?

MS. ROBINSON: This is a list 4 inert?

MR. VENTO: Yes, that's correct.

MS. ROBINSON: A list 4? Why are you prohibiting this? Those are allowed.

MS. OSTIGUY: We are not prohibiting it. We are not prohibiting it.

MS. ROBINSON: So what is the problem? I guess I'm confused.

MS. OSTIGUY: We are not going to list it. We are not prohibiting it. It is a synthetic.

MS. ROBINSON: But they are already allowed, aren't they?

MS. OSTIGUY: No, no.

MR. VENTO: Excuse me. We use it as an active ingredient, not as an other ingredient.

MS. ROBINSON: Right.

MR. VENTO: If we put it on the label as an other ingredient, it would be acceptable.

MS. ROBINSON: Oh, so you want it petitioned as an active, correct?

MR. VENTO: Yes.

MS. ROBINSON: I get it. And it is okay to use it as an inert?

MR. VENTO: Yes.

MS. ROBINSON: I see.

MS. OSTIGUY: It's one of the problems --

MS. ROBINSON: Another one of those confusions?

MS. OSTIGUY: Yes. It is one of the problems that many of us had.

MS. ROBINSON: It is okay to have it as an inert, but it is not okay to have it as an active.

MS. OSTIGUY: It is one of the problems that many of us had with that particular solution for dealing with inerts and just doing a categorical listing.

MR. VENTO: You know, the original founders of the rules I think did a good job. They can't think of everything. I would ask that reason prevail and you

accept this substance.

Thank you.

CHAIRMAN O'RELL: Thank you.

Jim Riddle. On deck will be Tom Hutcheson.

MR. RIDDLE: Jim Riddle here, and I have no handouts and no proxies, although I did have offers.

(Laughter.)

And I still agree with everything I said yesterday, so I won't repeat any of that.

But I would like to address a couple of things that did come up yesterday, in particular, about some budget issues. Barbara Robinson made a statement that the states have only spent 40 percent of their cost-share funds. An analysis of the states' dollars from figures provided by the NOP shows otherwise, and Liana Hoodes is going to provide details on that. So I would like to pre-endorse the comments that

she will be offering later.

But the thing that really concerns me is kind of pitting the cost-share against the NOP and compliance budget. We shouldn't be fighting for crumbs. Both are vary valuable and deserve full and adequate funding. So I just really want that message to be heard.

I am also concerned about the TAP contract money because I understand that we are out of TAP contract money or TAP dollars. Last year, when I was on the Board, there was about $200,000 to $300,000 for TAP contracts, and there haven't been that many TAP reviews done.

I don't know where the money is, but, hopefully, there will be money in the next budget cycle for all of the TAP reviews. I would just request that the Board receive a budget report from the NOP at least annually. That used to happen in the early days.

If that information is out there, it really helps all of us, supporters of organic agriculture, to be able to go to the Hill and lobby and request adequate funding, if we know the money that is being received and how it is being spent.

On the dairy issues, just a few comments. One thing that concerns me was another statement that Barbara made, saying that the requirement for pasture would be a significant change to the regulation.

It is my understanding that the pasture is required for ruminants, to accommodate their natural behavior of the species, in the regulation right now. It is just a matter of clarifying how much pasture is adequate.

So I don't see it as a significant change. I see it as a refinement of the current requirements.

The Board has made numerous recommendations to resolve this issue. I

just urge you to stay engaged and to have a plan in order to submit comments on behalf of the Board when a proposed rule is issued.

Likewise, the two-track, or now the seven- or eight-track, dairy replacement situation is really out of hand. It contradicts two of the three purposes of OFPA, which are to establish a consistent standard -- this is an inconsistent standard -- and to facilitate trade in organic products.

As Hue knows, it is certainly an impediment to the trade of organic dairy animals not knowing who can buy what.

So, once again, I remind you the Board has a very simple recommendation -- it has already been adopted -- to require one track, one standard, regardless of how an operation originally converts and gets certified, and to stay engaged and be prepared to comment on that.

I would like to inform you of a

couple of developments. Nationwide Extension Service has an electronic initiative, E-Extension, and now there is an E-Organic team that I am a part of to develop electronic information through Extension offices nationwide to support and inform/educate on organic. So I wanted you to be aware of that.

Also, a new research initiative that the University of Minnesota is just engaging in is development of alternative crops, to expand crop rotations with a focus at looking at methionine content in these alternative crops.

I know that the methionine, the synthetic methionine allowance is set to expire in 2008 to stimulate research. I just wanted to let you know that is a three-year research that we are just now starting on the next crop year.

I wanted to end by saying thank you to Nancy and Kevin and Michael. I

really enjoyed getting to know each of you and to work with you.

It is quite a sacrifice of time/effort that you have put in. Just keep going on.

(Laughter.)

Yes, keep it coming. But it has been a pleasure to work with you, and I really appreciate all of your efforts. So thank you.

CHAIRMAN O'RELL: Thank you very much, Jim.

Certainly, on the work plan items for the Livestock Committee going forward, the response to a proposed rule will be a high priority as well as the origin of livestock. That has been discussed.

MR. RIDDLE: Uh-hum.

CHAIRMAN O'RELL: That wasn't the primary focus here, waiting for it; we had hoped that there would have been a proposed rule published prior to this meeting, but --

MR. RIDDLE: Yes, and the challenge for the Board, to act as a Board, you have to take actions at a public meeting. Oftentimes these proposed rules aren't in play.

But what we had done in the past, and I encourage the future Board to consider, is to compile comments and then send it as a letter from the Chair.

CHAIRMAN O'RELL: Absolutely. If the comment period is open during a portion when we can't meet in public, we will do that, yes.

MR. RIDDLE: Yes, okay, great.

CHAIRMAN O'RELL: Thank you.

MR. RIDDLE: Thanks.

CHAIRMAN O'RELL: Tom Hutcheson, and next up, Joe Mendelson.

MR. HUTCHESON: Hello. Tom Hutcheson with the Organic Trade Association.

It is nice to have been bumped to

the second day because now I can include all the collective wisdom from the first day in our own comments and have them be a little bit more polished that way.

That said, it, of course, does not include our reflections on the discussion this morning. I would like to speak a little bit about that.

First, we would like to inform the Board that in the next few weeks OTA will launch a pilot ingredients commercial list for OTA members. This follows extensive work with our ingredient suppliers and our Council, and we will keep the Board informed of our experience with this list-serv as we go forward.

In our written comments, you will notice that we do comment on a number of the items before you: the Pet Food Task Force, compost, hydroponics, agricultural and nonagricultural, commercial availability, aquaculture, and the recommendations of the

CAC Committee. I am just going to focus on a few of these for now.

First, agricultural and nonagricultural, we do appreciate the very deep work that went into the recommendations. However, while the recommendations point towards a desirable end, it is evident that we may not be ready for all parts of the recommendation to move forward.

While OTA supports the designation of yeast as agricultural, and we now do understand there are issues with livestock, it is apparent that the trade is not ready for all microbials, including bacteria, currently to be designated as agricultural.

Therefore, we do not support the deletion of the words "or a bacterial culture" from Recommendation No. 1, but we do support the other deletion in the definition of nonagricultural substance and

see no reason why that cannot move forward expeditiously.

In Recommendation No. 3, we do support the expeditious inclusion of yeast as soon as the other issues are solved. We feel that dairy cultures are not yet ready, as questions do remain regarding appropriate standards for organic dairy cultures.

We would also support moving yeast to 606 once animal feed questions are resolved, if it can be done as a technical correction, which it might be considered if the definition of nonagricultural changes, as you have proposed.

Regarding commercial availability criteria, some of the information requested consists largely of subjective market assessments which require considerable speculation. For example, regarding evidence of hoarding, how might a small handler substantiate the very real concern that a few large manufacturers could force

out their competition by buying up all available organic supplies of a critical minor ingredient?

A closely-related issue is that identification of sources or product or ingredients is usually confidential business information, which has been pointed out. We must protect the identity of these sources as confidential or risk having commonly-available organic product bought out by perhaps even one large buyer, which would force small businesses to drop product lines, a situation from which it would be extremely difficult to recover.

Regarding the NOSB and NOP role in review of petitions, we suggest implementing a process that involves posting all petitions for inclusion on 606 for public comment prior to NOSB review in order to permit potential suppliers of a petitioned product to come forward. This, I think, would complement what you are looking

for in a review of risk assessment for commercial availability.

Again, I do urge you to read the full written comments. There are other points to be made.

Regarding the issuance of certificates, including both issuance and renewal dates on a certificate should satisfy buyers' needs for current information. We understand that initial certification is not necessarily for a year and renewal dates would be in terms of a year in terms of the annual review.

Thank you very much.

CHAIRMAN O'RELL: Thank you, Tom. Just one note in your comments about yeast and being able to be moved with a technical correction, and I know that is kind of a shaky area. But there is a petition that has been filed for requesting removal of yeast from 605(a) and being placed on 606.

MR. HUTCHESON: And we do hope

that all of those 606 petitions, including any petitions for flavors, can be reviewed expeditiously. We have been urging members to submit petitions for 606 as much as we can --

CHAIRMAN O'RELL: And they have.

MR. HUTCHESON: -- and we are going to continue to do that.

CHAIRMAN O'RELL: And I believe that.

(Laughter.)

And we will try to get to them as timely as we can because we understand the urgent need for the industry with the June 7th, 2007 deadline approaching.

MR. HUTCHESON: Thank you very much.

CHAIRMAN O'RELL: Thank you.

Any questions for Tom?

(No response.)

Thank you.

Joe Mendelson, and next up is

Neil Sims.

Joe, I believe you have a proxy.

MR. MENDELSON: I do have a proxy from Steve Gilman of NOFA-Interstate.

CHAIRMAN O'RELL: So we will take him off the list and you have his time.

MR. MENDELSON: I will try not to use it all.

CHAIRMAN O'RELL: Ten minutes.

MR. MENDELSON: Good afternoon. My name is Joe Mendelson. I'm with the Center for Food Safety and the National Organic Coalition.

As always, I want to thank the program and the Board for all their hard work.

I do want to state for the record, to my knowledge, I don't have any outstanding FOIAs with the agency at this point.

(Laughter.)

So I would like that duly noted

in the record.

Briefly, yesterday there was some discussion about whether organic is a philosophy or a science, and I would proffer that it is both. It is the best of ecological science and it is a philosophy. It is not either/or.

In that context, I would like to talk about aquaculture. I have submitted comments on the recent questions. It is not up on the website yet, but copies are going around right now.

First, a little context: The Center for Food Safety recognizes that there's benefits of applying organic practices to aquaculture, but I think qualification for the organic label depends largely on the systems that are used.

Frankly, a system that puts an Atlantic salmon in an open-water net pen in the Pacific Ocean and feeds it fishmeal derived from wild-caught forage fish should

never be considered to be organic. We think such a system is antithetical to the ecological principles that underlie what organic was or how organic was developed and why Congress passed the OFPA. It is contrary to consumer expectation as to what a label on organic fish would mean, and, frankly, it is also, I think, contrary to both the OFPA and the implementing regulations.

First, on the ecological principles, there's no question that organic is focused on environmental protection. The history of developing the regulations and the law all reflect this, going back from the original 1980 study of organic that the USDA did to the 1990 passage of the OFPA, and what Congress was saying about organic at that time, the 2000 regulations, and more recently, in 2005, what the Board did to amend farm plans to greater incorporate production of biodiversity.

I would remind you that the organic regulations define at 205.2 organic production as promoting ecological diversity and conserving biodiversity. Well, the questions that were offered or asked for responses that might allow up to 12 percent fishmeal derived from wild-caught forage fish and open-water net pens I think violate this principle.

I will go briefly. I know a number of colleagues of mine from the environmental community will be speaking on these issues.

But escapees from net pens are directly looked or have been linked to loss of native biodiversity. The concentration of fish that are in these open-water pens has been linked to spreading of diseases that transfer to native populations. The concentration of waste from these facilities has been linked to toxic algael blooms and other environmental harms. The use of wild-

caught fish from forage fish, frankly, would be supporting an unsustainable practice of harvesting forage fish in many fisheries.

In fact, as more ecological science comes down, we are finding that forage fish form a basis for marine ecosystems. So impacts on those from fishmeal production really need to be further looked at, and I don't think can be considered at this point to be consistent with an ecological principle, especially when you are taking more forage fish out than the protein you are getting out ultimately from some of these systems.

Consumer expectation, there is one poll or focus group that I know of that is done by the New Jersey Department of Agriculture. Consistent with this environmental issue, just under 60 percent of consumers say they expect fish that have an organic label to be produced through systems that reflect environmental

soundness.

Second, the poll says that 95 percent of consumers expect that the fish that they would be buying with organic labeling would have less contaminants or no contaminants in it.

The fishmeal issue, that impacts directly on the fishmeal issue. We know that fishmeal derived from wild-caught forage fish has been linked to concentrating environmental contaminants such as PCBs and dioxin into that fishmeal.

When you combine that fishmeal being fed to, say, a salmon that is normally a migratory fish, but is confined to a net pen, that fish will be fatter. In that fat, it will have higher levels of PCBs and dioxins.

The farm fish, compared to a wild-caught fish, will, indeed, have increased contaminant levels. My comments reflect citations to scientific reports to

that effect.

That would be in direct contradiction of what consumers expect. They would not expect a farmed organic fish to have actually higher levels of contaminants.

Last, I would like to talk about the potential violations of OFPA. Allowing up to 12 percent fishmeal, I think falls in direct contradiction with the Harvey case. We know the Harvey decision says that organic livestock requires feed rations to be 100 percent organic feed. Right now, fishmeal derived from wild fish cannot be considered to be a feed that is organic. Essentially, allowing up to 12 percent would mean you have an 88 percent organic feed ration, not 100 percent feed ration.

I don't think you can say levels of 12 percent fishmeal are a feed additive or a supplement. I just don't think that washes.

Also, I would remind the Board that 205.239 -- and we have had discussions of this in the dairy issue -- requires producers or organic operators to establish and maintain livestock in living conditions that accommodate their health and natural behaviors. I think the Board needs to look very hard at whether using a migratory fish such as a salmon in a net pen kind of facility can be consistent with that standard.

Two other brief comments: One is on enforcement with this issue. I know there has been a lot of talk between industry, our organizations, a program about better enforcement. Well, right now there are products out there that are labeling their product as organic fish. There are no standards. The regulations don't even define fish as livestock because of the specific issue of not having standards.

Congress was clear that, when the

OFPA was passed, that USDA had jurisdiction and should enforce against any product that is labeled organic and implies that it is meeting the USDA standards but does not. I think it is time and consumers deserve to know what they are buying, and with organically-labeled fish at this particular time, they don't know.

Lastly, there was brief mention of the Peer Review Panel. I think Joe properly characterized what happened with the ANSI report, but I would also remind the Board that, back in October of 2002, our organization petitioned the Department of Agriculture, the Organic Program, to establish a Peer Review Panel based on the May 2001 NOSB recommendation for a Peer Review Panel. That legal petition is still pending. We have not received an answer to it.

We certainly appreciate the ANSI audit, but we do not feel that that was a

legal response to our petition. I would encourage the Board to look back at that recommendation and also our petition.

Thank you.

CHAIRMAN O'RELL: Thank you, Joe.

Any questions for Joe? Bea?

MS. JAMES: Is it feasible to assume that perhaps it might be just too difficult to certify fish as organic, wild-caught?

MR. MENDELSON: To certify wild-caught fish as organic, I am not sure how a certifier could certify vast ecosystems where fish is produced as somehow being consistent with organic.

I don't think we should feel that that's bad or unfortunate. I think there are a lot of folks who are looking at wild-caught systems and marketing their fish as wild-caught. Maybe that is the top of the pyramid, if we have sustainable wild-caught fisheries and then move on to organic.

Sometimes maybe we can't do the whole ball of wax. In my mind and in our organization's mind, that is fine.

CHAIRMAN O'RELL: Mike?

MR. LACY: Joe, I just wanted to be sure that we have been clear enough in our questions. The 12 percent fishmeal and fish oil thing was a temporary --

MR. MENDELSON: Yes.

MR. LACY: Okay. I just wanted to be sure.

MR. MENDELSON: We understand it is a temporary, but I still think that we have seen temporary, and you know, just the discussion on sunset, temporary doesn't always mean temporary once you have had it there for seven years. So that is a concern to us.

I would say one thing I did forget: that as far as consumer opinion, we did go out to our 40,000-member true food network to get their opinions on what they

viewed an organic label for fish would mean. We are still in the process of collating that information. Once we do have it, we will, of course, forward it to the Board.

CHAIRMAN O'RELL: Dan?

MR. GIACOMINI: Without having had an opportunity to look at your entire comments, you specifically mention problems with open pen, with the 12 percent fishmeal violating Harvey, with aspects of migratory fish being in a natural setting. Not meaning to sound flippant or anything, do you see any potential for organic farmed fishing, aquaculture?

MR. MENDELSON: I think we do. Like I said, it is system-dependent. I think closed systems, maybe some land-based systems, systems that are not initially based on fishmeal.

So maybe you are looking at herbivoric species or fish species that don't feed on fishmeal. That, in fact,

could be a basis for developing organic fishmeal down the line.

So I don't think we rule out organic aquaculture. We certainly understand that there's a history of using aquatic animals in farm systems for centuries. So I don't think aquaculture is per se inconsistent with organic.

CHAIRMAN O'RELL: Any other questions? Bea?

MS. JAMES: I am just trying to get my head around this idea of the netted-off pens that are in the ocean, having that be certified when the ocean water is the same as the wild-caught, whereas in crops, agriculture, you have to have your land go through a period of three years. The ocean never changes. It is what it is.

So I'm just confused how we could have netted-off pen systems as a possibility for organic fish.

MR. MENDELSON: Well, as my

comments reflect, I agree. I hadn't looked at it, considered the difference between certifying a land-based system over a three-year transition and water sources versus the actual water sources.

I think, just based on an ecological principle, and what we know happens to net pens and the escapes, the fish, and what that means to the environment, that it is inconsistent.

CHAIRMAN O'RELL: Thank you, Joe.

Neil Sims, and then next up is Dom Repta.

MR. SIMS: Aloha. My name is Neil Anthony Sims. I am the President and Co-Founder of Kona Blue Water Farms.

There was an insert, I believe, in your folders to this effect, which I would like you all to refer to, if you can, as I go through.

I am also a representative of the Organic Seafood Council. The Organic

Seafood Council is an industry association of producers, brokers, wholesalers, certifiers, and other industry entities that have come together to allow us to speak with one voice on issues that concern us.

These deliberations of your Board are of tremendous importance to our Council and to the future of organic seafood.

Kona Blue is the first integrated open-ocean fish farm and marine fish hatchery in the U.S. We are growing a sashimi grade Kona Kampachi in waters over 200-feet deep, using innovative hatchery techniques and advanced ocean engineering.

We are committed to environmentally-sound aquaculture, and we believe that open-ocean fish farming can and should be able to be organic. Our fish deserve it; the environment deserves, and American consumers deserve it.

The principles of organic production lie at the core of our company.

Our company's mission is to expand the environmentally-sound production of the ocean's finest fish. Our company's core values are sustainability, product quality, and consumer health, all of which are fundamental organic principles and essentials of organic consumers' aspirations.

Just as an aside, and additionally actually, our Chairman, Mr. Tom McCloskey, was formerly the lead investor and Chairman of Horizon Organic Dairy, one of the largest organic success stories in the world.

I respond in the following pages here to the specific questions that were delineated in the September 8th invitation for comment.

However, firstly, I would like to address that which I believe is a wide misapprehension, that fish farming is inconsistent with organic principles. This

perspective has been deliberately fostered by some of the prior testimony to this Board, testimony that is at best ill-informed and at worst broadly slanderous.

The best way to address these untruths is through transparency. I, therefore, issue an open invitation to you all as a Board or as individuals to come to Kona and to visit our offshore fish farm site and our hatchery operation.

There you will see the waters in which we culture our fish, some of the cleanest waters on earth. You can snorkel around our cages and see that the water quality upcurrent from our fish cages is, indeed, indistinguishable from the water quality downcurrent of the cages.

You will see how we rear our fish, native fish, in the hatchery using algae that we grow ourselves to feed to the zooplankton, which, in turn, feeds our larval fish.

You will see the innovative submersible cages that we have deployed, which reduce the likelihood of escapes and minimize the impact on the view plane.

You will see us humanely harvest our Kona Kampachi, a fish that in the wild is considered unsalable, but which we, through our rigorous commitment to quality in our hatchery and grow-out procedures, we are able to render into a high-end sashimi-grade product that is prized by the top chefs throughout the country.

I realize that it is difficult for you all with your busy schedules to travel to Hawaii, much as you might wish. So I have inserted here amongst the text of this submission photographs of our fish and fish farm that should help to inform your thinking.

I would also recommend you to our website, where we have video footage of our fish offshore and details of our

comprehensive permit process and the ongoing monitoring. In the interest of complete transparency with our community and with our customers, we have water quality data from our ongoing water quality sampling program, www.kona-blue.com.

I hope that this will help you to understand that, while fish farming is often framed as a pejorative, we believe that it can and should be conducted in an environmentally-sound manner, in strict accordance with ecological and organic principles.

