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

+ + + + +

MEETING OF THE NATIONAL ORGANIC
STANDARDS BOARD (NOSB)

+ + + + +

TUESDAY
OCTOBER 26, 2010

+ + + + +

The National Organic Standards Board convened at 8:00 a.m. at the Best Western InnTowner, 2424 University Avenue, Madison, Wisconsin, Daniel G. Giacomini, Chairman, presiding.

MEMBERS PRESENT

DANIEL G. GIACOMINI, Chairman
STEVE DeMURI
JOE DICKSON
KRISTINE "TINA" ELLOR
KEVIN K. ENGELBERT
JAY FELDMAN
BARRY R. FLAMM
JOHN FOSTER
WENDY FULWIDER
JENNIFER M. HALL
KATRINA HEINZE
TRACY MIEDEMA
JEFFREY W. MOYER
JOSEPH SMILLIE
STAFF PRESENT

MILES McEVOY, Deputy Administrator, National Organic Program
MELISSA BAILEY, Director, Standards Division, National Organic Program
LISA BRINES, Standards Division, National Organic Program
MARK LIPSON, Organic and Sustainable Agriculture Policy Advisor, Office of the Secretary
ARTHUR NEAL, Director of Program Administration, National Organic Program
EMILY BROWN ROSEN, Agricultural Marketing Specialist
<table>
<thead>
<tr>
<th>Call to Order - Daniel Giacomini</th>
<th>Page 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>NOSB Material Review Process Update</td>
<td>Page 5</td>
</tr>
<tr>
<td>Katrina Heinze</td>
<td></td>
</tr>
<tr>
<td>NOSB Committee Presentations and Discussions</td>
<td></td>
</tr>
<tr>
<td>Crops Committee - Tina Ellor</td>
<td>Page 20</td>
</tr>
<tr>
<td>Petitioned Materials Recommendations</td>
<td></td>
</tr>
<tr>
<td>Reaffirm Prior Sunset 2012 Recommendations at § 205.601 and § 206.602</td>
<td></td>
</tr>
<tr>
<td>Corn Steep Liquor Recommendation</td>
<td></td>
</tr>
<tr>
<td>Livestock Committee - Kevin Engelbert</td>
<td>Page 129</td>
</tr>
<tr>
<td>Petitioned Material Recommendation</td>
<td></td>
</tr>
<tr>
<td>Reaffirm Prior Sunset 2012 Recommendations at § 205.603 and § 205.604</td>
<td></td>
</tr>
<tr>
<td>Sunset 2012 Recommendation on § 206.603</td>
<td></td>
</tr>
<tr>
<td>Apiculture Recommendation</td>
<td></td>
</tr>
<tr>
<td>Animal Healthcare Products/Clarifying § 205.238(c)(2) Recommendation</td>
<td></td>
</tr>
<tr>
<td>Stocking Rates Discussion Document</td>
<td></td>
</tr>
<tr>
<td>Animal Handling, Transit, and Slaughter Discussion Document</td>
<td></td>
</tr>
<tr>
<td>Materials Committee - Katrina Heinze</td>
<td>Page 356</td>
</tr>
<tr>
<td>Nanotechnology Guidance Document</td>
<td></td>
</tr>
<tr>
<td>Materials Classification Oral Update</td>
<td></td>
</tr>
<tr>
<td>Compliance, Accreditation, and Certification Committee - Joe Smillie</td>
<td>Page 390</td>
</tr>
<tr>
<td>&quot;Made With&quot; Organic Claim Recommendation</td>
<td></td>
</tr>
<tr>
<td>Limitations of § 205.101(b) Recommendation</td>
<td></td>
</tr>
<tr>
<td>Policy Development Committee</td>
<td>Page 429</td>
</tr>
<tr>
<td>Barry Flamm</td>
<td></td>
</tr>
<tr>
<td>NOSB Policy and Procedure Manual Recommendations</td>
<td></td>
</tr>
<tr>
<td>NOSB New Member Guide Update Recommendation</td>
<td></td>
</tr>
<tr>
<td>Adjournment</td>
<td>Page 495</td>
</tr>
</tbody>
</table>
MR. GIACOMINI: The Tuesday session of this meeting, the National Organic Standards Board is now in session where the quorum of the board members are seated.

Audio crew, are we ready?

(No audible response.)

MR. GIACOMINI: Thumbs up from the audio crew. And the programmist was telling me we were late. So, I assume they're ready. So, we're ready to proceed.

I just want to make one quick statement before we move on this morning on some of yesterday's public comment. We had some new commenters that we don't always hear from. We even had one, I believe his statement was, "I don't talk too good." He came up and talked to me afterwards and I told him then and I'd like to put in the record now that, you know, sometimes it's the stone with the least amount of polish that has the most
shine. So, we just want to express our appreciation for all the people that have come and all the people that will be giving public comment tomorrow.

I hope you all had a nice evening and that we're ready for business. The first business this morning is our regular reminder of the material process with a presentation from the chairperson of the Materials Committee on the material review process.

Katrina?

MS. HEINZE: Good morning. Thank you. And I apologize that I used a dark background on my presentation. So, we're all sitting in the dark. So, the public see it. I will bear that in mind for the next meeting. So, I appreciate your indulgence.

So, this is our regular meeting update on the material process, which we like to schedule at 8:00 in the morning so that everyone can wake up.

So, I'm going to remind everyone
about the National List, what our petition and sunset review items are, how the process works, the criteria for both the National List and the sunset review and just end with some final notes. And really this is to remind the Board before we deliberate on materials today and to aid the public if they're not familiar with it.

Okay. So, just a reminder, the National List has six sections; two for Crops, two for Livestock, and two for Handling. For Crops and Livestock there are synthetic substances which are allowed which have been reviewed for the Board and deemed allowed for use in organic production. Those are section 601 for Crops; 603 for Livestock. Then there are non-synthetic substances which are prohibited for use in organic production, again reviewed by the Board and recommended as such. Those are sections 205.602 for Crops and 604 for Livestock.

For handling things are a little
bit different. For a material to be allowed it must be on the list.

I should go back and say for Crops and Livestock if it's non-synthetic and not on the list it is allowed. So, non-synthetics do not need to be listed.

For handling everything has to be listed. The list is divided between non-agricultural materials; those are in section 605, and agricultural materials which are not available in organic form, quantity or quality. That is section 606. Section 605 is divided between non-synthetics and synthetics.

And then we talked about this a lot yesterday, but just a reminder that 606, just because a material is on the list doesn't mean that it automatically can be used. There's a process that handlers have to go through with their certifier to show that they are looking for organic forms.

Okay. The material review process, if a member of the public wants a
material to be reviewed, or if they want to change an annotation, or if they want to remove a material, they petition to the Program for that, and guidelines on how to do that petition process are available through a Federal Register notice.

So, here we have that the material review process has a minimum time frame of 145 days. I really, really want to emphasize this is a absolute minimum if everything runs incredibly smoothly and it does not include time for rulemaking. So, this is the time from when the petition is deemed sufficient to the NOSB making a recommendation. And the time frame will be affected by how complete the petition is, and really the biggest impact on the time frame is the manpower within a specific reviewing committee. So, for example, right now when committees have been very busy with subset, which has to be a top priority, petitions fall lower on the list.

Also, the timing of our public meetings
can affect this and the time to get a complete technical review can affect this as well.

Okay. So, a brief overview of the material review process. The NOP gets the petition. They review it for completeness. They'll do some communication back and forth with the petitioner. Once they've deemed it complete, they will forward it to the Materials Committee and the appropriate Material Review Committee, whether that's Crops, Livestock, or Handling. Again, there will be a second review for completeness, determination of whether a technical review is needed and there will also be a review of other questions the Committee might have which needs to be included in the technical review.

Once the technical review is back, there will be work in committee to use that technical information, gather independent research if that's needed to review the petition, and then a committee discussion will happen. And based on that a committee
recommendation will happen. That committee recommendation gets posted for an NOSB meeting with a 45-day required comment period. And then at the meeting, which we'll be doing later today, those committee recommendations are presented and discussed. We have further comments from the public on many of them. And then the full Board will take a vote.

The thing I'd like to highlight here is that all communication -- so this is really for the public, and I'm sorry I'm not looking at you. It's really important to remember that all communication on petitions needs to go between the petitioner and the Program, and then from the Program to the NOSB. And that's so that we have a full record of that communication and that they get to the right people and don't kind of get lost in the process. It's also I think important that folks on the Board can get buried in email, and so this kind of helps manage that a little bit for us. So, just a reminder,
communication from petitioners to the NOP, not to the Board.

Okay. So, some criteria for the National List. So, generally any material is going to get reviewed for detrimental chemical interactions with other materials used in the farming system, toxicity and mode of action, impact on the environment, impact on human health. And this is all in the rule. Effect of the substance through interactions in the agro-ecosystem and alternatives. So, we'll look at alternatives to the material. And then really it comes down to the compatibility with the system of sustainable agriculture.

