

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

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MEETING OF THE NATIONAL ORGANIC
STANDARDS BOARD (NOSB)

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THURSDAY,

APRIL 29, 2010

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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 FULRIDER

JENNIFER M. HALL

KATRINA F. 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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P-R-O-C-E-E-D-I-N-G-S

8:07 a.m.

CHAIRPERSON GIACOMINI: Final

session of this National Organic Standard Board Meeting is now back in session. Board members are seated and we have the high five from Valerie and the sound man, so we're all ready to go.

Today's the final day for final discussion and voting on the Board recommendations brought forth at this meeting by the various committees. The committees have worked for months on these recommendations and now after respectfully weighing the public comments submitted both online and then in person at this meeting, we are ready for final consideration and vote.

It is always impressive to me at the responsiveness of the Committee to public comment. We work very hard, and sometimes very late in the evening, to make any modifications and changes that we can to make

1 corrections and make the document more
2 responsive to the industry.

3 And again, we thank the public for
4 their input.

5 So we ask the audience as we
6 proceed through this process to please
7 refrain. While we don't have email this time,
8 but in this modern age we do have cell phone
9 text and different things. Please refrain
10 from contacting members of the Board during
11 this process. And we thank you all for
12 consideration and fairness to all parties
13 involved.

14 We would like to make a special
15 request and remind the Board members Vice
16 Chairman of the committees working on the
17 recommendations as we take votes, please Vice
18 Chairman, make special attention to any
19 changes, any modifications, anything that is
20 altered in your documents before final vote so
21 that we make sure we're all on the same page
22 when it comes to posting the final documents.

1 So, Vice Chairs, please have your pencils
2 ready.

3 Regarding today's vote, the
4 substance of votes as required by OFPA require
5 a two-thirds vote of this Board. Abstentions
6 are handled as no votes, essentially. They
7 are counted towards the quorum, but are not
8 counted as part of the vote. They're
9 considered the essential of absent, but they
10 are counted towards the quorum.

11 Fourteen active votes. Members
12 voting requires a ten vote to pass. Thirteen
13 votes requires nine votes to pass. Twelve
14 members voting requires eight votes to pass.
15 Eleven voting requires eight. And ten votes
16 require seven. I ran that list in
17 consideration of any recusals, abstentions or
18 other reasons that someone may not be voting.

19 All the Board should have the
20 voting documents. I will be starting on the
21 side with Barry and working this way through
22 the members. If you'd please enter your

1 initials of everyone at the top of that page.

2 Still have a pair of reading
3 glasses here if anyone can't see their
4 documents.

5 And we have blank voting sheets
6 for anyone who may need them.

7 Any other housecleaning before we
8 start? Joe?

9 MR. SMILLIE: I'd just like to
10 thank the volunteers who had the coffee
11 available and the people at the Heidrick
12 Center for helping us get through these
13 meetings. I think that was really a wonderful
14 thing. I think it was Kim Dietz, Kelly Shea,
15 Gwen whoever you were thank you very much. It
16 really made it much hospitable for everybody
17 to have coffee and drinks. And the Heidrick
18 Center people went out of their way to
19 accommodate us. So I'd just like to thank all
20 of you for that wonderful, gracious gesture.

21 CHAIRPERSON GIACOMINI: Thank you,
22 Joe. And that is just centrally extended from

1 all of us. And all of you have helped make
2 this meeting a wonderful experience with the
3 consideration of things we'd have to deal
4 with. And we apologize for any inconvenience
5 with the wi-fi. And we hope that won't happen
6 again.

7 Okay. Anything else before we get
8 started? All right.

9 The first one up is the Crops
10 Committee and Chairperson Tina Ellor.

11 SECRETARY ELLOR: Thank you, Dan.

12 The first item we have up this
13 morning for a vote, and you know it's been six
14 months so I might be a little vague about the
15 process, I am aging, is the 2011 Sunset
16 Recommendation for ferric phosphate. And as
17 we discussed yesterday, we do have a petition
18 in front of the Board to remove. We had only
19 favorable public comments to keep this on.
20 And if we don't act on it, it will go off.

21 So do I make a motion or --

22 CHAIRPERSON GIACOMINI: Yes, you

1 make a motion to accept the recommendation.

2 SECRETARY ELLOR: Okay. I'll make
3 a motion that we accept the recommendation to
4 keep ferric phosphate on List 205.601.

5 MR. MOYER: I'll second that
6 motion.

7 CHAIRPERSON GIACOMINI: Motion has
8 been made by Tina Ellor, seconded by Jeff
9 Moyer to accept the recommendation from the
10 Crops Committee regarding the relisting of
11 ferric phosphate on 601.

12 Madam Maker of the motion, do you
13 have any further debate?

14 SECRETARY ELLOR: I do not.

15 Oh, Jeff.

16 CHAIRPERSON GIACOMINI: Jeff?

17 MR. MOYER: Dan, just a point of
18 clarification. The petition was to remove.

19 SECRETARY ELLOR: Right.

20 MR. MOYER: So we have to be
21 careful how we vote. Because if we vote yes,
22 it will be removed.

1 SECRETARY ELLOR: No, no. We're
2 not voting on the petition.

3 CHAIRPERSON GIACOMINI: No, that's
4 not correct.

5 SECRETARY ELLOR: We're voting on
6 the Sunset.

7 CHAIRPERSON GIACOMINI: This is
8 Sunset. The affirmative vote is for
9 relisting.

10 MR. MOYER: So we're not voting on
11 the petition?

12 CHAIRPERSON GIACOMINI: No.

13 SECRETARY ELLOR: We're not voting
14 on the petition to remove. We are voting on
15 relisting.

16 Sorry. Thank you, Jeff.

17 MR. MOYER: Yes, I just want to
18 clarify it.

19 CHAIRPERSON GIACOMINI: This is a
20 Sunset vote to relist. An affirmative vote
21 asserts and relists this substance on the
22 National List.

1 MR. MOYER: Thank you for that
2 clarification.

3 CHAIRPERSON GIACOMINI: Thank you.
4 Any further debate? Seeing none.
5 Barry?

6 MR. FLAMM: Yes.

7 CHAIRPERSON GIACOMINI: Annette?

8 MS. RIHERD: Yes.

9 CHAIRPERSON GIACOMINI: Jennifer?

10 MR. HALL: Yes.

11 CHAIRPERSON GIACOMINI: Wendy?

12 MS. FULWIDER: Yes.

13 CHAIRPERSON GIACOMINI: Jeff?

14 MR. MOYER: Yes.

15 CHAIRPERSON GIACOMINI: Jay?

16 MR. FELDMAN: Yes.

17 CHAIRPERSON GIACOMINI: Tina?

18 SECRETARY ELLOR: Yes.

19 CHAIRPERSON GIACOMINI: Tracy?

20 VICE-CHAIRPERSON MIEDEMA: Yes.

21 CHAIRPERSON GIACOMINI: Joe?

22 MR. SMILLIE: Joe.

1 CHAIRPERSON GIACOMINI: John?

2 MR. FOSTER: Yes.

3 CHAIRPERSON GIACOMINI: Steve?

4 MR. DeMURI: Yes.

5 CHAIRPERSON GIACOMINI: Katrina?

6 MS. HEINZE: Yes.

7 CHAIRPERSON GIACOMINI: Joe?

8 MR. DICKSON: Yes.

9 CHAIRPERSON GIACOMINI: Joe votes
10 yes.

11 One absent.

12 Votes are zero no, 14 yes, no
13 abstention. One absent. Motion passes.

14 I'm sorry. We missed an important
15 step of asking for conflicts and recusals.
16 Would anyone on that vote consider that they
17 have any potential conflict?

18 Please, even if I happen to miss
19 that point, the point of a vote, please if
20 anyone has those issues to state, please bring
21 them to our attention.

22 Madam Chairman.

1 SECRETARY ELLOR: The next item on
2 the agenda is our low hanging fruit, 2012
3 Sunset recommendation for 205.601 and -- no,
4 we're going to do that separation. Okay.

5 205.601 since synthetic substances
6 allowed for use in organic crop production,
7 and I'm going to go quickly through the
8 category use and the material. And all votes
9 from the Crops Committee were unanimous to
10 keep these on the List. So a yes vote would
11 be to relist all of the following:

12 Category use as algicides
13 disinfectives and sanitizers including
14 irrigation system cleaning systems: Hydrogen
15 peroxide, soap-based algicide de-mossers.

16 Category use as herbicides, weed
17 barriers as applicable. Herbicide soap-based
18 for use in farms as maintenance.

19 Category use as animal repellents:
20 Soaps, ammonia soaps.

21 Category use as insecticides:
22 Ammonium carbonate, boric acid, elemental

1 sulfur, lime sulfur including calcium
2 polysulfide, oils, horticultural oils - narrow
3 range oils as dormant, suffocating and summer
4 oils, insecticidal soaps, sticky traps and
5 barriers, sucrose octanoate esters,

6 Category use as plant disease
7 control: Hydrated lime, hydrogen peroxide,
8 lime sulfur, horticultural oils - narrow range
9 oils as dormant, suffocating and summer oils,
10 potassium bicarbonate and elemental sulfur.

11 Category use as plant or soil
12 amendments: Aquatic plant extracts, elemental
13 sulfur, humic acids, micronutrients, soluble
14 boron products, sulfates, carbonates, oxides
15 or silicates of zinc, copper, iron, manganese,
16 molybdenum, selenium and cobalt, liquid fish
17 products, vitamin B1, C and E.

18 And I believe I captured that list
19 accurately.

20 And I would encourage you to read
21 the recommendation because we did have some
22 concerns with some of these, and we did send

1 an awful lot of materials back for technical
2 review, which we certainly hope to get back by
3 the fall. But these are the ones we
4 considered.

5 Yes, Valerie?

6 MS. FRANCES: You forgot mulches.
7 You didn't mention that. Just for the record.

8 SECRETARY ELLOR: Oh, I'm sorry.

9 CHAIRPERSON GIACOMINI: Yes, for
10 the record --

11 SECRETARY ELLOR: Oh, okay. All
12 right. Very important.

13 CHAIRPERSON GIACOMINI: -- please
14 refer to the actual document.

15 SECRETARY ELLOR: Okay. Yes, I
16 did. I just can't read, Dan. Okay.

17 CHAIRPERSON GIACOMINI: That's why
18 I asked them to please refer to the document.

19 SECRETARY ELLOR: Okay.

20 CHAIRPERSON GIACOMINI: For all of
21 our humanity involved.

22 SECRETARY ELLOR: Mulches:

1 Newspaper, other recycled paper or plastic
2 mulching covers. Although, no. Actually, no.
3 We sent those back for TR because of new
4 advances in inks and coatings and because of
5 the nanotechnology. So, no, I should not have
6 read those. Those should not be on our list.
7 Yes.

8 And the plastic mulching covers we
9 sent back to look at alternatives. That's not
10 on our voting docket for this morning.

11 CHAIRPERSON GIACOMINI: Thank you.
12 As we said, please refer to the document.

13 SECRETARY ELLOR: Okay.

14 CHAIRPERSON GIACOMINI: Was our
15 motion there or do you still need make a
16 motion?

17 SECRETARY ELLOR: So, I would like
18 to make a motion that we -- oh no. Not yet.

19 Yes. I would like to make a motion
20 that we accept for relisting those materials
21 that I just listed for 205.601 that they are
22 accepted as allowed for use in organic crop

1 production.

2 So I made the motion.

3 MR. MOYER: I'll second that
4 motion.

5 SECRETARY ELLOR: Is there any--

6 CHAIRPERSON GIACOMINI: The motion
7 has been made and seconded to accept the list
8 of substances for relisting on Section 601.

9 Madam Maker of the motion, do you
10 have any further comments?

11 SECRETARY ELLOR: I do not.

12 CHAIRPERSON GIACOMINI: Any
13 further debate? Steve?

14 MR. DeMURI: Just a question of
15 clarification. The votes that I see up there
16 on the board apply to all those items? It was
17 unanimous, basically, for everything?

18 SECRETARY ELLOR: It was
19 unanimous, yes.

20 CHAIRPERSON GIACOMINI: Further
21 debate? Seeing none, proceed to vote.

22 For the new members, the process

1 that we proceed through is we start at one end
2 of the table for the first vote and we go
3 around the table, we proceed in that same
4 fashion moving one person each vote for the
5 starting person. So, the first vote is now
6 Annette.

7 MS. RIHERD: Yes.

8 CHAIRPERSON GIACOMINI: Jennifer?

9 MR. HALL: Yes.

10 CHAIRPERSON GIACOMINI: Wendy?

11 MS. FULWIDER: Yes.

12 CHAIRPERSON GIACOMINI: Jeff?

13 MR. MOYER: Yes.

14 CHAIRPERSON GIACOMINI: Jay?

15 MR. FELDMAN: Yes.

16 CHAIRPERSON GIACOMINI: Tina?

17 SECRETARY ELLOR: Yes.

18 CHAIRPERSON GIACOMINI: Tracy?

19 VICE-CHAIRPERSON MIEDEMA: Yes.

20 CHAIRPERSON GIACOMINI: Joe?

21 MR. SMILLIE: Joe.

22 CHAIRPERSON GIACOMINI: John?

1 MR. FOSTER: Yes.

2 CHAIRPERSON GIACOMINI: Steve?

3 MR. DeMURI: Yes.

4 CHAIRPERSON GIACOMINI: Katrina?

5 MS. HEINZE: Yes.

6 CHAIRPERSON GIACOMINI: Joe

7 Dickson?

8 MR. DICKSON: Yes.

9 CHAIRPERSON GIACOMINI: Barry?

10 MR. FLAMM: Yes.

11 Joe votes yes.

12 Motion passes, 14 zero.

13 Any conflict of interest? I will
14 get this by the last one. Any conflicts on
15 that that we would need to reconsider this
16 vote? Okay.

17 Motion passes.

18 SECRETARY ELLOR: The next one on
19 our agenda are the 2012 Sunset Recommendations
20 for 205.601: Non-synthetic Substances
21 Prohibited for Use in Organic Corp Production.

22 And the Committee voted again

1 unanimously on this particular category to
2 relist as prohibited for use in organic
3 agriculture: Ash for manure burning, arsenic,
4 lead salts, potassium chloride, sodium
5 fluoaluminate, strychnine and tobacco dust.

6 So I would like to make a motion
7 that we maintain those prohibitions on the
8 list.

9 Did I say that correctly.

10 CHAIRPERSON GIACOMINI: The way
11 you said it.

12 SECRETARY ELLOR: Okay.

13 VICE-CHAIRPERSON MIEDEMA: Second.

14 CHAIRPERSON GIACOMINI: Motion has
15 been made and seconded to relist the items in
16 the recommendation to maintain those
17 prohibitions on the list for 601.

18 Maker of the motion, do you have
19 any further comment?

20 SECRETARY ELLOR: No, I do not.

21 CHAIRPERSON GIACOMINI: Any
22 further debate? Seeing none, we'll proceed to

1 vote.

2 Conflicts? I wrote it down right
3 there. Thank you. Conflicts?

4 CHAIRPERSON GIACOMINI: Jennifer?

5 MR. HALL: Yes.

6 CHAIRPERSON GIACOMINI: Wendy?

7 MS. FULWIDER: Yes.

8 CHAIRPERSON GIACOMINI: Jeff?

9 MR. MOYER: Yes.

10 CHAIRPERSON GIACOMINI: Jay?

11 MR. FELDMAN: Yes.

12 CHAIRPERSON GIACOMINI: Tina?

13 SECRETARY ELLOR: Yes.

14 CHAIRPERSON GIACOMINI: Tracy?

15 VICE-CHAIRPERSON MIEDEMA: Yes.

16 CHAIRPERSON GIACOMINI: Joe

17 Smillie?

18 MR. SMILLIE: Yes.

19 CHAIRPERSON GIACOMINI: John?

20 MR. FOSTER: Yes.

21 CHAIRPERSON GIACOMINI: Steve?

22 MR. DeMURI: Yes.

1 CHAIRPERSON GIACOMINI: Katrina?

2 MS. HEINZE: Yes.

3 CHAIRPERSON GIACOMINI: Joe

4 Dickson?

5 MR. DICKSON: Yes.

6 CHAIRPERSON GIACOMINI: Barry?

7 MR. FLAMM: Yes.

8 CHAIRPERSON GIACOMINI: Annette?

9 MR. RIHERD: Yes.

10 CHAIRPERSON GIACOMINI: The Chair
11 votes yes.

12 One absent, zero no's, 14 yes.

13 Motion passes.

14 SECRETARY ELLOR: The next item on
15 our agenda are the List 4 inerts in
16 pesticides, that document, and I'm going to
17 turn this over to Jeff.

18 MR. MOYER: Sorry. I was looking
19 on livestock.

20 Okay. Do you have the document
21 up? Thank you.

22 Okay. A document that we had a

1 lot of discussion on yesterday, the mechanism
2 to handle the Sunset of List 4 and List 3
3 inerts as they appear in our standard.

4 While Valerie brings that up, we
5 did have the opportunity to meet briefly with
6 the program last evening. And taking into
7 consideration the discussion we had yesterday,
8 we did make some changes to the list for
9 inerts document which we think are quite
10 substantive, but still heading in the same
11 direction we were heading yesterday. So we
12 haven't changed our overall goals and
13 objectives.

14 You'll see there that we added to
15 the sentence about creating a memorandum of
16 understanding with the EPA. We added another
17 sentence to the end of that that says "This
18 MOU should serve as a platform for an
19 implementation strategy that may include an
20 official task force or some other structure to
21 achieve the following objectives."

22 So the idea would be that there

1 would still be the creation of a memorandum of
2 understanding between the Program EPA and this
3 Board, so all three of us would work together
4 in a triumvirate fashion bring industry into
5 the process as needed to make sure that we get
6 everything right as we go through this
7 process.

8 We have not changed the overall
9 strategy or the objectives for that task
10 force, or whatever structure the Program deems
11 would be most beneficial to the process. So
12 we included that sentence in there.

13 Moving down -- question?

14 MR. SMILLIE: Yes. This may be a
15 minor point, but the official task force, I
16 just want to probe into that. We've done this
17 in the past and there's been a differentiation
18 between task force and working group.

19 MR. MOYER: That's right.

20 MR. SMILLIE: Working group is
21 formally assembled and certain people are
22 invited. It's not necessarily inclusive of

1 everyone.

2 I just want to make sure that when
3 we structure this task force that it is open
4 to all sectors to be involved.

5 MR. MOYER: Yes. My understanding
6 in the discussion with the Program, and if
7 Arthur wants to comment here or jump in that's
8 fine. We were leaving the actual title of
9 that working group/task force a little bit
10 open. We used the word "task force" since it
11 came from the program yesterday in this
12 discussion, but it's really a working group,
13 task force, whatever you want to call it,
14 that's officially organized under this
15 memorandum of understanding with these
16 targeted objectives. And at that point we're
17 assuming in the MOU there will be a timeline
18 and the time frame for which this to operate.

19 We have seen working groups go on
20 for seven years; that's not the time frame
21 we're hoping this takes. But that'll all be
22 worked out in the Memorandum of Understanding,

1 which is really the platform that encompasses
2 this process.

3 CHAIRPERSON GIACOMINI: It does
4 say official task force or other structure.

5 MR. MOYER: Right. Or other
6 structure.

7 MR. SMILLIE: Right. I'm not
8 arguing with the wording. I want
9 clarification on it.

10 So the MOU is the trigger to
11 create the official working group?

12 MR. MOYER: That's correct.

13 MR. SMILLIE: So the MOU is
14 established first --

15 MR. MOYER: That's correct.

16 MR. SMILLIE: -- between the three
17 parties?

18 MR. MOYER: That's correct.

19 MR. SMILLIE: Okay.

20 MR. MOYER: Thank you, Joe, for
21 the opportunity to clarify that.

22 Moving down in the document,

1 paragraph 1 or objective 1 we did not change.
2 That was the objective that working with the
3 EPA to split the list into the naturals or the
4 non-synthetics and the synthetics.

5 Moving into objective 2, paragraph
6 2 there. We did at the recommendation of this
7 Board remove or suggesting that we remove
8 what's highlighted in yellow there; at least
9 yellow on my computer. Green on the wall.

10 We took out any reference to
11 specific days for implementation. So we were
12 suggesting we take out the 180 days of posting
13 and replace it with a phrase that says "An
14 established time frame" giving the task force
15 for other structure under that MOU the
16 opportunity to create that established time
17 frame. We're not doing it with this document.

18 A little hard to see up there. On
19 my computer, unfortunately or fortunately for
20 me, it shows up in red.

21 But the words right before "180
22 days of posting," it says "an established time

1 frame." That piece is new. That's the
2 replacement and we're suggesting we strike the
3 "180 days of posting." Again, based on
4 comments that we got from this Board yesterday
5 in our discussion.

6 Moving down to paragraph 3,
7 objective 3 there. We did the same thing with
8 this paragraph. Again, at the end where it
9 says " 1 year," we replaced that with the word
10 "designated." So "there will be designed
11 grace period" but we are not determining that
12 with this document. It could be one year, it
13 could 18 months; I don't know what it'll be.
14 Again, the task force operating under that MOU
15 will determine that.

16 Objective 4, again removing any
17 reference to time period, we're suggesting we
18 remove both references to the 6 month time
19 period, one for reformulation and one a grace
20 period and replace those with the same
21 verbiage that we used in the previous
22 paragraphs. The one saying "an established

1 time period" in 2.

2 I don't know if you can capture
3 that, Valerie. Yes, perfect.

4 The gray area would be the
5 replacement language, the green would be
6 stricken from the document.

7 And then at the end there
8 "designed" again would replace the text that
9 says "6 months."

10 Paragraph and objective 5. This
11 one we did not change the language, but what
12 our intention to do with this paragraph is
13 basically we cannot delete "EPA List 4 and EPA
14 List 3" as they're shown in the standard or it
15 would Sunset and we would lose all these
16 materials. So we didn't formulate the
17 language there and we're hoping we can do that
18 in a brief discussion here to make sure that
19 those materials do not come off the list
20 while this process takes place. Otherwise,
21 they would Sunset.

22 So whether we vote to relist

1 these, I guess that would be the official
2 terminology, we have to utilize vote to
3 relist. So a vote for this document would be
4 to basically to relist those two categories in
5 the rule so that we don't lose them in the
6 interim where the original language there says
7 to "delete them." So we got to change that
8 language. Just so you know what you're voting
9 for.

10 Objective 6. And this one, again,
11 was totally rewritten based on the -- so if
12 you can highlight all of number --

13 CHAIRPERSON GIACOMINI: That
14 should be a six, not a five.

15 MR. MOYER: That should be a six,
16 yes.

17 We're replacing six -- five with
18 language to relist. Okay. Okay.

19 And I'm going to read all of six
20 because we changed it completely from
21 yesterday.

22 As you recall, yesterday the

1 language said to list each item individually
2 in the rule and to put them under Sunset.

3 Here what we're doing is we're
4 giving ourselves some options. One of the
5 options is to list them as individual items,
6 but I'll just read it as its stated here. And
7 this was late at night, like 11:00 at night.
8 So if I get things wrong, I'm sure you'll
9 correct me.

10 "Based on the results of the MOU
11 established task force, the National Organics
12 Standards Board will either list the specific
13 inert ingredient components recommended for
14 inclusion on 205.601 and by the NOSB subject
15 to the current Sunset process, or post the
16 list as a single material listing as a subset
17 list managed by the EPA under" -- and the
18 title that we talked about was List of Inerts
19 Suitable for Organic Production. No matter
20 how we list it in our rule, this document is
21 suggesting that whichever listing format we
22 utilize, the materials will be subject to the

1 Sunset process already established under
2 National Organic Standards Board policy
3 manual.

4 So each of these materials would
5 still fall under the Sunset process, no matter
6 how we list them.

7 We could choose, or the task force
8 recommend that we list them as a subset of 40
9 CFR 180, which the EPA would us manage under
10 the title "List of Inerts Suitable for Organic
11 Production," which is a totally separate list
12 from what they manage today. And, again, that
13 was based on the discussion we had yesterday.

14 Madam Chairman, back to you.

15 SECRETARY ELLOR: I do have one
16 little bit of confusion. On item 5 we're
17 going to delete item 5 completely? Yes,
18 that's what I'm curious about.

19 And a vote for this would leave it
20 open for us to relist on the November meeting.
21 Because that item we decided to defer until
22 the November meeting. So I think essentially

1 that's what we would be doing.

2 MR. MOYER: That's fine. I'm
3 comfortable with that. I just highlighted the
4 whole box and didn't relight it because I
5 wasn't sure how you wanted to handle that or
6 how the Committee wanted to handle that, or
7 the Board.

8 SECRETARY ELLOR: Right.

9 MR. MOYER: But I did want to
10 highlight it to make sure that we don't lose
11 it.

12 I'm open to suggestions from
13 anybody.

14 CHAIRPERSON GIACOMINI: Arthur?

15 MR. NEAL: Good morning.

16 This is my perspective of the
17 recommendation.

18 To me the most critical part of
19 the recommendation would be the establishment
20 of the MOU and the potential task force. The
21 remaining pieces or items that are listed to
22 me kind of express the Board's desire.

1 MR. MOYER: Correct.

2 MR. NEAL: Because our discussion
3 and dialogue, that whole thing could change.
4 So I really wouldn't spend a lot of time
5 debating those things. It just may be the
6 Board, you know has a desire to see these
7 types of things happen. Because I guarantee
8 you it's going to change through the dialogue
9 and discussion with one another, and with the
10 industry and with the EPA.

11 MR. MOYER: Yes.

12 MR. NEAL: Because we don't really
13 know what's the best way to list these inerts
14 right now. So to prescribe, you know, the EPA
15 inerts, I mean the Listing in 205.601 may not
16 be the best to handle them or not. I think
17 that all of this will get flushed out if you
18 dialogue more about how to handle this issue.

19 That's just my perspective on it.

20 MR. MOYER: Yes. I think based on
21 our discussions, that's correct. However, we
22 the Committee still thinks it's important that

1 we post these objectives because it's our
2 perspective and point of view on how we -- we
3 felt it was important for us to give guidance
4 to the Program and the EPA on what we want
5 them to work on and accomplish. So these are
6 our Committee's objectives.

7 MR. NEAL: Right. And I don't
8 disagree. And as I said earlier, I think it's
9 the Board's desire to see something like this
10 happen. And what I want to make sure that
11 everybody understands, too, that it's a guide
12 for us but it may not look anything like that
13 after we all dialogue.

14 MR. MOYER: Yes. Sure. I
15 understand that.

16 CHAIRPERSON GIACOMINI: We just
17 need a quick decision within the Committee of
18 what they want to do with that paragraph.

19 MR. MOYER: That's correct.

20 Madam Chairperson, Committee
21 Chair?

22 SECRETARY ELLOR: Well, what I'm

1 not clear about, or to seems to me what are
 2 the consequences if we leave it exactly as it
 3 is? Because it's going to go through the
 4 major objective first, which is the task
 5 force. So for me it's a matter of timing.
 6 Eventually these will come off the list.

7 MR. MOYER: Correct.

8 SECRETARY ELLOR: But, you know --
 9 right?

10 MR. MOYER: Okay. I think what I
 11 hear you saying, Tina, is that we could leave
 12 it the way it is because that's one of our
 13 objectives, but the reality is we're deferring
 14 the inerts --

15 SECRETARY ELLOR: Right.

16 MR. MOYER: -- until November
 17 where we will vote to relist them?

18 SECRETARY ELLOR: Right. So until
 19 these processes --

20 MR. MOYER: Take place.

21 SECRETARY ELLOR: -- grind through
 22 the process, we are going to continue. And

1 five years from now if this thing isn't
2 complete, you know then the Board will have
3 decide again whether to relist as it is. But
4 I think that there won't be terrible
5 consequences if we leave that just the way it
6 is. And Arthur's --

7 MR. NEAL: No. Right now we kind
8 of, we frozen what we had before time with the
9 former EPA List 4 and List 3 designations that
10 were approved by the Boar for use in organic
11 agriculture.

12 MR. MOYER: Correct.

13 MR. NEAL: So right now we're
14 okay. We're going to be working on this and
15 dialoguing about it, though, to find out how
16 we tackle the issue in the future.

17 MR. FELDMAN: Just a point of
18 information.

19 CHAIRPERSON GIACOMINI: Jay?

20 MR. FELDMAN: You raised the issue
21 of frozen in time. We're frozen as the 2004
22 List but there have been additional inerts

1 approved since that time. So when we talk
2 about "frozen about time," we have to
3 reference what's happened since 2004.

4 CHAIRPERSON GIACOMINI: That's the
5 question that I asked yesterday. Point 2 says
6 "currently."

7 MR. FELDMAN: Right.

8 CHAIRPERSON GIACOMINI: Not the
9 2004 List.

10 MR. MOYER: No. It says the ones
11 that are currently allowed. It doesn't say
12 the current List. So it's the ones that are
13 frozen in time.

14 CHAIRPERSON GIACOMINI: They're
15 product ingredients currently listed.

16 MR. MOYER: Currently. Item
17 number 2 it says "currently allowed." So it's
18 not the current List.

19 CHAIRPERSON GIACOMINI: Okay.

20 MR. MOYER: It's the one that are
21 currently allowed under our List --

22 CHAIRPERSON GIACOMINI: Okay.

1 MR. MOYER: -- which is frozen in
2 time.

3 CHAIRPERSON GIACOMINI: Okay.
4 Okay.

5 If there's no debate on the
6 language, Arthur or --

7 MR. NEAL: Well, one point of
8 clarification on the things that have been
9 reclassified. Those inerts that have been
10 reclassified, just like prior to EPA's
11 reclassification, you know those inerts that
12 wanted to be included on the National List
13 that there were not an EPA List for, they had
14 to be petitioned.

15 MR. MOYER: That's correct.

16 MR. NEAL: And that process is
17 still the same. It hasn't changed. Yes,
18 they've been reclassified, but at the same
19 time EPA's definitions have not remained the
20 same regarding inerts. So what we've done is
21 that we've said that if anybody wants to have
22 a reclassified material add on a National

1 List, they would petition to have those
2 included until we work out this new process in
3 terms of accessing what the Program is now
4 going to allow based on the reclassification
5 of EPA inert ingredients.

6 MR. MOYER: That's the way I view
7 this, Arthur. And what we're suggesting in
8 these objectives is that moving forward, this
9 Board sees all the materials that gets added
10 to that list, whether the EPA manages it or,
11 whatever the Task Force decides; we still
12 review those materials because that's our
13 obligation as Jay read yesterday in OFPA. And
14 they would fall then under our Sunset process
15 as individual items, not as the List in whole.

16 CHAIRPERSON GIACOMINI: Miles?

17 MR. McEVoy: That's what the
18 current policy says.

19 MR. MOYER: Yes.

20 MR. McEVoy: Any additional
21 materials have to be gone through the petition
22 process, you would have full review of those

1 in deciding in whether to add them to the
2 List.

3 MR. MOYER: Correct.

4 MR. McEVoy: And this is pretty
5 clear on the website under policy 5008. So I
6 think we're pretty solid on this one.

7 CHAIRPERSON GIACOMINI: Valerie?

8 MS. FRANCES: I just want a
9 clarification. Did I hear a subtext kind of
10 going on in the conversation regarding the
11 List of materials that have not made it on the
12 2004 EPA List of Materials formally but were
13 allowed for use? I don't know if that's clear
14 from this discussions, but I sort of hear
15 that.

16 MR. MOYER: Your question, I
17 think, is less clear to me than my answer
18 might be. So I'm not sure what you're looking
19 for.

20 MS. FRANCES: There is the List
21 for Materials --

22 MR. MOYER: Right.

1 MS. FRANCES: -- that the EPA had
2 allowed for use that were not in that sort of
3 link on that we have in the Appendix --

4 MR. MOYER: Correct.

5 MS. FRANCES: -- in the document
6 that we then excluded by way of policy.

7 MR. MOYER: Correct.

8 MS. FRANCES: So I'm making sure
9 what are you doing with that list?

10 MR. MOYER: Nothing. It stands as
11 is; it's frozen in time. Any new materials
12 have to be petitioned.

13 MS. FRANCES: Okay.

14 MR. MOYER: And that's what our
15 language here says as well, moving forward any
16 new materials have to be petitioned.

17 MR. NEAL: And, just those
18 reclassified substances or as we dialogue
19 about them through the task force processing,
20 that may be some of the things that we talk
21 about.

22 MR. MOYER: Sure.

1 Katrina's been waiting.

2 CHAIRPERSON GIACOMINI: Okay.

3 Jennifer?

4 MR. HALL: Okay.

5 CHAIRPERSON GIACOMINI: Okay.

6 Jay?

7 MR. FELDMAN: Yes. I just want to
8 make sure that we capture that list you're
9 referencing, Valerie, that conforms to the
10 criteria of the previous list for, the frozen
11 static list in time. And that the NOP is
12 aware of what those ingredients are and that
13 we don't inadvertently disallow those if they
14 are in conformance with the previous list for
15 while we're going through this task force
16 process.

17 And the other issue is as things
18 come up, prior to full disclosure and, you
19 know dispensing with the CBI issues around
20 inerts, once we have this policy in place how
21 will we as a Board evaluate those ingredients,
22 the inerts, outside the context of their use

1 patterns and the products they're in? How
2 will we as a Board be able to do that?

3 MR. NEAL: I guess the question is
4 why would you want to evaluate them outside
5 their use pattern?

6 MR. FELDMAN: We wouldn't, but
7 they're CBI currently. You made the comment
8 that they would come before the Board through
9 the approval process and be petitioned. But
10 if they're not attached to a specific product,
11 how would we as a Board know what we are
12 approving?

