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

MEETING OF THE NATIONAL ORGANIC
STANDARDS BOARD (NOSB)

WEDNESDAY

APRIL 28, 2010

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

MEMBERS PRESENT:

DANIEL G. GIACOMINI, Chairperson

TRACY MIEDEMA, Vice-Chairperson
TINA ELLOR, Secretary
STEVE DeMURI
JOE DICKSON
JAY FELDMAN
BARRY FLAMM
JOHN FOSTER

WENDY FULWIDER
JENNIFER M. HALL
KATRINA HEINZE
JEFFREY W. MOYER
ANNETTE RIHERD
JOE SMILLIE
STAFF PRESENT:

MILES McEVOY
JUDY RAGONESI
VALERIE FRANCES

ARTHUR NEAL
MARK BRADLEY
LARS CRAIL
SHANNON NALLY
DR. KERRY SMITH
DR. LISA BRINES
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Adjourn
Chairperson Giacomini: The Wednesday session of this meeting is now in session. We have a quorum of the Board members present. Everyone's giving us the thumbs up, so we're ready to go.

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

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

First up on the agenda today is the Crops Committee. Well, are there any
announcements for this morning? Valerie, anything, program? We do have a pair of glasses that were found left on the table. If anyone is missing their set for some reason and all of a sudden can't read this morning, we may have your glasses.

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

(Laughter.)

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

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

We've finally, you know, we had to take some action on it or it would just have gone off the list, and we did not want that to
happen. So there is a petition to remove up before us, but we're still waiting for some more information. We got a tremendous amount of information on this in the public comment. I have, you know, five solid inches of material that we'll have to look at.

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

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

MR. FLAMM: Well, I had concerns with the use of the material. I was also
concerned that we couldn't act upon the petition to remove beforehand. So but after reading all the public comments, I'm going to reverse my vote.

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

CHAIRPERSON GIACOMINI: Any discussion on that item?

MA. HEINZE: So this is just a sunset?

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

MS. HEINZE: Thank you.

CHAIRPERSON GIACOMINI: Any other questions on ferric phosphate sunset?

MR. FELDMAN: I have a question,
just timing on -- do we know the timing or do we have a sense of the timing on consideration of the petition.

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

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

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

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

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

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

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

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

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

Soap-based algicide/demossers,
herbicide soap-based, ammonium soaps, ammonium
carbonate, boric acid, elemental sulfur, lime
sulfur, and we did have some comments
yesterday that grape growers really want to
keep some of these things on.
Horticultural oils, insecticidal soaps, sticky traps and barriers, hydrated lime, and this is a different usage category. Unfortunately, I didn't split the list. But we did review them in every usage category. We took a look at all the technical information available by separate usage categories.

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

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

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

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

CHAIRPERSON GIACOMINI: I think that for the sake of recognition of humanity, any questions on that list that she just read? The full and accurate list is the one posted in the document, in case you missed something one way or the other, just for the record.
MS. ELLOR: Right, right. I want to go through briefly, just so you, everybody knows, that we have done due diligence. We really did. We got a document from Valerie called "Down the Rabbit Hole" I think it was called.

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

CHAIRPERSON GIACOMINI: John helped put it together.

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

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

MS. ELLOR: Yes, that was terrific. We have -- and we all delved down every rabbit hole, let me assure you. We looked at old meeting minutes, from you know,
and looked at public comment from the last sunset. We looked at technical reviews. We looked at committee discussions. We really went down every rabbit hole to come to the conclusions that we've come to.

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

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

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

I wanted to say that the biggest frustration, which hopefully we're dealing with in sunset later, is that some of us felt that there should be clear annotations on some of these materials, which we don't apparently
now have the authority to adopt.

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

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

As new information comes up on these products, I think it's really incredibly important that we have the ability to annotate. For instance, on boric acid, there are formulations that are now bait formulations, that are much less harmful to the user and to the facility where they're being used, but we don't have the authority to
annotate the bait formulations of that product under our current process.

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

But when is the appropriate time to apply that foliar application, and who makes that evaluation and is it being adequately done. I know I'm very concerned, and I know other members are, that we have clear communication between the certifiers, the inspectors and the committee that's reviewing these materials, so that we know that they're not being overused, that they're being used properly, that they're being used
as a last resort and that the functionality of the organic system plan is really working.

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

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

CHAIRPERSON GIACOMINI: Further discussion?

(No response.)

CHAIRPERSON GIACOMINI: Question, Madam Chairman. Tina, do you intend to bring this up as one vote or blocked as you have it in this application?
MS. ELLOR: I think it was -- on our last committee call, we sort of thought we could do that all as one big block, that this was really the low-hanging fruit.

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

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

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

It was a lot of work. The committee worked together as a team on this, and so I'll start the discussion here, because
I'm sure there will be some discussion coming out of this document. I'll start the discussion, but other committee members feel free to jump in as we go along.

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

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

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

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

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

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

It says that we are to work with organizations like the Environmental Protection Agency, National Institute of Environmental Health Studies and so on.
Then Section 2 discusses how we should work with manufacturers, and in particular it lists in that Item No. 2 that we should look at synthetically produced materials, including inerts. So it's certainly the work that we put into this document does fall under our purview, and is really something that we have a responsibility to do.

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

We did spend a lot of time listing the public comment. We had public comment all over the board on this. We did spend a lot of time working with organizations like OMRI. Had many phone calls with them. We had a lot of phone conversations and public testimony.
from EPA.

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

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

    It would have been a lot easier for this committee to look at 40 C.F.R. 180 in whole, and just absorb that into our document as an item, and we could all vote on that and go home, and it would be a lot less work. It would also be a lot less transparent, and we
think not in keeping with the responsibilities
that we are assigned by OFPA, and the
expectations of the folks in this room and
other rooms that have sat in front of this
Board and testified, particularly when we look
at what inerts really mean.

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

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

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

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

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

We did get together last night as
a committee late at night in the hotel lobby,
and we added the paragraph, and the committee
can review that, because they didn't see the
exact wording. I did that in my room last
evening.

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

We think that -- the committee
thought last night, based on the public
comment that we heard yesterday, that it would
be important for us to spell it out more
clearly, and the fact that we need to create
or expected the creation of a memorandum of
understanding between the EPA and the NOP for
the evaluations of the materials previously
known as EPA List 4, Inerts of Minimal
Concern, and EPA List 3, Inerts of Unknown
Moving on down into the document, the goal of this document is several-fold. The first is to have EPA look at these, all these materials, whatever there are, if it is 859 or whatever it is, looking at all those materials and run them through a filter that would be a filter of our design, working off of the work Katrina's doing, to look at synthetic and non-synthetic.

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

We have no authority over that last. If they're naturals, they're on, and we don't have to worry about it. We don't have
to do any reviewing. There is a possibility that some folks hopefully would be able to reformulate or show interest in reformulating or formulating to that list.

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

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

Now last night we talked about the time frame in here. You'll see that in Item 2, where we talk about reviewing within 180 days. These time frames may not be reasonable, but rather than sit and last night, late at night, guess on what kind of time frames would be more reasonable, we left
those times in the document, knowing that this is just the first step in this process, if it goes out for rulemaking.

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

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

So there's plenty of opportunity for them to have input to work with EPA and to work with this Board and the program to get these things accomplished. Then finally in Item No. 4, we're pretty much saying that if they don't reformulate and don't submit
petitions, those materials will drop off the list and they will not be available for use in pesticide manufacturing -- pesticide use in organic production.

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

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

Discussion?

CHAIRPERSON GIACOMINI: Tina?

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

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

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

CHAIRPERSON GIACOMINI: Katrina?

MS. HEINZE: I have a couple of questions. The first, and this is a simple one and I maybe should have thought to ask it first. But are List 4 inerts on the National
List as a result of NOSB action or as a result of originally being included in OFPA. I should have looked and didn't. Do you know?

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

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

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

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

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

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

MR. MOYER: Yes.

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

MR. MOYER: Sugar was given yesterday.

MR. MOYER: Sugar and molasses.

MS. HEINZE: I mean do we -- I guess my broader question is do we really
expect there to be a long list of non-
synthetic inerts, or do we expect --

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

MS. HEINZE: Valerie has a list
behind you.

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

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

MS. HEINZE: Okay. So then my --

MR. MOYER: Now that may or may
not be the ones that pesticide manufacturers
are currently using. I don't know. Can they
reformulate to that? We don't know. There's a lot that the EPA doesn't know. There's a lot of unknowns, so part of the reason for this document, I guess I should have said, is for us to open the door, gather the information, and as Jay said yesterday, really get out in front of EPA, which is in the process of reviewing the 40 C.F.R. 180 inert materials, and give them a filter, an additional filter to screen at the same time for us.

MS. HEINZE: Okay. So my last question has to do with the time line, so I appreciate your comments that given the public comment, the time lines that you have outlined in the document may or may not be appropriate. I would wonder if they consider -- that committee would consider adding, taking out the specific times and maybe adding a sentence, that asks the NOP to determine an appropriate time line. As I read through it, I was actually quite confused about what the
trigger points were for different, now it's allowed, now it's not allowed, now it has to be petitioned.

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

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

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

Rather to gently steer them if we
can into something that's better for organic
and better for consumers, and more in tune
with what we all are about, and give them the
time do that.

MS. HEINZE: Thank you very much.

CHAIRPERSON GIACOMINI: Joe.

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

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

Again, they don't have
toxicological effect. But the purpose of it, there's different purposes for inerts. We're using one word, but there's a lot of different things that they do. Some make them soluble in water; some --

MR. MOYER: Anti-foaming agents.

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

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

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

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

(Simultaneous speaking.)

MR. FELDMAN: I would add adjuvants to the list, you know, sticking agents. The way I think about it, as you know, there are different formulations of products. Whether they're dust, granule, you know, liquid. The inert really makes up that part of the formulation, which is the carrier
for that product, and then has other characteristics that enable that product to be effective.

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

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

But you know, it is, as Jeff said, the majority, typically the majority of the product formulation. So it is part to which
we are exposed and the environment is exposed.

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

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

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

MR. SMILLIE: Well again, thank you for those comments, because getting in front of the EPA on this. When I heard that, well yes. We've got a lot of resources to get in front of EPA.
MR. MOYER: Well, only insomuch as
that we're helping to guide them into
something that they want to do anyway.
They've expressed interest and really came to
our meetings. We didn't have to beg them to
come.

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

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

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

(Simultaneous speaking.)

MR. FELDMAN: But the thinking is
that EPA's put out a proposed reg, which is
cited in the document here, which basically looks like it's really moving forward, and that is the disclosure of all inert ingredients.

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

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

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

To take that list, if we had the
list then in our document as a list of materials, I personally don't want to be on the Board when we say this Board listed 859 new materials onto the synthetic list. That is not a position I want to be in.

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

CHAIRPERSON GIACOMINI: John?

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

(Laughter.)

MR. FOSTER: I'm just checking.

CHAIRPERSON GIACOMINI: Leave this for you, John.

MR. FOSTER: I'm just asking.

CHAIRPERSON GIACOMINI: Probably the folks behind you are going to be -- than you. This is going to take some time.
MR. MOYER: That's right. We talked about this last night, that that's not an inconsequential commitment that we're layering onto the next generation, if you will, of NOSB members and petitioners for that matter.

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

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

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

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

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

MS. ELLOR: Yes. That's sort of, you know, one of the thrusts behind the recommendation, is to do that initial filtering, natural versus synthetic, and then,
you know, maybe at that point, when we've done
that filtering, it might be a good thing to
put a task force in place, including the EPA.
But I don't know, Jeff. What do you --

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

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

I guess what we wanted to do is
make sure there was a time frame vested in
this document, but a sentence that just
broadens that and gives us more flexibility
would probably make a lot of sense.

CHAIRPERSON GIACOMINI: Katrina?

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

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

MR. MOYER: That is correct.

MS. HEINZE: And having lived
through Harvey, when 606 went from four or
five items to the -- I haven't counted -- 90,
whatever, 100, whatever, the perception in the
public, and certainly what's seen in the
popular press, is that we weakened the
standard and added 100 items to the list.
And those are fairly innocuous items, as opposed to what may be added through this. I'm not sure that that would change how we all felt about doing the right thing. But I'm concerned about that, and how that's going to be perceived.

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

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

Maybe someone, you know, maybe a lot of them already are. I don't know that. The fact is there's a lot of unknowns out there, both at the EPA, at OMRI -- I shouldn't
say both -- but at OMRI, EPA, here, Washington state.

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

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

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

MR. MOYER: Very good point.

Thank you, Katrina.

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

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

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

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

CHAIRPERSON GIACOMINI: Thanks.

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

CHAIRPERSON GIACOMINI: Tina.

MS. ELLOR: Yes. We didn't want to take the "sweeping under the rug" option, and Katrina sort of said what I already said. We might be adding hundreds, maybe one, maybe two hundred. But we're taking off, you know,
859. So you know, if we can make the public aware of that and, you know, the reasons behind it, that would be very, very helpful.

CHAIRPERSON GIACOMINI: Barry?

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

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

I think EPA's on a new track of exposing what's really in a lot of these chemicals, and we just don't know what it will be. I think that's everything, where so much of this information is CBI and that's one, I think, one problem that we had, when we first tried to develop a way of narrowing this down, the lack of availability of some of this
But EPA does have it, and I think that's our first step. Whatever that list happens to be that's necessary and safe for the environment and human health that we end up keeping, that's the way it will have to be.

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

CHAIRPERSON GIACOMINI: Tracy.

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

With the 606 items, you know, here we are five years out. The perception is
still very much that we let a bunch of stuff
into organic that had no place there, rather
than what we actually did is create a
situation where there's a commercial
availability hurdle that must be met, that
items must be added to the National List,
instead of what was really an open-ended
certifier-by-certifier decision before.

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

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

I think we're really dreaming if
we think that the perception would ever be
that we have reduced the number of chemical
inerts allowed. So you know, this is a
situation where I agree with your point that
it's sort of a higher integrity in the truest
sense of the word, I guess.

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

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

CHAIRPERSON GIACOMINI: Joe?

MR. SMILLIE: Woof. That was,
that's -- I was thinking of the same things.
I'd like to find a compromise, and I think
what Arthur has suggested is a really excellent route.

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

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

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

So I think our history in having these working groups and task forces has been excellent. It will be a way that will be, that will take a little bit of workload off us. The EPA can participate. It will be a
more friendly forum for manufacturers, who,
quite frankly, are a little paranoid about
their materials.

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

We'll participate in it too, in
the same way that our group, the joint
committee, worked with the Materials Working
Group. It'll just be a more, I think,
respectful vehicle to get all that information
out, and they'll have -- and we don't have to
agree or disagree with their findings. We
could -- but we'll have somebody that's an
active group working on our behalf, because we
have limited resources, and EPA can
participate in it.
So I think it's -- and as far as timelines go, you know, we don't want to rush this. We want to make sure that we get it established. So that's how I would propose a compromise, to direct action of the NOSB or, as Tracy suggested, just pushing it totally back to the EPA.

CHAIRPERSON GIACOMINI: Tina.

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

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

We definitely have a change in the NOP. I mean before, if we'd said, you know, task force, a year and a half ago there would have been shudders all around. So, you know, that is something maybe we could consider. I don't think that this document would preclude
that. I think that we could use that as a
vehicle to accomplish what we are trying to do
with this document, within this document.

CHAIRPERSON GIACOMINI: Katrina.

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

MS. ELLOR: It's a 2012 sunset.

So by fall, you know, we would have to say
okay, we're just going to let these things
through again, without taking any action.

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

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

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

MS. ELLOR: Well, that's why we
I have, you know, a timeline. I think -- we just didn't want to put the List 4 through at this meeting for 2012 sunset, until we had this discussion. And so we still have yet to have that discussion.

CHAIRPERSON GIACOMINI:  Jay?

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

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

We have a structure in our, you
know. Within the context of the NOSB, there is a structure for reviewing materials. That's been established. We're really only asking a very simple question.

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

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

So we already have a structure. We have a statutory duty to review these
inputs. The process is changing by virtue of
EPA having changed its process. We're trying
to adapt to that new process that EPA has
adopted, and it's relatively straightforward
once we decide as a board that we are meeting
our duty to review these materials.

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

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

In effect, we've had a test run of
this already on a number of products. We just need to adapt to a changing landscape at EPA and put the process in place. I don't think we really have a choice, and I think what Jeff has outlined here in collaboration with the committee is really one that offers us flexibility to meet that statutory responsibility.

CHAIRPERSON GIACOMINI: Arthur.

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

Meaning that when we conducted the reviews, we would not be pretty much disrupting the industry, or adding an additional burden onto the industry, given the tight timelines that we have to review these materials.
If our decision-making becomes such that we will be disrupting the industry, that process is going to change, guaranteed. Everything that we will do regarding materials will probably then have to go through a more extensive review in the federal government, through OMB, because of the economic impact. That means that each decision that the Board makes on the material will probably have to have an economic impact study done associated with it.

CHAIRPERSON GIACOMINI: Tina.

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

(Laughter.)

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

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

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

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

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

MR. NEAL: I'm not saying this particular document. It could be. I think that the process needs to be thought all the way through before we just say we're going to include x, y and z.
Because as Tracy has already stated, EPA and you, Jay, you said that, who has the expertise to review these materials?

EPA has the expertise to review the materials.

EPA has access to the materials.

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

CHAIRPERSON GIACOMINI: Jeff.

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

As that document unfolds, we as a
committee envision that that's where that
would all take place, and we can do that MOU.

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

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

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

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

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

I think that's really the other question of then, if you have a list of categories that are parked in our national
list, but the categories are really held at EPA, I think that will facilitate your review and facilitate the public's understanding of what those categories represent.

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

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

CHAIRPERSON GIACOMINI: Jeff?

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

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

MR. MOYER: I should mention that.

There is a great over -- for some reason, Livestock did not get this on their work plan. That doesn't mean that the Livestock Committee was not involved. There's a great deal of overlap between the Crops Committee and the Livestock Committee.

CHAIRPERSON GIACOMINI: Including the chairman.

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

But there is a possibility that we could have that sublist managed, to some extent, by -- we'd still be doing all the
review pieces, because that's our responsibility, but they would help manage that list as a single item on our standards. I appreciate that, Valerie. Thank you for bringing it up.

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

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

We're getting to the point of listing, and it's that creative type stuff of
working with, you know, if EPA would create a list that we could put in both cases, because if we don't do that, we're not looking at adding 300 items. We're looking at adding 600 items, because every item we have, right now the way it's set up, would need to be listed twice.

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

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

But that there is a quite a bit of flexibility, not just on the time frame, but in the manner and how that's going to be executed. It might be a task force; it will
be done in collaboration with EPA. But up to
and including the fact that we're not exactly
sure how it's going to show up on the list
yet. Is that true?

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

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

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

   That doesn't reflect the
2 flexibility of having EPA manage the list. If
3 this document is intended to directionally
4 point us in the right direction, but still has
5 flexibility, it would be nice to have some of
6 that flexibility reflected in the document.
7
8 MR. MOYER: I will say, when you
9 read this document, you can read into it all
10 the opinions of everybody on the committee,
11 because we were as diverse as the conversation
12 is here, and have been for months, and certain
13 individuals are far to the right and others
14 are far to the left.
15
16 And we're trying to get a
17 compromise document here that we think the
18 Board would approve. But I agree. Item 6
19 doesn't necessarily reflect the language that
20 we just talked about here in the listing
21 component. So I guess we know that we have
22 some work to go back and do based on this
23 conversation, and we'll adjust that, because
we have nothing else to do tonight anyway.

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

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

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

We do have the experience, and I want to be as diplomatic as possible, but also as accurate as possible. When we went through the initial part of the 606 process, for whatever reason, and I was chairman of the Materials Committee at the time. If someone
needs to take the blame, I'll take it.

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

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

Because people coming forth with petition information that we have no other way of verifying, and we find out it's not completely truthful. Personally, as an individual of this industry, I take huge offense of that, as the method used to get something on the list.
We have the CBI issues that we don't have complete access to, and there's other -- there are other mechanisms that sort of keep us from always getting that full information. We also don't have any punitive leverage to keep that from happening, outside of how we may review it at sunset, or how we may deal with it in a different way.

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

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

But I do want to be careful about
how we characterize this list in two ways.

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

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

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

The other thing is that this is not unlike a lot of input lists that growers
provide to certifiers, in that there's a lot more things on this list than are actually in use. Just because it's on the list doesn't mean it's in use in a pesticide that is in current use in organic production.

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

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

CHAIRPERSON GIACOMINI: Okay.

Jeff, you have a response to --

MR. MOYER: Yes, I think you're absolutely right, John. Part of the problem we have is we're sitting in a field of unknowns here, and we don't really know what is being used.
You know, in EPA language, which is included in Item No. 2 on my list, you know, they specifically use the words "what materials or items on that list would the industry choose to defend."

(Applause.)

CHAIRPERSON GIACOMINI: Mark Bradley, come on down. (Laughter.)

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

It was to ask the industry, when you discuss industry, don't ask them what they would like to see on the list, because they'd say everything, because it makes life easier. Ask them what they would choose to defend,
which means those are the materials they actually really need.

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

CHAIRPERSON GIACOMINI: Tina.

MS. ELLOR: The minimal concern -- oh, I'm sorry. I'll talk louder. The minimal concern phrase is not one of ours. We didn't put it through our process and decide that those things were of minimal concern. We've attached the list to our document, so everyone can have a chance to look down through there and, you know, you can decide for yourself whether you feel like
those things are of minimal concern.

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

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

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

I guess that's why we thought a
memo of understanding might be a better
vehicle, or a good vehicle in addition to a
task force. How does that work?

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

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

Just because I may have sat on the
task force doesn't mean that the entire
program is going to agree with the
recommendation that comes to the program,
because I'm not trying to, as a quote-unquote
liaison for the program, I'm not steering the
Board or the task force where I necessarily want them to go.

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

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

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

MR. NEAL: It could. Now let's stop for a minute. The task force concept, we can flesh out a little bit more on paper for consideration. Don't want to talk about it here because, you know, we'll just be kind of kicking out ideas and brainstorming. Because when we start writing, everything may look...
differently, because we do want to incorporate the intent of the Board with this recommendation.

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

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

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

CHAIRPERSON GIACOMINI: Jennifer.

MS. HALL: I think that actually is kind of the best of all worlds, because I
absolutely respect where Tracy's coming from, and I think there's a great risk of adding just countless materials, though I respect the process and I think it's a really strong one.

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

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

CHAIRPERSON GIACOMINI: Jeff.

MR. MOYER: Yes, and in the
discussions -- I agree very much, Jennifer, and the discussions we had with EPA were very much along the line, while they didn't specifically say they would do it, was that there were indications that they would create a list of inerts for organic production through this process.

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

CHAIRPERSON GIACOMINI: Any other comments or questions? Steve?

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

MR. NEAL: It varies on the complexity of the issue. An MOU such as this shouldn't take us long. I'm not going to put a specific time frame on it. We do know that this is a current issue for EPA. It's a
current issue for us. EPA, we know, has always been willing to work with us.

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

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

CHAIRPERSON GIACOMINI: Steve?

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

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

(Laughter.)

MR. McEVOY: Being quiet is good.
MR. MOYER: He's looking for that lifeline, though, Miles, and you're just sitting there smiling.

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

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

We met with them in the fall on this whole inert issue, and now that we have really three new staff that are experts in materials evaluation, we have a little more resources, that we can pursue this a little more aggressively. It is a very important issue.
It needs some attention to work out a memorandum with EPA. We understand that they're very willing to work with us, Chris Pheiffer in particular. They have a lot of resources that we can help to move this whole thing along. So I don't think it will be that difficult to establish that memorandum, that agreement.

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

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

We'd work with you to see whether or not if we understood you correctly. It
won't be necessarily the program has, you
know, gone off and done a certain thing, other
than the fact to work with you, to make sure
we've understood what your desire was, so we
can continue to move forward in establishing
this relationship with EPA.

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

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

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

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

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

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

CHAIRPERSON GIACOMINI: Okay.

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

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

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

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

(Whereupon, the above-entitled
proceeding went off the record at 9:36 a.m.
and resumed at 9:47 a.m.)

CHAIRPERSON GIACOMINI: Board

members, please find your seats. Everyone
else, find your seat or please take the
conversation outside, please.

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

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

And, fortunately, we have in the
gallery today Gerry Davis, and he's the main
architect of this. Gerry is to this document
what Jeff was to the list, is to the List 4
document, and we completely are going to rely
on him for question and discussion, as much as
he's willing to participate. A godfather.

CHAIRPERSON GIACOMINI: One of the
godfathers.

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

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

Let me just quickly go through
comments that we did get. We had comments
that we need to somehow, you know, let
Everybody know that sprouts are fine. So we put language in to accommodate sprouts. Let me pull it up on my screen so I don't have to squint over there.

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

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

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

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

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

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

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

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

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

So I'm going to ask before I even
go through the changes, ask Gerry to maybe
speak to how this whole thing came about and
has evolved, and why, you know, why we're even
doing this. Gerry?
MR. DAVIS: Gerald Davis, former NOSB member, and one who worked on this document in the various permutations of it over the years, trying to move it forward. It was handed to the Board that I was on in the first, in the very first year, five years ago, from work, I think it started in 2003.

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

There are operations that are currently certified by some certifiers, that for example are using hydroponic methods. So some of the comments from at least one certifier is kind of reflecting that, that
they already have growers growing things that
they're certifying organic and they're using
at least, to some extent, hydroponic
principles.

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

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

Then there's others saying
absolutely not. You can't have hydroponics in
organic, and you know, the Canadians agreed
and we received a lot of public comment the
last couple of years from the public saying no
way. There shouldn't be hydroponics in
organic.

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

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

So we try to spend enough time in
the document to explain this, why it's important, and not just say no hydroponics because we say so, or because the Canadians say so. But probably enough said about that.

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

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

Greenhouses are expensive to build and maintain. There's a very short list of crops that financially will work in a
greenhouse, that make enough income, food
crops that is. There's lots of ornamental
crops. But very few food crops that will
allow for -- to make enough money to grow in
greenhouses and make it all work.

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

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

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

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

MR. DAVIS: Thank you.

MS. ELLOR: Enjoy the show. As I
said, we did get together last night as a
Crops Committee very late, you know. Some of us had had some things to drink, but I think that we made -- we responded to the preponderance of the public comments that came in on this wave of public comments, and we had tried to respond during the past public comment periods, we responded to those as well.

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

So that doesn't, you know, that handles the sprout concern, and scrolling down, we made some changes to match up the titles in our actual recommendation with the title of the recommendation. So we have
places where we had in the titles "Greenhouse Production Systems."

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

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

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

MR. MOYER: Under Section 205.209(b), following the last sentence of
that, we suggested adding the following sentence: "Growing media used to produce crop transplants should also be capable of supporting a natural and diverse soil ecology."

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

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

MR. MOYER: B. B as in Boy.

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

CHAIRPERSON GIACOMINI: Okay.

While they're doing that, I would just like to make one, I guess it's a clarification on this document, for anybody that might really be looking at it in detail, and could be concerned about a problem.

At the end of the document, it's listed as being seconded by a "Rigo Delgado," who is no longer on the committee, on longer
on the Board. Everyone needs to be aware that our turnover of new members is not meeting to meeting. It's January 24th, and the date of the document is January 23rd.

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

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

MS. ELLOR: Okay. So the other change reads "Growing media to use to produce crop transplants should be capable of
supporting natural and diverse soil ecology."

That was to make sure that, you know, it was clear that transplants are covered under this document.

MS. FRANCES: A quick question.

CHAIRPERSON GIACOMINI: Valerie.

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

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

CHAIRPERSON GIACOMINI: So you have both statements?

MS. ELLOR: We do.

CHAIRPERSON GIACOMINI: Okay.

MS. ELLOR: And I think we could open it up for discussion.
CHAIRPERSON GIACOMINI: Any discussion.

(No response.)

CHAIRPERSON GIACOMINI: No discussion from the Board?

MS. ELLOR: Wowie-gazowie.

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

MS. ELLOR: Okay. Well then that --

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

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

So at the risk of being something of the armchair quarterback, I look forward to the continued opportunity to change this as it goes through the process. I do feel pretty strongly that this -- it's a little
overwrought, and I think there's some mixed 

priorities in it.