There are some different criteria for processing aids or adjuvants. So, here you're going to look at if it cannot be produced from a natural source and there's no organic substitute. Again, effect on the environment, effect on human health, making sure that quality of the food has its nutritional quality maintained, that the
substance's primary use is not as a preservative or to kind of recreate the qualities of the food that might have been lost during processing, that the substance is generally recognized as safe and that we will look to determine its essentiality.

For items on 205.606 there's a different list of criteria. Here we're really looking for fragility of supply. So, there may be things on the list that are available but are not consistently available in the form, quality or quantity. So, what the NOSB considers is why the substance should be permitted and then we're going to look at current industry information to look at where is it produced. We'll look at things like climate, number of regions, the number of suppliers, how much is produced, current and historical supplies. So, you might look at weather events; floods, droughts that can make something that might be available in organic form not consistently available. And then
trade-related issues. You know, some things are grown in regions of the world that have unrest, and so getting them may be more difficult. And then other issues which could present a challenge. And often it's those other issues that we spent quite a bit of time talking about as well.

Okay. So, then just a reminder about the sunset review criteria. All materials on the list must be review every five years to stay on the list. And the way we've historically thought about this; and I know we're talking about the sunset process at the meeting, but our current process is that these exemptions to the rule; so anything on the National List is really an exemption, were accepted because the evidence available showed that the material was found not harmful to human health or the environment, the material was necessary because of the unavailability of wholly non-synthetic alternatives and use of the material was consistent and compatible
with organic practices. So, in the review we're going to look for whether there's any new information available on those three topics.

Any questions on that?

(No audible response.)

MS. HEINZE: Oh, let me do this slide real quick. So, really sunset is the opportunity to revisit the continued need for the exemption. So, it's our time to determine if conditions relevant to acceptance of the exemption have changed. So, any of those things I talked about on the last slide. If a review finds that the initial conditions still exist, the listing is renewed for an additional period of time. So, this is our current process.

So, our current process is this is not a time to add new substances to the National List, it's not time to change an existing annotation and it's not time to reinterpret unchanged information. So, if
there isn't new information and what we have is the same information that a prior board used to make their decision, sunset isn't the time to do that. We have our normal process where folks can petition and say they don't think it's essential or any other things they can petition.

Okay. So, if there aren't any questions on that, I'm going to go through materials that were currently in process.

So, I'll start with Crops. So, at this meeting Crops has four petition materials that they're looking at and their sunset 2012 material. Then they have a number of petitions that are kind of in process. And I will say that we had a number of petitions this summer, much more than we'd had in my previous time as Materials Chair. So, they have one petition to remove, four to add a substance and five additional inert ingredient petitions that Crops has received. So, that's just as committees work on their work plans.
This is a nice summary for you.

Livestock has one material they're looking at for this meeting and their sunset 2012 materials, and they have no other petitions at this time.

Different story for Handling. Handling got two slides. So, at this meeting they have four petitions to consider and then all their sunset 2012 materials. And then they have received a number of petitions. So, we have two petitions to remove that we've received within the last month or two, so very recently. We have three annotation change petitions and quite a list of petitions to add substances.

Any questions on that?

(No audible response.)

MS. HEINZE: And then I just wanted to give a preview of sunset, so hopefully we can continue to update this as we look out.

So, at this meeting for sunset
2012 you can see the materials we're looking at. Then we have at our spring meeting some 2012 cleanup to do. That will be I think our last meeting to be able to get those done. Then we do have sunset 2013 materials that are coming. You'll see that Livestock is in pretty good shape here, but Crops and Handling have some work. We have nothing for 2014. And then 2015 we'll have one. And then, you know, we'll add, but 2017 will be the big hitter again.

Okay. And then my last final note, and we added this at the last meeting; and this is really for the public to be aware of, that it's our practice when a material is being worked on in committee that the petitioned or sunset material is going to get assigned to a lead reviewer. So, someone who's really responsible for shepherding that material through the process, they're often chosen due to their area of expertise. So, that person is going to find all the relevant
material. They'll develop an initial perspective for the recommendation, provide that perspective to the rest of the committee and really lead the committee debate. So, that person is responsible for making sure that all sides of the topic are presented. They'll write the committee recommendation with input from the rest of the committee and they will be the person presenting it typically at the board meeting.

We want the public to know that just because a person is presenting the information, it may or may not be their personal point of view. They are just the person who is responsible for shepherding it through. So, just a note there.

Okay. And then you can't see this very well, but it will be available when this is posted, but these are the three relevant Web sites to be aware of. There's the NOP Web site, the NOSB Web site and then public comment.
And that is it. So, I hope everyone had a chance for coffee so we can get rolling. Any questions?

MR. GIACOMINI: Any questions or comments for Katrina from the Board?

(No audible response.)

MR. GIACOMINI: Okay. Thank you, Katrina.

If we could get a little more lights here, Board would appreciate it.

The main items on the agenda this morning and the remainder of the day are the committee presentations and discussions. The committees each have spent the last six months working on a number of recommendations, guidance documents. Put a tremendous amount of work in a number of documents that we'll be discussing today. Committees have also reviewed public comments submitted on regulations.gov and heard the comments presented here yesterday.

So, starting with the report from
the committees, first up is the Crops Committee and Chairperson Tina Ellor.

MS. ELLOR: Thank you, Mr. Chairman. Uncharacteristically, I actually have quite a lot to say this morning.

The Crops Committee met 16 or 17 times. I went through my minutes and we met a lot between the last meeting and now and, boy, accomplished quite a lot. And more importantly perhaps, had tremendous discussions on what directions we wanted to go. There's a wide range of diverse opinions and a huge range of knowledge and experience represented on the Crops Committee and I have to say I've learned so much from all of our discussions and look forward to our continued work together.

Also, a big improvement on the Crops Committee has been the addition of Emily Brown-Rosen as an NOP staff member who joins our calls and gives us support. And those of you who know Emily, know what a tremendous
resource that is. So, we really appreciate that addition.

We had a lot of discussions, and you will have noticed from Katrina's slides that we carried a lot of 2012 sunset materials over, and we did spend a lot of time talking about that and the reasons for that on the Crops Committee meetings. We have a lot of requests out for additional technical information. And although it wasn't a complete consensus, the majority consensus on the Crops Committee was that we would wait for that additional material if we possibly could before we do further deliberations on those materials. So, we're expecting to have a lot of work to do before the next meeting to shepherd those materials to where they need to go.

I want to apologize right up front about the late addition to the corn steep liquor recommendation, and I have to take all of the hostile fire for that. I even heard
somebody say that it made us look like bumbling idiots. And I just want to correct that. There's only one bumbling idiot, and that's me. But the way that happened -- and believe it or not, this isn't all we do. You know, we have other things that we do. And when it came time to write the final recommendations, I could have passed that one off, but I did not pass that recommendation off.

And I wrote that original majority opinion, even though I'm on the minority opinion. And let me say right off that that did not affect how I wrote the opinion. I wrote the opinion based on the minutes in front of me. I was very short in time because I had an unfortunate incident involving a new puppy, a cat, a cup of coffee and my computer. So, I was without my computer during that critical time and therefore I did get the recommendations out on time. I asked for feedback from the Crops Committee, especially
on that recommendation, because I wasn't completely comfortable that I had represented the majority opinion adequately. They did not have time to get back to me.

So, you know, it was my decision as Crops chair that if members of the Committee weren't feeling like their opinion was fairly represented that they should have the opportunity to do that. They did a great job rewriting. And when we started to get some negative feedback on that saying you guys can't do that at the last minute, we got back together as the Crops Committee and we decided that we did do the right thing. We want everyone's voice to be heard and to be heard in a way that they feel fairly represents what their intentions are.

So, any hostile fire on that should be directed at me.

Moving along. We have four new petition materials, and this gets to be a bit of a complicated issue. And after I'm done
with this introduction, I'm going to hand it off to Jeff. We talked a lot about how to handle -- all four petition materials are List 3 inerts. And we found now that we're beginning to review inerts based on criteria that were written to review actives, that there's some inconsistency and difficulty using those criteria to look at inerts. And I'm going to let Jeff address that in more detail with a statement later one.

As Katrina said, we as a committee appoint people or people take point on particular materials, so for ethylene glycol Jeff had point on that one and he'll be introducing that. EDDS I believe was Jay's material. He did a tremendous job with that one. And we do have a complication about that material which we'll bring up during that discussion. I had point on tall oils, and Kevin did some work on that one as well. And tetramethyl decyne-diol, if I pronounced that correction, is Barry's to introduce.
I'll go through quickly the reaffirmation for sunset and then we'll go through our sunset 2012 EPA List 4, which again I'll over to Jeff. For the majority opinion we have a minority opinion which will be presented by Jay. The corn steep liquor recommendation, Jay will present the majority opinion and John will present the minority opinion.

All that said, I'm going to turn it over to Jeff before we go to the individual materials to talk about the inerts issue and the complications surrounded by that.

I'll turn it over to you, Jeff.

MR. MOYER: Thank you, Tina. Yes, what I'd like to do, if I could direct the Board's attention to the screen.

Okay. I think Katrina did a very good job of leading into this conversation and it's really a follow up on the conversation we had last April. Looking at inerts seems to be a little bit different than looking at active
ingredients, yet the only process we have is the one, as Tina mentioned, for active ingredients.