13 MR. NEAL: Well, this is my take.

14 MR. FELDMAN: Okay.

15 MR. NEAL: If someone is
16 petitioning a substance, an inert substance,
17 and they want it to be used in organic
18 agriculture production and the Board can't
19 make a determination on its use because you
20 don't have enough information, how can you
21 then make a clear determination as to whether
22 or not it could be allowed? So it comes to a

1 point of, you know if the petitioner wants
2 their substance allowed, they're going to have
3 to provide enough information that the Board
4 can make an intelligible decision that proves
5 the applicable criteria.

6 MR. FELDMAN: Okay.

7 MR. NEAL: That's my take on it.
8 And we have to be reasonable with respect to
9 the sharing of the information.

10 MR. MOYER: Katrina's been --

11 CHAIRPERSON GIACOMINI: Katrina.

12 MR. MOYER: Thank you.

13 MS. HEINZE: I have a procedural
14 question. Are we in Committee discussion or
15 Board discussion?

16 MR. MOYER: We're in Board
17 discussion.

18 CHAIRPERSON GIACOMINI: Committee
19 discussion.

20 MR. MOYER: No.

21 MS. HEINZE: Committee discussion?

22 CHAIRPERSON GIACOMINI: Motion has

1 not been made presenting to this to the Board.

2 This is --

3 MS. HEINZE: So the rest of us are
4 just hanging?

5 CHAIRPERSON GIACOMINI: You can
6 participate, but this is officially Committee
7 discussion.

8 MS. HEINZE: Okay. Can I ask a
9 question then?

10 MR. MOYER: Committee invites you
11 to participate.

12 MS. HEINZE: Thank you. Okay. So
13 here's my understanding of the list for EPA's
14 List for Inerts. That after 2004 they stopped
15 maintaining the list, is that correct?

16 MR. MOYER: Correct. That is
17 correct.

18 MS. HEINZE: Okay. Since then -

19 MR. MOYER: Clarification. They
20 changed their designation and they still
21 manage the list. This list is in their hands
22 but frozen in time.

1 MS. HEINZE: Gotcha. So this List
2 for Inerts as it exists and as we use it is
3 frozen as of 2004?

4 MR. MOYER: Yes.

5 MS. HEINZE: Okay. Since then
6 there are materials that are on that list --

7 MR. MOYER: Yes.

8 MS. HEINZE: -- that EPA has
9 reviewed and taken off the list?

10 MR. MOYER: That's correct. Eight
11 of them.

12 MS. HEINZE: And there are
13 materials that weren't on the list --

14 MR. MOYER: That is correct.

15 MS. HEINZE: -- that they have
16 reviewed and approved through their process?

17 MR. MOYER: That is correct.

18 MS. HEINZE: Okay. So it seems
19 that your recommendation can ignore the ones
20 they've allowed because they're not on the
21 list?

22 MR. MOYER: That is correct.

1 MS. HEINZE: So then, therefore,
2 they're not allowed in organic?

3 MR. MOYER: That is correct.

4 MS. HEINZE: Okay.

5 MR. MOYER: Unless they petition
6 them as individuals materials.

7 MS. HEINZE: Right. But for the
8 purposes of this, we can ignore them unless
9 the petitioner petitions and they get listed
10 separately?

11 MR. MOYER: That is correct.

12 MS. HEINZE: Therefore, it seems
13 like somewhere in your recommendation --

14 MR. MOYER: Yes.

15 MS. HEINZE: -- but I'll have a
16 question after this, you need to do something
17 with the ones that have been prohibited,
18 otherwise they're still allowed with the
19 listing?

20 MR. MOYER: No. My understanding
21 is because of the way our rule is written,
22 those eight were removed from the static list.

1 MS. HEINZE: Gotcha.

2 MR. MOYER: So we can remove, but
3 we cannot add.

4 MS. HEINZE: Okay.

5 MR. MOYER: Removing is easy. We
6 don't have to review the removal. But we
7 would have to review --

8 MS. HEINZE: An addition?

9 MR. MOYER: Through a petition
10 process, yes.

11 MS. HEINZE: Okay.

12 MR. MOYER: Yes.

13 MS. HEINZE: So then I have one
14 final question. It seems that this
15 recommendation is focused on how do we want to
16 manage inerts going forward.

17 MR. MOYER: Yes.

18 MS. HEINZE: And it's perhaps
19 separate from what to do with the Sunset in
20 the interim?

21 MR. MOYER: That is correct. And
22 that was the point of discussion on item 5.

1 I want to make sure we handled that in the
2 most proper manner. But since this is a
3 document that's going to go into the hands of
4 the task force, we can leave it as is because
5 our goal is to do this. We're going to have
6 to do it anyway.

7 MS. HEINZE: Okay.

8 MR. MOYER: But as Tina mentioned,
9 we are deferring the vote today on EPA List
10 3--

11 MS. HEINZE: On Sunset.

12 MR. MOYER: -- or on Sunset until
13 the November meeting in which place -- unless
14 this all gets done between now and then, we
15 will vote to relist.

16 MS. HEINZE: I understand.

17 Then a final question. We didn't
18 spend that much time at the language right at
19 the time where it talks about MOU.

20 MR. MOYER: Yes.

21 MS. HEINZE: If as a Committee you
22 could look at that again and just make sure

1 that it's clear that 1 through 5 or 6 are
2 goals but not requirements.

3 MR. MOYER: I don't think we
4 stated in that MOU specifically that either
5 one of those was the case.

6 MS. HEINZE: I just didn't have a
7 chance to see how that might be --

8 MR. MOYER: We're just saying
9 that, if you look at the next down, we're
10 calling this a recommendation. So these six
11 items are our Committee's recommendation to
12 the MOU established group.

13 MS. HEINZE: I guess the question
14 is would the NOP see those as requirements --

15 MR. MOYER: No.

16 MS. HEINZE: -- or desires?

17 MR. MOYER: My understanding from
18 our conversations yesterday is that these are
19 our originally Committee and as soon as we
20 vote on these, the Board recommendation to
21 them and to this MOU created group, committee,
22 task force.

1 MS. HEINZE: I'm just keeping some
2 of our discussion on classification. You
3 know, and the recommendation can have a lot of
4 different meanings.

5 MR. MOYER: Yes.

6 MS. HEINZE: So if the
7 recommendation is thou shalt versus we would
8 like you to consider, I don't know if we need
9 to use different words or not.

10 MR. MOYER: I don't think we have
11 to. I mean, our discussion again and what
12 Arthur was saying is this is to give direction
13 to the MOU and to the Program.

14 Arthur?

15 MR. NEAL: Yes. Oh, go ahead,
16 Miles.

17 MR. McEVoy: Yes. This, you are
18 making a recommendation to the Program and the
19 Program will take a look at it and respond
20 back.

21 MR. MOYER: Yes.

22 MR. McEVoy: So you have specific

1 objectives that you're outlining here that
2 you'd like to see in the agreement in our work
3 with EPA, and we'll take a look at that and
4 we'll get back to you.

5 So I think it's clear that this is
6 a recommendation of your intent. And I think
7 it'll work.

8 MR. MOYER: And we got word from
9 the Program yesterday that they would expedite
10 this in a timely fashion, as Arthur said that
11 the MOU should not take long to write and get
12 this. Now how long it takes the task force to
13 work, or whatever you call it, we don't know.

14 CHAIRPERSON GIACOMINI: Okay. I
15 think we've moved from the discussion of the
16 things you would like to change in the
17 Committee structure into Board discussion.

18 I'd like to entertain the motion
19 so that if there's any further debate, it
20 really is Board debate if you're done making
21 all your little amendment changes.

22 MR. MOYER: I am, Mr. Secretary,

1 thank you. The little changes were made.

2 And I make a motion that we accept
3 this document as written.

4 MR. FELDMAN: I second.

5 MR. MOYER: And now it's yours,
6 Mr. Chairman.

7 CHAIRPERSON GIACOMINI: Okay.
8 Motion has been made, properly made by Jeff.
9 Seconded by Jay to accept this document.

10 You have first discussion, maker
11 of the motion. Did you have any further
12 debate?

13 MR. MOYER: I do not.

14 CHAIRPERSON GIACOMINI: Okay.
15 Joe?

16 MR. MOYER: Prepared to answer
17 questions.

18 MR. SMILLIE: Yes. But we're
19 voting on this package.

20 MR. MOYER: That's correct.

21 MR. SMILLIE: What is being
22 deferred until the November meeting?

1 MR. MOYER: Okay. Good question,
2 Joe. Just to clarify that, what's being
3 deferred you'll see when we get to our
4 materials vote, we are deferring the Sunset
5 item of EPA List 4 Inerts of Minimal Concern,
6 EPA List 3 Inerts of Unknown Toxicity Allowed
7 until the fall meeting. So the vote on that
8 as a Sunset item is being deferred. What
9 we're voting on here and the reason for this
10 to be included is, as one of the objectives
11 we're going to have to strike this eventually
12 from our document because they no longer
13 exist. So one of the processes that will be
14 what happens.

15 MR. SMILLIE: I got it.

16 MR. MOYER: Thank you for that
17 opportunity.

18 CHAIRPERSON GIACOMINI: Tina?

19 SECRETARY ELLOR: Yes, and just to
20 make that clear. In Committee we had already
21 decided not to act on the inerts Sunset at
22 this meeting. We decided as a Committee in

1 our Committee deliberations to act on that,
2 along with a lot of others, at the fall
3 meeting so that we could have this discussion
4 before we decided on what to do with that
5 particular Sunset.

6 So we've already been through all
7 the material votes, and that was not part of
8 our Sunset vote for this meeting. But you'll
9 see it --

10 MR. MOYER: You'll see that if you
11 look at your other documents and you go
12 further along, you'll see that List 3 Inerts
13 was deferred. The only way that that will
14 change in fall is if the Program gets the MOU,
15 EPA they work out all the details with the
16 task force before November and we know what's
17 going to happen, so you know the chances of
18 that.

19 CHAIRPERSON GIACOMINI: Well, we
20 could also extend into spring.

21 MR. MOYER: You could.

22 CHAIRPERSON GIACOMINI: I don't

1 know the exact date on this, but most of these
2 could allow us -- we generally allow three
3 meetings to try and accomplish all of our
4 Sunsets.

5 So, Steve?

6 MR. DeMURI: So has the Committee
7 voted on the reworked recommendation?

8 MR. MOYER: Yes. The Committee
9 voted this morning on this recommendation and
10 anonymously approved it.

11 MR. SMILLIE: Okay. Good. It's not
12 listed on the bottom of the recommendation.

13 MR. MOYER: No, we didn't change
14 that. That was the original Committee vote.
15 But we did vote on it this morning and it was
16 unanimous. We had one absent.

17 CHAIRPERSON GIACOMINI: Jennifer?

18 MR. HALL: Jeff, would you be kind
19 enough to restate the motion?

20 MR. MOYER: Sure. The motion is
21 to accept the document on the changes on the
22 status of List 4 and List 3 Inerts as posted.

1 CHAIRPERSON GIACOMINI: Further
2 debate of questions?

3 I would just like to add that as
4 we've added the initiation of this group, task
5 force, whatever, I just want to make sure we
6 have it in the record that that group needs to
7 be as inclusive as possible. It needs to
8 include the crop side, it needed to include
9 the farmer. This will also have implication
10 on livestock. And from what I understand on
11 the processing side in handling, when they're
12 dealing with their pest issues they generally
13 look to 601, if that's correct. So everybody
14 needs to be involved and we want to ask that
15 we make sure that we are extremely inclusive
16 in that endeavor.

17 Further debate? Katrina?

18 MS. HEINZE: I'm still confused.
19 Are we having Board debate or Committee
20 debate?

21 MR. MOYER: Board.

22 CHAIRPERSON GIACOMINI: Board.

1 MS. HEINZE: Okay. Could we scroll
2 through the document one more time?

3 MR. MOYER: Is there a place you
4 want to stop?

5 MS. HEINZE: Yes. The MOU part.
6 Okay.

7 Valerie, can you go back to that
8 MOU part? And you scroll faster than I can
9 read. Okay. You can scroll. Thank you. Can
10 you scroll? Okay. Thank you.

11 MR. MOYER: Except for the time
12 designation changes, you have the document on
13 your desk pretty much intact, except for that
14 language with the MOU. And we did change 6
15 dramatically.

16 MS. HEINZE: And then is 5 in or
17 out?

18 MR. MOYER: Five is staying in.

19 MS. HEINZE: Okay.

20 MR. MOYER: As part of this
21 document, yes.

22 MS. HEINZE: Thank you.

1 CHAIRPERSON GIACOMINI: Tina?

2 SECRETARY ELLOR: At the risk of
3 bloviating here, I have to say, to have to put
4 on public record that the work that Jeff and
5 Jay, and the EPA in the Program and the
6 consideration put into this document has been
7 extraordinary. And I think that this is not
8 just a, whatever, better getting in the way of
9 best or whatever. This is a great document.
10 And I just wanted to say thank you.

11 MR. MOYER: We learned a lot,
12 right Jay?

13 CHAIRPERSON GIACOMINI: Okay.
14 Also finally before we move to vote, I just
15 want to say that in response to some of the
16 way the discussion was being -- some of the
17 words used yesterday in talking about whether
18 things would be added to the list, what we're
19 all considering here is taking a single line
20 existing in the list and expanding it to all
21 the things that are included. Nothing would
22 be added to the list. If anything, even if we

1 added -- even if we included all the items
2 that we want, it would be a reduction in the
3 number of allowed substances currently
4 allowed.

5 So, this is going to end up being
6 a reduction in the number of substances
7 allowed in organic production and processing.
8 And it is not adding anything to the list.
9 There may be -- if there's 800 on this list,
10 there could be 1600 items listed in the list,
11 it is not adding a single item. So I just
12 want to be very clear on that.

13 MR. MOYER: Thank you, Dan, for
14 that clarification. I can't tell you how
15 important it is for the folks in the audience
16 to carry that message back to the world that
17 we are working diligently to reduce the number
18 of materials that are allowed in organic
19 production, and this goes a long way to doing
20 that. Thank you.

21 CHAIRPERSON GIACOMINI: Okay. Are
22 we ready for the question?

1 Okay. For the vote for accepting
2 the recommendation document from the Crops
3 Committee regarding List 4 and List 3 Inerts
4 beginning with Wendy?

5 MS. FULWIDER: Yes.

6 CHAIRPERSON GIACOMINI: Jeff?

7 MR. MOYER: Yes.

8 CHAIRPERSON GIACOMINI: Jay?

9 MR. FELDMAN: Yes.

10 CHAIRPERSON GIACOMINI: Tina?

11 SECRETARY ELLOR: Yes.

12 CHAIRPERSON GIACOMINI: Tracy?

13 VICE-CHAIRPERSON MIEDEMA: No.

14 CHAIRPERSON GIACOMINI: Joe

15 Smillie?

16 MR. SMILLIE: Yes.

17 CHAIRPERSON GIACOMINI: John

18 Foster?

19 MR. FOSTER: Yes.

20 CHAIRPERSON GIACOMINI: Steve?

21 MR. DeMURI: Yes.

22 CHAIRPERSON GIACOMINI: Katrina?

1 MS. HEINZE: Yes.

2 CHAIRPERSON GIACOMINI: Joe

3 Dickson?

4 MR. DICKSON: Yes.

5 CHAIRPERSON GIACOMINI: Barry?

6 MR. FLAMM: Yes.

7 CHAIRPERSON GIACOMINI: Annette?

8 MR. RIHERD: Yes.

9 CHAIRPERSON GIACOMINI: Jennifer?

10 MR. HALL: Yes.

11 CHAIRPERSON GIACOMINI: The Chair

12 votes yes.

13 And was there any conflict of

14 interest? Seeing none, we will keep the

15 count.

16 One no, one absent, 13 yes.

17 Could you track these with us?

18 No conflict of interest.

19 Motion passes.

20 One more for Crops.

21 SECRETARY ELLOR: Thank you, Mr.

22 Chairman.

1 The last we have on our workplan
2 for Crops is the Production Standards for
3 Terrestrial Plants and Containers and
4 Enclosures.

5 And I would like to make a motion
6 that we accept this document as up on the
7 board with the changes that we made. We
8 haven't made any changes since discussion
9 yesterday. So it's the --

10 CHAIRPERSON GIACOMINI: What
11 presented yesterday?

12 SECRETARY ELLOR: It was what was
13 presented yesterday. So I would like to make
14 that motion.

15 MR. MOYER: I'll second that
16 motion.

17 CHAIRPERSON GIACOMINI: It's been
18 moved and seconded to accept the document on
19 the Production Standards for Terrestrial
20 Plants and Containers and Enclosures presented
21 by the Crops Committee, and properly seconded.

22 Madam maker of the motion, do you

1 have any further debate?

2 SECRETARY ELLOR: I do not.

3 CHAIRPERSON GIACOMINI: Any
4 further debate on this matter? Seeing none,
5 we'll proceed to vote.

6 Is there any conflict of interest?
7 Any conflict of interest? Any further debate?
8 I'll do it one more time.

9 Joe?

10 MR. SMILLIE: Once again, one of
11 the criticisms of the document is not the
12 intent of the document, or even some of the
13 substance. But it's like the multiple points
14 that the document is trying to make. I'd just
15 like to ask you to just go through because
16 it's kind of scattered. So could you, Tina,
17 just summarize the document as the points of
18 principle of your intent? If you know what I
19 mean.

20 SECRETARY ELLOR: I do.

21 MR. SMILLIE: Okay.

22 SECRETARY ELLOR: And I think that

1 John expressed some of these concerns in
2 Committee.

3 And essentially it came about, I
4 think, as Jerry explained yesterday because of
5 the Equivalency Agreement with Canada was part
6 of it, and the very strong public sentiment
7 that hydroponics and aeroponics should not be
8 allowed in organics. So we're covering that
9 issue in this document.

10 And we were asked by the Program
11 to set forth some standards for container
12 grown greenhouse, you know, enclosure.

13 And this document has been through
14 now at least three groups of public opinion
15 and we responded to every bunch of public.
16 But I know that I sat in meetings in 2000
17 where this was in discussion. So essentially,
18 you know through all the public comment and
19 all the mutations of the Committees, which of
20 course and have a great deal changeover, this
21 is the document that we came up with.

22 And I know that there is some

1 concern about that it being overly
2 prescriptive. And we had comments on both
3 sides of that. That, you know, people wanted
4 to really tighten it down even more. And then
5 we had pretty clear comments it was over
6 prescriptive.

7 We kind of figured that would
8 shake out in rulemaking and that there's
9 further opportunity for work, you know, within
10 the community on this document. So this is
11 sort of, you know, our best effort after all
12 of that input and time.

13 MR. SMILLIE: So it clarifies our
14 stand on aeroponics or hydroponics, number
15 one?

16 SECRETARY ELLOR: Yes.

17 MR. SMILLIE: It creates a format
18 that will be a longer discussion, really, in
19 rulemaking on what constitutes container
20 growing? I hesitate to call it pot growing,
21 so we'll call it container. Couldn't resist
22 it.

1 And number --

2 MR. MOYER: You didn't hesitate
3 too long, Joe.

4 CHAIRPERSON GIACOMINI: We'd have
5 to transfer the document to the Joint
6 Committee in order to do that.

7 MR. SMILLIE: I knew you were
8 going to do it. I thought I'd get it before
9 you, but you beat me to it. It's definitely a
10 Joint Committee discussion.

11 But no, seriously. So the second
12 objective is there and it does correct the
13 allowance for sprouts? So these are the three
14 take homes I have when I vote yes on this
15 document?

16 SECRETARY ELLOR: Yes.

17 MR. SMILLIE: Okay.

18 SECRETARY ELLOR: Thank you for
19 that clarification.

20 MR. SMILLIE: Thank you.

21 MR. MOYER: That's correct. But it
22 further outlines some of the objectives within

1 those three --

2 MR. SMILLIE: Right.

3 MR. MOYER: Like split operations
4 and all those things --

5 MR. SMILLIE: Yes.

6 MR. MOYER: -- that will need to
7 be flushed out.

8 MR. SMILLIE: Right. Okay.

9 CHAIRPERSON GIACOMINI: Further
10 debate? John?

11 MR. FOSTER: Just very briefly.
12 If the intent was to address hydroponics in
13 Canadian, then that's what it should be about,
14 right. I think this is reaching much farther
15 than that in a way that can be improved with
16 further discussion.

17 CHAIRPERSON GIACOMINI: Okay.
18 Further debate? Katrina?

19 MS. HEINZE: Hey, John, could you
20 elaborate on what you just said? I'm not sure
21 what that means; what you're thinking.

22 MR. FOSTER: That if the main

1 intent was to address Canadian implementation
2 and its aversion to hydroponics, then calling
3 this Production Standards for Terrestrial
4 Plants in Containers and Enclosures I think
5 was drifting farther than it needed to. If it
6 wanted to be a prohibition of hydroponics,
7 that can actually be done very, very easily in
8 the context of existing crops production.

9 And I understand that the goals
10 were kind of amalgamated over time, and that's
11 very complicated particularly when Committee
12 members change over time. I totally get the
13 challenges that were in play. But to Joe's
14 question: What's the main point? If the main
15 point was hydroponics in Canada, that's very
16 discreet and I think this is not a discreet
17 solution.

18 CHAIRPERSON GIACOMINI: Katrina?

19 MS. HEINZE: So do you object to
20 that content or do you just object that it all
21 got muddled together?

22 MR. FOSTER: A little bit of both.

1 MS. HEINZE: Are there specific
2 things in the content to which you object?

3 MR. FOSTER: Not that I feel can
4 be effectively dealt with in the context of
5 this meeting. I think it's a long -- much
6 longer discussion.

7 MS. HEINZE: Okay. Well they be
8 addressed in their rulemaking process?

9 MR. FOSTER: I think they can be.

10 MS. HEINZE: Thank you.

11 CHAIRPERSON GIACOMINI: Tina?

12 SECRETARY ELLOR: Yes. And I'd
13 just like to make clear it wasn't the main
14 intent just to be compatible with Canada's
15 thought on hydroponics. We had an
16 overwhelming response from the public that
17 they did not want organic hydroponics.

18 So however I feel about it
19 personally, our community spoke loud and clear
20 over many years on that issue.

21 CHAIRPERSON GIACOMINI: Other
22 comments or questions? Seeing none.

1 Any conflict of interest?

2 Proceed to the vote.

3 Jeff?

4 MR. MOYER: Yes.

5 CHAIRPERSON GIACOMINI: Jay?

6 MR. FELDMAN: Yes.

7 CHAIRPERSON GIACOMINI: Tina?

8 SECRETARY ELLOR: Yes.

9 CHAIRPERSON GIACOMINI: Tracy is
10 absent for this motion.

11 Joe Smillie?

12 MR. SMILLIE: Yes.

13 CHAIRPERSON GIACOMINI: John
14 Foster?

15 MR. FOSTER: No.

16 CHAIRPERSON GIACOMINI: Steve?

17 MR. DeMURI: Yes.

18 CHAIRPERSON GIACOMINI: Katrina?

19 MS. HEINZE: Yes.

20 CHAIRPERSON GIACOMINI: Joe
21 Dickson?

22 MR. DICKSON: Yes.

1 CHAIRPERSON GIACOMINI: Barry?

2 MR. FLAMM: Yes.

3 CHAIRPERSON GIACOMINI: Annette?

4 MR. RIHERD: Yes.

5 CHAIRPERSON GIACOMINI: Jennifer?

6 MR. HALL: Yes.

7 CHAIRPERSON GIACOMINI: And Wendy?

8 MS. FULWIDER: Yes.

9 CHAIRPERSON GIACOMINI: The Chair
10 votes yes.

11 Two absent, one no, 12 yes.

12 Motion passes.

13 I'd ignore this but I think it's
14 just too obvious to completely ignore it. Our
15 Vice Chair is dealing with some personal
16 issues at home that she's needing to be very
17 close to her phone and making some phone
18 calls. And we will just be -- respectfully
19 accommodate whatever she absolutely needs to
20 be handling. And Jay has agreed to help us
21 make sure we get the votes right.

22 Are you finished?

1 SECRETARY ELLOR: That concludes
2 the Corp Committee official business for this
3 meeting. Thank you very much.

4 CHAIRPERSON GIACOMINI: Thank you.
5 Okay. We are currently ahead of
6 schedule, so we've been looking for a place to
7 slide something in. Miles has a presentation,
8 please.

9 MR. McEVoy: We have some plaques
10 for the new members. So thank you very much
11 for your service. I don't know if you knew
12 what you were getting yourselves into, but
13 here you go. And you get a nice plaque to
14 welcome you to the National Organics Standards
15 Board. Thank you very, very much for your
16 public service.

17 So there are plaques for Annette
18 Riherd, Wendy Fulrider, Jay Feldman, John
19 Foster and Joe Dickson.

20 So thank you very much. And here
21 we go.

22 CHAIRPERSON GIACOMINI: Can the

1 new members please come up so that we can have
2 everybody getting their plaques and we can get
3 some pictures for you guys.

4 We'll take a break after this.

5 MS. HEINZE: Welcome to the team.

6 CHAIRPERSON GIACOMINI: Thank you.

7 It's almost 9:15. Break until
8 9:30.

9 (Whereupon, at 9:14 a.m. the
10 above-entitled matter went off the record and
11 resumed at 9:35 a.m.)

12 CHAIRPERSON GIACOMINI: Okay.
13 We're back from break a few minutes late.

14 I realized in the middle of that
15 first session that while I had already checked
16 out of my room and I realized that I left
17 something in my room. So I had to run back
18 over to the hotel before my room got cleaned.

19 So we have an announcement here.
20 This evening from 6:30 until 11:00 there will
21 be post-NOSB meeting party to celebrate
22 another successful organic week. The dinner

1 dance will be in Sacramento. For details and
2 directions please see Katherine DiMatteo or
3 Bill Wolf.

4 I was asked if this would be
5 appropriate yesterday and I said we would only
6 announce it if everyone was invited.

7 Katrina, I'm going to finish
8 passing this around. Hopefully, I will have
9 a chance to look at this at the next break.

10 Okay. Anything else? Any other
11 housekeeping we need before we proceed further
12 with the voting part of our meeting?

13 All right. Next up is Livestock
14 Acting Chair Jeff Moyer.

15 MR. MOYER: Thank you, Mr.
16 Chairman. Again, standing in for Committee
17 Chairperson Kevin Engelbert. I would be amiss
18 if I didn't thank Kevin for all of his hard
19 work in pulling this together. It's a
20 privilege for stand in for Kevin on this at
21 this meeting and to conduct the voting.

22 Hopefully throughout the course of

1 this part of the discussion you'll hear
2 Kevin's voice in most of the things that we've
3 done.

4 Our first item of business, Mr.
5 Chairman, is the petition material methionine.
6 So I'd like to bring that up for discussion
7 here.

8 The Livestock Committee met
9 briefly yesterday and this morning to discuss
10 these documents, all the documents we're
11 looking at. And the methionine document we
12 have not made any suggested changes from
13 yesterday. So the document you see today in
14 front of as a Board for voting --

15 CHAIRPERSON GIACOMINI: Mr.
16 Chairman?

17 MR. MOYER: Yes.

18 CHAIRPERSON GIACOMINI: The first
19 thing we need to do is vote on the petition
20 and then our recommendation.

21 MR. MOYER: That's correct. There
22 are two votes.

1 CHAIRPERSON GIACOMINI: Yes.

2 MR. MOYER: There will be two
3 votes, that's what I was getting to.

4 CHAIRPERSON GIACOMINI: Okay.

5 MR. MOYER: The documents that you
6 see in front of you are exactly as they were
7 presented yesterday. There are two documents
8 that we'll be voting on.

9 The first document is the petition
10 from the Methionine Task Force, who again I
11 want to thank them publicly for all the hard
12 work that they've done throughout the course
13 of this lengthy multi-year discussion.

14 The first document we'll be voting
15 on is their petition. And then there's a
16 possibility we'll be having a second vote
17 based on the outcome of that vote.

18 CHAIRPERSON GIACOMINI: Make for
19 the motion for that.

20 MR. MOYER: There's a question.
21 Proceed to the question.

22 CHAIRPERSON GIACOMINI: We'll need

1 to make two lines. We'll have a methionine
2 petition line and a methionine LC
3 recommendation line.

4 MR. MOYER: Right.

5 CHAIRPERSON GIACOMINI: Depending
6 on the result of the first one.

7 MR. MOYER: It's on the outcome of
8 the first one.

9 MR. MOYER: Mr. Chairman, the
10 Committee's recommendation regarding the
11 petition of methionine, and it was --

12 CHAIRPERSON GIACOMINI: To lists.

13 MR. MOYER: -- unanimous --

14 CHAIRPERSON GIACOMINI: But to
15 list.

16 MR. MOYER: Right. The vote would
17 be to list this material with the
18 recommendation by the Livestock Committee at
19 the rate of, and if you want I can read the
20 exact petition. It's amending the annotation
21 for synthetic methionine on the National List
22 205.603 to read: DL-Methionine, DL-Methionine

1 hydroxy analog and DL-Methionine hydroxy
2 analog calcium for use only in organic poultry
3 production until October 1, 2015 provided that
4 the total amount of synthetic methionine in
5 the diet remains below the following levels
6 calculated as an average pounds per ton of
7 1000 percent synthetic methionine in the diet
8 over the life of the bird.

9 Laying chickens 4 pounds, broiler
10 chickens 5 pounds, turkeys and other poultry
11 6 pounds.

12 I move that we -- I'm not sure how
13 to make my motion for this petition.

14 CHAIRPERSON GIACOMINI: We need to
15 accept the annotation change --

16 MR. MOYER: I move that we accept
17 the annotation change. Thank you.

18 CHAIRPERSON GIACOMINI: Second?

19 MR. HALL: Second.

20 CHAIRPERSON GIACOMINI: It's been
21 moved and seconded to accept the annotation
22 change as listed in the petition.

1 We'll get to debate in a minute.

2 I just want to take this minute to clarify
3 especially for the new members and the
4 audience, the way we've evolved in dealing
5 with these issues with our Board and in
6 Robert's Rules of Order the closest thing that
7 we have found, and now with Jay's experience
8 in parliamentary procedure maybe we can find
9 something else. But the closest thing we've
10 found to the petition process is the
11 procedures in Robert's Rules of Order
12 following submission of bylaw change. That is
13 where recommendations are submitted from the
14 public, which are then reviewed and analyzed
15 by Committee and then presented in the form
16 that they were originally presented to the
17 Board for vote. That's the structure of what
18 we're dealing with here.

19 So we list these in an affirmative
20 vote.

21 The other reason we do that that's
22 very pertinent to the Board is that OFPA calls

1 for all substantive action on this Board to be
2 a two-thirds vote. So if something is to be
3 listed, it requires a two-thirds vote.

4 In the essence of time a negative
5 motion that fails does not list -- it's not
6 just a simple majority. The motion to not
7 list that fails, you could follow that up with
8 a motion to list that would also fail.
9 Because neither, if the vote was 8 to 7 on a
10 15 member Board, neither would pass.

11 The motion of importance is the
12 motion to list. That is the substantive
13 action that this Board needs to take. The
14 alternative of a motion to not list passing
15 doesn't accomplish anything, but could add
16 time to the process.

17 So we're not meaning to appear to
18 bait and switch. We're not meaning to appear
19 deceptive. There's foundation in Robert's
20 Rules of Order for the way we proceed. And
21 for the expediting the work of this Board
22 according to the votes that are required in

1 OFPA, this is the process that we proceed
2 with.

3 So, this motion is to accept the
4 recommendation of --

5 MR. MOYER: Yes.

6 CHAIRPERSON GIACOMINI: -- and the
7 petition for the annotation change, the
8 Committee's recommendation on that vote was to
9 fail.

10 MR. MOYER: Thank you for that
11 clarification.

12 MR. FLAMM: Thank you for the
13 motion.

14 Any further debate?

15 MR. MOYER: No. I appreciate that
16 clarification because it is confusing. That
17 and three hour's sleep was why I wasn't sure
18 how to make the motion. But I appreciate your
19 help on that and clarification.

20 And the Committee's recommendation
21 is to not approve that motion.

22 CHAIRPERSON GIACOMINI: Further

1 debate? Katrina?

2 MS. HEINZE: So I was thinking
3 about this last night. I just want to make
4 sure I'm clear on these points.

5 So the kind of historic aversion
6 to methionine is not necessarily the material,
7 but because its use compensates for production
8 standards that we're not comfortable with.
9 But even what I heard yesterday was even with
10 the right production standards it's possible
11 the animal might not get enough methionine.

12 And then the other thing I heard
13 was the material has a hard cut-off date in
14 October. So if we don't do something at this
15 meeting, there's no refining at all?

16 MR. MOYER: That's absolutely
17 correct.

18 MS. HEINZE: Okay. There's a lot
19 of natural alternatives in the works, but not
20 for act over?

21 MR. MOYER: That's also correct.

22 MS. HEINZE: Okay. So as I

1 understand it, even with the right production
2 standards, natural alternatives for methionine
3 are still going to be necessary?

4 MR. MOYER: That's our
5 understanding from the lengthy discussion and
6 in put from the public, and particularly the
7 poultry produces, and the Methionine Task
8 Force.

9 MS. HEINZE: So listing but with
10 the step down, is that a way to encourage
11 those natural alternatives?

12 MR. MOYER: Yes, but that's the
13 second vote.

14 MS. HEINZE: I get that. Yes.

15 MR. MOYER: Okay.

16 MS. HEINZE: I wanted to make sure
17 I was clear on this vote.

18 MR. MOYER: Yes. You have it
19 exactly correct.

20 MS. HEINZE: Okay. Thank you.

21 CHAIRPERSON GIACOMINI: Joe?

22 MR. SMILLIE: Again, I'm not sure

1 if it's proper to address the possible second
2 vote, or probable second vote. But --

3 MR. MOYER: I'm fine with it.

4 MR. SMILLIE: You're fine with it?
5 Okay.

6 MR. MOYER: Yes.

7 MR. SMILLIE: I'd just like to
8 explore why there wasn't a middle ground found
9 between the petitioner and the Committee
10 recommendation? I'd been lead to believe that
11 there was going to be some middle ground on --

12 MR. MOYER: Let's do that part.
13 IF that's the amount that you want to do with
14 the next vote, let's do that then.

15 MR. SMILLIE: Okay.

16 MR. MOYER: I thought your point
17 was to discuss that in relationship to this.

18 CHAIRPERSON GIACOMINI: If this
19 motion passes, we don't go to the second vote.

20 MR. MOYER: That's right.

21 MR. FELDMAN: I'm sorry. I got a
22 little distracted during your questioning,

1 which was the exact question that I wanted to
2 ask. So the first vote is on the --

3 CHAIRPERSON GIACOMINI: Jay.
4 Tina, please.

5 Go ahead.

6 SECRETARY ELLOR: Yes, I wanted to
7 bring up something Jennifer brought up during
8 the break and I thought it was a really good
9 point that two no votes and methionine goes
10 away, right? Am I correct?