Certainly, there are additional costs that we must bear to ensure that our fish farm meets the standards which we have already independently set for ourselves, but we also hope that organic certification can provide recompense for what we have accomplished so far and can further spur us and other fish farmers like us towards continuing improvements in our farming

methods.

This is what organic certification has done for dairy, beef, poultry, and crop production. This is what it should also do -- no, this is what it must do -- for seafood.

Thank you.

CHAIRMAN O'RELL: Thank you, Neil.

Nancy?

MS. OSTIGUY: Just to clarify, do you use any fishmeal?

MR. SIMS: Yes, we do. About 50 percent of our feed is a combination of fishmeal and fish oil.

We were originally feeding our fish what is called an organic diet. It is produced in British Columbia, but it is organic in European standards. But this is primarily based on Peruvian anchovies, which was to prove that an anchovy fishery is sustainable in its current sense; it is not

scalable. If we are going to go and build an industry around open-ocean aquaculture, we want to find a more broadly-sustainable solution in the long term.

So this organic fish feed, we recognized ourselves, wasn't what we would like to embrace as a company. So we worked with the feed company, and we said, "We need to include more sustainable ingredients in here," primarily those of agricultural origin.

So we have been able to replace 50 percent of the fishmeal and 25 percent of the fish oil with agricultural grains. We can't do this with an organic feed now because there are not the organic grains available in the quantities that we would need.

We would also hope to find -- I'm sorry, you're looking -- we're talking primarily about Canola, which is the main replacement for the fish oil. There is not

organic Canola available, so I am given to understand.

We also aspire towards more replacement of the Peruvian anchovy by use of fishmeals and fish oils from byproducts from edible seafood processing, such as the Alaskan pollock or the salmon.

One comment that I would have on the questions that you have here, it is not really clear to me the delineation that is drawn between fishmeal and fish oil from reduction fisheries, such as the Peruvian anchovy, and fishmeal and fish oil from processing byproducts of what are otherwise edible seafoods.

I think an organic principle would say that we should embrace the recycling of these byproducts, and so we shouldn't restrict fishmeal and fish oil from these edible seafood processing byproducts. Perhaps you may wish to limit fishmeal and fish oil from Peruvian

anchovies and like fisheries, although they do come from incredibly clean waters in a very well-managed fishery, but the other byproducts I think we should encourage, just as the fundamental organic principle of recycling and good use.

MS. OSTIGUY: A followup: My question actually has to do with whether or not the feed is organic, and you're saying no, is what I am hearing.

MR. SIMS: Organic by what standards, please?

MS. OSTIGUY: By our standards.

MR. SIMS: By the standards of the 12 percent, as it is drafted in here?

MS. OSTIGUY: No, no, no. As it exists right now, the organic standards that animals and plant production are currently held to by OFPA and the rule.

MR. SIMS: No, the fish feed that we are using at the moment is not because the grains that are included in there do not

come from organic sources. We would love to have organic Canola available to be able to include that.

The other thing is fishmeal, I am a little unclear about the status of fishmeal because somebody had mentioned earlier today that fishmeal is included in organic poultry feed. Could somebody perhaps -- is that correct?

MS. OSTIGUY: No. No.

MR. SIMS: There is some confusion. And if it is, I would wonder why are we drawing a delineation between what we feed the chickens and what we feed the fish.

Perhaps the same question might be asked of fish oil, if fish oils are included in any agricultural, any other feeds for other agricultural animals.

MR. KARREMAN: I believe there's some soluble fish oils that some of my dairy farmers have used in the organic -- they're certified organic.

MR. SIMS: Okay. Please remember this is a sustainable fishery for these forage fish in the Peruvian anchovies, which is the prime source for what we use. But we, ourselves, recognize we don't want to be wholly reliant on this. We want to move towards something that is more broadly sustainable, as we are building a larger industry out there.

CHAIRMAN O'RELL: Joe?

MR. SMILLIE: I hesitate, Chairman, because of the time constrictions, to open up the full-scale aquaculture debate, which we will have.

CHAIRMAN O'RELL: Right, which is not on the agenda to be a general vote item.

MR. SMILLIE: It is not on the agenda for a vote.

So having participated in the Aquaculture Task Force, as Kevin has also, I think this is a large, complex issue. Neil has brought a number of very important

points. Again, it is going to be one of those issues on what goal do we want to achieve.

Do we want to bring in organic aquaculture or do we not want to? What compromises are we willing to make to do so?

It is going to be a long one and, I am sure, a contentious one, but I just don't think we can start it today. But I really thank you for your comments and sort of putting it out there, because we will be dealing with it in great detail.

MR. GIACOMINI: And we will work on taking you up on your offer.

(Laughter.)

MR. SIMS: Bring your sunscreens and your mask and snorkel.

CHAIRMAN O'RELL: Just make sure you read your conflict-of-interest guidelines before you head to Hawaii.

(Laughter.)

However, as an outgoing member of

NOSB, I could certainly be talked into going there.

(Laughter.)

MR. GIACOMINI: We all must be properly educated before making a decision.

CHAIRMAN O'RELL: Just remember it is sashimi grade.

MR. DAVIS: A quick question.

CHAIRMAN O'RELL: Gerald?

MR. DAVIS: I'm not sure if it is in here somewhere. This species of fish, is it carnivorous or --

MR. SIMS: Yes, it is carnivorous.

MR. DAVIS: In its natural native -- okay.

MR. SIMS: Yes.

MR. ENGELBERT: Kevin, real quick?

CHAIRMAN O'RELL: Yes, Kevin.

MR. ENGELBERT: Do you have any plans for any other species of fish, to try

to raise in the methods you're using right now, for those types of pens, that location, that water depth? Any other plans anywhere else of any type of diversity?

MR. SIMS: Not immediately. This one fish distinguishes itself so well with feed conversion ratios and its growth rates and its presentability, both as a sashimi product or in the white tablecloth restaurant.

It is a tremendous fish to be growing. I am really proud to be growing it. I would love to be growing it organically.

CHAIRMAN O'RELL: Thank you, Neil.

Dom Repta and Amy Nankivil.

MR. REPTA: Good afternoon. My name is Don Repta. I'm from the Coastal Alliance for Aquaculture Reform. From the name, you should be able to figure out what I'm going to be talking about, aquaculture.

I have come from British Columbia. This issue of organic aquaculture is extremely important to us, in reference to the NOSB, in that British Columbia is the largest supplier of farm salmon to the United States. Seventy-seven percent of our production ends up in the United States market, which recent data shows is about 50,000 metric tons of farmed salmon end up into the U.S. market.

I am here to say that we do commend the Committee on taking on this pretty contentious issue of aquaculture. We have been working as a group for somewhat two decades now on salmon farming issues. So you might be there in 20 years as well.

We do not support open-net cage carnivorous species for organic standards. We would support herbivores in these standards.

We think that it is imperative that the production method in the

carnivorous species such as salmon, which most of my experience is with, be considered separately, and even considered whether or not it will ever fit into the framework of organic principles.

The basis of this is basically 15 years of peer-reviewed published science that I have included into the written submission I have made, six pages of peer-reviewed published science, which I think is really important to mention, that it shows that actually open-net cage systems cannot uphold the ecological integrity of the surrounding environment. It can't even maintain the ecological integrity of the surrounding environment. In fact, open-net cage carnivorous farms in British Columbia are showing to decrease the ecological integrity of the surrounding environment.

Most recently, you probably have heard the really hot issue in British Columbia is the issue of sea lice impacting

wild salmon. Wild salmon are pretty much a foundation of the entire coastal ecosystem up and down the West Coast, extremely important in British Columbia.

Right now, we just had a report come out of the University of Edmonton, co-written by the University of Victoria, Princeton, and Hawaii, showing that migrating juvenile wild salmon that pass salmon farms are having up to 95 percent mortality rates from sea lice. This is an astronomical impact on the foundation of the coast.

We are seeing escapes of farm salmon globally. We have partners in Chile, Norway, Ireland, Scotland. It is fair to say right now that the standards for conventional farm salmon do address this. They do say that production facilities must minimize escapes. Yet, we have over a million escapes a year globally.

In 2004, in British Columbia, we

had 40,000. I know in Europe they have had incidences, single incidences, of over half a million farmed fish, farm salmon.

We do have the issue of waste. I did take note that in the standards, the draft recommendations, waste is actually categorized as a metabolic product, which I find quite odd.

This is the waste; we are talking about large-scale farms here. We are also talking about a product that has a cultural impact in British Columbia. We have First Nations territories, First Nations populations who are dependent on species that exist around salmon farms. We are seeing that their rockfish populations are being contaminated, and we are seeing major impacts on their clam beds.

So there is a cultural aspect to these standards as well that I think is missing in the draft recommendations, especially if we are getting area-specific

to British Columbia.

We also have predator impacts. Again, already in the conventional industry they are supposed to minimize or eliminate impacts on predators. There are a couple of farms in British Columbia that are operating under what they would call organic principles. Yet, in May of this year, we had 1300 sea lions drown in one net. That was pretty significant impact. Again, we are seeing these impacts consistently through the last 30 years.

Okay, some things that I will get to: The solution is closed containment. We have been working for that for a long time. However, closed containment technology in the marine environment still does not adhere to organic principles.

It is not allow the innate behavior of the salmon. They are a migratory species.

And on the feed issue, even if we

decrease or allow 12 percent feed to be used, we are still talking about a feed conversion efficiency rate of 1.5 to 1. If we assume that organics is going to grow in the next seven years to 25 percent of production of BC farm salmon to the U.S. market, we have a net loss protein of 8500 metric tons of wild fish still. Highly inefficient, does not adhere to organic principles.

Also, we are at a point now where I think consumers really have clarity on what organic means. We have a system that is really supportive of organics. To introduce a species that is so contentious with, you know, we have environmental groups that will be sending a different message than somewhat that the organic producers will be, I think it muddies the water on what organic means.

Please ask me questions -- lots.

(Laughter.)

I came all the way -- this was an expensive 300 seconds I just had.

(Laughter.)

CHAIRMAN O'RELL: Well, you gave us a lot of information here, though, in the handout, which is great.

MR. REPTA: Yes.

CHAIRMAN O'RELL: And we appreciate that because it will be information for us to consider in discussion, further discussions on the topic.

Any specific questions at this time? Nancy?

MS. OSTIGUY: A similar question that was asked to others: Are there any types of seafood operations that your group would find acceptable within an organic system?

MR. REPTA: Yes, for sure. We would find species much lower on the trophic level. We would find herbivores acceptable.

The real issues are raised in carnivores. I mean I believe this would be the first time in North America that USDA and OCB would allow the farming of a carnivore to be called organic.

So I am not sure -- I think I'm correct in saying that. But we can't see how it fits into the kind of organic paradigm.

I must say there are a lot of global initiatives working right now to reform the salmon farm industry. There are partnerships with industry, environmental groups, academics, scientists, retailers. So this work is being done already.

I think we can get it to a place that goes beyond the organic scope and actually see organic certification of carnivores, actually, take us a step backwards from where we already are.

CHAIRMAN O'RELL: Yes, Gerry?

MR. DAVIS: I'm very ignorant on

aquaculture. I do not sit on the Task Force.

A quick question though: Your organization is against net pens and net type of culture. How do you farm salmon?

MR. REPTA: Well, currently, in British Columbia the only technology used is open-net pen systems. We have been working to reform the industry for a number of years now.

We are at a point now where we are at the table with governments and industry, and really looking at the economic feasibility of closed containment systems. We are comparing the economic feasibility. In that comparison, we will look at actually right now what the industry can just put off as externalities, including that into the cost of open-net systems.

There is a trial project that is supposed to be happening in this upcoming year of a closed containment system. We

have worked very hard on getting the funding going for this. So we are committed to reforming the industry, not shutting it down. But we believe it can be brought to a place that resembles sustainability in some form.

CHAIRMAN O'RELL: Nancy?

MS. OSTIGUY: These reforms that you are trying to negotiate, one of my questions has to do with the innate behavior of, let's say, specifically salmon. Is there a way to do a confined system that actually accommodates their innate behavior?

Part of the reason why I'm asking is that how we choose to do the aquatic standards has a lot of influence on other species, including one that I'm most familiar with, which is honey bees, accommodating natural behavior and forage being very important.

MR. REPTA: Short answer: No, which is why we believe that this falls

outside the realm of organic standards. I mean it is not to say that we shouldn't keep pushing for reform.

We have gone through this process in British Columbia. For two years, we had the Certified Organic Association of British Columbia looking at aquatic species.

One of their main reasons for denying organic certification was that it would not allow the innate behavior, open-net cage systems and closed-net cage systems, which is one of the reasons why I think that basically salmon farming or carnivores can't be classified organic. It can be classified as something, whether it is more sustainable, whether it has a different kind of stamp on it, but I really think the push for organics is just a push for marketplace.

CHAIRMAN O'RELL: Any other questions?

(No response.)

Thank you very much.

MR. REPTA: Okay, thank you.

CHAIRMAN O'RELL: We appreciate your comments.

Amy, I think that we are going to take a break, if that is okay with you, and you will be first up. I appreciate that.

Oh, we have a 3:15 break. I thought it was 3:00. Okay, all right. I just did a time check. I thought it was 3:15.

Corey Peet is next on deck then.

Thank you.

MS. NANKIVIL: Hi. I'm Amy Nankivil, and I am with Northland Organic Foods and Northland Seed and Grain, based in St. Paul, Minnesota.

Thank you for the opportunity to speak today. I would like to make a few comments regarding the Handling Committee's recommendation not to renew bleached lecithin as an allowed substance on the

National List under 606.5.

Much of what I prepared to say today was discussed earlier this morning, and I am in agreement with most of the ideas presented. Therefore, I will move through quickly to get to break.

There seemed to be some confusion surrounding the use of lecithin and the forms in which it is available for food, cosmetic, and nutriceutical uses. There are essentially two primary forms of lecithin used today, a fluid form and a powdered form. Within each of these two forms, there are many different versions or specifications. I believe one commenter suggested up to 165 forms.

Lecithin, bleached, has been listed by the NOP under 605(b) and primarily referred to powdered lecithin, which is considered a nonagricultural product.

Unbleached lecithin, on the other hand, has been listed under 606 and covers

fluid lecithin that is unbleached and is considered an agricultural product.

I brought two samples to show the difference between fluid and powdered lecithin. One is a typical bleached fluid lecithin; the other is a typical bleached powdered lecithin.

As you can see, they have very different physical appearances. As you can imagine, they have very different functional properties.

While fluid lecithin is primarily used in margarine and chocolate manufacturing, the powdered form is used in dry bakery and beverage mixes, cookies, pretzels, dried fruit, powders, instant infant formula powder, cosmetics, and anywhere else that a liquid with high soy oil content cannot be used.

At Northland, we produce and sell both fluid and powdered lecithin as conventional non-GMO products. Northland

and others have worked with experts in the oil and lecithin fields to develop certified organic dry lecithin. It has comparable characteristics and properties to the conventional counterparts.

As of today, we have been unsuccessful. We and others continue to work and hope to have something acceptable in the future.

While fluid organic lecithin works for certain limited uses in chocolate and margarine production, it does not function well for most other applications, particularly where a powder form is required. This can be confirmed by the many organic food manufacturers who have tried the fluid organic version and who have submitted letters to the NOSB recommending to renew both bleached and unbleached lecithin. In fact, there were 20 companies that originally petitioned to specifically keep bleached lecithin on the list.

The NOSB Handling Committee made a final recommendation for 606 lecithin, unbleached, on April 20th, 2006 to renew the substance, saying, quote, "The Handling Committee agrees, based on compelling evidence given by a manufacturer of organic lecithin, unbleached, that every use of lecithin, unbleached, cannot be adequately filled by the organic forms that are currently available."

It follows, then, if unbleached fluid lecithin does not work for all applications, then certainly the same fluid product that is bleached will not work either.

It is even more clear that the fluid form of lecithin will not work to replace the powdered form.

Commercial availability is defined as, quote, "the ability to obtain a production input in an appropriate form, quality, or quantity to fulfill an essential

function in a system of organic production or handling, as determined by the certifying agent in the course of reviewing the organic plan," end quote.

Organic bleached lecithin powder is not available in an appropriate form, quality, or quantity to warrant having it removed from the National List, nor will the fluid form work as a replacement.

While it is the goal of everyone here today to work diligently to replace non-organic ingredients with certified organic counterparts, we must be sure that the organic versions are readily available in the form, quality, and quantity before removing the non-organic counterparts from the National List.

Therefore, based on the information that Northland and many others have submitted, I would like to ask the NOSB Handling Committee to strongly reconsider and renew lecithin, bleached, as published

in the final rule 205.605(b).

Thank you very much for considering my comments and your hard work on this particular ingredient.

CHAIRMAN O'RELL: Thank you, Amy.

Any questions?

(No response.)

Thank you.

MS. NANKIVIL: Thank you.

CHAIRMAN O'RELL: Corey -- oh, Rebecca. I needed my glasses.

MS. GOLDBURG: I'm pretending to be Corey.

CHAIRMAN O'RELL: Okay.

MS. GOLDBURG: As you can tell, I am not Corey Peet. I'm Becky Goldburg. But Corey couldn't be here today, and he asked me to read his comments and I agreed to do so.

CHAIRMAN O'RELL: Okay. You are also signed up --

MS. GOLDBURG: I am signed up to

offer my own comments.

CHAIRMAN O'RELL: Okay, so this is just --

MS. GOLDBURG: These comments are on behalf of the Monterey Bay Aquarium.

CHAIRMAN O'RELL: So it is not a proxy. It is five minutes.

MS. GOLDBURG: It's five minutes.

CHAIRMAN O'RELL: Thank you, Rebecca.

MS. GOLDBURG: Well, first of all, I want to thank you for the opportunity to offer these comments. Please accept these comments on behalf of the Seafood Watch Program of the Monterey Bay Aquarium.

"Since its inception in 1984, the mission of the Monterey Bay Aquarium has been to inspire conservation of the oceans. For the last six years, the Seafood Watch Program has been working to foster consumer and business awareness and action for sustainable seafood. Over this time, we

have distributed over 8 million easy-to-use pocket guides to consumers throughout the United States.

"We have submitted comments to your questions and summarized them here today.

"Overall, we are in support of organic aquaculture, especially for low food chain species such as shellfish and odiferous fish grown in systems where inputs and outputs can be carefully controlled.

"At present, we have considerable reservations about the concept of organic production for carnivores species, such as salmon and other emerging species grown in open-net pen systems, as these species and systems are currently inconsistent with the principles of organic production.

"In addition, these pose considerable sustainability concerns regarding the protection of wild ecosystems, human health, and feed procurement.

"The scientifically-documented environmental impacts associated with open-net pen production of carnivores includes the high use of marine resources for feed, contaminants, escapes, disease and parasite transfer, the release of chemicals, and impacts on local predators.

"Many of these issues result from the use of open-net pen technology, which is dependent on a free flow of water from the cages to the surrounding marine environment. This lack of control over inputs and outputs means that open pens are simply not consistent with the current principles of organic production which requires careful control over inputs and farm exports. As such, we do not support products grown under these conditions as being labeled organic at this time.

"In addition, we suggest that certifying the use of wild fish as organic feed input is a direct contradiction of

organic principles and a requirement of control at all levels of production.

"In addition, the reduction and complete elimination of fishmeal and fish oil is also not consistent with organic principles, which state that species must be fed a diet consistent with their natural diet. While it is likely that alternatives to fishmeal and fish oil will be developed, the numerous scientifically-documented environmental concerns with farming of carnivores, the inconsistency of these alternative diets with organic production principles, and the inconsistency of using wild fish as feed with organic principles call into question the suitability of carnivores as being labeled organic at this time.

"An additional serious issue for the farming of carnivorous fin fish involves the high use of fishmeal and fish oil in their diets. Leading scientists have warned

about the inherent unsustainability of farming of the food web because of the relative inefficient use of marine resources.

"Additionally, although it has been argued that some reduction fisheries are sustainable or well-managed, present fisheries science models give little consideration to the importance of small pelagic fish in the wider ecosystem.

"The ecosystem sustainability of reduction fisheries must be resolved before specifies heavily dependent on these feed inputs can be certified as either sustainable or organic.

"We firmly believe that organic production should represent the gold standard for human health and sustainable production. The statement `good for you and good for the earth' is widely believed to be the consumer expectation of organic products.

"The USDA organic label is an established and trusted name to consumers, and USDA should seize the opportunity to set a gold standard for sustainable organic aquaculture.

"Given the range of issues associated with production of carnivores fin fish and the numerous ways that farming carnivores are incongruent with organic production principles, we conclude that trying to certify farmed carnivores at this stage could erode the high standing that the USDA organic label has with consumers.

"Given the confusion in the marketplace over what is sustainable and healthy, it is very important that the USDA organic label remain true to its principles and lead the marketplace in setting a high bar for healthy and sustainable products.

"Thank you for the opportunity to comment, Corey Peet, Aquaculture Analyst, and George Leonard, Science Manager, for the

Seafood Watch Program at the Monterey Bay Aquarium."

And I understand that the Aquarium also submitted, and I have seen them on the web actually, much longer comments for the Board.

CHAIRMAN O'RELL: Yes. Thank you, Rebecca.

MS. GOLDBURG: Okay, thank you.

CHAIRMAN O'RELL: The next person on the list, I think I got a note to take this individual off. So I just want to check with the audience. It was Sue Ann McAvoy. She's not here. Okay. So we can take her off the list. I didn't want to pass anybody up.