I think it gives the appearance to

me of something that started out as one thing, 

and maybe halfway or a third of the way 

through got added to, a little like a house 

with different architectural styles, with 

three different contractors a little bit. 

I'm not saying -- I do think that 

the changes that were made last night were 

appropriate, but I would -- I would push it 

farther and I'll provide that important 

content as the opportunities arise.

CHAIRPERSON GIACOMINI: I think in 

any case like this, you know, the risk is that 

you have the support of old members. You may 

not get the support of new members for 

whatever reason.

MR. FOSTER: That's the process 

sometimes.

CHAIRPERSON GIACOMINI: Just for 

the record, Madam Chairman, could you give us
the -- who made the motion, the maker of the
motion and the second, and the vote on these
amendments, which would have been within this
committee structure?

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

CHAIRPERSON GIACOMINI: Okay,

thank you. Any further discussion on this
document?

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

CHAIRPERSON GIACOMINI: All right,

thank you. We'll move ahead now to the
Livestock Committee, with Acting Chair Jeff
Moyer.

MR. MOYER: Okay. Starting with
the Livestock report, I would be amiss if I
didn't mention the absence of Kevin Engelbert.

Sitting in this position, figuratively and
literally, I'm only half the man that Kevin
is, particularly as it relates to the
documents that I'm going to bring forward on
Kevin's behalf.

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

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

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

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

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

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

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

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

The committee voted unanimously, I believe, to reject this petition for several reasons. We thought the rates of the pounds of material were relatively high, and the fact that they were averaged over a long period or averaged over the life span of the bird meant that in certain cases, they would be getting
quite a bit of, or could conceivably get quite a bit of methionine, synthetic methionine, and other times maybe not as much.

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

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

The Livestock Committee has attempted to seek a balance between those two
different constituent groups, and also to sort of try to put this methionine question to rest for a greater length of time, so we don't have to deal with these constant petitions coming almost on an annual basis, from the Methionine Working Group or task force.

That recommendation is as follows:

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

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

At that point, after 2012, "after
October 1st, 2012, the following maximum levels per ton: Laying and broiler chickens, two pounds per ton; turkeys and all other poultry, three pounds per ton."

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

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

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

The other change that we made in the recommendation was to take away the average over the life span. These are maximum amounts for every kind of feed that's mixed.
So it's not going to call on the certifiers to have to deal with that calculation.

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

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

I asked them for a -- no proprietary information guys, just tell me how much methionine are you putting in in all your different kinds of poultry mixes. They would give me a rundown, from starters to pullets to
some of them, I think, one of the mills that I talked to listed the amount that they were currently using as pretty much representing the amount that the task force was asking for to use on average.

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

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

So that was basically the framework that we used, and then we took those numbers and we worked as a committee through.
Wendy's connections with a number of professors, animal welfare people, poultry nutritionists, to find a number that -- the numbers that we were comfortable at leaving, at setting as the benchmark.

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

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

CHAIRPERSON GIACOMINI: No, no.

The question is the recommendation, it gives,
takes an unlimited use of methionine with a
drop dead date. We're changing that listing
to a qualified amount for X period of time.
Then a reduced amount after that date, that
would become the sunset review.

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

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

CHAIRPERSON GIACOMINI: Okay.

That's all I have. Any other questions and
statements, comments? Steve?

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

CHAIRPERSON GIACOMINI: Yes. It
would -- the substance would be on --

essentially, well --
MR. McEVOY: No, I don't think so.

CHAIRPERSON GIACOMINI: No?

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

CHAIRPERSON GIACOMINI: Yes, it would be 2015.

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

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

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

If don't do anything, it disappears completely. We did listen to the poultry industry and felt that they did have
some convincing arguments, that they need
some. But we also listened very intently to
the consumer groups that said they don't want
any. So we're trying to find a balance that
will allow the poultry industry to maintain
the integrity of the scale that it has today.

CHAIRPERSON GIACOMINI: Miles.

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

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

MR. McEVOY: Right, right.

MR. MOYER: We were very adamant -

MR. McEVOY: But that's going to
be very challenging.

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

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

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

We knew we would have ten of the same people that had reviewed this substance previously still on the Board, and that every year we extended that out, the more
reeducation of the entire process we would have to do.

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

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

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

MR. SMILLIE: Yes. My
understanding is because it's a synthetic, and
the poster child for a failed sunset process.

CHAIRPERSON GIACOMINI: Tina.

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

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

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

MS. HEINZE: So it's not a
specific objection to the material, but the production practices that that material enables?

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

MS. HEINZE: Okay, thank you.

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

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

MR. FELDMAN: That's okay.

MS. FULWIDER: Methionine is an
essential nutrient for growth, and they need it for feathering, you know. Otherwise, we'll have naked birds out there. Part of it is, you know, we don't have a natural diet for chickens. We're making them vegetarians. So we do need, you know, the synthetic source of methionine until we can come up with something better.

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

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

MR. FELDMAN: Is there not agreement on the committee that, what Jeff mentioned earlier, that the management
practices affect the need and reliance on this crop. Is there disagreement within the committee on that issue?

CHAIRPERSON GIACOMINI: Wendy?

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

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

Where I think where we may, I don't know what our leverage is, Mr. Chairman, on this, but it seems to me that there is
agreement that we can do better on the
management side, that product development is
in process, but is meeting some stumbling
blocks. Alternative products are in process.

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

CHAIRPERSON GIACOMINI: I think
that's a good idea, to talk to the program.

We are a FACA committee to offer
recommendations to the Secretary, especially
regarding the National List, and there are
certainly people in the industry that believe
the reading of OFPA was to keep the National
List no larger than necessary.

Maybe the Livestock Committee
could work with the program on the
justification and the reasonableness of a
recommendation that would encourage somewhere
along the line using the right language, and
courage the support of research. Jeff?

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

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

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

It's very complex.

For that reason, we are
recommending, the committee is recommending
that we do allow some synthetic methionine to remain in the diet.

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

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

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

CHAIRPERSON GIACOMINI: Any other comments on methionine?

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

CHAIRPERSON GIACOMINI: No.

MR. FELDMAN: No.

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

But when I went through and I found a number of feed mills that were already feeding, including only half this amount of methionine, with no encouragement and push at all to find an alternative method of ration formulation, it didn't seem completely out of line. But I'm happy to go along with the
committee, so there was no minority position.

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

MR. FELDMAN: Including Kevin, I imagine.

CHAIRPERSON GIACOMINI: Kevin was included.

MR. MOYER: Kevin was on the vote.

CHAIRPERSON GIACOMINI: Yes. Joe?

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

CHAIRPERSON GIACOMINI: You were on the call that day?

MS. FULWIDER: Yes.

MR. SMILLIE: Yes, okay.

CHAIRPERSON GIACOMINI: Any further discussion?

(No response.)

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

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

So I'll just go down them. The ones that we are voting to approve would be atropine, biologics vaccines, butorphanol, chlorhexidine, electrolytes, flunixin, glucose, hydrogen peroxide, iodine, magnesium hydroxide, oxytocin, ivermectin, per oxyacetic acid, phosphoric acid, tolazoline, copper
sulfate, lime hydrated, mineral oil, sucrose
octanoate esters, trace minerals, vitamins,
excipients, and on 204, we voted to keep
-- I'm sorry, on 205.604, we are suggesting
that we vote to keep strychnine as a
restricted or unusable material.

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

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

MR. MOYER: I should also mention
that these were not unanimous votes. The
committee vote was split. Both motions were
made by Dan, seconded by Wendy, and both had
a three yes -- I'm sorry, a five yes and three
no vote.

CHAIRPERSON GIACOMINI: No, three
absent.

MR. MOYER: I apologize. Three
absent.

CHAIRPERSON GIACOMINI: They were
unanimous among people present.

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

CHAIRPERSON GIACOMINI: Steve?

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

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

MR. MOYER: Mostly supportive.

CHAIRPERSON GIACOMINI: They
supported the list. I mean they supported the
recommendation.

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

CHAIRPERSON GIACOMINI: I didn't find any --

MR. MOYER: I didn't find any.

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

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

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

MR. MOYER: As per Dan's instructions.

CHAIRPERSON GIACOMINI: So we would encourage anyone to submit that.
Katrina?

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

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

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

At various times we've had recommend -- petitions to put additional things on. We've put them on as a better
alternative to ivermectin. When they are
listed, we will review, have somewhat
encouraged possibly the petition to remove,
and we don't know within, in feedback from the
program, exactly -- we believe now all of the
ones we have recommended will be listed.

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

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

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

CHAIRPERSON GIACOMINI: No. I
believe --

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

CHAIRPERSON GIACOMINI: Yes. I
believe there were some certifiers who agreed
with our recommendations.

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

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

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

(No response.)

CHAIRPERSON GIACOMINI: Okay.

Next one.

MR. MOYER: Okay. The next
material the Livestock Committee puts in front of the Board has to do with Section 205.238(c)(i) of the standard, where we voted to make some adjustments in the language back in November of 2009, under the animal welfare recommendation.

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

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

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

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

MR. MOYER: I apologize, Mr. Chairman. We'll come back to that document, and we'll move on to the order that's published in the agenda. Still under 205, Section 205.238, Livestock Health Care Product
Standard, there was discussion in the language that we used in the November 2009 document that talked about the administration of drugs and vaccines, but no real discussion about animal health care products.

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

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

CHAIRPERSON GIACOMINI: Well, what happened at the November meeting with the animal welfare document is that it came to our attention that we had a problem in the fact of everything was sort of listed as a drug, and we had definition problems in dealing with drugs, because that has specific definitions.
The first half of the effort to --

because a lot of these things are not
necessarily drugs, and Hugh could explain it
better than I can.

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

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

It was our best stab at this time,
and once we get a chance to see how the whole
thing looks and feedback from the program, we
may have to take another stab at it again.

But that was the origin of this.
So we should have included the definition, the listing of excipients from 603 that we passed in November in the regulatory or in the background somewhere part of this document, and we did not do that. We really should include that before presenting it tomorrow.

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

CHAIRPERSON GIACOMINI: Any other discussion?

MR. MOYER: Katrina.

CHAIRPERSON GIACOMINI: Katrina.

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

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

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

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

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

MR. MOYER: We can provide that, yes.

CHAIRPERSON GIACOMINI: The final recommendation for -- okay.

MR. MOYER: From November. Yes,
we have that.

MS. HEINZE: That would be useful.

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

MS. HEINZE: Okay, thank you.

CHAIRPERSON GIACOMINI: Any further questions?

(No response.)

CHAIRPERSON GIACOMINI: Okay, Jeff.

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

CHAIRPERSON GIACOMINI: Since you asked for clarification on that, this is actually slightly misleading. The problem with (c)(ii) was attempted to be corrected
with the listing in excipients, and the new
definition. This is only a (c)(i) document.

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

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

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

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

So that the bottom line, the question that comes, sort of that comes out of this discussion or that you need to consider, as Dan and I were talking about it this morning, really comes down to is the treatment of the mother animal, does that render her milk not organic or just not organic for sale?
If the milk is truly not organic, then it could not be fed to the calf. But if the milk is still organic but not legal for sale during the withholding period, it could still be fed to the calf.

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

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

At the same time, I call your attention to the minority opinion. There is a minority opinion on this recommendation,
that for all the reasons presented here, suggests that we would be making a serious mistake to remove that sentence, and that the milk, while it may be considered by some people organic, it should not be fed to young stock whose --

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

CHAIRPERSON GIACOMINI: Tina?

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

We, you know, heard about that quite a lot, and decided that we needed to address it, because it was put in after the
public comment and after the discussion, in
time for the voting. So there wasn't a chance
at that point for much public input on it.

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

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

You can't walk up and pet them.

They won't accept alternate animals. It could
be sheep, it could be in many different
categories, where the milk is actually not used for human consumption at all, but is only fed to the calf.

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

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

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

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

MS. FULWIDER: Some of the public
comment was positive and they're in favor of it, for the reasons that I would argue for it, and I would like to have the chance to do, and some of them were negative, because they feel that that milk has been -- it's not allowed for sale and so then the calf shouldn't be getting it either.

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

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

When I first got involved in the
organic industry, the big criticism that I heard that I did not expect to hear was that organic is not humane. What are you doing in that industry? Animal welfare is your specialty.

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

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

CHAIRPERSON GIACOMINI: One of the issues -- oh now they're not paying attention. One of the big issues on this is the question
of whether this milk is organic, not available
for sale or not organic.

MR. MOYER: Right.

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

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

CHAIRPERSON GIACOMINI: Well, the
potential --

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

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

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

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

(Laughter.)

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

MR. McEVOY: Yes. I would think that you would want to proceed to voice your intent of how you would like the regulations
to be interpreted, or if there's a need for a change to the regulations, of how you would like to see that change made.

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

CHAIRPERSON GIACOMINI: Thank you.

Jay?

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

Is that --

MS. FULWIDER: I would disagree,
because I mean I've -- with sows, I mean if you have one that needs to have a surgery, you know, on her hoof, and that's not going to preclude her from producing milk, or dehorning on a cow or you know, yes.

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

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

CHAIRPERSON GIACOMINI: The essence of that opinion comes down to the question of whether this is still organic milk
or not, and that's a huge part of it. Is it organic milk that is not sellable for human consumption, or is it not organic milk? If that's the decision, are there other implications that that leads us to. Jeff.

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

CHAIRPERSON GIACOMINI: Jay.

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

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

MR. FELDMAN: Right.

MR. MOYER: So that's why the question that Dan says, is it organic milk,
not for sale to human consumption, or is it not organic milk? It is an organic cow, it is an organic calf, it is all fed organic feed. But there is this small window of withholding time.

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

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

MS. FRANCES: I just want to remind you that FDA's reason for it not being sellable has nothing to do with it being organic. We extend the withholding time certainly, because it's organic. But the FDA
reason is really from a human consumption perspective, as a safety issue of having drug residues in milk.

CHAIRPERSON GIACOMINI: Wendy?

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

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

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

(Laughter.)

MR. MOYER: Joe's willing to try.
I can see it on his face. He's ready to go out. Bring that sow on. He's ready.

(Laughter.)

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

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

MR. MOYER: Well Horizon.

MR. NEAL: Horizon?

CHAIRPERSON GIACOMINI: Yes.

Kelly Shea, Horizon, who is also a producer-processor, had comments.

MS. FULWIDER: Organic Valley.

MR. MOYER: Organic Valley.

CHAIRPERSON GIACOMINI: Organic Valley.

MR. MOYER: That's under mentioned, comments on it.
MR. NEAL: But the comment --

MR. MOYER: Horizon supported the minority report.

CHAIRPERSON GIACOMINI: Yes.

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

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

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

CHAIRPERSON GIACOMINI: Tina.

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

CHAIRPERSON GIACOMINI: Jeff.

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

CHAIRPERSON GIACOMINI: Yes. We are essentially amending the document we did in November. They would both come to you long before you ever sat down and started rulemaking on it. So there wouldn't be a
flip-flop change in that respect. Miles.

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

CHAIRPERSON GIACOMINI: When? Joe said ask when.

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

CHAIRPERSON GIACOMINI: And that will be something that as you add your resources and your manpower and each committee has a representative at the program, that communication will be much easier to facilitate.
MR. McEVOY: Right, and then when we send you that response, we'll make that publicly available at the same time.

CHAIRPERSON GIACOMINI: Valerie?

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

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

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

CHAIRPERSON GIACOMINI: Oh, okay, okay.

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

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

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

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

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

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

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

MR. McEVOY: The other thing I'd like to say is that we support the decisions that certifiers are making. They're accredited certifiers. They're audited. They're doing an excellent job of making good
judgment calls on the way that the NOP regulations are written.

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

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

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

Because one side of -- one group
of people says, thinks that it feels that the regulation says one thing. Another one says well no, you're absolutely and completely 100 percent wrong. It says this over here.

In asking the question, the answer from you today is it's not a simple question, and it is not decided absolutely one way or another. So that is -- that is an answer relevant to this issue. Can we finish this?

Jeff, in responding to Jay's --

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

But if it was just a document in and of itself, I would agree that maybe you're right. But because this is a piece of a much
larger document that we've already voted on
and approved, and put in front of the program,
I think if we have a decision to make or a
choice in which direction we'd like to see
that go here today, it would be very
beneficial for them to know that in advance.

CHAIRPERSON GIACOMINI: Right. To

go back a little bit on history in that
November document, the reason within -- that
this paragraph came up within the animal
welfare document that we were working on, was
a concern that it was not clear enough, that
milk from cows that had received prohibited
materials, antibiotics for instance, and I'm
not saying this exists, but the concern was
that it was not clear enough that that was not
legitimate to be fed to the calves, okay.

Either in milking that cow through
that withholding time, in a separate bucket,
or putting that cow out for calves to nurse.

The intention of the Livestock Committee in
opening up this paragraph was to be clear that
that was not allowed.

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

In this case, we believed we put in a sentence that should not have been there.

But that's why we opened up the whole paragraph, was to be clear on that one issue.

Any other questions?

(No response.)

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

MS. FULWIDER: Yes.

CHAIRPERSON GIACOMINI: There are processors in the industry that do not allow dual operations within their producer groups. There are processors that do allow dual
operations, in that they have an organic dairy and a non-organic dairy. That is not within the regulation, but that's their right.

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

MR. MOYER: I'm always happy.

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

MR. MOYER: Okay, Mr. Chairman.

That concludes the recommendations from the Livestock Committee, and before I move onto the next item, I'm going to say one more time, please read Kevin's minority opinion, in light of the fact that he's not here.

The next item the Livestock Committee has to put in front of the Board has to do with the stocking rate and density
charts that we pulled out of the animal welfare document back in November of 2009, to give the committee and the industry a chance for input. This is just a discussion document for us today, and I don't know. Valerie, if you can pull up the chart?

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

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

They were probably asleep at the
switch, but they're glad to be engaged now, and we're glad that they are engaged as well, because we need information from industry, from producers and from consumer groups, and they're obviously engaged as well, in how we begin to fill out this chart, or if we actually do.

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

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

CHAIRPERSON GIACOMINI: Any
discussion? Wendy?

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

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

We have the guys in Wisconsin, we have the guys in Texas, and it's a real different situation. A lot of these standards want outdoor access 24-7, and that's not a good thing for young animals in the winter time. It's a real difficulty, you know, for farmers that already have buildings in place.
So I think it's really good to gather, you know, how our -- what densities our farmers already have, and I think that's a really good thing to do, and then, you know, make a decision after that. But then, you know, still with the outcome-based standards, there are core criteria. You know, are the animals clean. Are they in good body condition. Are any of them lame? You know, there are simple things, you know, that auditors can go out and look at and our own organic certifiers can look at and see if we have a problem or not.

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

And when you look at all of these
other standards, they're not the same. You know there's no uniformity in any of them, which is a huge problem. So it isn't an easy thing, and it's something we need to really talk to a lot of farmers about, and I know they talked about doing, going out and talking to different farmers and different groups. I think that would be a really good thing to do.

CHAIRPERSON GIACOMINI: Jeff.

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

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

So trying to find that balance between consumer expectations advertising and the realities of the real farm world is the
challenge, that not only this committee but
the entire board faces, as we wrestle with
this document. But it is quite important that
we come to some conclusion on it.

CHAIRPERSON GIACOMINI: Steve.

MR. DeMURI: We also heard quite a
few comments yesterday from producers who
claim that their birds like to be inside. You
can give them 100 miles of range and they stay
inside. I have a question for Joe Smillie.
From a certifier perspective, do certifiers
need stocking densities to be able to
determine whether or not producers are in
compliance with animal welfare regulations?

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

We actually, we thought it would
be a good idea at my company to actually set
up what we thought were stocking rates, right?
So we did that, and you know, we have non-
compliance for it actually, because that was
above and beyond the current regulation.

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

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

So it's a complicated issue, and
basically the way we as certification
organizations look at it, is we've got the
regulation. You don't deviate from that, and
then you go in and you judge each situation
based on the parameters you've got.
If stocking rates come in,
technically it will be easier for certifiers. But whether that's easier is best, I personally would disagree. I think it could become overly prescriptive, because we've seen some small operations that do really marvelous jobs, that would technically be under a stocking rate.

We've seen people with good stocking rates that the animals are in terrible conditions. So it's just an extremely complex question to ask. Would it be easier? The answer is yes. If there's specific stocking rates, you know, the number counting is a lot easier, you know, square feet, you know. It's easier to do. But I don't know if it's necessarily the right thing to do.

But that's -- again, I'm really not a livestock person and I don't participate that much in the certification of livestock.
CHAIRPERSON GIACOMINI: Jeff.

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

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

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

MR. SMILLIE: Yes, and we can talk about porches and fly areas and all those things. I mean there's many ways to do it. There's many tools that will allow the birds
to -- or any of those animals. We're talking about rabbits and pigs and everything in here.

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

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

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

MS. MIEDEMA: One of the things I'm hearing here with our inclusion of more
animal welfare and with our diversity is that it's going to take a lot more discernment on the part of certifiers, and so that onus is on the training there for certifiers.

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

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

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

CHAIRPERSON GIACOMINI: I think now would be a good time to go back and look
at a little bit of history on this. Need to
switch that cord.

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

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

But what we really need from you
to help us with animal welfare is some
specific things to not to use any one of their
words, but some specific things so that we can
issue some non-compliance.

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

So we were faced with that, you know, how to proceed. The track we took in this respect was to try and find some reasonable, legitimate welfare numbers that, as Joe said, there's some small guys with high stocking density numbers that are doing great, and these regulations -- our intent is that these regulations would allow for that.
Just as there's big guys that have plenty of space, and they're doing a horrible job, there's other regulations for them. There's other ways that they'll have their non-compliance. But we wanted to find something that we would start building that fence with. What we had hoped for with the Canadian numbers and with the two listings that we had were more comments specific to the numbers, as this number here, that number there, up a little, down a little.

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

I've gone to a couple of those websites. Maybe I didn't go to the ones where they're easy and on the front page. But boy, it was a rabbit hole. I couldn't find their
regulations and I know they have a set. So if you have some, if you contact those groups, please get them to us.

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

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

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

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

There's more to it than that, and consumer's expectations, I believe, are more.
But I'd like to hear your comments.

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

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

In recent years, and working with CROPP on this as well, have moved towards outcome-based standards. That's why we, you know, partnered with several other leaders in the area to start the Global Animal Partnership.
Where we're going with that is the finding that there are producers that are very dense, that do a very good job. There are producers that are very sparse that can do a very poor job.

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

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

You know, I have deep concerns that if we end up with an outcome-based standard, there's going to be a huge onus on the NOP and the certifiers to empower their inspectors to effectively look at animal welfare.
So I mean that's perhaps a hybrid approach that uses some sort of objective stocking density, and also some ideas from outcome-based standards would be something the committee can consider. But you know, there's definitely a trade-off there.

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

CHAIRPERSON GIACOMINI: We got pounded.

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

That's why we included them our phone conversations, and they were really directing us towards something as Joe said, that would be easier for them go in and say, "You've got 20,000 birds. You've got 20,000
square feet, one square foot per bird. You're in or you're out."

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

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

CHAIRPERSON GIACOMINI: John?

MR. FOSTER: Having been in a lot of livestock operations all around the country as an inspector, and then as a reviewer of other inspectors, numbers are really nice. They're really comforting. I think it's a false sense of security for the most part.
I wanted to -- I'm glad others are kind of this opinion. The performance-based is harder. It's harder as an inspector, it's harder as a reviewer, it's harder on the certifier. But it does serve the intent, the will of the consumer.

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

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

In a sense, it's looking at
performance-based goals for the health of the animal, but that's really also a performance-based goal for the industry, to make us qualitatively better, not just quantitatively knowable.

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

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

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

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

But the getting there is not necessarily so easy, and that what we're in the position of is defining a recommendation that will, you know, the test of time won't be influencing it as greatly, and whatever the
administration looks like at that time won't be able to have as much sway with how it's interpreted.

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

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

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

CHAIRPERSON GIACOMINI: All the certifiers are collecting information?

MS. FULWIDER: Well, some, some, some.

CHAIRPERSON GIACOMINI: At the
request of the program.

MR. SMILLIE: With an extremely
tight time line.

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

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

MR. FELDMAN: But I was thinking
the farm community, in terms of the community
affected by the regulation, do we need to hear
more from them? We heard from some during this session.

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

CHAIRPERSON GIACOMINI: Well, without the huge -- well Miles, maybe you want to address some of this?

MR. McEVOY: Yes. It seems like I'm ultimately new to this discussion on animal welfare. But it seems like there's a lot of programs out there. There's a lot of information that could be brought to the Board listening session, task force. I know that the Board really wants to move forward on making final recommendations.

But this is a huge area. You really, really need to consider this very carefully, economic impact. I don't think you've gotten -- you've gotten some anecdotal
type of information, but take your time with this. Do it very deliberatively.

             Task forces are very good ways of including industry members to provide that kind of economic impact to the whole process, and develop something that can be embraced by all sides, by consumer element and the producer element in this whole picture.

             CHAIRPERSON GIACOMINI: So just for overarching clarification, task force is no longer the dirty four-letter T word from the program?

             MR. McEVOY: Not in my book.

             CHAIRPERSON GIACOMINI: Okay, good. Thank you. Any other questions and --

             (No response.)

             CHAIRPERSON GIACOMINI: Okay.

             MR. MOYER: We have one more item, Mr. Chairman.

             CHAIRPERSON GIACOMINI: We were scheduled to break at 11:15 and it's 11:35. I think we should probably take that break and
then come back. So at 11:50. We will break for lunch at 12:30.

(Whereupon, the above-entitled matter went off the record at 11:38 a.m. and resumed at 11:56 a.m.)

CHAIRPERSON GIACOMINI: Okay. We have a quorum. We're later than my intended time, our announced time, so let's get started again. Again, any conversations, please take them outside and find a seat in the meantime.

Continuing on with Livestock, Jeff.

Mr. MOYER: Thank you, Mr. Chairperson. We have one more discussion item that I want to bring to the Board's attention. But before I do that, I want to recant something that I said. Under the sunset document for 205.603, I did make an error when I said that furosemide was being deferred. It is not being deferred. We do have it on our docket to vote on tomorrow.

There is one public comment by Dr. Hugh Karreman, who was the original petitioner
of that material. In his comment, he is saying that he would now request that that material not be on the list, and if it was his choice he would vote against it.

So we are going to take that material off the docket for tomorrow and defer it to the November meeting, so we have time to review that in light of those public comments from the petitioner itself. And now we'll go back to the last document.

Mr. GIACOMINI: Any questions or comments from any members of the Board?

MR. SMILLIE: Yes. I'm just a little confused. Is he withdrawing his petition?

MR. MOYER: No. He was the original petitioner. The material is on the list now. It is up for sunset. As the original petitioner, he is saying if I were there to vote, I would say this should not be on the list anymore.

We have it on the docket as an
item that is being relisted, but in light of
the petition, since he was the original
petitioner, we would like, the Livestock
Committee would like to further review that
item, and we are asking that we pull it out of
that docket to vote on tomorrow and defer it
to the fall meeting. Thank you for that
opportunity to clarify that, Joe.

CHAIRPERSON GIACOMINI:

Clarification. I'm normally the one that
people turn to on this. Valerie, maybe you're
the one. At what point in time in the process
is the -- does the document pass from the
committee to the full Board.

Is it tomorrow at the motion to
accept? So if we make a -- if the Livestock
Committee makes a change, amends their
recommendation, we can present that amended
recommendation tomorrow, without having to go
into the amendment through the Board; correct?

MS. FRANCES: Yes.

CHAIRPERSON GIACOMINI: Okay.
Tomorrow is when that transition takes place?

MS. FRANCES: Yes.

MR. MOYER: It's still a committee document.

CHAIRPERSON GIACOMINI: Right.

MR. MOYER: Thank you. The last point of discussion that Kevin Engelbert wanted to bring to the Board's attention relates to apiculture.

If you recall, last year in November, at the November meeting, the ACAs presented a document in the public comment that goes beyond the original documentation that is in the standard, regarding bees and bee culture.

We heard some testimony yesterday about bees, and Kevin wanted to open the floor at the Board level here for discussion on that document, or anything else people wanted to bring up regarding apiculture. You do not have that document in your disk or in your packet to refer to, but if there's anything
that people want to discuss about apiculture.