11 MR. MOYER: That is correct. If
12 you voted no on this first vote on the
13 petition, and then also no on the Committee
14 recommendation, October whatever the date is
15 2010 October 1st, it goes away. 2010, yes.
16 It would go away.

17 CHAIRPERSON GIACOMINI: Jay?

18 MR. FELDMAN: Thanks. I'm fine.

19 CHAIRPERSON GIACOMINI: Further
20 debate? Questions? Ready for the question?
21 Katrina?

22 MS. HEINZE: So if you don't want

1 the industry to lose methionine --

2 CHAIRPERSON GIACOMINI: You have
3 to vote for one of them.

4 MS. HEINZE: But you also have to
5 hope that the second one is going to pass,
6 right?

7 CHAIRPERSON GIACOMINI: Yes.

8 MS. HEINZE: So if the second one
9 doesn't pass, is there an opportunity to come
10 back and revisit?

11 CHAIRPERSON GIACOMINI: There is
12 always the potential motion to reconsider.

13 MS. HEINZE: Okay. Thank you.

14 CHAIRPERSON GIACOMINI: Further
15 questions, comments?

16 MR. MOYER: I would just mention,
17 Mr. Chairman, that the Committee did try to
18 seek compromise between the many public
19 comments that we heard regarding the idea that
20 some folks want no methionine, some people say
21 we need some. So when we get further down the
22 road to address what Katrina had to do, there

1 was some discussion.

2 CHAIRPERSON GIACOMINI: Further
3 debate? Question?

4 To accept the petition for
5 annotation change on the listing of
6 methionine. Jay?

7 MR. FELDMAN: No.

8 CHAIRPERSON GIACOMINI: Tina?

9 SECRETARY ELLOR: No.

10 CHAIRPERSON GIACOMINI: Tracy?

11 VICE-CHAIRPERSON MIEDEMA: No.

12 CHAIRPERSON GIACOMINI: I'm sorry.
13 Any conflict of interest? Hearing none, we'll
14 proceed.

15 Joe Smillie?

16 MR. SMILLIE: Yes.

17 CHAIRPERSON GIACOMINI: John
18 Foster?

19 MR. FOSTER: Yes.

20 CHAIRPERSON GIACOMINI: Steve?

21 MR. DeMURI: No.

22 CHAIRPERSON GIACOMINI: Katrina?

1 MS. HEINZE: No.

2 CHAIRPERSON GIACOMINI: Joe

3 Dickson?

4 MR. DICKSON: No.

5 CHAIRPERSON GIACOMINI: No.

6 Barry?

7 MR. FLAMM: No.

8 CHAIRPERSON GIACOMINI: Annette?

9 MR. RIHERD: No.

10 CHAIRPERSON GIACOMINI: Jennifer?

11 MR. HALL: No.

12 CHAIRPERSON GIACOMINI: Wendy?

13 MS. FULWIDER: No.

14 CHAIRPERSON GIACOMINI: Jeff?

15 MR. MOYER: No.

16 CHAIRPERSON GIACOMINI: The Chair

17 votes no.

18 We have one absent, no abstain, no
19 conflict. And two yes. I hate the way we do
20 this. 12 no, 2 yes, 1 absent. Motion fails.

21 MR. MOYER: Next item, Mr.

22 Chairman, is the recommendation from the

1 Livestock Committee on methionine, and I'll
2 read the recommendation as proposed by the
3 Committee, and I'll read the recommendation as
4 proposed by the Committee.

5 The recommendation is amend 7 CFR
6 205.603(d)(1) as follows: DL-Methionine, DL-
7 Methionine hydroxy analog and DL-Methionine
8 hydroxy analog calcium for the use in organic
9 poultry production until October 1, 2012 at
10 the following maximum levels per ton of
11 synthetic methionine in the feed ration.

12 Laying chickens, 4 pounds per ton,
13 broiler chickens 5 pounds per tons, and turkey
14 and all other poultry 6 pounds per ton.

15 After October 1, 2012 the
16 following maximum levels per ton:

17 Laying and broiler chickens 2
18 pounds per ton, and turkeys and all other
19 poultry 3 pounds per ton.

20 I make the motion that we accept
21 this recommendation from the Livestock
22 Committee.

1 SECRETARY ELLOR: Second.

2 CHAIRPERSON GIACOMINI: Second

3 Tina.

4 Okay. It's been moved and
5 seconded to accept the recommendation from the
6 Livestock Committee in the listing of
7 methionine.

8 Maker of the motion, do you have
9 any further debate?

10 MR. MOYER: No, Mr. Chairman.

11 CHAIRPERSON GIACOMINI: Jay?

12 MR. FELDMAN: Thank you.

13 First of all, thank you to the
14 Committee for an incredible -- incredibly
15 important and good work on this.

16 I'm glad to hear you were thinking
17 about it last night, Katrina. because it kept
18 me all night.

19 So I wanted to raise with four
20 issues that I've been struggling with. And
21 starting with the fact that I support a phased
22 down and with the hope that this would become

1 a phase out. And so I'm looking for that in
2 this Committee recommendation.

3 Number 2, it's hard for me, given
4 that I view the Sunset process as needing
5 repair, as agreeing to something that goes
6 back into the Sunset process, which I
7 understand to be the process here.

8 MR. MOYER: That's correct.

9 MR. FELDMAN: It's very difficult
10 to get out of the Sunset process at this
11 point. Now that may change, and my hope is it
12 will change. Very difficult to re-annotate
13 through the Sunset process. I know we can use
14 the petition process to do that. So I'm
15 troubled by the fact that we're not going from
16 phase down to phase out.

17 As we heard, there is very
18 promising research on the horizon. I think we
19 as a Board need to do everything we can,
20 especially -- and this is somewhat systemic or
21 this is a systemic question for us as a Board.
22 How do we create those proper incentives to go

1 from phase down to phase out rather than phase
2 down to evergreen without any real incentive
3 there for either changes in practices, changes
4 in breeds, changes in methodology of how we
5 view organic production in this arena.

6 So, my goal here is to not be
7 disruptive, but my goal here is to create the
8 proper incentives to get to where we want to
9 be. And I say that with utmost respect for
10 you, Wendy, and others that have so elegantly
11 articulated the need here. It's a catch-22
12 for me.

13 I also think we really need to
14 have a clear legal reading from the NOP on
15 what our authority is on this area. And I
16 think the Board, you know historically has
17 wanted to codify practices that are conceived
18 to be accepted practices of the industry. And
19 our role as a Board, I believe, is to
20 challenge those practices constantly and work
21 with industry to find -- you know, this is an
22 evolutionary process. We're always

1 transitioning to something better, hopefully.
2 But I would ask the NOP to look at and give
3 us, if possible, an assessment or an
4 interpretation of 6517(c)(1)(b)(i) or little
5 one, which is the exemption for prohibited
6 substances in organic production and handling
7 operations, and the categories of substances
8 for which the NOSB is allowed to issue those
9 exemptions for.

10 So, Mr. Chairman, I appreciate the
11 work, I do. I don't want to be disruptive to
12 organic productionists, and then I know the
13 Board doesn't want to be in this arena. I
14 think we need to know our legal standing here,
15 and I was hoping we could do a phase down to
16 phase out and put the burden back on the user
17 community to relist at that point, rather than
18 put the burden on the NOSB to find, which we
19 will never find because we typically don't in
20 my experience, to find that there is a problem
21 and then be told that previous Boards have not
22 found a problem, so why can we find a problem.

1 It's a catch-22.

2 So I would urge that this proposal
3 be amended to be a phase down, as you propose
4 to a phase out, which will shift the burden to
5 the industry to come up with an alternative,
6 or support.

7 This will -- this will I guarantee
8 -- I mean I don't guarantee. But I suspect
9 this will open the flood gates for research in
10 this arena because they will know, the
11 community will know we are serious about
12 moving to a better day.

13 So thank you. And thank you again
14 for your work on this. Appreciate it.

15 CHAIRPERSON GIACOMINI: Jeff, do
16 you have a response?

17 MR. MOYER: I guess I'm trying to
18 find out if in your comment there was a
19 question to the Program that you would like
20 addressed right now.

21 MR. FELDMAN: Well, I'm not sure.

22 MR. MOYER: Or is that -- I wasn't

1 sure what your question was. What is your
2 question?

3 CHAIRPERSON GIACOMINI: I think
4 part of that answer is in the fact that it
5 keeps getting relisted and it's gone through
6 Federal Register notice a number of times to
7 do that.

8 MR. FELDMAN: Right.

9 CHAIRPERSON GIACOMINI: One of
10 your issues addressed was an effort to pinch
11 the industry to prompt further research. That
12 was part of the basis for the original writing
13 of this document to have an additional step
14 down.

15 MR. MOYER: Right.

16 CHAIRPERSON GIACOMINI: The
17 Committee felt that it took the step down
18 process to take -- it would take too long.

19 MR. MOYER: Right.

20 CHAIRPERSON GIACOMINI: Because
21 we'd have to give a couple of years at each
22 step. They didn't like the length of time

1 that it was going to do.

2 Also, when you come in with the
3 next amount of step down, it had no scientific
4 basis for those amounts to be used. And it
5 was felt that it was an effort to pinch, but
6 we didn't have any of the basis to create
7 those numbers.

8 So, that was some of the intent
9 along the way of how we ended up. But the
10 original idea of this, number one, is even
11 though there is a certain part of the industry
12 that wants methionine completely off the List,
13 there's an even greater part of the industry
14 that they don't want to have to deal with a
15 repetition process everything two to four
16 years. This puts it on Sunset, puts it in
17 that process. We'll always have that to fall
18 back on. But instead of just giving them
19 methionine to use at the full amounts that
20 anybody wants to, it does start putting some
21 fences around it.

22 Jennifer?

1 MR. HALL: Jay, just a question.
2 Am I hearing part of your comments that
3 potentially be a friendly amendment?

4 MR. FELDMAN: Yes.

5 MR. HALL: Okay. Do you want to
6 suggest that?

7 MR. FELDMAN: Yes, I would. I like
8 to propose that we amend this proposal to
9 require a phase out at the end of the phase
10 down period. And I don't know, I mean you can
11 play with the wording on that.

12 CHAIRPERSON GIACOMINI: If we just
13 go back the wording of how many years would
14 you like the second phase to be?

15 MR. FELDMAN: Well, you had in
16 there 2012, and what was your second time
17 frame?

18 CHAIRPERSON GIACOMINI: Second
19 time frame puts it on Sunset.

20 MR. MOYER: Right.

21 MR. FELDMAN: Right.

22 MR. MOYER: Which is five years.

1 MR. FELDMAN: I would like to go
2 for the phase down and make that the phase out
3 period will require a relisting at that point
4 and see where we are with the research and
5 whether we have made any progress.

6 CHAIRPERSON GIACOMINI: So you
7 would like to add to the motion of adding that
8 it --

9 MR. FELDMAN: I guess it's to
10 phase down during the period from 2010 to
11 2012, at which point methionine would phase
12 out.

13 MR. MOYER: Yes, the
14 recommendation.

15 CHAIRPERSON GIACOMINI: Okay. So
16 your motion would be use in organic poultry
17 production until October 1, 2017? Or how many
18 years? How many years? Two more years?

19 MR. FELDMAN: Two more years.

20 CHAIRPERSON GIACOMINI: Two more.
21 So 2014. I'm trying to get this straight,
22 folks.

1 MR. FELDMAN: Sorry.

2 CHAIRPERSON GIACOMINI: '15, '17,
3 yes.

4 MR. MOYER: Well, '17 is what we--
5 if it's under Sunset, but I don't know what
6 he's proposing.

7 CHAIRPERSON GIACOMINI: Well, he's
8 asking for two more years.

9 MR. FELDMAN: No. I'm asking for
10 two -- if we do nothing --

11 CHAIRPERSON GIACOMINI: Right.

12 MR. FELDMAN: -- this phases out
13 when?

14 MR. MOYER: 2010.

15 MR. FELDMAN: 2010.

16 CHAIRPERSON GIACOMINI: Right.

17 MR. FELDMAN: So I'm saying two
18 years beyond that, which is 2012.

19 CHAIRPERSON GIACOMINI: Well this
20 recommendation puts the -- the recommendation
21 is to put the first fence around their use
22 until October 1, 2012.

1 MR. MOYER: And the rates standard
2 for clarification are the rates that we asked
3 for --

4 CHAIRPERSON GIACOMINI: For four,
5 five and six as asked for by the petitioner.

6 MR. MOYER: Correct.

7 CHAIRPERSON GIACOMINI: Okay. The
8 second step down after October 1, 2012, the
9 following maximum levels per ton: Laying and
10 broiler chicks 2 pounds per ton, turkey and
11 all poultry -- I'm sorry. Laying and broiler
12 chickens 2 pounds per ton, and turkeys and all
13 other poultry 3 pounds per ton until October
14 1, 20 --

15 MR. MOYER: Fifteen he said.

16 CHAIRPERSON GIACOMINI: You want
17 three years?

18 MR. FELDMAN: Okay. So that's
19 what I would suggest instead of a phase down
20 a phase out at that second phase.

21 CHAIRPERSON GIACOMINI: Okay.

22 MR. FELDMAN: Okay.

1 CHAIRPERSON GIACOMINI: So the
2 motion, if I'm allowed to paraphrase --
3 you're making it the form of a motion.

4 MR. FELDMAN: Yes, correct. Thank
5 you.

6 CHAIRPERSON GIACOMINI: The motion
7 is to amend the recommendation to add the
8 words until October 1, 2015.

9 MR. FELDMAN: Right.

10 CHAIRPERSON GIACOMINI: Is there--

11 MR. MOYER: I think you have to
12 add the word at which time it phases out to--

13 CHAIRPERSON GIACOMINI: No, we
14 don't. By the expiration date that is a --
15 that's it.

16 MR. MOYER: That is an expiration
17 date? Okay.

18 VICE-CHAIRPERSON MIEDEMA: Point
19 of order. When we have a motion and it's been
20 seconded and it's on the table, can we have a
21 second motion?

22 MR. MOYER: You can have a motion

1 to amend. It's a motion to amend.

2 CHAIRPERSON GIACOMINI: It's a
3 secondary motion to the primary.

4 VICE-CHAIRPERSON MIEDEMA: Okay.
5 So in both the original maker of the motion
6 and the second would have to agree to this
7 amendment.

8 MR. MOYER: That's correct.
9 That's what we're getting to now.

10 CHAIRPERSON GIACOMINI: For it to
11 be friendly not to require a vote, it would
12 be.

13 Jeff, maker of the motion, would
14 you accept that amendment? Would you accept
15 that --

16 MR. MOYER: He has a question.

17 MR. FELDMAN: Excuse me. I mean,
18 I believe I can propose an amendment on which
19 the Board can vote.

20 CHAIRPERSON GIACOMINI: Yes.

21 MR. FELDMAN: If Tracy wants to
22 amend my motion, I would have to accept that

1 as a friendly motion.

2 CHAIRPERSON GIACOMINI: No. You
3 weren't looking to amend anything Jay said,
4 were you?

5 VICE-CHAIRPERSON MIEDEMA: No. I
6 want to be able to vote on the motion that was
7 --

8 MR. MOYER: No. But you have to
9 first vote on my motion.

10 VICE-CHAIRPERSON MIEDEMA: -- the
11 first motion?

12 CHAIRPERSON GIACOMINI: Right.
13 Right.

14 MR. MOYER: But we first have to
15 address his.

16 MS. HEINZE: We'll have to address
17 my motion first.

18 CHAIRPERSON GIACOMINI: Okay.

19 MR. MOYER: Sorry.

20 CHAIRPERSON GIACOMINI: So we have
21 the motion to amend.

22 MR. FELDMAN: I need a second,

1 though.

2 CHAIRPERSON GIACOMINI: Well, no.
3 If Jeff and Tina accept that as a friendly
4 amendment, historical preference of the Board
5 has been to absorb it into the motion.

6 MR. FELDMAN: Okay. Okay.

7 CHAIRPERSON GIACOMINI: Jeff, do
8 you accept that?

9 MR. MOYER: I do not.

10 CHAIRPERSON GIACOMINI: Okay.
11 That answers that.

12 Do we have a second on the
13 amendment?

14 MR. FLAMM: I'll second the
15 amendment.

16 CHAIRPERSON GIACOMINI: Okay.
17 It's been moved and seconded to amend the main
18 motion by adding the words until October 1,
19 2015, is that correct?

20 MR. FELDMAN: Correct.

21 CHAIRPERSON GIACOMINI: Okay. Any
22 discussion on the amendment? Katrina?

1 No, I'm sorry. Maker of the
2 motion, do you have any further discussion on
3 this?

4 MR. FELDMAN: No.

5 CHAIRPERSON GIACOMINI: Katrina?

6 MS. HEINZE: So I want to be
7 clear. We're voting on the addition of the
8 words until October 2, 2015?

9 CHAIRPERSON GIACOMINI: Yes.

10 MS. HEINZE: If we vote no, we go
11 back to the original and vote yes it stays?

12 MR. FELDMAN: Correct.

13 CHAIRPERSON GIACOMINI: Yes.
14 Correct. Correct.

15 MR. FELDMAN: Just got all our
16 member, we want to make sure everyone is clear
17 on what they vote.

18 MR. MOYER: Correct. It's always
19 better to be clear.

20 CHAIRPERSON GIACOMINI: Jennifer?

21 MR. HALL: I would just like to
22 clarify with the Program that that wording

1 does actually establish an expiration?

2 MR. McEV0Y: Yes. The wording is
3 awkward.

4 MR. HALL: Yes.

5 MR. McEV0Y: I think there is a
6 lack of clarity in what you're proposing here.
7 So I'm not exactly sure how you should word
8 it, but so you're pretty much everything is in
9 place and then on October 1, 2015 methionine
10 is no longer allowed. I would add that.
11 Until October 1, 2015, methionine comes off
12 the list.

13 MR. MOYER: Thank you.

14 MR. FELDMAN: I think that needs
15 to be there, yes.

16 CHAIRPERSON GIACOMINI: Okay. The
17 current listing, if we could refer to that, is
18 for use only in organic poultry production --
19 it finishes. For use in only in organic
20 poultry production until October 1, 2010. We
21 would be consistent with the current listing
22 to add for use only in organic poultry

1 production and then finishing with October 1,
2 2015. That would be consistent with what it
3 is now. Is that okay.

4 MR. McEV0Y: The clarification is
5 what is valid until October 1, 2015? Is it
6 the annotation or is the substance? So I
7 think that's why you have to clarify it.

8 MR. FELDMAN: That's it.

9 MR. NEAL: This is Arthur.

10 This is why annotations are so
11 critical. The longer the annotation, the more
12 susceptible it is to abuse. So you want to
13 make sure that you're writing clearly and in
14 short statements if possible, because you want
15 people to be very clear in terms of what the
16 expectation is. So the inclusion of so many
17 dates in this annotation, you probably want to
18 make sure that you break those up.

19 Don't know exactly how, I'm like
20 Miles right now, because there's a lot we're
21 trying in that annotation. But some
22 additional thought just may want to be given

1 to communicating that annotation clearly so
2 that it doesn't get twisted and provide an
3 opportunity for somebody to exploit it.

4 MR. FELDMAN: I think we can add
5 the phrase if you think this is appropriate,
6 as of which date the use of methionine would
7 phase out. Then there's no question of
8 whether phasing -- expired. Then there's no
9 question as to whether we're talking about the
10 annotation or the product.

11 MR. McEVROY: Yes. I would use the
12 term phase out.

13 MR. FELDMAN: Expired. Expired.

14 MR. McEVROY: But expired is much
15 better. Yes.

16 MR. FELDMAN: Thank you.

17 And just again so the Board
18 realizes here, I'm not suggesting that there
19 wouldn't be a case that could be made for it's
20 continued use at that point. But, again, it
21 shifts the burden to the industry to show us
22 that a product that no one it seemed -- even

1 those who use it, no one is that happy with
2 it. That it gets a really rigorous review at
3 that point.

4 CHAIRPERSON GIACOMINI: Yes. I'm
5 just making a note here so I can --

6 MR. NEAL: Arthur again.
7 Just another thought.

8 CHAIRPERSON GIACOMINI: Okay.

9 MR. NEAL: Potentially putting a
10 period at the end of the 3 pounds per ton, the
11 last line and then just beginning a new
12 sentence saying that on October 1, 2015 the
13 use of methionine will expire. Instead of
14 putting another comma there.

15 CHAIRPERSON GIACOMINI: Would that
16 be acceptable to the maker of the motion?
17 Okay.

18 Maker of the second?

19 Barry, would that be acceptable to
20 you?

21 Okay. So the amendment is to add
22 the words at the end of the current

1 annotation. The new sentence, on October 1,
2 2015 the use of methionine in organic poultry
3 production expires. Is that acceptable to
4 both of you?

5 Berry?

6 MR. FLAMM: Yes.

7 CHAIRPERSON GIACOMINI: Katrina?

8 MS. HEINZE: Yes.

9 CHAIRPERSON GIACOMINI: So the
10 maker of the motion and the maker and the
11 second have accepted this. So this is now the
12 amendment that we are discussing, addition of
13 the sentence at the end of the current
14 annotation, October 1, 2015 the use of
15 methionine in organic poultry production
16 expires.

17 Katrina?

18 MS. HEINZE: I think this is a
19 very important discussion. I am concerned
20 about exactly what wording we're voting on.
21 I'm not sure that I'm ready to do this. I was
22 going to suggest that perhaps we take a

1 breather on this. Let the folks really look
2 at the wording, and then we come back after
3 lunch and regroup on it do we really get the
4 wording right. Because what you're reading
5 doesn't match the screen and there's periods.
6 And I'd rather that we really get the working
7 right and then come back and really be able to
8 vote.

9 So I believe I make a motion to
10 defer. Is that the proper -- to pause?
11 What's my right thing to do here?

12 MR. FELDMAN: Mr. Chairman, I
13 would accept that as a friendly amendment.

14 CHAIRPERSON GIACOMINI: Well,
15 okay. Could you make the motion to table
16 until after lunch?

17 MS. HEINZE: I make a motion to
18 table until after lunch.

19 MR. HALL: Second.

20 CHAIRPERSON GIACOMINI: Second.

21 Okay. Help me out. Table two-
22 thirds or majority?

1 Majority? Okay. My parliamentary
2 procedure advisor says majority.

3 Okay. I know it's debatable.

4 So it's been moved and seconded to
5 table this until after lunch.

6 Those in favor aye.

7 (Chorus of ayes.)

8 CHAIRPERSON GIACOMINI: Opposed
9 nay.

10 (Chorus of nays.)

11 CHAIRPERSON GIACOMINI: Okay. The
12 Chair is unsure. We'll go with a voice vote?
13 Joe? Joe first.

14 MR. SMILLIE: That's fine. We're
15 talking about tabling the amendment, right?

16 CHAIRPERSON GIACOMINI: We're
17 talking about tabling of the discussion for
18 methionine at the point in time we are right
19 now. We have a motion and an amendment.

20 Jay, did you have --

21 MR. FELDMAN: That's fine. Thank
22 you.

1 CHAIRPERSON GIACOMINI: Okay.

2 MR. SMILLIE: I was curious as to
3 why there's vote opposing it, the people that
4 are opposing them or opposing this.

5 CHAIRPERSON GIACOMINI: The Chair
6 was not sure, let's do a voice vote.

7 Barry, on the motion to table?

8 MR. FLAMM: Yes. I agree to
9 table.

10 CHAIRPERSON GIACOMINI: Annette?

11 MR. RIHERD: Yes.

12 CHAIRPERSON GIACOMINI: Jennifer?

13 MR. HALL: Yes.

14 CHAIRPERSON GIACOMINI: Wendy?

15 MS. FULWIDER: Yes.

16 CHAIRPERSON GIACOMINI: Jeff?

17 MR. MOYER: No.

18 CHAIRPERSON GIACOMINI: Jay?

19 MR. FELDMAN: Yes.

20 CHAIRPERSON GIACOMINI: Tina?

21 SECRETARY ELLOR: No.

22 CHAIRPERSON GIACOMINI: Tracy?

1 VICE-CHAIRPERSON MIEDEMA: No.

2 CHAIRPERSON GIACOMINI: Joe?

3 MR. SMILLIE: No.

4 CHAIRPERSON GIACOMINI: John?

5 MR. FOSTER: No.

6 CHAIRPERSON GIACOMINI: Steve?

7 MR. DeMURI: Yes.

8 CHAIRPERSON GIACOMINI: Katrina?

9 MS. HEINZE: Yes.

10 CHAIRPERSON GIACOMINI: Joe

11 Dickson?

12 MR. DICKSON: Yes.

13 CHAIRPERSON GIACOMINI: Chair

14 votes yes.

15 So the results are five no, nine
16 yes, the motion to table this discussion until
17 after lunch passes.

18 Mr. Chairman, please proceed with
19 your next item.

20 MR. MOYER: Thank you, Mr.

21 Chairman.

22 And the next item are the Sunset

1 substances on 205.603. It's a rather lengthy
2 list. I will go through the list reading only
3 the main materials, not all of the annotations
4 as we go through them.

5 Under 205.603(a) disinfectants
6 sanitizers and medial treatments as
7 applicable. We have atropine, biologics -
8 vaccines, butrophanol, chlorahexidine,
9 electrolytes, flunixin.

10 And the Committee, as discussed
11 yesterday, is setting aside furosemide, which
12 was on our list yesterday but we're setting it
13 aside deferring it to fall, the fall meeting.
14 So, you know, you see it on your list. It is
15 being deferred. We voted on that as a
16 Committee.

17 Nitrogen peroxide, iodine,
18 magnesium hydroxide, oxytocin, paraciticides,
19 ivermectin, peroxyacetic/peracetic acid,
20 phosphoric acid, poloxalene, tolazoline,
21 xylazine, and that completes that list.

22 We're also adding under 205.603(b)

1 topical treatment, external parasiticide or
2 local anesthetic, iodine, lidocaine, lime
3 hydrated, mineral oil, procaine, sucrose
4 octanoate esters.

5 And then under 205.603(d) as feed
6 additives we have trace minerals and vitamins.

7 And under 205.603(f) excipients.

8 I make a motion that we approve
9 that recommendation.

10 SECRETARY ELLOR: Second.

11 CHAIRPERSON GIACOMINI: Motion
12 made by Jeff. Seconded by Tina to accept the
13 Committee's recommendation on 603. Been
14 properly seconded.

15 That is the statement of the
16 motion, and that includes the withdrawal of
17 the one item no longer being in that list,
18 which is not part of the motion itself but
19 just making sure we all recognize that.

20 Maker of the motion, do you have
21 any debate?

22 MR. MOYER: I do not.

1 CHAIRPERSON GIACOMINI: Any
2 further debate, questions on this topic from
3 the Board? Ready for the question? Okay.

4 For the relisting of the 603 items
5 as recommended by the Livestock Committee.

6 Tina?

7 SECRETARY ELLOR: Yes.

8 CHAIRPERSON GIACOMINI: Tracy?

9 VICE-CHAIRPERSON MIEDEMA: Yes.

10 CHAIRPERSON GIACOMINI: Joe

11 Smillie?

12 MR. SMILLIE: Yes.

13 CHAIRPERSON GIACOMINI: John

14 Foster?

15 MR. FOSTER: Yes.

16 CHAIRPERSON GIACOMINI: Steve?

17 MR. DeMURI: Yes.

18 CHAIRPERSON GIACOMINI: Katrina?

19 MS. HEINZE: Yes.

20 CHAIRPERSON GIACOMINI: Joe

21 Dickson?

22 MR. DICKSON: Yes.

1 CHAIRPERSON GIACOMINI: Barry?

2 MR. FLAMM: Yes.

3 CHAIRPERSON GIACOMINI: Annette?

4 MR. RIHERD: Yes.

5 CHAIRPERSON GIACOMINI: Jennifer?

6 MR. HALL: Yes.

7 CHAIRPERSON GIACOMINI: Wendy?

8 MS. FULWIDER: Yes.

9 CHAIRPERSON GIACOMINI: Jeff?

10 MR. MOYER: Yes.

11 CHAIRPERSON GIACOMINI: Jay?

12 MR. FELDMAN: Yes.

13 CHAIRPERSON GIACOMINI: Any

14 conflicts of interest?

15 MR. MOYER: You didn't vote.

16 CHAIRPERSON GIACOMINI: I know.

17 No, I haven't yet.

18 Any conflicts of interest?

19 MR. MOYER: No.

20 CHAIRPERSON GIACOMINI: Okay.

21 Seeing none.

22 Chair votes yes.

1 One absent, zero no's, 14 yes.

2 Motion passes.

3 Next one, Mr. Livestock Chairman.

4 MR. MOYER: Thank you, Mr.

5 Chairman.

6 The next item on the Livestock
7 Committee's voting schedule is section 205-604
8 materials. These are non-synthetic substances
9 prohibited from use in livestock production.
10 We have one material in this category under
11 section (a) strychnine.

12 The Committee's recommendation is
13 that we continue to not allow strychnine to be
14 used in organic production.

15 I make a motion that we accept the
16 Committee's recommendation

17 MR. HALL: Second.

18 CHAIRPERSON GIACOMINI: Okay. Mr.
19 Chairman, could you please rephrase that as
20 accepting the motion to relist?

21 MR. MOYER: Yes. I make a motion
22 that we accept the Committee's recommendation

1 to relist this material.

2 CHAIRPERSON GIACOMINI: Thank you.

3 Been moved and seconded. Jeff

4 moving, Jennifer seconding to accept the

5 Committee's recommendation to relist the

6 substance in 604.

7 Maker of the motion, do you have

8 any further debate? Jeff?

9 MR. MOYER: No, I do not.

10 CHAIRPERSON GIACOMINI: Any other

11 further debate on this topic? Seeing none,

12 proceed to vote.

13 Tracy?

14 VICE-CHAIRPERSON MIEDEMA: Yes.

15 CHAIRPERSON GIACOMINI: Joe

16 Smillie?

17 MR. SMILLIE: Yes.

18 CHAIRPERSON GIACOMINI: John

19 Foster?

20 MR. FOSTER: Yes.

21 CHAIRPERSON GIACOMINI: Steve?

22 MR. DeMURI: Yes.

1 CHAIRPERSON GIACOMINI: Katrina?

2 MS. HEINZE: Yes.

3 CHAIRPERSON GIACOMINI: Joe

4 Dickson?

5 MR. DICKSON: Yes.

6 CHAIRPERSON GIACOMINI: Conflict
7 of interest? I'm going to get this before the
8 last round.

9 CHAIRPERSON GIACOMINI: Barry?

10 MR. FLAMM: Yes.

11 CHAIRPERSON GIACOMINI: Annette?

12 MR. RIHERD: Yes.

13 CHAIRPERSON GIACOMINI: Jennifer?

14 MR. HALL: Yes.

15 CHAIRPERSON GIACOMINI: Wendy?

16 MS. FULWIDER: Yes.

17 CHAIRPERSON GIACOMINI: Jeff?

18 MR. MOYER: Yes.

19 CHAIRPERSON GIACOMINI: Jay?

20 MR. FELDMAN: Yes.

21 CHAIRPERSON GIACOMINI: Tina?

22 SECRETARY ELLOR: Yes.

1 CHAIRPERSON GIACOMINI: Chair
2 votes yes.

3 One absent, zero no, 14 yes.
4 Motion passes.

5 Mr. Chairman, your next item,
6 please.

7 MR. MOYER: The next item, Mr.
8 Chairman, on the Livestock's voting docket is
9 the animal health care products definition.
10 The Livestock Committee met and has asked to
11 table that --

12 CHAIRPERSON GIACOMINI: Please
13 don't move to table. Just withdraw it.

14 MR. MOYER: We're going to
15 withdraw it. Sorry. We're not putting it on
16 the table. We are withdrawing that from the
17 voting docket.

18 CHAIRPERSON GIACOMINI: Thank you.

19 MR. MOYER: There's questions why
20 we're withdrawing it. We're withdrawing that
21 from the voting docket because the way it was
22 presented to the Board we don't have it in the

1 right context of where it belongs.

2 We positioned as being part of the
3 Animal Welfare document, it actually belongs
4 in the excipients document. So the language
5 that we had isn't appropriate. If we vote on
6 it, it won't be right. And so it does impact
7 the industry at all to defer this to a
8 November vote. So the Committee has withdrawn
9 it from the voting docket and you will see it
10 again in its proper context.

11 CHAIRPERSON GIACOMINI: Livestock
12 Committee hugely apologizes for this, the way
13 it was structured.

14 Your next item.

15 I'm on Livestock, so I can --

16 MR. MOYER: Yes. I'm not sure how
17 we didn't catch that, but we didn't. We did
18 have a lot of work. And that's not an excuse,
19 just a reason.

20 The Livestock Committee's next
21 item on the agenda is the Animal Health Care
22 Products classification of 205.238(c)(1). The

1 Committee has met and has not made any changes
2 on that document from what you saw yesterday.
3 That's the one that I have the minority
4 opinion.