It is 3:15 now, and we do have a scheduled break. So I would like to take a 15-minute break.

When we come back, Diane, you are up, and Lynn Clarkson will be following Diane.

We are going to start promptly at 3:30.

Thank you.

(Whereupon, the foregoing matter went off the record at 3:19 p.m. and went back on the record at 3:40 p.m.)

CHAIRMAN O'RELL: Diane, I see you are ready to go. How about that?

MS. GOODMAN: No time to lose, guys.

CHAIRMAN O'RELL: Thank you.

Lynn Clarkson is following Diane.

MS. GOODMAN: I would really like to wait for Julie to be here. Is that possible?

CHAIRMAN O'RELL: Wait for who?

MS. GOODMAN: Julie. I could switch.

CHAIRMAN O'RELL: If you want to switch, because we have a quorum here, and I apologize that there is a member missing, but -- she's Handling Committee. Lynn is

related to Handling Committee as well.

MR. CLARKSON: My name is Lynn Clarkson. I am one of the Managing Directors of Clarkson Soy Products. We have what might be called a vested interest in organic lecithin.

I have submitted some materials being passed around to you, giving a cover letter, sort of a processor's state of the industry, followed by a couple of recommendations for you, followed by market segmentation.

We are offering you the best information we can get in the world. We are not relying only on our own opinions. We have gone out and found the leading expert, at least we think the leading expert, in the world, and tried to make sure that we are providing you very valid information.

Since I do not like to read to people who can read better than I, let me just encapsulate what we are offering here.

First of all, there are some research and development projects going right now that will moot much of your discussions today. I read all the comments that you received, and the language that we are using with respect to lecithin might be misleading.

There are really two families of lecithin, fluid and de-oiled. Under the de-oiled world, you run into powdered and granular.

So if I could walk you through a process, typically, lecithin starts with a soybean. It comes in and you extract oil. The conventional world uses hexane to extract the oil.

From the oil, you try to extract lecithin, but that carries quite a bit of oil with it. The conventional world then uses acetone to de-oil the lecithin.

So for any conventional lecithin today being used in an organic product, we

are using hexane, which is No. 80, 88, on the National Pollution Index, and we are using acetone, which is even worse. Most people aren't aware of that, but acetone is probably No. 20 on the National Pollution Index for bad things.

Okay, if we switch over to the organic world today, we start with an organic soybean. We do not use hexane. We extract the oil physically. We extract the lecithin with a combination of temperature and pressure and certain mechanical procedures.

If we then want a bleached version, we apply hydrogen peroxide; you have a bleached version.

Now if you want a de-oiled version today, you would need some solvent to extract the remaining oil residue with the lecithin. That is not available today.

But in our R&D labs, we have done that. But the conversion from an R&D

project to a commercially-available project will typically take about 16 months to 18 months. So within something like, at the low end, 12 months, at the tail end two years, there should be powdered, de-oiled, organic lecithin without any changes in the rules today. So I look forward to that day.

A suggestion for you: If there is at any time in the future a lecithin formulation that the organic world can't meet, you are in a position, I would hope, with the sufficient sophistication, to at least require that those folks providing it start with an organic soybean.

We are not facing a limitation of organic raw materials here. We are facing some process limitations.

If you would do that, then you would reduce the tendency to play games with the system, to reduce the cost of an ingredient. So we would like to see that.

When I appeared before you

before, I told you that roughly 165 formulations -- really, I perhaps confused you with that. It doesn't mean there are 165 different families. There aren't really significant differences.

There might be 165 versions of fluid lecithin, but the variations are largely on viscosity, and almost every variation there can be taken care of, be fully addressed today, inside the organic system.

So, in summary, the organic system is working the way I think you and we want it to work. It is making progress. R&D is happening. More organic products are going to become available in the ingredient line.

Secondly, we have roughly 80 to 85 percent of the current omnibus market for lecithin covered by organic lecithin, and we have some additional work to do on some things. As of today, not every usage of

lecithin can be met by an organic lecithin. It has been expressed to you by other people; it is absolutely true, but we see that changing.

So thank you for your time. Questions?

CHAIRMAN O'RELL: Thank you, Lynn.

Any questions for Lynn? Andrea?

MS. CAROE: Lynn, have you considered petitioning to have lecithin removed or the annotation on lecithin changed that would require organic soybeans be used for the listed material?

MR. CLARKSON: Yes, I began considering that earlier today.

(Laughter.)

MS. CAROE: Just to follow up on that, it is good to know that at a bench level we can do this without the synthetic solvents. However, until that is commercially available, I don't know that we

can even consider it.

MR. CLARKSON: Sure.

MS. CAROE: I mean it is nice to know, and I hope that we will receive a petition to have it taken off the list at that time, but --

MR. CLARKSON: Well, my question, let me phrase a question to you. Would you prefer we do this incrementally or would you like for us to wait the roughly 12 to 16 months and just proceed in a general way to petition for the removal of lecithin, or would you like to see us promptly submit a petition to remove fluid lecithin?

I think I understand.

CHAIRMAN O'RELL: Andrea?

MS. CAROE: I don't think it is up for us to decide that. We are going to react to what you do. I mean it is our business to serve the community --

MR. CLARKSON: Sure.

MS. CAROE: -- but we don't put

the petitions out there. When they are out there, we are going to service them the best way possible.

MR. CLARKSON: Well, these are somewhat sophisticated procedures in our community. They take a lot of your time. They take a lot of the time of the people here in the room.

So my question really was a more practical one. Should we do this twice or should I just wait and only take your time once? But I am guessing I am going to take your time twice.

(Laughter.)

MS. CAROE: We're anxious to find out what you decide.

(Laughter.)

MR. CLARKSON: Any other questions?

(No response.)

Thank you very much.

CHAIRMAN O'RELL: Thank you very

much, Lynn. We appreciate it.

Diane? Next up would be Andrianna Natsoulas.

MS. GOODMAN: Thank you. I am Diane Goodman. I am consultant to the organic industry, primarily for regulatory compliance.

This is my second comment to you. Thank you again to the Board and to NOP for the opportunity to comment today. Especially thank you to Kevin and to Nancy and to Mike for the past five years of patience and humor and diligent work.

Many of my comments were included in previous comments by me as well as others. So I promise to make this one different.

Regarding your recommendation for commercial availability information requested to add substances to 606, I got it that the Board and the Department want to see justification from the petitioner that

there is enough evidence, historical, current, and futuristic, to prove that 606 is the appropriate section for their agricultural substance and that there is the reality or likelihood that it may one day not be available in organic form.

It sounds a little vague, but we've got a lot of experience with vague. So at least we are on familiar ground.

I think the combined comments about concerns over commercial availability are all valid. I understand the explanation from those of you on the Board who I have had this conversation with, that everyone now gets it, that the NOSB is not going to make commercial availability determinations. I hear you that all the NOSB will do is evaluate a potential risk.

And I am still not convinced that there is a whole lot of difference, substantive or implied, between having the NOSB review this justification and not call

it making it a determination, since this will be new criteria and petitions will be determined for recommendation based on this decision.

Now that said, we need to take this process out for a test drive, see how it goes, and we will all know if it runs smoothly.

Please do schedule more meetings exclusively for materials review and put your recommendations forward. This will create the precedent and confidence that we need to move ahead so we can trust and confidently refine a process that will work for the Department, for the Board, and for the industry.

About colors, maybe I'm being obstinate or stubborn or obsessive or just spoiled and wanting my own way, but I still don't see why it is not possible to petition for an annotation for a substance already on the National List. It doesn't matter how it

got there, and it doesn't matter that it may sunset in a year, because right now on the list is where colors are.

While most of the substances, if not all others, that are going to end up on 606 aren't on the list anywhere, at least colors have the distinction of being there. There is an advantage to that in that in this time of no time to get this work to done, buying time to review colors in all their glorious and potentially non-synthetic use doesn't sound to me like such a bad idea.

It is not as if there aren't already more than 32 petitions in the queue and one-third of them have been returned, compounding the time necessary for petitioners to revise, correct, and make them complete, and then resubmit them to NOP.

Arthur Neal made interesting points earlier today in the discussion about

recommendations to sunset lecithin, bleached, that if there is no viable alternative, it should continue to be allowed on the National List. Robinson followed by adding that killing it would cause harm to the industry.

Needless to say, colors have no viable alternatives, and killing them will cause harm to the industry.

Arthur went on to say that the NOSB needs to base its decisions to remove a substance during sunset against criteria developed and agreed upon for sunset review.

In the case of lecithin, bleached, there never was a petition. It would follow, then, that a decision to remove it would still need to be based on the same sunset criteria.

In the case of colors, there never was a petition or a recommendation. I looked into this history and ended up in a conversation with a former NOP staff person,

Ted Rogers, who worked on the earliest version of the regulations. I knew Ted in those days, and we had a recent good conversation.

I asked him if he knew or remembered anything about how colors got on the list. He replied, yes, he put them there, and he did so based on SOOFAH, which was the System of Organic Farming and Handling, the current thinking of the day.

It seems to me, and I really hesitate to say this, that some responsibility for colors being on the list lies with the Department. So, in closing, perhaps some of the alternatives presented would offer solutions to the dilemma we have over colors. Perhaps reviewing the category against petition criteria that applies to 605(a), using the TAP review received earlier this year, perhaps considering a petition now for annotation that colors non-synthetic be approved only for one year, and

we have a precedent for this with methionine, where we have a limited amount of time that that material would be allowed for use.

Please do reconsider some kind of alternative, some kind of out-of-the-box thinking, that might not be terrible, might even be legal; just a little cushion between one category of substances at risk and some others. And if none of these suggestions are acceptable in good conscious and according to law and regulations, maybe, hopefully, you may have another idea that will.

Thank you again for all your work and commitment. I look forward, as always, to what the future holds. Thank you.

CHAIRMAN O'RELL: Thank you, Diane.

Any questions for Diane?

Diane, the methionine issue was not a sunset.

MS. GOODMAN: I understand.

CHAIRMAN O'RELL: So the precedent there --

MS. GOODMAN: It is a tricky precedent, but it is something that was annotated with an extension and then another extension to allow it on the list for a limited period of time.

CHAIRMAN O'RELL: But it has been specific, I think, in working with the program in terms of changing annotations.

MS. GOODMAN: I know, but I had to bring it up.

(Laughter.)

CHAIRMAN O'RELL: I appreciate that, and you brought up some other food for thought, I guess.

MS. GOODMAN: I hope so.

CHAIRMAN O'RELL: Color for thought. So we appreciate that. Thank you.

MS. GOODMAN: Thanks.

CHAIRMAN O'RELL: Okay.

Andrianna Natsoulas, and next up, Rhonda Belluso.

MS. NATSOULAS: Thank you. My name is Andrianna Natsoulas, and I am representing Food and Water Watch. We are a national nonprofit consumer advocacy organization based here in Washington, D.C. We seek to ensure the health, nutritional and environmental integrity of our food and water.

Food and Water Watch is pleased to have the opportunity to comment further on the interim final report to the Aquaculture Working Group. On October 6th, we already submitted comments. So, hopefully, many of you have already had the opportunity to take a look at those comments. I am just going to shorten them, make them very brief, and pull out specific points.

We urge the Livestock Committee to carefully develop the standards for farm-

raised seafood, taking into consideration consumer health and the health of the environment.

First of all, and most importantly, fishmeal and fish oil from wild fish should not be allowed in organically-certificated farm-raised seafood. A variety of scientific studies have found that farmed fish have high concentrations of persistent organic pollutants such as dioxins, dioxin-like PCBs, and organo chlorine pesticides due to high concentrations of these contaminants in the wild fish they are fed.

Furthermore, using wild fish to feed organic farm-raised seafood would, in fact, compromise the integrity of our environment. The UN Food and Agricultural Organization has identified 75 percent of wild fish populations are either overfished, approaching an overfish condition, or already depleted.

In addition, any fish that were

to be used to feed these organic farm-raised fish should come themselves from organic farms. So they should themselves be organically-certified.

Furthermore, third-party certification of sustainable fisheries in general, whether it be farmed or wild, should not be allowed, as third-party certification does not allow any accountability or transparency.

Three, only closed inland aquaculture facilities should be certified organic. Those inland ponds must not harm this running environment. They must be closed containment, so as no waste harms the surrounding terrestrial lands, and they must be a certain distance to prevent any contamination of natural ponds, lakes, rivers, or oceans.

Fourth, producers of organic seafood, organic certified seafood, must not kill, harm, or harass predators and other

wild species. This often is a problem with birds. Oftentimes with inland farms the birds are attracted to these ponds, and there have been cases where farm owners, the producers, will kill them to deal with that situation. So there should be absolutely no harassment or killing of any wild species when it comes to certifying farm-raised seafood.

Fifth, Food and Water Watch opposes the use of byproducts from the slaughter of terrestrial animals in organic aquaculture feed that could compromise consumer confidence in the organic standards, because many consumers do consume seafood, but they do not consume terrestrial animals -- chicken, hogs, cows.

So we thank you for the opportunity to comment on the aquaculture standard. I would also like to just make one comment on the avian flu.

Food and Water Watch urges you to

define procedures to exempt growers from allowing flocks access to pasture when threatened by disease, particularly avian influenza. We understand the need to protect flocks in the case of an avian influenza outbreak, but there needs to be evidence of such a threat, and certifiers need to be informed in how an exemption is granted. So that should be taken into future consideration.

Again, Food and Water Watch thanks you for allowing us to publicly comment, in addition to our written comments, which we have already submitted. We do have confidence in you that you will protect the integrity of organic standards and protect consumer confidence.

Thank you. Are there any questions?

CHAIRMAN O'RELL: Thank you very much.

Any questions?

MR. KARREMAN: One comment regarding the avian influenza. If there was an emergency and there was some declaration made, there are mechanisms within the regulations for exemptions to happen due to emergencies.

MS. NATSOULAS: They are already in?

MR. KARREMAN: Yes.

MS. NATSOULAS: Okay, thank you.

CHAIRMAN O'RELL: Dan?

MR. GIACOMINI: Yes, one of the issues that we have grappled with in this discussion is, and that is where the compromise of the seven-year and 12 percent and those things came from, is sort of a Catch-22: How do we create the organic fish to be used as the source of fishmeal and fish oil if we don't have anything to feed them that is considered organic?

MS. NATSOULAS: Right, uh-hum. So the idea is that, after seven years, then

there would be a way to feed them fully organic. Well, that indicates that it may not be time right now to be certifying carnivorous fish. That precisely may indicate that there needs to -- maybe in seven years come up with an organic standard, and during those seven years develop alternatives, so wild fish doesn't need to be used.

But that does indicate that maybe we just are not at the point now to certify carnivorous fin fish.

Anything else?

(No response.)

CHAIRMAN O'RELL: Thank you.

MS. NATSOULAS: Thank you.

CHAIRMAN O'RELL: Rhonda Belluso. Dave Townsend is next.

MS. BELLUSO: Hi. Good afternoon. Thank you very much.

As you said, my name is Rhonda Belluso. I am presenting the comments of

the Pure Salmon Campaign. Our Director Andrea Kavanagh was originally scheduled. She apologizes; she is a bit under the weather today.

The Pure Salmon Campaign is a project of the National Environmental Trust. Pure Salmon is a partnership of over 30 organizations from across the globe with a common goal of raising the environmental and health standards of farm-raised fish.

We believe that carnivorous fin fish, specifically salmon, can be farmed safely with minimal ecological damage if the industry adopts standards that protect the environment, consumers, and local communities.

In our perspective, this means replacing open-net cages with enclosed tanks equipped with proper water filtration systems for waste and developing ecologically-sustainable forms of food to replace the current fish feed.

Pure Salmon Campaign fully supports organic aquaculture for herbivorous fin fish such as tilapia and catfish and other low food chain species such as shellfish that are produced in controlled environments. However, we do not support organic aquaculture for carnivorous fin fish, especially those farmed in open-net cages or integrated net pen systems.

While we support containment technology as a solution to many of the environmental impacts of carnivorous fin fish farming, we believe that the natural dependence of carnivorous fin fish on wild fish feed makes carnivorous fin fish inherently incompatible with organic standards.

We are here today to urge the National Organic Standards Board to omit carnivorous fin fish aquaculture, specifically the open-net pen systems, from consideration for a USDA organic label.

The Pure Salmon Campaign believes that the production of carnivorous fin fish in an open-net cage is inconsistent with organic productions on several fronts. The four main areas are:

One, there is a lack of a physical barrier between farm fish and wild fish. Therefore, the producers lack control over the inputs and outputs of the aquaculture system.

Two, carnivorous fin fish in open-net cage production uses non-organic wild fish for feed, which, according to the standard, organic livestock, including fish, must be fed 100 percent organic feed. As no wild fish are currently certified as organic, carnivorous fish farmers would not be able to meet the requirements of 100 percent organic feed if they rely only on wild fishmeal and fish oil.

Three, this type of production does not improve, and in many cases

degradates the genetic and biological diversity of the surrounding environment.

There are over 40 peer-reviewed science studies that support this statement. Dom Repta from CAAR gave you, I think, six pages' worth of some of the same studies.

Many of these studies clearly point to main examples of negative impacts. The first is escapes, and the second is disease and parasite transfers.

Fourth, farming migratory fin fish such as salmon ignores the species' natural behavioral needs, as discussed earlier.

As you have noted, there were specific questions asked to those for the public to comment upon. In our written comments submitted last week and posted on the NOSB website, we provided detailed responses to the Livestock Committee's request. So I urge you to look at those. I am just going to give a brief summary to try

to keep within my time limit here.

To start, we strongly urge the Livestock Committee to consider only those species which by their nature could comply with the current definition of organic.

In response to the second question regarding impacts on soil and the environment, we believe that the farming of low food chain species in controlled environments could well maintain the soil and environment surrounding the farms. However, we look to a large and growing body of peer-reviewed research that again demonstrates the varied and significant degradation of the marine environment, and that can result from farming carnivorous fin fish in open-net cages.

On consumer perceptions of the differences between organic and conventional aquaculture, it seemed unlikely to the Pure Salmon Campaign that organic consumers would expect organic seafood would be produced in

the manner that uses open-net cage with little control over inputs, provides little to no protection for the transmission of disease and parasites, lacks of full treatment of waste, poses potential competition with wild fish for feed, and has the potential for lethal impacts on marine mammals and other marine organisms, uses wild fish for feed, contains unhealthy levels of PCBs and other contaminants, and is fed livestock byproducts such as poultry bones and feathers.

To determine U.S. consumer perceptions of organic seafood, we conducted a national omnibus poll of approximately 700 U.S. consumers.

CHAIRMAN O'RELL: You can finish your thought.

MS. BELLUSO: Yes, thank you.

Of that number, of that close to 700, 60.5 percent questioned said they would not expect USDA organic farm fish to contain

contaminants or be farmed in a way that is harmful to marine wildlife and does not allow fish to follow their natural behaviors.

CHAIRMAN O'RELL: Thank you, Rhonda.

Any questions?

(No response.)

MS. BELLUSO: Thanks.

CHAIRMAN O'RELL: Thank you. We appreciate your comments.

Dave Townsend. Next, Jim Pierce.

MR. TOWNSEND: My name is Dave Townsend. I am with Crystal Peak Environmental. We were the petitioner on the sulfuric acid addition to the livestock waste.

I will get into why that was in a little bit. Some of you may be wondering. It has been an interesting learning process for us.

We filed the petition several

years ago, and since that time, we have learned quite a bit about the organic rules. Since the Crops Committee has issued their recommendation a few weeks ago, and in considering their recommendation, we have learned more. Then today, this morning, listening to the report of the Crop Committee, we learned quite a bit about the interpretation of the rules.

Based on what we have learned and what we have heard, I would like to make a request today. I would like to request that the Board defer any final decision on our petition until we have had a little more time to research the Crop Committee's recommendations, specifically, with respect to citric acid, an alternative to the sulfuric. That is one of the things that we really have learned a lot about.

Honestly, getting into this a few years ago, it seemed simple. It seemed that sulfuric acid was already on the list for

fish and aquatic products. We'll give sulfuric a try. It worked well. Let's do a petition.

Well, we have learned since that it is not so simple. This is a complicated process, and there's a lot of history.

Citric, similarly, I thought sort of fell into that same category, that it is on the list for use with fish and aquatic fertilizers, and therefore, it must be synthetic; it must need to go through the same petition process.

Honestly, right now, today, I don't know the answer to that. That is one of the things I would like some time to look at. I would like some time to look at whether citric acid will actually work for us, whether we need to file a new petition, whether it is a natural substance, and we don't need to do a petition.

So among other things, there is a lot of research and homework that we would

like to have a bit of an opportunity to do on that aspect of the Committee's recommendations before a final decision is made on our petition.

Another part of the Committee's comments dealt with compost. While compost is not typically done with liquid animal waste, such as in the swine industry that I work within, it is something that I would like to take a little bit of time to reconsider.

We have some legitimate concerns about the comment that it is an available alternative, because it is not available everywhere. It tends to be available where there is poultry and turkey production. But where we are in the Midwest, there are some organic producers; there could be more. The ones that are there have trouble getting compost, and then in other areas of the country, where I have talked with producers, organic producers, where they can get

compost, they have difficulty with quality and quality control.