I know we heard from the Hawaiian
bee folk's yesterday that they're in dire
straits. I don't know that any action this
Board takes, either now or in November,
whenever we have our next meeting, would help
them. But we wanted discussions. Dan?

CHAIRPERSON GIACOMINI: Jay.

MR. FELDMAN: I just -- this is an
issue dear to my heart. We have a lot of, as
we've seen in the public comment, there's a
huge intersection between pesticide use, the
pesticide use community and the organic
community. We see this most clearly when it
comes to honey bees and managing bees and
foraging bees.

This is where the organic board
and the organic program can be extremely
helpful. Because if you -- we had a meeting
with EPA and a bunch of beekeepers, who are,
I would say, conventional beekeepers.

But their biggest problem is
getting enforcement of pesticide labels, so
when their bees go out and forage and the
plants are flowering, there's compliance with
the label, so that pesticides are not being
used with plants that are flowering.

Which is specifically on the
label. So there's a problem with enforcement
that has huge implications for organic
production as well. And we talked a lot about
task force and collaboration with EPA.

But I think as we develop a
program, we have to be cognizant of some of
the huge problems that beekeepers are having
with foraging bees, in areas where pesticides
should be used but are being used in
conventional systems, and having devastating
effects.

The problems with bees, as you all
know, is We're dealing with sublethal effects.
So we're getting lethargic bees, bees that
have diseases, extreme vulnerabilities to
diseases that they didn't have previously
because their immune systems are, you know, they're compromised.

So I just -- it's one of these areas if we're going to get into it seriously, we have to take on this issue of how pesticides, conventional pesticide use, is adversely impacting our efforts to develop an organic bee industry.

We can't ignore it and I think it has to be -- it can done collaboratively and I think it will benefit everybody. It will benefit both the conventional side and the organic side.

CHAIRPERSON GIACOMINI: Joe.

MR. SMILLIE: Well, it's a real pleasure to agree with you on this one, Jay. From a certification standpoint, it's a real challenge, because when we're certifying a crop and, you know, we have to look out for GM drift and we're talking about boundaries, when you're certifying apiculture, boundaries really start to spread out.
You really have to deal with a lot of factors in the bees' foraging range, three meters or whatever. Not three meters. Three kilometers. But anyhow it's a really tricky issue, and one of the things we have to do in the certification of honey and apiculture is really access what is being used in that forage area.

Which is why a lot of organic honey is totally restricted to pretty wild areas in the southern hemisphere or very northern Saskatchewan kind of thing. So we really take on a real biodiversity challenge when we start to -- when we get into the certification of honey and apiculture.

CHAIRPERSON GIACOMINI: Any other comments?

MR. MOYER: Mr. Chairperson, that concludes the Livestock Committee report.

CHAIRPERSON GIACOMINI: Thank you, Livestock Committee. We are now ready to --

MS. HEINZE Mr. Chairperson?
CHAIRPERSON GIACOMINI: Yes.

Katrina?

MS. HEINZE: I'm sorry. Before you conclude your report, Miles was kind enough to hand me last fall's animal welfare recommendation, and I was unable to find reference to the animal health care products. I was hoping that before we retire for the evening, I'm not sure what the right word is, that someone could --

CHAIRPERSON GIACOMINI: We'll work on that before tomorrow.

MS. HEINZE: Well, I was hoping not just that you work on it before, but before we retire for the evening, that you perhaps could tell the rest of the Board where we should look, in case we wanted to educate ourselves before the morning.

CHAIRPERSON GIACOMINI: Okay.

MS. HEINZE: Thank you.

MR. FELDMAN: Dan, can I ask one last thing?
CHAIRPERSON GIACOMINI: Jay.

MR. FELDMAN: Sorry, but and this is something to the program, because it picks up on an issue we've been dealing with earlier, and that is the question of whether the Board is within or outside its bound, its legal boundaries, in terms of taking actions on various things.

So this is something that I'd like to ask to the list of possible, and some of this, Dan, comes from the audience. A lot of folks out there know a lot more about this than I do.

It's been brought to my attention that under the Organic Foods Production Act, there's a limitation on the allowance of synthetics used in livestock to certain categories of synthetics, which includes, as you know, a long list, copper and pheromone soaps, et cetera, but does not include amino acids.

I would like to know if the
committee looked at this, and if not whether an OP could look at this in establishing the legal basis for the allowance of synthetic amino acids in livestock production, and what our limitations are as a Board in terms of doing that.

The other legal issue that I'm hoping we can resolve before we vote, or maybe it won't happen in that time frame, is whether a material that was intended to be phased out by a previous NOSB can be picked up again without a petition process.

So in effect, if the intent was to effectively to ban methionine by 2010, do we have that authority, and that was voted on by the Board, do we have the authority to pick that up without a petition, and then extend it and put it into the regular sunset process?

CHAIRPERSON GIACOMINI: There was a petition. Each time. Each time the methionine, and the other, that first question, is something that I think, from the
time I've been on the Board, we've yielded the wisdom of prior boards in their decision.

But on this one, each time it has sat there on the list with a drop dead date, it was a petition. That's where Jeff started with, was the petition. We will vote on that petition.

The recommendation from the Livestock Committee was to reject that petition, and then we had an alternative listing for methionine as a modification of what they were requesting in that position, that we're proceeding with as the recommendation for the list.

MR. MOYER: So we have the authority --

CHAIRPERSON GIACOMINI: Yes. It was done within the petition process.

MR. MOYER: Now if you move fast, Mr. Chairperson, I'm done.

CHAIRPERSON GIACOMINI: Okay.

Well, we may have missed -- I believe in our
talking of things, we need to look at the --
we said, I think, we used some of the wrong
language. So we will try to work on fixing
that. But now if we'll go to Steve with the
Handling Committee.

MR. DeMURI: Thank you, Dan.
Before I get started, I'd like to thank all of
the members of the Handling Committee for the
tremendous amount of work they've done the
last four or five months on all these
materials we're looking at.

Especially the two new folks, John
and Joe. You guys jumped in head first and
stared fear right in the face and plowed
forward on helping us get through all these
sunset items for the last few months. I
greatly appreciate all your help.

As you all know, we had the
daunting task of redoing a total of 97
handling materials on 205.605 and 205.606 for
sunset 2012.

Like the other committees that
have gone before me, we have also decided to
split these up into groups. We're doing the
so-called low-hanging fruit this meeting, and
the ones that we need more information on or
need a little more time to discuss, we are
putting off to the fall meeting.

The grand total for this meeting
will be 54 that we'll be voting on. Not
individually at this meeting, and the other 43
we'll take up on the fall. If you'll review
the recommendation posted on the website,
you'll see that I grouped them in what I
thought were a logical order.

So we have 205.605(a), Groups 1
and 2. 205.605(b), Groups 1, 2 and 3, and
then the 606 items were grouped in two groups,
1 and 2. The reason for the grouping was a
couple of reasons.

One, some of the substances are
similar, so it just kind of made sense to put
them together in a group. In some cases,
individual reviewers had expertise in certain
areas, so they were handed assignments for
those materials. In other cases, we felt like
maybe some of them might be a little
contentious, so they were kind of grouped
together as well.

One of the items that we had
intended to make a recommendation on at this
meeting was nutrients, vitamins and minerals.
Based on the information that we received from
Miles on Monday, we're going to pull that back
for a recommendation for this meeting, and
defer that until the fall, so we can have a
chance to confer with the program on the scope
of our sunset recommendation for that.

So we will not be voting on that
tomorrow, and we will not discuss it today for
that reason.

As we go through each of these
groups, as I mentioned, they were assigned to
different members. I will hand off the
discussion and the explanation to those
members as we get to their groups.
Before we get into that, I'd like to reiterate what Katrina and others have said the last couple of days, and that is we fully intend to read every public comment that comes in between now and May 25th on these items, and we will be prepared to re-recommend anything that we think we need to, and we will do an affirmation vote in the fall on everything that we vote on tomorrow as well.

So I want everybody to rest assured, both on the Board and in the public, that we will read those public comments that come in over the next few weeks.

Okay. The first group is 605(a), Group 1, and they are acids, bentonite, calcium carbonate, calcium chloride, carageenan, dairy cultures, diatomaceous earth, kaolin and nitrogen.

What we're going to do is give you just a brief update on what each of these substances do, especially for the new Board members, to give you an idea of what they're
used for; a brief mention of the public
comment received, if any; and then we'll move
forward. We'll do this as quickly as we can.
Just a few sentences on each.

On the acids, they're all GRAS; they're all generally recognized as safe by
the FDA. They're alginic, citric and lactic, and the citric acid must be produced by
microbial fermentation and the carbohydrate
substance.

They're all very commonly used in
the food processing as acidifiers to adjust
pH. The alginic acid is produced from various
species of sea weed. Citric, which was
commonly extracted from citrus fruits in the
past; it is not any longer done that way.
It's now extracted by fermentation of the
carbohydrate substrate.

Lactic is produced by fermentation
of a suitable carbohydrate substrate by a
lactic acid bacteria. Bentonite, also
considered GRAS, the TAP for that was from
1995. It's a natural clay and mine resource, and it's used as a processing aid, not as an ingredient, in the clarification or refining of wines and fruit juices. No human toxicity at low levels of intake, and no public comments that recommend that we not relist that.

Calcium carbonate is a fine, white, crystalline powder which is mined, ground and screened, and it's used in processing as an alkalite, a nutrient, a dietary supplement, dough conditioner and firming agent, and as a use food. It also has GRAS status and no comments against relisting of that.

Calcium chloride, commonly used in the food industry as a firming agent, especially for things like canned tomatoes and potatoes. Also has GRAS status. No toxicity issues according to the 1995 TAP, and no recommendations against relisting. Everybody agreed with our recommendation that we list
Carageenan is a naturally-devised substance, according to the 1995 TAP prepared by the aqueous extraction and various types of Red Sea weed. Then recovered, drum-dried and frozen, or frozen. Its primary use is a stabilizer and liquid milk-based products, but also can be used for other thickening or joint applications.

Also generally recognized as safe by the FDA, and the committee, as with all of these, found no other further information that would cause us to not recommend for relisting of these, and the public comment backed that up.

Dairy cultures. These cultures aid in the preservation of food by utilization of carbohydrate conversion to lactic acid, and the resulting pH drop helps protects against spoilage organisms. Again, this was TAP-reviewed in 1995.

A lot of these are fairly old TAPs
now but were pretty sufficient, pretty thorough, and dairy cultures are used in a lot of products, yogurts, cheeses, some butter, milk-derived products, products such as that. Diatomaceous earth is used as a filtering aid in food production. It's considered a processing aid, not an ingredient, and results in no significant residue in food when used under good manufacturing practices.

It is GRAS as defined by the FDA, and it is a substance, is a sedimentary rock consisting of deposits of accumulated shells of hydrosilica secreted by diatoms.

If you have a swimming pool at home, you might have diatomaceous earths in the filter for that.

Kaolin is another clay, very similar to bentonite. Also a natural clay used in food processing applications. It occurs largely in deposits, and as a clay consists primarily as alumina, silica and
water. It's a mine resource. It has no human
toxicity at low levels. Also considered
generally recognized as safe by the Food and
Drug, and no new information came to our
attention through public comment or through
research that would cause us not to relist
that item as well.

Nitrogen is a gas that's very
commonly used in the food processing industry.
It's compatible with organic food production.
It's non-toxic and not normally synthetically
produced. It is definitely FDA GRAS and
there's again no new information that has been
discovered or brought to our attention.

No public comment that did not
agree with our recommendation to relist this.
Originally TAP-reviewed in 1995, and it's used
primarily for reducing oxidation as an oxygen
replacer in food production. Superior
propellant without ozone-depleting properties,
and is often used as a sterile blanket to
 purge gas or over-pressure gas in aseptic
processing systems.

So that is the first group of 205.605(a) items. What I'd like to do now is hand over the mike to Joe Dickson. He's got the next group, Group No. 2 of 605(a) items.

CHAIRPERSON GIACOMINI: Steve, should we have a discussion on each, by section?

MR. DeMURI: We probably should do that.

CHAIRPERSON GIACOMINI: I think that would probably be a little more, make you know, less confusing.

MR. DeMURI: I should have mentioned also that this is how I intend to vote on these as groups tomorrow. So it would be seven separate votes.

CHAIRPERSON GIACOMINI: Seven separate votes.

MR. DeMURI: Rather than one large vote for everything. The secretary has just taken that as duly noted. Jay?
MR. FELDMAN: Great. Thank you for that thorough review. My question goes to the availability, you know, commercial availability of the organic forms of this, whether this is -- we're talking natural substances.

MR. DeMURI: These are all 605 non-agricultural items.

MR. FELDMAN: Right. So commercial availability.

CHAIRPERSON GIACOMINI: Commercial availability does not exist, apply at this time.

MR. FELDMAN: Does not exist for this category, right.

MR. DeMURI: Does not apply to these.

CHAIRPERSON GIACOMINI: I have a question.

MR. FELDMAN: Okay.

CHAIRPERSON GIACOMINI: Inquiry. I know a number of years ago in the ice cream
industry, some of the companies that were trying to position themselves as more natural ice creams with less additives, that carageenan was one of the things that they were including in their commercials that they were attacking.

Are there any alternatives, reasonable alternatives, and did you look at the state of the -- the status of the current necessity of that?

MR. DeMURI: There are some other gums that are used in ice creams. We did not get into the availability of those other gums and which gums might be more or less --

CHAIRPERSON GIACOMINI: Just a different version of the same beast though.

MR. DeMURI: They're all gums; they're all natural-type gums. So no, we did not delve into that, past what the previous Board TAPs did.

CHAIRPERSON GIACOMINI: Right.

Katrina.
MS. HEINZE: In our previous reviews of petitions for gums, we've heard a lot of public comment that while they're all gums, that each have very individual properties in the finished product, and they're not interchangeable.

CHAIRPERSON GIACOMINI: Any further debate, discussion, questions? Okay. Move onto the next session.

MR. DeMURI: Hey. Like I mentioned, I'll hand it over to Joe. He's got the next six items.

MR. FOSTER: Thank you, Steve. I hope that oxygen is the least controversial substance that we review at this meeting. Oxygen is, you know, a constituent of air. It's used as a processing aid largely in all of production and to modify the atmosphere in a number of curing and fermentation-type processes.

It is GRAS. It did not raise any red flags in its original TAP review, and I
don't have any reason to believe that those circumstances have changed. Perlite is a similar --

(Off mic comments.)

MR. FOSTER: Well, this is you know, it's oxygen as fractionated from the air. So fortunately we're not reviewing air. Perlite is a similar storage of diatomaceous earth. It's used as a filtering aid in food processing. It's a volcanic rock. There are no known safety issues. It is considered grass by the FDA.

Interestingly, the production practice is to heat it until it pops like popcorn, to expand about 20 times its usual size, and then it is ground into a powder, which is used as a filter medium.

Potassium chloride. It is GRAS. It is used as a salt substitute, is one of its uses, and it's extremely bitter taste is a self-limiting factor that keeps its usage extremely low in foods.
It's also used as a yeast nutrient, a gelling agent and in certain dietary supplements as a source of potassium. It is extracted from natural brines, and there's no known environmental impact. It did not raise any red flags in its review criteria, in its original technical review.

Sodium bicarbonate and sodium carbonate I'll speak to together, because they're similar substances that are both extracted in the same way from natural ore deposits or derived from brine.

Both are used as leavening agents. Sodium bicarbonate is best known as baking soda. It is GRAS. We did receive two public comments in support of the continued use of these substances.

Sodium bicarbonate and sodium carbonate are actually both used as alkali and to regulate acidity and pH. Sodium carbonate is additionally used in traditional Asian noodle processing, and they are GRAS.
Non-synthetic waxes, specifically carnauba wax and wood resin. Carnauba is naturally extracted from palm leaves. Wood is extracted from wood. They're only used on the exterior of fruit and vegetables to improve appearance, reduce dehydration, extend storage life for those fruits and vegetables.

We received public comments in support of the continued use of these substances as well. That concludes my section of 605(b).

CHAIRPERSON GIACOMINI: Is that a (b)?

MR. FOSTER: A, A. I'm sorry.

MR. DICKSON: 605(a).

CHAIRPERSON GIACOMINI: Another section of 605(a).

MR. FOSTER: I'm looking ahead to my next group.

CHAIRPERSON GIACOMINI: Any discussion?

(No response.)
CHAIRPERSON GIACOMINI: Seeing none, proceed on, Mr. CHAIRPERSON.

MR. FOSTER: Thank you.

MR. DeMURI: Okay. The next group are the first group of 205.605(b) items, and Mr. John Foster has this first bunch.

MR. FOSTER: Thank you Steve for something of a softball of materials. Yes. Low-hanging fruit, all of them. Are they -- I can't quite -- is that the list? All right, the calcium phosphates. Used for fortification, baking and other leavening powders. Generally recognized as safe.

Carbon dioxide I hope, without annotation there. Used in carbonated beverages. It's a pretty good solvent in some circumstances for removing caffeine. It's also used to displace oxygen in some packaging contexts.

Also generally recognized as safe when used in accordance with labeling instructions. Also, of course, in wine-
making. Used frequently in wine-making.

Ethylene, and this does have an
annotation. Allowed for post-harvest ripening
of tropical fruits and degreening of citrus.
It just -- it hastens ripening of those
materials.

Glycerides, mono and diglycerides
used only in drum-drying of foods. Generally
recognized as safe. Glycerin, glycerin's
interesting here actually. Produced by
hydrolysis of fats and oils.

This is one, I think it's a
softball this time around. I suspect as more
novel ways of producing glycerin are moving
forward, we may have an interest in changing
the listing on the National List here.

Since it is produced by hydrolysis
of fats and oils, which you can do with a lot
of materials, my understanding is there's some
organic glycerin on the market, and we may be
-- I don't want to bring up the yeast thing
yet, but it's entirely likely we would see
that.

But at the time being, we're not changing annotation. We're not dealing with lists to change this at this time. It's used broadly in the food industry. Generally recognized as safe.

Hydrogen peroxide, a processing aid, typically a packaged disinfectant. It's a very good sanitizer for a lot of equipment, where chlorine might not be a good option. Generally recognized as safe.

Magnesium carbonate. This is allowed only for use in foods that have a "made with" claim, made with organic-specified ingredients claim. Magnesium chloride annotated, "derived from sea water only."

Used as a thickener or firming agent.

Magnesium stearate, a binding material. This is also allowed only for use with foods with a "made with" claim.

And ozone, I think. For some reason the light is not bright. Ozone is the
last one. Used nominally to wash fresh fruits and vegetables as a food contact sanitizer. It has limited use, depending on what food you're trying to disinfect, and that is without annotation.

I looked at a number of resources, all the original TAP reviews, mostly from '95 forward, and then there was no public comment that contradicted anything except a relisting. Several people kind of in groups asked to relist these materials, and to my knowledge no public comment said to remove any.

Oh, I also -- I should say also called about a dozen processors out in the world that I knew used some or a couple of these materials, and other than those who made public comment and all of them, when asked, said yes, they would like to see them on the list. That's anecdotal. That's it.

CHAIRPERSON GIACOMINI: Questions.

Jay?

MR. FELDMAN: What is our
responsibility or authority to, in the case of 605(b), to look at alternative practices or non-synthetic approaches to these uses to these chemicals? Do you know?

CHAIRPERSON GIACOMINI: The sunset process is a re-review of the process that put them on the list. The major debate that we are, sort of have reentered into the discussion is whether we only look at new or whether we look at all.

I would think that anything that you are aware of on any of these things would likely be new if it's something that's developed within the last five years.

So that would be appropriate to discuss that at this time.

MR. FELDMAN: Right. So I guess my question is did any information come forward at all on alternative, either management practices or products, that would fall in the non-synthetic category?

MR. FOSTER: Not to the extent
they could serve to replace these. There may be a few isolated relatively unique circumstances, wherein some of these might not be the best alternative. However, either by virtue of their limited applicability, or limited availability in some cases, for the use that was recently discovered, it's not in that zone of being able to make that transition.

I will just note that I was pleasantly surprised with the, when I was calling manufacturers, I was very pleasantly surprised at the degree to which they were actually inquisitive about asking questions, asking similar to that.

Well, since you're asking John, have you heard of anything that's, you know, I could use that's different? I wasn't really expecting that, and I was pleasantly surprised by that.

CHAIRPERSON GIACOMINI: Katrina.

MS. HEINZE: I want to note that
for handlers, when we use these materials, they are on our ingredient deck. So there is very clear transparency to consumers that they're being used. So speaking as a handler, we are driven by the consumer questions that we get. I answer the consumer questions that Small Planet Foods gets, and consumers call and say "Why do you have blank in your product? Can you help me understand?"

So that's information and input to our process, our R&D process that we use all the time. So if there's an alternative, we have a market incentive to use that alternative, and would be allowed.

CHAIRPERSON GIACOMINI: Steve.

MR. DeMURI: I would hope through the public comment process that if a manufacturer had a substance that they thought could replace one of these synthetics, they would let us know that and we would definitely take that into consideration, as we did the sunset reviews. In the cases of these, none
of that information was brought to us.

CHAIRPERSON GIACOMINI: Further questions, comments in this set?

(No response.)

CHAIRPERSON GIACOMINI: Mr. Chairperson.

MR. DeMURI: Okay. Group 2 of the 205.605(b) items are Tracy Miedema, other than the last one, which I will take. But Tracy, I'll pass them off to you.

MS. MIEDEMA: Okay. The five items on 205.605(b) are all synthetic compounds or mine items that have potassium in them. So the first one is potassium tartrate, also called cream of tartar. Mainly used as a leavening. It can be produced by an extraction from tamarind pulp or isolated from wine or a grape-making process, grape juice-making process.

The second item, potassium carbonate. This is caustic. It's used also for pH control, leavening. Its common names
are salt of tartar or potash. It's produced through an electrolysis of potassium chloride. It's used in the manufacturing of cocoa, chocolate, soft drinks. Also can be used as a boiler additive.

The third item, potassium citrate, also called citric acid salt. Can be used as nutrients, as a sequestrate, as a chelating agent, adjusting the pH of products, a buffering agent, an antacid. It is created by the treatment of citric acid with potassium hydroxide. Various phosphates could serve as a substitute.

The fourth item is potassium hydroxide, also called lye. This is produced through an electrolysis process. It is an extreme corrosive. There can be some hazard in the disposal of this material. It has a very narrow usage in organic handling through annotation, which is only to be used in the production of IQF peaches, individually quick-frozen peaches.
The last one is potassium phosphate. This is a mined material used as a nutritional supplement, a sequestrate pH control agent. It has a very bitter taste. There are some disposal issues to the environment with this one as well that were raised during the original TAP. But the original Board decided to, in '95, to include this item on the list.

The comments we received prior to the meeting had unanimously called for relisting. Yesterday we received one comment in writing from a speaker who couldn't make it, but noted that potassium hydroxide was being used in the manufacture of soap labeled as organic.

And I would defer that to the program as really an enforcement issue, since the annotation is clear that this is an IQF peach handling material.

MR. DeMURI: Thank you, Tracy.

The last one on this list is xanthum gum.
It's a polysaccharide gum derived from xanthomous, by a pure culture fermentation process. The Board who originally listed it determined that the source material was natural, but its manufacturing process made it synthetic, because it is purified by recovery with isopropyl alcohol, then dried and milled.

The material is used in food processing as a stabilizer, emulsifier, thickener, suspending agent, bottling agent, and quite commonly used in ice creams, baked goods, salad dressings, those kind of food products.

In the original TAP report, no adverse dietary, physiological or toxicological effects were found, and again, we received no public comment that disagreed with our recommendation to relist xanthum gum. So that's the end of this group of 605(b) items.

CHAIRPERSON GIACOMINI: Okay. Discussion, questions on this set? Joe. Oh,
I've got to be quick, Mr. Dickson. Joe, do you have anything to say?

MR. SMILLIE: Yes, I have a question. It says "Potassium hydroxide prohibited for use in the lye peeling of fruits and vegetables, except for peeling peaches during IQF." I don't necessarily interpret that to mean it can't be used in other functions.

It's simply to me the reading is it can't be used for the lye peeling of fruits and vegetables, as similar to the sodium hydroxide, prohibited, which that reading for sodium hydroxide is prohibited for use in the lye peeling of fruits and vegetables.

To me, my interpretation is it would be allowed for other uses. That's just simply a prohibition on its use in that specific area.

CHAIRPERSON GIACOMINI: Tracy? Joe?

MR. DICKSON: Actually, Joe said
exactly what I was going to say --

CHAIRPERSON GIACOMINI: Okay.

MR. DICKSON: And I'd just add to

that that, you know, we've seen that

interpretation used in the marketplace, and I

believe that both substances are used in other

places than peach peeling.

CHAIRPERSON GIACOMINI: Okay.

Katrina? Miles.

MR. McEVOY: Yes, that's my

interpretation as well. It's just -- it can

be used in other things besides lye peeling of

peaches. That's my understanding. That's my

understanding as to how certifiers are

interpreting it. We do have a complaint on

this that we're looking into.

CHAIRPERSON GIACOMINI: Katrina?

MS. HEINZE: I have not read the

transcripts for when this was listed. Do we

know what the intent of the Board was that

listed this material?

MS. MIEDEMA: I went back to the
1995 recommendation, and it prohibited all fruit peeling, and it intimated other food uses. But specifically, you know, didn't seem like it wanted to get used in any other fruit peeling situations, and then the 2002 Board added it for IQF peaches.

MS. HEINZE: Thanks.

MR. DeMURI: And I believe that was based on a comment from an individual manufacturer, who does IQF quick-frozen peaches that needed it for their operation.

CHAIRPERSON GIACOMINI: Okay. Any more comments on this section?

MR. McEVOY: Sounds like we might need to provide some clarification on this to the Board, in terms of the history of this? Or do you feel like you have a solid background on this?

CHAIRPERSON GIACOMINI: I think we'll leave it up to the committee on whether they think this affects their sunset analysis, and we'll see how -- we'll go with that
tomorrow.

MR. McEVOY: Okay.

CHAIRPERSON GIACOMINI: Okay.

We're past the time of scheduled break. You have two more sections for sunset to do. I don't even know if the lunches are here yet. They are? What's the opinion and feeling of the Board?

MR. DeMURI: I can go either way. I'm perfectly happy to finish up the handling items. It depends on how bad people need to eat.

CHAIRPERSON GIACOMINI: Is that agreeable to everyone? Okay. Well, let's go -- let's do them one at a time and then we'll see how we are, how hungry everybody is after the next section.

MR. DeMURI: The 606 items will go pretty quickly, I think. Okay. We have one more group of 605(b) items, and Joe Dickson has those.

MR. DICKSON: All right.
Alginates are, they're the salts of alginate acid, which I think is actually on 605(a) and slated for fall review. But alginate acid is extracted from brown algae. As you might expect from something extracted from algae, it's used as a thickener and stabilizer in processed foods.

For all of the items on this list, I'll just lump them. They are all GRAS and they all had no negative public comments or raised any red flags in their original TAP reviews.

Ammonium bicarbonate and ammonium carbonate are both used as a leavening agent, similar to sodium bicarbonate and carbonate. They are -- the question of which to use depends on the pH and the sort of viscosity of the baked good. But they're both used in similar ways.

Ammonium bicarbonate and carbonate are consumed completely in the leavening process, and leave no residue in the food.
Ascorbic acid, a/k/a Vitamin C. As one of its primary uses, it's used to fortify fruit juices to replace Vitamin C to pre-processing levels, as required by certain federal regulations.

It's also used as an antioxidant in cut fruits such as apples to prevent darkening. It's made by a fermentation from dextrose, and from there it's extracted and purified. It's used in curing as an antioxidant in flour and beer as a stabilizer, in fats and oils as an antioxidant, and again for Vitamin C enrichment.

Calcium citrate is -- that's the next one -- prepared from citric acid. It is then fermented to yield the final product. It's used as a sequestrate, buffer, firming agent and a source of calcium. Calcium hydroxide is also known as lime. Limestone is heated to a very high temperature to obtain carbon dioxide and quick lime.

The quick lime is then mixed with
water to produce calcium hydroxide. It's used as a buffer, a neutralizing agent, a firming agent, a pH adjuster, and also used in making calcium acid phosphate, which is baking powder. It's also used in nutritional supplements. That is the list.