5 I make the motion that we accept
6 the Committee's recommendation as written.

7 CHAIRPERSON GIACOMINI: Second?
8 Is there a second?

9 MR. HALL: Second.

10 CHAIRPERSON GIACOMINI: Motion
11 from Jeff seconded by Jennifer to accept the
12 recommendation from the Livestock Committee
13 regarding an amendment to section 238(c)(1).

14 Mr. Maker of the motion, do you
15 have any further discussion?

16 MR. MOYER: I do not.

17 CHAIRPERSON GIACOMINI: Any
18 further debate?

19 MR. FELDMAN: Yes.

20 CHAIRPERSON GIACOMINI: Jay?

21 MR. FELDMAN: I just want to make
22 sure I've got this right in terms of the

1 public comments we've received. There is a
2 disagreement within the industry on how we
3 should handle this, is that fair?

4 MS. FULWIDER: Yes.

5 MR. FELDMAN: Okay.

6 MR. MOYER: Well, I'm not sure if
7 you mean there's a disagreement in -- I guess
8 in the industry, but also between the public
9 and the industry as well.

10 CHAIRPERSON GIACOMINI: No,
11 there's --

12 MR. MOYER: There's some in the
13 industry as well.

14 CHAIRPERSON GIACOMINI: Yes.
15 There's portions of the farmer industry.

16 MR. MOYER: Right.

17 CHAIRPERSON GIACOMINI: The
18 processor industry that has differences of
19 agreement.

20 MR. MOYER: Right.

21 MR. FELDMAN: Okay. I just wanted
22 to just make sure that was true.

1 MR. MOYER: Okay. Thank you. And
2 we heard that public comment several times
3 since we made our language recommendation in
4 November.

5 CHAIRPERSON GIACOMINI: Barry?

6 MR. FLAMM: Thank you.

7 I guess this one has me confused,
8 especially the very clear and strong minority
9 opinion by the Chair of the Committee. And so
10 I have to respect those opinions. And also
11 the comments made by the Board on this issue,
12 and the divided comments among the public. And
13 not being on the Committee or very closely
14 involved, I'm not real clear what's happening
15 here.

16 I understand the explanation for
17 taking out the line that it was put it under -
18 - you know, without maybe full consideration.
19 But I'm particularly -- you know, I'm
20 persuaded by that minority opinion. So I
21 don't know if anybody can help me through my
22 own dilemma here on the proper course of

1 action.

2 CHAIRPERSON GIACOMINI: The
3 amendment suggested is to change what we
4 passed at the November meeting. A no vote
5 keeps in the sentence that we are recommending
6 to delete. So a no vote keeps the sentence
7 and 100 percent completely supports the
8 minority opinion.

9 A no vote completely supports the
10 minority opinion. We don't even need to go
11 back and revote anything. That just reasserts
12 the existing language in the recommendation we
13 had in November and completely supports the
14 minority opinion.

15 Tina?

16 SECRETARY ELLOR: And here's the
17 difficulty and the reason why we decided to
18 take this action. Because this was put in in
19 one of those late night meetings by the person
20 who wrote the minority opinion. And without
21 any opportunity for -- you know, it was not in
22 response to public comment. It was not

1 subject to any public comment or public input
2 when it was put in.

3 So, you know, we did get a lot of
4 feedback and people very clearly explained to
5 us what the ramifications of this can be. And
6 we discussed some of those yesterday in terms
7 of beef out on the range, piglets. And, you
8 know, it's not like if you have one sow and
9 you have piglets, those piglets have to be on
10 the sow. I mean, there's a knock on effect to
11 this beyond the dairy and it's the dairy that
12 people mostly, I think, had in mind when they
13 were recommending against this.

14 And for me, personally, it's an
15 animal welfare issue. So that's why I would
16 support this particular document.

17 CHAIRPERSON GIACOMINI: I have Jay
18 and then Wendy. But I'd like to further
19 respond to Jay's question earlier. I don't
20 think we gave Jay a full and complete answer.

21 There is also debate within the
22 regulatory part of our group as to whether

1 this recommendation is completely legal. The
2 issue of whether this action would allow the
3 feeding of a prohibited substance to a non-
4 sick animal is part of the regulatory debate.
5 If they were to decide that that was the case,
6 I'm sure the Program would come back to us and
7 say that they could not accept that
8 recommendation.

9 MR. MOYER: That's correct. Yes.

10 CHAIRPERSON GIACOMINI: If they do
11 come back with that recommendation we will
12 also or they will also then need to look at
13 what they are going to do with this milk
14 because the comment from Kevin making the
15 minority opinion is that you just go out and
16 dump it on your ground. Well, that would be
17 putting the synthetics, an unlisted synthetic
18 substance on organic crop ground also. So the
19 full ramifications in both directions will
20 need to be evaluated.

21 But to complete the answer for
22 your question, there's even regulatory

1 consideration.

2 MR. FELDMAN: Thank you.

3 MR. MOYER: That's correct, Dan.

4 But if we vote affirmative on the
5 recommendation by the Committee, it does put
6 it in the hands of the Program to address
7 that.

8 CHAIRPERSON GIACOMINI: Correct.
9 Correct. Correct.

10 MR. MOYER: Not in the hands of
11 the Board.

12 CHAIRPERSON GIACOMINI: Of what's
13 legal?

14 MR. MOYER: Of what's -- yes, of
15 what's legal and what's not.

16 CHAIRPERSON GIACOMINI: What's
17 legal within OFPA and the rest of the
18 regulation.

19 Jay, did you have any --

20 MR. FELDMAN: Yes. I was actually
21 going to ask about the prohibited material
22 issue. And thank you for clarifying that.

1 Because I think that's very helpful.

2 In deliberations on this issue did
3 the Committee evaluate the range of synthetic
4 materials that are used in this context? I
5 guess these are therapeutic uses. And whether
6 there's any distinction that the Committee
7 could have made among the therapeutic uses,
8 say between parasitocides or antibiotics, or
9 types of antibiotics? Was there any
10 discussion regarding the type? You know,
11 because this seems pretty broad. This seems
12 all inclusive as opposed to limiting, to
13 zeroing in more on certain conditions and some
14 certain subset of those therapeutic drugs?

15 CHAIRPERSON GIACOMINI: Wendy?

16 MS. FULWIDER: I believe this
17 primarily addresses things that would not
18 routinely be used, like the pain meds and the
19 Flunixin. And the pain meds would be, you
20 know if the animal needed surgery for some
21 reason. You know, and so therefore it's a
22 humane issue and we don't want to, you know

1 just be restraining the animal and tying her
2 down and, you know, doing surgery.

3 And the other one is the Flunixin.
4 And that particular product, you know brings
5 down fevers. It's an anti-inflammatory. And
6 it prevents septic shock. And this is
7 particularly important that we have this
8 particular tool available to farmers that are
9 transitioning and have not learned all the
10 proper and appropriate organic tools that are
11 at their disposal. Because there is a
12 learning process for these folks to learn how
13 and when to administer these organic
14 medicines.

15 CHAIRPERSON GIACOMINI: Jay?

16 MR. FELDMAN: Do you feel that
17 this wording is sufficiently narrow to not
18 exclude or to exclude other treatments that
19 might go beyond the two you just described;
20 the pains meds and the --

21 MS. FULWIDER: Flunixin.

22 MR. FELDMAN: -- Flunixin? My

1 question is, is the wording sufficiently
2 narrow to pertain solely to those uses as
3 opposed to something broader something?

4 MR. MOYER: Yes, Jay. Those are
5 the only materials that we have at our
6 disposal on the National List --

7 MR. FELDMAN: Right.

8 MR. MOYER: -- that have the
9 withholding times.

10 MR. FELDMAN: Right.

11 MR. MOYER: So it includes all of
12 them. We did not go specifically into each
13 material to determine.

14 MR. FELDMAN: Okay. That's --

15 MR. MOYER: That was already done
16 in the review of those materials and the
17 withholding times are established.

18 MR. FELDMAN: Right.

19 MR. MOYER: This point of
20 discussion was whether or not that milk
21 retains its organic character and can be feed
22 as 100 percent feed to organic livestock or

1 whether it cannot.

2 MR. FELDMAN: Okay.

3 CHAIRPERSON GIACOMINI: Barry?

4 MR. FLAMM: Has the Committee
5 considered postponing a decision on this until
6 this regulatory issue is cleared up?

7 CHAIRPERSON GIACOMINI: They're
8 shaking their heads. I think this
9 recommendation would put it right in the lap
10 for them to make that regulatory decision and
11 either accept or reject the document.

12 Valerie?

13 MS. FRANCES: Wasn't the intention
14 of this vote just to correct essentially kind
15 of a mistake in the previous recommendation
16 and really just keep things as the status quo
17 in the recommendation as they are right now?

18 CHAIRPERSON GIACOMINI: I think
19 that's the way some of the members would feel
20 and others would disagree.

21 MR. MOYER: Yes. Certainly the
22 writer of the minority opinion would not

1 consider it as a correction of a mistake but
2 a reaffirmation of the statement that they
3 thought was correct.

4 CHAIRPERSON GIACOMINI: Yes.
5 Kevin writing the minority opinion was the
6 person who wrote that sentence --

7 MS. FRANCES: Yes. I didn't mean
8 to characterize it really as a mistake. I'm
9 sorry.

10 CHAIRPERSON GIACOMINI: Yes.

11 MS. FRANCES: But just wasn't it
12 intended to just remove what was added?

13 CHAIRPERSON GIACOMINI: Yes.

14 MS. FRANCES: It would just keep
15 the regulation as it is right now.

16 CHAIRPERSON GIACOMINI: Yes. Part
17 of the industry that came to us with the
18 question and part of the Committee really sat
19 down and read what that sentence was that we
20 put in on that last day. We felt that we had
21 gone farther than we intended.

22 MR. MOYER: That's correct. And

1 it wasn't up for community debate at that
2 point or public comment. And some of the
3 comment that we got subsequent to that
4 sentence being added encouraged us to go back
5 and maybe retract that sentence.

6 CHAIRPERSON GIACOMINI: Again, to
7 finish. Kevin would say it says exactly what
8 we have intended.

9 MR. MOYER: Right.

10 CHAIRPERSON GIACOMINI: Joe?

11 MR. SMILLIE: I apologize, but I
12 just want to be really clear. I missed the
13 previous recommendation possibly. But this
14 wording limit to analgesics, like you couldn't
15 use a parasiticide, for example?

16 Following the same question as
17 Jay's, but I didn't really catch the
18 definition answer.

19 MS. FULWIDER: Well, the
20 parasiticides are not allowed in this
21 discussion.

22 MR. SMILLIE: Right.

1 MS. FULWIDER: I mean, this is
2 just about the pain meds and the Flunixin.

3 MR. SMILLIE: Okay. Absolutely
4 restricted to those two items?

5 MR. MOYER: Yes, that's my
6 understanding. And only to be used in
7 emergency situations.

8 MR. SMILLIE: Right.

9 MR. MOYER: This is not routinely
10 on just animals.

11 MR. SMILLIE: Okay. That's what I
12 thought, but I just wanted to be clear.

13 MR. MOYER: And only under a
14 veterinarian's care

15 CHAIRPERSON GIACOMINI: Katrina?

16 MS. HEINZE: I have two questions.
17 A follow-up on that one. How would a non-
18 expert know that? Because what it says is --
19 right. How would we know that? So if it's
20 prohibited, you can't sell it. So presumably
21 these are allowed non-synthetics?

22 MS. FULWIDER: Allowed synthetics.

1 MS. HEINZE: Allowed synthetics?

2 MR. MOYER: Allowed synthetics.

3 MS. HEINZE: So when that was on
4 the list, there's a withholding time?

5 MR. MOYER: They're allowed
6 synthetics with a withholding time and
7 previous Boards have established a two times
8 the FDA withholding period for those
9 materials. Those are the materials we're
10 talking.

11 MS. HEINZE: Okay. And my second
12 question much more pragmatic is, my
13 understanding is this is current practice. So
14 this is what --

15 CHAIRPERSON GIACOMINI: Some.

16 MS. HEINZE: Some.

17 CHAIRPERSON GIACOMINI: In some
18 cases it's current practice, in some cases the
19 more restrict language is their current
20 practice of what's being enforced.

21 MR. MOYER: Both are current
22 practices.

1 MS. HEINZE: Okay.

2 CHAIRPERSON GIACOMINI: Let me
3 just read 238 Livestock Health Care Standards.
4 (b) When preventative practice and veterinary
5 biologics are inadequate to prevent sickness.
6 And this gets to both sides of your issue. A
7 producer may administer synthetic medications
8 provided that such medications are allowed
9 under 205.603. Parasiticides allowed under
10 205.603 may be used on to dairy stock when
11 used a minimum of 90 days prior to the
12 production of milk or milk products that are
13 to be sold, labeled or represented as organic.

14 So there is a specific statement
15 in the regulatory language of the rule
16 identifying the milk of the parasiticide
17 treatment animal as not organic.

18 Other discussion? Wendy?

19 MS. FULWIDER: We're not
20 requiring, you know that the farmers use the
21 pain meds when they do surgery, but we
22 certainly don't want to discourage them from

1 doing this because this will further label us
2 as being inhumane. And so we have the
3 science, you know and morally and ethically I
4 mean we should not be doing surgery on animals
5 without pain meds.

6 MR. MOYER: As a follow-up
7 representing Kevin, Kevin would say that
8 that's true, he would agree with that
9 statement. But then he would go further to say
10 that the milk that comes out of whatever
11 animal it is could not be fed to the young
12 stock. He would still treat his animals with
13 the pain meds, but he would dump that milk.

14 CHAIRPERSON GIACOMINI: Is that
15 new or a follow-up, Katrina? New statement or
16 a follow-up to what Jeff just said?

17 Jay?

18 MR. FELDMAN: So, Dan, the point
19 of view of reading the annotation on
20 paraciticides is to suggest that the language
21 before us does not allow -- would not allow
22 the use of paraciticides? I mean, I guess I'm

1 having trouble --

2 CHAIRPERSON GIACOMINI: No. It
3 would --

4 MR. FELDMAN: I mean in this
5 context?

6 CHAIRPERSON GIACOMINI: Yes.

7 MR. FELDMAN: Right. Yes. And
8 substance that contains a synthetic not
9 allowed under 205.603. That's a huge --
10 that's the language here as proposed.

11 CHAIRPERSON GIACOMINI: As
12 prohibited?

13 MR. FELDMAN: Right. So the
14 presumption is -- there's no reference in here
15 to pain meds and referencing surgery, or that
16 sort of thing?

17 CHAIRPERSON GIACOMINI: No. No.
18 The reference there is the excising out
19 specifically or of milk from cows treated with
20 the parasiticide as opposed to the pain meds
21 or other items with -- actually, it's not
22 limited to pain meds. Currently the only

1 thing on the List with or withholding
2 additional withholding time is pain meds, but
3 it's not limited to pain meds. It's other
4 substances on the List with a withholding time
5 which could change in the future.

6 MR. FELDMAN: Right. Thank you.

7 CHAIRPERSON GIACOMINI: Katrina?

8 MS. HEINZE: So clearly we want to
9 encourage farmers to use the pain medications
10 when they need to. We don't want to
11 discourage that.

12 So if we leave the sentence in, we
13 might be encouraging them to wean the young
14 from their mother too early, right? Because
15 they treat -- is that really what it comes
16 down to?

17 CHAIRPERSON GIACOMINI: Or not
18 using pain meds.

19 MS. HEINZE: Or not using pain
20 meds. It could be perceived that that's what
21 we're doing?

22 MR. MOYER: We don't know that for

1 a fact. But what you're saying is, yes, some
2 farmers could.

3 MS. HEINZE: Right.

4 MR. MOYER: In order to not dump
5 their milk, they could say we're not going to
6 use these materials.

7 MS. HEINZE: I'm just trying to
8 understand, right?

9 MR. MOYER: I don't want to
10 characterize farmers as not treating their
11 animals correctly, that's --

12 MS. HEINZE: Totally get that.

13 CHAIRPERSON GIACOMINI: No, It's
14 going to end up coming down to what is legal
15 within the rule, you know. Is it legal to do
16 this? Is it legal to give this to the calves
17 or not. If it's not, I think someone's going
18 to have to look at well what can we do with
19 that milk? Because --

20 MR. MOYER: Right. And that's why
21 an affirmative vote here puts it in their
22 camp, not ours to decide that.

1 CHAIRPERSON GIACOMINI: Miles?

2 MR. McEVoy: Or the suggestion
3 that you made a lot of questions basically
4 about this, that maybe you should just ask a
5 question of the Program and we can get back to
6 you on this. I'm clarifying --

7 CHAIRPERSON GIACOMINI: The intent
8 of the majority vote of the Livestock
9 Committee was to alter what was the final vote
10 of what was included in the recommendation in
11 November and bring it back to what the
12 majority of the Livestock Committee fully
13 intended that section to say when we were
14 going through all of our discussions in
15 reviewing it as opposed to the next step that
16 was taken on the last day when that sentence
17 was included.

18 MR. MOYER: As a point of
19 reference, Dan, all we're doing is if we make
20 that change, the full recommendation, the
21 final recommendation is on the plate of the
22 Program.

1 CHAIRPERSON GIACOMINI: Yes.

2 MR. MOYER: This just clarifies
3 that paragraph.

4 CHAIRPERSON GIACOMINI: Yes.

5 MR. MOYER: And keeps it on their
6 plate so they can act on it.

7 CHAIRPERSON GIACOMINI: Yes. Yes.

8 Arthur, did you have a statement?

9 MR. NEAL: I'm okay.

10 CHAIRPERSON GIACOMINI: Joe?

11 MR. SMILLIE: Call the question.

12 CHAIRPERSON GIACOMINI: Objection
13 to calling the question? Seeing no objection
14 and no further debate, call for the vote on
15 accepting the recommendation from the
16 Livestock Committee on the amendment to
17 section 238(c)(1). So an affirmative vote
18 accepts the deletion of that sentence and as
19 an amendment to the previous recommendation we
20 passed in November. A negative vote keeps
21 that sentence and completely supports the
22 opinion expressed in the minority opinion.

1 MR. MOYER: That's correct.

2 CHAIRPERSON GIACOMINI: Joe

3 Smillie?

4 MR. SMILLIE: Yes.

5 CHAIRPERSON GIACOMINI: John

6 Foster?

7 MR. FOSTER: Yes.

8 CHAIRPERSON GIACOMINI: Steve?

9 MR. DeMURI: Yes.

10 CHAIRPERSON GIACOMINI: Katrina?

11 MS. HEINZE: Yes.

12 CHAIRPERSON GIACOMINI: Joe

13 Dickson?

14 MR. DICKSON: Yes.

15 CHAIRPERSON GIACOMINI: Barry?

16 MR. FLAMM: A reluctant yes.

17 CHAIRPERSON GIACOMINI: Annette?

18 MR. RIHERD: Yes.

19 CHAIRPERSON GIACOMINI: Jennifer?

20 MR. HALL: Yes.

21 CHAIRPERSON GIACOMINI: Wendy?

22 MS. FULWIDER: Yes.

1 CHAIRPERSON GIACOMINI: Jeff?

2 MR. MOYER: Yes.

3 CHAIRPERSON GIACOMINI: Jay?

4 MR. FELDMAN: No.

5 CHAIRPERSON GIACOMINI: Tina?

6 SECRETARY ELLOR: Yes.

7 CHAIRPERSON GIACOMINI: Tracy?

8 MS. FULWIDER: Yes.

9 CHAIRPERSON GIACOMINI: Conflict.

10 Any conflicts?

11 Okay. One no, one absent --

12 MR. MOYER: Did you vote, Dan?

13 CHAIRPERSON GIACOMINI: Ah, yes.

14 One no, one absent, 13 yes.

15 Motion passes.

16 Mr. Smillie?

17 MR. SMILLIE: There's been so much
18 channeling of Kevin, that I do want to urge
19 that if we find time during a break for Jay
20 Feldman to conduct his survey as to who is
21 channeling Kevin. I want to remind him of the
22 promise he made yesterday. I fully intend to

1 vote on that. So find an appropriate time.

2 MR. MOYER: I was going to suggest
3 earlier, but didn't think it appropriate, Joe,
4 that we just pretend that Kevin is sitting
5 here and that my voice is coming out of him.

6 MR. SMILLIE: I want a vote on
7 that. I want to vote,

8 CHAIRPERSON GIACOMINI: We did do
9 a straw pull at dinner, so I know who is
10 leading.

11 MR. MOYER: Mr. Chairmen, until we
12 return to the methionine question, that is the
13 end of the Livestock Committee.

14 CHAIRPERSON GIACOMINI: So to deal
15 with that issue, I would request that at a
16 break or at lunch we have the maker and person
17 making the second of both the original motion
18 and the amendment, just so we have all four
19 parties involved, so -- I'm asking them to be
20 there just so everybody understands what the
21 language is that we're dealing with. They
22 don't have the exact say, but I'd like them

1 aware.

2 So we have Jeff, Tina and Barry.
3 It's mainly Jay and Berry that need to approve
4 this language, but just so everyone is
5 involved.

6 What time are we at? 10:45.
7 Okay. We're ahead schedule.

8 And that concludes Livestock.
9 Moving on to Handling, Steve, please.

10 It is the request of the Chair for
11 the Handling Committee to possibly consider--
12 and I expressed this to Steve early, so it's
13 not news to him. It's news to you. To
14 consider consolidation of their
15 recommendations so that we could vote 605(a),
16 605(b) and 606 as three separate motions
17 rather than the individual groupings that they
18 did by members of the Committee.

19 MR. DeMURI: Yes. And I am fine
20 with that. As I mentioned yesterday the group
21 things that we put together for ease of
22 presentation yesterday, not necessarily for

1 voting. So we will be voting the three
2 separate groups in. So the first group will
3 be all the 605(a) items, which I'll through in
4 a minute. And then we'll vote on all the
5 605(b) items. And then all the 606 items. So
6 there will be three separate votes for the
7 Handling Committee Sunset items.

8 So I think we went through a
9 pretty thorough review of all the items
10 yesterday. I'll start with the 205.601(a)
11 items. I'll just read them at this point. If
12 anybody has any specific questions, we can get
13 to that during the discussion after I go
14 through these.

15 So the first group is Sunset
16 materials for section 205.605(a) which are
17 nonagricultural, non-organic substances
18 allowed as ingredients in or on processed
19 products labeled as organic or made with
20 organic. And these are the non-synthetics.

21 So they are: acids, bentonite,
22 calcium carbonate, calcium chloride,

1 carrageenan, dairy cultures, diatomaceous
 2 earth - food filtering aid only, kaolin,
 3 nitrogen - oil-free grades, oxygen - oil-free
 4 grades, perlite for use only as a filter aid
 5 in food processing, potassium chloride, sodium
 6 bicarbonate, sodium carbonate and waxes none
 7 synthetic, carnauba wax and wood whip resin.

8 So those are the 605(a) items we'd
 9 be voting on right now.

10 I'd like to make a motion that
 11 these Sunset items be accepted as re-listed.

12 VICE-CHAIRPERSON MIEDEMA: Second.

13 CHAIRPERSON GIACOMINI: Motion
 14 made by Steve DeMuri, seconded by Tracy to
 15 relist the items listed under 605(a) for
 16 relisting in the Sunset Review process.

17 Mr. Maker of the motion, do you
 18 have any further debate on this?

19 MR. DeMURI: No.

20 CHAIRPERSON GIACOMINI: Any other
 21 debate? Ready for the vote?

22 MR. DeMURI: Conflict.

1 CHAIRPERSON GIACOMINI: Conflict
2 of interest? Thank you.

3 MR. DeMURI: I do. Let me mention
4 that not only for the 605(a) item, but 605(b)
5 and some of the 606 items the company that I
6 work for does use some or all of these items
7 in our processes.

8 CHAIRPERSON GIACOMINI: Chair does
9 not that find that as a reason to recuse. But
10 I would like everyone with those similar
11 conflicts to reveal or state them.

12 Katrina?

13 MS. HEINZE: I also work for a
14 food manufacturer who may use some or all of
15 the items on 605(a), 606(b) and 606.

16 CHAIRPERSON GIACOMINI: Thank you.
17 Joe?

18 MR. DICKSON: Yes. I also work for
19 a retailer and a food manufacturer that uses
20 all or some of the items on 605(a), 605(b) and
21 606.

22 CHAIRPERSON GIACOMINI: Thank you.

1 John?

2 MR. FOSTER: Not surprisingly,
3 work for a manufacturer that may use some or
4 all of the items on 605 and 606.

5 CHAIRPERSON GIACOMINI: Thank you.
6 Okay.

7 MR. FELDMAN: I eat those things.

8 CHAIRPERSON GIACOMINI: So what
9 you're telling me then is they do have a
10 specific finance or impact on you, but we will
11 allow it at this point.

12 MR. DeMURI: We'll let you do it
13 then.

14 CHAIRPERSON GIACOMINI: Any
15 further? Thank you.

16 Proceeding with the vote.

17 John?

18 MR. FOSTER: Yes.

19 CHAIRPERSON GIACOMINI: Steve?

20 MR. DeMURI: Yes.

21 CHAIRPERSON GIACOMINI: Katrina?

22 MS. HEINZE: Yes.

1 CHAIRPERSON GIACOMINI: Joe

2 Dickson?

3 MR. DICKSON: Yes.

4 CHAIRPERSON GIACOMINI: Barry?

5 MR. FLAMM: Yes.

6 CHAIRPERSON GIACOMINI: Annette?

7 MR. RIHERD: Yes.

8 CHAIRPERSON GIACOMINI: Jennifer?

9 MR. HALL: Yes.

10 CHAIRPERSON GIACOMINI: Wendy?

11 MS. FULWIDER: Yes.

12 CHAIRPERSON GIACOMINI: Jeff?

13 MR. MOYER: Yes.

14 CHAIRPERSON GIACOMINI: Jay?

15 MR. FELDMAN: Yes.

16 CHAIRPERSON GIACOMINI: Tina?

17 SECRETARY ELLOR: Yes.

18 CHAIRPERSON GIACOMINI: Tracy?

19 VICE-CHAIRPERSON MIEDEMA: Yes.

20 CHAIRPERSON GIACOMINI: Joe

21 Smillie?

22 MR. SMILLIE: Yes.

1 CHAIRPERSON GIACOMINI: And the
2 Chair votes yes.

3 One absent, zero no, 14 yes. Is
4 that what everyone else has? Of course that
5 was an easy one that I asked. Motion passes.

6 Your next item, Mr. Chairman?

7 MR. DeMURI: The next group would
8 be the 205.605(b) items. Again, all lumped
9 together for the vote. These are non-air
10 cultural, non-organic substances allowed as
11 ingredients in or on processed products
12 labeled as organic or made with organic.
13 These are the synthetics that are allowed.

14 And they are: Calcium phosphates
15 (monobasic, diabasic, tribasic), carbon
16 dioxide, ethylene - allowed for post-harvest
17 ripening of tropic fruit and de-greening of
18 citrus, glycerides - mono and did for use only
19 in drum drying of food, glycerin produced by
20 hydrolysis of fats and oils, hydrogen
21 peroxide, magnesium carbonate for use only in
22 agricultural products labeled "made with

1 organic" prohibited in agricultural products
2 labeled "organic," magnesium chloride -
3 derived from sea water, magnesium stearate for
4 use only in agricultural products labeled
5 "made with organic" prohibited in agricultural
6 products labeled "organic," ozone, potassium
7 acid tartrate, potassium carbonate, potassium
8 citrate, potassium hydroxide prohibited for
9 use in live peeling of fruits and vegetables
10 except when in used for peeling peaches during
11 the IQF, individually quick frozen, production
12 process; potassium phosphate for use only in
13 agricultural products labeled "made with
14 organic" prohibited in agricultural products
15 labeled "organic," xanthan gum, alginates,
16 ammonium bicarbonate for use only as a
17 leavening agent, ammonium carbonate for use
18 only as a leavening agent, ascorbic acid,
19 calcium citrate and calcium hydroxide.

20 I move for relisting of these
21 items just read off to Sunset.

22 MR. SMILLIE: Second.

1 CHAIRPERSON GIACOMINI: Been moved
2 and seconded by Joe. Moved an seconded to
3 relist the items and the recommendation from
4 the Handling Committee for relisting on
5 605(b).

6 Maker of the motion, do you have
7 any further debate?

8 MR. DeMURI: I don't.

9 CHAIRPERSON GIACOMINI: Any
10 further debate and questions, comments on
11 this?

12 Tracy?

13 VICE-CHAIRPERSON MIEDEMA: I have
14 a clarification. I misspoke yesterday, so I
15 would like to make the correction and put that
16 on the record.

17 When I present potassium hydroxide
18 I stated that the uses were limited strictly
19 to the peeling of IQF peaches. And what the
20 Listing actually says according to Codex when
21 this was originally put on, is that all food
22 uses are okay unless there are annotations

1 that limit it. So the limitation actually has
2 to do with the peeling of fruits with the
3 exception of IQF peaches, which are allowed.
4 Other food uses are also allowed. And I
5 needed that to be clearly stated in the record
6 and then, of course, enforcement, everything
7 else falls under enforcement and outside of
8 our purview.

9 CHAIRPERSON GIACOMINI: Joe, did
10 you have -- Joe?

11 MR. SMILLIE: Yes, I've got a
12 question concerning the List and especially
13 placement on the list. As we know, we've got
14 a number of materials that may not be on the
15 right Lists, which is not a controversial one,
16 but it's come to my attention that glycerin
17 can also be produced, not necessarily by
18 hydrolysis in fats and soil. That it can
19 actually be extracted and certified as organic
20 and put on the marketplace.

21 So I'm just wondering when we put
22 something down like glycerin that can be

1 produced in two dramatically different ways,
2 how are we going to deal with that in the long
3 run, or do you just want to say --

4 CHAIRPERSON GIACOMINI: There's a
5 number of ways to deal with that. Number one
6 right now is the Sunset Review Relisting as
7 it's printed.

8 MR. SMILLIE: As it's printed?

9 CHAIRPERSON GIACOMINI: As the
10 annotation reads.

11 Number two, there's always the
12 petition process to change an annotation.

13 Number three, as we proceed
14 through the classification, the material
15 process a reevaluation of anything that may
16 need to be shifted is part of that road that
17 that group plans to go down.

18 MR. SMILLIE: Thanks.

19 CHAIRPERSON GIACOMINI: Thank you.

20 Katrina, did you have anything
21 else on that?

22 MS. HEINZE: No. I agree with what

1 you said as cannot be on your --

2 CHAIRPERSON GIACOMINI: Yes.

3 Steve?

4 MR. DeMURI: I agree with you what
5 you said, Dan. And just to reiterate that, I
6 think it's cleaner if we go ahead and Sunset
7 these as written and then go through a
8 petition process to either move them or change
9 them around on the List.

10 CHAIRPERSON GIACOMINI: Katrina?

11 MS. HEINZE: As Joe said, I just
12 wanted to make sure the original Board review
13 for potassium hydroxide considered all those
14 uses, correct?

15 VICE-CHAIRPERSON MIEDEMA: All of
16 what uses?

17 MS. HEINZE: The other three uses?

18 VICE-CHAIRPERSON MIEDEMA: As
19 standard practice, yes.

20 MS. HEINZE: Thank you.

21 CHAIRPERSON GIACOMINI: Further
22 debate? Ready for the question?

1 For the relisting of 605(b) in
2 Sunset.

3 CHAIRPERSON GIACOMINI: Steve?

4 Any additional conflicts on this
5 items from all those that were previously
6 disclosed?

7 Steve?

8 MR. DeMURI: Yes.

9 CHAIRPERSON GIACOMINI: Katrina?

10 MS. HEINZE: Yes.

11 CHAIRPERSON GIACOMINI: Joe

12 Dickson?

13 MR. DICKSON: Yes.

14 CHAIRPERSON GIACOMINI: Barry?

15 MR. FLAMM: Yes.

16 CHAIRPERSON GIACOMINI: Annette?

17 MR. RIHERD: Yes.

18 CHAIRPERSON GIACOMINI: Jennifer?

19 MR. HALL: Yes.

20 CHAIRPERSON GIACOMINI: Wendy?

21 MS. FULWIDER: Yes.

22 CHAIRPERSON GIACOMINI: Jeff?

1 MR. MOYER: Yes.

2 CHAIRPERSON GIACOMINI: Jay?

3 MR. FELDMAN: Yes.

4 CHAIRPERSON GIACOMINI: Tina?

5 SECRETARY ELLOR: Yes.

6 CHAIRPERSON GIACOMINI: Tracy?

7 VICE-CHAIRPERSON MIEDEMA: Yes.

8 CHAIRPERSON GIACOMINI: Joe?

9 MR. SMILLIE: Yes.

10 CHAIRPERSON GIACOMINI: John?

11 MR. FOSTER: Yes.

12 CHAIRPERSON GIACOMINI: Chair

13 votes yes.

14 One absent. Was there a no?

15 Fourteen yes. Motion passes.

16 Next item, Mr. Chairman.

17 MR. DeMURI: Okay. The last group

18 are the 606 items, non-organically produced

19 agricultural products allowed as ingredients

20 in or on processed products labeled as

21 "organ." And if I've said it once, I've said

22 it a million times: These are subject to the

1 commercial availability statutes, scrutiny by
2 certifiers, but these would be agricultural
3 nonorganic ingredients that would be
4 sunseting.

5 So, they are: Casing from process
6 intestines, celery powder, chia, dillweed oil,
7 fish oil stabilized with organic ingredients
8 or only with ingredients on the National Lists
9 205, 605 and 205.606, galangal frozen,
10 gelatin, gums - water extracted only (Arabic,
11 guar, locust bean and carob bean, konjac
12 flour, lemongrass frozen, orange shellac
13 unbleached, pepper chipotle chile, kelp for
14 use only as a thickener and/or dietary
15 supplement, sweet potato starch for bean
16 thread production only, Turkish bay leaves and
17 wakame seaweed.