We had a process that we worked on for six or seven years that produces a very nice, pelleted, odor-free, dust-free, pathogen-free product. We did use sulfuric acid in the pilot plant, and it made a nice product. It prevented the emissions of the ammonia during the production. We think that there is a possibility citric might do the same, but we would like a little more time to figure out that, as well as consider the regulatory aspects of the rule.

So, based on the things we learned, we request that the NOSB defer on final action on our application.

CHAIRMAN O'RELL: Okay. Dave, we appreciate your comments. This is something that we can do to vote, to defer based on the petitioner's request to update a petition or time for additional tests to be able to supply answers or questions

regarding the TAP that was done from the petition process.

So are there any specific questions for Dave?

MS. CAROE: Just one.

CHAIRMAN O'RELL: Andrea?

MS. CAROE: Just to make a point to the Board: By us doing this, since the material is being petitioned to add on the list, this doesn't hamper our decision in any way. It is not putting it on the list. It is just asking for time before we make our consideration. So I think tabling it is appropriate, and I am very interested in what you find out as far as the alternatives identified by the Committee.

MR. TOWNSEND: Thank you.

CHAIRMAN O'RELL: Joe?

MR. SMILLIE: I do agree with it, but if the question is to reform their petition on sulfuric, I see tabling it. If it is to give them time to come up with

citric, it would have to be a new petition.

CHAIRMAN O'RELL: No. No, it is to test -- in the TAP they had talked about that as an alternative.

MR. SMILLIE: Oh, okay.

CHAIRMAN O'RELL: And they want time to be able to test that as an alternative --

MR. SMILLIE: Right.

CHAIRMAN O'RELL: -- which it's their petition; it is certainly procedurally fine for us to table the vote until the petitioner comes back with additional information.

Okay, thank you.

MR. TOWNSEND: Thank you.

CHAIRMAN O'RELL: That's fine. Okay.

MR. TOWNSEND: Thanks.

CHAIRMAN O'RELL: And committees will meeting this evening to adjust recommendations for tomorrow morning.

Hue?

MR. KARREMAN: Just a question: How long is a TAP good for? I mean, what if they come back in two, three, four years? Let's just say, is this current TAP going to be okay at that point?

CHAIRMAN O'RELL: Well, we've used past TAPs in the sunset review process which was five years later. So I think it is just -- we have to go back to the TAP itself and see if there's any information that we feel is no longer relevant or needs to be updated. But that is a case-by-case determination.

George Kalogridis is following Jim. Thank you.

MR. PIERCE: Thank you. I am Jim Pierce. I am going to be speaking comments without a script but with some outline from both Organic Valley and from my other life as a trout farmer in Wisconsin, so on behalf of the Wisconsin Aquaculture Association.

Great work. I am seeing excellent interaction between Board, program, audience, and having been a regular suspect at these things for years, I have seen some stinkers.

(Laughter.)

I think, honestly, Mike and Kevin and Nancy, you are leaving things in good hands.

Case in point: We were talking about commercial availability. A consumer rep speaks up and says, "How are we going to guarantee credible documentation of commercial availability?" A certifier rep speaks up and says, "Well, this is our plan to do just exactly that." I really like that. You guys are wearing your hats well, and you're working well together.

George, when he was on the Board, George Siemon, of course, was retired from the Board with Jim Riddle, he used to ask in all these discussions, "Who dies?" So I

want to ask you now, "Who dies?"

On these crop materials, I think the collateral damage might be minimal, but the precedent is a little bit concerning. I am wondering if it might be time for my standard tools lecture.

Anybody who has heard me give these speeches knows that I am a staunch conservative when it comes to standards, but I am considerably more liberal when it comes to materials. If the material can go through the petition and TAP process and be shown to be a viable tool in organic agriculture, I think it should be listed. Even if there is another tool there that may be as appropriate, or in some cases more appropriate, there is woefully few tools on the list, and to add whatever is appropriate for farmers, I think should be done.

A case in point is this calcium. I just dealt with a case this week where the guy was very close to a sugar beet

processing. So he had access to sugar beet lime, which is a great source of calcium, but guess what, it's synthetic and not allowed. So he is importing calcium from who knows how far, mined calcium, that, by the way, doesn't absorb as fast in the soil. It is just the balance. That seemed counter to organic principles, to have to truck in mined lime when he had a resource right there.

On colors, you ask the question, "Who dies," and I think there's going to be a line of bodies. I think it is going to be from the processors, from the consumers possibly, and it is going to lead right back to farms supplying the raw materials. So be very careful with that determination. I wish I could stand here and give you the silver bullet, but there's not one.

I do think, though, that it is a much more complicated issue as to what is a color and what is not, and how those things

all come together.

A lot of your recommendations on the table today, you are asking for rule changes. That's fine. That's fine to ask for rule changes, but we know how long rule changes can take. We also know how much of a workload the NOP is working under.

So maybe at the same time as you ask for them, you will give them some prioritization in their procedure to take them through. Because, otherwise, it is still going to be the Wild West for another five years, which wouldn't be at all unusual.

On private label -- and then we will switch to aquaculture -- on private label, your proposal on the table works for me. It works for Organic Valley.

We do 10 or 12 private label agreements, some of which are done with other manufacturers as well. I'm confident that that audit trail is not broken. Just

from a simple HACCP and recall procedure, that's there. Any consumer, any date-coded product can be tracked back. So, respectfully, I agree with Joe.

(Laughter.)

On to aquaculture, I was heartened to hear that you are still accepting comments. So answers to those six questions from the Wisconsin Aquaculture Association will be forthcoming.

A couple of quick points that I would say is: I would like to see someone from the aquaculture industry appointed to the NOSB, just as you have a handler on the Board who happens to have a lot of expertise with colors and flavors, and you have a farmer on the Board who happens to be very well-steeped in the dairy issue, as you struggle with difficult dairy issues, I think that's good.

I have heard the conversations on net pens and appropriate systems. I say you

set the systems and let the entrepreneurs figure out if they can do it. If someone can figure out how to do salmon in a net pen that is not environmentally or accumulatively, whatever, detrimental, let them try to do it.

You saw an excellent example from Mr. Sims how net pen systems can work in certain situations.

The consumers will take care of the rest. I honestly think, if domestic protein is an issue in feed, although it is certified organic, it will work it out.

The last comment: If Mr. Sims can make it here from Kona for a five-minute comment, you guys can make it to Kona. So I will just end by saying, "Aloha."

(Laughter.)

CHAIRMAN O'RELL: Thank you, Jim.

Any questions for Jim? Did you have a question, Julie?

MS. WEISMAN: No, no. I was

saying I'm volunteering to go to Hawaii.

CHAIRMAN O'RELL: Oh, you're volunteering to go, okay.

(Whereupon, the foregoing matter went off the record at 4:20 p.m. and went back on the record at 4:22 p.m.)

CHAIRMAN O'RELL: George, you have our attention.

MR. KALOGRIDIS: My name is George Kalogridis. I own George's Organics, which is an organic sourcing company. We have been dealing with commercial availability for about 20 years.

I want to depart from my prepared remarks quickly to talk about the expiration date on certificates. I think that that will be problematic for stream-of-commerce items as well as aged products, miso, wine, cheeses, where something is laid down for two or three years before it goes out into the stream of commerce and continues in the stream of commerce for quite some time. You

are talking about having to have addendums to the certificate every year on something that won't make it into the marketplace for three or four years.

So I think the expiration dates work very, very well, and would suggest that you take another look at expiration, which is going to be renewal dates. I'm sorry.

I am here today to talk about additional language to commercial availability for a proactive plan. Early this year I submitted a proposal to have proactive language included into the recommendation for commercial availability. The current NOSB recommendation does not address this language.

There is a general consensus among organic ingredient suppliers that, without proactive language, we will continue to revisit this important issue over and over again for the coming years. If there is not a plan, nothing will move forward.

When there is a request, it is a very simple proposal that works within the framework of the organic certification. When there is a request for an organic ingredient exemption, the petitioners must attach a proactive plan detailing how they will either create an organic analog or resolve the organic ingredient shortage situation. This plan would automatically become part of the organic handling plan of either the petitioner or the company that is using the non-organic ingredient and would be subject to annual review by the organic certifier.

If you view an exemption as a privilege and not a right, the addition of a proactive plan is a logical resolution to the issue of commercial availability.

Any questions?

MS. CAROE: Yes.

CHAIRMAN O'RELL: Andrea?

MS. CAROE: You're not really

meaning petitioner; you're meaning organic certified applicant?

MR. KALOGRIDIS: No, I am talking about when a person files a petition for a non-organic ingredient, at that time they also put in a proactive plan to be able to find an organic analog for that product.

MS. CAROE: Are you sure you're talking about petition and not the certificate?

MR. KALOGRIDIS: I'm talking about both. I'm talking about both. Anybody making a petition to say, "I want to have an exemption from organic" should also have in their hand a plan of how I'm going to create the organic product as well. Then that proactive plan would then attach to their organic certification of anybody using that product.

So we would always be in front of them; you would always have the certifier inspector asking them, what's being done

about this?

So the idea is to make it a front-burner issue so that we can actually come up with solutions. I have been involved in two projects where there wasn't an organic ingredient. I have to tell you that the process of petitioning to remove something and get people to accept it from a financial standpoint has been hellish. It really hasn't worked like it is supposed to, and there needs to be another way to approach it.

CHAIRMAN O'RELL: Yes, Joe?

MR. SMILLIE: I'm having the same issue. You are talking about a petition to put something on 606?

MR. KALOGRIDIS: Uh-hum.

MR. SMILLIE: So you want that plan to be part of that petition, not just part of the justification of non-availability as executed by the certifier?

MR. KALOGRIDIS: Absolutely.

MR. SMILLIE: Okay.

MR. KALOGRIDIS: I mean the organic community is allowing you the privilege to operate in our industry. For you to just say, well, here it is and I'm not going to try to find something else, I don't think is acceptable.

MR. SMILLIE: And you don't find it adequate enough that on the second level -- let's suppose something is placed on 606, that you don't find that your idea isn't adequate if it is just placed on the person that says, okay, it's on 606; I'm requesting that I can use conventional because it isn't available. Then what you are saying is, indeed, the certifier's role in determining what they plan to --

MR. KALOGRIDIS: Exactly. It is a dual track.

MR. SMILLIE: It is not enough. You want both?

MR. KALOGRIDIS: I want both. It

is a dual track, because they are asking for an exemption from our industry.

Yes?

MS. CAROE: I need to be recognized by the Chair.

MR. KALOGRIDIS: Oh, I'm sorry.

CHAIRMAN O'RELL: Andrea? George can recognize you.

(Laughter.)

MS. CAROE: Yes. You know, what is different, though, and the climate is changing from where we were, is that just by placement of these materials on 606, there is proactive movement. By them being placed on the list, organizations like yours, George, are saying, okay, well, people are wanting to use this and they consider this not available; how do I fill that gap?

That has not been the situation. Nobody knows the depth of what ingredients are being used in that less than 5 percent as a non-organic component at this time.

There is, just by us changing our procedure and using 606 in this way, there is a proactive movement to move those towards organic and --

MR. KALOGRIDIS: It is not a proactive; it is an identification. Identification is not proactive.

MS. CAROE: Well, I don't want to argue, but --

MR. KALOGRIDIS: Oh, come on.

(Laughter.)

MS. CAROE: I'll get you afterwards.

CHAIRMAN O'RELL: But, George, I see that being proactive from two standpoints -- if you are a supplier, you have the capability to proactively go out and maybe see how you would manufacture something to comply with the regulations. If you are a user, what type of proactive plan could you have other than telling people you need this material?

MR. KALOGRIDIS: The proactive plan would be to go to their supplier and say, "What are you doing to resolve this?" There are many products on these lists right now which are natural or non-GMO, or whatever they may be. There's never been any effort by the supplier of that ingredient to come up with the organic analog.

MS. CAROE: You know, if --

CHAIRMAN O'RELL: Go ahead, Andrea.

MS. CAROE: I'm sorry. You know, say I'm a manufacturer of curry, you know, a frozen dish.

MR. KALOGRIDIS: Uh-hum.

MS. CAROE: Or something that includes saffron, okay? And say there's no organic saffron available. Nobody is doing it. I petition to have it put on 606, and I show that there's just not production of this. It is a high-value item, and the

suppliers are just not interested in supplying to the small organic industry for the amount of saffron that this industry uses.

So I show that it is not available, and I am working with my certifier to prove that I am not finding it. If saffron is on that list, and I'm a supplier of spices to the industry, I look at that and say, "Hey, if I make that available, they're going to have to use it, and I can show that it's available," that is motivation.

I think this opens it up for the suppliers to fill those gaps. I really feel that it is there.

I think by placing it on the list, that is the plan. That is the plan. I am placing it, I'm identifying it to the industry that this is in shortage.

MR. KALOGRIDIS: I can tell you right now that there are companies out there

that game this system very, very well. They do it by saying, "This is not available."

The way they say it is not available is they never plan in the future to make it available. We have had people that will come up, and we have gone to them and said, "If you sit down with us and you work with us, we can do contracts, and we can have this product for you within a year to 18 months." They never do it, and they won't do it until there's something to happen.

It is really a problem.

MS. CAROE: I agree right now, but I don't think that is going to happen in the future. I don't think it can.

MR. KALOGRIDIS: Well, let's ask the question he brought up, "Who dies if we follow this plan?" Nobody.

MS. CAROE: The expansion of the organic industry. The expansion of the available --

MR. KALOGRIDIS: No, no, I'm saying if you adopt a proactive plan, who dies? Nobody.

CHAIRMAN O'RELL: Julie?

MS. WEISMAN: I would have a concern that if this becomes -- one thing that I think would happen is that I think that this would bog down the 606 petition, against which we have a very tight time -- the 606 process.

So I think a big piece of the organic processed food industry dies.

MR. KALOGRIDIS: It isn't bogging anything down because there is not time limit on it. It simply says --

MS. WEISMAN: But it will complicate the process of evaluating petitions. Listen, I'm on both sides. I supply an ingredient, and I also have to try and continuing to source ingredients for my 95 percent products that are not currently available organically. I run into what

Andrea describes. My use is not big enough to make it interesting to the people who currently manufacture the products in the form that I need them.

You know, I could try to make them in my own facility, but I don't really have that expertise.

MR. KALOGRIDIS: And you could identify those as part -- it is just like an organic handling plan. You have to identify where the problems are and then say, "How am I am going to solve it?"

It is just a basic -- if you look at a five-year forecast or seven-year -- you know, it doesn't make any difference to me as long as there is a proactive plan to resolve the problem.

MS. WEISMAN: I'm not sure how substantive that necessarily -- just because it is on the petition doesn't mean that it is any more substantial than having the materials be listed on 606 now.

I need a little more convincing.

MR. KALOGRIDIS: Have you got the time?

(Laughter.)

CHAIRMAN O'RELL: Okay, thank you, George.

MR. KALOGRIDIS: Thank you for the time.

CHAIRMAN O'RELL: Thank you.

Katherine?

Steffan Hake is up next.

MS. DiMATTEO: Hi, and today I am Katherine DiMatteo.

It has been a long time since I've actually been to an NOSB meeting. Probably from the time Tom Hutcheson joined the Organic Trade Association, I have sent him as my emissary or our emissary, OTA, to these meetings.

I have to say I came reluctantly to the meeting today because of the 10 years I have spent going to the meetings, but I

want to thank you all and commend you on your really dedicated work and the good meeting facilitation, the preparations for the meeting, NOP being here, the interaction. Again, I guess I will join Jim in noticing the interaction, the good interaction, between the Board and the industry, the community that is here, each other, and the staff.

I have to say that, very much like many of the very early meetings of the NOSB -- I don't want to take up all my time, but I felt that I had to make note of that and to let you know, as you sit there towards the end of this very long day, that your good work and your good intentions and your commitment are recognized.

I am commenting today or I am bringing back a comment on agricultural and nonagricultural, and the written recommendation I am changing -- the written comment that you just received, I'm going to

change slightly as I go through it, because of the good presentations yesterday, your conversation this morning, when you presented your Committee work.

So I am representing Thorvin, Incorporated today, producers of certified organic kelp sold under the brand name of Thorvin Kelp, located in New Castle, Virginia.

Thorvin as a company would also like to thank you and recognize your hard work and commend you for taking on the difficult and complex issues that face the organic production and processing community.

Thorvin supports the work done on the definition of a nonagricultural substance and the use of a decision tree to provide assistance in defining a nonagricultural substance presented by the Joint Handling and Materials Committee.

These recommendations provide the opportunity to implement the full scope of

the Organic Foods Production Act that includes non-plant life and, as has been brought up, I know that you will have to deal with now this very good question, "How does it fit, non-plant, non-animal?" What else needs to be done in your recommendation to make this workable.

As a company, Thorvin, Inc., that produces an organic product that is not land-based, we have seen the environmental benefits that have resulted from our organic kelp production. We believe that it is important that non-plant/non-animal life should be considered agricultural, and that by doing so, have the opportunity and encouragement to be produced organically and contribute to a positive impact on the environment.

In 2004, Thorvin joined the 15-member coalition of companies to support the petition to consider yeast as an agricultural product. Our motivation to be

part of this coalition is based on our strong conviction that continuous improvement is one of the underlying principles of organic production.

Encouraging better methods as they become available was intentionally built into the organic regulations for just this type of situation. As gentler production methods that align more closely with organic principles are developed, it is essential that we encourage and adopt them.

This direction to change the definition of nonagricultural substance allows the National Organic Program rule to move more effectively and serve the growing and innovative organic industry by supporting organic production and handling of several products that had been previously considered outside of the requirements of organic certification.

So we strongly encourage you to continue this work on this recommendation,

to move in the direction that your recommendation has presented, and to expand opportunities for non-plant and non-animal living organisms to be considered organic.

Thank you.

Any questions?

CHAIRMAN O'RELL: Thank you, Katherine.

Any questions?

(No response.)

MS. DiMATTEO: All right, thank you very much.

CHAIRMAN O'RELL: Thank you.

Steffan, and on deck, Rebecca Goldburg.

MR. HAKE: Good afternoon and thank you for giving me the opportunity to give some comments. My name is Steffan. I work for GNT. We are a base producer of natural colors, and those are all the colors that are qualified as non-synthetic.

We thought we would take this

opportunity to give a little bit of an insight on how does a color manufacturer supplier look at this, because I think colors generally are misunderstood from a lot of different angles. So what I wanted to do is just give a very quick overview.

Basically, as I said, we are a base manufacturer. We would agree that non-synthetic coloring category is too broad. Because if you look at all the colors that are available under that category, it would include carmine, annatto, paprika, just to mention a few.

Then we have to look at the process. So then if we look at annatto, paprika, and carmine, they are traditionally processed using all kinds of different solvents to make them into form that it becomes functional to use in different food and beverage applications.

Then under non-synthetic food colorings, you would have fruit and

vegetable juice color. So these are derived colors from fruits and vegetables. They can be processed with water only, or by FDA definition, they only can be processed with water.

So that is where the differentiation would come in. So for a consumer, it is very confusing. If you see on a label "annatto," you don't know what is behind the process of annatto, whereas it is a little bit more clear what is behind the fruit and vegetable juice color process.

The FDA classification of color is very misleading because anything that is capable of importing color is classified as a color and, therefore, an additive. So, therefore, a strawberry puree added to an ice cream is a strawberry, but if I now used that same strawberry to standardize a cherry juice or to add to a cherry juice, this strawberry now becomes an additive and, therefore, is classified as a color.

So we would think that a true natural color really would be a food having coloring property. Because if we cook at home, there's all kinds of foods that can impart foods to other items, such as a strawberry imparts color to the ice cream. A chocolate imparts a color to the chocolate milk.

So how do we deal with the question of making colors available for organic products? One of the suggestions would be to look at the FDA regulation, the fruit juice and vegetable juice color. This provides a wide spectrum of different colors that are available from orange, red, yellow. They work in all different applications.

By definition, that process has to be organic. You are not allowed to use any chemical solvents. You are basically removing the water, which you would do if you are making, for example, a tomato puree at home. You are simply concentrating a

fruit and vegetable.

So where do the challenges lie? The challenges lie, there's not enough organic farmers that can cultivate organic fruits and vegetables for the coloring worldwide. So that is really where right now the challenge lies.

It is not that we cannot provide with a process to come up with an organic color, but it is to say, okay, now we need to grow these fruits and vegetables organically and make them available organically. That is a challenge because there are not enough farmers out there who can do this at this moment. Organic crops could be made available, however, over a given period of time.

Why do we keep mentioning fruit and vegetables as a broader category? Because the way we have to look at it is, if nature makes the color, we cannot modify due to process; we have to work with all

different batches from fruits and vegetables. We can take cherries, we can take elderberries, strawberries, and we can mix them, but in the end, with using this mixing knowhow, different fruits and vegetables can deliver standardized colors that are available for the industry.

So it would be very difficult if we were to say, well, let's just put cherry on the list; let's just put elderberry on the list. So a broader category that allows for fruits and vegetables will allow for better commercial availability because you could use the organic fruits and vegetables that are available and put them together.

So, in conclusion, our suggestion would be to take a more holistic approach, eliminating the usage of highly-processed colors --

CHAIRMAN O'RELL: We will let you make your conclusion.

MR. HAKE: Okay, thank you.

Allow non-synthetic color to meet certain requirements, organically-certified process; colors can be eaten with a spoon; colors from fruits and vegetables with no selective extraction. We believe this will motivate companies to produce organic materials by providing compliance timeframes.