As you may recall, last April we made a proposal to the Program to enter into a Memorandum of Understanding of some sort with the EPA. At this point in time that process is moving forward. I know I've been in many conversations with Arthur Neal and with other folks at the Program to help guide that and steer that process forward since Tina had appointed me Inerts Tsar temporarily.

So, if you look back or go back in a history a little bit to April, what we did was we proposed to the Program, we requested of them that they create a Memorandum of Understanding with the EPA to assist in the evaluation of the materials previously known as EPA List 4 - Inerts of Minimal Concern and EPA List 3 - Inerts of Unknown Toxicity Allowed.

The MOU should serve as a platform
for an implementation strategy that may include an official task force or some other structure to achieve the following objectives. And then we listed six objectives that we all approved last April. And those were to create a sub-list from what we call the current but not supported by EPA List 3 and List 4 inerts that might meet our criteria as non-synthetic or natural materials.

Because it's my understanding from talking with EPA that some of the materials currently on that list probably are naturals. Then from that list give pesticide formulators an opportunity to reformulate to that shortened list, if possible. If it wasn't possible for them to do that, for them to supply the information needed to the Program or to EPA in terms of CAS numbers or CBI so that we could begin a petition process of some sort to go through those materials that they would wish to defend. Based on all of that criteria, what we did last April, we were for
this meeting presented with some inert materials to look at.

So, what we'd like to do at this point in time -- can we make it so we can see that, Lisa, because I think it's the only way. People don't have this in front of them. It's a relatively new document.

What we're doing is we created some language with the help of Program to present to the Program.

And we're in the dark and I apologize for that. On my screen it's very bright.

And I'll just read verbatim what we wrote. And again, this is a statement to the Program.

"The goal of this statement is to manage the National List of materials regarding inerts used in pesticide formulations as found on 205.601(m)(1) and (2) and to protect consumers' interests and producers' needs. Since the April 2010
meeting several petitioned materials were reviewed by the Crops Committee under the Review Evaluation Policy that fell under the heading of inert materials used in pesticide formulations that were previously listed under EPA List 3 - Inerts of Unknown Toxicity. Without a reviewed or newly developed evaluation process as discussed in the proposed guidelines to the NOP in April as documented above,” because there was a bunch of preamble language that I'm not going to sit and read, "targeted to inert materials, the Crops Committee agreed the existing review evaluation process may be flawed."

So, our guidance statement that we'd like to propose here is that in an effort to optimize the management of the Board, the Committee's time and the Program resources, the Crops Committee asks that the following be considered until the NOP/EPA process recommended at the April 2010 meeting is resolved or completed:
(1) A suggested moratorium on inert materials into the petition process.

(2) An allowance of any material currently in the review process as an inert to be temporarily withdrawn by the petitioner without prejudice including petitioned materials evaluated by the Crops Committee for the fall 2010 meeting. Any material withdrawn by a petitioner or material voted on at the fall 2010 meeting is eligible for repetition pending the outcome of the NOP/EPA process.

(3) All former EPA List 3 and List 4 inerts currently allowed in the organic production should continue to be acceptable for use until the EPA/NOP evaluation process is finalized subject to our current sunset process. And we'll discuss that when we get into the list of sunset materials.

So, in short what we're suggesting is that -- I don't want to say it's a waste of time, but it's a tremendous drain on the
resources of the Program and of the Crops Committee and ultimately of the Board to review these materials under our current evaluation process. Because when you look at them, many of them, at least the List 3, they're almost all synthetics. So they're going to fail that vote, they're going to be called synthetic. And when we run them through the evaluation process, they're almost all going to fail the environmental criteria.

So, it's not that we want to tell people don't bother petitioning them, but we'd rather wait until we have the process in place that we've already requested before we go through this process and use up valuable time and resources only to come to a conclusion that we already know what that's going to be.

So, that's our statement that we're going to make today to you folks and would like you to think about that on the Board as we evaluate our comments for Thursday's vote.
We're going to get into some materials that were petitioned and that we did evaluate, and we'll discuss those. The Committee is prepared to present those. But again we are also prepared to entertain a motion, which is atypical for me. I don't like to go through the process that the Committee went through only to have things withdrawn at the last minute because somebody didn't like the way the vote was going. But in this particular case; and that's why we mentioned they could be withdrawn without prejudice, it's not their fault. It's not our fault. It's just the situation we're in and we don't have that resolved yet.

So, I guess I'd open it for comments or discussion from the Board and the Program.

MR. GIACOMINI: Any debate?

Arthur?

MR. NEAL: Good morning. Arthur Neal. My comments I think will be brief.
We have met with EPA and their leaders in various programs related to biopesticides and some of the more environmentally-friendly programs that they have. And there is a lot of interest within EPA to help us get this problem resolved and establishing a working group, a Memorandum of Understanding to help us address the whole inert issue within organic agricultural production.

We will be touching base with EPA again probably sometime in November so that we can continue working on the MOU. The Program had drafted a Memorandum of Understanding. We sent it to EPA. They have reviewed it. We have to refine it some more and look at our resources both personnel and financial resources to see what we can do to collaborate and effectively address this issue for the organic industry.

But there's a lot of interest around it, a lot of energy. So, we do believe
that we'll be able to have a process outlined that will be effective in accomplishing this goal.

MR. GIACOMINI: Thank you.

Kevin?

MR. ENGELBERT: Yes, I'd like everyone to be sure or to be aware that there was concern in the Crops Committee about the steps we've taken. There's concern that even though these materials are called inerts, we've learned that in many cases they're not truly inerts and it's simply just a label. But given the situation that we're in, we all agree that this was really the most prudent approach to take. I think it's going to be very important to see how this plays out.

But I just wanted to make sure everybody knew we did talk about that and we don't want to give the impression that these are just going to be given a free ride or lesser criteria. It's just going to take more research and more work to be sure that we're
doing the right thing as we look at these List 4 and List 3 inerts.

MR. GIACOMINI: Jeff?

MR. MOYER: I think that's a very good point, Kevin. The Crops Committee did talk about this I believe at every one of the 17 phone calls that we were on. It is a very important topic.

The bottom line is once the new criteria is out and we do evaluate these materials, they could very well all end in the same fate as we're talking about now, but at least this way we felt that we'd be more fair and responsible to the petitioner, to the consuming public and also to the farmers who are requesting or need these materials. We want to be fair to everybody and run it through the proper process.

MR. GIACOMINI: Arthur?

MR. NEAL: One thing I do want to say to the Board is that as we dialogue with EPA the resounding issue that came up was the
fact of what criteria are we going to use to
evaluate these materials? We looked at some
of the criteria for the actives. And as you
stated, Jeff, many of them may not pass the
test. So, that was one of the resounding
issues that came up. If we did establish this
working group or this task force, what
criteria will be used to evaluate the
material?

MR. GIACOMINI: Tina?

MS. ELLOR: I could be mistaken
here, but I think that we were hoping that
would be a product of this collaboration.

MR. NEAL: And it will, but we
just wanted you to understand as well that EPA
recognizes it, too. One of the things that
they don't to do is try to make the decisions
for our program, but they do want to assist us
in making the decisions that represent the
best interest of the organic industry and the
intent of the Organic Foods Production Act.
What they're trying to do is cross their
regulatory authority.

So, we're going to be looking at criteria that we could potentially use in making these decisions. And as we begin to set up the working group, we'll be communicating with you, keeping you informed every step of the way.

MR. GIACOMINI: So, where do we stand now? That seemed to include a request to the petitioners. Where do we stand with the ones that we are looking at that were on the agenda for this meeting?

MR. MOYER: As a committee we're going to move forward on the materials that we have in front of us unless there's a representative in the room who formally withdraws the petition at this time. That's why we stated that if they did that they would be withdrawing the petition without prejudice. By the same token, if we move forward with it; and the committee struggled with this sort of language, because typically if a petition goes
through the process and fails, it's a little more difficult for them to just repetition it. And so; it's not on the screen at the moment, but in our language we did say that any of these materials that we vote on today, should we accept the recommendation of the committee as a Board; they may fail, they would be eligible for repetitioning pending the outcome of the NOP/EPA process, which may be the exact same set of criteria. We don't know at this point. That's the point. As Arthur just mentioned, we don't know what that criteria is going to be, that evaluation criteria. It may very well be the same criteria we have today and the outcome could very well be the same. But in all fairness to the petitioner, to the public and to farmers who use those products and materials, we'd like to let the process run its course.

Now, we can't stop somebody from petitioning this committee or this board with a material. We're just suggesting to them
that they look at the outcome of these particular materials. We just don't want to use up all of our resources. You can see we have five more materials coming up for the next meeting. There could be hundreds.

MR. GIACOMINI: Okay. Anything else on this topic? Any further debate?

(No audible response.)

MR. GIACOMINI: Okay. Tina?

MS. ELLOR: So, in keeping with the agenda, we're going to stay with Jeff and present ethylene glycol.

MR. MOYER: Thank you, Tina.