18 I move for the relisting of these
19 items on 205.606.

20 MR. SMILLIE: Second.

21 CHAIRPERSON GIACOMINI: Motion has
22 been and seconded to relist these items as

1 stated in the recommendation on 606.

2 Joe Smillie?

3 CHAIRPERSON GIACOMINI: Mr. Maker
4 of the motion, do you have any further debate?

5 MR. DeMURI: I do not.

6 CHAIRPERSON GIACOMINI: Further
7 debate, any questions? Jay?

8 MR. FELDMAN: This, I may not have
9 heard this, but you're including in this
10 lemongrass?

11 MR. DeMURI: Frozen.

12 MR. FELDMAN: Frozen? And I guess
13 sweet potato starch, although the whole List
14 is -- you didn't leave any off? Okay.

15 MR. DeMURI: No. They're all on
16 it.

17 MR. FELDMAN: Okay.

18 CHAIRPERSON GIACOMINI: Further
19 discussion? Jeff?

20 MR. MOYER: Yes. Steven, this
21 also has the animal casings on this list as
22 well, right?

1 MR. DeMURI: That was the first
2 one I mentioned.

3 MR. MOYER: Yes. I guess I'm going
4 back to the discussion that we had when we
5 first put that on the List. There was a lot
6 of discussion about that, and I know several
7 of us in the Livestock Committee have been
8 talking about the fact that the livestock
9 industry has grown tremendously since that was
10 first put on the list. And I'm just curious
11 why -- it would seem like there would be
12 enough to make a difference now, and I'm
13 wondering why no one's responded or put up any
14 information. And I don't know, maybe this is
15 mentioned more to the audience.

16 MR. DeMURI: Well, we do have a
17 casings guy in the audience, I believe. Is he
18 here, the one that talked to me yesterday.
19 No, I guess not. He's out playing somewhere.

20 He mentioned to me yesterday that
21 beef intestines are not suitable for sausage
22 making. They have to use hog intestines and

1 organic hog availability for intestines for
2 sausage making would not be able to supply the
3 organic sausage market. He had told me that
4 earlier when I had contacted them sometime ago
5 when we were looking at this. But he
6 reiterated that to me yesterday.

7 MR. MOYER: I guess I always feel
8 like we're in the same dilemma that we get
9 into. I mean, there's a certain amount of
10 organic hog intestine, obviously not enough to
11 satisfy the whole market. But it seems like
12 people who buy this stuff, if they can't get
13 it all, they don't want any. So now that we
14 get -- it just doesn't seem to be working the
15 way the system --

16 MR. DeMURI: The way our
17 testimonies do?

18 MR. MOYER: Yes. The way the
19 system's designed, maybe Joe.

20 MR. SMILLIE: There's probably
21 enough, but they all don't go to the same
22 slaughter house. It's a question of how much

1 processing goes on at the slaughterhouse and
2 how they have to be certified as an organic
3 slaughterhouse, have segregation. So the
4 potential to segregate hog intestine is there,
5 but the volume's not, as I understand it. And
6 the petitioner, as I understand it, at least
7 one of the petitioners was Organic Prairie,
8 not Organic Valley, but the meat division of
9 crop cooperative. And that petitioner is
10 totally, you know I would expect industry
11 being on top of the availability of organic
12 when that volume reaches a point that the
13 process could occur.

14 So, I'd fully expect once we hit
15 that number that there will be a petition
16 because it's in the interest of the organic
17 industry to do so, to make use of their
18 currently non-saleable intestines.

19 MR. FELDMAN: Well, I guess my
20 question is how do we -- and we probably can't
21 answer it here. Is how do we encourage the
22 industry to buy what's there before they go

1 somewhere -- I mean, they want it all at one
2 place, this one-stop shopping. I know that to
3 me -- but it's frustrating from my perspective
4 when I'm looking at I know there's organic
5 hogs out there and they are growing, but that
6 segment doesn't move -- hopefully in the
7 future it will.

8 MR. SMILLIE: Well, again what
9 Steve said for the millionth time, you know
10 it's like commercial availability. The
11 certifier has to be on top of making sure that
12 every year when they use -- and that's one of
13 the things that I think was asked for, one of
14 the public, is you know a database where 606
15 items that are requested are posted so that we
16 get a more transparent database of how many
17 606 items are being granted. You know, so we
18 get a good handle on that and what's
19 available.

20 I think it is definitely in the
21 financial interests of the organic hog
22 producers to get this off the List once

1 they've got their volume. But perhaps Wendy
2 could add more detail to that.

3 CHAIRPERSON GIACOMINI: Wendy?

4 MS. FULWIDER: I'm sorry, I
5 haven't worked that much on that side of it.

6 MR. SMILLIE: But when we go
7 around again, I'm sure we'll have this.

8 MS. FULWIDER: I'll make a point
9 of knowing.

10 CHAIRPERSON GIACOMINI: Jay?

11 MR. FELDMAN: Do we as a Board
12 have a good sense of how well that system is
13 working, Joe? in terms of certifiers directing
14 the organic production side toward that
15 element of the community that is producing
16 organic products on the 606 List?

17 MS. FULWIDER: You know, it's not
18 perfect but I think it's good. I mean, the
19 ACA, the Accredited Certification Association,
20 has got a 606 List and they are making that
21 known to their members and to other people.
22 So I think the certifiers are actively

1 reaching out to the community.

2 And again, one of the best ways,
3 and I don't want to get into all of our
4 secrets, but enforcement, you know competition
5 is a great enforcer. And if you are using
6 something organic and your competition is
7 sourcing conventional, you have a financial
8 interest into making that known to certifiers
9 and to the Program.

10 And so through the complaint
11 process, through again the active outreach of
12 ACA on the 606 List. But competitors are
13 driving that, Jay.

14 And I think it functions pretty
15 well. We've seen a lot of things. So we saw
16 it, and we just went through it. You missed
17 the wonderful lessons and the debates, which
18 hopefully we won't return to, but we had some
19 really classic examples of some of the
20 industry using organic lecithin and some of
21 them not using it. And that drove us to
22 remove lecithin from the thing.

1 So it's not perfect, but I think
2 it is working. I think that the commercial
3 availability rules are getting better and
4 better understood. And as we are now in the
5 age of enforcement, I think that it will only
6 improve.

7 I would also like to see that
8 database for all the -- I don't want to call
9 them exceptions because that's the wrong word.
10 But for all the 606 conventional materials
11 that are allowed be posted so it becomes even
12 more transparent.

13 MR. McEVoy: From the Program's
14 perspective, I would say that ACAs and
15 certified operations are doing a great job at
16 using organic seeds and using organic when
17 available. And ACAs are doing a great job at
18 doing their best to be consistent in terms of
19 how they evaluate the firm's efforts around
20 commercial availability. There's certainly
21 room for improvement. We're planning on
22 clarifying requirements for certifiers to

1 determine commercial availability on seeds to
2 implement the NOSB recommendations in draft
3 guidance this summer. But I think it's a
4 challenging area to be consistent through all
5 the certifiers and all the certified
6 operations worldwide. But I think that there
7 are very good efforts going on and also room
8 for improvement.

9 CHAIRPERSON GIACOMINI: Thank you.

10 Further discussion?

11 Yes, Steve, I would have totally
12 been behind dropping the casings from the List
13 today. I very much appreciate your statement
14 on the need for the hog casings. I don't
15 think that there's any question that this is
16 probably the least mature of all the major
17 livestock industries that we have developing
18 an organic. I would just ask you to very much
19 keep track of the ANPR Notice of Public
20 Comment and see if there's much at all there,
21 new information of any significance, to
22 justify reviewing this one.

1 MR. SMILLIE: Yes. As a Committee
2 we will be looking at all public comments that
3 come in between now and May 25th on all these
4 items that we've voted on today. So we'll
5 keep an eye on that.

6 CHAIRPERSON GIACOMINI: Thank you.
7 Further debate? Ready for the
8 question?

9 Conflicts? Seeing none.
10 Katrina?

11 MS. HEINZE: Yes.

12 CHAIRPERSON GIACOMINI: Joe
13 Dickson?

14 MR. DICKSON: Yes.

15 CHAIRPERSON GIACOMINI: Barry?

16 MR. FLAMM: Yes.

17 CHAIRPERSON GIACOMINI: Annette?

18 MR. RIHERD: Yes.

19 CHAIRPERSON GIACOMINI: Jennifer?

20 MR. HALL: Yes.

21 CHAIRPERSON GIACOMINI: Wendy?

22 MS. FULWIDER: Yes.

1 CHAIRPERSON GIACOMINI: Jeff?

2 MR. MOYER: Yes.

3 CHAIRPERSON GIACOMINI: Jay?

4 MR. FELDMAN: Yes.

5 CHAIRPERSON GIACOMINI: Tina?

6 SECRETARY ELLOR: Yes.

7 CHAIRPERSON GIACOMINI: Tracy?

8 VICE-CHAIRPERSON MIEDEMA: Yes.

9 CHAIRPERSON GIACOMINI: Joe

10 Smillie?

11 MR. SMILLIE: Yes.

12 CHAIRPERSON GIACOMINI: John?

13 MR. FOSTER: Yes.

14 CHAIRPERSON GIACOMINI: Steve?

15 MR. DeMURI: Yes.

16 CHAIRPERSON GIACOMINI: Chair

17 votes yes.

18 One absent, zero no, 14 yes.

19 Motion passes.

20 Okay. Does that complete your

21 work, Mr. Chairman?

22 MR. DeMURI: We are done.

1 CHAIRPERSON GIACOMINI: Okay. We
2 are slightly ahead of schedule. We have a
3 little bit of work that we have to do within
4 one Committee before we bring that information
5 up for a final vote. And so we're going to
6 slightly change and take our break now. We're
7 slightly ahead. Not bad. Slightly ahead.

8 So let's go 11:25 to bring it back
9 to order.

10 Lunch will be when we fit in,
11 closer to 12:30 after the meals arrive.

12 (Whereupon, the above-entitled
13 matter went off the record at 11:10 a.m. and
14 resumed at 11:25 a.m.)

15 CHAIRPERSON GIACOMINI: Okay.
16 Thank you.

17 We had a slight extended break.
18 We are way ahead of schedule and we had plans
19 of things that we need to do as Board business
20 relevant to some of these recommendations at
21 the break. So as far ahead in the schedule we
22 are, we're going to be moving some people so

1 that they were missing the breaks that we were
2 planning to work on those information. So
3 that was the cause for coming back a little
4 bit late.

5 Let's see, we have one bit of
6 business to backtrack on. Annette? I mean
7 Wendy.

8 Sorry Annette.

9 I was going to ask for a ChapStick
10 demonstration, but we'll just move on with
11 Wendy.

12 MS. FULWIDER: Yes. I need to
13 change my vote on the 606 to an abstain
14 because of connection to Organic Prairie. I
15 was unaware of their petition.

16 CHAIRPERSON GIACOMINI: Recused.
17 I think the fact that you were unaware that
18 the company that you fairly recently started
19 working for only the last couple of years was
20 the petitioner of this substance reveals how
21 close you are to it and how much it effects
22 your life. We probably would not have

1 requested that, but because of the nature of
2 the way this has folded out, we appreciate
3 your voluntary action on that matter.

4 MR. SMILLIE: Five Our Fathers and
5 two Hail Mary's.

6 CHAIRPERSON GIACOMINI: You've
7 just brought religion into government, Joe.

8 Okay. We now have that vote on
9 606 as zero no, 13 yes, one absent and one
10 refusal.

11 We are now moving on to something
12 that is on the agenda 2:00, folks. We are
13 doing amazingly well. Yes, we do have to go
14 back on methionine. But we can make it feel
15 like we're ahead. Okay.

16 The Joint Materials and Handling
17 Committee, Katrina Chairperson.

18 MS. HEINZE: Thank you, Mr.
19 Chairman.

20 CHAIRPERSON GIACOMINI: One
21 second. This is actually a joint Committee.
22 It actually has Co-Chairs. Steve is also the

1 Chairman on this. But through this
2 classification process issues, Katrina is
3 generally. But it does actually have two
4 Chairs. I don't want to shortchange Steve's
5 participation, addition and level of authority
6 with that Committee.

7 MS. HEINZE: Thank you.

8 I've been informed that sometimes
9 I'm a little bit quiet. So if that's the case
10 if someone on the Board could just wave at me
11 and I will reposition my microphone.

12 Okay. I'm not going to go through
13 everything that I summarized yesterday, but
14 obviously we'd be happy to have discussion on
15 that.

16 What I did want to do is update
17 the Board on updates to the document that we
18 noted on this morning. So, Valerie, if you
19 could scroll down to section IV, the Rule
20 Change.

21 So yesterday there was some
22 discussion about whether the changes that we

1 recommended in November and tweaking with this
2 addendum, whether they could be done through
3 a guidance document or whether rule change was
4 required. There was some preference by some
5 on the Board that if we could do it through
6 guidance, that would be more flexible and
7 certainly more timely.

8 So working with the Program, we've
9 approved a change to this Rule Change
10 language. So now this document is coming out
11 of Committee with nine yes votes, two no
12 votes, no absent.

13 Our previous document said that we
14 asked the NOP to begin the process of rule
15 change and know that they would prioritize it
16 as appropriate. The new language says: "In
17 our November recommendation we asked the NOP
18 to begin the process for rule change when they
19 received recommendation from the NOSB." With
20 this addendum we are instead asking the NOP to
21 begin the process of reviewing this
22 recommendation for the purpose of facilitating

1 a relevant rule change and/or developing the
2 industry guidance. Where possible we would
3 like this recommendation to be implemented in
4 industry guidance for some period of time
5 prior to rule change.

6 The NOSB asks that the NOP
7 provides feedback to the NOSB regarding its
8 review and works collaboratively with its
9 numbers to address any areas of concern. We
10 asked the NOP to prioritize the review of in
11 response to this recommendation so that
12 increased consistency and classification of
13 materials can be implemented quickly.

14 So in conversations with Arthur,
15 really the intent, if this addendum passes, is
16 if they will take this and our November
17 recommendation, they will take it back for
18 review, identify any areas of regulatory
19 concern, identify where there may be a need
20 for more immediate rule change and then work
21 with us as we develop the guidance document.

22 So it will really be a

1 collaborative process to bring the changes
2 that we recommended into place for the
3 industry. They understand that our preference
4 would be the guidance document because of the
5 flexibility that that allows us. So this
6 language, I think, captures that.

7 Then I just wanted to highlight a
8 couple of other things in the addendum so
9 you're fully aware of what you're voting on.

10 Valerie, on section III right
11 above this. the last sentence. There you go.

12 I just wanted to highlight for
13 everyone that we have requested that the NOP
14 continue to be aware of the public and NOSB's
15 desire to explore this topic, this topic being
16 the applicability of commercial availability
17 to 605.

18 So then finally, Valerie, if you
19 could just look at the chemical change
20 definition, which is above. There you go.

21 Oh, unfortunately it's on 2 pages. Maybe put
22 in some spaces or something so it ends up.

1 Bravo. Okay.

2 So everything I just mentioned is
3 really procedural, how we want to go forward.
4 This is really the key change that you'll be
5 voting on.

6 So in November the Board passed a
7 definition of chemical change which says "An
8 occurrence whereby the identity of a substance
9 is modified, such that the resulting substance
10 possesses a different distinct identity (see
11 related definition of "substance").

12 And you know just to summarize,
13 there's considerable public comment that that
14 went too far with regards to agricultural
15 products. So after all the debate in public
16 comment that I summarized yesterday, the Joint
17 Committee is recommending the addition of the
18 underlined language which reads: "Allowed
19 processing, as defined in ^U205.2 of
20 agricultural products using materials allowed
21 on the applicable section of the National
22 List, that is: ^U205.601 for crops, ^U205.603

1 for livestock and ^U205.606 for handling does
2 not result in chemical change as it applies to
3 classification of materials."

4 So with that, I move that the
5 Board accepts this document as an amendment to
6 the November recommendation.

7 VICE-CHAIRPERSON MIEDEMA: Second.

8 MR. SMILLIE: Second.

9 MS. HEINZE: Questions,
10 discussion?

11 CHAIRPERSON GIACOMINI: Yes.
12 Questions and discussion? Properly been moved
13 and seconded of this document from the Joint
14 Materials and Handling Committee. That was
15 Katrina's motion and Tracy's second.

16 Madam Maker of the motion, do you
17 have any further discussion?

18 MS. HEINZE: No.

19 CHAIRPERSON GIACOMINI: Further
20 debate? Jay?

21 MR. FELDMAN: I've already told
22 you this, Katrina. Thank you for all your

1 work on this. It's been an extraordinary
2 effort. Very fair, open. And you've really
3 sought out everybody's opinion in putting this
4 stuff together. But, so none of this is a
5 surprise to you and I just want to get this
6 out there so people are clear on where I'm
7 coming from on this.

8 This is a scenario I see, and I
9 don't want to mischaracterize it. But I hope
10 we have agreement on what's happening here
11 from a practical standpoint. We're approving
12 a synthetic as part of our listing process
13 that we're approving their list, and then we
14 use that synthetic to make another material
15 that we then call non-synthetic. And that's
16 the process we're engaged in here.

17 I understand what part of the
18 community wants to do that. I think it at the
19 end of the day is going to be a problem for
20 the Board and the organic community. I would
21 prefer if we could have taken an approach that
22 would have recognized its synthetic nature of

1 the material we've approved or are considering
2 and recognize, as we have to date, that these
3 materials are necessary, essential and
4 important to organic under the guidelines that
5 we have embraced.

6 And so I think we're at a
7 crossroads that we're not wanting to put more
8 synthetics on the List wanting to be able to
9 point to materials as being non-synthetic even
10 though they may have synthetic components to
11 them. And that is not the road that we should
12 follow I don't believe at this time.

13 Now as you know, Katrina, part of
14 my concern as well as the underlying document
15 the past November on the issue and the
16 challenge of defining significant versus
17 insignificant. And I think having been then -
18 --yes I'll refer to it as another rabbit
19 hole but I think I should have characterized
20 it as a rat hole. Having been down that rat
21 hole on numerous pesticides on the
22 conventional side as to what is an allowable

1 level that represents a reasonable exposure or
2 a reasonable certainty of no harm, or de
3 minimis risk, there are never really good
4 answers.

5 So it is my hope that at some
6 point we can return to the statute here and
7 really recognize that we are about process, we
8 are governed by a process-driven law and we
9 should seek to identify those materials that
10 we believe are necessary and essential to that
11 process, and live up, own them, embrace them,
12 explain to the public why we think they're
13 necessary and essential. And then take
14 whatever heat comes from that process. But
15 recognize that to do otherwise takes us into
16 a realm of exposure patterns, sensitivities
17 among the consuming public, ecological fate
18 issues, health outcomes around issues around
19 endocrine disrupting chemicals for which we
20 have not yet established an acceptable level
21 of exposure and for which we're seeing no
22 longer classical toxicology having impact on

1 significance, such as dose makes the poison.

2 And a dose response code that is linear.

3 We're now seeing inverted use
4 where we see nonlinear exposure responses to
5 synthetic chemicals. You've heard about the
6 hermaphroditic frogs, you've heard about the
7 impacts at very low levels of exposures to
8 synthetic materials for which we have no
9 testing.

10 Now, I'm not saying that is
11 relevant or irrelevant to the kinds of low
12 level exposure to synthetics we're talking in
13 the context of this effort. But we just don't
14 know and we want to precautionary. So we want
15 to ensure that when we do allow synthetic, we
16 have subjected it to the most thorough review
17 even at minuscule and so called insignificant
18 levels.

19 And I know everybody wants to do
20 that and balance that against what we view as
21 a burdensome process. And I don't think we've
22 yet found that balance in this definition. I

1 think we're avoiding something.

2 And last point. We're looking to
3 organic to be leading the curve on these sorts
4 of issues. Leading the curve rather than
5 pointing to definitions in FDA and EPA and
6 other institutions that have expressly taken
7 a different viewpoint this question of process
8 driven. They are risk-mitigation driven. It's
9 a totally different realm. And to point to
10 those statutes and to those other venues
11 really does a disservice to those who have
12 embraced the organic concept.

13 Again, a tremendous effort.
14 Really, I mean that sincerely and I think that
15 some day we'll find the balance here. But I
16 don't think this is it. Thank you.

17 MS. HEINZE: Thank you. I
18 certainly do respect your opinion. Although,
19 I respectfully disagree with one point that
20 you made, which is that we are at a
21 crossroads.

22 We very studiously in our November

1 recommendation worked to classify materials as
2 they have traditionally and historically been
3 classified by previous Boards and by our
4 certifiers. So the definition that we passed
5 in November effects very, very few materials
6 with regards to how their classified.

7 So I do not believe this is a
8 crossroads for organic, or changes how we've
9 historically behaved. That was the November
10 recommendation.

11 So what I want to emphasize is we
12 are not voting on the first sentence. All we
13 are voting is the second sentence which
14 corrects an intended consequence that our
15 November vote had with regards to
16 classification of very large numbers of
17 agricultural products.

18 So just for everyone else. I
19 know, Jay, that that won't change how you're
20 feeling about it. But I just want to be clear
21 that folks know what they're voting on. We're
22 not voting on November.

1 The other thing is, I think your
2 comments on significant and insignificant are
3 very valuable and are going to be critical to
4 our discussions on that topic as we write up
5 that document. And I'm very grateful to have
6 your expertise on that. It will be a
7 challenge. I know we've gotten a lot of
8 public comment, but that is work still ahead
9 of us, and also not being voted on today.

10 CHAIRPERSON GIACOMINI: Joe?

11 MR. SMILLIE: Well, there's two
12 issues we can talk about. We can talk about
13 this document and the specifics of this
14 document, or we can color that discussion with
15 our philosophical differences. And some of
16 the comments you made, Jay, are putting this
17 document in the context of following the path
18 of the conventional industry. I don't believe
19 that's accurate.

20 I believe that we are process-
21 driven, and that's one of our beauties. And
22 I believe we are finding the balance. I think

1 that this document is actually living proof of
2 the search for that balance.

3 And I also think that it's a
4 philosophical difference that's been playing
5 out for the last -- well, since I can
6 remember. And it's that same, we keep coming
7 to the same point. Is the point to change
8 agricultural in the United States to make
9 organic profitable so that we can get farmers
10 to convert or is the point to create the
11 purest food possible? And we always are
12 trying to find the difference between those
13 two.

14 I believe that this Board, the
15 entire history of this Board has been
16 searching for, you know, the Buddhist middle
17 way on this. And it's an ongoing exercise.
18 It's never going to end. And I believe that
19 this document is a process-driven document
20 where as what you would be proposing would be
21 the endless petition process for anything that
22 could possibly be considered synthetic --

1 CHAIRPERSON GIACOMINI: I think
2 the impact of what he's proposing would be
3 subject to how it was applied for this
4 Committee. I think that would be way down the
5 road. I'd like to kind of -- let's see if we
6 can bring the discussion back specifically to
7 this document.

8 MR. SMILLIE: I started my remarks
9 by saying we can go down two roads on this
10 discussion. And Katrina stuck to the
11 document. I just want to point out that Jay
12 made it into a bigger context, and I'm simply
13 not -- I respectfully retreat back to the
14 specific comments that relate to the document.

15 CHAIRPERSON GIACOMINI: We've
16 allowed Jay's --

17 MR. SMILLIE: That's right,
18 soapbox.

19 CHAIRPERSON GIACOMINI: We've
20 allowed Jay's philosophy, we've allowed Joe's
21 counter-philosophy. Both of those would have
22 been more appropriate yesterday in the

1 Committee discussion. Today we are looking at
2 the discussion for any amendments and changes
3 to this document as it has been presented by
4 the Joint Committee and the vote by the Board
5 on that document.

6 MR. SMILLIE: I concur.

7 CHAIRPERSON GIACOMINI: Any
8 further statements, questions relevant to this
9 document and its implications, application not
10 to the alternatives? John?

11 MR. FOSTER: So this is a very
12 complicated situation. And I've admired the
13 previous work on it tremendous. A lot of ins,
14 a lot of outs, a lot of what have yous.

15 At the risk of clouding Katrina's
16 very clear statement, my point is my hat the
17 changes here don't exist in isolation. They
18 exist in a context that has pretty firm
19 footing in the industry, I think, and is
20 relatively noncontroversial.

21 I think the language here does two
22 things. One, it makes our definition

1 consistent across multiple applications. And
2 I think that's good because it's based in what
3 exists in reality and is independent really
4 from philosophical opinion, I believe.

5 It's a little bit counter to other
6 comment. I think we're always at a crossroads
7 everyday. And so the fact that we might here
8 today is no different than any other day. I
9 think everyday is a crossroads in a relatively
10 young industry.

11 I'll leave it there. Thanks.

12 CHAIRPERSON GIACOMINI: Barry?

13 MR. FLAMM: Question. Katrina,
14 could you for my benefit simply say what
15 problem this addition is intended to solve
16 that the original definition created, please?

17 MS. HEINZE: It's simple as I used
18 the example that I used yesterday, which is
19 that if you take a wheat kernel and you toast
20 it under the definition of chemical change as
21 it stands from November, that wheat kernel
22 once toasted is now synthetic. That's a very

1 simplistic example, and I get that. There are
2 a myriad of other agricultural products that
3 we have a similar effect. And it's maybe less
4 simplistic is any 95 percent certified organic
5 product that has as an ingredient a 605(b)
6 item and is nixed could be a certified organic
7 synthetic.

8 You could take two agricultural
9 imports and mix them together and have
10 chemical, and that's chemical change. And
11 that would be synthetic. And that was not our
12 intention.

13 And we heard very clearly from our
14 public that they thought that was way too far
15 and very inconsistent with how we have the
16 classified the materials in the past.

17 MR. FLAMM: I have had --

18 MS. HEINZE: Hold on just a
19 second. Does that answer your question,
20 Barry?

21 MR. FLAMM: What effect does it
22 have on crops in the field? There's where

1 I'm--

2 MS. HEINZE: I am, as everyone in
3 this room knows, not a crops person. And I
4 haven't asked him to do this, but I'm
5 wondering, John, would you be able to address
6 that better than I can?

7 CHAIRPERSON GIACOMINI: Or the
8 Corps Committee, Tina or Jeff, or anyone.

9 MS. HEINZE: I think I can do this
10 one, John, if you're not comfortable.

11 MR. FOSTER: No, I'm fine. I just
12 wanted Dan to okay it.

13 CHAIRPERSON GIACOMINI: I think we
14 should send it to the Crops Committee first.
15 We'll come to you if they're not responding.

16 The question is the impact of this
17 Listing, this potential amendment on crops in
18 the fields? Tina?

19 SECRETARY ELLOR: It would have an
20 impact on inputs, if I have that right. It
21 would have a impact on inputs to crops on the
22 field. Not directly to the crops themselves,

1 but to the inputs on the crops. Is that okay?

2 MR. FLAMM: But what?

3 MS. HEINZE: I guess what I would
4 add, but only for synthetics that have been
5 reviewed by this Board as allowed for crops.
6 So it's not like you could use a 605 input. It
7 would only be crops inputs.

8 MR. FLAMM: But does it make a
9 difference? I guess this change does it make
10 a difference to the inputs to crops in the
11 field on how -

12 SECRETARY ELLOR: It would have an
13 impact in that in the determination of what's
14 applied to crops. So in the determination of
15 whether something is synthetic or not
16 synthetic according to whether a chemical
17 change has or has not taken place. And I
18 guess -- you know, it's just in determining
19 what's synthetic and not synthetic to be
20 applied to crops, that's where it would have
21 an impact.

22 CHAIRPERSON GIACOMINI: Okay.

1 MS. HEINZE: Although I am unaware
2 in public comment of an example that it would
3 apply to. But again, I'm not a crops expert.

4 CHAIRPERSON GIACOMINI: Okay.
5 This is the Chair taking their term.

6 In the November document one of
7 the -- and we all come from our -- we're
8 victimized by our experience and a big part of
9 my experience is livestock.

10 In the November document one of
11 the things we did was eliminate the step for
12 agricultural products to become nonsynthetic
13 before becoming synthetic.

14 In the definition that we had at
15 that time it was viewed that the mechanism of
16 that change was too liberal and that it would
17 create too many synthetics. We have now
18 changed that to decrease the number of
19 synthetics created in this step.

20 Now processing in 205(2) cooking,
21 baking, curing, heating, drying, mixing,
22 grinding, churning, separator, extracting,

1 slaughtering, cutting, fermenting, distilling,
2 preserving, dehydrating, freezing, chilling or
3 otherwise manufacturing blah, blah, blah.

4 Okay.

5 If you're taking out a product and
6 you use an allowed synthetic on 601 in crops,
7 603 in livestock, 605/606 in handling it would
8 not create a synthetic. That's a lot of
9 stuff. We've really cut back on the number of
10 things that are becoming synthetic now.

11 Have we gone too far the other
12 way?

13 MS. HEINZE: My understanding is
14 that this definition much more -- I don't have
15 the right verb. Much better matches the
16 current practice. So it is from a principle
17 that has guided our work for the last two
18 years on this, because that we did not want to
19 cause the mass reclassification of materials.

20 CHAIRPERSON GIACOMINI:
21 Absolutely.

22 MS. HEINZE: We were trying to

1 come up with definitions that matched the
2 current matched the current practice in the
3 industry to aid in consistency. We're not
4 trying to change, and have no intention of
5 changing how people are doing it. It's just
6 about consistency.

7 So my belief and the majority of
8 the Committee's belief is that this does a
9 better job of that.

10 CHAIRPERSON GIACOMINI: Thank you.

11 Jay?

12 MR. FELDMAN: I was trying to
13 address Barry's issue. You know, first of
14 all, I think I have to agree with the comments
15 that we got that most of our discussion was
16 processing-centric. So in that context, where
17 we're talking about materials that essentially
18 become ingredients in the processing world.
19 And if those materials are developed with an
20 agricultural material and a nonsynthetic
21 material, nonagricultural material, in our
22 view as we discussed it in the Committee, in

1 our view that if you applied to normal
2 practices of heating, baking, churning all
3 those things Dan mentioned in the definition,
4 that you wouldn't by definition end up with a
5 synthetic product.

6 The problem was when you say that
7 an organic product for which we have allowed,
8 this is an agricultural commodity, say, or it
9 could even be an allowed synthetic under
10 605(b), but once you take that allowed
11 synthetic material and mix it with all that
12 other nonsynthetic stuff that we understand to
13 be nonsynthetic by virtue of the fact that we
14 call it an agricultural commodity or we call
15 it a nonsynthetic nonagricultural commodity;
16 that when you mix in that admittedly
17 acceptable synthetic material that we have
18 approved, that somehow we can ignore the fact
19 that that ingredient we're creating, not that
20 overall product. I'm not talking about calling
21 macaroni and cheese produced with grain
22 products, we're not calling that a synthetic

1 product. We're calling that a processed food
2 that it contains different ingredients.

3 We're talking about creating a
4 material. Creating an ingredient essentially
5 by putting in some agreed upon 605(b)
6 synthetic and not calling that a synthetic
7 ingredient. It's not logical.

8 And I understand why we want to do
9 that because we've approved that ingredient.
10 We believe it's not harmful. We believe it's
11 acceptable. And I concur with all that. But we
12 can't logically not call it synthetic because
13 we have done something to that product, either
14 by adding it or by virtue of changing some
15 chemical bonds; we've done something to that
16 ingredient that now makes it synthetic.

17 I mean, I don't know how much
18 that's going to change the list. I guess you
19 have a better feel for that than I do. But I
20 think that we have to, again, own up to what's
21 happening here and then just deal with the
22 consequences.

1 MS. HEINZE: In many cases --
2 actually in probably most cases that would be
3 certified organic ingredient. So the objection
4 that the public had was to certified organic
5 synthetic.

6 MR. FELDMAN: I'm sorry. Say that
7 again. A certified --

8 MS. HEINZE: Certified organic
9 corn and I -- this is one that Katrina's made
10 up. And I -- okay, how about this? This is
11 relevant to this week.

12 I take my certified organic grapes
13 and I add sulphur dioxide to them, and I have
14 certified made with organic grape synthetic
15 wine.

16 MR. FELDMAN: No. No. What you
17 have if you create an ingredient, you're
18 creating a material. We're not talking about
19 a product, we're talking about a material that
20 would be added to wine, is that material, the
21 sulfites synthetic. The product can still be
22 based on the percentage 95/6, 70/30 can still

1 be classified as an organic product that has
2 a synthetic ingredient.

3 MS. HEINZE: And in fact last
4 November going into our deliberations the
5 Committee agreed with you.

6 MR. FELDMAN: Yes.

7 MS. HEINZE: Which is why we
8 didn't have the second sentence.

9 MR. FELDMAN: Right.

10 MS. HEINZE: The public disagreed.

11 CHAIRPERSON GIACOMINI: John.

12 MR. FOSTER: I haven't been
13 successful in making my point, apparently,
14 that I think this does the opposite. I think
15 this makes it more consistent.

16 We have the one example I've used
17 before is bread. We recognize bread is not
18 synthetic, even though we've added synthetics
19 to it and we've baked it, we all accept, and
20 I've embarrassed myself more than once making
21 the point that wine is wine even though it has
22 sulphur dioxide; bread is bread even though it

1 has synthetics in it, leavening agents in it.

2 And my hope was that this made
3 things, the definition of what is synthetic or
4 not, more consistent across ingredients and
5 inputs. If at a later time, this is what I
6 was trying to get at with the difference
7 between definitions and sensibilities. If our
8 sensibilities are such that we want to change
9 what's allowed in organic, that's one thing.
10 But I think what this does is make the
11 determination about what's synthetic more
12 consistent. And I think more consistent with
13 what we all think of right now with what's
14 okay to put in our mouths; wines, bread, for
15 example, cheese, many, many things. We
16 recognize those things as being nonconsistent.
17 And if we discovered that wine was a fantastic
18 fungal control agent or better fertilizer
19 which would make a lot of people in this room
20 rally happy, I think, that wine would be
21 allowed as a fertilizer as is because it's
22 non-synthetic.