CHAIRMAN O'RELL: Steffan, thank you very much.

Did you hand a copy of this in?

MR. HAKE: Yes.

CHAIRMAN O'RELL: You have it now? Okay. Because I think we would certainly like to have this, the information you presented.

Julie?

MS. WEISMAN: Before when you said that there are not enough organic farmers to provide for these colors on a worldwide basis, are you thinking in terms of conventional and organic or just for

organic foods?

MR. HAKE: Just for organics. So, for example, if you say, let's make an orange color from carrot, you would have to go to a farmer, and then we would provide the seeds, and then we say, "Please grow these carrots for us." Finding a farmer that has land available to now grow carrots, or just using carrots as an example, that is quite difficult, because it has not been done on a large scale up until now.

MS. WEISMAN: Are there specific varieties of, say, carrots that have to be grown in order to manufacture colors? Are these different than the carrots that we eat?

MR. HAKE: Yes. Yes, there are different varieties. But, more importantly, what has to happen is one has to work with the farmers, because the way the rows, what kind of light is available, the environment, where it is grown, and also it has to be

harvested at an optimal point, whereas, commercially-available, even organic, a lot of times it is not harvested at an optimal time because you grow carrots because of taste and different characteristics. Strawberries are grown, so that if you eat them in a hotel, they still look good, but they all taste like colored potatoes.

(Laughter.)

MS. WEISMAN: That's true.

MR. HAKE: Yes. So if you make strawberries for color, you would do it completely different, because you grow them; you want to get the optimal amount of color. It has to be processed really quickly because you have to harvest it, and then it has to be processed quickly.

MS. WEISMAN: Thank you very much.

CHAIRMAN O'RELL: Kevin?

MR. ENGELBERT: Do you have conventional farmers growing vegetables for

you for color?

MR. HAKE: Yes.

MR. ENGELBERT: And have you approached them about organic --

MR. HAKE: Exactly. So that is what we are looking into. We would say over the next couple of years it will become more and more available. It is doable, but it needs time. It is not something you can do overnight.

So I think a good timeline would be somewhere around five years. But, in the meantime, there could be some of fruits and vegetables that could be organic, but maybe not all of them. But to get the whole color spectrum and to make it commercially available, probably somewhere around the timeline of five years, and then it could be done.

MR. ENGELBERT: Thank you.

CHAIRMAN O'RELL: Joe?

MR. SMILLIE: Actually, he just

answered my question.

CHAIRMAN O'RELL: Okay. Any other questions?

(No response.)

Thank you.

MR. HAKE: Thank you.

CHAIRMAN O'RELL: Becky?

Marie Banda is on deck.

Becky, you're up. Sorry.

MS. GOLDBURG: All right. Well, thank you. This time it really is me. Becky Goldburg representing Becky Goldburg. I am, as many of you know, a former NOSB member. I am a senior scientist with Environmental Defense in our Oceans and Health Programs, and I am also a member of the Aquaculture Working Group working on aquaculture standards, where I am the lone representative of an environmental organization. My comments today represent me and Environmental Defense, not the Working Group at large.

I want to offer my own perspective, after listening and reading many of the excellent comments that have been received by the NOSB about aquaculture standards.

It is clear to me that there is really and truly broad support for promulgation of aquaculture standards. There's been no comment, to my knowledge, that has been in opposition to aquaculture standards, despite the really incredible diversity of the commenters.

But two areas are highly controversial. One is feed for carnivorous fish, especially the use of fishmeal and oil made from wild-caught fish.

The other area that is really controversial is the use of net pens or net cages to raise fish, open systems, in other words, that are placed in natural waters.

Now, to be upfront, outside the context of my work on the organic standards,

I have been among scientists and conservation organization staff who have raised some concerns in the past about the sustainability of feeds for carnivorous fish and the ecological impact of net pens. There is, in my view, a very real basis for many of the concerns expressed.

With that in mind, I want to suggest an option to the Livestock Committee as it moves forward. That is to move forward really expeditiously with organic standards for herbivorous and omnivorous fish raised in ponds and tanks and similar sorts of aquaculture, it would be really terrific, from my vantage point, to have USDA organic standards for such popular fish as shrimp and tilapia and catfish in the near term.

Such species are now the majority, by far, of U.S. aquaculture production. I know that there are producers keen to grow these fish in accordance with

USDA organic standards.

Then the Livestock Committee could put on a separate track the development of standards for carnivorous fish and fish raised in net pens. Of course, the issues with carnivorous fish and net pen raising of fish are intertwined because most of the carnivorous fish consumed in the United States are raised in net pens, and vice versa. They go together.

And as you have heard, the issues are difficult. They are complex. They are controversial. We need to get them right, even if it takes us more time.

Moreover, such an approach would be consistent with what the Aquaculture Working Group is now doing with mollusk production. There are a number of tricky issues around production of shellfish such as oysters and clams and mussels which live in the water column and filter out water.

Because we recognize that it

takes some time to consider all the associated issues, we are pursuing mollusks on a separate track and have not yet even completed a draft set of standards for organic mollusk production.

So, in other words, even once we get through a first set of aquaculture standards, there will, presumably, in the future be more coming.

So, from my perspective, it makes sense to take the difficult and tricky issues around farming of carnivores and net pens and give them more time and fast-track the non-controversial areas, which, as I said, represent the bulk of U.S. aquaculture production at this time.

That said, if you do choose this option, continued work on draft standards could, of course, be done by the Livestock Committee or could be done by the Aquaculture Working Group.

I would like to offer an

observation that it might be useful, if we do have a separate process looking at carnivores and net pens, that perhaps some of the critics of those types of operations be included in the deliberations, in the interest of making them really balanced.

Anyway, those are my thoughts, and I thank you for your time.

CHAIRMAN O'RELL: Thank you, Rebecca.

Any questions? Dan?

MR. GIACOMINI: Hi, Becky. I just want to say hello. We've talked and traded emails for months.

MS. GOLDBURG: Right, many emails.

(Laughter.)

MR. GIACOMINI: I just wanted to say hi.

MS. GOLDBURG: Hi.

MS. CAROE: I just wanted to thank you, Becky, for your participating on

all of those calls. I know it was really hard for you to schedule to be there, and your input was always very valuable, and it is appreciated, the work that you did on that Task Force.

MS. GOLDBURG: Well, thank you very much.

Nancy?

CHAIRMAN O'RELL: Nancy?

MS. OSTIGUY: I'm curious, you are suggesting that we possibly fast-track the herbivorous and omnivorous fish. Are there any questions about accommodating their innate behavior in a farm system?

MS. GOLDBURG: Well, that is a really great question. I haven't thought it through.

Many of the fish that are raised that are lower on the food chain naturally within, say, a relatively small section of river or a pond anyway, so there aren't -- perhaps the one area where there could be

some consideration is, what do we think about indoor systems for raising these fish? Is it the equivalent of access to pasture for fish or is a tank as good as a pond?

MS. OSTIGUY: Yes, do you have to have sunshine?

MS. GOLDBURG: Right. Do you have to have real sunshine?

MS. OSTIGUY: Or could you do lights?

MS. GOLDBURG: You could have a tank, though, that has real sunshine, too, but there could be some of those issues which the Committee could consider. I, frankly, think it will be really tough because so little is understood about perhaps the natural needs of fish.

MS. OSTIGUY: Yes, I agree.

CHAIRMAN O'RELL: It's tough to ask them.

MS. OSTIGUY: Well, it's also tough to ask a cow.

(Laughter.)

CHAIRMAN O'RELL: Dan?

MR. GIACOMINI: Becky, after hearing all the comments that have been made and all the wonderful participation you have done, in your recommendation to include the omnivorous fish sort of in a faster track mode, do you have any ideas at all on what we can possibly do regarding the chicken-and-the-egg issue of the fishmeal that we would need for those fish?

MS. GOLDBURG: Well, it is possible right now, actually, to raise some omnivores without fishmeal. For example, Bart Reid, who is part of the Aquaculture Task Force, is a shrimp producer in Texas and raises shrimp with no fishmeal and oil at the moment, even though shrimp are naturally omnivorous, but they are naturally tridivores, so they are not so selective.

Similarly, channel catfish are naturally omnivorous. Their diet at the

moment in conventional production is maybe a few percent fishmeal, and it may be possible to have a zero fishmeal diet or to consider a diet where fishmeal or fish oil is really used as a supplement in a way we are all really comfortable with, because it is only a couple of percent of the diet.

MR. GIACOMINI: Okay.

MS. GOLDBURG: The other issue, of course, is the use of slaughter byproducts, which I haven't directly addressed. But the use of organic slaughter byproducts in fish feeds would be a really good source of protein for omnivorous fish.

There are all sorts of questions about the acceptability of their use, even if they are from organic sources, but I happen to favor their use personally, as long as they are from organic sources. But it deserves more consideration by the NOSB, and maybe it makes sense to restrict the kind of slaughter byproducts, for example,

to poultry and not allow ruminants, since there is so much concern about ruminant byproducts.

CHAIRMAN O'RELL: Bea?

MS. JAMES: Do you believe that netted-off pen systems, if that became a part of, just hypothetically speaking, an organic system plan for aquaculture, that the geographic locations would be conducive for that anywhere, or would there have to be certain areas that maybe pollution levels or water levels would not be adequate for systems like that?

MS. GOLDBURG: Oh, siting of net pens is really critically important. I think anybody in aquaculture would say that today. They just can't go anywhere. They have to be sited carefully.

CHAIRMAN O'RELL: Thank you, Becky.

MS. GOLDBURG: Any more questions?

(No response.)

Thanks.

CHAIRMAN O'RELL: Maria Banda, and then Richard Theuer following.

MS. BANDA: Good afternoon, everyone. I am Maria Banda from the Small Planet Foods, a processor of a number of organic products, including organic cereal.

The comment I will be providing is in regards to the recommendation for bleached lecithin. I commend, and sincerely commend, the NOSB members for the thoughtful consideration given to manufacturers such as ourselves who at the current time have not found an appropriate substitute for de-oiled lecithin powder.

We know that our consumers would prefer we use an organic de-oiled lecithin and so continue to look for one. However, we also aim to meet their desire to have organic flake cereal, which requires that we use de-oiled lecithin powder.

We strongly support the recommendation made this morning to renew bleached lecithin on the National List while encouraging petitions to remove liquid bleached lecithin.

When an organic dry version becomes available, a petition can be made to remove bleached lecithin from the list.

Thank you for the opportunity to provide these comments and for your thoughtful consideration.

CHAIRMAN O'RELL: Thank you for the very direct recommendation.

MS. BANDA: I would like to have the notoriety of having the shortest comment in history.

(Laughter and applause.)

MR. MOYER: Kevin, I think Jennifer's right; that was a challenge to everybody else to try to beat.

(Laughter.)

MR. THEUER: My name is Rich

Theuer. I am here with two hats today. The first one is as a representative of OMRI. OMRI is the Organic Materials Review Institute. I am currently Chair of the Board.

(Pause due to technical difficulties.)

Well, I'm representing OMRI, which is the Organic Materials Review Institute, where I am serving as Chair of the Board. OMRI was created to facilitate the organic industry by reviewing inputs for organic agriculture and handling, and to make that available to the industry.

In the past year, as you heard yesterday, OMRI has created an accessible database for organic seed. We see that that is a close model for organic equivalence to items that are on 605 and 606.

So, at this moment, OMRI stands ready and willing to implement a similar accessible database for those particular

materials on 605, on 606, which are available in organic form, and to provide this source of information, to use your words, within about four months. So we think that that would be very useful to the industry for suppliers who make the organic form of something on 605 or 606, to be able to get that in a database that would be accessible to the world.

The second comment I would like to make is perhaps the only one in the room from the inaugural NOSB 12 to 14 years ago, and to, first of all, congratulate you on the quality of work -- it is very, very good -- and the dedication of all of you to making organic better.

I noticed in printing agricultural versus nonagricultural the comment that, quote, "The distinction between agricultural and nonagricultural originated with the NOSB," about 1994, and the NOSB adopted this distinction based on

its understanding of OFPA requirements.

I think it is important that, in reflecting back on the work that we did 14, 13, 12 years ago -- I only had a three-year term, one of those early people -- that we were doing the best we can, as you are trying to do. The NOSB in that time, we frequently did not get compliments.

(Laughter.)

We were not infallible.

I think one of the things I would like to congratulate you on is the fact that you have a reasoned skepticism about some of the work that was done a long time ago. Because, again, we were not infallible.

I think the take-home lesson that I have learned is that you are a good Board and you realize precedent does not mean prohibition, that something that happened a long time ago like creating something called "agricultural," it served its purpose perhaps then, but maybe no longer does so.

Thanks.

MS. CAROE: I have a comment.

CHAIRMAN O'RELL: Andrea?

MS. CAROE: Better late than never, I want to compliment the pioneers that were on the first Board and actually had the foresight to put in place a good path.

Yes, we are filling in the details of and we are negotiating our way through at this point, but I appreciate all the work that was done by those groups, and based on the fact that you had nothing for precedence, I think you did a fabulous job.

MR. THEUER: We used an axe and we went through the forest marking the trail.

(Laughter.)

CHAIRMAN O'RELL: Jeff?

MR. MOYER: I have a question for your, Rich. When you mentioned about your seed list database, how do seed companies go

about getting their seeds on your list? What is the process or the procedure?

MR. THEUER: Well, it has been made available. Dave DeCou, the Executive Director of OMRI, has been working with the seed manufacturers and the seed associations to make this database available.

People just get in touch with OMRI. There's a relatively low-cost $25 per company, $10 per seed listing in groups of five. So for $75, they can get their seeds listed in the database.

And it is up and running, I believe, for the last month or two, yes.

MR. MOYER: Thank you.

CHAIRMAN O'RELL: Julie?

MS. WEISMAN: Not to take up too much time, but piggybacking on Andrea's comment is that it really helps to have -- I mean our view is better because we are standing on your shoulders, and yours are particularly tall.

(Laughter.)

And I'm particularly short. So it really helps.

(Laughter.)

MR. THEUER: Thank you.

CHAIRMAN O'RELL: Thank you very much, Rich.

Lisa?

Leslie Zuck is up next.

MS. McCRORY: Hi, everybody. I have a proxy, Pat Kane. So I am not going to use a full 10 minutes. I'll just want to take my time when I read my comments.

So thank you for the opportunity to comment. I appreciate all that the NOP and the NOSB are doing. I realize that there are a lot of thankless hours that go into this process.

My name is Lisa McCrory, and I work as a technical advisor for the Dairy and Livestock Technical Assistance Program of the Northeast Organic Farming Association

of Vermont. I have been working with certified and transitioning livestock and dairy producers for 15 years.

The program provides technical support to the 126 certified organic dairy farms and the 80 farmers who are currently transitioning to organic production.

NOFA-Vermont's Dairy and Livestock Technical Assistance Advisors are very concerned about the integrity of the organic milk market due to either decisions made or lack of final decisions by the NOP in the following areas pertaining to organic dairy production.

I am representing NOFA-Vermont today to share the following concerns:

NOFA-Vermont's Dairy and Livestock Technical Assistance Advisors are concerned with the fact that the NOP did not accept the following NOSB recommended substances for use in organic livestock production: synthetic activated charcoal,

calcium boro gluconate, calcium propianate, Kaolin pectin, mineral oil, and propylene glycol.

These substances are commonly used by producers and veterinarians. With a cow with milk fever, for example, there is no fast-acting intravenous alternative treatment to calcium boro gluconate, and prohibiting this product makes no sense to producers and veterinarians alike.

The NOP has rejected these substances not based on criteria set up by the OFPA, but, instead, because the FDA does not consider these substances to be animal drugs. However, the FDA does acknowledge that there are 3,000 medications that are allowed by discretion for livestock producers, and the NOSB has recommended only six identified as such in The Federal Register notice and noted above.

If organic producers and veterinarians are prohibited the use of

these products, they will be robbed of important tools to treat serious ailments, for no other reason than bureaucratic classification.

One example I have in what I have presented comes from the online version of the Merck Veterinary Manual and principles of treatment for hypocalcemia. The definitive treatment for hypocalcemia is to eliminate the underlying cause; supportive measures, including the following: "to restore normal calcemia, can be administered pending the diagnosis. Hypocalcemia tetany or convulsions are indications for the immediate IV administration of 10 percent calcium gluconate, which should be slowly infused over a 10-minute period."

And it goes on a little bit further, but just to clearly illustrate that the use of calcium boro gluconate is clearly recommended within a veterinary manual that, obviously, all veterinarians have access to.

It is a common product, and, again, just to illustrate that this is one example of a product that should be allowed for organic producers.

The second item that I would like to discuss is the pasture standard. The pasture standard has been under construction for more years than the NOP has been in place. As time goes on, consumer confidence for organic products, especially dairy, is starting to waiver.

NOFA-Vermont realizes that the NOP has been incredibly busy, but if we want the organic milk market to succeed, we cannot wait any longer for a pasture standard to be finalized. This issue needs to be reconciled immediately, and it needs to be implemented in support of the NOSB's recommendations, which states that all ruminants over six months of age should harvest/graze 30 percent of their dry matter needs from pasture for a minimum of 120 days

per year.

The NOSB recommendation also clarifies the producer of an organic operation may provide temporary confinement for an animal because of the animal's stage of life, and that the producer of an organic operation must not prevent dairy animals from grazing pasture during lactation.

Third is origin of livestock. NOFA-Vermont believes that the allowance for conversion of non-organic dairy animals should be permitted only as a one-time whole-herd transition. After the transition, all certified operations must manage their animals organically, starting from the last third of gestation.

Currently, all of our 126 dairy farmers are abiding by this standard. The preamble to the rule clearly states that this was the intent of the law. If farms are permitted to buy in non-organic young stock or to continually transition in young

stock to organic, this allows animals under 12 months of age to potentially be fed GMO feed, feed treated with hormones and antibiotics, or fed slaughter byproducts. This is in direct contradiction to the NOP rule for livestock feed and healthcare.

To clarify that the NOP rule requires that animals brought onto a certified operation must be raised organically, starting from the last third of gestation, would provide consistency among producers and certifiers. It would not require a significant change in management, as it is currently the practice for a large majority of organic dairy producers.

Recent headline news has indicated that cloned livestock are making it into the conventional market undetected. Allowing a continuous flow of conventional livestock to transition into the organic market will undoubtedly allow some of these livestock to infiltrate the organic system,

which will, again, have an effect on consumer confidence and ultimately their purchasing power.

And, last but not least, the dairy animal acquisition document under the NOP regulations, issued on October 3rd, 2006, has created yet another outcry from producers and certifiers alike. Where did this come from? Why did it come to be?

Thanks for all your efforts, though.

(Laughter.)

But I understand that it is with all the best of intentions, but why did this come to be?

Because once a dairy farm has completed the one-time whole-herd conversion, those dairy animals should be certified organic, period. We should be moving forward from their official certification date, not looking back into the producer's precertification history.

This document is inconsistent and creates a system of organic standards which are difficult for organic certifiers to verify, not to mention all those producers out there.

It also allows two neighboring farms to have very different organic standards, creating yet another unlevel playing field.

The NOP's clarification that it is okay for some farms to continually raise non-organic young stock and then transition them to organic creates issues with consumer confidence and allows two farms to be certified by very different standards from each other.

The Dairy and Livestock Technical Assistance Advisors of NOFA-Vermont encourage the NOP to pull this document from the NOP site and allow us to follow the policy that most certifiers have been enforcing all along. Once a herd is

transitioned in, all livestock are certified organic.

I thank you very much for your time.

Any questions?

CHAIRMAN O'RELL: Thank you, Lisa.

Any questions?

MR. KARREMAN: I want to thank you, Lisa, for bringing up all those good points.

MS. McCRORY: Thank you, Hue.

CHAIRMAN O'RELL: Thank you.

Leslie?

Emily Brown Rosen on deck.

MS. ZUCK: Hello. I'm Leslie Zuck, Pennsylvania Certified Organic.

I just have to say I was really compelled to come before you for a few minutes at least to just express my feelings about the commercial availability of organic seed guidance statement.

I was really disappointed to read about the statement that said producers of non-organic seed should bear the cost of this requirement. It made me think that we should be asking, is the purpose of this policy to punish the farmers that are using non-organic seed or is the purpose of it to provide a better market for organic seed producers?

And if the purpose is to provide a better market or motivate that market, then why should the farmers bear the cost of that program? Remember, the rule allows them to use non-organic seed when organic is unavailable.

I know the farmers are out there looking for it. I know they are. They are seeking organic seed. They are asking us about it. They are trying to find out where they can get the seed. They are really trying to do it.

But many, many seeds are still

just non-existent organically. It is not a matter of how far away they have to be shipped or how much they can get or what variety. They are just not there.

So it really presents a problem for me as a certifier. The statement was, well, we would bill the farmer who is using the non-organic seeds to cover the cost of this requirement, and, you know, I'm going to send him a bill. That farmer is going to call me up and he is going to say, "You mean you're charging me because I use non-organic seeds?" And they are going to look at it as a penalty.

It really doesn't make any sense because farmers are already paying what I feel to be a disproportionate share of operating this program. I don't think they should be paying anything.

It really seems silly to make a farmer pay because the industry hasn't yet developed an organic sorghum-sudangrass

seed. I mean, what kind of sense does that make?