If I can direct the Board's attention to the ethylene glycol evaluation document that the Crops Committee went through, you will notice that we followed our procedure and took two votes on this material. The first vote was to determine whether or not ethylene glycol was in fact a synthetic or not and we had determined by a vote of five to zero with two absent that the material is
indeed synthetic based on the TR review and
our own information.

You also notice then that we took
a vote on whether or not the material passed
or failed the criteria in the evaluation form,
and by a vote of -- I don't see that. Again,
the motion was made to list ethylene glycol on
the National List 205.601. So, the motion was
made in the affirmative and there were zero
yeses, six noes and one absent at the time of
that vote. So, in the Crops Committee's
opinion, based on the information we had in
front of us supplied by the petitioner and the
TR, this material failed to be listed on the
National List.

I would entertain any discussion
or questions. Again, this was one of those
inert materials that we had to run through our
process. So, this is just the first of four
materials that you're going to see today that
went through the same process. And, you know,
quite honestly there was a lot of information
on this material that we struggled with in terms of the global use of this product. On one hand we're talking about minute amounts of the material being allowed in pesticide formulations and it's the same material that they spray on airplanes to deice them on runways. And so, they put millions of gallons of it -- just dump it on the ground and it's in the environment. So, there's this real struggle that we had. But when we look at the criteria that we had in front of us, this material, you know, it strictly failed. And, you know, again the Committee struggled with that and said "Is this really the direction that we want to go?" But based on the criteria we had in front of us to evaluate this on, it failed.

MR. GIACOMINI: Tina?

MS. ELLOR: We had only one comment in support of listing this and it was from the petitioner, and they referred us to some comments. And this, by way of a little
bit of history, is part of the Cocide formulation. But we weren't reviewing Cocide. We were reviewing ethylene glycol as an inert use in that formulation, which used to be allowed. And there were two farmers that came to the spring meeting and testified that they would like to be able to use Cocide again. So there was that in favor of it. But that's the only comment that we received.

MR. GIACOMINI: Comments and questions on this issue? Katrina?

MS. HEINZE: This is maybe more of a process question. For synthetics that are on the crops list already, do they have to pass all the criteria or is it an evaluation and a tradeoff between benefits and risks?

MR. GIACOMINI: Jeff?

MR. MOYER: Well, that's a very philosophical question. It's a little bit of both. You know, like all the committees we try to balance that. But we have to find some areas where it passes the criteria and then we
can weight those. But in the case of these
types of materials, you know, List 3 inerts,
they're tough ones. I mean, they're not mild
materials. They're not, as Kevin said,
they're inert in the way they act on the
target pest, but they're not inert in the way
they act in the environment. And so, they are
relatively, in some cases, like this case,
fairly harsh materials. So, like every
committee we try to weight those things, but
this didn't pass anything. So, we have
nothing to weight in favor of it because of
the criteria we had to judge it by.

MR. GIACOMINI: Katrina?

MS. HEINZE: Thank you. That's
helpful.

MR. GIACOMINI: Other comments?

Steve?

MR. DeMURI: So what's the impact
if this is not listed?

MR. MOYER: My understanding is
that the petitioner would not be allowed to
use it in his or her Cocide formulation. If they did continue to do that, Cocide would stay out of the production practices the way it is today. So, nothing changes as of today. It's just that a material that had been used in the past, is now disallowed, would not come back on for use by farmers.

MR. DeMURI: And is it used in anything else, any other formulations?

MR. MOYER: We don't know. As far as we know it's not, but we had no information to go on because we only had what the petitioner supplied and then of course the technical review information that reviews it as a chemical or as a material that it is, not in the terms of any other formulation. So, if it's out there, we don't know of it. Was Cocide the only one that was being honest and said it was in there, I don't know. They're inerts. The information is locked up at the EPA and somewhere else. We don't have it.

MR. GIACOMINI: John?
MR. FOSTER: So, in the discussion we had, a lot of talk about the difference between an inert and the finished product; Cocide in this case, and that there was I think a reasonable amount of support or recognition of a grower's need for Cocide and that was a valuable tool no longer in the quiver. For a lot of growers it was a very valuable tool and my experience was that it was used pretty judicially. Point being that if there is another material, a non-synthetic material that this manufacturer could use, they will find it now for sure because Cocide is a material with a lot of market value. Growers want to use this. If they can find another material that's non-synthetic, they will do it. Build it and, you know, they will come. So, they will have a choice now. Cocide won't happen unless they find something non-synthetic. My point is if they don't find a non-synthetic material, that's a very good sign that there's no other choice here.
And so the utility of this particular synthetic associated material, inert seems to have gotten this pejorative connotation I'm not really in support of, but this other material, they'll find something non-synthetic or they won't have Cocide. The market wants Cocide. So, I want to just point out now that the manufacturer has never been more motivated to find something non-synthetic. If they can't find it, it's not for lack of trying. And I'd like to suggest that we build in to our future criteria that kind of information. Because if I'm manufacturing Cocide, I'll scour the earth for something I can find. And if we don't have it very soon, then we ought to be able to consider that in our future considerations of these kinds of materials. The utility of this in the context it's going to be used, not whether or not this material meets our existing criteria for all materials for review.
MR. GIACOMINI: Yes?

MR. MOYER: Just as a quick follow up to that comment, Joe.

I agree with what you're saying, John, and the Committee did talk about that. What we have to be careful of is that if we list this on 205.601 just as a material, then anybody can use it in any way, shape or form. We can put an annotation on it, but I think we'd be amiss if we annotated it strictly for Cocide. So, we can't go that far, I don't think. So, there's a balance. And we're hoping again, as you indicated, that the new process figures out a way to do that. At the same time, yes, if we do follow through with the vote that the Committee is suggesting or recommending to the full Board, that will be an indication to the manufacturers of Cocide of the direction that things are heading. And, yes, that would be the impetus they need to scour the world to find a material that --- if on the other hand we have voted to allow
this, they wouldn't have to do that. So, yes.

MR. GIACOMINI: Joe?

MR. SMILLIE: So, this material could come back without prejudice and be judged by the new criteria, is that correct?

So, by voting it down today we're not damaging its ability to come back under the new criteria that EPA is going to establish?

MR. MOYER: That's correct. If the Board approves tomorrow the language that we're suggesting to the Program, you are absolutely correct. If we decide not to accept that language and to move forward with these materials as they currently are being petitioned to us, then you would be incorrect. So it's up to the Board.

MR. GIACOMINI: Katrina?

MS. HEINZE: So, what happens in between? So, presumably for these inerts that we're evaluating today and again at the spring meeting they are currently in use in formulations. No? None of them are? I'm
just trying to get an understanding of what
the impact on farmers is going to be.

MR. MOYER: They should not be in
use and as far as I know they are not, though
the materials that are currently on List 4
could be in use and probably are in use.

MS. HEINZE: So the ones before us
today are not on List 4?

MR. MOYER: That's correct. They
were formerly on List 3. It's just our
feeling that the petitioners in their
anxiousness to get their product to the market
have a little bit jumped the gun in terms of
our process. And I understand that that's a
little unfortunate for them and ultimately for
the farmers, but to try to protect consumers
and farmers who want to use the product we
want to go through this process that we
recommended in April. And again, I think it's
an important process. I was a little
disheartened to see that it was far down the
list of what Miles presented yesterday. It
was on the list and they did discuss it. And we'd like to see it move up the list because I think it's very important to our committee. They have a lot of work to do.

MR. GIACOMINI: Katrina?

MS. HEINZE: So, what I understand is that the ones we're looking at, if an inert is on List 4, it could be in use today and would continue to be allowed. Things that are not on List 4 may be the things that we're starting to see petitions for and so they're probably not in use today because List 3 isn't on the list, isn't on the National List. Am I understanding this properly?

MR. MOYER: You're absolutely correct, assuming that this Board votes on Thursday to relist under the sunset process List 4 inerts. If the Board chooses to not do that, then they would all be done. But if you follow the recommendation of this Committee, which we'll get into later on in the discussion, what you said is absolutely
correct.

MS. HEINZE: Thank you.

MR. GIACOMINI: Further debate?

Questions? Considerations?

(No audible response.)

MR. GIACOMINI: I think that's it.

Okay. Next item.

MS. ELLOR: The next item on our agenda is ethylene DDS. And we had an embarrassing wrinkle in this material which Jay pointed out to me last night. We had a comment from the petitioner that they would like us to defer this vote so that they can provide us with more material, and that will be part of our discussion. But, boy, Jay did some sterling work on this material. And this one we as a committee unanimously decided would not be good on the list. But again, in view of the big picture and the whole story, we're going to go ahead and present this material.

MR. GIACOMINI: Jeff?
MR. MOYER: Before we present the material I think the question that we need to pose as a committee to the Program is is a sentence in a comment, a public comment to withdraw this material grounds to withdraw this material from voting? To us it did not seem like an official request to the Program to defer the material to a later time. And their request was not to defer it pending the new process coming out of the joint effort between the NOP and the EPA, but rather to defer it so that they could give us more information, and we saw that as a real difference.