1 So my point is -- my thought is
2 that we already do this. We've already said
3 if there's a synthetic on the National List
4 and we take an egg product, add something on
5 the list, use it if approved practices as
6 defined in 205(2) that product is not
7 synthetic. And that is a definition -- that's
8 the difference between the definition versus
9 the allowability.

10 So I think I see this as just kind
11 of codifying that and allowing wine to be used
12 as a fertilizer if we find it works. And I
13 would be thrilled with that, actually.

14 CHAIRPERSON GIACOMINI: I think we
15 have beaten this section of this pretty well.
16 I would certainly if there's any new
17 consideration from this part of it, but there
18 are some other issues in the document that I
19 would like us to get to if there is any
20 discussion on.

21 MS. HEINZE: Can I just wrap up?

22 CHAIRPERSON GIACOMINI: Yes.

1 MS. HEINZE: I appreciate, Jay,
2 Berry you guys asking the questions and
3 helping bring the conversations we've had for
4 two years to light.

5 It is my personal opinion that
6 this is the very best that we can do at this
7 point and that industry asked us 3« years ago
8 to do something, and our time has come. And
9 it is time to give this to the Program, give
10 them a chance to chew on it, to work with us
11 and to get this out there to industry to use.

12 And, like someone so elegantly
13 said, the matter of classification for the
14 National Organic Program will never really be
15 done, it just needs to be done right now.

16 CHAIRPERSON GIACOMINI: Further
17 debate any other of the other issues in the
18 document?

19 MR. FELDMAN: Can I just ask one
20 more question of you, Katrina? You know, in
21 the crops community we've been dealing a lot
22 with extraction, extraction of elements with

1 the synthetic process. Can you envision a day
2 when where we're be sitting in the Crops
3 Committee and will be told that you've got an
4 agricultural product all natural, we've
5 extracted the portion of that that we want.
6 You know, it could even be an enzyme, a
7 bacteria or whatever it is through some
8 process. It has not left any residues in the
9 final product, and therefore we want you to
10 classify this as a nonsynthetic. Could you
11 envision that day? Would it change what we're
12 doing in our Committee work presently? And
13 how do we control that down the road, or do we
14 need to?

15 MS. HEINZE: It looks like, Tina,
16 do you have a comment on that?

17 SECRETARY ELLOR: We do that now.
18 There's lot of extracts used as botanical
19 controls, essential oils; those things are
20 extracted.

21 MR. FELDMAN: Right.

22 SECRETARY ELLOR: So I think we do

1 that now.

2 MR. FELDMAN: Right.

3 SECRETARY ELLOR: Right.

4 MR. FELDMAN: So I'm asking what
5 the effect of this classification would be
6 where we're told you can extract, chelate,
7 whatever you do and not result in it being a
8 significant residue or having a synthetic
9 component either because that is on the
10 acceptable List as an acceptable synthetic or
11 somehow it's determined that the residues
12 remaining are de minimis or insignificant?

13 MS. HEINZE: So I understand your
14 question, the addition of this sentence I do
15 believe, I'll one of the Committee members
16 speak if they want, doesn't change that. It's
17 the first sentence.

18 MR. FELDMAN: Okay.

19 MS. HEINZE: So in an extraction
20 if you use -- because this happens today.
21 Botanical pesticides are extracted with
22 hexana, as I understand.

1 MR. FELDMAN: Right. Yes.

2 MS. HEINZE: There is no chemical
3 change. There's no change in identity. That
4 first sentence. And there is, as currently
5 understood, no significant residue of the
6 hexane. Adding this sentence so what's being
7 voted on today is not affected, or does not
8 affect that.

9 MR. FELDMAN: So I'm referring to
10 the November decision. Okay.

11 MS. HEINZE: Right. Yes.

12 MR. FELDMAN: Thank you.

13 CHAIRPERSON GIACOMINI: Also, Jay,
14 there's a place for everything on Handling.
15 There's essentially a place for everything in
16 crops. The biggest impact on this is on
17 livestock feed of what has changed. I mean,
18 I don't want to get into this whole
19 discussion.

20 MR. FELDMAN: Right.

21 CHAIRPERSON GIACOMINI: We've had
22 it. But an agricultural product is it changed

1 to a nonsynthetic? Well, we don't do that
2 anymore. Does it go all the way to synthetic?
3 Then it would need to be on the list. If it
4 doesn't go all the way to synthetic, it's
5 required by statute or by the regulation that
6 it had to be organic. And that is the place
7 where this whole discussion I believe has the
8 biggest impact. Because everywhere else,
9 wherever it falls, there's a place to put it.

10 If it falls a certain place on the
11 livestock side and it's something that goes in
12 the cow's mouth, there's no place to put it
13 depending on where it falls.

14 MS. HEINZE: And then if you
15 remember yesterday I asked the Livestock
16 Committee to look at that in more detail --

17 MR. FELDMAN: Right.

18 MS. HEINZE: -- and see if they
19 wanted to make recommendation to address
20 that.

21 CHAIRPERSON GIACOMINI: Ready for
22 the question? All right. On the motion to

1 accept the recommendation from the Joint
2 Materials and Handling Committee as presented.

3 Joe?

4 MR. DICKSON: Yes.

5 CHAIRPERSON GIACOMINI: Barry?

6 MR. FLAMM: I hope you're right.

7 I vote yes.

8 CHAIRPERSON GIACOMINI: Annette?

9 MR. RIHERD: Yes.

10 CHAIRPERSON GIACOMINI: Was that
11 yes?

12 MR. RIHERD: Yes.

13 CHAIRPERSON GIACOMINI: Okay.

14 Jennifer?

15 MR. HALL: No.

16 CHAIRPERSON GIACOMINI: Wendy?

17 MS. FULWIDER: Yes.

18 CHAIRPERSON GIACOMINI: Jeff?

19 MR. MOYER: Yes.

20 CHAIRPERSON GIACOMINI: Jay?

21 MR. FELDMAN: No.

22 CHAIRPERSON GIACOMINI: Tina?

1 SECRETARY ELLOR: Yes.

2 CHAIRPERSON GIACOMINI: Tracy?

3 VICE-CHAIRPERSON MIEDEMA: Yes.

4 CHAIRPERSON GIACOMINI: Joe

5 Smillie?

6 MR. SMILLIE: Yes.

7 CHAIRPERSON GIACOMINI: John

8 Foster?

9 MR. FOSTER: Yes.

10 CHAIRPERSON GIACOMINI: Steve?

11 MR. DeMURI: Yes.

12 CHAIRPERSON GIACOMINI: Katrina?

13 MS. HEINZE: Yes.

14 CHAIRPERSON GIACOMINI: No

15 conflicts on this. This is a classification.

16 Everybody lives and dies on this. Nobody's

17 getting out of this one.

18 On the entire document as it was

19 done yesterday for the Chair.

20 One absent, two no's, 13 yes.

21 Motion passes.

22 MR. MOYER: Twelve and two.

1 CHAIRPERSON GIACOMINI: Sorry.

2 Okay.

3 Does that conclude the work of --

4 MS. HEINZE: It does. I am very
5 grateful for such a fabulous discussion. I
6 think future Boards will benefit from having
7 all that in the transcript, and I really
8 appreciate it.

9 So thank you.

10 That concludes the work of the
11 Joint Materials and Handling Committee.

12 CHAIRPERSON GIACOMINI: Somehow
13 I've lost my pages here.

14 Okay. We're at 12:15. We have
15 one CAC. Do we have a lunch in. Lunch is in?
16 Have the lunches arrived? We're not sure.

17 We're going to go with the CAC.
18 We already said.

19 Go, Joe.

20 MR. SMILLIE: We're not ready?

21 CHAIRPERSON GIACOMINI: You're not
22 ready?

1 MR. SMILLIE: Well, I'm ready.

2 The document being presented is
3 Guidelines for the Use of Inert Atmospheric
4 Gases With Products Labeled and Sold As 100%
5 Organic.

6 Just a couple of things. In
7 struggling to find the FDA information on
8 this, it isn't under packaging aids, although
9 it is referred to as packaging aids in the FDA
10 CFR. It's under -- oh, gee. I forgot it
11 again. Steve? Oxygen displacement. So that's
12 where the information on the use of these
13 materials as approved by FDA can be found.
14 Again, it's one of the FDA rabbit holes. Not
15 that it affects things, but that information
16 is there on how the FDA considers it.

17 So we're not changing the document
18 whatsoever. The changes that were made
19 yesterday stay the same, but the backup
20 information is available.

21 I'd like to move that the NOSB
22 accept the document, Guidelines for the Use of

1 Inert Atmospheric Gases With Products Labeled
2 and Sold As 100% Organic

3 VICE-CHAIRPERSON MIEDEMA: I
4 second.

5 CHAIRPERSON GIACOMINI: It's been
6 made and seconded to accept the recommendation
7 from the CAC on 100% label with use of inert
8 atmospheric gas.

9 Maker of the motion, do you have
10 any further debate on this?

11 MR. SMILLIE: Nope.

12 CHAIRPERSON GIACOMINI: Any other
13 debate, comments or questions?

14 I have one clarification that I'd
15 like to ask. Does the use of the term being
16 "oxygen displacement" change the potential
17 answer that we've discussed yesterday with the
18 carrot juice?

19 MR. SMILLIE: Thank you. I
20 believe it does. I believe it does. Because,
21 again, it's complicated. Our recommendation
22 is to regard it as a packaging aid, not a

1 processing aid; that stays as our
2 recommendation. But the fact that the FDA
3 calls it is effect is not as a packaging aid,
4 it's effect is oxygen displacement would lead
5 me to change the opinion that I gave on the
6 spur of the moment to Steve that during the
7 processing of the carrot juice at an
8 intermediate period, this inert gas was used
9 as oxygen displacement would take it out, once
10 again, from the processing equation and hence,
11 I think it would be allowed.

12 Again, to be fair to the negative
13 commentator, this does add a layer -- pun
14 intended -- of complexity to the decision
15 making process. But nonetheless, I would
16 change my opinion I gave Steve yesterday based
17 on the information data in FDA.

18 CHAIRPERSON GIACOMINI: And I
19 think it's always important to remember that
20 the Program holds final authority on
21 interpretation. But it is important that with
22 the proper language and the intent of this

1 Board being on the public record, I felt that
2 that was something I wanted to add.

3 MR. SMILLIE: I thank you for
4 that. I think you that, Mr. Chair.

5 CHAIRPERSON GIACOMINI: John?

6 MR. FOSTER: I'm quite confident
7 that ACAs would consider this a processing aid
8 if it was used in the application that Steve
9 brought up yesterday. It fits the definition
10 quite well. I mean, I don't know how a
11 certifier could call it anything other than a
12 processing aid in the context that Steve
13 brought it up.

14 MR. SMILLIE: But not in the
15 context of the flush at the end of processing.

16 MR. FOSTER: Okay. Regardless. I
17 mean, I'm as you know --

18 CHAIRPERSON GIACOMINI: You're
19 expressing an difference of opinion and the
20 opinion as the opinion of the Board then, from
21 what Joe just stated?

22 MR. FOSTER: I don't know that.

1 If you say, I'll accept it.

2 CHAIRPERSON GIACOMINI: Okay.

3 CHAIRPERSON GIACOMINI: But my
4 point being that it would be a processing aid
5 out of the context of a processing plant. And
6 that it's something different in a bottle and
7 a jar with a cap as opposed to a tank with
8 valve is odd to me.

9 CHAIRPERSON GIACOMINI: Okay.

10 Jeff?

11 MR. MOYER: I guess my question,
12 Joe, I see a difference between the two. And
13 I was inclined to originally consider this as
14 a packaging aid, that made sense to me. But
15 what you just said infers that anywhere along
16 the processing chain if you used it for the
17 same use then it's -- so if you used it as the
18 first step in the processing, you would still
19 call that a packaging aid; and then I have a
20 problem with it. I do see differences.

21 MR. SMILLIE: You're agreeing with
22 John, what John just said?

1 MR. MOYER: Not exactly. Because
2 I think John sees the use, he doesn't care
3 where it is in the step of the process if I'm
4 reading your comment correctly, even at the
5 end in a bottle as a packaging aid, you see
6 that as being the same?

7 MR. FOSTER: No.

8 MR. MOYER: Isn't that what your
9 comment just was?

10 MR. FOSTER: I think we ought to--
11 if it's used in a tank, it's the same material
12 for the same purpose as it is in a bottle with
13 a cap. I think we ought to treat it the same
14 way. That's all I'm saying. And in a
15 processing facility it's a processing aid, so
16 it would discount the 100 percent claim on
17 anything after that point.

18 So if that carrot juice is in a
19 tank and you get the nitrogen displacement in
20 the tank, then at that moment that carrot
21 juice loses its ability to be labeled a 100
22 percent anywhere else down the chain.

1 So the assumption is is that
2 process had not been used in the tank in the
3 processing facility, in the case of being
4 allowed 100 percent claim in the finished
5 product of this carrot juice with the nitrogen
6 flush, in that case so apparently the
7 processing plant that ended up producing the
8 finished product that Joe's talked about, a
9 bottle with a cap, you know a retail package,
10 had not used that same material in that same
11 way for the same purpose anywhere in the
12 processing facility. What I don't see a way
13 around is why you can treat a material for a
14 single use in one case, differently just
15 because it's in a bottle with a cap as
16 compared to a tank in a processing facility.
17 I don't see -- that doesn't add any clarity to
18 me. I don't understand the rational to allow
19 that inconsistency.

20 CHAIRPERSON GIACOMINI: Okay. I
21 apologize to the readers in the transcript in
22 the future not to be able to get John's hand

1 message. But to Jeff --

2 MR. FELDMAN: Interpretive dance.

3 CHAIRPERSON GIACOMINI: Yes. To
4 Jeff, does this part of the discussion of
5 whether it's one or the other effect your
6 consideration of this document, or is this
7 just something --

8 MR. MOYER: Yes. No, it does. It
9 clearly does.

10 CHAIRPERSON GIACOMINI: Okay. I'm
11 happy to continue it then. If not, and it's
12 just -- when I initially introduced the
13 question to Joe was to get -- if that change
14 in language changed his interpretation of what
15 it mean as the Board's thinking in presenting
16 this document to the program, I wanted that on
17 the record. It's obvious now that it has --
18 that the Board is undecided on that influence.
19 So I'm happy to get that on the record.

20 MR. MOYER: Yes.

21 CHAIRPERSON GIACOMINI: I think we
22 only need to continue this part of it of that

1 influence if it's going to effect your vote on
2 this document.

3 MR. MOYER: Correct. And I do
4 think it will as a point of clarification.

5 CHAIRPERSON GIACOMINI: Okay.

6 MR. MOYER: Because even though
7 the same material is used at different stages,
8 I guess I'm inclined to say if it's a
9 packaging aid, I'm approving of it. But if
10 it's used as a processing aid even though it's
11 the same material, atmospheric gases along the
12 way, then it's processing. But if you're
13 saying with this vote it's going to be allowed
14 anywhere along the chain, as it what John is
15 suggesting that they be equal, then I have a
16 problem with it.

17 MR. SMILLIE: Well once again, we
18 have the beautify and the luxury of not making
19 the regulation. We just make our
20 recommendation and the Program will determine
21 how they will deal with it and what guidance
22 they will give to certifiers if we do adopt

1 it.

2 So I believe that that issue can
3 be clarified.

4 To me processing means that you're
5 using something in a process to create
6 something. There's a reason for it. It's an
7 anti-foaming agent, it's a filtering agent;
8 it's doing something to move the process
9 forward. That's what processing aids do.
10 This doesn't do that.

11 CHAIRPERSON GIACOMINI: I think
12 this relates sort of to the diatomaceous earth
13 in grain tanks. To say that this is as
14 wondrous as the other would be like to say
15 only when you use the diatomaceous earth in
16 the last tank before it's feed to the cows
17 would cover for this, but other times it would
18 different. I don't understand that.

19 Tracy?

20 VICE-CHAIRPERSON MIEDEMA: I think
21 the argument could be made that it's a
22 processing aid right there in the bottle. It's

1 doing something. It's keeping the oil fresher
2 longer. In a drum it's keeping the carrot
3 juice fresher longer.

4 The recommendation as we put it
5 forth attempts to make some more fairness,
6 creates some more fairness. The risk is that
7 it creates inconsistency. So we're kind of
8 taking making a decision of more fairness,
9 less consistency, I believe, by voting yes on
10 this document. And I don't think it's a very
11 powerful argument to say that there's no
12 processing function.

13 And I think it's a problem to
14 start introducing more layers of certification
15 and more terms. We haven't explored all the
16 other types of packaging aids, even though we
17 would be introducing the term.

18 CHAIRPERSON GIACOMINI: Steve?

19 MR. DeMURI: I forget the
20 Committee's feeling on some wording change in
21 this.

22 Instead of calling a packaging

1 age, call it an oxygen displacer. Wherever
2 packaging aid shows up in your document, refer
3 to it as an oxygen displacement gas.

4 CHAIRPERSON GIACOMINI: Would you
5 like to present that in the form of a motion?

6 MR. DeMURI: I would like to make
7 a motion for a friendly amendment.

8 CHAIRPERSON GIACOMINI: To make
9 the motion to change --

10 MR. DeMURI: To change the
11 language in the recommendation from "packaging
12 aid" to "oxygen displacement" anywhere in the
13 process.

14 CHAIRPERSON GIACOMINI: Joe,
15 Tracy, would you accept that as a friendly
16 amendment?

17 MR. SMILLIE: I do.

18 VICE-CHAIRPERSON MIEDEMA: I do
19 too. And I think it --

20 CHAIRPERSON GIACOMINI: Just yes
21 or no right now.

22 VICE-CHAIRPERSON MIEDEMA: Okay.

1 Yes, and may I have a turn?

2 CHAIRPERSON GIACOMINI: Yes. It's
3 been accepted as a friendly amendment to
4 change the language in this recommendation
5 from wherever it says "processing aid" --

6 MR. SMILLIE: Packaging aid.

7 CHAIRPERSON GIACOMINI: "packaging
8 aid" to "oxygen displacer."

9 Steve, maker of the motion, do you
10 have any further debate?

11 MR. DeMURI: No.

12 CHAIRPERSON GIACOMINI: Tracy?

13 VICE-CHAIRPERSON MIEDEMA: I think
14 that's a pretty nice elegant solution and
15 would keep us from having to decide between
16 the fairness and the consistency. So I'd vote
17 for that.

18 CHAIRPERSON GIACOMINI: Jay?

19 MR. FELDMAN: Okay. Yesterday, we
20 questioned what materials we were talking
21 about. And I'm trying to use this handy dandy
22 thing to figure out on the web what we're

1 actually talking about.

2 So what I come up with, and
3 Katrina you may be able to correct me, is that
4 the inert atmospheric gases include helium,
5 neon, argon, krypton, xenon, radon -- it
6 sounds like Superman's involved with this one.
7 But I don't know -- I'm not sure about
8 nitrogen in that context. And if you just
9 define it as inert, whether you're going to
10 capture nitrogen, which is one of the
11 materials I understand you want to get to.

12 MR. SMILLIE: It's the main
13 material.

14 MR. FELDMAN: Yes. But you've
15 researched that apparently. I mean, you came
16 up with inert as including that, right?

17 MR. SMILLIE: I've never seen any
18 reference otherwise that N2 isn't an inert
19 gas.

20 MR. FELDMAN: Okay. I guess when
21 you're strictly talking about the elemental
22 table, it may not be there, but maybe in the

1 trade it's referred to as inert. I don't know.

2 MS. HEINZE: I cannot help. I'm
3 sorry.

4 MR. FELDMAN: Okay.

5 CHAIRPERSON GIACOMINI: I know
6 there are strict terminology in -- I
7 understand. There's strict terminology in
8 chemistry for the use of this term. There's
9 also use strict terminology in chemistry for
10 the use of the term "organic." And we've
11 slightly modified from that one.

12 I think whether the N₂ form is
13 reactive or not is the pertinent information
14 here. And I think the intent of the document
15 is very clear, and I would hope that the
16 Program would evaluate the list to make sure
17 that whatever is listed there, is not a
18 nonreactive atmospheric gas and take any
19 guidance or rulemaking appropriately.

20 Is that reasonableness?

21 MR. FELDMAN: Yes.

22 CHAIRPERSON GIACOMINI: So -- Jay?

1 MR. FELDMAN: One more question.

2 Can you give me an example? Maybe you did,
3 John, and I just missed it, where in the
4 processing would this oxygen replacement as
5 opposed to packaging as the layperson
6 understands packaging, where in processing,
7 what would you use it?

8 MR. SMILLIE: Well until
9 yesterday, my understanding as that it was the
10 final cap fill.

11 MR. FELDMAN: Right.

12 MR. SMILLIE: That's where it's
13 mostly used, that's what we are talking about.
14 I hadn't realized that it was used during the
15 processing -- I got to be careful here. It
16 wasn't used during the process. But
17 apparently it is. And for the same exact
18 reason; to prevent rancidity and not to change
19 anything.

20 MR. FELDMAN: Right.

21 MR. SMILLIE: Just to keep what
22 you got.

1 MR. FELDMAN: Okay.

2 MR. SMILLIE: Without having it
3 react. And in the bigger picture of things,
4 Jay, you know there's a lot of packaging
5 materials that we allow that we're starting to
6 find out do react.

7 MR. FELDMAN: Right.

8 MR. SMILLIE: And this doesn't.

9 MR. FELDMAN: Right.

10 MR. SMILLIE: So we're allowing
11 more things, to go back to back to your
12 philosophic dictum, this is just a much better
13 solution. And then you've got the food safety
14 aspect that the sole purpose is to prevent
15 rancidity.

16 CHAIRPERSON GIACOMINI: Steve?

17 MR. DeMURI: Yes, Joe pretty said
18 what I was going to say.

19 Its used quite often in tanks to
20 push the oxygen out and put a nitrogen blanket
21 on top of the product, just on top. There'd
22 be an interface there. But just on top of the

1 tank to keep oxidation from occurring before
2 that juice, for instance, goes further into
3 the process. It might sit in a tank for two
4 or three hours, so you don't want oxidation to
5 occur during that period of time.

6 CHAIRPERSON GIACOMINI: John?

7 MR. FOSTER: In terms of full
8 disclosure I should note we do a product,
9 Earthbound does where we use nitrogen flush in
10 the finished packaging actually for the
11 purposes of displacing of oxygen. And we do
12 that.

13 MR. SMILLIE: But you're not
14 making a 100 percent claim.

15 MR. FOSTER: That is correct.

16 CHAIRPERSON GIACOMINI: This is
17 affecting the 100 percent claim.

18 MR. FOSTER: Yes. Okay. I wanted
19 to make it clear that --

20 CHAIRPERSON GIACOMINI: You're
21 reminding me of conflict of interest.

22 MR. SMILLIE: So you're not

1 getting off on recusal on this one, John.

2 MR. FOSTER: I wanted to make
3 clear that despite the fact that we use it and
4 may in fact at some point in the future be
5 able to benefit from making a 100 percent
6 claim, we would choose not to.

7 CHAIRPERSON GIACOMINI: Jeff.

8 MR. MOYER: I have a question, I'm
9 not sure who it's for. But --

10 MR. SMILLIE: Well, I'll take it.

11 MR. MOYER: Thank you.

12 Last night sitting in the
13 restaurant I learned a little trick from Dan
14 that by -- yes, I talk more than I more
15 learn.

16 MR. SMILLIE: Too much
17 information.

18 MR. MOYER: That if you blow
19 through a straw into a glass of wine and put
20 CO2 into it, you can change --

21 MR. SMILLIE: The taste?

22 MR. MOYER: The -- completely the

1 flavor and the texture of that wine.

2 MR. SMILLIE: Correct. Yes.

3 That's CO₂.

4 MR. MOYER: I got you. But are
5 there opportunities where inert atmospheric
6 gases would be infused into a product that
7 would somehow change it if --

8 MR. SMILLIE: The answer almost a
9 100 percent, and Steve might know more, is no.
10 if you put it in, it comes up. That's what it
11 does. It's consistent behavior, nonreacting
12 consistent behavior, as far as I know.

13 MR. MOYER: So bubbling through
14 and infusing in there --

15 MR. SMILLIE: It wouldn't matter.
16 Actually if you would allow me the indulgence,
17 I would like --

18 MR. MOYER: And I apologize. It's
19 an area of expertise of which --

20 MR. SMILLIE: But we need an
21 answer. I'd like to ask Gwen to come to the
22 mic to clarify it. If you don't mind.

1 CHAIRPERSON GIACOMINI: Yes, Gwen?

2 MS. WYARD: Gwendolyn Wyard.

3 CHAIRPERSON GIACOMINI: I'm
4 accused of having great control, but sometimes
5 I'm getting around it. That's okay. Go
6 ahead.

7 MS. WYARD: So this might be some
8 useful information, and it does sound like
9 hair splitting, but there is a distinction
10 that Oregon Tilth makes. And we make this
11 distinction because we're trying to hang our
12 hats on the word "processing aid." And the
13 requirement in the regulation that you have to
14 have an organic processing aid in order to
15 label something 100 percent. We're trying to
16 prevent going down the rabbit of hole at what
17 point along the process whether you're using
18 a sanitizer in the field that might knock
19 something out of the 100 percent category, to
20 something that you're using post-harvest
21 handling and something that you're using
22 during processing. We want to make a

1 distinction. We want it to be a processing
2 aid.

3 So when it comes to the use of
4 nitrogen under 834.1520 the ingredient is used
5 as a propellant aerating agent in gas as
6 defined in 173.025. Now pointing out it just
7 referred to it as an ingredient, however it
8 will do that throughout the regulation. The
9 point here is that 170.3025 describes the
10 technical functional effect of oxygen
11 displacement versus 21 CFR 173.24 that
12 describes the technical functional effect of
13 processing aids.

14 So the FDA makes a distinction
15 between an oxygen displacer and a processing
16 aid. And it doesn't matter whether you're
17 using it during processing or during
18 packaging. In fact, that definition of
19 processing includes packaging.

20 So whether you're flushing a tank
21 or whether you're adding it to a bag, the
22 technical functional effect is oxygen

1 displacement. And that could be in the case
2 whether it's going to be aerating or
3 propelling, or displacing oxygen; it's all
4 under that 170.3025 different than the
5 technical effect of processing aid.

6 So that's a distinction that we
7 make.

8 MR. SMILLIE: Could you speak to
9 the other issue? Does it react if you bubble
10 it through --

11 MS. WYARD: Blowing -- bubbling
12 into a line? I did that last night.

13 MR. SMILLIE: It's only 70 percent
14 nitrogen, though.

15 MS. WYARD: Right. So what the
16 question there again?

17 MR. SMILLIE: If you bubble into a
18 solution will it react differently?

19 MS. WYARD: No. Nitrogen
20 wouldn't.

21 MR. SMILLIE: Then would if you
22 lay it out?

1 MS. WYARD: Right. Versus carbon
2 dioxide or --

3 MR. SMILLIE: Right.

4 MS. WYARD: Right, but nitrogen
5 would not.

6 MR. SMILLIE: It doesn't react?

7 MS. WYARD: Would not react.

8 MR. SMILLIE: Thank you.

9 MR. MOYER: Thank you. That was
10 very helpful for me.

11 CHAIRPERSON GIACOMINI: Oh boy.
12 Oxygen displacement, Joe or Steve, whichever
13 of you, the oxygen displacement issue I was
14 pretty comfortable with. But when Gwen then
15 reads the rest of that, I think super loading
16 that to use as a propellant is an entirely
17 different issue. Would that be part of this
18 document?

19 MR. DeMURI: No.

20 CHAIRPERSON GIACOMINI: Thank you.
21 Thank you.

22 Is that clear to the Program that

1 it wouldn't be? Thank you.

2 Further debate?

3 MR. SMILLIE: I'm not sure how to
4 proceed now. Because there are some place --

5 CHAIRPERSON GIACOMINI: We'll take
6 the vote, that's the best way to proceed.

7 MR. SMILLIE: Yes, I know that.
8 But I want to be clear. I don't want to --
9 you know. There may have to be some
10 wordsmithing because if you do a direct
11 replacement, it creates some non-English
12 sentences in there. It doesn't change the
13 intent of the document. But there has to be
14 some minor wordsmithing when you change from
15 packaging aid to oxygen displacement. But I
16 do not believe it affects the document. It
17 doesn't affect the intent of the document
18 whatsoever.

19 CHAIRPERSON GIACOMINI: Was it
20 "displacement," or "displacer?"

21 MR. SMILLIE: Well that's what I
22 mean. It will depend on the context of the

1 sentence.

2 CHAIRPERSON GIACOMINI: Right.

3 Right. I think the appropriate one is valid.

4 MR. SMILLIE: Thank you. Just want
5 to be clear.

6 CHAIRPERSON GIACOMINI: Ready for
7 the question?

8 CHAIRPERSON GIACOMINI: Barry?

9 MR. FLAMM: Yes.

10 CHAIRPERSON GIACOMINI: Annette?

11 MR. RIHERD: Yes.

12 CHAIRPERSON GIACOMINI: Jennifer?

13 MR. HALL: Yes.

14 CHAIRPERSON GIACOMINI: Wendy?

15 MS. FULWIDER: Yes.

16 CHAIRPERSON GIACOMINI: Conflicts
17 of interest outside of John's statement?

18 MR. SMILLIE: I do not believe I
19 have a conflict of interest. We rule on this
20 everyday, but I have no interest in nitrogen
21 gas sales or -- but we have to rule on that.

22 CHAIRPERSON GIACOMINI: Thank you.

1 The Chair does not view that as a conflict.

2 MR. SMILLIE: Thank you.

3 CHAIRPERSON GIACOMINI: We're
4 getting to far down the page to follow my
5 line.

6 Jeff?

7 MR. MOYER: Yes.

8 CHAIRPERSON GIACOMINI: Jay?

9 MR. FELDMAN: Yes

10 CHAIRPERSON GIACOMINI: Tina?

11 SECRETARY ELLOR: Yes.

12 CHAIRPERSON GIACOMINI: Tracy?

13 VICE-CHAIRPERSON MIEDEMA: Yes.

14 CHAIRPERSON GIACOMINI: Joe

15 Smillie?

16 MR. SMILLIE: Yes.

17 CHAIRPERSON GIACOMINI: John

18 Foster?

19 MR. FOSTER: Have you determined
20 whether or not I have a conflict of interest?

21 CHAIRPERSON GIACOMINI: You're
22 allowed to vote.

1 MR. FOSTER: No.

2 CHAIRPERSON GIACOMINI: Steve?

3 MR. DeMURI: Yes.

4 CHAIRPERSON GIACOMINI: Katrina?

5 MS. HEINZE: Yes.

6 CHAIRPERSON GIACOMINI: Joe

7 Dickson?

8 MR. DICKSON: Yes.

9 CHAIRPERSON GIACOMINI: Chair

10 votes yes.

11 One absent, one no, 13 yes.

12 Motion passes.

13 We are at 12:40. We're looking
14 for a lunch break. 1:40 -- 1:45 back for
15 after lunch.

16 (Whereupon, at 12:44 p.m. the
17 meeting was adjourned, to reconvene this same
18 day at 1:57 p.m.)

19

20

21

22

1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 1:57 p.m.

3 CHAIRPERSON GIACOMINI: Jay are
4 you ready? The rest of the Board all
5 completed our lunchtime. We're a little late,
6 but we're fairly well ahead of schedule, and
7 hopefully that will continue.

8 Valerie, are you ready? Okay.
9 All the sound?

10 We had the motion earlier to table
11 the discussion on methionine until after lunch
12 for the makers of all the various motion to
13 get the language together for the amendment to
14 the main motion. So, Jay, could you please
15 read the agreed upon language to amend the
16 main motion?

17 MR. FELDMAN: Yes. Thank you.

18 We're really only adding a
19 sentence or a portion of a sentence that would
20 affect the expiration of the --

21 CHAIRPERSON GIACOMINI: Let's just
22 start by reading it.

1 MR. FELDMAN: I'm reading the last
2 sentence here.

3 CHAIRPERSON GIACOMINI: Okay.

4 MR. FELDMAN: On October 1, 2015,
5 allowed uses of the synthetic methionine in
6 organic poultry production expires.

7 CHAIRPERSON GIACOMINI: Yes. And
8 that's agreed to by the second. Thank you.

9 So that has been properly moved
10 and seconded?

11 MR. FELDMAN: Yes.

12 CHAIRPERSON GIACOMINI: This is
13 the language. This is where we tabled, this
14 is where we're coming to with the exact
15 language that they're looking for.

16 Jay, please, proceed with any
17 debate.

18 MR. FELDMAN: Yes. Again, just to
19 review quickly. The point of this was to make
20 sure that everybody understands the
21 seriousness of this issue and it's tacked onto
22 the original motion because the step down

1 process is one that the Board would be
2 endorsing. It's just at the end of that step
3 down process this amendment would require
4 those that feel its continued use is essential
5 and necessary, would have to repetition to
6 retain that use.

7 My feeling is that this sends a
8 stronger message than putting it into the
9 Sunset process. And, hopefully, will
10 contribute to the ability to do more research,
11 generate more interest to support research
12 that would help facilitate the transition to
13 another source of methionine or other
14 practices that might help in this regard.

15 Thank you. That's all I have to
16 say.

17 CHAIRPERSON GIACOMINI: Thank you.
18 Jeff?

19 MR. MOYER: Just to try and
20 represent the Livestock Committee's
21 perspective, and the reason that we had chosen
22 in our original recommendation to not have an

1 expiration date on methionine was because we
2 had already gone through a process where we've
3 had two, if not three, expiration dates on
4 this material and each time the Methionine
5 Task Force has repetitioned to the Committee
6 and to this Board to have it reinstated on the
7 List.