CHAIRPERSON GIACOMINI: Any discussion?

(No response.)

CHAIRPERSON GIACOMINI: Seeing none, do we still want to move on? Go.

MR. DeMURI: Okay. Before I get into the next group, which are all 606 items, I should mention that for the record, that you could probably see most of the committee up on the screen. In every case, the votes were all unanimous, except for maybe an absent member for some of them. So nobody voted no for any of these items to be relisted in the committees.

All right. We're going to go on to Group 606, the first group of 606 items.
Let me mentioned before I start these, that everything on 606 is subject to commercial availability. So just because they're on the list, doesn't mean that users have free rein to use them whenever they want.

They have to prove they're a certifier, that they need to use them because the, an organic form of these ingredients isn't available in the quantity, quality or form that they need.

So this is not rote approval to go ahead and use everything on here whenever they want. They do have to satisfy their certifier that they actually need them. That applies for all the 606 items.

So the first one under the first group is casings for processing intestines and sausage-making. As I mentioned, it would have to be -- is subject to commercial availability. I must be getting hungry. So they would have to prove to the certifiers that they need this. No public comment at all
that this was no longer needed to be on the list.

The next one is celery powder. It's an ingredient not currently commercially available as organic. I did do a little searching on this one myself, just to satisfy my own curiosity, and found that it still is not very available. There's a couple of capsules and things that claim to have some organic celery powder, but for large uses, it's just not out there.

The reason that it's used primarily is in organic meat, poultry and sea food products manufacture, primarily as a natural source of nitrate, although it also contributes to the savory flavor of final meat products. So it is a nitrate replacer for organic products.

Chia, also known as salvia hispanica. It's also an agriculture ingredient not commercially available as organic. Developed several years ago as a
source of Omega-3 fatty acids and dietary fiber, which is added to some organic foods as a nutritional supplement. Mostly from Peru, Argentina, Colombia, and Bolivia.

Dillweed oil. Extracted from fresh dill plant material through a steam distillation process. The oil is used as a critical ingredient in the manufacture of organic dill pickle products. No information brought forward that this item is now available on the market, to be used in organic pickles.

Fish oil. Fish oil is typically used as an ingredient to increase the Omega-3 fatty acid content of organic foods. It's derived from high fat-containing fish such as salmon, tuna, anchovy and sardines. The manufacturing involved alkali refining with sodium hydroxide filtration, bleaching of the clay and natural carbon, and deodorization through a steam process.

Again, no information brought
forward that this should be removed from the list, and no public comment disagreeing with our recommendation to relist.

Galangal, in the frozen form only, is a ginger-like knobby red-colored root stock or rhizome cultivated in Southeast Asia. Used in the formulation of authentic Asian processed foods such as Southeast Asian soups.

The original petition stated that the dried form of this ingredient was available, but that the dried form did not provide the flavor profile that the manufacturer was looking for in their finished product. So only the frozen form of this item is listed.

Again, we had no public comment that did not agree with our recommendation to relist galangal frozen.

Gelatin has been on the list for quite some time. Some of these items are post-Harvey items, so they're up for their first sunset review at this point. Gelatin's
been on the list for a while. Gelatin is regarded as GRAS.

It's used in a wide variety of organic products, including as the main component of the outer shell that encapsulates fish oil, which is the use that's specified in the original petition. Many organic products use encapsulated fish oil and some other products. So it's pretty common in the food industry to use gelatin.

It can be derived from a variety of sources, including natural sources such as skin, connective tissue in the bones of animals and from the skin of a variety of commercially-harvested fish. Again, no public comment disagreeing with our recommendation to relist gelatin.

Now a broader category of gums, water-extracted only. This includes Arabic, guar gum, locust bean and carob bean source gums. The original 1995 TAP report for gums determined them to be non-synthetic and
compatible with organic agriculture.

They're polysaccharides derived from a variety plant sources. Each is processed a little bit differently depending on the source, but all those listed in 606 must be water-extracted.

Gums, of course, are used in a wide variety of organic products, including ice creams, baked goods, soups, candies, jellies, baked goods, fillings and some beverages. No public comment received that disagreed with our Recommendation to relist those gums on 606.

Konjac flour is the next item. It's obtained from the tubers of various species of amorphophallus. It's a soluble dietary fiber that is similar to pectin in structure and function. The tuber is ground and milled, mechanically separated and washed with water to produce the flour, and it is used as a jelling agent, thickener, emulsifier and stabilizer in organic foods.
Again, no public comment disagreeing with our recommendation to relist konjac flour.

Lemongrass-frozen is very similar to galangal. It's also a grass-like spice, also known as citronella that's used in Southeast Asian dishes, Southeast Asian-processed organic foods. It has a similar situation to the galangal.

There are some dried forms of lemongrass available, but the manufacturer who originally petitioned this back in 2007, when it was first listed, stated that the dried forms were not suitable for their products because it did not give them the flavor profile they were looking for.

So this was listed only in the frozen form. So frozen lemongrass we're recommending for relisting, and we had no public comment disagreeing with that recommendation.

The next one is orange shellac,
unbleached, and this is an old, somewhat older
listed item. First presented at the NOSB
meeting in Austin, Texas in 2002. It is an
unbleached -- it's unbleached, and it's used
principally as a coating agent and as a
glazing or polishing agent on fruits and
vegetables.

It is considered GRAS by the FDA,
and it's a hard, durable, amorphous resin that
is semi-permeable to water. It is a mixture
of resins derived from secretions of the lac
insect, that are collected from resiniferous
trees and bushes and further processed to
yield shellac. Again, we received no comments
disagreeing with our recommendation to relist
orange shellac.

The last one in this group is
peppers, specifically chipotle chile peppers.
I remember this one. It was listed back in
2007. We've had some interesting
conversations on this one, but we did
recommend they relist it.
The original petitioner claimed they needed this specific type of pepper that they could not find in organic form, especially processed in the way they needed it processed for their product.

There are organic peppers out there, but specifically processed in the form that they needed for their products was not available, and we received no comments to the contrary when we recommending relisting of this. So we are recommending for relisting of chipotle chili peppers.

So that's all of the first group of 606 items.

CHAIRPERSON GIACOMINI: Any questions or comments? Katrina?

MS. HEINZE: For the new members, I wanted to highlight. When we went through the first set of post-Harvey 606 items, something that continued to come up was this disconnect between the fact that you might have the raw agricultural material in organic
form, but could not put together a processing supply chain for it.

Depending on the material, the reasons why could vary. It could be proximity to a processing location; it could be the size of batches that were required. So that's why you see some very specific materials on here or specific form of the agricultural product. It was less about you can't grow, you know. You can clearly grow an organic -- chipotles or jalapenos, right? But you can't put together the rest of it, to have that final material available.

MR. FELDMAN: Okay. Wow, great job. I'm just curious in going through this, do you see any of these as being close to being replaced by an organic alternative? I mean we heard yesterday and I see hops is obviously going to be on here later on.

MR. DeMURI: That's for the fall.

MR. FELDMAN: Thank God, but I'm just wondering. In the course of doing your
work, did you see any materials that were close to being available commercially in the organic form?

I'm curious as to what we can do as a board to help facilitate that transition, and create the encouragement that does what 605 or 606 was intended to do?

MR. DeMURI: Well as a board, I think we can encourage manufacturers that have these items available to bring that forward to us. We do the best we can in doing some research on some of these, but we can't see every single from every single supplier.

So we rely on the public comment process and even the petition process to remove, to get these off, and I make a plea to the industry to help us with that. When they have an item that they think can replace any of these, let us know about it, because we definitely take that into consideration.

CHAIRPERSON GIACOMINI: John.

MR. FOSTER: My experience has
been if there's a supplier of these that's at
all tuned into a national supply chain, they
do bring it forward. I can see a few things
where -- that are closer than others to being
attractive in large scale growers and
manufacturers.

But I feel the industry was used
to pre-Harvey kind of sensibilities and
patterns, and is just getting to the point
where they're starting to get comfortable with
the durability and the consistency that this
is starting to look like, and that fear of
instability, for minor ingredients, that's a
big investment for a minor ingredient.

So the more stable we can make a
list, the more attractive it's going to be in
the long term, to do exactly what you want.
I don't think there's been that perception of
stability for a relatively small production
volume.

But the more stable it is, I'm
certain you'll see more action faster in the
next couple of years, I would guess.

CHAIRPERSON GIACOMINI: Katrina?

MS. HEINZE: I was going to add to that too, that it is very much in the interest of the supplier of one of these ingredients to bring it before the NOSB, because once they have, it would be very hard for a certifier to then let a handler use it. So I believe we would know.

MR. DeMURI: And to your point, Jay, I do know of -- I'll take gums as a specific example. I do know of a fairly major manufacturer that makes organic gums, and they are listed on the 606.com website. So certifiers should know that, and they should be asking their clients whether or not they're using organic gums.

The research that I've done, because we use organic, we use gums in our operation, is that the supply is not quite there yet to be able to handle everybody that needs it. But it's getting pretty close.
CHAIRPERSON GIACOMINI: There's one item on here that I'm really surprised is on this first go-round. I remember the conversations, the discussions we had. But I want you to refresh me, so I can make sure I keep it in the right context.

Was casing an original 606 listing, or was that a Harvey?

MR. DeMURI: That was a Harvey item, 2006.

CHAIRPERSON GIACOMINI: Okay, okay. I remember when that, those discussions for putting that on the list was going on. There was a lot of contention for GMO issues, and now the organic beef industry is much larger than it was then. The supply would seem to be much more available if they were pushed.

While it's not right there yet now, and maybe I just shouldn't say it, but we are closer to cloned animals being approved.

There was a tremendous amount of debate on
this last time. I'm very surprised that there
was no negative comment on this. But that
notwithstanding, I'm surprised it's on the
first set, first go-round of approvals, and I
would support you considering to put that off
until next time.

MR. DeMURI: What I think I'd
rather do is go ahead and vote on it, so I
don't have to pull it out and redo that
particular recommendation, and then rely on
additional public comment between now and the
end of May. If it looks like we get some,
we'll be more than happy to reconsider it.

CHAIRPERSON GIACOMINI: That's the
process we set up. Any other comments? We
are now pushing one o'clock. Do you really --
you're sure you really want to finish this?

MR. DeMURI: We only have four
more, and they're Joe Smillie's. I know he's
going to be very quick, because he's hungry.

CHAIRPERSON GIACOMINI: That means
he can't comment on them later as he goes on.
(Laughter.)

MR. DeMURI: So the last group of -- the last four are four 606 items that Mr. Smillie's going to handle for us.

MR. SMILLIE: I'll start with the items. Basically, sweet potato starch, and it's for bean thread only. It's one of those items where there is sweet potato starch available, but the production of bean thread is a very, very narrow enterprise, engaged in by very few people, which creates a very specific type of food in Southeast Asian cuisine.

There's no availability. The original petition and the reviews were pretty exhaustive, and the manufacturer is aggressively looking for a supply that has not shown up yet.

The second is similar in a certain sense. Turkish bay leaves are distinctly different from other bay leaves, and are not replaceable by other bay leaves, and there's
a very limited supply due to a number of
fragilities on the supply side. The
manufacturer again is supposedly keeping their
eye out for it, and looking for the supply of
that. Right now, there isn't one.

The third one, wakame sea weed, is
a specific type of sea weed, and even though
there are some North American sources of sea
weed, it's a different variety and species
that isn't amenable to the wakame, the undaria
pinnatifida that's used in miso soups and
other specific Japanese cuisine items, and
that -- don't get so interested there. You've
got more chop stick practice, hashi practice
to cover.

But these items are all similar in
the sense that they're specific minor
ingredients used for specific cuisines. We
did have a number --

CHAIRPERSON GIACOMINI: Did you
miss kelp Joe?

MR. SMILLIE: Sorry? Yes, I'm
going to wait a second on that one. We did have a number of sunset comments. I counted 15 in total. Some of them just were supporting renewal in general, and others were more specific as to their support. But they all supported renewal of these items, and there were some specific supports.

I'm going to deal with kelp last, because it's a slightly different one. Unlike the others, which were -- I hate keeping using the post-Harvey, because now Arthur is back, and I remember going through all the Harvey talk with Arthur. We'd sit there and go man.

But anyhow, we've got kelp, which is a pre-Harvey item, and that was put on originally with the annotation for use only as a thickener and dietary supplement. Again, there was specific support for this, and there is organic supplies of kelp available.

But the petitioner and the information said that not all varieties.

Again, kelp is not as specific as the wakame.
It covers a number of varieties of sea
vegetable, and both the petitioner and the
available industry information says that
although organic is available for some uses,
it's not all types are available. The
petitioner or the support document basically
said that it should remain on 606, since that
wasn't available.

That received the only, I won't
say negative comment, but the only comment we
got was from CCOF, that supported all but had
some concerns.

Those concerns expressed by CCOF
weren't necessarily that the material wasn't
there, but they questioned the use of it as an
agricultural material, since there was no
specific standards for the production of sea
vegetables, similar to that we have no
specific maple syrup, mushroom or honey
standards per se.

So I'm interpreting that, unless
it's more specific, that they're not against
it, relisting. They just had some concerns that specific standards for the production of kelp aren't in the regulation. But I believe and the committee believes that the production of kelp is covered within the regulation, as interpreted by certifiers.

So therefore we have support for these items. The committee votes were all unanimous in support of these items, and again, commercial availability, as has been previously expressed. If we get comments or we get petitions to remove them, we'll certainly look at them. They're there for, to spur the industry to produce these as organic.

CHAIRPERSON GIACOMINI: Comments on the set? Jay?

MR. FELDMAN: Kelp is a good example, I think, in this area, of looking at certain varieties becoming available while others aren't. It brings up this issue of annotation. So how do we deal with that? I guess we're limited by our ability to --
CHAIRPERSON GIACOMINI: The petition process.

MR. FELDMAN: So we have to petition to remove from --

CHAIRPERSON GIACOMINI: To change the annotation.

MR. FELDMAN: To change the annotation. And you're saying that petition exists?

(Simultaneous speaking.)

MR. SMILLIE: No, no, no. The original. We've got the original petition, the original TAP and specific comments.

MR. FELDMAN: So what would be the process for that? I mean we are not going to petition ourselves, right? But on the other hand, we see commercial availability --

CHAIRPERSON GIACOMINI: Anyone on this Board can submit a petition as an individual, and you would just need to withdraw yourself from that vote. But we have 14 other people to vote on that petition.
MR. FELDMAN: Right. I would urge the committee to consider someone from the committee to petition in this case, where you've identified varieties that are commercially available.

CHAIRPERSON GIACOMINI: Or we all have friends.

MR. FELDMAN: Or we all have friends.

CHAIRPERSON GIACOMINI: Katrina.

MS. HEINZE: I appreciate your passion for this topic. It is really good. We as handlers want to see this list be an active, dynamic list. I just want to remind you, just because it's on the list doesn't mean that someone can use it.

So if there's a particular variety that I as a handler wanted to use, and that variety is available in organic form, I have to use it.

MR. FELDMAN: Right.

MS. HEINZE: So there is -- just
because it's on the list really isn't a problem.

MR. FELDMAN: Yes. I mean I understand that. I guess I'm picking up on the thread from yesterday regarding hops. I don't know how representative that is of how this plays out. I know our intent is for this to happen, but the question is is it happening, and what incentives can we adopt that ensures that it moves in that direction.

MR. SMILLIE: Well, I think Katrina answered it properly, that that's the mechanism. It works. As you can see, we're not here to discuss hops. I guarantee you we'll have a battle royal on this in the fall. But as far as this one goes, it's significantly different.

And we did not get a petition and we did get a comment from a supplier of organic kelp, saying that they wanted to relist, but they did not want to take it off, because they could not supply all the needs.
MR. FELDMAN: Oh, okay.

CHAIRPERSON GIACOMINI: Okay. Any further questions on that? Okay. We're a little after. First of all, one more reminder. There were a set of reading glasses found from last night. If these are yours and you can't figure out why you can't see the paper in front of you, this might be it. Whoops, Steve?

MR. DeMURI: I forgot. Katrina asked me to let her talk briefly about colors, because she has that large group for the fall.

CHAIRPERSON GIACOMINI: After lunch.

MR. DeMURI: So Katrina, go ahead.

CHAIRPERSON GIACOMINI: After lunch. Reconvene at two o'clock.

(Whereupon, the above-entitled matter went off the record at 1:07 p.m. and resumed at 2:00 p.m.)
After two o'clock. Could we please have the members in their seats, and the rest of the people find a seat or take the conversations outside please?

Got you quiet. Barry will show you how. Okay, all right. Two o'clock. We have a quorum of the Board. We're back in session. Valerie, thumbs up Valerie? We ready to go?

That's wonderful, okay. I almost had them under control here for a minute. Golly, okay. Please. We're ready to move on with the next part of our agenda. Yes, one last moment back to the Handling Committee for Steve.

MR. DeMURI: We need one minute. Katrina's going to give us a brief update on Colors. There's 19 of them that are up for sunset 2012, that we're going to talk about in
the fall. So that's 19 of the 44 or 45 we had to do in November. Katrina's handling those for us, for the committee and would like to provide an update.

MS. HEINZE: If I could beg the indulgence of the Chair, I do not have the classification of materials documents that Valerie needs. Can I just -- on a drive. Can I just have one minute to do that before I do Colors?

CHAIRPERSON GIACOMINI: Yes. If we had thought of it, we would have had a long break right before this session. So but since we didn't think of it, you can proceed and we'll watch you. Excuse us for one minute while we make some technology adjustments.

MS. HEINZE: With comments like that, you're likely to have your joint Chair walk out of the room and leave you to do it.

CHAIRPERSON GIACOMINI: Okay.

Three guys walk into a bar.

MS. HEINZE: Thank you, Mr.
Chairman. You ready for me to proceed on Colors?

CHAIRPERSON GIACOMINI: Thank you.

MS. HEINZE: Thank you for your patience. I should have done that during the break. I just neglected to think about it. Okay. The Handling Committee wanted to just alert the rest of the Board that in the fall, we will be reviewing 19 colors that are listed on 606.

MR. MOYER: Katrina, could you move the microphone a little closer? It's difficult to hear on this side of the room. I'm not sure why.


Okay. My husband would not say I'm usually soft spoken, so thank you. I'll be sure to pass along the information. The Handling Committee has on our work plan to review 19 colors currently on 205.606 for sunset. We wanted to let the rest of the
Board know that in that process, we're also evaluating how to best proceed with an annotation change.

When those materials were reviewed, we reviewed processes that were either water or oil-extracted. But after much discussion on the board, we chose not to annotate those listings with that restriction.

It has since come to our attention that there are some manufacturers who are using solvent-extracted colors, and that was not our intent.

So I have been working with the program to determine the best way to proceed with that, whether it's through a petition, which we are prepared to do if that becomes necessary, or whether the committee can proceed with a recommendation, given our information.

So we will have two recommendations on these materials in the fall. One will be an annotation change and
one will be the relisting of sunset. So we just wanted you to be aware, since that's one of our problematic materials. Any questions?

CHAIRPERSON GIACOMINI: So just to be clear on that, that is not an annotation change within sunset process?

MS. HEINZE: That's correct. It's two separate recommendations.

CHAIRPERSON GIACOMINI: Thank you. Any discussion, questions for Katrina on that?

(No response.)

CHAIRPERSON GIACOMINI: Okay, seeing none. Does that conclude the Handling Committee, Mr. Chairman?

MR. DeMURI: Yes it does, thank you.

CHAIRPERSON GIACOMINI: Thank you. Moving on to Joint Material Handling Committee. The chairperson is Katrina Heinze.

MS. HEINZE: Thank you. Valerie, you have many documents on flash drive. The two that you have that you might want to open
are the 042610, Classification Materials.

Yes. It should be a Word document.

Then the other is titled the "MCHC Presentation." It's a PowerPoint, thank you, and it's just one slide, so you don't need to flip through it or anything. Thank you.

Okay. So while Valerie gets that going, just for the Board, the presentation is just a couple of different versions of the definition of chemical change, and I'll refer to them in my presentation. So you don't need to look at them quite yet.

So first, I really want to thank the committee for your continued work on this topic. It has been a very long journey. I want to particularly commend the new members for jumping in with two feet. It has really been a pleasure working with you, and having your skills working on this topic.

At the November 2009 NOSB meeting, the NOSB passed a recommendation on
classification of materials. In that recommendation, we said that there were a few public comments that needed additional study, and stated our intent to do so. This addendum is those clarifications.

Before I address the definition of chemical change, there are a couple of other points I want to highlight from this addendum. The first is that -- oh bummer. Miles isn't here. Pay attention Arthur.

The committee and the public, as we continue to hear in public comment, very much support the idea of having commercial availability applied to 605. We understand that at this point the NOP does not see this option as viable, but we'd really ask the NOP to continue to explore that option and perhaps report back to the full NOSB on that topic in the fall. So if that would be possible, we would appreciate that.

Second, I also wanted to highlight that we have received a few public comments,
asking us to explore merging 605 and 606. We explored that with the NOP last summer, and were informed it wasn't an option. So that's why that wasn't in our recommendation.

Then I want to highlight a couple of other points that are important. Our November recommendation was rule change, that would affect how a few materials are classified. We want to highlight that certifiers should not be using that recommendation until it's formalized in a guidance document and rulemaking.

We know the NOP is going to prioritize that rulemaking once we've completed hopefully at this meeting a recommendation, and that they'll partner with us to get a guidance document out as quickly as possible. But we don't want to have chaos in the marketplace between the two systems. So we just wanted to remind folks that that's our goal.

Livestock feed. This is a matter
that has been hovering on the outskirts of our classification document as long as I've been involved in the topic. There is a requirement that agricultural products in a food ration be organically produced without exclusion, and it does get marked up in this. Yeast is the best example.

While not related to classification of materials, we've continued to hear public comment that it's time to revisit that requirement for agricultural products. So I didn't want those public comments to get lost once its classification document is done. So I would perhaps ask the Livestock Committee to be aware of those public comments, and determine as you see appropriate how you want to proceed with that.

Then I want to thank the Policy Committee for your timely recommendation on having two votes on every material. I appreciate you getting that done so quickly, so that that's formalized in the manual.
Okay. That was the easy stuff.

Let's talk about chemical change. In November, we received public comment that asked us to clarify our definition that we as a board voted on in November.

They asked us to clarify our support, that the term "synthetic and chemical change" were intended to identify materials that are man-made, synthesized compounds.

Similarly, we were asked to address whether chemical changes generated during processing methods allowed in OFPA or using allowed National List materials, would make an otherwise agricultural product synthetic. The public did not support that that would be synthetic.

There was consistent concern, expressed by the public, that a recommended definition of chemical change and the definition of substance that goes with it went too far, and moved a wide number of agricultural materials into the category of
synthetic.

The simplest example, which we have in our addendum, is toasted wheat kernels. I get it's very simple. It is an analogy for many other materials that we could discuss. So if you toast a wheat kernel, there is chemical change. It browns. It's a different identity.

Our definition, as we recommended in November, would make that synthetic, which was not our intent. So I'm going to draw your attention out the screen. The definition in November says that "chemical change is an occurrence whereby the identity of a substance is modified, such that the resulting substance possesses a different, distinct identity."

Then there's an associated definition of substance.

So in fact for a lot of agriculture products, if you heat them, mix them, the long list of processing, you would result in chemical change. So our definition
did do that.

After discussing these points after the November meeting, the Joint Committee worked on adding a sentence, which you see in the middle definition, this is our posted definition.

That sentence is "allowed processing as defined in 205.2, that has only agriculture or non-synthetic inputs, does not result in a substantive change in identity as it applies to the definition of this term."

So this was our attempt to address the public comments in November.

This posted change was approved or passed by the Joint Committee by a vote of 8 yes, 2 no and one absent. The two "no" votes felt that the language went too far in kind of drawing the line between what's Agricultural or what's non-synthetic or what's synthetic.

This was, however, our best effort to capture the idea. We are very grateful for those who submitted thoughtful, written
comments ahead of the meeting, because that
gave us time to really look at the language,
and gave us better suggestions, which is why
we love public comment. It really helps us
get more brains involved.

These comments agreed that in our
effort to address their comments in November,
we erred and went too far. What they said is
that that middle definition could be applied
to processing of non-agricultural inputs,
which in fact it does. That wasn't our
intent.

They also said that it went too
far in going over to crops and livestock, and
would be too inclusive. So that was good
suggestions or good comments that the
committee took seriously.

We did receive one public comment
that said all chemical change should be
synthetic, and they wanted us to stick with
the November recommendation. Interestingly,
we also got a second set of public comments
which balanced the others received.

What those comments said is we're "headed toward a very restricted definition of chemical change that will radically increase the regulatory burden and reduce the availability of organic farming inputs, and goes beyond the federal law and the regulations enacted to capture the historic intent of the organic philosophy."

I bring that up because I think it really highlights how difficult classification of materials is. It is a layering of science and philosophy and consumer sensibility, and what we realized a year ago or so is that our job is to make the tough choice and draw the best line we can through those very different perspectives. So that is what the Joint Committee is doing with our recommendation.

So based on the written public comment, the Joint Committee has met through the past week to discuss them, and as a result on Monday night, we voted unanimously for the
third thing that you see.

So what that says, it's the same first sentence; it hasn't changed since November. What it says is that "Processing, as defined in 205.2 of agricultural products, using materials allowed on the applicable section of the National List, i.e., 205.601 for crops, 205.603 for livestock and 205.605, 205.606 for handling, does not result in chemical change as it applies to classification of materials."

We believe that this new language addresses the public comments submitted prior to the meeting, specifically those comments our original language allowed 605 materials to cross over to crops and livestock or vice-versa, and that it addresses processing as it applies to non-agricultural inputs.

We did have a discussion about whether we should include crops and livestock, or restrict the second sentence to handling. There was very strong support in the
committee, unanimous given that the unanimous vote for this language, to support being inclusive of crops and livestock.

We appreciate that there are those in the public who looked at this definition yesterday and provided verbal public comment.

I think in general they supported the new language, but they echoed the debate about limiting, whether they should be limited to crops and livestock, or limited to handling, or whether it should also apply to crops and livestock.

Okay. I'm just going wrap up with a summary of the rest of the public comment we've received. We did receive a couple of comments about our definition of non-agricultural, which was passed in November. These folks said it might need more refinement. For example, with regards to wild crops, mushrooms and kelp.

It is our intention at this point to address those in the guidance document. If
we're not able to do that, we'll be back at that point. But we do believe we can do that in the guidance document.

I've already mentioned the matters of livestock feed and commercial availability. We did have one comment asking or recommending that we change the title of 605, which we do not believe we need to do. Okay. So I'm going to wrap up.

I want to wrap up by reminding everyone of two key points on classification of materials. Remember that classification of materials is not the same as allowance or prohibition. So there are materials that are classified as non-synthetic that are not compatible with organic production and need to be prohibited. Our definition does not change that.

Similarly, there are materials that are classified as synthetic that are essential for organic and should be allowed. Our definition doesn't change that. So
classification is separate from allowed or prohibited.

My second point is there is no definition that will address every single material, and will draw the line perfectly for every single material. There will always be one example that someone can think of, that is not going to work.

Our goal should be to address the great majority of the materials for which there's been confusion, and that's what industry has asked us to do.

Right now there are classes of materials that are confusing, that there is differences in how to classify them, and we have tried to address a great majority of those. At least that is my opinion. I will let other committee members voice their opinions on that.

But I believe strongly that this is really the best effort, and that further work -- we could work on this for another ten
years. We absolutely could. There is diminishing returns. I think we have done tremendous work.

The Joint Committee has been fabulous. We've had ongoing debates, and I'm quite proud of what we're presenting. So that's my presentation on this. I would open it up for questions and debate.

CHAIRPERSON GIACOMINI: We could certainly continue debating this for another ten years, and we don't want to do that. We don't want to put that on the Board. But I think it's safe to say that very likely ten years from now, they'll probably still be talking about something like this, or they will again, I should say.

MS. HEINZE: They'll have that one material.

CHAIRPERSON GIACOMINI: Any comments, questions? Tracy.

MS. MIEDEMA: I have a question for the deputy administrator on this topic,
Miles.

(Laughter.)

MS. MIEDEMA: The question is this topic affects so many other topics, that the hope is if the Board decides to make this recommendation to the program, that the program would go through all of its terminal reviews and promulgate rulemaking. Do you have room in your priorities or would this fit among priorities?