MR. McEVOY: Okay. Conferring with my colleagues here, yes, it's up to the Board to decide whether or not you would defer the vote or table the vote until a later time. So, it's your choice whether or not to accept their request to defer the vote.

MR. GIACOMINI: Jeff?

MR. MOYER: Again, for the Board's
reference, if we accept the language tomorrow that we just presented here regarding a moratorium on petitions, then even if we follow through and vote on that material, they would be eligible to repetition immediately upon that new process coming out. So, we're trying to be as fair to the petitioner as is possible.

MR. GIACOMINI: I think there's a significant difference though from what we've seen in other situations in the past where a substance that was having a negative recommendation and showing very little support, the petitioner withdrawing it seemingly for no other reason than to hope to have a more favorable shuffle of the cards in the future as the Board turns over. This doesn't necessarily seem to be that kind of request. This is more of an informational request where they want to try and provide more information. I'm not telling you to agree with it or not as a committee, but I
think there is a difference there.

Jay?

MR. FELDMAN: I'm inclined to agree with that. I mean, I think the petitioner responded to the Committee's work and acknowledged that more information was needed on a particular issue that we identified and is now asking for it to be deferred after having presented additional information for our consideration. So, I don't know what the Board has done in the past on this, but it seems like a somewhat reasonable request.

MR. GIACOMINI: In the past the Board has shied away from allowing petitioners to withdraw a petition at the very last stage after we've done all our work and made all our recommendations simply to avoid a negative vote. But this is an entirely different situation where we're already looking at the fact of changing the process and acknowledging that there would be no prejudice to reposition
something.

Jeff?

MR. MOYER: I would come back to
the Program though and request some guidance
on whether or not a single line in a public
comment is a formal request to the Program or
to this Board to defer. Is that considered a
formal request, just one line in the --

MR. NEAL: I guess that the
Program has not put in the Federal Register
how to withdraw a petition, however, the
Committee did request or provide that
instruction to petitioners if they wanted to
withdraw that they could. And this seems like
a response to that request. So, the Board can
decide to accept that because it was the
substance in which this petitioner had
petitioned for review.

The additional comment that I have
is that although the Board is proposing or the
Committee's proposing a moratorium to review
inerts, the public still has the right to
petition the inert. I think the thing would
be to communicate with those petitioners the
position which we are so that we can
facilitate a fair and adequate review of the
substance. Make sure that we let them know
this is where we are currently in the process
concerning these types of materials. You may
want to consider, you know, holding off until
we get a little further down the road in
establishing the criteria, the guidelines that
would help us give your material an adequate
review.

MR. GIACOMINI: Yes, from the
Board's perspective we're asking them if they
would consider withdrawing the petition. I
would think the ability to do that without
having to pay for a plane ticket and a hotel
room when you're asking them to take no
action, when that was what the request was, it
seems like a company would want to do that as
cheaply and as easily as possible.

Jeff?
MR. MOYER: I know we're spending a lot of time on this, but it does seem to be important. Just as a process question, the Board has not approved the language that the Committee is suggesting in terms of withdrawal of petitions until Thursday. So, my suggestion would be that we go forward at least today with the presentation of the information pending the Board's determination on whether or not they do want that language presented to the program, because we don't have that officially done yet.

MR. GIACOMINI: That's up to the Committee.

MR. NEAL: Would you mind repeating that for me one more time just for clarification?

MR. MOYER: Yes, Arthur. What I was saying is that this Board has not accepted the language that the Crops Committee has just put forward regarding the moratorium or the discussion on withdrawal of petitions without
prejudice or the repetitioning of those materials. So until this Board votes to accept that language and present it to the Program, we don't have any grounds to act on in terms of the material today. And my suggestion is that we follow the agenda and present the material as it is listed on the agenda. The first vote we'll take on Thursday is to accept this language. If we do that, then we could withdraw and not have to go forward with that vote. That's my suggestion.

MR. NEAL: In reading the petitioner's public comment, it seems like he's asking the Board to particularly defer on the material because it appears that they've submitted substantial new technical information. So, with that information I think they're asking the Board to defer so that you would have time to review that information before you make your final decision. And that was in response to as well the work that you all had done.
Now, I think that what we probably need to do is just communicate to the petitioner also the current position or the place we are concerning inert materials so that that petitioner can make an adequate decision about next steps.

MR. GIACOMINI: I think we have a problem here in that the Committee is going to be asking the Board to take a vote on essentially a document or a procedure that has not been posted, has not been reviewed, has not been seen even by any of us outside of the Committee. I'm not sure according to our procedures that that is going to be a proper vote to take at this time, at this meeting. I would like to possibly review that by the Program. But everything we do, even within the "Policy and Procedure Manual" and the "New Member Guide" goes through that exact same posting process.

If the Committee would like to proceed with that action and they wish to deal
with these relevant petitions internally within the Committee on deciding whether to proceed or withdraw, that is up to the Committee's decision. But as far as voting on a Board policy on something that has not been posted and not had an opportunity for anybody to be reviewed I'm not sure is in order and I'm not sure the Chair would be willing to proceed with that vote.

MR. MOYER: Yes, the Committee understands that and certainly discussed it. And that's why we are prepared as a committee to move forward with all the materials that are petitioned and in front of the Board. That's why I suggest that Jay go ahead and make his presentation on this material. We follow through with that on Thursday with a vote. And why we have said that in that document, if we do discuss presenting that to the Program and posting it for public comment, that those materials that went through the process today should not be disadvantaged
because of that but should be allowed to come
back into the process immediately. And that's
why we put that language in there.

So, I don't want to speak for
Tina, but the Committee, as Vice-Chair of the
Committee I know we're prepared to move
forward on these materials under our standard
procedure.

MR. GIACOMINI: Yes, I think the
decision to proceed or not is definitely up to
the Committee. I think both of those the
Chair would certainly find reasonable actions.
But voting on a document and a recommendation
that has not been posted and reviewed I don't
think would be in order.

MS. ELLOR: Yes, and I think our
original intent was just to read it into the
record so that we would have on the public
record what the issue was. So, you know, I
don't think that the document we presented
this morning was one up for voting anyway.

MR. GIACOMINI: It's not --
MS. ELLOR: Right. So, I think we should proceed with the EDDS. Okay.

MR. FELDMAN: Thanks, everyone. I want to thank the USDA NOP S&T for the review that we received, the technical review. It enabled I think a thorough review by the Committee and it really shows -- when the process works that way, it enables our work.

I think what we're discussing, and that is this tabling issue, is a tribute to that review because we identified some issues that in fact the petitioner acknowledged were perhaps not fully disclosed and evaluated, and so they're submitting additional information which they would like us to consider.

But having said that, we did vote, we did evaluate this material, this substance, which is an inert ingredient. To my knowledge it is not used in the United States at this time. The vote, I think has already been said, was five -- I think five of us voting against -- well, we voted in two stages.
First we vote on whether the chemical is synthetic, as you know. And that vote was I believe five against and two absent. And then voted against the material, or the listing of the material, five to two. Two absent, I should say. Zero voting for.

Just to put this in context and just to show you how difficult the road is ahead, the petitioner believes that this is a safer alternative to inerts that are typically used in formulations, which is called EDTA. You're all familiar with that. So, they believe they're doing something positive. And I really want to put that into the discussion here because it's the framework in which we will be struggling with, what will be called other ingredients down the road as opposed to inert ingredients that are used in formulations. So, from our perspective that's an important piece of information in the context of an EPA review of a chemical that might subject the public to less risk. But in
our world the question is does it meet the
standards in terms of impacts on the
environment and impacts on health and
compatibility with organic production systems?

The other interesting thing of
note here is that we received information from
the technical review that we did not receive
in the petition. So in other words, the
petitioner viewed some of this information as
proprietary I guess and did not include that
information, but the technical review somehow
has access to that and provided it to the
Committee. In the future of course through
this collaborative process it's our hope that
we will have all the information we need to
conduct a complete and comprehensive review
and then make a fully informed decision on
this.

So, walking through the evaluation
criteria you can see that the issue of the
components, the manufacturing process or the
components of this material are exceptionally
troublesome because it is composed of a number of materials including ethylene dibromide. And dibromoethane, which is material we're talking about, according to the Agency for Toxic Disease Registry; and this is in the technical review, is reasonably anticipated to be a human carcinogen and has been banned by EPA for most kinds of uses since 1984.

So, that of course right out of the box raises a serious issue. And is that issue which the petitioner is now providing additional information, which you referenced, Arthur, in its comments, feeling that the data that we receive, the information we receive from the technical review process I guess was in some way inadequate. But we worked off that technical review. We worked off of other reviews that were cited in the document and found that the constituent of this material, being EDB, did not meet our criteria. I mean, that's shorthand for this comment, this issue.

One of the things in the TAP
review that is really clear that I would like
to read here. This is quoting from it.
Although the labeled part -- they radio
labeled the different components to see if
they had impact on the environment over time.
And, although the labeled part of the EDDS
component to CO2 gas that did not necessarily
assure the unlabeled part also decomposed to
CO2 gas since that part was not directly
measured.