8 The Livestock Committee felt by
9 taking the drastic step down measure that down
10 and putting it into the Sunset process still
11 enables us to review the material every five
12 years, but frees up the slate of work on the
13 Livestock Committee to move on to other items.
14 Because this continuously keeps coming up and
15 I can almost guarantee you that you will see
16 a petition in before the Livestock Committee
17 that sits at that point, we'll see a petition
18 to reinstate again and again. And our goal is
19 to move beyond that. Not that we didn't think
20 research was important. We think we're
21 sending a fairly strong message with the
22 drastic step down that we already gave them.

1 That was kind of our position from
2 the Livestock Committee.

3 CHAIRPERSON GIACOMINI: John?

4 MR. FOSTER: I think the Livestock
5 Committee's work has been really good, really
6 strong. I think they did the hard work and
7 continue to do it.

8 I also think that the participants
9 in the Methionine Task Force and associates
10 have already shown very clearly that they get
11 this is an important thing and have made as
12 significant movement in research and ponying
13 up money as much more than any other interest
14 group out there. I think they clearly
15 understand this already.

16 And I think for those two reasons,
17 I think the original Livestock Committee's
18 recommendation I think is good.

19 CHAIRPERSON GIACOMINI: Jeff?

20 MR. MOYER: Point of clarification
21 for the Board, Dan. A no vote on this
22 particular amended language would send it back

1 to the original recommendation of the
2 Livestock Committee, and we would vote on
3 that, is that correct?

4 CHAIRPERSON GIACOMINI: Yes. This
5 is to amend the motion.

6 MR. MOYER: But if we vote yes on
7 this the Livestock Committee's is a dead
8 issue? And this is what we would be
9 accepting?

10 CHAIRPERSON GIACOMINI: No. We
11 would then vote on this as the amended motion.

12 MR. MOYER: Right.

13 CHAIRPERSON GIACOMINI: So first
14 we vote to amend the motion. If that fails,
15 we vote on the original motion. If that
16 passes, we vote on the amended motion.

17 MR. MOYER: I gotcha.

18 CHAIRPERSON GIACOMINI: We're
19 going to have two votes either way.

20 MR. MOYER: Thank you very much
21 for that clarification.

22 CHAIRPERSON GIACOMINI: Katrina?

1 MS. HEINZE: I'm having a dej... vu
2 moment. I'm vaguely remembering that perhaps
3 my first or second meeting we had this
4 conversation as the result of a petition to
5 methionine because their cut off date was
6 coming. And there were some who wanted to --
7 we had the same debate: Should we put it into
8 Sunset or should we have a cut off date. And
9 there were some Board members who felt we had
10 to have the cut off date to be able to
11 communicate to future Boards the concern.

12 Am I imagining things or am I
13 correct?

14 MR. MOYER: I don't know if you're
15 imagining things, but in this particular point
16 you are correct.

17 MS. HEINZE: Thank you.

18 CHAIRPERSON GIACOMINI: Yes. As
19 I've stated before when we originally -- an
20 early draft of this recommendation had one
21 more step down period, which was the full
22 intent of, for lack of a better word, pinching

1 the industry to really go after and initiate
2 all possible avenues to that research. We
3 could not find a scientific justification for
4 the numbers we picked, so we backed up one, we
5 settled on these numbers with the one step
6 down. We had a number of public comments from
7 one side of the issue wanting the finding to
8 be completely off. We had a number of
9 comments from the other side issue requesting
10 us to transfer the young chickens in the step
11 down to the larger amount of methionine.
12 Because of all the debate requesting that
13 methionine come off, we decided to stay with
14 this recommendation and not agree to the
15 request from the poultry community to move the
16 young chickens.

17 In my mind the effect of that is
18 essentially that it's going to continue to
19 spur that research because some of that
20 community is right now saying they'll have an
21 extremely, extremely hard time if possible to
22 achieve it.

1 So I think the demand for pushing
2 for research will continue. And it was a
3 great desire of the Program, the Livestock
4 Committee and a large part of the public over
5 three times in my time of being on this Board,
6 I believe, to please get this onto Sunset so
7 we don't have to be continuing to deal with
8 the petition process.

9 Jay?

10 MR. FELDMAN: All this amendment
11 does is gives the ability of future Boards to
12 address the annotation issue. It ensures the
13 ability to address the annotation issue.

14 If the Sunset process doesn't
15 change and we go with the original amendment,
16 then the Board does not have the authority to
17 change the annotation, as we all know, unless
18 we can encourage someone to petition, which is
19 somewhat of an artificial process. Because,
20 you know, here we already have something
21 that's controversial. The Committee in its
22 wisdom has created a step down process that

1 the industry seems to think is probably
2 viable. But there are still unknowns
3 associated with that

4 The controversy on the chemical
5 has not gone away. All this amendment does is
6 ensure that we as a Board, as we vote on this
7 thing, guarantees us the opportunity to
8 address the annotation process, or address the
9 annotation. No other process guarantees us
10 that opportunity because we cannot as a Board
11 be ensured that anybody would petition or we
12 would artificially ask someone to petition who
13 would, or might or might or not. You know we
14 just have no control over that.

15 So this is a guarantee on a
16 chemical that's controversial. It's an
17 attempt to compromise among those who think
18 this a bad idea to institutionalize and others
19 who recognize they don't want to be disruptive
20 to the industry, but want to help to
21 facilitate a transition, this is an attempt to
22 create a middle ground so that there's some

1 assurance and guarantee to future Boards that
2 they will have the opportunity to do what you
3 all did on the Committee, and that is craft an
4 annotation that reflects your best sense of
5 what needs to be done as of today.

6 Thanks.

7 CHAIRPERSON GIACOMINI: Tracy?

8 VICE-CHAIRPERSON MIEDEMA: Mr.
9 Chair, I'd like to call a question on this
10 amendment.

11 CHAIRPERSON GIACOMINI: Any
12 further debate? Tina?

13 SECRETARY ELLOR: I still feel
14 like the original Livestock Committee
15 recommendation is the best of all worlds, and
16 this is why. It puts it into straight Sunset
17 at a defined and reduce usage to spur further
18 developments of alternatives, which we know
19 are on the way. It also provides a great
20 incentive for those people who have invested
21 in these alternatives to come forward at
22 Sunset and say we don't need this anymore.

1 And I know that that's not how it
2 always works, but I think there's strong and
3 focused incentive built into this for those
4 people to come forward at Sunset. But this
5 puts into straight Sunset and off this
6 perpetual petition cycle.

7 And I'd also like to point out, I
8 love my birds. Birds aren't meant to be
9 vegetarian. And the way the office set up
10 this is sort of forcing birds to become
11 vegetarians. And methionine is important.

12 Once again, I don't want to see
13 naked chickens, absolutely not. Whether in
14 the future there will be a continued need for
15 a small anti-synthetic methionine, that is yet
16 to be determined. We know there's
17 alternatives in the development. I think that
18 the Livestock Committee recommendation is the
19 best of all worlds to forward that agenda.

20 And I'd like to go back to the
21 original.

22 Thank you.

1 CHAIRPERSON GIACOMINI: Further
2 debate? Seeing none, proceed to vote on the
3 motion to amend the motion. So the motion is
4 to accept this language.

5 I'm trying to figure out where to
6 put it. Okay.

7 So an affirmative vote accepts
8 this new language into the motion, which we
9 would then vote on that. A negative vote
10 retains the original motion and we would vote
11 on that.

12 Annette?

13 MR. RIHERD: Yes.

14 CHAIRPERSON GIACOMINI: Jennifer?

15 MR. HALL: Yes.

16 CHAIRPERSON GIACOMINI: Yes?

17 MR. HALL: Yes.

18 CHAIRPERSON GIACOMINI: Conflicts?

19 MS. FULWIDER: Organic Prairie
20 does have hen houses. I don't make money on
21 chickens.

22 CHAIRPERSON GIACOMINI: I have no

1 problem with you voting.

2 MS. FULWIDER: I would vote no.

3 CHAIRPERSON GIACOMINI: No.

4 Jay? I'm sorry. Jeff?

5 MR. MOYER: I vote no.

6 CHAIRPERSON GIACOMINI: Jay?

7 MR. FELDMAN: Yes.

8 CHAIRPERSON GIACOMINI: Tina?

9 SECRETARY ELLOR: No.

10 CHAIRPERSON GIACOMINI: Tracy?

11 VICE-CHAIRPERSON MIEDEMA: No.

12 CHAIRPERSON GIACOMINI: Joe?

13 MR. SMILLIE: No.

14 CHAIRPERSON GIACOMINI: John?

15 MR. FOSTER: No.

16 CHAIRPERSON GIACOMINI: Steve?

17 MR. DeMURI: No.

18 CHAIRPERSON GIACOMINI: Katrina?

19 MS. HEINZE: No.

20 CHAIRPERSON GIACOMINI: Joe

21 Dickson?

22 MR. DICKSON: No.

1 CHAIRPERSON GIACOMINI: Barry?

2 MR. FLAMM: Yes.

3 CHAIRPERSON GIACOMINI: No.

4 Ten no, 4 yes, 1 absent. Motion
5 fails.

6 Mr. Chairman of the Livestock
7 Committee, Acting Chairman, Jeff?

8 MR. MOYER: Yes.

9 CHAIRPERSON GIACOMINI: The debate
10 is now reopened on the existing motion. Is
11 there any further debate on the recommendation
12 from the Livestock Committee to relist
13 methionine with the step down putting it back
14 onto Sunset.

15 Joe?

16 MR. SMILLIE: Yes. There will be a
17 question. Originally the Methionine Task
18 Force came back and asked you to change the
19 number somewhat. This is the question about
20 the numbers. I just wanted to hear what your
21 reasoning for not boosting the methionine
22 levels in pullets and broilers is.

1 Differentiating it from layers and turkeys, I
2 think.

3 MR. MOYER: Okay. I'll attempt to
4 answer it, but other Livestock Committee
5 members please feel free to jump in.

6 For broilers, for example, the
7 difference would have been for the entire life
8 span of the bird because they asked for 27
9 weeks.

10 Pullets we did discuss but felt
11 that in talking to industry people in the
12 hallways and privately, that it wasn't
13 absolutely necessary.

14 To follow-up on what Jay was
15 saying, we wanted to make sure that the
16 industry certainly felt the need to pursue
17 other avenues, to work on research, and in
18 counsel with Wendy and other people on the
19 Committee felt that scientifically the birds
20 would be okay at those lower levels.

21 Our goal is to use this as a tool
22 to also help modify production practices.

1 Because we know that production practices are
2 also related directly to the bird's need for
3 methionine.

4 So we thought we struck a good
5 balance when we originally discussed this in
6 Committee. We did take into account the
7 public's comment and the comments from people
8 in the Methionine Task Force to include those
9 birds. But again, our recommendation was to
10 not accept that.

11 Is that helpful? But maybe
12 Wendy--

13 CHAIRPERSON GIACOMINI: Any other
14 Livestock Committee members?

15 MS. FULWIDER: I agree with what
16 he's saying.

17 CHAIRPERSON GIACOMINI: The reason
18 I've decided to stay with this was twofold.
19 Again, I'm a firm believer in the petition
20 process. This is now an annotation on Sunset
21 that's allowable for a petition to change the
22 annotation.

1 Number two, this brings into great
2 focus the problem that Tina just expressed
3 where, unfortunately, OFPA has created an
4 abnormal diet for poultry. And I'm hoping it
5 will give the opportunity for the Livestock
6 Committee to work with the program to explore
7 possible potential ways that that issue can be
8 addressed to meet within the need. And I
9 understand that's in OFPA, which makes it very
10 difficult. But to also, though, meet the
11 needs and demands of all of the rest of the
12 industry that would be concerned, depending on
13 how that language is written, that would be
14 concerned with any liberalization of the
15 regulation that would be ensued.

16 So that's the process I would like
17 to encourage to proceed as well.

18 Joe?

19 MR. SMILLIE: Yes. One other
20 thing. You know, the vegetarian diet is one
21 thing, and that's an important thing which in
22 my understanding is in Europe they don't have

1 that same constriction.

2 My understanding also is that
3 Canada, who we have mentioned briefly in our
4 talks as influencing us on hydroponics, have
5 no restrictions on methionine, and we have an
6 equivalency agreement with Canada. So that
7 means that American consumers can eat USDA
8 chicken that has methionine.

9 CHAIRPERSON GIACOMINI: They can
10 now.

11 MR. SMILLIE: They can now.

12 CHAIRPERSON GIACOMINI: Even in
13 our regulation.

14 MR. SMILLIE: Right.

15 CHAIRPERSON GIACOMINI: We just
16 have it --

17 MR. SMILLIE: Well, you're
18 stepping it down.

19 CHAIRPERSON GIACOMINI: Yes.

20 MR. SMILLIE: Okay. Just wanted
21 to make those two points.

22 Would the Committee, in your

1 recommendation, consider a friendly amendment
2 to split the difference and boost for broiler
3 chickens and pullets up to 2.5 pounds per ton
4 for broilers and pullets? In other words, a
5 slight boost for those two categories. Would
6 the Committee consider that as a friendly
7 amendment? I'm proposing an amendment.

8 I would propose that we move to
9 replace, after October 1st, 2012, the
10 following maximum levels per ton. Laying and
11 broiler chickens 2 pounds per tons ending
12 there, and replacing with, after October 1,
13 2012, the following maximum levels per ton:
14 Laying chickens 2 pounds per ton, the same;
15 broiler chickens and pullets 2.5 pounds per
16 ton.

17 CHAIRPERSON GIACOMINI: And
18 turkeys?

19 MR. SMILLIE: The same. That's
20 continued.

21 CHAIRPERSON GIACOMINI: Arthur?

22 MR. NEAL: Please forgive me. I'm

1 just coming back. Don't know the full history
2 on how we came to our numbers. But I want to
3 caution us all on how do we justify the
4 numbers that we've established for this
5 annotation?

6 I mean, I'm not saying that you
7 have not done it.

8 MR. MOYER: Right.

9 MR. NEAL: But even in making
10 changes to it, what's the rationale that we're
11 using to make the changes? Because it needs
12 to be documented. Because when we go to rule-
13 making, we've got to put it in the Federal
14 Register.

15 MR. MOYER: And that was going to
16 be my answer to you, Joe, that the Committee,
17 while we haven't had a chance to discuss your
18 friendly amendment here among ourselves, my
19 reaction is to say no we would not accept that
20 because it's an arbitrary number just pulled
21 out of thin air, which Arthur is just alluding
22 to. The Committee itself did do its due

1 diligence in terms of searching through the
2 industry to come up with the numbers that we
3 came up with looking at, as Dan indicated
4 yesterday, talking to feed mills, talking to
5 producers and folks who are raising chickens
6 to come to the numbers that we came with. And
7 as the Acting Chair of the Committee, I would
8 be reluctant to come up arbitrary numbers to
9 plug in today sitting here at this meeting.

10 So my answer to you is no, we
11 would not accept that friendly amendment.

12 CHAIRPERSON GIACOMINI: I would
13 respectfully disagree with your statement
14 there, Jeff, of his arbitrariness. Without
15 extensive writing in our recommendation on the
16 process of the step down, it could be easily
17 said we cut the numbers in half but we decided
18 to do more than that on broilers without
19 justifying why were doing that to broilers.

20 I don't think putting that in at
21 2.5, which is half of what the broilers are in
22 the earlier part of the recommendation, would

1 be considered anymore arbitrary than anything
2 else.

3 Tracy?

4 VICE-CHAIRPERSON MIEDEMA: Mr.
5 Chair, we need to --

6 CHAIRPERSON GIACOMINI: We had one
7 -- for the Livestock Committee comment. I'm
8 sorry.

9 VICE-CHAIRPERSON MIEDEMA: Mr.
10 Chair, we need to --

11 SECRETARY ELLOR: This is in
12 response to Joe's comment.

13 CHAIRPERSON GIACOMINI: Right.

14 SECRETARY ELLOR: I did raise my
15 hand. Honest to God I did.

16 CHAIRPERSON GIACOMINI: Okay.

17 SECRETARY ELLOR: The usage is
18 only half the concern about methionine. There
19 are other concerns around methionine besides
20 just the use of it. And that's my point.

21 MR. MOYER: Right.

22 CHAIRPERSON GIACOMINI: Tracy?

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VICE-CHAIRPERSON MIEDEMA:

Procedurally we can't ask the Livestock Committee whether they would make an amendment. This is out of Committee now and a motion before the full Board. And so any amendment proposed would be to the Board's motion. And if there is no second, then there's no amendment being discussed right now.

CHAIRPERSON GIACOMINI: Well, he asked if the Committee would accept it as a friendly amendment in making it.

MR. SMILLIE: I asked if the motioner would accept it.

CHAIRPERSON GIACOMINI: Yes.

MR. SMILLIE: And no second.

CHAIRPERSON GIACOMINI: And he said no.

MR. MOYER: And I said no.

VICE-CHAIRPERSON MIEDEMA: Okay.
Thanks.

CHAIRPERSON GIACOMINI: Valerie --

1 MR. SMILLIE: So it's off the
2 floor now, right?

3 MS. FRANCES: I do want to remind
4 the Committee that there is all the backup
5 criteria when you make your recommendation,
6 all the little checklists under each category.
7 And you don't really capture your discussion
8 well there in terms of the bases for your
9 numbers. I think it certainly is reflected in
10 your various Livestock Committee minutes and
11 all the discussion that you did have. But it
12 would, I think, would be helpful when you
13 actually submit this final document to make
14 sure you do that in here.

15 CHAIRPERSON GIACOMINI: Thank you.

16 MR. MOYER: I acknowledge that on
17 behalf of the Committee. And when we do submit
18 the final documentation we will document all
19 those numbers, the way we came to those
20 numbers.

21 MS. FRANCES: Do you have any of
22 your notes on that here that you could add it

1 into the record right now?

2 MR. MOYER: I'm going to say no.
3 I probably do, but I'm not going to spend an
4 hour finding them.

5 CHAIRPERSON GIACOMINI: Joe, would
6 you like to make that in the format of a
7 motion to amend?

8 MR. SMILLIE: Yes.

9 CHAIRPERSON GIACOMINI: Did you do
10 it in that form before, or did I just miss it?

11 MR. SMILLIE: I thought I did.

12 CHAIRPERSON GIACOMINI: You did?
13 Okay.

14 Is there a second to Joe's motion
15 to amend? Yes, unfriendly.

16 MR. SMILLIE: No.

17 CHAIRPERSON GIACOMINI: No, not
18 making it. Okay.

19 MR. SMILLIE: Just one last
20 question instead of the unfriendly amendment.

21 Isn't there a difference between
22 the methionine needs of a pullet and an layer,

1 although the pullets will become layers or
2 they'll become broilers, right? But isn't
3 there a difference in their methionine needs?

4 CHAIRPERSON GIACOMINI: Wendy?

5 MR. SMILLIE: Wendy.

6 MS. FULWIDER: Yes. Well, the
7 younger the bird is when they're growing and
8 they're feathering, there is a greater need.
9 And then, of course, after they molt, you know
10 they have a greater need when they're
11 refeathering. So, I mean, it's not a simple
12 issue.

13 MR. SMILLIE: Want it to be.
14 Okay. I'll accept it.

15 CHAIRPERSON GIACOMINI: Further
16 debate? Ready for the question?

17 To take your statement of
18 potential conflict of interest, Wendy, the
19 Chair does not feel that that justifies you
20 not to vote on this unless there's any
21 significant objection from any other members
22 of the Board. We'll proceed with that.

1 Program, Arthur?

2 MR. NEAL: Mr. Chair, just
3 thinking through the process and the time line
4 that has to be met for methionine, providing
5 the justification is going to pass the muster
6 test. I'm concerned.

7 If the recommendation is not
8 thoroughly fleshed out as to how we came up
9 with this, this annotation, which it may be,
10 our ability to explain it so the industry and
11 those who will be participating in the formal
12 public process can understand it as well as
13 OTC and whoever else has to review it
14 internally, we're probably going to have an
15 issue. That's my personal concern.

16 I think some of us on the Program
17 probably feel the same way, especially those
18 of us who have to write it.

19 And just for future references,
20 any decision -- one of the things that
21 distinguishes this Board from some other
22 organic programs across the world is that I

1 think we document our decisions such that
2 people can follow how we came to where we
3 ended. And I'll never forget in Codex one
4 time we were being challenged on a materials
5 decisions that our Board had made, and there
6 was not any documentation that they had. But
7 we did have some.

8 And so if we're going to make
9 these types of recommendations, we want to
10 make sure that how we make them can be
11 defensible when we're challenged.

12 And so I just highly recommend
13 that for future references whatever decisions
14 we make, they're thorough with respect to the
15 criteria sheets, that we have, all of the
16 information that's necessary to fill in the
17 gaps or provide it because we have to write
18 the rules based on what you all provide us.

19 CHAIRPERSON GIACOMINI: Thank you.

20 We ready for the question?

21 MR. McEVROY: I'd like to add a
22 little bit to that.

1 I've already been through the
2 federal rule-making process, well only once
3 with a major rule. And when I first got there
4 in October the idea is we were going to get
5 that Access to Pasture final rule published by
6 the end of December. It came out in mid-
7 February.

8 There are lots and lots of
9 questions, lots of economics questions that
10 come up during the review process.

11 Seeing this complicated
12 annotation, it's very different from
13 annotations in the past with this very, very
14 tight time line that we have in front of this
15 to do this before October. I definitely have
16 concerns that this going to be challenges.

17 I hope that the background that
18 you have, the justification that you have for
19 this annotation is very solid because we'll
20 probably need it as we move forward.

21 CHAIRPERSON GIACOMINI: The time
22 line of this is certainly unfortunate. We

1 requested this petition pretty much when we
2 made the previous recommendation. We received
3 it, I believe, like the last week in August,
4 a week before we were supposed to post
5 recommendations for the fall meeting. And we
6 had no time to act on it then.

7 I understand your concern. I am
8 very concerned with the potential disruption
9 to the industry. Is there a process that you
10 would recommend that we can follow? Can we
11 split this into two or what can we do right
12 now that would help you not disrupt methionine
13 in October, but maintain the intent?

14 Steve?

15 MR. DeMURI: Could we go back and
16 rebuild on the Sunset? We considered the
17 Sunset for another year or two years while
18 they have time to flesh out this petition?

19 MR. MOYER: Well, Dan, in response
20 to Steve, if we were to vote yes on this,
21 nothing does change for two years. They
22 maintain their current levels that they

1 already have through 2012. So this puts that
2 into play. We're not stepping anything down
3 at this point in time. There should be at
4 least, according to what we're saying here, no
5 disruption in the industry for a minimum of
6 two years, which is when we requested the step
7 down. But we would be able to get before our
8 final recommendation to the Program, all the
9 documentation that we used to come up with the
10 numbers that we came up.

11 The industry, of course, in that
12 two years could repetition to change that
13 annotation if there was a problem. But it
14 would not fall off in October and it would
15 disrupt the industry.

16 MR. SMILLIE: Is that true,
17 though? Aren't they going to be able to not
18 use it in October of 2010? Because this
19 petition won't be in effect yet.

20 CHAIRPERSON GIACOMINI: If it
21 doesn't get listed, it will go off the List
22 and they won't be able to use it.

1 I'll get to you, Katrina.

2 If that motion is made, Steve, we
3 have to proceed but it would not be my
4 preference until we find out the response from
5 the Program.

6 It would take extreme cooperation
7 from this Board to do what I'm thinking. But
8 there is a possibility, I think, and we would
9 ask the Program if this were appropriate also,
10 if it would be appropriate at this time that
11 we could split this into two recommendations,
12 one that can be posted to save methionine for
13 October and a second one that would put in
14 the step down and switch it over to Sunset
15 that could be advanced later on.

16 So I would like to know what the
17 Program -- if you want to make that motion, we
18 will accept it and proceed. But I would like
19 to see what the Program has to say.

20 Katrina, did you have anything?

21 MS. HEINZE: I was thinking the
22 same thing you were. If we split it with the

1 first one, have a cut off date of the October
2 1, 2012?

3 CHAIRPERSON GIACOMINI: Yes.

4 MS. HEINZE: Okay.

5 MR. McEVoy: We would recommend
6 because of the tight time frame that you split
7 this into different recommendations. And if
8 you pass both of them, we can try to do it as
9 one rule-making action. But if we start to
10 run into problems with the step down part of
11 this, we can just do that as a separate item.

12 CHAIRPERSON GIACOMINI: Okay.

13 MR. McEVoy: So that we can move
14 forward and extend the expiration date to
15 2012.

16 CHAIRPERSON GIACOMINI: Valerie,
17 are you going to be able to manage this?
18 Doing this on the -- okay.

19 Livestock Committee is that
20 reasonable to you?

21 MR. MOYER: The Livestock
22 Committee has no objection to that.

1 CHAIRPERSON GIACOMINI: Okay. I
2 think the best action would be for the
3 Livestock Committee to withdraw their current
4 motion, or the maker, who was Jeff, I believe.

5 MR. MOYER: I'm willing to
6 withdraw the motion.

7 CHAIRPERSON GIACOMINI: You're
8 just withdrawing your motion?

9 MR. FELDMAN: Yes. I'm saying I'm
10 to withdraw the motion.

11 CHAIRPERSON GIACOMINI: Second?

12 MR. MOYER: Tina.

13 CHAIRPERSON GIACOMINI: Tina
14 seconded that. Do you agree?

15 SECRETARY ELLOR: Yes. That would
16 be fine.

17 CHAIRPERSON GIACOMINI: Okay. All
18 right. Jeff, do you have a motion regarding
19 methionine that would deal with the first half
20 of this up through the period of 6 pounds per
21 ton?

22 MR. MOYER: Yes. I would like to

1 make a motion to amend 7 CFR 205.603(d)(1) as
2 follows: DL-Methionine, DL-Methionine hydroxy
3 analog and DL-Methionine hydroxy analog
4 calcium for the use only in organic poultry
5 production until October 1, 2012 at the
6 following maximum levels per ton: Synthetic
7 methionine in the food ration; Laying
8 chickens, 4 pounds per ton, broiler chickens
9 5 pounds per tons, and turkey and all other
10 poultry 6 pounds per ton.

11 CHAIRPERSON GIACOMINI: Second?

12 Is there a second.

13 SECRETARY ELLOR: Second.

14 CHAIRPERSON GIACOMINI: It's been
15 moved and seconded to amend the annotation for
16 methionine as stated. Again, the way you have
17 it in front of you in the documents to cutting
18 it off after the 6 pounds per ton for turkeys
19 and all other poultry.

20 Mr. Maker of the motion, do you
21 have any further debate?

22 MR. MOYER: I do not.

1 CHAIRPERSON GIACOMINI: Any
2 further debate? We ready for the question?

3 Beginning with Jennifer?

4 MR. HALL: No.

5 CHAIRPERSON GIACOMINI: I stand by
6 the same Chair decision regarding any conflict
7 with Wendy.

8 And does everyone understand what
9 we're voting on right now?

10 MR. SMILLIE: I beg your
11 indulgence. Could you just recalculate what
12 an affirmative means and what a negative
13 means?

14 CHAIRPERSON GIACOMINI: Affirmative
15 means that we are relisting methionine for the
16 use in poultry until October 1, 2012 at the
17 levels of 4 pounds for layers, 5 pounds for
18 broilers, 6 pounds for turkeys and all other
19 poultry.

20 Jennifer, your vote was no.

21 Wendy?

22 MS. FULWIDER: Yes.

1 CHAIRPERSON GIACOMINI: Jeff?
2 MR. MOYER: Yes.
3 CHAIRPERSON GIACOMINI: Jay?
4 MR. FELDMAN: No.
5 CHAIRPERSON GIACOMINI: Tina?
6 SECRETARY ELLOR: Yes.
7 CHAIRPERSON GIACOMINI: Tracy?
8 VICE-CHAIRPERSON MIEDEMA: Yes.
9 CHAIRPERSON GIACOMINI: Joe
10 Smillie?
11 MR. SMILLIE: Yes.
12 CHAIRPERSON GIACOMINI: John
13 Foster?
14 MR. FOSTER: Yes.
15 CHAIRPERSON GIACOMINI: Steve?
16 MR. DeMURI: Yes.
17 CHAIRPERSON GIACOMINI: Katrina?
18 MS. HEINZE: Yes.
19 CHAIRPERSON GIACOMINI: Joe
20 Dickson?
21 MR. DICKSON: Yes.
22 CHAIRPERSON GIACOMINI: Barry?

1 MR. FLAMM: No.

2 CHAIRPERSON GIACOMINI: Annette?

3 MR. RIHERD: No.

4 CHAIRPERSON GIACOMINI: Chair

5 votes yes.

6 One abstention, we have 14 voting.

7 Four nos, 10 yes, 14 vote, one absent, with 14

8 voting, it takes ten to pass. Motion passes.

9 To complete the rest of the second
10 half of that -- yes, Valerie?

11 MS. FRANCES: I only got three
12 nos. Did I miss somebody.

13 CHAIRPERSON GIACOMINI: Barry,
14 Annette, Jennifer and Jay.

15 MS. FRANCES: Okay.

16 CHAIRPERSON GIACOMINI: Jeff,
17 would you please with what we were doing
18 there, please make the second motion for this
19 process?

20 MR. MOYER: Yes, Mr. Chairman,
21 I'll do my best.

22 After October 1st, 2012 I move

1 that we amend 7 CFR 205.603(d)(1) as follows:
 2 DL-Methionine, DL-Methionine hydroxy analog
 3 and DL-Methionine hydroxy analog calcium for
 4 the use in organic poultry to be at the
 5 following levels per ton:

6 Laying and broiler chickens, 2
 7 pounds per ton, and turkey and all other
 8 poultry 3 pounds per ton.

9 CHAIRPERSON GIACOMINI: Nobody
 10 second.

11 Can I make a suggestion, Jeff?

12 MR. MOYER: That's fine.

13 CHAIRPERSON GIACOMINI: Could you
 14 please just change that motion to amend the
 15 annotation on poultry -- oh, we have to do it
 16 this way because the other one is not yet
 17 fully in place. Okay. So we have to reread
 18 the entire thing --

19 MR. MOYER: That's what I thought.

20 CHAIRPERSON GIACOMINI: -- as a
 21 full complete. Okay. Second?

22 SECRETARY ELLOR: I second.

1 CHAIRPERSON GIACOMINI: Okay. Mr.
2 Maker of the motion, any further debate? Does
3 he have any further debate? Jeff?

4 MR. MOYER: No, I do not.

5 CHAIRPERSON GIACOMINI: Steve?

6 MR. SMILLIE: Maybe it's a mute
7 point and I'm just tired and can't think
8 straight. But how is this going to affect
9 Sunset, the two petitions? Are they both
10 going to Sunset in five years?

11 CHAIRPERSON GIACOMINI: The first,
12 the one we just voted on, has a drop dead
13 date. It's in this current process we have
14 been in since methionine was put on. It would
15 need a petition to relist because of the drop
16 dead date.

17 This motion would amend that
18 annotation to drop to a lower level and put it
19 onto Sunset. The second one was Sunset.

20 Valerie, are we straight over
21 there? I think so. Good.

22 Program?

1 MR. NEAL: I'm sorry, but I missed
2 this earlier on the first vote, and I know
3 we're on the second portion of the vote. This
4 is a complexity of what we're talking about.

5 To justify the annotation by
6 October 1, 2010, it has to be a solid
7 justification. Because it's very different
8 from what's currently in the regulations.

9 If you're confident that the
10 justification is there, no snags, no people
11 are going to fly with it or be able to delete
12 it and get their questions answered, then we
13 can probably make that October date. If we
14 can't, we do run the risk of disrupting the
15 industry.

16 The one option would be to end the
17 first portion of the recommendation at the
18 date October 12, 2012, or October 1, 2011,
19 something of that nature. And work to try to
20 get the other piece, the step down in, when
21 you're comfortable with the justification if
22 you're not already comfortable with the

1 justification.

2 CHAIRPERSON GIACOMINI: The
3 amounts set in the first vote we have already
4 taken, are the exact amounts taken from the
5 petition that came from the industry with only
6 one slight change. They asked for it to be an
7 average over the life span of the bird and we
8 took that off to just be each ton that's made.
9 There was absolutely no objection from the
10 poultry industry to the first half of this
11 recommendation. The only comment that we
12 received was on the second half.

13 Is that substantive to your
14 concern?

15 MR. NEAL: It is. And I think
16 that that would probably and should be
17 sufficient if that's the case.

18 MR. McEVoy: What is involved here
19 is that you're putting in a whole bunch of new
20 information, and we'll have to justify it so
21 it's going to take longer because there's
22 going to be questions: Where did you come up

1 with these numbers? Do we have the research?
2 Is it supported by evidence by the community
3 of poultry producers? You know, do we have
4 that background to justify that. It's going
5 to slow down the process, I'll put it that
6 way, because we have to justify --

7 CHAIRPERSON GIACOMINI: We have
8 the structure place for the Methionine Task
9 Force as well. We have the --

10 MR. McEVROY: Okay. So if you have
11 all that information, then we'll use that. It
12 is going to open up more questions why you
13 putting in all these additional restrictions
14 or annotations for that given material. Since
15 we're in such a tight time frame that will
16 potentially impact our ability to get this
17 done by October. But if you have lots of good
18 information, we'll use that and we'll do the
19 best we can.

20 CHAIRPERSON GIACOMINI: Tina? She
21 called point of order.

22 SECRETARY ELLOR: Point of order.

1 We are responding to a petition from the
2 industry, that's what we're doing at this
3 meeting. So we're not -- this isn't being
4 pulled out of thin air. This is in response
5 to a petition.

6 So what we're basically doing is
7 pretty much giving them what they petitioned
8 for with that first vote.

9 With the second vote then we
10 introduce the more complicated step down
11 process.

12 CHAIRPERSON GIACOMINI: Further
13 debate on the question of the second motion?
14 Steve?

15 MR. SMILLIE: A question for the
16 Program. The people that are going to be
17 asking the questions, will they take the
18 opinion of the groups that were against this
19 into consideration as well?