So that seed is unavailable at all anywhere, and he can't get it organically, or maybe he can, but I just picked that one. You all would know better than I would.

He looks in the rule, and he is allowed to use it because it doesn't exist organically. Then the certifier sends him a bill for using that.

So it just kind of was something I would like to bring up and ask you to re-think about it. Because if the purpose is really to promote the use of organic seed, it only seems logical to me and fair that the seed industry should bear that cost. Why couldn't they go and seek out a list of all the organic seeds that are available in the world, post it somewhere on a website, and they can pay for that?

Then all the certifier has to do

is look on the website and say, "Hey, this one's available, buddy. You'd better be using it or we are not going to approve your organic plan." That seems to be a little more logical than having all these certifiers collecting all this information and sending it who knows where, and then charging the farmers for doing that.

On the other hand, I felt really great when I got that hydroponic survey in my email box. I really, really appreciated the opportunity to contribute to your process at that point in the system. I think it just makes so much better sense to me than you all drafting a recommendation, posting it three weeks before the meeting, and then having to rely on public comment, us all coming up here, the day before you vote.

So if you could do more of that type of thing, I would really appreciate it, and we encourage it. I will have to say,

though, that some of the certifiers were a little reluctant to spill it out, thinking that maybe they would say something that might appear to be non-compliant, like, "Oh, what if I say I'm certifying hydroponics and they say we're not allowed to?"

So that may be something we can deal with if we are going to do more of this and figure out a way to handle that, but I think the information-gathering process is really great. I hope it works for you all, too. We will see how it pans out.

Did you get a lot of response? I'm not supposed to be asking questions. Sorry.

(Laughter.)

Now this one's for Hue. As happy as I was to see that hydroponics survey, I had a totally different reaction when I got the dairy animal acquisition chart and it landed on my desk.

(Laughter.)

I'm not going to comment on that today in detail, actually, because of time constraints, other than to say it caused me to go up in my attic and look for my old law school books on statutory interpretation. Okay? Statutory interpretation involves a series of canons that judges use when they have to figure out what a law or a regulation really means.

One of those canons is called "the canon of avoiding absurdity."

(Laughter.)

And the canon of avoiding absurdity says the legislature did not intend an absurd or manifestly unjust result.

So I submit that Congress would not have intended different lifetime privileges and penalties for producers who are all producing exactly the same commodity, which would be organic milk. It is the epitome of absurdity, and I bring

this up because I am worried that this could be considered rulemaking without notice and comment. I don't want to see the program have to defend another lawsuit. It is not going to be coming from me, you know.

(Laughter.)

I just want to say that I don't want to see that happen. It is a serious regulatory flaw. We have to fix it soon.

There is talk of an ANPR. I hope it is on a fast track, and the industry is willing to help in any way it can to make that happen.

CHAIRMAN O'RELL: Leslie, thanks. Thanks for your comments. We do appreciate the fact, recognizing that the survey idea, going out and getting information from certifiers beforehand is a good process. I am sure that the Board will look at that and make more use of that in the future.

MS. ZUCK: Great.

CHAIRMAN O'RELL: We don't want

the certifiers to feel like they are going to be self-incriminated if they fill the wrong thing out, though. So maybe we can put a disclaimer on it.

MS. ZUCK: Immunity from prosecution.

(Laughter.)

Can we grant immunity?

CHAIRMAN O'RELL: I believe we have a question. Gerald?

MR. DAVIS: Leslie, the document on the seed availability, that was just merely answering concerns that many of the certifiers voiced at the previous meeting. It was not any new guidance or anything.

It was just a discussion, a response, and it is just a suggestion that, if there are growers that continually use a lot of untreated seed, and it is clear that they are not trying, and they are putting a lot of work on you to collect all this information, and it is costing the certifier

money, that was a suggestion maybe that is a way that you could recoup that.

MS. ZUCK: Do you know what we do if they are not making good-faith effort to source organic seed? It is a non-compliance, and that is how we handle it. They go down the road.

(Laughter.)

MR. DAVIS: If there is a large grower, for example, if you are certifying a large grower and they have a lot of instances of stuff you have to do recordkeeping on to document all those exemptions, I know the certifiers might for some growers be spending a lot more time on it and don't have a way to get a fee out there.

MS. ZUCK: It is definitely an additional cost for our certification program because we don't collect all that information. We have the growers retain it, and we inspect it when we go to the farm.

We audit their records from sourcing organic seed. So we don't have all that. We don't collect it. We go and we make sure that they have it, and we audit their records.

CHAIRMAN O'RELL: Kevin?

MR. ENGELBERT: Just to expound on what Gerry said, Leslie, in the realm of gathering seed of all different varieties all over the country, we wanted to be sure that farmers are trying to source organic seed.

MS. ZUCK: Right.

MR. ENGELBERT: We are not saying you've got to send them a bill if they don't, but just the cost involved with using any conventional untreated, they've got to bear that cost. So they continually have some type of incentive to look hard for organic seed. That's all.

We aren't trying to punish them. We just want to continue the development of the organic seed investment --

MS. ZUCK: I think it would go a lot farther if the industry could come up with a way to just put a list somewhere of what's all available and we could use that. That way, it would be really simple: It's either on the list or it's not, and you can't use it. That crop that you grew without that, that we told you you couldn't use that seed, ain't going to be organic.

CHAIRMAN O'RELL: Gerald?

MR. DAVIS: The problem, Leslie, is there are elements of the seed business -- and this is especially in the hybrid vegetable realm -- there's a lot of big companies that really have no interest in going into organic seed production.

MS. ZUCK: Well, they probably won't ever.

MR. DAVIS: Right.

MS. ZUCK: Whether we want them to or not.

MR. DAVIS: It would be nice to

come up with a way to nudge the system without causing major disruptions. That is what we were all, I think, in general, trying to grapple with.

MS. ZUCK: Yes, and I don't really think it --

MR. DAVIS: How can we give a little bit of a push without hurting the --

MS. ZUCK: It's a great idea. I just don't think the certifiers and the farmers should be the ones that do it.

Thank you.

CHAIRMAN O'RELL: Thank you, Leslie.

Emily?

Erin James is next on deck.

MS. ROSEN: She's not here. I'll take her -- she had to leave, but I will try not to use it, though. Okay.

CHAIRMAN O'RELL: Okay.

MS. ROSEN: I really don't think I'll need it, but just in case.

CHAIRMAN O'RELL: She gets 10, yes. We're just clarifying the time. Go ahead. She's not going to take it all.

MS. ROSEN: Okay, we'll have a speed race.

Emily Brown Rosen, Pennsylvania Certified Organic.

I would just like to say double amen to everything Lisa McCrory said. We are facing all those problems with livestock. They are all really critical.

I know there's so much going on, so much to do, but, you know, it is just really important to get these issues settled.

For the Livestock Committee, the followup on the medications docket and whatever happens next, I hope you dedicate some time to that because I do think, I do hope NOP will see fit to come back and consult further with you on those withdrawal times and other annotations, and that we can

straighten all that out kind of somewhat promptly. That would be really helpful.

I have really just three issues, and the second one is a short one, too. I have new problems for you, okay? I'm sure you need them.

Peracetic acid just got added to the National List for use in washing flume water and sanitizing equipment. Unfortunately, all the formulations of peracetic acid that are on the market, you have to understand they are considered antimicrobials that are registered pesticides with EPA.

Sanitizers, there is a whole division of EPA for sanitizers. So they all have this List 4 inert ingredient in them, only some of the ones I'm aware of that are commonly out there.

So now we have the manufacturer sending letters around to our clients saying, "You can use this product on direct

food contact," and we're saying, "What about the List 4 inerts?" Because, unfortunately, we don't have a category on the National List in the processing section for List 4 inerts. I think that was an oversight.

I did bring it up about five years ago, but now it has hit the fan. So we need to know what to do about this. Otherwise, we are telling them they can't use peracetic acid in direct contact; they are going to have to rinse or something or they can use it on equipment, but this is a little bit of a setback.

So we really need this product for direct crop use for food safety issues. So I don't know if we need an expedited petition or something, but we need to get it on the list.

The other new problem is we seem to be getting a lot of complaints lately about brokers/handlers of livestock feed. These are agricultural commodities who all

seem to think that they don't need to be certified. They think that they are exempt or excluded. Some of them say they have called NOP and been told that.

These are third parties that buy grain, buy hay that's on trucks. They take it somewhere else. They may store it or they may take it directly to a farmer, but they are an intermediate party handling crops that are getting fed to organic animals.

They claim they don't need to be certified. They get their initial certificate from the grower, and then they make photocopies and hand it over to the farmer.

Now I am not sure who's -- you know, we wouldn't let this be done with our certified farmers, but inspectors keep turning this up and they keep arguing about it. So I think we need a little clarification on this.

We don't see that they are excluded, the definition that would allow an exclusion for a handler. It says it has to be, the product has to be packaged or otherwise enclosed in a container, and it has to remain in that same package. We don't see hay wrapped in twine as being enclosed in a container. We don't see truckloads of grain, particularly which can be unloaded and stored and then shipped somewhere else, as exempt.

So we would like a little clarification there, that this was not intent.

There is also a problem where 310(2)(a), 5.310(a), it says, any product, if it was exempt or excluded, that those products produced or handled on an exempt or excluded facility cannot display the seal, cannot be sold or represented as certified organic, cannot be used in multi-ingredient product.

So we think that pretty well knocks it out for livestock feed. So we would appreciate a little support from -- I don't know if you need to get involved, but if NOP should look at this, too, but that I think is potential for a huge amount of product that is going out that is not tracked as a complete whole audit trail or there's big potential for fraud and people shipping this stuff around.

So I think that was really all I needed. So I'm done.

Any questions?

CHAIRMAN O'RELL: Thank you, Emily.

MR. KARREMAN: Yes.

CHAIRMAN O'RELL: Hue, and then Joe, and then Jeff.

MR. KARREMAN: This question, it is kind of for you, Emily, but also for Mark. Regarding the materials that came out on July 17th, what part of the -- it is for

Mark, actually -- what part of the process are we in there? Are we in what is called ex parte or can we or individuals still have some input, or can we help you, or is it what you would call ex parte? If that is the case, do you declare when that starts or not?

MR. BRADLEY: For the proposed rule that closed --

MR. KARREMAN: For the 12 materials that took four years to go through.

MR. BRADLEY: Oh, those?

(Laughter.)

MR. KARREMAN: On July 17th, that ANPR.

MR. BRADLEY: We would be in ex parte right now, but in ex parte you can discuss things that are -- we can't allude to what the final rule would be on that, but we can hear discussion as long as it is recorded, and this is.

MR. KARREMAN: Because in the AN --

MR. BRADLEY: At a public meeting.

MR. KARREMAN: In the ANPR, I think it said that the Secretary will engage in further discussion on various materials.

MR. BRADLEY: Like this.

MR. KARREMAN: Is that still happening now?

MR. BRADLEY: That's what this is.

MR. KARREMAN: Right now, okay.

Well, is there anything we can -- I mean, with all the public comment that we have put in as a group, is there anything that needs more clarification or enunciation regarding those non-NADA products that the Secretary doesn't want to add?

I mean, do you guys understand what the industry and some of the experts out here are saying about the non-NADAs?

And is that maybe going to be incorporated in your response?

MR. BRADLEY: We will consider that when we draft the final rule.

MS. ROSEN: Okay, can I ask another question? A followup on that would be, the restrictions, the withdrawal times, you know, you said you couldn't do that because FDA wouldn't let you do it. A lot of Board members signed a letter saying, okay, we really recommended restrictions; here's another way to do it.

Can you go back to them and see if they would approve whatever your new version is going to be, if there is one, on withholding time, like before the next proposed rule?

MR. BRADLEY: Let me look at that.

MS. ROSEN: Okay.

MR. BRADLEY: I'll see what we can do. We understand what your concerns

are.

CHAIRMAN O'RELL: I have Joe and then Jeff and then Gerald. Joe?

MR. SMILLIE: Without getting into a detailed discussion, which we don't have the time for, I hear your issue about brokering of trucked feed products and all that. It is really complicated. It is tricky. We don't have the clear lines like we do with canned or labeled, packaged products.

MS. ROSEN: Right.

MR. SMILLIE: I think there is the opportunity for fraud there. But, basically, primarily, if you use the word "broker," they don't have to be certified.

MS. ROSEN: Not the way I read the rule.

MR. SMILLIE: I know. I recognize that we are looking at it differently. So I would like to pursue that conversation.

MS. ROSEN: Okay, sure.

MR. SMILLIE: If I get a written statement as a certifier rep, I will certainly act on it.

MS. ROSEN: Okay, very good.

MR. SMILLIE: We will start to look at it in CAC.

CHAIRMAN O'RELL: Jeff?

MR. MOYER: Yes, my question was in the same vein. When you are talking about broker, are you talking about somebody who actually takes ownership of the product?

MS. ROSEN: Yes, yes.

MR. MOYER: Versus somebody who is just moving product for someone else?

MS. ROSEN: The definition of handler, let's see, says that, you know, someone who is handler, handlers are -- brokers are handlers. Anyone is a handler who sells, processes or packages, except it doesn't include to sell, transport delivery of crops or livestock by the producer to the

handler.

So if you are delivering your crops and livestock to the mill, that's not a problem. But someone else comes in and takes it and brings it over there, they are a handler and they are not excluded.

MR. MOYER: Even if they don't take ownership of it, if they're just a -- you're talking about an outside --

MS. ROSEN: Ownership is not really mentioned in the rule. But, I mean, it does say -- well, you know, we could go around about that. It is probably worth more discussion.

MR. MOYER: Yes.

MS. ROSEN: Yes.

MR. MOYER: It would be.

CHAIRMAN O'RELL: Kevin -- or, I'm sorry, Gerald and then Kevin. I had Gerald up.

MR. DAVIS: Emily, on peracetic acid, the List 4 inert, what is that?

MS. ROSEN: I'm trying to remember if it is on the label or not. I'm not going to answer unless I checked the label. I'm not sure if I am supposed to say that.

If you read the FDA center of identity for peracetic acid, they mention it there. So I guess it is probably public, but I am not sure that it is disclosed on the labels of the registered pesticides.

MR. DAVIS: So the people you have talked to claim that it is in all formulations of peracetic acid?

MS. ROSEN: I'm pretty sure it is because it is a stabilizer. Otherwise, peracetic acid is pretty -- you know, disassociates really rapid and wouldn't be as effective.

CHAIRMAN O'RELL: Kevin?

MR. ENGELBERT: Emily, I would like your opinion real quick on where you think milk falls into this category of

trucking, because milk is transported farm to plant, plant to plant. It is transloaded from trailer to trailer. The trucking companies never take ownership, but it is --

MS. ROSEN: Could I defer that question to Leslie or maybe Jim Pierce wants to answer that? I'm not quite -- I haven't really thought about that angle.

MR. ENGELBERT: Okay.

MS. ROSEN: I know initially we used to worry about it, and there's some -- Jim, do you want to answer that?

MR. PIERCE: Jim Pierce, Organic Valley.

I think the solution to both the milk, and then wider to the feed and hay issue, is that that needs to be part of either the shipper or the receiver's handling plan.

In our case, we have a tanker affidavit on file for every milk-hauling company we are dealing with and livestock-

hauling affidavits to get those animals to the slaughterhouse, and in a lot of cases, trucking affidavits for feed companies, and whatnot.

Where it breaks is exactly where Emily said, when it is wrapped and contained in a package. Then it is common carrier, and you just make the contractual agreement.

But, in addition to a thousand certificates, we've got a few dozen trucking certificates that we maintain on file.

MS. JAMES: I just want to say real quick, otherwise, wouldn't we have to certify UPS?

(Laughter.)

I know, but I'm just trying to make a point that they are just a courier and --

MR. PIERCE: But anywhere where there's a chance for contamination, and milk-hauling is an excellent example -- they could either wash with the wrong materials

or haul without a clean truck. There's lots of potentials, and they are on file as understanding basic organic regs and signing off that they are going to follow them.

CHAIRMAN O'RELL: Any other questions or comments for Emily?

(No response.)

Thank you, Emily. We appreciate your comments.

I think I failed to announce who was on deck. Steffan Scheide and then Lisa Engelbert.

Steffan? Sorry about not giving you notice. We got a little distracted.

People want a break? Okay, we are going to give you a chance to get yourself together. We're going to take a little break. There's been a request for a bio break here.

(Whereupon, the foregoing matter went off the record at 5:35 p.m. and went back on the record at 5:53 p.m.)

CHAIRMAN O'RELL: Lisa Engelbert is on deck.

Okay, you have the Board members and you have their attention. We are fresh and ready to go. So this should be an advantage for you.

(Laughter.)

Bea is going to be a little bit late. So I am going to try to manipulate her little timepiece here.

MR. SCHEIDE: Thank you for the break, Mr. Chairman. Also, thank you to each and every member of this Board for steering all of us through the sunset process. It certainly has been exciting, and it has been fun. Sadly, I do have to comment on the sunset material.

My name is Steffan Scheide. I am affiliated with Summit Hill Flavors, and I am a food product developer.

I am speaking out today again for the retention of colors on the National List

under sunset. The removal of color, non-synthetic sources only, means the entire elimination of a class of ingredients as defined in 21 CFR Part 40.

Colors are entirely regulated by the FDA. It means, even though that we have organic certified tumeric, organic beet juice, organic carrot powders available commercially, they are now gone and they can no longer be used.

This means that if this Board decides that colors fail sunset, after October 2007, we will no longer have those organic food products which contain color. For example, organic hotdogs, organic beverages, organic candy, and I don't even want to think about the impact on organic clothing and organic cosmetics.

So, in other words, if color is already listed, then I would implore this Board to come up with some type of sunset process for the delisting of colors and also

for the type of use of colors in manufactured items up until October 2007.

Therefore, I implore you to please keep colors on the National list, where they currently are.

I think the impact is really going to be significant to the organic industry. We have heard a manufacturer of colors today, which I am kind of happy about, because there is a lot of progress being made for subcategories of colors.

Now even though I am aware of the petitioning process, not one manufacturer of organic certified colors has actually petitioned, and I am wondering why that is the case.

That really worries me. Why are manufacturers of conventional colors petitioning conventional colors under 606, whereas none of the manufacturers that I'm aware of have been involved in this process?

I think there's another issue

that we have to recognize as part of the petitioning process. Clearly, if you change the definition of agricultural/ nonagricultural, you can petition colors onto 606, but it is only the FDA that makes a determination of what actually is a color.

Can this Board actually determine, for instance, if I use a barley malt that I use for a coloring material, to be a color? Or do I have to petition to the NOSB or the USDA an item with an annotation for color use only?

So I am a product developer, and I am concerned about the impact that that will have. If this Board decides to delist, I will have to ask our salespeople to basically inform our customers that, after 2007, we are no longer going to be able to manufacture products that contain food colors both within food ingredients or within the final food product.

So I thank you for your time.

CHAIRMAN O'RELL: Thank you, Steffan.

We certainly recognize the potential train wreck, for lack of a better term, but it is definitely an issue that this Board recognizes for colors.

The easy thing to do would be to pass colors. We have tried that, and we received some objections to procedure, that colors previously was not petitioned -- or was not recommended by the Board to be listed.

We are going through sunset now, which we have limitations in terms of what we can do. We can renew it or not. If we choose not to, this could be challenged, and somebody might have the false belief that they're okay, and then down the road we get in a situation where we're told colors procedurally is not accepted by OGC or the program, maybe a legal challenge.

We really want to have an answer

to this. Our answer back in April was petition, petition, petition. Get those materials on the list for consideration on 606 that are not available organically.

Obviously, if it is available organically, it continues to be used. That is not a problem.

We would welcome for that magic solution truly. We have talked with the program. We understand the list of petitions we have. We need to expedite those. We need to work in collaboration with the program to get those petitions that are currently in reviewed.

If there is information that still needs to be supplied by petitioners, to get those back in a quick manner and give the petitioners an opportunity to get those petitions corrected and back in place, so that at least the materials that have been petitioned, we can deal with in a timely manner before the June 2007 deadline.

But I understand it. It is a big challenge.

Any comments, questions?

Andrea?

MS. CAROE: I don't know that even renewing this material on the present list is going to help you. The reason I say that is because the colors that we are seeing are agricultural, and being agricultural, they're not allowed by -- they're on the list for nonagricultural colors.

So maybe a color that is coming from a mineral or something is allowed by the present listing, but a color from agriculture, it is not on the National List right now. It needs to be put on 606.

We have the petitions. All we can do is be cognizant of that and expedite that process as much as possible to best service.

MR. SCHEIDE: I would like to

add, I do thank you for finalizing or completing the sunset process, and for consistency for the industry, if you could come up with a vote about the future of colors, I think that would help us all, independent of how petitions proceed.

So thank you.

CHAIRMAN O'RELL: Thank you.

Any other questions?

(No response.)

Thank you for your comments.

Lisa Engelbert?

Liana Hoodes, up on deck.

MS. ENGELBERT: Good afternoon. My name is Lisa Engelbert. I am Co-Administrator with NOFA-New York Certified Organic in Binghamton, New York. I work primarily with the dairy farms in our agency.

First of all, a big thank you to all of you. As I said at the last meeting, I am seeing really firsthand how much time

you really put into this.

(Laughter.)

We really, really appreciate it from a certifier's point of view and from a producer's point of view.