So, here you have, you know, an
issue where the Committee is aware of an
ingredient, EDB, banned by EPA in this
product. The manufacturer, according to the
technical review, the petitioner and
manufacturer conducted environmental impact
reviews on one component or one constituent of
this material but not the other, the other
being the more dangerous one that EPA has
banned. Because of the hazardous nature of
EDB and its regulatory history this of course
was of great concern to the Committee. We
also do not know whether EDDS and its
cOMPONENTS react differently in different
pesticide formulations.

So, as is the case with a lot of
the materials we review, and we'll be
discussing some of this under other chemicals
later, we're left with some unanswered
questions. And I think the Committee felt,
especially given the knowledge about the
classification of this constituent, EDB, in
this formulation that not having knowledge was
not a good thing and that the lack of
knowledge should not support the approval of
a material like this.

The question was raised earlier in
our earlier discussion this morning about how
this is used and in what products it is used.
And similar to the answer we heard earlier, we
don't know that. All we know is that this is
used in formulations that presumably would be
applied across agriculture. So, in that
context we can't even do essentiality review
to determine whether its use pattern would be compatible with organic production because we don't know -- we can assume, but we don't know specifically what formulations or what materials this chemical will be used in.

So, we're left with a degree of unknown or insufficient information, but given again what we know about one of the major constituents of this material, as you heard earlier, we voted this down.

MS. MIEDEMA: Thank you. Is there any further comment? Questions for Jay?

MR. FELDMAN: I guess for the record I should say we didn't receive any other comments. I didn't see any except for the petitioner.

MR. SMILLIE: Totally got what you said and agree. My only feeling about this is that what is the petitioner going feel, because they feel they've withdrawn it and we're moving forward. If I could get a quick answer to that.
MS. MIEDEMA: Tina?

MS. ELLOR: I think, as a point of order, and I was hoping Dan would be here, but maybe someone else can help us, is that we'll get together quickly as a committee and take a vote on whether we choose to defer that. And then we'll present that to the full Board.

MR. FELDMAN: Thank you.

MS. MIEDEMA: Okay. So, Tina, back over to you and what's up next?

MS. ELLOR: Next up is tall oil, which was a very interesting material to look at, and I took point on that one. I'll just, you know, make it 150 percent so I can read the tiny writing.

You know, at first blush when we looked at it, we thought this is a fairly benign material. It's extracted from trees. It's a byproduct of the paper making process. But when we discussed it further and looked at it more closely, what we realized is that although it's being petitioned as an inert, it
also has uses as an active. So, it failed our
criteria based on that it would act in the
environment in ways for which its not being
petitioned, which is inadvertent but doesn't
prevent that from happening.

We voted six to zero with one
absent that this is synthetic and we voted to
reject the material, or to not allow it to be
listed six to zero with one absent.

We did get some comments from the
petitioner about that there are different
extracts and different -- I can't come up with
the right word -- forms of tall oil that
they're petitioning for that do not have some
insecticidal activity. But on the other hand
substances with the same CAS number that might
be called something else, but since they have
the same CAS number, they have the same
identity CAS number, that they do have
insecticidal properties.

And again, this would be listed,
if it makes it to the List, as a List 3 inert.
And the Crops Committee is recommending that we do not allow that.

MR. GIACOMINI: Any debate on this issue? Katrina?

MS. HEINZE: Not debate but a question. Could you briefly summarize the thought process on the classification? Not that I disagree with it, I'm just trying to -- since it's an extract from trees, I'm sure there's more to it than that.

MS. ELLOR: And that was an unfortunate term for me to use. It's a byproduct of the paper milling process so it does not exist, you know, in nature without that process happening. And it was petitioned also as a synthetic. So, yes. I don't know if you need more information than that, but I will go through the TR which explained what the process was and what the chemical changes were that make it a synthetic.

MS. HEINZE: So it is not a substance that exists naturally? It's a
different substance?

MS. ELLOR: It's a different substance.

MS. HEINZE: Okay. Thank you.

MR. GIACOMINI: Any other questions?

Moving on.

MS. ELLOR: Next up is Barry with tetramethyl.

MR. FLAMM: Thank you.

Tetramethyl is a twin to our earlier discussion with ethylene glycol. They're both used in the formulation of Cocide, but we shouldn't mention that because we're evaluating this material as petitioned. And tetramethyl was petitioned by Dupont on January 18th, '08. We subsequently received a technical report and we had a number of questions and sent it back. And our questions were answered and it was a very valuable TR, what we got back. And the Crops Committee received this technical review last May,
actually after the -- at least I didn't see
until after the spring meeting.

    Just a little background.

Tetramethyl is a wax used to enhance the
wetting of copper hydroxide, which is the
active ingredient, and to prevent excess foam.
It's a defoaming agent. And mentioned before,
just like ethylene glycol, it's a List 3 inert
of unknown toxicity.

    The only comment we received this
time was from the petitioner, Dupont; at least
the only one I saw, and they primarily
referred back to the written comments at the
spring meeting, which were reviewed in looking
at this.

    After running through the
checklists and everything we decided that it
was synthetic. It was petitioned as a
synthetic. And the Committee rejected the
petition. The vote was one yes, five no and
one absent.

    The TR points out the
environmental risk in the material, the incompatibility with organics, and additionally the possibility for build up in the soil and that.

So, I'm personally rather familiar with Cocide. I used it when it was available a number of years ago occasionally and certainly was a tool. But it hasn't been available for several years and obviously during those years growers have found alternatives. So, our choice is not whether this is better than the alternatives on the market. We're evaluating against the checklist tetramethyl itself.

And all the comments that Jeff and others have made regarding, you know, our examination of inerts, that all applies to this material. And the main things that were discussed with ethylene glycol are relevant to this one here, so I won't try to repeat it.

MR. GIACOMINI: Okay. First question I'll ask. There was one affirmative
vote as opposed to all the rest of them being zero-six. What was the consideration on that from the member of the Committee?

MR. MOYER: I'm sorry. Could you repeat that?

MR. GIACOMINI: The vote listed here on this substance, as opposed to all the rest of them having been zero-six, this is a one-five vote. I was just wondering what the consideration of the one member of the Committee, that they didn't --

MR. FLAMM: You can ask that member if you'd like.

MR. GIACOMINI: -- in support of it. I don't know who it was.

MR. FLAMM: If John wants to speak up, it was his vote.

MR. GIACOMINI: John, did you have any comment on that vote on that? It may have been merely a matter of time frame.

MR. FOSTER: What do you mean matter of time frame? I don't understand.
MR. GIACOMINI: It may have just been this was the first one you reviewed in May and the perspective at that point in time was that vote and as you got into more of them and more of the inerts that may have evolved.

MR. FOSTER: Certainly my thoughts about the process and where -- at that time I had a lot more concerns about and kind of weighing the unwieldiness of having discussions about materials in a decision making or a process that clearly was not intended to address these kinds of materials and was really uncertain about how to proceed and how much sticky to put in the wicket right then because it wasn't clear to me at that time that we were going to go ahead and say, you know what, this is too weird. We can't do this anymore. It wasn't clear to me at that time. So, I was kind of in the mind set of, well, we push forward. We do, you know, what we need to do. In that frame of mind I was -- in my head I can convert the context in which
these materials were going to be used as inerts. And at the time I was thinking, well, we're going to have to kind of flex our criteria to include inerts in that.

And so in my vote I'm thinking, okay, well, we're going to have to figure out a way to make this fit. This is how I'm making it fit. It's used in small quantities. Our discussions about the utility of Cocide were hot and heavy at that point and there was general agreement -- well, I shouldn't say that. There was some agreement that Cocide was a valuable material. That in my mind it was valuable, much better than the alternatives on the market, certainly in the conventional world. So, I was thinking we were going to go proceed and fit the other ingredients into our process somehow.

And I'd still be open to that. I know that's not where we're headed as a committee now, but at the time that made sense to me. So, I was still of the mind to --
what's the right word -- to build the context
into what we need of -- into the process.

MR. GIACOMINI: Okay.

MR. FOSTER: Thanks.

MR. GIACOMINI: Thank you. Any
other comments or questions?

(No audible response.)

MR. GIACOMINI: Seeing none, Madam
Chairman.

MS. ELLOR: Okay. Moving onto the
next item on the agenda is the reaffirmation
of the § 205.601 and 205.602 2012 sunset votes
that the Board took in April.

We did not receive any comment
after the last meeting or prior to this one
that would indicate any desire to change those
votes. We didn't receive any comments that
would indicate that people weren't happy with
that decision.

So, the Crops Committee is
recommending that we as a Board reaffirm those
votes as we took them in April. And I'll list
them as individual materials when we go through the vote on Thursday.

MR. GIACOMINI: Thank you. Any discussion any on that item?

Next item, please?

MS. ELLOR: Okay. The one material or bunch of materials that we did decide to proceed with during this term was the EPA List 4 listing and the Crops Committee's -- actually, I'm going to turn this over to Jeff because he's done the most work with this.

MR. MOYER: Thank you, Tina.