MR. McEVOY: Well, we do have a lot that we're working on. This is an important area to clarify how materials are reviewed and evaluated, and either denied or allowed onto the National List.

I'd ask you to think about whether or not you need to request rulemaking in this area, or you could use this as guidance for your own decision-making, in terms of how substances get reviewed, evaluated and either allowed or prohibited.

Because it's probably going to
change. As you've said, there's always those materials out there that you're going to look at a little bit differently and want to modify these definitions.

So do it through guidance. Do it through your own internal guidance of your NOSB policy, rather than asking for rule changes. It might be an easier way. See how it fits, see how it works for a while, and if it's really settled and solid, then make it into a recommendation for formal rulemaking.

That's what I would suggest.

We'll certainly utilize it for guidance, but I'm not sure if we really want to move towards rulemaking on this.

MS. MIEDEMA: Would you be willing to include it in the handbook if it were as guidance? But I don't know how that would work.

MR. McEVOY: Sure. We already have a lot of things on the deck in terms of what we're putting into the first edition of
the handbook.

But the handbook will continue to expand as we clarify more and more areas. So it could be done through adding it into a draft guidance, 60-day comment period, gets comments, and then through formal guidance. Yes, that's a possibility.

CHAIRPERSON GIACOMINI: Katrina.

MS. HEINZE: It is a bit what we envisioned with the November recommendation, that that would turn into a formal guidance document, and we could feel it out for a bit, make sure it was working and then proceed with rulemaking. So that fits with what our intentions were, I think.

CHAIRPERSON GIACOMINI: Jay.

Jeff.

MR. MOYER: In light of that Katrina, does that change the wording at all of your recommendation, or does it not?

MS. HEINZE: I don't believe it does, because this would match then what --
the same language that we had in November.

Then it's just the timing for the next steps
that were in our November recommendation. So
I think that's not a problem.

CHAIRPERSON GIACOMINI: Any other
comments or questions?

(No response.)

CHAIRPERSON GIACOMINI: Okay, I
have one. John? I've been part of this
process since almost as long as I've been on
the Board. I was part of writing the document
that flew the industry into an uproar, that
created the Materials Working Group, of which
we were very grateful that they were able to
come together and step forth.

I've stayed a part of this process
the whole way through, and I've always tried
to help the committee write the best document
they could, even if there was a major part of
it that I didn't fully agree with. In the
November document, I had a major concern with
the step we took that eliminated the step of
agricultural products being able to become non-synthetic, with minor processing or minor change, I will use the word "change," before they became synthetic.

I didn't have examples for that then. I think that and other examples have come up. We had a terrific one here, and the reason I bring, I use this background is because it all comes to the, if Valerie still has that document, it still comes to the chemical change issue. What is chemical change?

Chemical change, the use of the term has become an issue of chemistry. It's become an issue of breaking bonds and moving electrons and those kind of chemical issues, that even with the fairly sophisticated knowledge of chemistry that we had here yesterday, people could not decide when the bond was broken on the corn going to corn-steeped liquor.

It reminds me very much of the
time a couple of years ago when we were discussing aquaculture to well-respected experts looking at the exact same data on sea lice and coming to an 180 degree opposite conclusion. Also in the last year and a half, I've been working on documents for nanotechnology.

We all agree that nanotechnology should be synthetic, but in the shaving of larger particles into the smaller particles of nanotechnology, it's not a chemistry change. There is a change in the chemical nature, but there's not a chemical chemical change.

There are also very large potential issues in the yeast recommendation regarding yeast derivatives. If yeast fully became agricultural, the definition of whether those derivatives would be allowed as agriculture, since we're saying they can't be non-synthetic anymore, when and if that gets changed from 605.

So there's a lot of issues. I
think we've gone -- I don't know how to get
the horse back in the barn. But I'm very
concerned that we've gone down the right road,
making this entirely a chemical, a chemistry
issue. We are not looking -- I think chemical
change from a standpoint of the chemical
nature, the chemical functionality.

Yes, everybody can say that oh
well that's too debatable. But as we saw
yesterday, the debate of when a bond gets
broken and what broke the bond is also pretty
darn debatable too.

So I'm not looking to go
backwards. I'm really not. But I like the
idea of keeping it as guidance and really
seeing if it works. But I disagree with -- I
now have substance to what I didn't agree with
in November. It's directly relevant to the
chemical change issue, and I just had to
express that.

MS. HEINZE: Well thank you.

However, the good news is we voted on that in
November.

CHAIRPERSON GIACOMINI: But chemical change is the issue, so it makes the difference. So any other comments?

MS. HEINZE: Yes, yes.

CHAIRPERSON GIACOMINI: Steve?

MR. DeMURI: Just as a reminder, this is -- I see this as a tool to help us and future boards determine where to put substances as they are petitioned. It's not the end-all to everything.

There's going to be case-by-case instances where chemical change is going to be debated. But we have to rely on the other board members, whoever that happens to be at the time, to make a logical decision on that.

CHAIRPERSON GIACOMINI: Any other comments? John.

MR. FOSTER: So this has been the one issue that more than any other that I've been watching the Board go around about, where I don't think it's been a clearer case of
where our wish for a simple answer or a simple
guideline or a simple flow chart or a decision
tree runs more counter to sensibilities that
we have, that we all bring to the industry.

My comment earlier about stocking
density, numbers are really nice, but I think
that gives a false sense of security. And in
this case, what I was taken with probably
increasingly in the last three or four weeks
of discussion was just how badly we want
something, a piece of paper to go to and say
"make it easy for us to decide these things."
There's a thirst for that.

I think part of that is a fairness
issue. We want to apply these things
consistently and I think that's appropriate.
But we also, everyone I think on the Board,
and certainly all the commenters, think of
this, think of the appropriate decision tree
in the context of the materials he or she
feels are appropriate. We filter, we kind of
iterate our decision tree model based on what
we feel is appropriate to be included.

I think that's a human thing to
do. I don't think there's anything wrong with
it, but it's not -- it's hard to be consistent
that way. It's hard to get an answer for
every material. And in all of our
conversations that we had over the last few
months, we would go around with "Well, how
does this definition sound? Oh, that sounds
pretty good. Well, what about that material?"

Inevitably, some people would say,
there would be some general agreement on a
basic decision tree or flow chart, and then
one material would come up and say well, I
don't think that should be an organic. So I
want to make the decision tree, call it
synthetic, whereas someone else would say
"Well, I think that material is okay. So I
want the decision tree to call it non-
synthetic."

And it was interesting for me to
watch, as a relative newcomer to the Board,
see how powerful our sensibilities are, in wanting to control kind of the scientific consistency of what constitutes chemical change.

I had a whole new respect for the Board's activities prior to my coming on it, whereas it was this very cloudy issue. It's less cloudy now, but I'm -- I think we'll always have a tension between our personal sensibilities about what's appropriate for organic, and our wish for consistency in application of a guideline.

Having said that, I really like the idea of guideline as opposed to rulemaking, and in my head I realize I've been considering this. I hadn't identified it as such, but I was thinking of it as a rulemaking. But I think I prefer the guidance model strongly at this point, for all of the reasons that have been discussed already.

CHAIRPERSON GIACOMINI: Any other comments?
(No response.)

CHAIRPERSON GIACOMINI: Seeing none, Madam Chairman, you're next subject.

MS. HEINZE: Okay. Well actually I was going to say on that point, you know, what this document says right now is that the rule changes or the definition changes, as recommended in our November document, and this would be added to that, be added to the NOP work plan and prioritized as appropriate.

So we could add something like prioritized after the guidance document's been in place for some period of time or something. Because in November we recommended definition changes. This is just an addendum to that.

MR. McEVOY: So you're recommending a rule change definition changes in your -- that's what I seemed like you were doing in November.

MS. HEINZE: We did in November.

MR. McEVOY: Right. So that you're thinking --
MS. HEINZE: This is only an add
to that.

MR. McEVOY: To add to that
request for a rule change?

MS. HEINZE: Right. So we could
change the language to say that the rule
change should follow after the guidance
document.

CHAIRPERSON GIACOMINI: But it's a
low priority.

MS. HEINZE: Right.

MR. McEVOY: Yes. I guess the
question would be do you really want to
request a rule change here, or do you want to
use it for guidance and let it sit for a
while, and if it works really well, then
recommend a rule change.

MS. HEINZE: So then would we add
a sentence to this, to take back what we said
in November?

MR. McEVOY: If that's what you
choose to do, sure.
MS. HEINZE: Jeff.

MR. MOYER: That was my point earlier in terms of the recommendation, because it is an addendum to a recommendation you already made for rule changes. So do we have to change or add a sentence in this, to rescind that request for rule change, and make it more of a guidance document? That was --

MS. HEINZE: I get the question.

MR. MOYER: I'm sorry. I wasn't clear.

MS. HEINZE: No.

CHAIRPERSON GIACOMINI: Valerie.

MS. HEINZE: Actually Jay had something. Hold on.

CHAIRPERSON GIACOMINI: Oh, okay.

Jay.

MR. FELDMAN: With respect to the decision made in November, do we have definitional work to do regarding some of that?

CHAIRPERSON GIACOMINI: That's
what this was.

MS. HEINZE: That's what this is.

MR. FELDMAN: No, but this on

significant or insignificant?

MS. HEINZE: That's in the

guidance document, and yes, we do have that

work. I haven't talked about it yet.

MR. FELDMAN: That would be in the

guidance document?

MS. HEINZE: Correct.

MR. FELDMAN: Okay. I'm wondering

if given the way Miles has described the

guidance document, as an opportunity to see

how this works, which I would really enjoy

that opportunity, that we don't lock ourselves

into a definition that precludes us from

making slight changes, similar to what seems

to have occurred with an annotation

restriction, or the sunset guidance on

allowance of annotations.

We've locked ourselves out of

tweaking that until we go through a long
process of officially changing that, which is
-- I guess it's not as lengthy as rulemaking,
but it's still a significant process. So is
there a way, is it feasible to create
flexibility, so if we see that oh, we didn't
think of this, because you know, as we go
through applying the definition, that we have
the ability to.

MS. HEINZE: I guess would I would
say if it stays at the guidance document
level, what having been through this now for
three years, I think any change to the
definition that we would want to do should
come to the full board, and that's how this
would stand.

I do like that. I will see if I
can work on some proposed language to address
the timing of rule change, with regards to the
guidance document that we can talk about
tomorrow.

CHAIRPERSON GIACOMINI: Okay,
Valerie?
MS. FRANCES: I just want to remind and affirm that the program is working really hard to respond to the Board's recommendations now in a timely fashion, and if you've asked for rule change, they're going to need to address that in their responses.

This has obviously been requested by OIG and other, you know, articles out there in the press, that be specific about what you want, so that it's -- we're giving the appropriate answer to what you want.

MS. HEINZE: That's just a change in direction from where we were.

CHAIRPERSON GIACOMINI: This has some interesting logistics. This is an interesting road. I'd like to hear what Miles says, and then I may have a question for him.

MR. McEVOY: Yes. I guess one of the responses back to the Board would be to really, when you're working on something, you're doing great work but you're not quite finished, like with the animal welfare and the
classification materials, don't call it a final recommendation.

Or call it a work in progress or something, because if it's a final recommendation, then that's something that we as the program should officially respond to.

But then in the meantime, you're working on further changes to it. So you bring up for more discussion and, you know, it might go on with animal welfare for another meeting or two.

So I'm not exactly sure what the right terminology should be, but the final recommendation terminology is probably not the right one, because then it looks like we're not taking action on your final recommendation.

But you actually don't want us to, because you're not done with your work. So we have to get a little bit clearer on our communication between the program and the Board.
The other issue about this classification materials is that some of the things that you want to use as an alternative definition, we already have definitions in OFPA and the regulations, that OFPA takes first priority. We always go there first, and then you go to the regulations, and then the rest has to align with those things.

So if part of your definitions are different and aren't just clarifications or guidance to the definitions that are in OFPA and the NOP regulations, then the only way you can really use them is by a rule change.

MS. HEINZE: And in fact that's what November was.

CHAIRPERSON GIACOMINI: Yes, that's my question. In suggesting this to be guidance, how do you implement the suggestions that we are making in changes to definitions? How would that get implemented to see if it works?

MR. McEVOY: Well, if it is not in
alignment with the existing regulations, you can't do it. You've got to following the existing regulations, and if you want to use different regulations, then you have to make a final recommendation to make a rule change, and then we'll respond whether or not we support that. If we support that, then we'll start going through the proposed rule and the final rulemaking.

CHAIRPERSON GIACOMINI: So in areas of this path we took on classification materials, when it's clarification of language in the regulation, we could go guidance.

MR. McEVOY: Right.

CHAIRPERSON GIACOMINI: But if we think the needed path that needs to be taken, and I believe we were very conscientious not to touch any OFPA definitions. But any of the definitions that are in the rule but not in OFPA, we can't -- there's no mechanism to give those the guidance try.

MR. McEVOY: Right. If you want
to add definitions to the regulations or change those definitions, that has to be done through rulemaking. So you've done a lot of work in this area, and a lot of that work that you've done is discussion is guidance, is things that kind of help you to decide how to make decisions.

But part of it is actual language changes to the regulations, and if that --

CHAIRPERSON GIACOMINI: Well that -- all that work was done in November, and it was only with the follow-up that the committee felt and with the community coming to us, that this definition in particular needed work, that we are back here on this specific item.

But all the other recommendations, from language to interpretation, was pretty well completely done in the November document.

MR. McEVOY: Okay. Pretty well completely done. So --

CHAIRPERSON GIACOMINI: Except for this.
MR. McEVOY: Except for this. So the rest of your final recommendation is a final recommendation on all the other definition changes you want, except for this? And how do you --

MS. HEINZE: That is correct.

MR. McEVOY: Okay. And --

MS. HEINZE: And they are changes to the rule.

MR. McEVOY: Okay. So if that's what you would like, then we look forward to your final recommendation on this.

MS. HEINZE: Arthur.

CHAIRPERSON GIACOMINI: Arthur Neal.

MR. NEAL: As I look at the third definition, one of the questions I asked myself, and this is not final.

I'm just thinking to myself, does this require a rule change? Because as I look at it, we're trying to help people understand more clearly what a chemical change is, and
for the purpose of clarifying the existing definition, this could be viewed as just additional insight or guidance as to how that definition is understood, that applicable sections of the National List, if they're used in the processing of, or if processing an agricultural ingredient, they do not result in the chemical changes that applies to the classification of materials.

I mean I don't know if that requires a rule change. So that may be some of the feedback that you get after it goes through the internal process.

CHAIRPERSON GIACOMINI: Well, we made a rule change on this definition in the November document, that the committee felt was not the proper recommendation to make. This is trying to fix that. We at the very least, if we want to go back to the original, we would have to, you know, rescind whatever, however you want to describe it.

MS. HEINZE: Hey Dan? I guess I
would respectfully disagree.

CHAIRPERSON GIACOMINI: Okay.

MS. HEINZE: That in November we passed a recommendation that we strongly believed was the right one, but that it needed clarification.

CHAIRPERSON GIACOMINI: We did not have -- did we have a chemical change definition from that one?

MS. HEINZE: Yes.

CHAIRPERSON GIACOMINI: Okay.

MS. HEINZE: The first sentence, where it says "November," is what we recommended in November. At that meeting, we got public comment that it needed clarification.

CHAIRPERSON GIACOMINI: Okay, all right.

MS. HEINZE: It was our understanding at that time, both from the public and the program, that that needed to happen through an additional part to the
definition of chemical change, as opposed to clarification.

We can certainly change that and say that this second sentence could be in the guidance document. Regardless, as a Board, we need to decide that that's the right sentence.

MR. McEVOY: Yes, the other thing you can do is you can determine what you want, and then we can let you know whether or not it requires a rule change, or we can put it into guidance. So some of these things that may be new definitions, don't necessarily have to go into the rule to start to use them, as long as they're aligned with the existing regulations.

But if you're requesting a change to an existing definition that's in the regulation, then that would require a change.

CHAIRPERSON GIACOMINI: Jeff.

MR. MOYER: I'm glad you brought that up Miles. I mean part of the reason, I think, at least I'll speak for animal welfare or many of those other documents that come to
the program still needing some tweaking, and we call them final recommendations, is to finally at some point put some of these discussions to bed, so we can move on to other things.

As you can see, these kinds of conversations can go on ad infinitum, and we will never be finalized until we like hand it to you and at least you have something to react and respond to. I think your point at the end was well-taken, whether or not it should be rule change or guidance. It really should come from you folks, not from us. We're just putting the recommendation in front of you, and I think that's what we want to do with this document.

Otherwise, as was noted earlier, ten years from now we'll still be doing it. Ten years from now we'll be talking about animal welfare. Ten years from now we could be talking about all of the things that we've been talking about and never reach consensus.
But we need to move on to many of the other things that are coming on our plate. So handing it off to you through a final recommendation is the only way we have to get it onto your plate.

MR. McEVOY: Okay.

CHAIRPERSON GIACOMINI: Katrina.

MS. HEINZE: I would suggest that the right thing to do is to see if there's any more questions on this proposed sentence, and then that I tweak the update on next steps, part of our addendum, to summarize some of this conversation, to say that we are recommending hopefully this, for rule change, but that we would ask that the next step be that the program look at this addendum, together with our November recommendation, and advise on which of the definitions need to go through rule change and which could be part of the guidance document. Does that make sense?

CHAIRPERSON GIACOMINI: Right now we are -- yes. Right now we are still though
in the discussion at the committee level. This document is still in the hand of the committee.

MS. HEINZE: Yes, I get that. I'm just talking about --

CHAIRPERSON GIACOMINI: You can sort of take a "How do you feel poll." But it hasn't -- it's not in front of the entire Board for a full vote.

MS. HEINZE: I get that.

CHAIRPERSON GIACOMINI: So the committee can take it back and do what they need, and present it tomorrow morning.

MS. HEINZE: I get it. Any other questions about that? We don't need that slide, Valerie. Yes.

CHAIRPERSON GIACOMINI: Jay.

MR. FELDMAN: I have a question for Miles on the program. I think you said this. I just want to clarify that. Once you get this document in the form of a final recommendation, you will or the Department
will evaluate whether the proposal is in compliance with OFPA, and the standard and the definition of synthetic in agricultural products in the statute, you'll make that determination or the OGC will make that determination.

If there's a problem with that, which there may well be, you would get back to the NOSB.

MR. McEVOY: Yes. That's the process. Okay, you've got it.

MR. FELDMAN: Great, thanks.

CHAIRPERSON GIACOMINI: Okay.

Anything else?

(No response.)

MS. HEINZE: Well thank you. That was a direction I didn't expect it to go.

CHAIRPERSON GIACOMINI: That was an interesting turn of events.

MS. HEINZE: That was interesting.

Okay. Our second topic is the guidance document. Yes, so, good segue. What I was
going to start with was this one should be easier, but I don't think that's appropriate anymore.

A very key next step from our November recommendation was to develop a guidance document that would put the recommendation into practice. So I'm glad we worked on that, given our last discussion.

What we decided to do is to present at this meeting a draft document. We intentionally did not view the draft that we presented as complete, but instead complete enough. What we want to do is to provide to the public and you, the rest of the NOSB, with a view of the direction that we were going with the guidance document, and an opportunity to comment, so that you could influence the remainder of our work.

Specifically, we asked for input on three questions. Does the guidance document reflect the November NOSB recommendation? In general, the responses to
that were yes, it does. Do the example materials reflect the range of materials that currently pose classification difficulties?

In general, the answer was no.

Are there materials whose classification would be unclear using this document, and we did get some materials that folks thought we should look at. I'm not going to review the document at this time unless you want me to, but rather I wanted to summarize public comment and then what we plan to do with that public comment.

It's our intent to take the public input that we've gotten and any comments we have from the Board during this discussion, and further refine our document. We will then work with the NOP to develop a draft to put into the NOP process for guidance documents. There's a formal process published in the Federal Register on the development, issuance and use of guidance documents.

That process includes additional
opportunities for public comment. So there
will be more opportunities for public comment,
which I think is very important.

So to summarize the public
comment, we appreciate the work of the public.
A number of folks really took the time to go
through this guidance document line by line,
word by word, give us very detailed comments,
give us alternate sentences, structures that
we can really use, and we so appreciate that.
That will be very helpful for us.

So just to summarize the public
comments, we had one public comment that said
it was clear from the recommendation that
source -- or from the guidance document, that
source and manufacturing process are possibly
the most important piece of information to
have when making a classification.

Also, it is important for the
industry to know that once a classification
has been made regarding a substance, that the
information leading to that classification is
just as important as the classification itself.

So what they really liked is this work sheet approach versus a decision tree, because the work sheet requiring documenting a lot of that thought process about source and process.

There was generally concerns with Question Number 2, which is is the substance certified organic or certified "made with"? Folks felt that that would get very confusing between Crops and Livestock, didn't apply to Crops and Livestock. That question is a bit of a stop gap, because of the chemical change definition that we came up with in November. If as a Board we approve the addendum that we just discussed, this question would no longer be necessary.

The third class of public comment was that the examples were too handling-centric. So again, the public gave us a number of other materials that we should look
at, and we do appreciate that. There is
general consensus among the public that we
needed different work sheets for crops,
livestock and handling. Then someone provided
us some examples of what they thought those
should look like.

We had said in our document that
this question of significant and
insignificant, we knew required more work, and
we asked for suggestions from the public on
how to proceed on that. We got a number of
suggestions, and I know I've had informal
offers during breaks for that as well. So we
will continue with the work on significant and
insignificant.

We were asked that the guidance
document addresses the materials on the
National List cannot across over between
sections. So for example, that a material on
605 cannot be used as a crop input unless it's
on 601. So we will do so.

Specific materials were offered
for us to consider in development of the
document. Someone redirected us back to the
Material Working Group. Suggestions were some
additional definitions in there that they felt
we should consider, and finally someone said
we should align the guidance document with the
proposed addendum if it's passed, and provided
some examples where they weren't in alignment.

So that was the public comment.

Again, we will take those back. We'll
incorporate them into our work, so that
hopefully what we do provide to the program
has been fully fleshed out. Any questions or
comments?

CHAIRPERSON GIACOMINI: Any
comments from the Board on the guidance
document?

(No response.)

MS. HEINZE: That's a discussion
item, so this is your last opportunity.

CHAIRPERSON GIACOMINI: Only for
discussion.
(No response.)

CHAIRPERSON GIACOMINI: Seeing none, does that conclude the --

MS. HEINZE: That concludes the Joint Committee's presentation for today.

CHAIRPERSON GIACOMINI: Okay,

thank you.

MS. HEINZE: On time.

CHAIRPERSON GIACOMINI: We are on schedule for a break. We'll take that and be back at 3:15 on the nose.

(Whereupon, the above-entitled matter went off the record at 3:01 p.m. and resumed at 3:25 p.m.)

CHAIRPERSON GIACOMINI: We have a quorum. We'll come back into session. Any conversations going on, if you'd please take those outside or otherwise find your seat. Me too, no. I didn't mean that. I understand there have been some discussions going on on some of the material issues.

I would like to, as a slight
digression from the agenda, just to cover, make sure we finish this off properly, to ask each of the three chairmen of the material committees, Crops, Livestock and Handling, if there is any further discussion, any input that they want to look at, to bring to the table at this time. Steve, Handling?

MR. DeMURI: I have had some folks that were experts in certain areas come to me and talk to me during breaks and what-not, and I appreciate that input. I don't know that we need any further input at this point. I feel like most of the Board members are pretty well versed on the materials that we talked about.

If anybody has any questions on anything, particularly with potassium hydroxide or any of the gums, we do have experts in the audience who are willing to discuss that. If anybody has any questions on those, we could call those experts up to answer any questions.

CHAIRPERSON GIACOMINI: If any
Board members have questions on this.

MR. DeMURI: Any Board members have questions.

CHAIRPERSON GIACOMINI: And anybody that has questions on those substances can still make comments to the sunset ANPR, and it could possibly be pulled out of the affirmation vote next fall and put onto the spring docket.

MR. DeMURI: I did mention that, right, to the folks that I talked to, I mentioned they still have several weeks to make comments as well.

CHAIRPERSON GIACOMINI: Tina, Crops.

MS. ELLOR: As far as I know, we're good.

CHAIRPERSON GIACOMINI: Jeff, Livestock?

MR. MOYER: Yes. I have no need to pull anybody to the front.

CHAIRPERSON GIACOMINI: Thank you.
Okay. Moving on, back onto the agenda. Next on the agenda is the Materials Committee, with chairperson Katrina Heinze.

MS. HEINZE: The Materials Committee has one item on the agenda. It is a status update on nanotechnology, and Dan has graciously agreed to do the presentation for that topic.

CHAIRPERSON GIACOMINI: Switching hats, I need Joe's hat set for switching hats.

Yes. The Materials Committee in the NOSB began looking at nanotechnology. I believe this is our third recommendation. Didn't we have a discussion and then a recommendation that we pulled or at least a year.

The significant amount of comment at the last one was to request sort of a technical review on this substance/technology. We discussed that item and we prepared this document with that thought in mind, was to -- and it has been submitted to the program to be forwarded on to the technical advisory,
what are those called -- reviewers, and for a
report to come back to us on suggestions
around forming the definition, which would be
applicable and usable and correct for the
organic industry.

The nature of -- no, that's a bad
word to use in this situation. The
development of the nanotechnology industry is
one that even within themselves, aspects of
the definition continue to change. It wasn't
that long ago that the maximum size considered
for nanotechnology was 100 nanometers. That
has been expanded to 300.

There are some people that think
that should be bigger. That's one of the
questions we asked. When we're dealing with
an issue of very small particles of natural
substance -- very small pieces of natural
substances, it could not have occurred without
very advanced technology instruments that are
used to generate those particles.

We asked whether a consideration
of that technology needed to be part of the definition. So there were a number of issues that we looked at, from everything from art, we were using resource materials of popular pres articles, scientific journal articles, going all the way to essentially being text books on the subject. I did read what would essentially have been sort of a lay person's text book on nanotechnology.

So that's where we, the resources that we used to come up with this. We're very appreciative of the comments that helped us deal with definition. We are also very appreciative of the comments that continue to express the feelings of the industry, which is certainly that nanotechnology and the products of are not appropriate in organic.

Should we do that by calling it synthetic? Should we do it by creating essentially a big four, along with the sewage, sludge, irradiation and excluded methods? Those are all considerations.
The decision to go any of those routes is greatly dependent on the definition that we can define, that we can create to isolate what nanotechnology is to this industry, that we are specifically trying to prohibit.

We're not trying to prohibit homogenized products. We're not trying to prohibit products created in the milling process. But there are some more advanced technologies that are being used to create mouth feel in ice cream and other products, that do need to be included in that debate.

Those are the kind of things we're trying to find with this document, that hopefully we will get feedback from the reviewer on. One of the things that we became aware of in reviewing this is that the standard definitions of nanotechnology are created by the nanotechnology industry.

And because -- I think partly because of the nature of people -- how some
people feel about nanotechnology, and how
similar it is to the genetic engineering and
in our case excluded methods issue, they have
purposely, I think, for the most part created
a definition for their use that is as
expansive as possible.

So that if it really gets really
bad press, they can come back and say "See
look, nanotechnology is homogenized milk.
Nanotechnology is, you know, churned ice
cream. Nanotechnology is flour milling."
Those are not the kind of things -- and that's
a value to them in their industry, with the
function of what they're trying to achieve.

The other thing they're trying to
do is there is money in nanotechnology for
research. The broader the definition, the
more research projects qualifies
nanotechnology, even if it just is freeze-
drying ice cream in liquid nitrogen.

There's one company that has
liquid nitrogen frozen ice cream, and they say
it's nanotechnology with nanoparticles. So we need a definition that works for us. I think most of you were here yesterday.

I think a lot of us wanted to look at that, the situation of really having that strong, solid line and possibly putting it in that big four category.

But we have to understand what the implications are, because nanotechnology is going to be all around us, and as I used in that example, and maybe it's not the best example, but it's an accurate representation of what can happen when an outside entity, an outside municipal organization, an outside somebody without -- we're already allowing for when required by law.