The same goes to the NOP. We really appreciate all the effort you guys are putting forth.

I would like to thank Mark and Barbara, even though Barbara is not here, please pass that on to her, for clarifying where there's no proposed pasture rule in place yet.

I am sure you have all noticed that we are not swarming with dairy farmers at this meeting. Partly, pasture wasn't on the agenda, and it is busy harvest season. But I think the main reason is the producers really have faith that the NOP is going to get this done.

They are disappointed it hasn't been done yet, but they do have faith in the

program. So you can pass that along to Barbara, too.

I agree wholeheartedly, and NOFA-New York agrees wholeheartedly, with Lisa McCrory's comments on the origin of livestock. I know the chart was really meant to help, and we really appreciate that, but we've gone from a two-track system to a seven-track system.

Even in the seven-track system, there are some pretty serious questions that aren't answered yet. So, hopefully, we can revisit that.

I also would like to put forth to the NOP, on issues like this, I love the idea of what the NOSB is doing, putting forth questions to certifiers for input. I think most certifiers are really, really open to that from not only the NOSB, but from you as well, on issues like this, to get input from the people that are doing it.

It is very difficult out in the

field to have a farm side by side, two farms side by side, one that transitioned under the 80.20 and one that transitioned or became certified however else, and have to hold them to two different standards. It is just very, very difficult to explain that to them.

It just doesn't make any sense to think that the 80.20 people had a big financial advantage during transition when the pre-NOP people, once their land qualified as organic, they basically had a 90-day transition at 100 percent organic feed. So I just wanted to put that out there.

I also have to really question, can we legally treat two groups of producers producing the same commodity differently? Is it legal?

The intent of the rule is clear. Once a farm becomes certified to produce organic milk, they should be managing all

livestock, whether farm-raised or purchased, organically in the last third of gestation. This is a scale-neutral rule. It doesn't matter if they have five cows or 5,000 cows; they are following the same rule. And I think that is the true intent of the rule.

I would like to comment on the cost-share program. Barbara had mentioned that there's a lot of money left over each year. I don't know any of the details with that, but I do know that the majority of the farmers that we are working with -- and this is not only dairy; this is all producers -- are taking advantage of this cost-share program. It means a lot to them. It means a lot especially to new, small-scale people that are just starting up, that the certification fee may be a burden, the first few years especially. So I hope that program can continue.

We agree also that there needs to be standardized certificates in English,

please. We do see some in foreign languages, and we say we have to have this in English.

We agree that it should list all crops and products produced, including what labeling category a product falls in. It doesn't need to be so prescriptive that you get down to varieties within sweet corn, for example, or broccoli.

We also agree that there needs to be some sort of a date on certificates indicating either the last date of inspection or the last date of Committee approval for that farm. Out in the field, it is difficult for inspectors, when they see a certificate from 2002, to know for sure whether that certificate is still valid. So if there is some sort of a mechanism there -- I don't really think we need expiration dates. I think that could create a whole new nightmare, but some sort of an annual date would be really helpful.

Once again, I want to comment just on the broker issue. We are hearing things also in the field, especially with grain, that there are people calling themselves brokers that are basically taking possession of organic grain, offloading it at non-certified facilities and then reloading it and transporting it elsewhere. So that really is an issue.

CHAIRMAN O'RELL: Thank you, Lisa.

MS. ENGELBERT: You're welcome.

CHAIRMAN O'RELL: We appreciate your comments.

Any questions for Lisa? Kevin, it is your opportunity to get a response on the record.

(Laughter.)

MS. ENGELBERT: He wouldn't dare.

(Laughter.)

MR. ENGELBERT: I would pay later.

(Laughter.)

CHAIRMAN O'RELL: All right, we won't go there.

Thank you.

Lianna?

Julianne Mayo is up next.

MS. HOODES: Hello, all. I am Lianna Hoodes. I am the Organic Policy Coordinator of the National Campaign for Sustainable Agriculture.

I am sorry I don't have a copy of my comments and I will get them to you, but they have now been changed. Really good stuff this afternoon. So I need to add some more things. But there is a copy of an attachment that I thought you would be interested in.

The National Campaign is a national network of organizations and individuals working to advance sustainable ag policy. We have environmental groups, consumer, health, animal welfare, food

security, and other interests that support ag policies.

We want to compliment the work of this Board and the National Organic Program in your ongoing work to support the premiere standard of sustainability in agriculture, organic agriculture. That is really important. That is what it means to us in sustainable ag, that high bar, and you're the ones that set and keep that high bar of organic integrity.

I am going to leave most of the docket questions for my written comments, but I want to spend some time talking about what some of the work of the National Campaign groups, the National Organic Coalition, and the Sustainable Ag Coalition, and others on Capital Hill do to advocate for organic programs.

We advocate for many agricultural programs that support the work of organic farmers, such as the Conservation Security

Program, ATTRA, SER, Organic Transitions Research Program, as well as the NOP budget and the National Organic Certification Cost-Share.

This advocacy is vital, because without it, programs for organic farmers and family farmers are easy targets, and with it, it works.

Unbelievably, ATTRA, for instance, for the past six years, in the President's budget has been zero, zeroed out. With advocacy from all of our groups, we have been able to bring it back, but it has gotten level-funded for six years, but at least it has something. Can you believe that they would zero out that really efficient program of ATTRA? With our advocacy, we can bring it back.

With regard to the National Organic Program, last year's FY 2006 funding was at $2 million. Proposals supported by the National Organic Coalition, as well as

virtually all others, including the President, House, and Senate, called for an increase in NOP budget to $3.13 million.

We all acknowledge that that isn't even enough. We need more in the NOP budget to really get the job done. We have to keep pushing for it.

National Campaign groups and the National Organic Coalition have also supported a request for additional funds for the National Organic Certification Cost-Share Program in the amount of $1.5 million. The cost-share it the only program that goes directly in the pockets of farmers. It provides reimbursement for cost of certification. It is vital for organic farmers that this be continued.

But, for 2007, all funds have been expended from this program, and it awaits reauthorization in the next farm bill. Without additional funding, though, in 2007, there will be no national cost-

share money available, and the future in the next farm bill is in serious jeopardy. You can't go into the farm bill trying to reauthorize a program that has lapsed.

According to information directly from NOP, and you'll see on your chart, the National Organic Certification Cost-Share Program figures show that 89.16 percent of the funds allocated to the states has been used by the states. This usage doesn't really show quite all of the usage. It is probably a little higher than that. You will see California supposedly hasn't used its money. We know California will use all the money that it was allocated.

Of the 44 states that applied for funds, a mean of 82.99 percent was used by each state. This is a very, very well-used program and extremely important.

The Senate budget offered a compromise by proposing that $500,000 of the $1.31 million increase of NOP be used for

certification cost-share, leaving the rest for NOP. We support this compromise position at a time of severe fiscal restraints since this does provide for an increase for NOP and a small amount of money to pay for direct farmer payments. Farmers aren't and shouldn't be pitted against the agency in this compromise. Ideally, we would and we hope to find additional funds to make both funding proposals complete, but that just isn't always possible.

Also, please don't get confused with the Risk Management Agency, Ag Management Assistant Cost-Share. That is a whole different program, and that is where you might have gotten confused on some numbers that were presented earlier. There is another program, but that is only for 15 states.

So the federal program for all of our organic farmers in the pocket to help them support their work to produce organic

product and to protect environment is that certification cost-share.

Thank you.

CHAIRMAN O'RELL: Thank you, Lianna.

Any questions?

(No response.)

Thank you.

Julianne Mayo, and Lynn Coody is up next.

MS. MAYO: Hello, all. Julianne Mayo from Ocean Nutrition Canada. I am happy to be here from Nova Scotia, and I thank you very much for continuing to take comments, despite it being past our allotted time.

To put my comments in context, Ocean Nutrition is an omega-3 fish oil ingredient manufacturer and supplier. We make omega-3 fish oil patter that can be added to foodstuffs for human consumption.

This is different from

previously-discussed fish oil applications that you have heard today. This is intended for the food industry.

One of our applications is the addition to organic foods in the 5 percent non-organic portion. Therefore, we want to really address the agricultural/ nonagricultural petitioning under 606 issue.

Our type of product is not really the first thing you think of when you consider organic applications. We want to be sure that our place in the organic industry as a healthy food ingredient is not lost in the shuffle in these debates we have been having. We have a very vested interest.

We have previously submitted comments on the NOSB recommendations in writing. So I did not bring duplicate copies today. You should have them, and they were posted on the NOSB website for anybody else in the audience who wants to

see them.

After hearing discussion over the past two days, I can say it has been extremely informative, very helpful for me.

I do want to reiterate that we are in support of the clarification of agricultural and nonagricultural definitions. More specifically, we do support the decision tree approach, and we would like the text of the tree rooted in the definition as well.

However, we do caution against oversimplification. It has been suggested that if something is truly agricultural, that means it can be grown organically. As you have seen from today, omega-3 fish oil, fish products, and, in particular, omega-3 fish oil is an example of an exception to that idea. We currently cannot have omega-3 fish oil that is organic.

However, we do feel that fish oil products like omega-3 fish oil for human

consumption are agricultural. Some people are onboard with that, but we have had others that have questioned it. We are concerned about that seemingly still gray area of how to consider products such as ours.

I had hoped to see acceptance of a revised agricultural and nonagricultural definition at this meeting, but, as we saw today, it is not looking that way, from the hand that was played earlier today.

As Arthur Neal pointed out earlier today, processing of petitions for 606 may be delayed where agricultural and nonagricultural designation is still unclear. This is a serious cause of concern for us.

We ask the Board to recognize that omega-3 fish oil for human consumption is an agricultural substance, so that we can continue and have our petition processed by the NOP. We have already submitted our

petition earlier in the summer for fish oil and for fish gelatin.

Further, during your continued work on the development of more robust definitions for agricultural and nonagricultural substances, we ask that you please consider explicit inclusion of aquatic animals. Omega-3 fish oil is sourced from the byproduct of wild fish. Therefore, it likely won't come as a surprise that we would specifically enjoy seeing the inclusion of wild captured fish in an agricultural definition.

So since you are still proceeding to work on it, and it is not looking like it will be decided at this meeting, at least it is a silver lining in the cloud that you can, hopefully, try to focus on including some specifics in the agricultural definition like certain animals as aquatic animals versus just animals. So that seems to be a bit of an issue still.

So I want to keep it super brief since you are here late and open it up to any questions, because I know we are in an area that is not necessarily something a lot of people have been exposed to. So if you have any questions at all, let me know.

CHAIRMAN O'RELL: Thank you.

Joe?

MR. SMILLIE: Yes, I'm obviously losing it.

(Laughter.)

MS. MAYO: It's late.

MR. SMILLIE: But why would --

MR. GIACOMINI: No, he's just obviously losing it.

(Laughter.)

MR. SMILLIE: Why wouldn't you want to be on 605(a)?

MS. MAYO: Oh, because that's for, if I remember correctly, nonagricultural, isn't it?

CHAIRMAN O'RELL: Yes,

nonagricultural.

MS. MAYO: Nonagricultural.

MR. SMILLIE: Right.

MS. MAYO: And so we feel it isn't --

MR. SMILLIE: Non-synthetics allowed.

MS. MAYO: Yes, well, we feel it is an agricultural ingredient because it is derived directly from fish.

MR. SMILLIE: Am I missing something?

(Laughter.)

We have a number of products that aren't like yours but that are similar that are on 605(a).

MS. MAYO: Yes.

MR. SMILLIE: I would love to see your product be allowed because I think it is a very healthy, good product, but I would see it as really a long, uphill battle to get it on 606 because of all the issues

surrounding it.

MS. MAYO: Right.

MR. SMILLIE: And I am just wondering that 605(a) wouldn't serve your purpose to keep it as allowed. Because if you don't get on 606 and you're not on 605(a), you will be one of the deaths.

MS. MAYO: Yes, that's what we are really concerned about. But our understanding of the agricultural, what is agricultural has always been that we do nothing to chemically alter this oil. We pull it out of the fish. It is a fish product. There is very little removed from the fish itself. Therefore, that is what makes it agricultural. So that is where it needs to be.

CHAIRMAN O'RELL: Gerald?

MR. DAVIS: Would your company's desire to have it be considered agricultural, it is because of concerns about the 95 percent organic versus 100

percent organic and all that, so you can position your product for more categories of organic?

MS. MAYO: No, no. Well, not in the foreseeable future would we ever operate as an organic product because it is fish. So we know that for a long time to come we will always be in the non-organic portion. So it would really be up to our customers if they are seeking a 95 percent or 70 percent designation.

But at this current time, and I don't foresee it in the early future, we would ever be in a product that was considered 100 percent organic. So our product development hasn't been based on that at all because know that we are always less than 5 percent in terms of the technical amount that you have add to get EPA and DHA levels. So it is up to the customer for what designation they want, but it is not something that we target at all.

CHAIRMAN O'RELL: Well, I would think that just if you want your customers to have the availability of use of organic products, that at least at this point in time, until there is some definitive direction for aquaculture and how the regulations apply to organic, that you file a petition to have them in 205.605(a) -- 605(a), yes.

MS. CAROE: As a nonagricultural ingredient.

CHAIRMAN O'RELL: Right, yes.

MS. MAYO: But it's not nonagricultural. Like we are not trying to do it to get around the regulations, and where do we get on a list so that we are on a list. We are trying to do it -- you know, we do feel we are agricultural. So we are attempting to be where we think we are supposed to be, which is as an agricultural ingredient.

CHAIRMAN O'RELL: Okay. You've

already --

MS. MAYO: But this is why we're here, because there is debate, and we're not really sure why.

CHAIRMAN O'RELL: Okay, I've stirred up the Board. They're awake now.

(Laughter.)

Nancy?

MS. OSTIGUY: Well, I'm somewhat puzzled as to what the argument would be that it is not agricultural. I don't understand --

MS. MAYO: As are we.

MS. OSTIGUY: I don't see how safflower oil or Canola oil is different.

MS. MAYO: Yes, that is one of the reasons that I am here and was hoping for discussion, because whenever we have had somebody say, "Well, we don't think you're agricultural," we've never gotten a good reason for why they think that. We just don't see the argument in it. So I am in

complete agreement. We don't know why.

MS. CAROE: I don't get it, either.

CHAIRMAN O'RELL: Kevin? Dan?

MR. GIACOMINI: Your company is the one that has already submitted the petition --

MS. MAYO: Yes.

MR. GIACOMINI: -- that is listed on our list? Okay.

MS. MAYO: Yes.

MR. GIACOMINI: I just wanted to clarify that.

MS. MAYO: Yes, Ocean Nutrition.

MR. GIACOMINI: So they have already submitted a petition for 606.

MS. MAYO: Yes, uh-hum, based on our understanding --

MR. GIACOMINI: Okay.

MS. MAYO: -- and guidance from various groups. We did try to go to several different groups before we filed, and we

kind of had to go with most people fell out on the agricultural side. That is where we really feel we need to be. So that is where we decided that the petition was most appropriate.

CHAIRMAN O'RELL: Gerald?

MR. DAVIS: But, realistically, for their problem, we are a long ways off from dealing with the wild-caught issue. Are we -- not talking organic; never mind.

MS. MAYO: Yes. No, we are not trying to get it organic, yes.

MR. GIACOMINI: It is just ag.

MS. CAROE: It was just the answer, you know, that this is not about making an organic fish oil.

CHAIRMAN O'RELL: Right.

MS. CAROE: This is about allowing fish oil, when it is unavailable in an organic form, as a conventional.

MS. MAYO: Yes.

MR. GIACOMINI: Considering it as

ag.

CHAIRMAN O'RELL: So you've done the right thing.

(Laughter.)

MS. MAYO: Can I have that on the record, please?

(Laughter.)

CHAIRMAN O'RELL: It is on the record.

MS. OSTIGUY: And I'm looking at 606 and kelp is on there. The last I knew kelp was ocean also.

MS. MAYO: Yes.

MS. OSTIGUY: So it can't be that it is ocean versus land. I'm just puzzled.

MS. MAYO: I understand your puzzlement.

(Laughter.)

MS. CAROE: Jim is going to answer the question.

CHAIRMAN O'RELL: Okay, Jim.

MR. RIDDLE: Yes, Jim Riddle.

For the purpose of the organic regulation, it comes down to the definition of livestock, which specifically excludes aquatic animals. That is what we are stuck with right now. That, eventually, probably will be changed, but that is the way it is right now.

MS. MAYO: Isn't there, though -- I was trying to find it earlier today -- isn't there a section that says fish for use as food, like for food use? I was trying to remember where I found it, and I couldn't remember.

MR. RIDDLE: In the law, I think it is.

MS. MAYO: So, anyway, that's our issue.

CHAIRMAN O'RELL: It's a good one.

MS. MAYO: Thanks.

CHAIRMAN O'RELL: Judy Ellis is on deck.

MS. COODY: Oh, no.

No, no, no, you're up. Sorry, Lynn. We wouldn't do that.

MS. COODY: Well, here I am again. I have an issue that probably is just as fishy as the one heard about, but it has nothing to do with fish. This is about the Peer Review Panel and other issues related to accreditation.

My name is Lynn Coody. I am from Eugene, Oregon, and I have a consulting firm called Organic Ag Systems Consulting that specializes in certification and accreditation issues.

Earlier on, Joe gave a good overview of the peer review section, the regulatory language related to the Peer Review Panel. Remember that there is a mention of the Peer Review Panel in the Organic Foods Production Act, and that basically says certifiers should review each other.

Then in the rule it is a little bit different. There it says the Peer Review Panel reviews the NOP accreditation systems for compliance with an international standard called ISO 17011 and for compliance with the agency's own regulations.

So we heard Rich Theuer before go back, harken back to the original NOSB, but I'm going to go back to pre-history. Before there was an NOSB, before there was an NOP, there was me.

(Laughter.)

And I helped to write the Organic Foods Production Act.

CHAIRMAN O'RELL: You are the beginning.

MS. COODY: Well, I wasn't the only one, but I was there when we were writing it.

In the section on the Peer Review Panel, we thought of this as a mechanism to provide oversight of the NOP's accreditation

system. Of course, we didn't even really know what the accreditation system would be because in those days we didn't know much about accreditation.

Our collective understanding of accreditation issues was much different than it is today. So at that time, we decided that we needed some system, though, to oversee the whole thing. We wanted to make sure that there was a public/private component of this, that there was people from outside the USDA overseeing this. That is why it is written as it is, in the Organic Foods Production Act.

At that time, we were unaware of the international ISO standards for either certification or accreditation. It seems hard to believe, but that's the way it was.

These days, now, the expectations of organic guarantee systems are much higher and the concepts in the rule reflect the current practices more closely than those in

OFPA. So the rule is closer to what we know today than OFPA is.

So I only have a little time, and I have lots to say about accreditation. So I am just going to try to ask you to make sure you try to use the concepts in the rule other than OFPA when you are writing your peer review recommendations.

Remember, there already is an NOSB recommendation from 2001 that is based on the rule. So that is a darned good place to start.

So here are five things that I am concerned about about just relying completely on the OFPA standard:

I am concerned that the peer review system in OFPA does not provide a direct mechanism for evaluating the NOP's accreditation program. Attention would be focused on the deficits of an individual certifier instead of the inability of the accreditation system to find and deal with

the deficits.

Unless there were a mechanism that allows an overview of the results of the peer review process, as defined under OFPA, it would be very difficult to piece together a picture of the management of the entire accreditation program. That is the most important point.

Secondly, OFPA does not require the NOP to comply with ISO 17011 specifically. In my opinion, conformance with ISO requirements is essential for transparency, competency, and international acceptance of our NOP program.

A quote from the July 2003 NOP press release announcing the contract to hire ANSI to perform the so-called peer review assessment that we have right now says, "International acceptance of U.S. agricultural inspection and certification programs is important in order to ensure domestic producers are fairly treated around

the world." We know that this happens through ISO 17011.

Third, certifiers vary greatly in their ability to conduct an internal audit of another certification body, as would be required under the rule -- I mean under the OFPA system.

Conflict-of-interest issues arise when certification agencies have spent years investing the infrastructure of their quality systems, which would then be open to their competitors through the OFPA-based peer review auditing process.

And my fifth point is the NOSB's own recommendations on Peer Review Panel are based on the rule, not the concepts in OFPA. We have had little public exploration of a system based on certifiers doing peer review, and a thorough exploration of public comments would be necessary.

I have three other whole issues to talk about about accreditation, which

obviously I don't have any time to do. So I want to just let you know, finish up by saying, I did provide the CAC Committee with papers that explain whole models for incorporating bold things, so you don't get sued from not complying with OFPA, and yet you still are doing the rule process. They already have those papers.

If they need help to understand them, just call me. They are hard. It takes some thinking.

Thanks a lot.

CHAIRMAN O'RELL: Lynn, thank you.

MS. COODY: Okay.

CHAIRMAN O'RELL: We have a question.

MS. COODY: Okay.

CHAIRMAN O'RELL: Andrea?

MS. CAROE: One of the things that, Lynn, I am not quite sure you know about, and probably do, is the IG oversight

on this government program.

MS. COODY: Right, yes.

MS. CAROE: And the fact that there is a quality systems oversight --

MS. COODY: Right.

MS. CAROE: -- already happening --

MS. COODY: Yes.

MS. CAROE: -- as just being part of the government.