You should see in front of you the Committee's summary following the recommendation to the Board in the spring 2010 meeting regarding these materials. It's recommended that we relist EPA List 4 inerts pending review by the Program of inerts individually and as a class of materials. To allow these materials to sunset at this point would be disruptive to the industry.
So recognizing as we did in April that even though the EPA does not currently support anything called List 4 inerts, we are suggesting that as a Board we maintain that list as a static list, not dynamic. It's not growing or shrinking. It is what it is. We know what the materials are on that list and so we're suggesting that we relist that -- at least the Committee's recommendation is that the Board relist that category of materials as EPA List 4 inerts.

Now, there is a minority opinion, and I'll read that minority opinion into the record, but if those folks who supported that minority opinion want to comment, I'm certainly open to that. And I'll just read it verbatim.

"Given the statutory responsibility of the NOSB to evaluate allowable substances on the National List including inert ingredients in pesticides it is critical that the now-defunct EPA inert..."
ingredients listing process on which the Board relied be replaced as soon as possible by a new system of review based on a collaboration between the EPA, NOP and the NOSB.

Is the minority opinion of the Crops Committee that a blanket five-year relisting of List 4 inert ingredients under the sunset review process is much too long because of the widespread use of these ingredients in product formulations and the current reliance on the now-non-existent review process.

As is recognized by EPA and the guidance recommendation adopted by the NOSB at its April 2010 meeting, so-called inert ingredients including those in products for use in organic systems are not biologically and chemically inert. They may act as solvents, emulsifiers, synergists or even active pesticide ingredients as we have seen from the EPA's previous de-listing of numerous lists for inerts.
The review of these chemical is not a static process and listings are subject to change based on updated reviews, new science and better understanding. Therefore, the NOSB must insist on an expeditious process to implement the inert ingredient guidance document adopted by the Board at its April 2010 meeting.

It is the strong minority view of the Committee that the best way to express the Board's sense of urgency in upholding the legitimacy of its materials review process is to limit the time frame for relisting on the National List those chemicals previously on List 4 to three years. It is our hope and desire that setting a reasonable yet firm time frame will help to elevate the importance of this issue and move implementation ahead in a most expeditious fashion."

So, the point of all of that was that the minority opinion does not disagree with the process but it's merely the time
frame of the sunset process that we're suggesting the Board follow. In other words, moving from a five-year sunset to a three-year sunset to put pressure on the Program to expedite this process.

The majority opinion, and we did have a lot of discussion on that in Committee, the majority opinion was more sympathetic to the Program and to the idea that we're striking out in new territory where we're building cross-departmental bridges between the USDA and the EPA, between the National Organic Program and the EPA, which is going to take some time, and we understand that. We also as a committee are very sympathetic to the minority opinion, recognizing that these materials should be given their fair day in the sunshine and be reviewed, but also understanding that the Board has a lot on its plate, a lot of pressure, and as Miles mentioned yesterday in his opening comments, things at the federal level move slower than
we would all like. So, the majority opinion recognizes that the minority opinion wants to turn up the heat on the Program.

MS. ELLOR: Yes, and I did intend, you know, for the minority -- and I think, Jay, you were assigned that job to present their side of the story, too.

MR. FELDMAN: Yes, thank you. Yes, we're very unsympathetic, the minority. We're just an unsympathetic duo here.

Just to remind everybody about List 4, List 4 is divided into two parts; List 4 A, which is minimal risk inert ingredients, and list 4 B which are other ingredients for which EPA has sufficient information to reasonably conclude that the current use pattern in pesticide products will not adversely affect the public health or the environment.

So, in effect we have materials in use right now that are presumably unacceptable given our standards, but are in use because
we're relying on an EPA evaluation system that considered exposure patterns and risk assessments that incorporated elements or a definition that includes elements that go to average body weight, average consumption, occupation, different types of exposure patterns. As you all know, that is not an element of our review.

So having said that, I just wanted to give you just a couple examples of why we think this is so urgent and are troubled actually by our inability to do our jobs in the context of materials review without having this information. I mean, I think the dilemma you discussed, John, in terms of Cocide and not being able to look at the full formulation in the context of essentiality and all those other questions, if I understood you correctly, is part of the problem here. We cannot do a complete review unless we know all of the ingredients. And now that we have an EPA process that has ingredient
identification, we have the ability to get at that information in a much more comprehensive way.

We've got to bump this up, otherwise we'll be facing the next sunset in five years without this information, I would bet, and that would be a real travesty I think.

So, let me give you a couple of examples of the List 4 inert of concern, and this sort of underlies why we're so concerned about this. Urea --

MR. GIACOMINI: Jay, let's start with one. Okay? We've got a lot of this stuff to go on today.

MR. FELDMAN: Okay. EDTA is the one I mentioned earlier. It's identified by NIOSH as a mutagen, a reproductive affecter. We've got titanium dioxide identified by NIOSH as a carcinogen and a mutagen. I've got a list here of about seven or eight materials that are listed by federal agencies as having
adverse effects.

    We can quickly go through those lists, get that information before us in a step-wise process so that we don't let the Government work its will on us. And I know you're frustrated by this. I know that the Program is often frustrated by the slow moving bureaucracy. But in this case it really impedes our ability to do our job.

    So, I can provide more examples for you if you'd like on this, but I really think we need to bump up the time frame on this and somehow get this to be very close to top of the list of NOP priorities so that we can do our job and meet the statutory requirements. Thanks.

    MR. GIACOMINI: Barry?

    MR. FLAMM: Jay has done an excellent job of presenting the minority opinion and Jeff was very fair in the way he presented it. And for the record, I'm a part of that minority.
MR. GIACOMINI: Miles?

MR. McEVOY: Yes, I just want to clarify that this is a priority for the Program to address the inerts that are allowed in organic pesticides or organically-approved pesticides. Very much one of, you know, a couple dozen high-priority items that we're working on and we're putting significant resources into working this issue. We have had a productive meeting with EPA. We plan to have the NOSB part of that process of that Memorandum of Understanding so we can develop the criteria.

I would say in terms of what we've heard from EPA in terms of the public disclosure of ingredients that are in pesticide formulations that the Federal Government moves slowly. It's going to be years before that occurs. They have the intent to that, but you know, that's not going to happen soon. It's going to be years.

So, I would say that hopefully in
three years we'll have this all figured out, but it's a good chance that's going to take longer than that, especially if there's any rulemaking that we need to do as part of this process. It's going to take some time.

But it is a high priority for the Program to work with EPA. We have a lot of ideas of how we can really leverage more resources with EPA, switching details, getting somebody from EPA working in the NOP, getting somebody from NOP working at EPA. Lots of different ideas of how we can move this issue forward.

MR. GIACOMINI: Kevin?

MR. ENGELBERT: If we're going on the record, then I also need to chime in and say that I wanted to be part of the minority opinion, but I realize what the Program is up against and what the ramifications might be. I guess it's because I'm in this year's graduating class and have seen just how long these processes take.
MR. GIACOMINI: Also one of the things that we're doing on the Material Committee is to evaluate that entire petition process, the petition to remove process, all of those so that -- I'll say it again; I've been saying it every meeting for the last five years, the petition process is broken. And at any point in time when the Program and EPA can get this issue resolved, hopefully we'll be through fixing the petition processes and all those works and will come forth with a petition to remove it. But I think trying to force their hand on it at this point would not be in our best interest and the potential of getting to that three-year point of the potential impact on the industry.

Any further?

(No audible response.)

MR. GIACOMINI: Seeing none, Madam Chairman, next up? Somebody? Joe?

MR. SMILLIE: The other consideration is if we do the three-year, then
all of a sudden we put that in their laps. They go to OMB. OMB says you're going to take all this business away from all of these things. There's going to be another kerfuffle with OMB. You know, I understand your intent, Jay, but I just don't think it's worth it.

MR. GIACOMINI: Right now we can't go three year. We do not have in our policy and procedure to amend a sunset listing at this time. The preference of the minority opinion would be a petition to amend the annotation for a three-year drop dead listing. Right now we are looking at sunset where we're not currently allowing those and it needs to be a yes or no vote on whether we're relisting this for at this point in time the next five years. And a negative vote on that amendment would be to take it off where it would sunset on its sunset date, which is -- what is the sunset date on this item? Do we know? Sometime in 2012.

PARTICIPANT: October 2012.
MR. GIACOMINI: October 2012. It would just come off the list and become totally unavailable. So, that is the question that we are faced with right now.

Any further on this item?

(No audible response.)

MR. GIACOMINI: Madam Chairman,
your next item.

MS. ELLOR: All right. The next and last item on the Crops Committee business docket here is corn steep liquor.

So, we have two very strong opinions about this on opposite sides of the tables, with absolute respect. Jay is going to present the majority opinion and John is going to present the minority opinion. I'm just going to stand back.

MR. GIACOMINI: Before you begin, Jay, this is one of a number of very contentious issues we have before the Board. The Chair will do its best to allow everyone to state their case, but to use a phrase, you
know, once the horse is dead, you don't need
to keep beating it. Everybody will be allowed
the opportunity to state their case, but I
think generally that case can be made in a
minute or two. It doesn't need to go on for
10 and it doesn't need to be done four or five
times. So, everyone will be allowed to state
their case, but we have a lot of business to
attend to and I'd just ask everybody to
consider everybody else on the Committee,
respectfully deal with all the other opinions
and recognize the fact that we do have a long
day.