Well, if it's a filter in a water system in a municipal water supply, it's not required by law -- it's what they chose to put in. If we firmly and completely identify it under that, creating the big four with nanotechnology as an absolute prohibitive,
what happens to that factory in the middle of a city that is manufacturing organic products, and they suddenly have a small contamination of some nanotechnology particles in their water supply that they have absolutely no control over? Are they out of business?

It may not -- like I say, it may not be the exact best example, but it's certainly a very good representation of the kind of issues we need to be aware of, that we are aware of as we look in proceeding with this, and the reason that we need to try to find the absolute best, most accurate definition of nanotechnology or the products of nanotechnology or however we decide to come up and craft it, that fit this industry and the needs of this industry.

So Madam Vice Chair, I'm going to hand that over to you. If you would please run our discussion for anyone who wants to make comments, ask questions or make comments on this.
MS. MIEDEMA: Jeff.

MR. MOYER: Thank you, Tracy. I guess my question to you, then Dan, would be since, as you just stated, the industry is currently in the driver's seat in regards to the definitions of nanotechnology, do you see our definition changing or being pushed in a certain direction, based on whether or not we are looking at it under the idea of it being an excluded method, or whether we're looking at it as being defined as a synthetic.

        It would seem to me like the definition could be altered or swayed in different directions, based on the goal of --

        CHAIRPERSON GIACOMINI: Well, I think it's the other way around. I think the goal would be to find a definition that would allow it to be, to go under that, the big four excluded method type of scenario. That would be the ideal situation. But it takes the right definition to do that.

        MR. MOYER: Yes, it does.
CHAIRPERSON GIACOMINI: And if we can't reach that definition, we may have to go back to the next one. Because like I said before, you know, if you're taking a chunk of silver and making nanosilver, you haven't changed any bonds. You've just made smaller pieces. That where our current definition in a lot of things we deal with with synthetic don't work.

I want to be clear on one thing.

That was an example I used before, when we were discussing on the joint committee document, you know. That's just an example. That is not -- we are so far down the road on that, that that will be something we can work on later, if we get there.

Please don't use that and your opinion on nanotechnology as a decision to change your consideration or not vote for what you would otherwise like to do on that recommendation.

So please don't do that. It's two
separate issues and after we get to where we end up wanting to be with nanotechnology, if that ends up being a factor, that is something we can deal with then in that structure. So please don't let that influence your vote on the Joint Committee document.

MS. MIEDEMA: Yes, Tina.

MS. ELLOR: I'm actually going to speak as Kevin right now, so pretend I'm Kevin. He did email me some discussion points on, you know, things on the agenda that he wanted to mention. So for this comment, I'm Kevin.

MR. MOYER: Before you start Tina, I would say that you're a worse Kevin than even I am.

MS. ELLOR: Thank you, Jeff.

(Laughter.)

MR. MOYER: And that was meant to be a compliment.

MS. ELLOR: All right. Well, here's what Kevin has to say. "I'm
disappointed that the committee has requested
a TR for nanotechnology, but I am thankful
they did not approve nano for organic
agriculture.

As a relatively new and extremely
complicated development, the final TR in
nanotechnology will never be written. A new
TR will probably be warranted every year."
This is not me; this is Kevin.

"Public comment leaves no doubt
that consumers do not want nanotechnology
allowed in any segment of organics. Humans
overestimate their ability to not only detect
results, but also to predict them.

"Predicting the impact on humans
when different nanoparticles interact in the
human body is impossible. Organics must
represent a clear-cut difference with regard
to the use of nanotechnology in food
production.

"I hope the committee requests
that the focus of the TR centers on defining
nanotechnology," which if he was here, he would know that, "and the appropriate sizes of particles depending on uses, so that when they write their final recommendation, there will be no doubt that nanotechnology has no place in organics."

CHAIRPERSON GIACOMINI: Yes. I hope -- I'm the person they're talking about.

MR. MOYER: He's the chair.

MS. FRANCES: Are you replying?

MS. MIEDEMA: I'm replying to that.

CHAIRPERSON GIACOMINI: Yes. I hope that we were clear --

MS. MIEDEMA: One free pass.

(Laughter.)

CHAIRPERSON GIACOMINI: Golly. See if I turn the gavel over to you again. Okay. I'm hoping we were clear enough in this document that we forwarded to the program, that we are not asking for a technical review on nanotechnology.
We are asking for help in crafting a definition. That's what we were asking, and I am hoping that is what the program saw. I'm hoping that's what the technical reviewers see.

MS. MIEDEMA: Katrina.

MS. HEINZE: I just wanted to articulate the journey that we've been on with regards to nanotech. It is so abundantly clear that our consumers do not want nanotech in the food, the organic foods that they consume. What is very unclear to us is what they mean by nanotech, because different folks mean different things when they say nanotech.

So I think a lot of the debate that we had as a board at our November meeting about how to prohibit nanotech centered on this idea of we didn't know what it was. So to Dan's point, we asked for a TR that said help us define this, so that we're prohibiting all the things that we want to prohibit, but not having unintended consequences.
So I think that I feel very good about the direction, and I'm looking forward to getting some help back from the program. We also got some good public comment, up to and including a couple of public comments that gave us a draft definition that they thought might be beneficial.

So I'm looking forward to some good work before the next meeting.

MR. MIEDEMA: Any other comments?

Madam Chairwoman, Materials. How are we doing?

MR. HEINZE: That concludes the Materials, unless there's other discussion. We're done.

CHAIRPERSON GIACOMINI: Thank you, Madam Vice Chair. We move on. We're actually a bit ahead of schedule, so if we can keep on that for this next one, we'll be able to do a little bit extra here this afternoon. Move on to the CACC, Compliance, Accreditation and Certification Committee. Chairperson, Joe
MR. SMILLIE: Thank you, Mr. Chair. A little bit of background on this, that the recommendation, guidance recommendation, not a rule change, is guidelines for the use of inert atmospheric gases with products labeled and sold as 100 percent organic.

The committee started with the issue of looking at the 100 percent seal, the 100 percent claim. That's where we started from. There was a pretty broad spectrum of opinion, both from the Committee and the sector, that this claim was not working very well in the marketplace for a number of reasons.

Especially the ACAs had a lot of trouble with it; consumers had trouble with it. Nobody was really happy with it. So foolishly, we put it on our work plan and started to look at it. The feeling we got right away was that it would just be really
nice to get rid of it, to abolish the 100 percent claim. It doesn't exist in the EU, doesn't exist in Canada.

It's problematic for a number of reasons, and we felt that that would be just a nice thing to do. But we decided that it would be a big step, and Arthur and people like Arthur, you know, rule change, it would be maybe too big of a step.

So we took a second step, which was that well let's just fix the things that are wrong with it. Well, there's a lot wrong with it. Perhaps the thinking about it. Maybe the claim itself is okay, but the thinking about it and the delivery into the marketplace hasn't worked too well.

We got into a number of complex issues, which we put in our first recommendation, and those include sanitizers, food contact substances, post-harvest handling issues, diatomaceous earth and grain bins, all sort of things. You know, chickens with
peracetic acid on them and you know, water baths.

It just became an incredibly complex issue, and we had a lot of opinions on each of these issues, and putting them all in one recommendation didn't look very feasible, since we didn't have a lot of agreement. So we narrowed it down more, and we got down to some of the most egregious issues, which we felt were the use of atmospheric gases as packaging aids.

The reason that this became an issue was because the program interpreted the use of these inert atmospheric gases, nitrogen mainly but others, as processing aids that would prevent the product from achieving 100 percent claim.

We had a number of manufacturers who felt that when we put coffee beans into a vacuum pack foil, or they put olive oil into a jar and they flushed it with nitrogen, that that product was still 100 percent.
They let us know in no uncertain terms that they felt that they were being prevented from using that seal after they had created it, which you know, they felt that was economic damage to them, and they had two options. Either change the seal or stop flushing with nitrogen, neither of which were very good solutions, and neither of which achieved a higher degree of organic integrity. We looked at the situation and we have come to the conclusion on our committee that we believe that inert atmospheric gases are packaging aids and not processing aids, and we've cited the CFRs that we believe support that contention.

So onto the document itself. We made, we did have a number of comments. I could be wrong. It's sometimes hard, and I'll go off on my little soap box. When you have your name and it says "multiple issues" on regulations.gov, sometimes we might miss your
comment.

    Or if you follow the excellent
example of the OTA and you break it down and
each issue has a title, then Valerie can put
them all so that we see them all, and the
broad category, "multiple issues," we don't
lose your input. So I recommend to everybody
if you've got multiple issues, give them all
a title and give them separate documents, so
that we don't miss them.

    I got seven, and six of them were
entirely favorable to this document and one
was opposed. I'll go into that opposition and
the reasons for it. The one tweak that was
requested was from OTCO, and we have taken
that as a friendly amendment.

    The difference between what you
have in the document and what's up on the
screen, you'll see that we agreed with their
opinion that "made with organic" label -- yes,
that one -- how many ingredients and food
groups. That category also requires
processing aids be on the National List.

Again, this document's not about processing aids, but we had to quote that in order to differentiate between what we believe is a packaging aid and a processing aid. So we made that minor correction to the document. It doesn't change the intent of the document. It just makes the document, we believe, correct.

So the rest of the document goes through our reasoning. Basically again, to a minor tweak to allow handlers to use, to flush their product, make it safer with nitrogen, which is again 70 percent of what you're currently breathing more or less, and create a better product with no loss of organic integrity, because we believe it's a packaging aid and not a processing aid.

That's basically it. We will not, we are not addressing, you know, post-harvest handling, diatomaceous earth, peracetic acid in chicken baths, food contact substances.
We'll save those for a different time and place, if they're to be discussed.

We simply want to right what we believe is a wrong, and ask the program to go back and possibly, in our opinion I think, I hope I'll get the votes for this one, correct their interpretation of inert atmospheric gases. So Mr. Chair.

CHAIRPERSON GIACOMINI: John.

MR. FOSTER: So I'm not a chemistry guy, but my understanding is inert gases are all on the right-hand side of the periodic table, and nitrogen isn't there. Isn't it? I don't know. I don't have access to the Internet, so I can't --

MR. SMILLIE: I'm not basing this on the periodic table.

MR. FOSTER: Well, my understanding --

CHAIRPERSON GIACOMINI: We have a representative from the --

(Simultaneous speaking.)
CHAIRPERSON GIACOMINI: --of a scientist. We have a scientist on the Board.

MR. FOSTER: Perhaps I can finish my comment, and then we can go there.

MR. SMILLIE: Okay. Sorry to interrupt.

MR. FOSTER: So that's my understanding. If I'm wrong, I'm happy to be corrected. So to call it inert atmospheric gases, I don't know if that's accurate. I know it's not all about the name, but the name is important.

Also so I'm not quite sure, looking under the paragraph that starts with "historically." There have been two other classes used in organic processing which are not ingredients, but have not been considered processing aids either. The first is sanitizers.

MR. SMILLIE: Right.

MR. FOSTER: So with that in mind and my understanding is food contact
sanitizers are much more commonly used in processing than inert gases, inert atmospheric gases. Why did you, this is my question.

Why did you pick atmospheric gases to be the one to stand kind of on its own as a packaging aid, which I'm not really familiar with that term? Why that one instead of sanitizers to still allow 100 percent claim?

MR. SMILLIE: I believe we had a clarification from the program on sanitizers, that their -- the ruling, the thinking we got or the policy we got from the program was that sanitizers shouldn't be included, that they were already allowed.

MR. McEVOY: Well, you want a response to that?

MR. SMILLIE: Yes.

MR. McEVOY: Okay. So sanitizers can be used in different ways, right. So they can be used as a food contact substance, or they can be used on food contact surfaces for sanitizing those surfaces, or they can be used
in the dump tank water. So that it would be
different uses.

MR. SMILLIE: Correct.

MR. McEVOY: So the question was
did we clarify this in the past? Is this
before I came or --

MR. SMILLIE: Yes, before you
came.

MR. McEVOY: Okay. So I'll turn
it over to Mark.

(Laughter.)

MR. SMILLIE: Well, let me -- but
in response to that, yes, those are two
different uses. As I said in preamble, we
didn't touch the use of them in the tank
water. We're just not addressing it. Why we
chose not to do it, I think we'll let
Livestock do that one.

But as far as on the sanitizers
and use on equipment on food contact surfaces,
we did get a clarification on that. That's my
recolletion and understanding.
MR. McEVOY: Okay, and there certainly needs to be more clarification, and that will come out in the draft guidance that we're putting out later this summer, okay.

MR. SMILLIE: But I kind of would respond to you John with tai chi. We just, I didn't, we didn't deal with that in this document. So the sanitizer issue. We felt that that was clear enough.

MR. FOSTER: But why -- so you didn't.

MR. SMILLIE: No.

MR. FOSTER: Okay, that's fine.

CHAIRPERSON GIACOMINI: Madam Scientist, would you like to respond to John's first statement at all, if you're capable without being on the Internet and having a periodic table in front of you.

MS. HEINZE: Only if he wants me to.

MR. SMILLIE: Please.

MS. HEINZE: Okay. I will process
this by saying that the last time I did chemistry was 15 years ago, and it does wane quickly from the little gray matter.

As I recollect, nitrogen in the air exists at N2, and is very non-reactive. So from a chemistry perspective, it would be viewed as inert.

MR. SMILLIE: Thank you.

MS. HEINZE: Who knows if it's on the right? You think chemists memorize the periodic table?

CHAIRPERSON GIACOMINI: All right.

Jeff.

MR. MOYER: Yes. Joe, you mentioned that there was one written public comment opposing your recommendation.

MR. SMILLIE: Right.

MR. MOYER: I'm just wondering if you, I didn't pick that one up in my reading. I'm just wondering if you could tell us what their thought was or why they're opposing it.

MR. SMILLIE: Right. It was CCOF,
and they felt that we were making simple things complicated. Well, I don't want to paraphrase it, but if I totally misquote, I'll ask Jake to come up and rephrase it, and we'll have the debate that I avoided yesterday, specifically avoided because it was getting to be a long day.

So but their point, and I understand it. Their point is it takes a simple thing and it makes it more and more complicated as you get more and more different ways to interpret it, and I understand that. It's true. But I felt that it was better to serve, you know, have justice served than make it more complicated and to keep things simple.

The second point was I think they said that basically they felt if something was on 605, that therefore it had to be -- that gave it a certain recognition, that it couldn't then be used in a product and have the product called 100 percent.

That's where we differ. We
believe it is on 605, as the document says, as a processing aid, and if you use it as a processing aid, then you can't claim 100 percent. Well, we do not believe it's being used as a processing aid, in any sense of the word "processing."

It's a packaging aid, not a processing aid, and we cite CFRs to support that conclusion.

MR. MOYER: As a follow-up, in the usage that you're envisioning, is there residual on the food?

MR. SMILLIE: No, absolutely not.

MR. MOYER: I just wanted that on the record.

MR. SMILLIE: It's totally inert and the purpose of it is to displace oxygen, which isn't inert and which causes rancidity.

MR. MOYER: That's my understanding.

CHAIRPERSON GIACOMINI: Tina.

MS. ELLOR: I'd just like to say
that I find this recommendation to be
intuitive and logical and righting a wrong, as
you said. This appeals to my sensibilities
and my sense of logic, and I agree with it.
But now to put my Kevin hat on --

    MR. SMILLIE: I hear the "but."

    MS. ELLOR: Well, Kevin did send a
comment in on this, which I promised that I'd
read in to the record, and even though I'm not
a very good Kevin, Kevin says "I agree with
the recommendation as far as it has gone, but
I think the CACC needs to add a definition to
2052 for a packaging aid, so that inert
atmospheric gases that are used in the 100
percent organic products are defined as such.

    "I agree that they do not fit the
definition of processing aid or ingredient.
Inert atmospheric gases by definition do not
react to the product they come in contact
with, and as the committee has stated, are
used to maintain quality of packaged products.

    "I think that represents a very
important usage, as long as the gases are positively inert with regard to the products and packages they are used with. I am sure there are many organic products that would benefit from the allowance of inert atmospheric gases, especially considering they do not contain any preservatives like their conventional counterparts probably do.

"Making the distinction between a processing aid and a packaging aid need not be difficult nor create a loophole that would allow a processing aid to be called, to be used by calling it a packaging aid," and he suggests a definition.

"Packaging aid. A gas added to the package for an organic product at the time of sealing, that must be atmospheric and also inert with regard to the packaging material and the product the gas is used with." That's it. Okay, thank you.

MR. SMILLIE: I take that as a friendly amendment.
CHAIRPERSON GIACOMINI: Jay.

MR. FELDMAN: Yes. I didn't know he made that comment. I would agree with that. I think, you know, it's a question of process, and getting a definition. You were citing a definition of packaging aid in the CFR. You were citing a definition of processing aid and distinguishing this from packaging aid. So the question would be whether we need to have a definition.

MR. SMILLIE: That would create a rule change, right, and I just didn't want to go there, because that will delay justice being served. So I don't think we need a rule change. I think that it's clear, but that's our opinion.

CHAIRPERSON GIACOMINI: Katrina? Valerie?

MS. FRANCES: I just want to remind folks that in the spring 2009 discussion document on this issue, there was a lot more background material on the history
of FDA's definitions in the EAFUS list versus the GRAS list, and the intersection of them and what was on one list and what was not on the other list.

It is available for your review, and I just stuck it here on Katrina's jump drive as well, that you could pass around, because I can't email it to you. But there is some additional material there for anyone who wants to review it.

MR. SMILLIE: But to answer you Jay, both, both. We looked at both, to try and -- and again, once you know, it's like I've had this singular experience. Once you dive into FDA CFRs, it's like the never-ended story. It just, you know, it's the Alice in Wonderland quote.

CHAIRPERSON GIACOMINI: Jeff.

MR. MOYER: I'm just wondering from the program's perspective, do we need a rule change to make this adjustment, or is this as simple as Joe was trying to present it
MR. McEVOY:  I would suggest that the Board determines what it would like to do, we'll take it and review it and see what needs to happen, whether or not it could be done through guidance or through a rule change. We'll get back to you.

MR. SMILLIE:  But clarification. If we don't ask for a definition of a packaging aid, then it shouldn't require a rule change. Am I not correct?

MR. McEVOY:  You're asking for an interpretation of the standard.

MR. SMILLIE:  Right.

MR. McEVOY:  To allow these inert gases to be used and still be able to label the product as 100 percent organic?

MR. SMILLIE:  Correct.

MR. McEVOY:  We'll have to see whether that aligns with the current regulations or not. If it aligns with the current regulations, then it could be done
through guidance. If it doesn't, then it would require a rule change.

MR. SMILLIE: But if we ask specifically for a definition of packaging aid, then it would require a rule change.

MR. McEVOY: Right, yes.

MR. SMILLIE: So that's why we're not.

CHAIRPERSON GIACOMINI: Arthur, did you have something?

MR. NEAL: Yes, real short. If at all possible if we can -- I think I was sharing this earlier with Dan, make sure that when we come with these recommendations, we've thoroughly kind of checked the other agencies who have responsibility for some of these terms. I know you looked at them.

MR. SMILLIE: We looked at it.

MR. NEAL: Because this is one of those -- it's kind of close to processing aid, but not quite, maybe not quite a processing aid. The whole packaging issue is a question
of concern. But I agree with Miles. We'll
look at it, determine whether or not a rule
change is necessary. If not, we'll be back in
touch with you.

MR. SMILLIE: That's fine.

CHAIRPERSON GIACOMINI: Further
questions? Steve?

MR. DeMURI: What if a processor
is processing -- let me give you a real life
example here -- carrot juice. They process
carrot juice with no additives. They take it
to -- they chill it, put it in a tank and put
a nitrogen blanket on it to hold it for two or
three hours until they can get it to an
evaporator and a filler.

They go to a filler. They put it
directly into a sterile container with no
nitrogen. Is that, would that be considered
100 percent organic?

MR. SMILLIE: The same material,
same purpose, but it's part of a process
rather than at the end of a process. And so
that gets back to your philosophical --. It's
the intention, not the nature. So you know,
I don't know. They put a blanket on it in the
tank, right?

MR. DeMURI: Yes, to keep it from
oxidizing.

MR. SMILLIE: Yes, right.

(Simultaneous speaking.)

CHAIRPERSON GIACOMINI: Okay. A
qualification of final packaging would be
potential.

MR. DeMURI: But there's no
difference at all in the --

MR. SMILLIE: No, none.

MR. DeMURI: --the contact or the --

MR. SMILLIE: But you see the
carrot juice is being processed.

MR. DeMURI: Yes.

MR. SMILLIE: That's what we hung
some of this on, was it's not part of a
process. It's the end of it and it doesn't
interact. Now the nitrogen doesn't interact
with the carrot juice.

MR. DeMURI: No, not at all.

MR. SMILLIE: But it becomes part
of the process.

MR. DeMURI: It is a processing
step, I guess you could call it, because it's
not -- there's no interaction at all with the
carrot juice and the nitrogen.

MR. SMILLIE: Right.

CHAIRPERSON GIACOMINI: Okay. Any
further -- okay. I would just -- Jeff.

MR. MOYER: I just want a point of
clarification. Joe, a question. Under the
hypothetical that's not so hypothetical that
Steve just gave us from some company that we
don't know, but if in that situation you're
saying that this rule would not pertain to
that, because that is processing and this is --
what you're talking about is packaging?

MR. SMILLIE: That would be my
conclusion of it, yes.
(Simultaneous speaking.)

MR. SMILLIE: But you know what?
It really doesn't harm organic integrity a whole heck of a lot either.

MR. MOYER: No, I'm not saying it does. I'm just saying for the point of discussion here of this, that would not be categorized under this.

MR. SMILLIE: That's the way I would look at it if I was a certification agent that had to deal with this regulation, which speaks to Jake's point, of making things more complex, which I understand. But you know, I don't necessarily shy away from it.

MR. MOYER: Thank you.

CHAIRPERSON GIACOMINI: John.

MR. FOSTER: As you might have guessed, I'm a little uncomfortable saying it's okay in a bottle but not okay in a tank. That inconsistency is hard, and just amending this language to say that final packaging is okay? That seems -- that's a bit of a stretch
for me. I don't like that inconsistent logic.

CHAIRPERSON GIACOMINI: Well, and

that logic is not taken in other similar

situations.

MR. SMILLIE: Well again, I just

said in my opinion. I'm just trying to get --

CHAIRPERSON GIACOMINI: Right.

Katrina.

MS. HEINZE: I think as a consumer

I would be really confused if I was buying a

bottle of carrot juice whose ingredient deck

said organic carrot juice, and it wasn't 100

percent organic. Wouldn't that be confusing
to you?

MR. SMILLIE: There's so many

products out there that are currently --

MS. HEINZE: I get that.

MR. SMILLIE: That's why

originally we said we'd like to get rid of the

whole category.

MS. HEINZE: So that was going to

be my comment, which was how many products are
really labeled 100 percent organic? Because I don't -- okay. I buy organic all the time, right. We write the little dollar signs on the grocery list all the time. It's kind of a family joke.

I don't think I have anything in my cupboards or grocery, you know, or refrigerator that's labeled 100 percent organic. But as a consumer, I'm pretty clear. When I buy that cauliflower, it's probably 100 percent organic. But when I buy the cereal, it's probably not. I don't think we should sell our consumers short. So maybe this is --

MR. SMILLIE: You'd better check the cauliflower.

MS. HEINZE: Really? Do we really think -- no, because it doesn't say 100 percent.

MR. SMILLIE: Seriously, it depends on how it was processed. If there's any kind of processing aid whatsoever used in that -- and that's why certifiers in the U.S.
especially, and I'm going to put a plug in for
the home grown certifiers here, have to deal
with a lot of certificates that we get in as
ingredients saying "100 percent."

We know they're not 100 percent,
because we know all the -- and they say "well,
it's all 100 percent." They say "yes, but did
you use a processing aid?" "Well, but they're
allowed." "Yes, but the regulations specifies
not only to do they have to be allowed; they
have to be organic processing aids."

So if you crush apples with
conventional rice hulls, that apple juice is
not 100 percent organic, Because the press aid
was conventional. If you crush that apple
juice with apples with organic rice hulls,
then you might be able to claim 100 percent
product.

MS. HEINZE: Perhaps we should
reinterpret my comment to say I get that the
regulation might be more complicated. But as
a consumer, it's 100 percent organic, because
it's a head of cauliflower. There's nothing else in it.

I get it depends by the regulation, but we need to put our consumer's hat on and say they bought a cauliflower, they bought a bottle of juice that has no other ingredient, from their perspective.

CHAIRPERSON GIACOMINI: Tracy?

MS. MIEDEMA: I don't think we're going to resolve all of the logic inconsistencies, and one of the things that you were saying John that troubles you, you know, that the blanket of nitrogen is used and that, you know, ruins the chances of 100 percent because it's a processing aid. But then you flush the package and that time it's okay.

We have GRAS packaging that is very reactive and migrates in the organic products today, and into products that are labeled and can be legally labeled 100 percent organic. That's not logical. But it's
accurate from a regulatory standpoint.

So we're not going to be able to create this crystalline superstructure that all makes perfect sense in every direction here today with what we're doing. I was very compelled by CCOF's comments yesterday though, and the introduction of the term "packaging aid" into an area that's already fraught with all of these issues that we're talking about today.

I thought made a lot of sense that we might be, even in the interest of fairness, that we might be muddying things up a little bit more. I was one of the people on the CACC that voted for this recommendation, but I'm reconsidering my vote.

CHAIRPERSON GIACOMINI: Steve.

MR. DeMURI: The problem I have with it is that carrot juice company A, with the nitrogen in the tank that's trying to protect quality, cannot label his product as 100 percent organic, and carrot juice company
B, that is flushing with nitrogen, but not putting nitrogen in his tank, cannot. There's a market inconsistency there.

MS. MIEDEMA: Under this recommendation.

MR. SMILLIE: Well, that's one possible conclusion. That's one possible conclusion. Once again, we're up against that wonderful old maxim. We're letting perfect be the enemy of good.

I'm just trying to get these poor coffee bean guys who are screaming at me, why can't I call my product 100 percent, and the olive oil guys, who don't use filtering aids, who use centrifuges or whatever to get their olive oil, those guys want to label it 100 percent. I think they have a right to, but that's up for this Board to decide.

CHAIRPERSON GIACOMINI: I think the other way to look at it, Joe, is members of the Board just want to try and help the committee make it good enough, not considering
perfect as the enemy of the good, but just
helping to make sure that it's good enough.

Jay?

MR. FELDMAN: So Joe, I am
sympathetic to what you want to do, and I --
but I'm thinking, up until a few months ago,
I thought I knew what the definition of
synthetic was in OFPA, and now I'm totally
confused.

(Laughter.)

MR. FELDMAN: I think I know what
the definition of packaging is, but I imagine
a year from now I'll be totally confused. So
I think we should probably do this right, you
know, get the definition out there and just do
it right and solve it, because I think what
you're trying to solve is a real issue.

Now it is unfortunate that it
takes more time than we would like it to take.
But we've gone down this path before. We went
down the path on synthetics and the five
percent, down this path on synthetic amino
acids.

We shouldn't do that, even though we see the good or we believe that those are good decisions, because they come back to haunt us.

CHAIRPERSON GIACOMINI: Any further comments? A couple of things, Joe. First of all, if we ever do look at a definition, I would not recommend isolating the aspect of this document of the gas, as Kevin suggested. I think it would need to be a far more generic issue than that for the packaging, on the packaging aid.

In his recommendation on packaging aid, he used gas, and I think we would need to make sure that we're totally inclusive, if we do go the route of that definition.

MR. SMILLIE: Well, if this Board wants to get into packaging, that's a whole new topic.

CHAIRPERSON GIACOMINI: I just wanted to comment on that recommendation.
Okay, Tina?

MS. ELLOR: You know, I just want to go on record as saying that I support this recommendation, and I think that better, better is good.

CHAIRPERSON GIACOMINI: Any further comments or questions? One more issue, Joe. As you went through the process of this, as you reached the point in time where this was what you were looking to make a recommendation on, it seems to be a fairly, definitely a handling document. Was there any consideration to transfer this to the Handling Committee work plan?

I don't know whether their work load could fit it, but just so that we can -- we have the issue that we're looking at at this meeting on who's doing what work, and this was one of them that came up.