MS. COODY: Yes.

MS. CAROE: So, you know, one of the things that we will be looking at is, does ANSI or that type of audit or another systems audit actually get us any further down the line?

MS. COODY: It gets you further down the line in complying with ISO 17011, as required by the rule, but it doesn't do, in my mind, much to comply with the peer review part of OFPA because it doesn't -- well, I can't really explain it all unless I

take a lot of time. But there are other components that need to be addressed.

I thought that both ANSI and the Inspector General efforts were extremely valuable. I think that the outcome of the reports were right on, and I am happy that the NOP is now saying that they are ready to work on their quality system in a really intense way. That makes me really happy, and I know that they will do that to try to comply with ISO 17011, since that was the outcome of those two, both reports that pointed out many non-compliances with that international standard.

So good luck to the Accreditation Committee. I know you have a lot ahead of you.

CHAIRMAN O'RELL: Well, don't think you're off the hook, Lynn.

(Laughter.)

We know your phone number.

MS. COODY: Yes. Okay.

CHAIRMAN O'RELL: Thank you, Lynn.

MS. COODY: Okay. Thanks a lot.

CHAIRMAN O'RELL: Judy Ellis is up, and David Engel is on deck.

MS. ELLIS: Hello. Thank you so much for all of this hard work that you all are doing. It has been an eye-opener for me. I'm an organic consumer, and it is very, very important to me that the quality of organic products is high.

So with that in mind, I would just like to read this.

With all due respect, were the regulations and precedents created to ensure the integrity of organic products are uncompromised or are the regulations and precedents established for the sake of protecting the regulations and precedents?

If yeast and organically-grown microorganisms are better for the organic movement under Section 606, then why don't

we or why don't you reinterpret the definition of agricultural to include organically-grown microorganisms as well as yeast? Why allow the precedent in which the original intent was to protect the organic movement prevent the organic movement from moving forward? That's my question. Could you reinterpret it without changing the definition?

CHAIRMAN O'RELL: I guess it is a question to us.

MS. ELLIS: You don't have to answer me.

CHAIRMAN O'RELL: Joe, take a stab.

MR. SMILLIE: I'll take a stab at it.

(Laughter.)

CHAIRMAN O'RELL: Thank you. Thank you.

MR. SMILLIE: I hear what you're saying, and that's the frustration. But,

you know, it is a question of process and regulation. The thing is you have to do the right thing by creating the right structure, so that all decisions are processed the same.

And you can't just say, well, we're going to take this particular product because it is the right thing to do and allow for it. Because once you have done that, you've broken the structure. So, therefore, you have literally opened the box. So then other people say, "Well, if you did that for them, you must do this for us."

So we have to have a level line from which to proceed. That is the regulation. So we have to find a regulatory basis to make good decisions.

And if we make good decisions and use bad process, then it will hurt us more in the long run. That is, I guess, the belief that we are all committed to.

So we want to make the right decisions, but we've got to have the right process, too. So we have to find regulatory justification and a consistent way of interpreting it.

MS. ELLIS: I understand. I am wondering if perhaps it could be amended. If something, like the gentleman mentioned, if something worked 10 years ago, but now we realize it is not working, is there a way to change it?

MR. SMILLIE: I think we are committed to finding the solution to solve that problem. It may not happen as quickly as we would like it to happen, but I think we are committed to finding that solution.

CHAIRMAN O'RELL: Dan? I'm sorry, Joe.

MR. GIACOMINI: We have a petition in front of us. As Joe was saying, if we an error, we have to fix it within the structure. We have a petition in front of

us to remove it from 605 and to put it on 606. That would essentially do that, and if we can do that without having to change the definition of agricultural product, we will proceed, if that is prudent, we will proceed in that way.

MS. ELLIS: That would -- sorry, you were going to say something?

MS. WEISMAN: Well, I was going to say, in addition to that, we are here because we are trying to work out how, you know, what changes are possible. That is exactly what we are here for. We are looking at all the different ways that -- you know, what different bases could we use for changing the definition.

But I can appreciate how frustrating it is when you get a snapshot view and haven't had a chance to sort of -- I mean this is something that has been engaged in over a long period of time because we are trying to find the right way

to do it. It is not that we are trying to shirk that or not do it.

MS. ELLIS: No.

MS. WEISMAN: I mean there are some issues that you have heard about today where there's a little, you might have sensed a little more of a feeling like, well, this is the way it is. This is not one of them. I think we are very willing to try and be creative and explore all the different ways that we could look at it.

MS. ELLIS: And please forgive me; I don't want to seem hostile at all. I'm very impressed with all of you and this meeting, and you're the cream of the crop. You're leading the world with the regulations. You're leading the world.

This group of people right here, the NOP and the NOSB, you are creating standards that are going to affect the international community. I highly respect you and I am thankful for the work that you

are doing.

I am just wondering, can you reinterpret agricultural. That's all.

CHAIRMAN O'RELL: Okay. Well, thank you.

MS. ELLIS: Thank you.

CHAIRMAN O'RELL: We appreciate your comments. Thank you, Judy.

David Engel, and then Richard Siegel.

MR. ENGEL: Good evening. My name is David Engel. I am entering my 26th year as a dairy farmer, organic dairy farmer, and have been certified organic for almost 20 of those years. I have also been intimately involved with the certification side of the organic industry for the past 18 years, and I am presently the Executive Director of Nature's International Certification Services.

My comments this afternoon are addressed to the NOP and, Mr. Bradley, in an

effort to help us all reach a better level of communication which will be helpful to us all.

In all human endeavors, success of those endeavors rests primarily with the success of communication that takes place amongst those involved in those endeavors. This public/private partnership that the NOP is is no exception to this, and as we have experienced over the years of all of our efforts, some of our communications have been successful and some of them have not, with predictable results coming from each success or failure of communication.

Each of us has felt frustrated from time to time about different things that have happened, and as we have tried to make decisions to further our mutual cause of good, healthy food produced without prohibitive inputs.

My overall point here is that it is critical that the NOP and the accredited

certification agencies, the ACAs, develop, establish, and maintain a professional two-way regulatory relationship/partnership which enables an ACA to make their certification decisions in an informed, professional, procedural manner and which allows the NOP to provide the necessary regulatory oversight of this process.

A significant problem now, in my opinion, is that the current relationship between the NOP and ACAs is a somewhat strained relationship, due to the inevitable juxtaposition within the NOP of its perceived and actual dual roles of both serving as an accreditor and helping to make certification decisions for various individual certifiers.

It is noted and acknowledged that the NOP has made purposeful efforts to provide nationwide and international training for ACAs and to help ACAs better understand and manage their role of making

certification decisions. The problem occurs when an ACA makes an informed and documented certification decision and then the NOP overrides or influences that decision.

As I say above, there is within the NOP and current regulatory setup an inevitable juxtaposition of their overall responsibility of the regulatory roles of certification and accreditation, Sections 400 and 500, respectively, in the rule, but it would be in all our mutual best interest to be able to have a well-developed, clearly-established process whereby the NOP concentrates its resources and attention on running a top-notch accreditation program while at the same time, when the NOP is approached with a certification issue, question, problem, interpretation, that the NOP is then able to tap into and utilize the measurable experience and knowledge of the ACAs via the ACA, the Accredited Certifiers Association.

In sum, I would highly recommend and encourage the NOP to develop and establish such a process. Indeed, I remember an NOP training session which took place at the May 2005 ATO meeting where the then-Accreditation Manager of the NOP, Mr. Mark Bradley, stated that he would prefer that the certifiers put their heads together in developing and establishing consistent, well-documented decisions on various rule interpretations.

Mr. Bradley further stated that he was mainly concerned with how well decisions are made, their documentation and justification per the rule, and that concerns regarding the actual rule interpretation itself could be addressed during required regulatory audits.

Mr. Bradley also invited the ACA members at that session to put together well-thought-out position papers on rule interpretations and submit them to the NOP

for dialog, emphasizing the need for a well-documented suggested solution, and the NOP would respond.

Right now, we are stuck in a situation that is widely variable as to how different ACAs do interpret the rule, with predictable resulting frustration amongst all ACAs.

In sum, again, I highly recommend and encourage both the NOP and the ACA to be proactive in their efforts at more successful communications for all our mutual benefits, so that we are not left pounding our fists on the counter.

Thank you.

CHAIRMAN O'RELL: Thank you, David.

Any questions for David?

(No response.)

Thank you.

Richard Siegel.

MS. JAMES: Do you have a proxy?

MR. SIEGEL: No.

CHAIRMAN O'RELL: Okay, we have somebody signed up on the list, just R-A-M, Ram. I don't know what that is. RAM, okay.

Then Richard Martin.

MR. SIEGEL: Thank you, members of the Board, for allowing me to comment, even though I missed original round of signups for today.

I am Richard Siegel, and I'm speaking now as counsel for Marroquin International Commodity Services, Grace Marroquin, who testified yesterday.

Yesterday, there were a number of people commenting and counseling the Board that they thought that the Board should not take action at this time to move a yeast from 605(a) to 606. They made a number of arguments which I think the Board took very much into account.

The hour is late, but I wanted to leave you with our responses to these three

points.

The first point that was developed was that putting yeast on 606 would affect livestock feed, and therefore, should be a time to examine this, problems that might flow from that.

The second point was that additional standards tailored to yeast should be developed before yeast should be moved to 606.

And the final main point that was brought up was that putting yeast on 606 cannot be done as the Committees recommended by way of a technical correction, that there would have to be a petition process.

What about feed? I have looked at the regulations, and I don't see any particular widespread problem that would develop if yeast moved over to 606 in the area of feed.

The feed regulations are described in Section 205.237. The

Composition of Feed is governed by Section 205.237 of the rule.

Dairy farmers, for example, that were mentioned yesterday as direct feeding microorganisms, as feed additives and supplements -- well, that regulation is very liberal about allowing feed additives and substances that are natural. They don't have to be organic.

So there is an area of these microorganisms that are fed do not have to be organic. So moving yeast over to 606 would not affect the kind of uses that farmers make on farm with microorganisms.

Who would be affected? The commercial feed manufacturers who are putting out processed feed products that are certified organic, and they would be subject to the 95.5. Well, their exposure to having to use organic agricultural ingredients would be no different from the exposure of food manufacturers. So these are people

that want to put out an organically-labeled product, and they would have, if yeast were commercial available for their needs, they would be subject to that, if yeast were on 606 and commercially available.

Now what about additional standards for yeast? We came to this Board more than two years ago, and we hate to hear another thing that might be a recipe for delay. And, moreover, it is not particularly necessary.

The regulations we have are very thorough. They are very detailed. They are very comprehensive.

We have a lot of smart certifiers in this industry, and they will be able to figure this out. In fact, they are already certifying yeast as organic. There are already certifiers that are finding yeast meets NOP standards.

So I don't see why we have to wait for the perfect set of tailored yeast

standards.

Mushrooms don't have their own standards yet. They're improvised. They're under crops. There is nothing wrong with that.

Manufacturers are just waiting to get this cleared up, so that they can make organic yeast available. Every time we delay, we keep the status quo, which is using conventional yeast instead of organic yeast. And I know this Board doesn't want the status quo.

Technical corrections, we can make this a technical correction. The Board did this itself in the year 2000. They put a comment, they gave a comment to the NOP on the second proposed rule, and they said there are seven substances on 605(a) that can move over to 606.

The NOP did that in the final rule. They took five of the seven and they moved them. They made them agricultural.

So there is good precedent for this.

Harvey does not apply because Harvey wants to put substances that are not out there yet on the National List, and that was where Harvey was focused. When the product is already on the National List, and the question is whether it is going to be a 605(a) product on the National List or a 606 on the National List, Harvey doesn't get into that.

CHAIRMAN O'RELL: Thank you, Dick.

Andrea?

MS. CAROE: Well, just stay there for just one second.

First off, the feed requirement is not 95 percent; it is 100 percent, excluding the supplements. Now very well yeast may be considered a supplement, but until we know that, I am not comfortable with us putting forward this recommendation that may have an impact. I think it would

be prudent of this Board to make sure of that.

As far as additional standards not being necessary, you may be right as well. But it just makes sense that we investigate that and look at the implications of that.

We are hearing from the trades that there's a lot more to it. It would be an error in judgment for us to ramrod forward with this recommendation, not investigating that.

And as far as the technical correction, as I mentioned earlier today, I feel that we need to just verify that that's a possibility and make sure with the program that that can happen.

Again, these are just three areas that I'm not saying have to change. I am saying they warrant further investigation before we put forward the recommendation.

MR. SIEGEL: Okay. Well, I --

MS. CAROE: And I do understand your frustration, Dick. I have seen you here at these meetings, and I know how hard that you have been working for this. However, it does nobody any good to put a recommendation out there that's going to fall flat or get us in trouble.

MR. SIEGEL: Well, I did want to leave you with my thoughts before we went to the meeting tomorrow. All right?

CHAIRMAN O'RELL: Thank you, Dick.

MR. SIEGEL: Thank you very much.

CHAIRMAN O'RELL: Thank you.

Richard Martin, and I'm just going to go back to the first name that we called, David Cox. This will be the last chance, and then you are the last.

MR. MARTIN: I'm it again.

CHAIRMAN O'RELL: You're it.

MR. MARTIN: Thank you for having me.

Richard Martin. I own Martin International Corporation. I hold a degree in marine biology and have been in the aquaculture business for 27 years.

On my way down today, I got sidelined by The Boston Globe with a big report on a study that was published today in JAMA that is a risk/benefit analysis conducted at the Harvard School of Public Health, which is a clear, very, very powerful statement about the benefit of omega-3 fatty acid delivery to human beings. I will just take a quick excerpt.

Also, just curiously, the headline on top of it: "Population Clock Reaches 300 Million People in the United States." So it is kind of a picture that is interesting right there. We have a lot of people and we have to feed them, and we have to feed them good food.

The major study was fish intake, contaminants, and health. "According to the

single most comprehensive study on the risk and benefits of fish consumption published today in JAMA, the Journal of the American Medical Association, Dr. Rimm and Dr. Darius Mozaffarian of the Harvard School of Public Health concluded one to two servings per week of fish, especially those high in omega-3 fatty acids, reduced the risk of coronary death by 36 percent and the overall mortality by 17 percent." They are astounding numbers.

"The documented benefits of fish consumption outweighed the hypothetical cancer risks from contamination by 100 to 1,000-fold. The authors state that even this is a likely underestimate of the benefit since the estimated risk of cancer already has a 10-fold safety net built in."

I think the statement says, and someone could challenge me, but my take on this is aquaculture of carnivorous aquatic species, which are the highest in omega-3

fatty acids, is the conveyor belt of omega-3 fatty acids to consumers.

In addressing your points, I will talk as fast as I can because I have a lot of stuff here. In context, I'm talking about the impact in the environment.

Open-net pen aquatic systems can minimize environmental impact through the reduction of input and maximizing bioefficiency within the feeding systems. It can be argued that a combination of polyculture, the co-culture of plants, invertebrates, and aquatic species of fish, can actually enhance the ecosystem within an aquatic environment.

A combination of limited organic input, feed, invertebrates that live off the effluent in filtered surrounding water and plant culture that contributes to the absorption of metabolic waste can be considered to be a viable model that improves the environment and location in

which these factors are in balance.

A lot of what we heard today so far compares or talks about the aquatic or aquaculture of carnivorous species, but they refer to the conventional model. They don't address what is currently in place in the organic model, which is very different and a very good place to look at what improvements have been made over the conventional model.

The differences between organic and conventional aquaculture standards are organic aquaculture standards deliver enhanced value to the consumer in the following ways:

One, organic aquaculture maximizes delivery of omega-3 fatty acids by lowering or eliminating feed components, especially corn derivatives, which tend to be rich in far less beneficial N-6 acids that do not contain omega fatty acids.

What a lot of people don't understand is in the conventional industry a

lot of the diet of carnivorous animals is pumped up with corn derivatives, which has very little value to us human beings when we eat the product or reduces it anyway.

Two, the elimination of the use of therapeutic agents such as antibiotics and anti-parasite agents are also part of the EU program. So you are removing chemicals from the system, very different from the conventional industry.

EU aquaculture has a requirement that mitigates environmental impact by limiting the use of fish oil. The fish in the EU-certified organic product is a maximum of 26 percent. The conventional industry right now uses up to 50 percent worldwide. So it is a 50 percent reduction in fish oil consumption. The elimination of the practice of forcing growth, as seen in the conventional system, is also taken out in the organic model.

The organic system currently in

place in the EU works within the natural growth rates of the species being raised, which minimizes negative environmental impact and reduces consumption of fish and fishmeal and oil.

Five, lower stocking densities in the EU model are 10 cubes per cubic meter versus 40 in the conventional model. So already you are reducing environmental impact by four-fold just by the footprint size in the requirements.

Utilization of recycled protein, the EU practice that requires all fishmeal to be solely comprised of recycled fish trimmings produced from human food use, the recycled fish protein is only obtained from fisheries produced within safe biological limits determined by its robust worldwide organizations as FAO and ICES. This is currently the only truly sustainable fishmeal model in the aquaculture industry.

Five, the elimination of the use

of synthetic pigment agents, GMO-free components, which are passed on directly to consumers.

The confusion regarding the apparent need for the certification of wild-caught fish for feed draws a parallel to the terrestrial equivalent of wild grass being consumed in the pasture by certified organic terrestrial creatures. The certified organic steer is required to spend a certain amount of time in pasture, and that has been analyzed and certified.

During the pasture time, that steer is free to consume any available feed. That includes wild grasses, weeds, and other vegetable matter.

Finish the statement?

CHAIRMAN O'RELL: Finish your thought.

MR. MARTIN: Okay. Although the pasture itself is certified and controlled, and the inputs that can be controlled are

controlled, the pasture remains to the environment, which includes rain, wind, and gases that cannot be controlled for purity, content, origin.

The feed components used in the aquatic system can be controlled, and to the extent that they can be evaluated, adjusted for environmental contamination, as well as source from renewable fisheries, creating well-controlled input, it is similar, if not more controllable, than a terrestrial model.

I have a lot more, but that's it.

CHAIRMAN O'RELL: Okay. Thank you, Richard.

We have a couple of questions. Bea?

MS. JAMES: Have you submitted your comments?

MR. MARTIN: I didn't. I can submit them, though.

CHAIRMAN O'RELL: Please.

MR. MARTIN: Okay.

MS. JAMES: That would be really helpful if you could do that, please.

MR. MARTIN: Yes.

Nancy, I wanted to address something you asked earlier about the animal doing what it wants to do and living the life it was meant to --

CHAIRMAN O'RELL: Nancy, are you asking a question?

MS. OSTIGUY: Yes, I was going to ask a question, and that was not it.

(Laughter.)

CHAIRMAN O'RELL: Okay. Would you like to ask a question?

MS. OSTIGUY: The question, actually, it is more of a statement than a question. You are referring to the Harvard study and the benefit that we see from humans consuming fish. Those fish are not organically-produced.

MR. MARTIN: No.

MS. OSTIGUY: So you cannot make

the analogy that, therefore, we need an organic fish standard in order to attain the benefit that was talked about in this study.

MR. MARTIN: I wasn't attempting to. What I'm saying is the conventional model produces this kind of health benefits. Now if you take the conventional model, you take chemical applications out of it. You give the animals more space and take away environmental or reduce environmental --

MS. OSTIGUY: These animals aren't all farmed.

MR. MARTIN: No, I understand that.

MS. OSTIGUY: Fish consumption is not all farmed conventional.

MR. MARTIN: Could I quote Dr. Rimm briefly?

According to Dr. Rimm, "even a modest amount of seafood such as 3 ounces of farmed salmon per week reduced the risk of death for coronary heart disease by 36

percent."

The other -- I was going to address your earlier question, if it is appropriate.

CHAIRMAN O'RELL: Okay.

MR. MARTIN: About the fish when they are in their net pen in their natural life, what the fish would do would be to migrate -- we're talking salmon here -- migrate down the river --

MS. OSTIGUY: Uh-hum.

MR. MARTIN: -- go out in the ocean, feed, get bigger, and then the only time they migrate, really when they are in the migratory pattern, is when they are going back to breed.

MS. OSTIGUY: That's right.

MR. MARTIN: In the farm system, they are never allowed to get that old. In the wild, they come back at year three. In the farm system, they are harvested by 16 months.

So they aren't denied their desire to migrate because they haven't gotten to the age where they would do that normally.

CHAIRMAN O'RELL: Did you have a question, Dan?

MR. GIACOMINI: It was Bea's question.

CHAIRMAN O'RELL: Oh, okay.

Joe?

MR. SMILLIE: Just a final thanks, and we look forward to your participation on a regular basis in the future.

MR. MARTIN: I'll be back.

Thank you.

MR. SMILLIE: Thank you for the balanced presentation.

CHAIRMAN O'RELL: I would like to thank everybody who gave public comment today.

Thanks to those who are in the

audience today and stuck it out with us. We appreciate that.

There's been a lot of good public comment, a lot of good dialog from the Board to commenters.

Tonight the committees will be working somehow to digest this information.

(Laughter.)

First, we're going to digest.

So, with that, we will recess until tomorrow morning. Is it eight o'clock? 8:00 a.m.

Thank you.

(Whereupon, at 7:00 p.m., the proceedings recessed for the day, to reconvene the next day, Thursday, October 19, 2006, at 8:00 a.m.)