20 MR. NEAL: We do have to provide
21 it. We have to provide all positions that
22 were presented on this particular petition.

1 MR. SMILLIE: So that could
2 potentially slow it up?

3 MR. NEAL: It depends on how valid
4 they are.

5 CHAIRPERSON GIACOMINI: Jeff?

6 MR. MOYER: Steve, were you
7 referencing the consumer groups that wanted it
8 dropped, is that what I'm to understand, not
9 just the industry folks?

10 MR. SMILLIE: Consumer groups.

11 MR. MOYER: Thank you.

12 CHAIRPERSON GIACOMINI: Further
13 comment? Debate, questions? We ready for the
14 question?

15 Okay. Starting out, conflicts.
16 The Chair has already voiced its opinion on
17 Wendy. Anything else?

18 Katrina?

19 MS. HEINZE: I just need to
20 clarify. So we're voting on the step down
21 with--

22 CHAIRPERSON GIACOMINI: Annotation

1 change to add the step down and convert it to
2 Sunset.

3 MS. HEINZE: Without a cut off?

4 CHAIRPERSON GIACOMINI: We are
5 voting on this entire language right now. An
6 annotation with this entire language.

7 MS. HEINZE: But there's no cut
8 off, right?

9 CHAIRPERSON GIACOMINI: Sunset.

10 MS. HEINZE: Okay. Thank you.

11 CHAIRPERSON GIACOMINI: Okay. So
12 a yes vote is to accept the motion to change
13 the annotation to this entire language.

14 Wendy?

15 MS. FULWIDER: Yes.

16 CHAIRPERSON GIACOMINI: Jeff?

17 MR. MOYER: Yes.

18 CHAIRPERSON GIACOMINI: Jay?

19 MR. FELDMAN: No.

20 CHAIRPERSON GIACOMINI: Tina?

21 SECRETARY ELLOR: Yes.

22 CHAIRPERSON GIACOMINI: Tracy?

1 VICE-CHAIRPERSON MIEDEMA: Yes.
2 CHAIRPERSON GIACOMINI: Joe
3 Smillie?
4 MR. SMILLIE: Yes.
5 CHAIRPERSON GIACOMINI: John
6 Foster?
7 MR. FOSTER: Yes.
8 CHAIRPERSON GIACOMINI: Steve?
9 MR. DeMURI: Yes.
10 CHAIRPERSON GIACOMINI: Katrina?
11 MS. HEINZE: Yes.
12 CHAIRPERSON GIACOMINI: Joe
13 Dickson?
14 MR. DICKSON: Yes.
15 CHAIRPERSON GIACOMINI: Barry?
16 MR. FLAMM: No
17 CHAIRPERSON GIACOMINI: Annette?
18 MR. RIHERD: No.
19 CHAIRPERSON GIACOMINI: Jennifer?
20 MR. HALL: No.
21 CHAIRPERSON GIACOMINI: Yes. The
22 Chair votes yes.

1 One absent, 4 no's, 10 yes.

2 Motion passes.

3 Does that conclude the matters
4 before this Board from the Livestock
5 Committee?

6 MR. MOYER: I certainly hope so.

7 CHAIRPERSON GIACOMINI: Thank you

8 MR. MOYER: And I appreciate
9 everybody's indulgence.

10 CHAIRPERSON GIACOMINI: I
11 appreciate everyone's hard work. I appreciate
12 the inputs from the Program, the efforts that
13 Valerie, obviously, has endured and
14 everybody's working concern on this.

15 And we now move to the Policy
16 Committee, Chairman Barry with your
17 recommendation for this meeting.

18 MR. FLAMM: We have a
19 recommendation on the two tier process, and
20 Steve will present that as he explained
21 yesterday.

22 MR. DeMURI: Thank you, Barry.

1 We went through this yesterday.

2 The Committee did not meet and did not make
3 any changes to it since the last time you've
4 seen it.

5 So, at this point I want to
6 explain real quick that it is a two tier
7 voting process to reinstate that process as it
8 relates to materials that are petitioned to
9 the Board to be added to the National List.

10 And as I mentioned yesterday, in
11 the past the Board used to vote twice on each
12 material whether or not is was synthetic, and
13 a yes or no vote. That practice was stopped
14 at some point. We are just putting language
15 back into the policy manual to reestablish
16 that procedure.

17 So it was unanimous in the
18 Committee. And we made no changes to what you
19 saw yesterday.

20 So with that, I'd like to move
21 that this two tier voting procedure be made a
22 part of the Policy Manual for NOSB.

1 VICE-CHAIRPERSON MIEDEMA: Second.

2 CHAIRPERSON GIACOMINI: Been moved
3 and seconded to accept the recommendation from
4 the Policy Committee regarding two tiered
5 voting.

6 Steve made the motion, Steve's
7 first. Steve, do you have anything further?

8 MR. DeMURI: I do not.

9 CHAIRPERSON GIACOMINI: Any
10 further comments and debate? Barry, do you
11 have anything? Joe?

12 MR. SMILLIE: Would the Policy
13 Committee considering referencing the new
14 document on Classification of Materials in
15 their manual?

16 CHAIRPERSON GIACOMINI: How is
17 that in regard to this motion for two tiered
18 voting?

19 MR. SMILLIE: I think it directly
20 affects --

21 CHAIRPERSON GIACOMINI: Katrina?

22 MS. HEINZE: I guess I'm not sure

1 why you're asking for this. Because this --
2 you mean just for the historical that they're
3 doing it because we have that document?

4 MR. SMILLIE: No. That they would
5 use that document now as part of the two
6 tiered voting system as a vote on whether
7 it's synthetic or not using this --

8 CHAIRPERSON GIACOMINI: That would
9 not be appropriate until it comes back to the
10 Program as --

11 MS. HEINZE: Yes.

12 CHAIRPERSON GIACOMINI: --
13 accepted.

14 MS. HEINZE: I agree.

15 MR. SMILLIE: Okay.

16 MS. HEINZE: I don't think that's
17 appropriate we have the guidance document in
18 place.

19 CHAIRPERSON GIACOMINI: Oh, I'm
20 sorry. Were you done, Katrina?

21 MS. HEINZE: Yes, thank you.

22 CHAIRPERSON GIACOMINI: Thank you.

1 Sorry.

2 MR. DeMURI: Joe, I did reference
3 the classification materials work in the
4 narrative prior to the recommendation. So it
5 is in there.

6 MR. SMILLIE: Oh, okay.

7 CHAIRPERSON GIACOMINI: Further
8 debate?

9 I can't imagine, but conflict of
10 interest? I finally remembered on one that
11 could never matter.

12 Seeing no further debate, we'll
13 call for the vote.

14 CHAIRPERSON GIACOMINI: Jeff?

15 MR. MOYER: Yes.

16 CHAIRPERSON GIACOMINI: Jay?

17 MR. FELDMAN: Yes.

18 CHAIRPERSON GIACOMINI: Tina?

19 SECRETARY ELLOR: Yes.

20 CHAIRPERSON GIACOMINI: Tracy?

21 VICE-CHAIRPERSON MIEDEMA: Yes.

22 CHAIRPERSON GIACOMINI: Joe

1 Smillie?

2 MR. SMILLIE: Yes.

3 CHAIRPERSON GIACOMINI: John?

4 MR. FOSTER: Yes.

5 CHAIRPERSON GIACOMINI: Steve?

6 MR. DeMURI: Yes.

7 CHAIRPERSON GIACOMINI: Katrina?

8 MS. HEINZE: Yes.

9 CHAIRPERSON GIACOMINI: Joe

10 Dickson?

11 MR. DICKSON: Yes.

12 CHAIRPERSON GIACOMINI: Barry?

13 MR. FLAMM: Yes.

14 CHAIRPERSON GIACOMINI: Annette?

15 MR. RIHERD: Yes.

16 CHAIRPERSON GIACOMINI: Jennifer?

17 MR. HALL: Yes.

18 CHAIRPERSON GIACOMINI: Wendy?

19 MS. FULWIDER: Yes.

20 CHAIRPERSON GIACOMINI: Chair

21 votes yes.

22 One absent, zero no, 14 yes.

1 Motion passes.

2 CHAIRPERSON GIACOMINI: Any
3 further work, Mr. Chairman from the Policy?

4 MR. FLAMM: That completes our
5 work, Mr. Chairman.

6 CHAIRPERSON GIACOMINI: That
7 completes all of the recommendations for
8 voting that we had at this meeting.

9 Well done, everyone, Public,
10 Program, Board, Valerie, the sound man,
11 everybody. Thank you.

12 MR. FLAMM: The internet guy.

13 CHAIRPERSON GIACOMINI: Even
14 without the internet.

15 Next on the agenda, one request I
16 think we would like to make, though, is
17 regarding particularly the second vote that we
18 took on the methionine is for the Program to
19 stay in touch with us and to give us feedback
20 as quickly as possible on whether that ship
21 could be sailing or whether we're having an
22 extreme crash and burn. So that the industry

1 and this Board would be aware of it and be
2 able to deal with that.

3 We only gave that until 2012. If
4 the next step is not going to go through, that
5 is putting the industry again in a petition
6 position of an extremely compromising nature.

7 MR. McEVoy: We will keep you
8 informed through monthly report and other
9 ways.

10 CHAIRPERSON GIACOMINI: Thank you.

11 Okay. We are now up to the point
12 and time of the meeting for the Committee Work
13 Plans.

14 If the Committee Chairman would
15 please get their work plans ready. The
16 practice of the Board is for each Committee to
17 put forth the expected work plan for the next
18 meeting. And we would like to do that at this
19 time.

20 First on the list is, in the order
21 we've going for this meeting, first is Crops
22 with Tina?

1 SECRETARY ELLOR: Yes. We have
2 work, and we plan to do it. We have a lot of
3 work and we did in our last Crops Committee
4 meeting briefly go over a work plan.

5 So in addition to the remaining
6 2012 Sunsets, which we have on our work plan
7 for the fall, and in a perfect world we would
8 get all of that done in the fall. We have
9 some petitions we have some comments on. So
10 for petitioning material that we need to act
11 on, we have ethylene glycol, tetramethyl,
12 polycaprolactone. For that we had a draft TR
13 received and we sent it back with additional
14 questions.

15 Tall oils, actually I think that
16 we found TR to be sufficient and we can start
17 to look at that material.

18 Ethylene DDA, difluoroethane we've
19 sent forward for a TR.

20 PGML, propylene glycol
21 monolaurate. We have sent that one forward
22 for a TR.

1 Ferric phosphate to remove. We'll
2 be acting on that petition. And petitions to
3 remove do take priority, so we fully expect to
4 have that ready for the fall. We have tons of
5 information on that.

6 Indole-3butyric acid. We still
7 have not yet received that petition. We
8 received the checklist, but we still don't
9 have that petition in our hand. So that's
10 where we stand on that one.

11 Corn steep liquor, we've talked a
12 lot about that. We found the TR to be
13 insufficient, and we have additional questions
14 to send forward for that. Although they might
15 have already answered those questions, you
16 know, that is a possibility.

17 We have received a petition for
18 nickel which we will review for sufficiency
19 and decide whether we want to send it for TR.
20 And the same for ammonium nonanoate, if I said
21 that correctly.

22 I've already mentioned the Sunset

1 materials.

2 And boy, that's pretty much it.
3 It's an awful lot, but that's what I have
4 unless anyone can remind me of other things.

5 CHAIRPERSON GIACOMINI: Nothing
6 for your spare time?

7 SECRETARY ELLOR: We might take
8 on, who knows, food safety, mushroom
9 standards. You just never know.

10 CHAIRPERSON GIACOMINI: Okay. So
11 those are potentials: Food safety and
12 mushrooms standards. Thank you. Having them
13 on your list and not getting to them, it may
14 be better than not listing them and doing it.

15 SECRETARY ELLOR: Yes. It takes a
16 long time to scroll down to get to those.

17 CHAIRPERSON GIACOMINI: Okay.
18 Livestock Committee. Jeff has been acting as
19 Chair. We'll have you proceed.

20 MR. MOYER: Thank you, Mr.
21 Chairman.

22 The workplan for the Livestock

1 Committee leading up to the fall meeting will
2 include Sunset materials that were deferred
3 from this meeting for which we are awaiting
4 TRs, the alcohols, aspirin, the chlorine
5 materials, glucose, glycerin, magnesium
6 sulfate, copper sulfate and then as of today
7 fusoreamide.

8 The apiculture, we'll be taking
9 that up.

10 We'll also be revisiting the
11 stocking rate chart that we had, the paper
12 that we had at this meeting. And possibly
13 including a hybrid of that system based on our
14 conversations here that would include maybe
15 some basic minimum numbers and then outcome-
16 based guidelines for that as well.

17 And then we will also be taking up
18 the discussion document that we had here --
19 I'm sorry. Not the discussion document, but
20 the item that was pulled, which is the
21 definition of animal health care products so
22 we can reformulate that and get that where it

1 belongs.

2 CHAIRPERSON GIACOMINI: Okay.

3 Would all the Chairmen please forward a copy
4 of these work plans to Valerie as soon as
5 possible so we can make sure we cross
6 reference the two lists in case she happens to
7 miss one as she's furiously typing?

8 MR. MOYER: Yes.

9 CHAIRPERSON GIACOMINI: Thank you.
10 Handling, Steve.

11 MR. DeMURI: Yes. We have quite a
12 few petition materials that are in various
13 stages of work at this point. We have
14 received tech reviews for a few here in the
15 last month or so.

16 Glucosamine. These are 605 items.
17 Calcium acid pyrophosphate and sodium acid
18 pyrophosphate, have not received those TRs
19 yet. But if we do, here shortly we'll try to
20 get those in for the fall.

21 Two fairly new ones, attapulgate
22 and silicone dioxide to remove.

1 606 items we have pectin, yeast
2 and hops which are being worked on. Yeast
3 would be a big one. That's a petition to move
4 from 205.605 to 205.606. So that one will get
5 a lot of attention by the Committee over the
6 next few months.

7 And we have four fairly new
8 petitions that we received recently:
9 Caramunich malt. barley beta fiber, beta
10 carotene and sugar beet fiber. And those
11 would all be related in some respect to the
12 nutrient vitamins and minerals work that we'll
13 be doing.

14 We do have 43 materials for Sunset
15 in fall 2000 that we need to continue on in
16 addition to any comments we might get on what
17 we recommended for this meeting.

18 We have a five 605 items, 12
19 605(b) items and 26 606 items; 19 of those are
20 colors and the colors will take an little
21 extra time because we also do have a petition
22 on colors to change annotation, which

1 Katrina's working on for the Committee. So
2 that will take up quite a bit of time.

3 And then, of course, we have the
4 nutrient vitamins and minerals guidance or
5 recommendation that we're working with the
6 Program on as we get more information on that.

7 So we have a full docket.

8 CHAIRPERSON GIACOMINI: I'm going
9 to ask you to include one more.

10 MR. DeMURI: Okay.

11 CHAIRPERSON GIACOMINI: The policy
12 put forth presented by the Program regarding
13 certification of yeast is out. It presents a
14 far number -- it doesn't present the
15 questions, but it certainly raises some
16 questions that may or may not be fully
17 answered within that document. It refers to
18 production standards for yeast, but it doesn't
19 quite explain what they are. It includes that
20 they be following the National List but it
21 doesn't say what section is followed. And it
22 justifies the inclusion the continuance of

1 yeast to be feed to livestock according to its
2 existing Listing on 605 and that would
3 influence if you changed it to 606, the impact
4 of that effect. That makes the Handling
5 Committee doing a bit of an issue regarding
6 the impact on livestock, which I'm not sure
7 what the best way to handle is. But there are
8 a number.

9 There's also some specific
10 references, at least one I know in the
11 classification of materials documents
12 regarding yeast that I would ask the Committee
13 to include when they're making these
14 considerations, both for petition to change
15 the Listing and the other issues.

16 MR. DeMURI: What would be real
17 helpful for us is if you would put your
18 questions in writing and them to us, and we'll
19 consider those as we go through all this.

20 CHAIRPERSON GIACOMINI: Joe, do
21 you have those? Did that send that list to
22 you?

1 MR. SMILLIE: You did, but not
2 formally.

3 CHAIRPERSON GIACOMINI: Okay. I
4 can do it formally. Okay.

5 MR. SMILLIE: Because some of what
6 you said is going to be part of our
7 deliberation on either the switch for the
8 Listing and some of it isn't.

9 CHAIRPERSON GIACOMINI: Yes.

10 MR. SMILLIE: And as far a the
11 livestock, I think what would be -- I don't
12 want to do another Joint Committee because
13 those just play hell with our schedule, you
14 know.

15 CHAIRPERSON GIACOMINI: Yes.
16 Agreed.

17 MR. SMILLIE: Those are deadly,
18 deadly things. No offense, Katrina. No
19 offense. I mean, it's just like scheduling-
20 wise, joint committees are really rough.

21 But I would propose that we get a
22 representative from the Livestock Committee to

1 join us when that issue is being discussed. I
2 think that would be a quick efficient way so
3 you guys can decide in the Livestock Committee
4 who you would nominate to be your point
5 liaison when we deal with that issue.

6 CHAIRPERSON GIACOMINI: We'll talk
7 to Kevin on that issue, since he's officially
8 Livestock Chairman.

9 MR. SMILLIE: Yes. Whatever you
10 guys decide is fine.

11 CHAIRPERSON GIACOMINI: Yes. I
12 just think that with these questions that are
13 raised I'm very uncomfortable proceeding with
14 the change of petition ahead of those issues.
15 If they can be done concurrently, that would
16 be great. But the questions that were raised
17 I think are fairly significant. So --

18 MR. SMILLIE: Well, we also might
19 consider making sure we had the Program
20 involved in that discussion, too, on the
21 specific issue of what their guidance policy
22 is.

1 CHAIRPERSON GIACOMINI: Yes.

2 MR. SMILLIE: So we'll have to
3 look at that and get it all lined up properly
4 because it's a multifaceted issue, as you have
5 pointed out.

6 CHAIRPERSON GIACOMINI: Is that
7 okay, Program, for us to request that you --

8 MR. McEVROY: Yes, that sounds
9 great. Input into the yeast policy would be
10 very helpful.

11 CHAIRPERSON GIACOMINI: Thank you.

12 Okay. That was Handling. Joint
13 Materials and Handling, Katrina?

14 MS. HEINZE: I could not be
15 happier to say that the Joint Committee of
16 Materials & Handling is no longer required.
17 Any work they have left to do will be rolled
18 into the Materials Committee.

19 CHAIRPERSON GIACOMINI: The Chair
20 concurs.

21 MS. HEINZE: Ay.

22 CHAIRPERSON GIACOMINI: Materials,

1 Katrina?

2 MS. HEINZE: Okay. Well, we're
3 short-lived. But I know speaking probably for
4 11 people on the NOSB, we will all be happy to
5 have that extra hour back every week.

6 Okay. The Materials Committee
7 work plan.

8 We have nanotechnology on our work
9 plan. We are hoping to have a recommendation
10 on how to appropriately prohibit
11 nanotechnology in organic for the NOSB's
12 consideration in the fall. So we, hopefully,
13 will have the TR back in time that we can
14 accomplish that, but that is our goal.

15 On classification of materials we
16 will continue work on the draft guidance
17 document taken up from the Joint Committee and
18 with all the useful public comment that we had
19 at this meeting.

20 We will also be working with the
21 NOP on implementation of our November
22 recommendation and the addendum that passed at

1 this meeting.

2 We have, obviously, quite a bit of
3 work on materials. First we'll be working
4 with the Material Committees; Crops, Livestock
5 and Handling as well as the NP on petitions
6 and TRs just to make sure that everyone's on
7 the same page with what's in queue and to make
8 sure everything's on track and prioritized the
9 way everyone wants it to be.

10 So I run the master list, so the
11 master list will get updated and we'll try to
12 stay on track with that.

13 On Sunset 2012 we'll be monitoring
14 the public comments to that Federal Register
15 notice in collaboration with, again, the
16 Corps, Livestock and Handling Committees.

17 There is a take from the table
18 petition that the NOSB passed several meetings
19 ago that found materials that in times past
20 the NOSB had tabled materials during Board
21 discussion, but had never finished the
22 discussion. So we'll be digging all those out

1 and figuring what needs to happen with those.

2 Similarly, there were materials
3 that were never on the table but were
4 petitioned and have kind of gotten lost. We
5 need to refine them. We have public comments
6 that we've received over the last several
7 years. And so we'll be collecting the list and
8 working on those, which I know you all are
9 very excited about.

10 On those last two topics, I do
11 envision we'll have to work with the Program
12 on the right way to do this. That our first
13 step would be to contact the petitioners and
14 make sure that they still want us to be
15 working on those materials.

16 And then finally, it is my
17 understanding that the NOP is working on a
18 number of materials related items that they
19 want us to work with them. There is a
20 criteria for a material review program,
21 improvements on the petition process, the
22 quality and timeliness of TRs and then should

1 any of their guidance work deal with
2 materials.

3 So we will, obviously, be
4 available to work with them as needed on those
5 topics and other material topics as they come
6 up.

7 CHAIRPERSON GIACOMINI: Thank you.
8 Let's see CACC, Joe.

9 MR. SMILLIE: Current work plans,
10 which can always change, would include further
11 guidance. We did, was it two years ago,
12 published a guidance on retailer re-
13 certification. standards for retailer re-
14 certification. And we're going to enlarge
15 upon that document. That document was
16 designed originally to be the first step and
17 now we're going to take the second step.
18 Getting more specific about how guidance for
19 the current regulation to improve both the
20 retailer certification and the understanding
21 of retailer certification and now retailer
22 certification is marketed among other topics.

1 And the second item is it sounds
2 like, although I haven't had a chance to
3 confer with my Committee, but sounds like
4 we're ready to take on round two probably I
5 would think in a recommendation, some guidance
6 on the made with label claim. I think there's
7 enough in that. And again, I didn't say seal.
8 I said just the made with label claim and how
9 we'd like to create some guidance for that
10 label claim.

11 And, I should add, I have no
12 intention of taking on the 100 percent claim.
13 So forget about it if you're going to try to
14 get it on our work plan.

15 CHAIRPERSON GIACOMINI: John?

16 MR. FOSTER: I would ask that you
17 look into the transcript and public comment
18 from Patti Bursten about organic integrity
19 opportunities to enhance it. Take that
20 comment and consider adding it to the work
21 plan.

22 CHAIRPERSON GIACOMINI: Thank you.

1 Miles?

2 MR. McEV0Y: We're looking forward
3 to working with all the various committees on
4 the guidance documents that we'll be putting
5 out this summer. There's a lot of NOSB
6 recommendations that you all have made. We're
7 moving towards putting that in the Program
8 Handbook. And we imagine that we would like
9 to confer with the committee from time-to-time
10 to clarify your recommendations.

11 In addition, I would request that
12 the CACC put on their work plan pesticide
13 residue testing, unannounced inspections, or
14 parameters around unannounced inspections and
15 probably material evaluation programs is
16 mostly relevant to that Committee.

17 These are things that the Program
18 will be working on and we'd really like to
19 work closely with the NOSB as we develop these
20 initiatives.

21 MR. SMILLIE: Could you run
22 through that list again? Pesticide residue

1 testing?

2 MR. McEVoy: Material evaluation
3 programs, the procedures for what's an
4 acceptable material evaluation program that's
5 evaluating substances and putting them on a
6 list. For instance, the OMRI program, WSTA
7 program. We're getting a lot of requests from
8 various entities. Some are certifiers, some
9 are not certifiers of what makes an
10 appropriate material evaluation program.

11 We have the new California
12 Fertilizer law that's being implemented. They
13 want some kind of official recognition from
14 the NOP for reviewing organic input materials.

15 We have foreign entities that are
16 looking at approving materials, and they want
17 some kind of acceptance from the NOP that
18 their evaluation programs are sufficient.

19 Long term I think we got to look
20 at adding material evaluation as one of the
21 scopes. We have four scopes currently.

22 So it's just more the long term

1 initiative, but it's a very important part of
2 this whole organic integrity piece of what
3 materials are approved. Not just on the List
4 but how does an organization evaluate it to
5 see that it actually meets the criteria.

6 MR. SMILLIE: So you're asking us
7 actually to develop some sort of matrix to
8 judge the program it's evaluating, not
9 evaluating the material. We're evaluating the
10 evaluators.

11 MR. McEVROY: Right. Kind of an
12 accreditation criteria for material evaluation
13 program.

14 In addition we would request the
15 Livestock Committee in their animal welfare
16 deliberations to --

17 MR. SMILLIE: You did have -- I
18 thought you had three.

19 MR. McEVROY: Oh, unannounced
20 inspections.

21 MR. SMILLIE: Okay.

22 MR. McEVROY: Is that enough?

1 Okay.

2 Livestock Committee, we'd ask the
3 Livestock Committee to in their animal welfare
4 deliberations to look at slaughtering
5 transport in terms of including that in a
6 comprehensive welfare recommendation.

7 And I think that's it.

8 CHAIRPERSON GIACOMINI: Okay. And
9 we have one more, Policy. Barry?

10 MR. FLAMM: Thank you, Mr. Chair.

11 The Policy Committee has a draft
12 work plan that the Committee has discussed.
13 And it consists of one new item plus a follow-
14 up on the discussion items that we presented
15 this week.

16 The new item is a request by the
17 Board Chair for the Policy Committee to look
18 at the ability of the Chair, the Board Chair
19 to establish to create ah hoc committees as
20 the Chair feels necessary. And we have agreed
21 to examine that in the context of our current
22 policy and see whether we think that is a

1 desirable thing to do.

2 So that's on the top of our list
3 since it came from the Board Chair.

4 But very importantly, and I think
5 Miles' request touches on a topic that was one
6 of our discussion items, that is a portion of
7 our policy and procedure manual dealing with
8 the NOP/NOSB working together or collaboration
9 as it's being called. And we've had some
10 discussions at this meeting with Miles about
11 that and coordinating work plans in a better
12 fashion is one we've already discussed.

13 Another item, and he's already
14 implemented, that was in his having contact
15 points for the committee. But we'll do more
16 work on that and have more discussions and
17 welcome further feedback.

18 The Committee hasn't received very
19 much either from the public or the rest of the
20 Board. So we plan to wrap that up and have a
21 recommendation for the fall meeting.

22 I'm not doing this in the order we

1 presented it because I'm going to leave a
2 major item to last so we don't squeeze out
3 these other things.

4 But the next item was one that's
5 been raise by a number of people on the
6 previous Board and at various times requested
7 I think by the Program, or at least sort of
8 agreed to by the Program to look into it, and
9 that's the question of whether the rotation or
10 replacement of Board members is now occurring
11 due to events that may have not been fully
12 anticipated when the appointment schedule was
13 first set up.

14 We got almost no public comment on
15 this. About the only ones that do anything,
16 and we didn't get a whole lot more than that
17 from the Board discussion. So it leaves a
18 little dilemma. So I think we need some
19 direction from the Board Chair and the rest of
20 the Board whether we should pursue it.

21 It seemed like coming out of
22 discussion, if I got it right and Tina,

1 correct me, it seemed like the more concern
2 with how we going forward if there isn't a
3 system to replace people who leave the Board
4 prematurely, rather than trying to fix the
5 schedule now. I sort of got that impression.
6 I may be wrong.

7 But anyway, Mr. Chair, I think we
8 need some direction on whether you want us to
9 pursue that because it will take some time.
10 And whether or not the Board really thinks it
11 is an issue that is important. I don't know
12 whether you want to take the time to address
13 that now or we'll just pass on it and maybe at
14 Executive Committee meeting or something,
15 pursue it. But I think our Committee will
16 need some direction on it.

17 And then finally what we consider
18 very important that we have on our draft work
19 plan is the follow through taking the comments
20 we've received on the Sunset policy issues and
21 try to frame that into a recommendation to the
22 Board. You know, we're not pointing him and

1 suggesting any sort of option right now. The
2 questions were raised about the Policy
3 Committee doing that. And I don't know, Mr.
4 Chair, whether a joint committee is something
5 you want to do, or an ad hoc committee. But
6 right now it's on our work plan to follow up,
7 and we think it's really an important thing to
8 follow up on and to clarify.

9 So that is the status of our draft
10 work plan at this time.

11 CHAIRPERSON GIACOMINI: Thank you,
12 Barry.

13 Miles, did you have a comment?

14 MR. McEVoy: Yes. I would say
15 that OFPA is pretty clear about the
16 appointment schedule, that it's a five year
17 appointment. There's only allowed staggered
18 terms when the Board was initially set up. So
19 that I would suggest that you shouldn't spend
20 a lot of time on that since that's a statutory
21 requirement that you are appointed to five
22 year terms. Unless you can get really

1 creative of working with the statute, it might
2 not be worth the Policy Committee's time to
3 try to address that.

4 CHAIRPERSON GIACOMINI: Thank you,
5 Miles.

6 Katrina?

7 MS. HEINZE: I was just going to
8 suggest to Barry on the Sunset if you process
9 it, perhaps you and I, Tom can figure out the
10 most efficient way for our two Committees to
11 work together as opposed to doing a joint
12 committee. I think we could just probably do
13 it through some liaison between the two
14 Committees.

15 CHAIRPERSON GIACOMINI: Yes, I
16 would like you to have that conference. I
17 would like, though, also for the Executive
18 Committee to sort of discuss all of these.

19 I think it's very important to
20 remind all the Chairpersons of all the
21 committees and all of the members, and of
22 course respectfully the Program and staff and

1 everyone else our first and number one job
2 this year, we got the easy stuff, now we got
3 to do the hard stuff. We got the new TRs
4 coming in. We need to get as much done of the
5 2012 Sunset as we possibly can that we don't
6 have to put off to the next spring meeting.

7 So it's very important for even
8 the Committees that are not material review
9 committees, Livestock, Crops and Handling, to
10 keep that in mind. Because all of you, the
11 Chairman and all the members are on those
12 other committees and it's very important that
13 we conquer as much of that mountain as
14 possible for the fall.

15 Joe?

16 MR. SMILLIE: In the spirit of
17 give and take, the Program has got to get the
18 TRs to us in time. This is critical. And the
19 TRs have to meet our needs.

20 We are going to be really
21 hamstrung if we don't get those TRs a lot
22 faster and a lot better than we've been

1 getting them.

2 MR. McEVoy: I completely agree.

3 We'll work on it and get them to you in a
4 quality fashion. That's our goal.

5 CHAIRPERSON GIACOMINI: Thank you.

6 I completely agree also, Joe.

7 Thank you, Miles.

8 So that's one.

9 I want to remind everybody that
10 the Board, Valerie and Miles please stay in
11 this area after the meeting. We'd like to get
12 a Board picture.

13 I have had a couple of requests to
14 consider any alternations and change in
15 committee assignments. That could be somewhat
16 altered now since we do not have the Joint
17 Committee. And that was greatly going to be
18 greatly dependent on sort of what passed and
19 what didn't, what moved ahead and what you
20 still have to work on.

21 So anyone else who is still
22 looking for wanting me to consider any

1 possible changes in the committee assignments,
2 please get those to me fairly quickly and I'll
3 look those over and see what I can do.

4 We do have some flexibility as 11
5 of us are now on one less committee.

6 Steve?

7 MR. SMILLIE: Before we break up,
8 I'd like to invite everybody to the COPAC
9 meeting tomorrow. California Organic Product
10 Advisory Committee meeting. You're laughing.

11 Everybody on the NOSB, everybody
12 in the audience, all Program staff are invited
13 to the COPAC meeting tomorrow. Starts at 9:00
14 a.m. goes until, who knows, maybe 4:00. And
15 it's at the California Department of Food and
16 Ag Building at 1220 N Street, the Main
17 Auditorium in Sacramento. 9:00 a.m.

18 CHAIRPERSON GIACOMINI: Thank you.

19 Joe, did you have something?

20 Tina, you had something to add?

21 SECRETARY ELLOR: We all maybe are
22 denying this emotionally, but this Valerie's

1 last meeting as our leader. And I just want
2 to take a minute to say the work you've done
3 is beyond extraordinary. But we've heard that
4 we're going to see you again. We've heard
5 you're not leaving the NOP. And I know we're
6 going to take an opportunity to thank you in
7 a more formal way. But speaking from the
8 bottom of my heart you've been terrific.

9 (Applause.)

10 CHAIRPERSON GIACOMINI: Before I
11 call on you, Katrina. There's been a couple
12 of times where someone has steered the Chair
13 a little bit. And during the course of these
14 meetings we joke about it a lot. I don't
15 think that there's anything that I'm probably
16 more upset with taking on that -- of co-opted
17 on, but I completely echo that sentiment. I
18 could not have said it better. And thank you
19 for all the wonderful efforts, hard work and
20 dedication you have put on this Board.

21 We came on together. We're one
22 meeting off of going off together. But thanks

1 for everything.

2 Katrina?

3 MS. HEINZE: I was just going to
4 say that for those in the public who don't
5 really fully appreciate what Valerie does, we
6 talk about the work that the Board has to do;
7 Valerie is on every single NOSB Committee call
8 that we have. She takes the notes. She keeps
9 track of it. She reminds us what we talked
10 about. It is unbelievable. And we'll miss
11 you.

12 CHAIRPERSON GIACOMINI: Okay.
13 Final reminder. The party. South Sacramento.
14 If you're interested, Bill.

15 Okay. Any other announcements?
16 Any other housecleaning? Last call on the
17 reading glasses.

18 Do we have a motion to adjourn
19 this meeting of the National Organics
20 Standards Board?

21 MR. SMILLIE: I move we close this
22 meeting.

1 CHAIRPERSON GIACOMINI: Do we have
2 a second?

3 MR. RIHERD: Second.

4 CHAIRPERSON GIACOMINI: Motion
5 made by Joe Smillie, seconded by Annette.

6 Any objections to the motion to
7 adjourn? Seeing none, we are adjourned.

8 (Whereupon, at 3:25 p.m. the
9 meeting was adjourned.)

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