MR. SMILLIE: Well basically it was organic, in the sense that it started off really as a CACC issue, the 100 percent claim...
and the enforcement and compliance with 100 percent claims. As we went through it, it became more and more, at first a post-harvest handling issue, and then finally a handling issue.

So if it's continued, it would definitely be part. If we're going into packaging aids, then it would definitely have to move to the Handling Committee. It ceases to be a 100 percent claim, unless we decide to go back and ask for the abolishment of the 100 percent claim, which is a possibility. Then it would remain a CACC issue. If it becomes a packaging aid --

CHAIRPERSON GIACOMINI: Can we try and find that buzz please.

MR. SMILLIE: If it becomes a packaging aid issue, then it would go to the Handling Committee. At the same time, I don't necessarily agree with the fact that we have to be as narrow in scope as to which committee handles which issues.
I believe that workload is also a factor that should be considered, and if there's a committee that, you know, is involved in an issue, they could either make it a joint issue with the Handling Committee. Right now Handling, since I'm on it, has got a load of work. So I didn't mind keeping this one on our committee, and I don't think necessarily, you know, workload should be a factor.

CHAIRPERSON GIACOMINI: I agree. I just wanted you to address that issue.

MR. SMILLIE: Sure.

CHAIRPERSON GIACOMINI: Thank you. Any other statements or comments? If not, I'm bringing my committee back to you, Mr. Chairperson. I believe you have one more?

MR. SMILLIE: I thought that one was easy. Okay, history. Actually --

CHAIRPERSON GIACOMINI: Valerie, that's not the right document. There should be one, March 8th, 2010.
MS. FRANCES: Which document are you on right now?

MR. SMILLIE: Made with.

CHAIRPERSON GIACOMINI: Made with.

MS. FRANCES: Yes. I hadn't gotten there yet.

CHAIRPERSON GIACOMINI: Oh, okay.

MS. FRANCES: Looking for -- hang on.

CHAIRPERSON GIACOMINI: Okay.

(Off mic comments.)

MR. SMILLIE: Okay, there we go.

Okay, the history of this document was that the previous administration, NOP, asked us to put this on the work plan. They felt that the made with category would look better with some sort of a USDA imprimatur or seal of some kind, and we accepted that.

When the administration changed, I checked with the current administration. I said we had this on our work plan. You guys don't want to do this, do you? They said "Oh
yes, we'd like to get your opinion on that."

I said, oh shoot, okay. We'll do it.

These are facts, absolutely. No wiggling on this one, MM. So basically we said, okay, we'll do it, and we jumped into it. Basically, there is a strong feeling that the made with category is kind of -- somebody called it yesterday, who was it, that called it the stepchild, the poor stepchild of the organic industry.

And in a certain sense, it is, and in a certain sense, there's been a lot of problems with it. So we concurred with the program in saying let's take a look at this category, because you know it's not -- it, like the 100 percent, is not working that well. There's problems there.

The program, since we started that work, has identified one of the problems, which is the use of organic in the manufacturer's name when they're putting out a made with product, has caused confusion in
the marketplace. So they're taking that on
and dealing with that issue.

There was another issue that I
thought was very, very important, and years
back, which is the use of organic and non-
organic of the same material in a made with
product. And NOSB did make a recommendation
to the program, to eliminate that. There was
a loophole, and you had to be a lawyer,
because it was like a triple double negative,
to understand how you could use organic and
non-organic of the same item in a product.

So we made a recommendation and we
asked the program to fix that loophole, and
stop the use of organic and non-organic in the
name of the product. We're still waiting for
the implementation of that. So those two
items, we believe, rest with the program, and
they'll hopefully be dealing with them soon.

The next thing we looked at is the
fact that, should there be sort of greater
recognition for the made with label claim in
the marketplace. Because after all, it is 70
percent organic.

We want to grow this industry. We
want more farmers to be able to sell more
product, and for companies with certain
technical restrictions and the one that I
think of, the one I'm used to was corn chips.
You see a lot of corn chips in the
marketplace, various different companies, who
are "made with organic corn."

Well, there's a reason for that.
You can get organic corn reasonably priced,
but when you're in a plant that makes both
organic corn chips and conventional corn
chips, you've got the hot oil bath that the
chips, either fresh masa or powdered masa,
have to go through.

Changing that oil bath and putting
organic oil in is a very significant capital
investment. So if you want to have organic
corn chips, that's a big step. You can get
into the organic industry and use organic corn
and just run through conventional oil, which makes it a made with product.

But there's a lot of other areas that made with could be suitable for for various different reasons. So for a lot of people, this issue was that we're not seeing as much action in the made with category as perhaps we should.

So we looked at it. We came up with an idea and we batted it around in committee, and again, it was a discussion document, no intention of making a recommendation.

But we batted it around and came up with the idea, well, maybe on the back panel, we'll have like a little mini-organic USDA seal, so the consumers know that this product has gone through the certification system and the USDA regulation just like an organic product has -- that the manufacturer, the ingredients were subject to the same scrutiny, to the same regulation, and should
have a little more credit. That was sort of like the feeling behind it. So we floated out this discussion document.

Well, we did get a reaction, and the reaction was pretty much, I would say uniformly, "no way, Jose." People did not -- the people who responded, okay, did not want to see any kind of a USDA seal for made with organic products. They felt that that was diluting the organic product that was on the marketplace that manufacturers and farmers and everybody along the chain had created.

And it was pretty -- it was a very strident response. No seal, no way, no how. But the other parts to that comment were yes, there is something wrong with the made with category, and we recognize that.

We don't think the seal's going to fix it, and I can speak with one voice on this, because the comments were all of the same vein, almost all of them, all 14.

They all said that there needs to
be more consumer education about this.

Yesterday, on verbal commentary, and I apologize, I didn't write down who it was, but someone said we should allow some sort of statement that this product meets NOP regulations and has gone through the NOP certification system or something like that.

I thought --

MS. FRANCES: Urvashi.

MR. SMILLIE: Urvashi, okay. Good comment -- or something to that effect.

That's where I think this committee sits now with it, although you're just getting my opinion and we had a lot of opinions and you'll hear them shortly.

So basically we said okay, they don't want us to go with some sort of variant of any kind of the USDA seal, but we really need some action on the part of the industry and the program and the NOSB, to make this category less of a stepchild and more like the younger sister, more recognized, and that
consumers understand that the manufacturer
went through the same certification process,
that there was some rigor to it, and it's not
like sort of a semi-USDA claim.

You know, it's just the certifier
that handles it; USDA's got nothing to do with
it. No. It's a label claim, and that's not
clear in the marketplace, and that's what we
were requested to come up with, in lieu of a
seal. And I'd like to open it up for other
comments from committee members with NOSB.

CHAIRPERSON GIACOMINI: First, I
would just like to thank the accredited, the
ACAs for proper use of Spanish, as Jose is the
Spanish translation for Joseph. It was very
appropriate in this case for "no way, Jose,"
for Joe's document. So any comment from the
Board?

MR. SMILLIE: As long as they
don't say Pepe, I'm okay with it.

CHAIRPERSON GIACOMINI: Steve.

MR. DeMURI: I have a question. I
tried to look it up real quick, but I didn't see it. Are "made with" products allowed to use the certifier seal on their labels?

             MR. SMILLIE: Funny you should mention it. Yes.

             CHAIRPERSON GIACOMINI: Other comments or questions? Jay?

             MR. FELDMAN: Isn't there an asterisk required for those products that are certified by that certifier? Doesn't it link back to the specific ingredients?

             MR. SMILLIE: No, no. That would be an ingredient panel claim. If you're not making a made with organic claim, but you want to highlight in your ingredient panel which of your ingredients are organic, you can do that. The claim is very clear. I mean it's --

             MR. FELDMAN: Made with. Okay, so that's --

             MR. SMILLIE: It has to be 70 percent, and your claim can be three or less ingredients on the principal panel display
MR. FELDMAN: Okay. But I guess the question is, you're saying it's not consistently required that on the ingredient panel, the organic ingredients be identified. You don't have to. Did you consider that, as an option for clarifying to the consumer what might be in that product?

I mean, I think that might help give some clarity to the consumer that this is a real product that has complied with the standards of OFPA in regard to the ingredients that they're making a claim for.

CHAIRPERSON GIACOMINI: Tracy.

MS. MIEDEMA: The issue there, Jay, would be, that for the company who is really trying to get some organic ingredients into their products, but may have an unstable supply, they'd have to change their packaging for every, you know, cycle. So it's actually a disincentive for beginning to use organic ingredients.
CHAIRPERSON GIACOMINI: Katrina, Jennifer.

MS. HALL: The other difference there is that it doesn't differentiate necessarily products that have been inspected, that if you had organic on the label from those that may have an organic ingredient on the ingredient label, that have not been inspected in the marketplace, like for some of the other things that just don't, right now, fall under the sphere.

Which is why yesterday I tried to kind of explain just a different framework of thinking about the seal itself, and using it not as, necessarily, its history as the gold standard, but truly as the verification, that it's been through the process, being inspected, certified, that it's fully under the umbrella of the program, and not so much, you know, just the gold standard that it's been.

Now I do believe that in this
distinction of using it on the front or the back, that that's a fairly straightforward thing to, and I worked with consumers every day, to train them, to understand that if it's on the front, that is the highest content and if it's on the back, then it's 70 percent, where right now it's very ambiguous to me.

CHAIRPERSON GIACOMINI: Jeff.

MR. MOYER: Thank you, Mr. Chairman. My question would be to you, Joe. Would any of this conversation that we're having today with the made with label relate to the issues that came up with the wine industry yesterday?

MR. SMILLIE: Well, yes and no. That's a separate -- I probably would get help from Shannon on that, but that's -- that confuses me, because basically that was -- they're allowing a made with claim to have different varieties of grapes.

In other words, you can make a Meritage with 70 percent Cabernet Sauvignon
and 30 percent Merlot, and the Merlot can be conventional. And TBT and NOP say that's okay, okay. Right now, we've got a problem where you can have organic wheat and conventional wheat in a made with product, which I believe is not the intent of the rule. Is that what you're referring to? I'm confused.

MR. MOYER: Yes and no. I'm confused as well, so that's why I was looking for some clarification on whether or not this would relate specifically to their -- because they don't do any better than they did, right?

MR. SMILLIE: The label claim for made with is clear. I don't believe there's confusion about the regulation of the label claim. There's confusion in the marketplace about what consumer perception of the made with claim is.

The regulation is clear. I mean, once we fix the organic or not, the regulation is clear as a bell as far as I'm concerned.
MR. MOYER: I understand that.

But in terms of what your document had,
whether you go back and change it or not was
to have the seal on it, which right now they
can't use the seal.

MR. SMILLIE: That's correct, yes.

MR. MOYER: So if they could use
the seal, would that remedy the issues that
they were questioning? No.

MR. SMILLIE: No.

MR. MOYER: Okay.

MR. SMILLIE: No. That was just
our suggestion to float it out, that a small
USDA seal on the back panel could sort of give
more credibility to the claim. That's what
our response was, a unanimous no, no use of
the USDA seal. That was what response we got
back.

CHAIRPERSON GIACOMINI: Joe.

MR. MOYER: I understand that,
Joe. But I guess my question is did -- if
that response that you got hadn't been there
and we could go ahead and use a small seal on the back panel, would that help the wine industry? Would that be something we could do? Would that be a remedy for them at all?

MR. SMILLIE: No. What they want is to be able to call it organic wine. They couldn't do that. They can only call it wine made with organic grapes. Even if it's 100 percent organic, which is one of the other problems with the made seal, is, it's often called with 70 to 94. It can be much more than 70, even more than 95.

MR. MOYER: Although currently, there's no incentive to move much beyond 70 in many cases.

MR. SMILLIE: Well, that's where it starts to get a little fuzzy, and we're looking for the solution, because the percentage claim that you can make on a made with product is not mandatory. But you can make on a made with product. It's not mandatory, but you can make a percentage
claim.

So you could make a made with product. This is where you get a little -- you've got to watch, you've got to be really careful with the program on this one now, because you have to watch how you're representing the made with claim, because they're really crossing their t's and dotting their i's, and you know, they're going to be counting angels on the head of a pin on this one now.

It's like there's a percentage, you can make a percentage claim on a made with product. So there is an incentive to boost your organic content in a made with claim. But it's not many.

CHAIRPERSON GIACOMINI: Jim.

MR. DICKSON: Well, first to Jeff's point. There's a really big incentive to go to 95 percent from 70 percent, to organic or made with that's using the USDA organic seal on the package. That ties into
my main point, which is, you know, for consumers, the USDA organic seal means quite a lot.

They have come to accept it as sort of this official, you know, legitimacy as an organic product. It's really, you know, taken on a lot of equity in the stores as a very meaningful market.

In the made with category, we have seen a lot of consumers very confused about the category. Many perceive it as unregulated. There's just a lot of confusion about what it means, and you know, our proposal for the use of a mini-seal on the back of the package clearly was going down the wrong road, as the feedback we received.

But there's still a big problem in that category, and I don't know if the solution is, you know, Urvashi's suggestion that we look at different languages used on the package to emphasize its certified nature or what it is.
But I think we, you know, as an industry need to look more closely at that category, to figure out what we can do to accurately and meaningfully represent it to consumers, because it's not as organic as a 95 percent organic product. But it's still way more organic than a conventional product.

The producers looking at entering that category, I think, there are a lot of folks out there who are reluctant because of all the confusion in the marketplace. I think we can shore it up quite a bit.

CHAIRPERSON GIACOMINI: Jeff.

MR. MOYER: I just wanted to say I support that 100 percent, because I think it is extremely important to the industry and to farmers who are producing the raw ingredients for those products. It's extremely important as a growth -- an entry point and a growth mechanism for it.

I'm just trying to find the best solution. I would have supported the mini
label, but that's not what the industry supports. So what is the solution? I'm not sure.

MR. SMILLIE: Well, let me answer two of those things. We did get feedback and it was, you know, 14 people. But if I look down the list, there was only a few handlers, a few companies that responded, and there's a lot of companies out there that make made with product. Sometimes they don't know we exist, which is sad, tragic, certainly ironic. But that's their choice. If they don't want to play, then they pay.

So we may get more comments on that. The other thing is that this is a first step, and we got some good feedback and we're not giving up on this. We're going to go back to the drawing board and come back with some more ideas, because we really believe work needs to be done.

I think, my gut feeling is once the age of enforcement starts, you know,
cruising down the aisles, the supermarket, supernaturals and health food stores and coops start seeing all the product there, and we start to get the made with category sort of cleaned up a little bit.

And once they implement our previous recommendations, I think there will be a lot more interest in it, and I think that it's our job to come up with a clear message to the consumer about the value of this category, without diluting the power of the organic category.

CHAIRPERSON GIACOMINI: Steve.

MR. DeMURI: Speaking from a handler perspective, since you didn't get very many comments, we have just one made with product in our entire line of organic products, because we can't find any organic okra. Just kidding.

(Laughter.)

MR. DeMURI: No, actually it's organic clams.
CHAIRPERSON GIACOMINI: The gavel is ready.

MR. DeMURI: We would rather see something in the -- under the "certified by" statement, that says certified by XYZ under the auspices of USDA or something to that regard, rather than a seal.

MR. SMILLIE: So I'll take it that's Campbell's official comment?

MR. DeMURI: No. That's my comment.

CHAIRPERSON GIACOMINI: Katrina.

MS. HEINZE: I won't talk about the comments we have about products we have on the marketplace. We have two. I would concur with what Steve said, that we've recently taken a product from organic to made with because of a supply issue, and have found that consumers are very clear on the difference, and are expecting us to go back to 99 percent as quickly as we can.

But that seal is 95 percent. So
some other statement that says certified in compliance with would be a good middle of the road, I think.

CHAIRPERSON GIACOMINI: Other statements? Yes. I just completely agree with that. I'm far more concerned with the dilution of organic than I am with the promotion of made with. If there's a problem with made with, let's fix it without compromising organic.

I certainly don't want to set up either scenario, where we're encouraging manufacturers to take something from 96 to 94, because the made with is almost -- it would be good enough.

I think we have enough issues -- to address Jennifer's point, I think we have enough issues that we're still trying to get the consumer on, that trying to educate them with a smaller, a different size and a different placement of where the organic seal goes and what that means.
I think they'll see the seal, and that's the seal and it's organic, and it will really dilute the value of organic, because I think that will be real hard for them to discern. Any further statements, comments on this issue?

MR. SMILLIE: Again, we won't be addressing this tomorrow, so this will be the last words on the subject. But we intend to put it on the work plan. It will be back on the work plan.

CHAIRPERSON GIACOMINI: And does that conclude your section?

MR. SMILLIE: Yes, Mr. Chair.

That concludes the CACC.

CHAIRPERSON GIACOMINI: Okay, and we are at -- we're at the point for another break. We are at 35. 4:50 we will reconvene. Please be prompt.

(Whereupon, the above-entitled processing went off the record at 4:38 p.m. and resumed at 4:55 p.m.)
CHAIRPERSON GIACOMINI: Okay. We are back in place and the time is up for that break, and we have one more section to go, the Policy Development Committee. Barry, can you please lead us along?

MR. FLAMM: Thank you, Mr. Chair. The Policy Committee has one recommendation for changes to the policy and procedures manual, and three discussion items, two involving changes to the policy and procedure manual and one kind of a floater that will go upstairs if the committee thinks it's worth pursuing.

In any case, the recommendation is to add to the policy and procedure manual a two-tier decision-making process on materials and we appreciate, Katrina, your thank you notes. It did get noticed, since we almost never get a thank you.

And Steve will take the lead on that one. The two discussion items involve sunset review approaches and Jay, one of our
two new members, will handle that.

I will present the collaboration proposal to update the manual on NOP/NOSB collaboration, and Annette is going to go over what is not a change in the policy and procedure manual, but a discussion on a possible rotation of board members.

We have one committee member missing, and that's Kevin, and he was particularly interested and involved in the sunset approaches, and Jay will summarize some comments that Kevin has given to us, that he wanted to be considered part of the record.

So with that introduction, Steve, would you please kick off and present the two-tier decision-making on materials?

MR. DeMURI: Certainly, I'd be happy to. Thanks, Barry. As has been mentioned several times, as we've been talking about materials subjects, we thought it would be a good idea to align the policies and the policy manual with respect to voting for
materials with the classification work that's been done.

So try to stay ahead of the game a little bit, we decided that we would make recommendations to change the applicable sections of the policy manual so that we would be doing a two-tier voting process as materials are brought before the Board for adding to the National List.

Interestingly enough, when you look back through the old meeting transcripts and the old recommendations, back in the old days, back in the 90's and early 2000's, there actually was a two-tier voting process in place.

And as I went back and looked through the old transcripts, I didn't look at everything, but the ones I did look at, I really couldn't see any hard-cut time when that was stopped or any reason for it being stopped. Maybe somebody else has some insight on that.
But for some reason, the Board at some point quit doing the two tier voting, and we believe that now is a good time to go back to that with these material classification issues that are coming before us.

So with that, hopefully everybody's had a chance to kind of read through the recommendation. Valerie, if you can go to the outline for writing committee recommendations page. Go down to Section 5, Committee Vote.

That step was the first spot where we made a change, and that was we added a sentence -- we struck one sentence and then added a sentence at the tail end of that section that says, "In the case of recommendations for petitions to add materials to the National List, two votes should be taken and recorded.

"The first for synthetic or non-synthetic material classification, and the second to list or not list the material. The
record should lost the number of synthetic and
non-synthetic votes, and yes and no votes for
listing, and the number of abstentions and
absences." So that's the first addition to
that section.

To go to the next page, under
"Committee Vote," we added a short paragraph
there. It says, "the vote of the committee or
task force shall be reported," and then we
added "in the case of recommendations for
petitions to add materials to the National
List, two votes will be recorded. One for
synthetic or non-synthetic material
classification, and the other for listing or
not."

Following that is the NOSB
committee recommendation form that we all fill
out when we're making recommendations to list
materials, and we added to that, under Section
D, "Recommended Committee Action and Vote," we
added a short statement there that says
"Including classification recommendation," and
then a section right below that for recording the synthetic and non-synthetic votes, the absences and the abstentions.

Then right below that would be votes for and against listing the material, and the absences and abstentions. I believe that was the changes that we made.

CHAIRPERSON GIACOMINI: Any questions or comments from the Board?

MR. DeMURI: I have one more.

CHAIRPERSON GIACOMINI: Oh, I'm sorry.

MR. DeMURI: I'm trying to get the last, the very last page, or next to the last page -- the last page, Valerie. I did highlight a paragraph in there.

It's the procedures for the materials review process for NOSB members. This is highlighted only because it already existed. This wasn't something we added, but it was already in the policy manual.

It said, "NOSB members assigned to
those committees shall conduct a thorough
review of the material and vote on whether it
is synthetic or non-synthetic, and if it
should be allowed or prohibited for specific
use as either a crop, livestock or processing
material."

So this paragraph was already, has
been in the policy manual for years, and just
was not really followed in the past, for the
past several years at least. So we're just
reinstating a procedure that was already in
place.

That's the end of the changes. I
will mention that we had just a couple of
comments regarding this policy change, and
they were both in favor of the change. One of
them even happened to mention that they were
surprised that we weren't voting for a
synthetic and non-synthetic material. They
thought we were still doing that. So that was
interesting.

CHAIRPERSON GIACOMINI: Done?
MR. DeMURI: I'm done.

CHAIRPERSON GIACOMINI: Okay. Any question or comments on this document?

(No response.)

MR. DeMURI: The next is going to be presented by Jay on our sunset review approaches, and, as Jay will outline, we tried to -- I think after last fall's discussion of sunsetting that, we felt it was an opportunity to try to re-look at our sunset and to lay out some options for discussion and for consideration.

We had gone through, just two years before, a review and updating of the policy manual, but there was -- it was based on some premises at the time and we're just sort of laying this all out for discussion, and Jay will explain where we're at right now on it and what we've received and what the options actually mean. Jay, please.

MR. FELDMAN: I will try. Thank you, Barry. I appreciate it. I'm going to
get to play Kevin also today, so that will
make three of us and you get to vote at the
end of this presentation as to whether Jeff,
Tina or I did a better job. But that's just
a teaser, so you stay awake. We'll do that
later in the presentation.

I'll start with the background.

Here, we, in this document, we cite the
regulatory background on this issue, and
principally the underlying statutory language,
which says, basically, that, and then I'm
quoting here, in the strict sense of the law,
this language would seem to require that the
National List be reevaluated to ensure that
the list is in conformance with the standard
laid out in 2118 of the statute.

And I'm quoting, and you all know
this, that the use of such substances, one,
would not be harmful to human health and the
environment, two, is necessary for production;
I'm not going to read all the language -- and
three, is consistent with organic farming and
 handling.

So with that as the basis, we discussed what our possible options were. As we were doing this, we got the great news, of course, that NOP had come out with a ruling on February 16th, which we got early release on thanks to Valerie, and in that document, I had earlier arranged with Miles to present this, but since he's not here, I'll just remind you.

The document says there is nothing in OFPA to prohibit the NOSB from making a recommendation to modify or amend an annotation during the sunset review process. However, the NOSB policy manual states in the sunset review procedures that amending or creating new annotations is not part of the sunset review process.

So we obviously have some work to do if we want to change the process that we're using. In terms of the discussion on this, we all agreed that we don't want to do anything that's disruptive to the organic marketplace.
So anything we do, we understand has to be sensitive to that.

But, at the same time, we believe as a committee, and we were unanimous on this, that this process should be constantly asking how are we, or how or if the reliance on listed materials can be reduced.

One of the citations in the Federal Register from years ago said that because these substances may be critical to the production and handling of a wide array of raw and processed organic products, their expiration could cause disruption of well-established and accepted organic production handling and processing systems.

Our perspective on that is that the sunset process is the statutory mandate to periodically question whether those established and accepted processes should be reaffirmed or altered, based on previous decisions.

So the sunset process, to be
optimally effective, requires close collaboration with the resources of NOP, and that's a key element of what we believe is important background information on this topic.

Now it's interesting, because we all had a chance now, all of those who worked on this, many for longer periods of time, some for shorter, have been involved now with the sunset review process. The newbies on the Board had an opportunity to dive into a number of sunset evaluations, and I think that experience has informed the positions that we have on this issue.

As a result, you can see three options that we, on page four, that we came up with, one being a shift of the burden of proof to the user community and the industry; two being that we maintain an evergreen process, and three being some sort of hybrid among those two, the first two processes.

Since we put this out, we -- and
you heard many of the comments yesterday, we received nine comments, which is not a lot on such an important issue, but they are diverse comments, and I think they cover the diversity of the community of one former NOSB member, five trade industry groups, two certifiers, and one consumer farmer advocacy organization.

I'll get to what their issues are, but let me first try to play Kevin on the first option. The first option is the hopefully straightforward approach, which really calls for a shifting of the burden, and some sort of petitioning process or formal communication and request to the NOSB, to retain status as a listed material.

Kevin writes in support of that position, which he essentially drafted, "it is my opinion, one of the best occurrences possible would be for substances on the National List to truly sunset. The message sent to consumers and industry would be that the rules are different in organic
agriculture. Decisions are made based on what's best for human health and sustainability, not on what's best for business.

"Along these lines, there are" -- I'm sorry, "there has been displeasure voiced regarding the statement in the recommendations that getting items on the National List should not be easy, nor should it be easy for them to remain on the National List."

And at this point, he quotes Barbara Robinson, former acting director of the NOP, from the November 2007 NOSB meeting, and she said "'I really want to applaud the committee for exactly what you did. I understand, and the Board should be prejudiced against synthetics."

"'That is the nature. That is your charge by law. You are supposed to be prejudiced against putting synthetics on the National List.' The path," -- I'm still reading Kevin here -- "the path that needs to
be taken, so that organic agriculture becomes
more than just a footnote, involves fewer
items on the National List, not more.

"For 205.601, 603 and 605, we need
to have a true sunset process; for 602 and
604, an evergreen process needs to be present,
so that prohibited substances remain, unless
compelling evidence is presented to the NOSB
that dictates a change.

"Lastly, given that prohibiting
changes and annotations during the sunset
process is a policy of the NOSB, not the NOP,
I hope to hear sound public comment before the
fall meeting on why the NOSB should or should
not allow such action to take place.

"Given the rapid pace of change in
organic agriculture, being able to respond
quickly would enhance the NOSB's ability to
protect consumers." That's Kevin.

So there was some support for that
in the comments, not a lot. But there was
some support that there be a straightforward
process that is unequivocal on this issue.

Moving onto the second approach with the evergreen process, there tended to be a lot of support for that process, with some modification among the trade groups.

There was only one or maybe two outright supporters of that approach. Most of the supporters modified their support by suggesting that we shouldn't shift the burden in a way that is burdensome, and we should use the TAP review process or some sort of comment period to enhance the ability of the Board to make these decisions.

So I would say that the evergreen process tends to have a fair amount of support among the trade groups in that respect. But the third option, which we're calling a hybrid for now, really is our request to you all to see if there's a combination approach that might work here, taking the best set we can get from those who are using the materials, need the materials, can justify their
continued use, have information on
alternatives, have information on effects, and
try to shift some of that burden.

I think CCOF said it best, when
they said, regarding Option 3, "Industry
should bear the burden to prove that a
material should remain on the National List of
allowed substances, and that the NOSB should
bear the burden to show that a material should
be delisted."

So that wouldn't, under that
scenario, create an automatic delisting, but
would require some process whereby we would
have to generate the data, probably through
some sort of TAP review process and a
commercial availability assessment or
something of that sort.

So there you have it. I mean,
there are a range of opinions on this. We are
hoping to get more input as we bring this
forward at the next meeting, and hoping to do
this on somewhat of an expedited basis, so
that we can, you know, set an approach that we feel better reflects the current thinking, scientific thinking and organic practices experience.

I should say one last thing, that there seems to be I think unanimous support -- I think that's correct, among the nine at least, that we should have the ability as a board to annotate during the sunset process, that that should be an ability on our part. Miles, did you want to say anything more about it? I read your statement from February and summarized it.

MR. McEVOY: Sure. I would first of all say that materials are really important in organic agriculture, biological agriculture. For many organic farmers, materials are a critical input that allows them to have a thriving, biologically alive system, and that this bias against synthetics is really not a good thing. I would really caution the board to really think about that.
There's a whole continuum of materials that are very synthetic, very chemically changed, very toxic, to ones that are just a little bit manipulated. Corn-steeped liquor, you know, a little bit of sulfur dioxide. If you call that a synthetic, is that really a horrible substance?

So I just would really caution the board about this bias against synthetics.

Okay. So in terms of sunset review, the OFPA, from our perspective, it's definitely not an evergreen process. The board's responsibility is to evaluate these substances every five years, to determine whether or not they should be renewed or removed from the National List.

You have the opportunity to look at old technical reports, TAP reviews, the decisions by the board, the deliberations by the committees, bring your own expertise, any new information, bring all that information to try to determine whether or not these substances should be removed or renewed.
And then -- so we certainly don't see it as an evergreen process. It should really be a sunset review process. Then in terms of annotations, I think that you should be very cautious, if you want to look at changing annotations or adding annotations during the sunset review process.

But our understanding of OFPA, there's nothing in OFPA that prevents you from looking at annotations. You have a lot of work in front of you. There's already been a lot of people that have reviewed these materials in the first place to get them on the National List.

So I would use -- if you do change your procedures, I would use that ability very, very carefully, be very cautious.

MR. FELDMAN: Thank you. Mr. Chair, back to you.

CHAIRPERSON GIACOMINI: Arthur, did you have some -- yes or no. No, you don't have to.
MR. NEAL: Well real quick. One of the things too, we just want to make sure that we keep in front of us, since we're making decisions about materials, is to remember how does the substance -- well does the substance have a negative impact on the goal of the environment and what we're trying to do in terms of maintaining a system of organic agriculture.

That kind of goes to Miles' comment about synthetic. Just because it's synthetic, the question is how does it really impact the system of organic agriculture that we're trying to promote? Just because it's synthetic doesn't mean that it's having a negative impact on what we're trying to do.

CHAIRPERSON GIACOMINI: Thank you. I'm going to step out of the statement that I made earlier. This is something that I feel that it's worthwhile to the discussion for me to introduce some ideas, relative to this document here. So I apologize to the board if
they feel I'm not giving the rest of the board a chance, and I'm driving this issue.

But I think from the start of this document, as far as the background and granted you say -- thank you, Joe.

(Laughter.)

CHAIRPERSON GIACOMINI: No, you do not get to split the bill with Mark. It's two separate bills. One of the sections that I -- parts that I believe you missed in the historical perspective of this, and the general process that I think we have almost always gone through in this respect, is that these kind of major documents, looking to put change into the policy and procedure manual, sort of come from an evolution and a change within the respective part of the board, and then the new thinking is applied into the policy and procedure manual.

I think this kind of a document, taking some of the perspectives that you did without consideration from the Material
Committee, I think could have done with a little more collaborative effort. I think when we look at some of the issues involved, the repetitioning process.

If everything would need to be repetitioned in order to stay on the list the next time around would be extremely disruptive to the industry.

I believe that the annotation change process, I disagree that you can do it just a little bit or only part-way. I think, in looking at the potential for the annotation process, there is -- once you open that door, there is absolutely no way to stop, on public comment day, person after person after person coming up and wanting to tweak this, tweak that, this one over here, that one over there, no, don't use an "and." You need to use an "or."

This process, which is already -- it is one of the most significant processes that we do on this board. There's no question
it is our directive in OFPA. But it doesn't need to be any longer than it has to be.

I truly believe, from my experience as the Material chair, in dealing with all of those petitions, in dealing with all of those technical reports, it very well could become the only process we have the time to complete. I would be very cautious of opening up what I truly believe would be a huge Pandora's box.

I think regarding the statement from the program, I believe there were two major points that the program made on that. The first one I believe you kind of make much ado about little, in that one of -- the statement from the program.

No, to go back. The main policy that we had always been working from in sunset was that the sunset process was a complete review of the original petition process, and an evaluation of the new information and a vote on the new information.
The new policy from the program really said you can base your vote on everything. I don't think we need to go through all of these other issues, when really the consideration of that is one of the main issues in that document.

So I think really the main thing was to expand and reconsider of all the information involved, and I think that's really the main thing of what they're working on. As far as the second part being that OFPA doesn't prevent annotation changes, I just think that Pandora's box would be overwhelming, because I don't think you can do it just a little bit.

I think the effect on public comment and the impact of our work process in other issues would become overwhelming. So I apologize for that little bit of a statement, but yes, Jay.

MR. FELDMAN: Well, no. I appreciate what you're saying. The challenge
we found is that as some of these approved materials change their formulations, we're sort of faced with a dilemma, because the original product or active ingredient actually that was approved, say in the Crops Committee 15 years ago, there are all these new formulations of that product.

Which in many cases are better, they're better in terms of limited exposure, limited contamination. They've been much improved. Yes, it may be true that users would be inclined to use the better or newer, more modern products. But others may not. Others may be drawn to the others.

I should say this isn't -- we heard public comment. Here's one that said "Oftentimes the choice or renew or remove is not appropriate for certain materials."

That's what we found. You know, I didn't want to be forced to vote against materials or actives. I prefer to tweak it, as you say, and it is the risk.
I mean, you know, a lot of -- an older board members, a previous board member said, you know, trust the process from the previous boards. Why go back and look at stuff? Well because what's happened in this arena is that things have changed dramatically in terms of products. This is what we're facing with the pheromones.

I mean pheromones are an incredibly important tool but, you know, with the uproar as you know around LBAM and issues around encapsulated materials sprayed from airplanes, or thrown out up by a ground rig, is really problematic in certain circumstances, and really not the formulation that was originally approved by board.

So the question is do we look at that. Might we say that that was not was intended, that we are more interested in the ties or the attractants? So in other words, it gives us that flexibility. It enables us effectively to leave things on the market that
we might otherwise be forced to try to let on
the market for allowable use, that we might
otherwise be forced to vote against.

CHAIRPERSON GIACOMINI: Well, I
think we have a process to take care of that
though. That process is the petition process
to change annotations.

The problem that we have, from the
Materials Committee, we have been trying to
request from the program, and I hope that at
some point in time now in the new
administration, and not only the new
administration but the increase in staff to
handle all of these issues, is to recognize
that certain aspects of the petition program
are broken. They don't work.

They have a huge and tremendous
bias to the manufacturer, and people trying to
do something outside of that structure, with
the amount of information that is required to
be considered, a complete petition or it's
rejected by the program and never comes to the
board, is overburdensome, to the point of not being possible to complete.

That's similar to the situation we dealt with in the Livestock Committee a year or so ago, when the recommendation from a conference call with the program and with the Center of Veterinary Medicine was to present a petition to the program for injectables.

The response we got back from the program, after being on that call, was that they wanted a full manufacturing process of every potential injectable that would be considered. It's a broken process. It's got a bias and it needs to be fixed.

I think if we could focus on fixing the process that we have in place, we would be far better off and it can also be done quicker than what we're looking at doing here in sunset, because if we have a concern today, where we find out something's broke, we don't have to wait two or three or four years for sunset. We can file the petition now and
take care of it. Arthur.

MR. NEAL: Great comments. Just from a program perspective, we do realize that there are some things that can be enhanced in the sunset review process.

I think that what needs to happen is that the program needs to be more involved with the board in terms of talking about these issues and working out some potential changes to the process.

CHAIRPERSON GIACOMINI: But be clear what I said. The broken part is the petition process, not the sunset review.

MR. NEAL: Well, I think there are some things that even in the sunset review process that can be amended as well. The petition process probably could be done a little faster.

CHAIRPERSON GIACOMINI: Well, it's a manufacturer's bias, and that is huge, and it's almost impossible for the common man to overcome. Katrina.
Ms. HEINZE: I do have a comment on annotations, because I have kind of a little prepared thing I wanted to do on sunset.

I very much appreciate the fact that the Policy Committee brought his as a discussion document, to get input from the rest of the board. I do wish that perhaps more inclusion with the Materials Committee, so we could have had kind of a user perspective on it would have been useful.

Public comment clearly shows that there's a wide variety of perspectives on this topic. I want to particularly draw your attention to the comments made by Kim Dietz. Kim was very active in the last time the board reviewed this, and I don't think we should sell that board short.

They did debate all these topics and the changes in materials and all those things, and came up with a process that they thought would work for that. I'm wary of us
revisiting what past boards have done, because
I think that will get harder as time passes.

I first want to say, I concur with
some comments that were made public comment
about synthetics, but also what Miles said.
I think it's a mistake for the NOSB to
approach sunset with the idea that synthetics
should be difficult to keep on the National List.

If you look at leavening agents,
which are synthetics, it shouldn't be
difficult for us to keep synthetics on -- to
keep leavening agents on 605(b). They're
safe, they're necessary, and I don't think
consumers are really concerned about them
being there.

There are certainly synthetics
that should have a short life on the National List as alternatives are developed. So I just think that it's incorrect for us to approach our sunset review with the perspective of trying to boot every synthetic off the
National List. I think we need a more nuanced approach.

So you asked us for what direction did we want you to take. I agree that we need better information from the public on providing a rationale for why a material should be on the list, if it's allowed or taken off the list, if it's prohibited.

That should include the natural alternatives or production methods to the material. I do not support requiring petitions to relist at all.

With regard to annotations, I agree with pretty much everything that Dan said. I would caution you to say that you had public comments that all said they supported changing annotations.

So specifically, if you look Kim's document, she said she did support changing annotations, but only if they required a new or amended original petition, and technical and scientific evidence that the change is
needed.

So I think if you read the rest, that was the only one I had time to look at.

But I think if you look at the public comments, you will see that there are several that say "Yes, we understand why you want to do annotation change, but it should be very limited in scope. I shouldn't be a blanket for all material."

So my final comment is colors. I hadn't thought about this when I had asked Steve if we could talk about colors. But that is a very good example of an annotation change that does need to happen, concurrent with the sunset process. It shouldn't -- that annotation change should not happen as part of the sunset process.

So what the committee is doing is bringing two recommendations, so it's very transparent to the public that we are considering annotation change. We'll get public comment. We can have that discussion,
we can have that vote. But it's separate from sunset.

The alternative, if annotations were part of sunset, would be that every single material that we considered would get into the "do" loop that Dan described. I think we're setting up future boards for disaster should we do that. That's it, thank you.

CHAIRPERSON GIACOMINI: Barry.

MR. FLAMM: I feel I ought to make a response or at least an explanation to your concerns, Dan, and what Katrina just said about the involvement of the Materials Committee, which I think we would really welcome. I would like to point out that the Policy Committee is a diverse committee and it has the chairs or vice chairs of all the committees.

So certainly nobody should be unaware of what the Policy Committee was doing. But more importantly, coming out of
the November meeting, where there was debate on sunset and the sunset process, and what I consider confusion over the implementation of the recently revised procedures that are in policy and procedure manual. So we were using words like "evergreen," which had never -- doesn't appear in the manual, concepts. So there seemed to be quite a bit of honest confusion over the procedures that need to be straightened out, and several board members approached me, almost as a self-evident fact, that the Policy Committee ought to try to straighten that out. So after consideration and mentioning it, both at the meeting, the November meeting and then at subsequent executive committee meetings, it appeared on the work plan. I could have pursued maybe working with the Materials Committee a little more aggressively, but I really thought you were really burdened, and if you wanted to join in,
we would welcome it.

In fact, the time before I pursued having a joint effort with Materials to do that, and the joint effort was primarily just with Dan. We tried to work together on that. So we weren't trying to exclude. In fact, the more the merrier, more ideas.

So this paper was to lay out all the things that just came forward. So without -- we tried not to have any bias one way, even though members may have an opinion. But we wanted to --

I thought we laid out the option and laid out the pros and the cons of each action, the benefits of it, the cost of it, and maybe come -- well, we have to come to some sort of joint decision, and we may end up --

But doing it just like we've been doing it is not real clear, and I found this is really my first time also through sunset, and I found out what I thought some of the
premises about using past information and
using the past petition, using all that.
Well, it isn't even there. You can't find it,
you know.

So there's holes in the premises.
So I just want to say we take all the comments
and I don't care, you know. Dan, you're the
chair. If you want somebody else to do this,
I think we can do something else. But we were
just trying to perform a function for the
board and lay this out, and try to develop it.

It's not even going to affect
what's going on right now. This is something
to look at for really the next go-around.
We're not trying to push this. We wanted to
get the best ideas and see if we can't -- and
there are some new --

We had interpretations, like on
the -- that Miles had laid out for us now, in
terms of annotation, in terms of evergreen,
that was different than words that I have in
writing that came from the previous
administration.

So I think we just need to clear the air so we can all work together, and so -- and things, as Jay has pointed out, as you all know, this is a moving target. The information, what is being learned, what's being looked at, it does change. So we have to be able to -- and that's our intention. That's what we say in the manual right now.

But sometimes it seems like in spite of that, then we just end up what appears to be doing what happened before. But I'm trying very hard not to take the position on all that, and I'm sorry if I offended Materials, but that wasn't our intention.

MS. HEINZE: We didn't think you were. We do appreciate you recognizing we were overburdened. I equally could have noticed you were working on it. I didn't, so that's my --

MR. FELDMAN: We worked very quietly.
CHAIRPERSON GIACOMINI: Jay.

MS. HEINZE: We work very noisily.

MR. FELDMAN: Again, I think we have to come back to the fact that we've all been through some sunset review, long days and meetings together. We've made it out alive and we've made it out liking each other.

So the fact is we have worked in the process. The question is does that process need to be tweaked? But that's not why I raised my hand.

You know, any organization worth its salt does a strategic plan. In the strategic plan, they lay out their vision and their mission and their core values and their beliefs.

In the process of doing a strategic plan, they then commit to reevaluate the vision, the core beliefs, the tactics, the approaches. The first thing they do, and I'm not telling anybody here things they don't know, but I want to remind us of this, is to
check in with their mission, to check in with
their mission.

That's what I read to you at the
beginning, what the mission of our work is.
I read to you Section 2118 of the Organic
Foods Production Act.

What I want to say, I think, is
that if we think this is a residue-driven law,
where we can define safe and we can start
talking about levels of exposure and
significant and insignificant, we are going
down a rabbit hole that John hasn't even been
able to identify yet for us, because that is
not what OFPA is about, and we really need to
keep that vision and those core values in
front of us.

I will read to you Section 2115.
"To be sold or labeled as an organically
produced agriculture product under this title,
an agricultural product shall (1) have been
produced and handled without the use of
synthetic chemicals, except, except as
otherwise provided in the title, in this

title."

Number two, "Except as otherwise

provided in this title and excluding

livestock, not be produced on land to which

any prohibited substances, including synthetic

chemicals, have been applied during three

years immediately preceding the harvest of the

agricultural products."

And three, "Be produced and

handled in compliance with an organic plan

agreed to by the producer and handler of such

product, and the certifying agent." I daresay

if you look at what is required in the farm

plan, chemicals come last. Materials come

last. It's process, okay.

So let's check in with our vision,

and let's use the sunset process to check in

with our vision like we would do if we worked

for an organization where we checked in with

our strategic plan. It's not a disservice,

it's not disrespect to the people that came
before us.

   It's really respectful of the people that came before us, to check in with the foundation that they have built, and build on that foundation. This is what the sunset process is about.

   We are not regulating chemicals under de minimis risk standards, under -- effect standard, which one of our presenters yesterday slipped into, if you noticed, because he's used to presenting that standard at EPA regulatory hearings.

   That's not a bad thing, but that's not our vision. That's not our mission, and I really think that what the committee has laid out here, Barry, I think you did an extraordinary job of leading us to raise the issues.

   We brought this issue to you all to get your input for this. We hope you can see the vision that we're trying to uphold, advance, nurture, respect, and we are
welcoming everybody to join that process. So thank you. I'm sorry for getting on the soap box, but I think this is a critical issue.

CHAIRPERSON GIACOMINI: No. If I did, you're entitled to. Barry, your next topic.

MR. FLAMM: The next topic is an item in Section 5 in the policy and procedure manual, which is NOP-NOSB collaboration. As you know, the Policy Committee has been systematically reviewing and trying to bring up to date the policy and procedure manual of --

Actually almost a year ago, Rigo had led review of Section 5 on the collaboration process. Some questions came up that we weren't quite ready to handle. Rigo felt that the section needed to be -- a lot of redundancy needed to be taken out and be streamlined, and some members of the committee weren't quite ready for that.

But most importantly, this was a
time of transition, with changes in NOP, a new hat and new funding, new staffing, lots of things. So we thought it was best just to postpone changing that section until we had an opportunity to get public comment and get more public comment.

But also to discuss it with NOP. After all, we're talking about collaborating and working together, so it's only right to talk to the party that we wanted to collaborate with. It wouldn't be very good to start out talking about collaboration and not even ask them what they thought about it.

And I -- we sort of delayed any work on it, because we had the high hopes of getting together in the retreat and talking about that at that time, and that didn't happen.

One of the reasons -- well, the reason it didn't happen is because of the restrictions that sort of the Sunshine Act places on us. One of the interesting things
that -- we only received two comments, written comments. At least if there were more, I missed them.

The one that had the most substance warned us about working out of the -- in the shadows with NOP, and never really reinforcing what sort of the Sunshine's all about, and just it was sort of a reminder. So that's one of the limitations we have in a collaboration, is that it all has to be --

That's not bad, but that's one of the things. So we can't just sit down and work and collaborate as you might with other parties or other organizations. So that's the limitation.

I think, I hope you've looked at what we have said, or it's mostly kind of obvious, in coming out of the procedure manual. One of the things that was suggested though, as a tool of improving communication and coordination would be to have an NOP staff person assigned to a committee.
Now we strongly endorse and support the executive director position, what Valerie has done and her replacement will do --, an overarching thing. But that's an awful lot of work, and we had one idea, and these are just ideas, was to have a contact person or somebody to work with the committee, to help with a multitude of activities.

We don't have any really original ideas. I'm still hoping before we revise this, we will have a recommendation for the fall meeting, that we'll have a chance to get some feedback from the program and ideas from the board on how we ought to improve our -- if we need to improve.

I mean from my standpoint, it's pretty good right now. But that's sort of the sum of it.

CHAIRPERSON GIACOMINI: Any comments or questions from the board? Yes. I think this is a really good document. It's always hard to put personality on paper, and
so much of a collaboration effort is the personality of the people. The only thing, the one thing I would like you to look at, as you move forward in this, is in your NOSB committee staffing, down towards the end, where you're talking about things that will be kept on the NOP website, you're including the range of positions discussed during committee meetings.

Historically in the past, and I'm not sure it's necessarily what we want to deviate from, is the committee meetings, committee minutes are not posted. One thing I would recommend for you to do is to develop that structure, so that we can put the position, get the position on the website, without having to necessarily post the entire committee minutes. Any further?

(No response.)

CHAIRPERSON GIACOMINI: I think I hear a clock dinging somewhere. Barry, your last item please?
MR. FLAMM: Our last item, Annette will cover, and that's the rotation of board positions. I have to say, this is something Annette was assigned lately to, and another board member that is no longer on the board was really the -- initiated this particular discussion document, and was probably concerned about it.

Again, we're just trying to get the feeling of whether this is a problem that ought to be dealt with, and whether -- but anyway, Annette, carry on please.

MS. RIHERD: I will make this brief, because I know you all are tired and are ready to go. As you know, when this was first started, it was planned that there would be three people appointed at a time. But because people have left the board -- it's on. Yes.

Because people have left the board for various reasons, now like this year five people came on. It was brought up that this
was a problem, and there was a suggestion that we take it back to, we can get it to where there's three people coming on a year again.

But many people put a lot of work into the graphs and sat down and tried to figure out a way to get this going on. But we can't figure out a way to stop this problem from happening again. So unless we have some input from you guys, to say hey, here's an idea, this will probably not go on.

So we really just need your thoughts on this. There were two public comments. One was that they didn't think this should even be thought, and another one said that they thought we should talk to you guys, to see if there was a law that we needed to follow or something.

CHAIRPERSON GIACOMINI: Valerie.

MS. FRANCES: I did put this forward to the GSA secretary which governs the FACA committees overall, and I was hoping to get feedback before this meeting. I did put
this forward to those folks, and they did say that they would look at this and take it under review, and have promised to get back to us and have not done so yet. So I'll continue to pursue that.

But they were interested in the topic and did feel that they would ultimately have something to contribute. They have 1,000 committees that they look at and relate to. But they were appreciative that the question was brought forth.

CHAIRPERSON GIACOMINI: Barry.

MR. FLAMM: I'd like to call attention to the discussion items for the board members. There's some questions posed, that unless there's an answer to these questions, I don't think we can proceed to develop charts or anything else.

Originally back in I think it was 2005, when the board spent a lot of time in developing a rotation system and charts and those are attached, but only as sort of a
reference, because unless you answer these questions, there's no sense in going ahead.

One, is it first really a question. Is it a problem? Does it make any difference? I think having five people just come on, five come off, it looks like we're working pretty good. So yes. I don't know whether it's a problem. So you have to kind of --

And then there's a series of questions that I think have to be answered. If those are answered, depending on the answer, then you can develop a schedule. But one thing, definitely, you know, as you all know, it was staggered when the board started, and to get to this three every, for five year terms.

But people resign, and that will always happen. So there has to be, as Annette alluded to, even you get a -- if you agree to all this and get a rotation system, you'll still have to -- there will still have to be
a commitment to appoint people, to fill
retired, I mean people resign.

But I think the first question, is
it a problem? Do you want to even pursue
this? We don't have -- we have no, within the
committee, no real strong feeling either way.
I just want to let you know that. So we're
really -- if we got to proceed this way, we're
willing to work out if we need answers from
the board on these questions.

CHAIRPERSON GIACOMINI: John.

MR. FOSTER: I don't perceive it
as a big problem. It's a little self-serving
on my part, coming in in this first wave of
five. I agree with you, Barry. I think it's
going okay. Despite the fact of getting hit
pretty square in the forehead with sunset
right out of the chute, I think it's been
okay.

I can imagine a whole lot of work
and thought and energy going into how to
reconfigure this, and as soon as it's done,
someone will leave early again. The odds of it happening, such that we have six or seven come on in a given year, is unlikely. But I don't know. I don't see it being that big a problem. I see more of just the need for whatever alchemy goes into the selection process. I think whoever is in charge of that needs to take that into account, and I trust that process, again self-serving, but I trust the process, and if they have five people to pick, then they'll pick appropriately.

Everything I've seen so far is that there's the capacity and the will to present a very balanced board, with representation from a very good representative collection of folks, and I would expect that in the future, regardless of how many need to be appointed in a certain year. So I would toss in that I think it's okay.

CHAIRPERSON GIACOMINI: Just on that chart up there, I think there's a
correction that needs to be made. That 11
should be a five. There was six in '06, but
one of those appointees withdrew, which made
four in '07, which created the five in '11 and
the four in '12.

MR. FLAMM: Dan, that was a point
and I didn't make it clear enough. That's a
problem. Those charts were developed back in
2005, and I think, you know, I thought that it
was clear, but maybe it wasn't, that these
were illustrative of work that had been done
in the past, and what we can do now.

But there's absolutely no sense.
We could develop a chart. But for example, it
would make a lot of difference if it was
implemented today, that change, or if it was
implemented, you know, in January. I mean
when it's implemented would change the whole
chart.

So until you decide to do it, this
doesn't mean -- and there's a whole series.
People did a lot of worrying, and there was a
bunch of different charts, alternatives that were developed, and they were good work. But there wasn't a will to actually implement it, and there was some features of it that were -- what I understand was disagreeable to people.

So that's the reason I think that posing these questions were better, you know, have to be answered first. The first one is, is it worth doing? Does this board think --

I mean past boards thought it was, and part of the board that left thought that this was something that ought to be dealt with.

CHAIRPERSON GIACOMINI: Tina.

MS. ELLOR: I actually think it's important to have a mechanism in place to deal with this issue, whether during this particular board turnover it was a problem or not.

You know, in the future, it really could be a problem. It so happened that, you know, everyone hit the ground running, and I think that's usually the case, although that
hasn't always been the case in the past.

I've been sitting through these meetings now for ten years and seen a huge variety of board members. So whether we use it or not, I think it's good to have a mechanism in place to deal with this issue. You know, I was going to volunteer to leave early, but I can see by the charts that that's not going to do anybody any good.

(Laughter.)

MS. ELLOR: And I think we should reward, you know, the people who have been sitting in these meetings for ten years with, you know, with a seat on the board. Then they would hit the ground running.

MR. FLAMM: So are you suggesting that -- well, there's two parts to that. One, getting it back on a level playing, and that are you -- and then the other is just replacing people that retire early. I mean --

MS. ELLOR: And you know what? It might just shake out all in the wash. I mean
it might just work out that it works back to three years. But whether we use it or not, it would be good if there was a mechanism in place, if it was the will of the board and/or the will of the NOP, that if this does turn out to be a problem, say we're turning over six in one year, then yes, we should have a mechanism in place to start to stagger this out again.

But I'd be interested to hear the response to the inquiry that Valerie sent out. I'm sure other boards have this problem. So I'd be interested in hearing what the come back on that is.

MR. FLAMM: Yes. That was going to be part of -- it will be part of our input. But --

CHAIRPERSON GIACOMINI: We're running very late, but I think this deserves as much attention as the things we started with this morning. So I want people to have note of the time, but not that I'm encouraging
them to cut this off if they think it's important. Katrina.

MS. HEINZE: I'm going to apologize. I missed when I read this document that you had questions that you wanted responses on. So are those the premises under Section 4, Discussion?

MR. FLAMM: Yes. That's what I'm interested in.

MS. HEINZE: Well, I apologize that I kind of missed that that was your intent. So I'll take a look at them and then maybe in an email or something send you my thoughts. I apologize for that.

CHAIRPERSON GIACOMINI: Steve?

MR. DeMURI: And keep in mind it's not just a numbers game of numbers of people going off at the same time. If John and I both had to resign the same week, there would be no handlers on the board.

So you need to have some kind of a mechanism to fill those positions with X
members that could come on for a couple of years or something. That's the kind of comments we're looking for.

CHAIRPERSON GIACOMINI: Yes. Any further? Arthur?

MR. NEAL: We just have to also be mindful that members of the NOSB are appointed by the Secretary. So it's not a quick process. So we just want to be mindful of that.

CHAIRPERSON GIACOMINI: Yes. I would just like to also add that there may be some disruption in the inequities of the numbers. But in the past couple of years, we've also leveraged that, to take advantage of it.

We did it with the Material Working Group on the material issues. It gave us a year of no new people to not have to lose as much as half a year, to bring that to the table.

We also used it in Livestock with
methionine. The reason we gave them the drop
dead date that we did was because the next
time it came around, there were only going to
be five new people that had come on the board.
So we've had situations where we
really leveraged that discrepancy to our
advantage. So there might be some disruption,
but there also could be sometimes it can be
utilized positively. Further comments?
(No response.)
CHAIRPERSON GIACOMINI: Seeing
none, any -- is that the conclusion of your
discussion, Mr. Chairperson?
MR. FLAMM: That's the conclusion,
Mr. Chairperson.
CHAIRPERSON GIACOMINI: Okay.
That concludes our Policy Committee. It
concludes our business of the day. Any
announcements? We still have the pair of
reading glasses. Katrina?
MS. HEINZE: I apologize for this,
but I do now need the Joint Committee for
about two minutes.

CHAIRPERSON GIACOMINI: Katrina may not be with us in the morning.

(Laughter.)

CHAIRPERSON GIACOMINI: In the case of death, okay. Okay. Madam Secretary, Tina.

MS. ELLOR: Also, I do need to get the Crops Committee together tomorrow morning briefly before the meeting. So if the Crops Committee could maybe meet here at 7:30?

VOICE: No, no.

CHAIRPERSON GIACOMINI: Jay.

MR. FELDMAN: I have one --

MS. ELLOR: 7:30 tomorrow morning.

CHAIRPERSON GIACOMINI: John.

MR. FOSTER: I believe Richard Matthews' phone went off in the back. I just wanted to call attention to that.

CHAIRPERSON GIACOMINI: Yes. You try and get it out of Richard.

MR. FOSTER: That's a rabbit hole
I can find.

CHAIRPERSON GIACOMINI: Okay.

Everyone thank you. Our meeting's in recess, eight o'clock tomorrow morning. Have a safe evening.

(Whereupon, at 6:05 p.m., the meeting was recessed, to reconvene on Thursday, April 29, 2010 at 8:00 a.m.)
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