MR. FELDMAN: Thank you, Mr.
Chairman. And, Tina, I think you're doing a
great job and did a great job on this. We had
a little glitch, but I really don't see it as
big a problem as you've suggested.

I looked through all the comments.
We received 12 comments on this. Nine of the
comments basically supported the listing of
this as a non-synthetic and three supported
the listing of corn steep liquor as a synthetic.

Most of those supporting this as non-synthetic -- well, let me not go there. So, given that as the context, I wanted to just give a framework for why this has become so contentious and why I think people feel so strongly about how we come down this as a board. And I always start with the law, but the reason I start with the law is because I think we're talking about this issue in the context of organic integrity, as we've heard yesterday and as we know is a priority of the USDA NOP and the NOSB, and that is consumer trust in the process. So, this has become an important issue because it is a linchpin issue from which flows a lot of other decisions.

As you heard today on the materials or the crop decisions, we start out every review with a determination as to whether something is deemed synthetic or not. So, that is key to the integrity of our
evaluation process. And to have a format and a framework that is not questioned, that is understood by the public, that is uniformly applied, that is not looking at outcomes per se, what impact would that have on the market, but is looking at the scientific processes that go into the decision. That's where we need to focus this discussion and this decision.

So, as the document cites, synthetic is defined as a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from a naturally-occurring plant, animal or mineral source except that such term shall not apply to substances created by naturally-occurring biological processes. I think we're going to face in the discussion today all of those issues and how corn steep liquor fits in or doesn't fit in with that.

So, the focus is process and the
characteristics of that process. You know, and it's interesting to note, as I was thinking about this and how to put this in the context of the larger work that we do as a board, I was thinking about this question of process as it's been used in the context of our conversations and our decisions under the Organic Certification Program. For us it's a question of process and inputs. It's not a question of the outcome of that process per se. In other words, we're not determining acceptable processes based on the outcome. In organic agriculture we're not focused on the residue. We use residues as a check, but we're not focused on the residue of an end product. We're focused on what goes into the process that yields that end product. And that is an analogy I think that we have to keep coming back to when we consider corn steep liquor.

We're dealing with a process here and the question is not whether the outcome of
that process is compatible with organic production. That's a decision we make another day under another process. The question before us is whether the process that is producing this input is being done so in a way that defines it as synthetic. The discussion of compatibility with organic systems of that synthetic is a different discussion and I think is not the discussion we're having.

So, that brings us to the science on this issue because obviously we're dealing with a waste product of the corn wet milling process that does not occur on its own. It does not occur on its own. If it were to occur on its own, we wouldn't need to add or manufacturers would not need to add sulfur dioxide to that process. So, we're adding a synthetic material into a process, a wet milling process of an agricultural product to cause a specific chemical reaction, which we heard yesterday. And that chemical reaction causes a breaking of disulfide bonds.
Disulfide bonds, as we heard yesterday, are covalent bonds. And if you look that up in medical dictionaries, numerous medical dictionaries will define disulfide bonds as a strong covalent bond important in linking polypeptide chains in proteins.

So, that sort of puts us in a box. Whether we want to be able to use this thing or not and whether we do end up using corn steep liquor or not is again not the question. We have to decide whether this in effect is chemical change.

Now, some will argue that the intent of adding sulfur dioxide is not to break bonds or break apart any materials or cause insoluble proteins to become soluble. The point is to effect fermentation, which is a natural process. I think again what the Board has to decide is whether the intent of the introduction of this synthetic ingredient or this synthetic substance is to break the bonds, which I believe it is. But even if it
isn't and even if something else is going on in that process that expedites an otherwise natural process, we still are breaking the bonds in this process by intentionally adding a substance. And I think this is where the public comes down on this.

So, if we're adding a synthetic substance and it just touches that product but doesn't cause a chemical change, then we'd be having a different conversation. We'd be talking about an additive process that doesn't affect change and we'd be talking about is there a significant residue level in the end product? We're not having that conversation. We're having the conversation around an intentionally added material that causes chemical change.

Now, there's a lot of reference in this discussion to again outcomes, which I don't believe should be the focus, and the safety of the outcomes. It's been cited in some of the discussion that CSL has a long
history of safe use as an added source of
nutrition in animal feed, in fermentation
processes and in antibiotic production. It is
not a significant source of water or air
pollution. These are outcomes. These are
outcomes that we can consider in the context
of a compatibility in organic systems. And if
we blur that distinction, I think we're not
doing our job and we're really creating a
slippery slope for future decisions, again the
first threshold decision we have to make in
every material that we make down the road.

But the reality is whenever you
talk about safety of a synthetic; my
experience, there's usually another side to
the safety question.

I just want to put this on the
table just to show you that it's never that
black and white on safety issues when you talk
about outcomes. Rich Theuer, who I'm sure
will be cited numerous times today in
different contexts, basically said that the
draft technical document refers to the fact
that AFCO has listed corn steep liquor as a
livestock feed ingredient. Corn wet milling
byproducts historically have been used in
conventional ruminant production, however,
feeding newer corn wet milling byproducts
masquerading under the same generic feedstuff
names can have an adverse impact on the health
of ruminants due to too much sulfur. Too much
sulfur destroys thiamine in ruminants leading
to thiamine deficiency and PCM,
polioencephalomalacia.

   So, again even when we talk about
the hazard about this material and its
outcome, you know, we face a tough road. It's
not an easy decision. I think it may be
easier than this discussion, but it's not an
easy decision.

   So, just in closing here, because
I know we don't want to spend a lot more time
on this, we have to focus on what our task is,
I think. And our task is to determine whether
there is some chemical process going on here that constitutes a chemical change, whether there's an intentional adding of an unnatural or a synthetic ingredient into a process to intentionally break bonds and to do that in a way that has an outcome that results in a chemical change. And I think that part is clear. And I look forward hopefully to a discussion on how we can incorporate this product into use in a different context; that is, under the National List process for determining whether this is compatible with organic production as a synthetic.

MR. GIACOMINI: Kevin?

MR. ENGELBERT: To briefly chime in, everyone that has attended these meetings and that have been here knows that I didn't get a nickname as Mr. No for no reason. Jay's position is not the farthest in that direction. I personally believe that it doesn't matter what the outcome or the intent. If you use a synthetic with an
agricultural product it's no longer agricultural. I know there are implications to other materials on the list, and as I've said in the past it doesn't matter to me. One or two, three, four wrongs don't make a right. If other materials have to be looked at, then so be it.

I liked the analogy yesterday with Urvashi and Joe, whether Urvashi's here, and the argument that her hair has remained the same, but technically it's not. To me there would be argument presented, well, her hair could be rinsed and there may be insignificant levels of that left on her hair. To me it doesn't matter. To me you couldn't cut her hair off and sell it as organic. It was a synthetic. A synthetic was used and that eliminates that. And I'll stop right there. But I just want people to know that that's my position.

MR. GIACOMINI: Other comments?

(No audible response.)
MR. GIACOMINI: Okay. I think as an alternative view, when I look at this in light of the material classification documents, both parts of the document that I agree with and where I disagree, I see this as a non-synthetic in both cases. And I think there's certainly a very reasonable view, I think, with Kevin and the discussion. It is still hair. And while we're not looking at outcome, I think we do need to look at where things are. A lot of other processes and items come from these processes in the wet milling and I think almost everyone here would still consider them agricultural and that they would need to be organic in livestock feed. So, I just think that there's, you know, reasonable alternatives and reasonable other points of view. It is a good debate and we'll have to see how the Board comes down on it.

Any other discussion? Joe?

MR. SMILLIE: I don't want to disappoint Jay by not quoting Rich Theuer.
But again, Rich wrote a lot. You quoted parts of it. It's like, you know, quoting the Bible. You can just about quote anything you want. The thing is Rich's overall view, and I respect Rich's opinion. He was on the Board in the beginning in 1995. He's followed it.

I listened to his comments really carefully and he gave a very long detailed reasoned approach to it. And it's one of those judgment calls. You know, it's the synthetic/non-synthetic. It's a slippery slope. We live on a slippery slope. We're not going to get there. We're there. We are on a slippery slope at all times. And the whole idea of the razor between synthetic and non-synthetic I think is a great detriment to this industry.

I think we need to look at outcomes and not just so much, as you stressed, the process. We need to look at the overall good of something versus its negatives. We have to weigh these things.
That's what we continually are forced to do at this Board. We have to weigh it all the time. You could point out a lot of different things. And whoever thought we'd be talking about corn steep liquor so much? But it's not just about corn steep liquor. It's about everything that we look at, whether we judge it synthetic/non-synthetic. And it's a huge very important debate that has been going on since day one and, you know, there's going to be two sides to that. And I believe that you just look at it in its totality, holistically and I believe that Rich pointed out to us that you could have both opinions. Just like we heard yesterday, two chemists talking about covalent bonds. There's two opinions on it. And it's probably always going to be that way.

And I really think that overall when you look at it, it's a non-synthetic. It's an agricultural product. And, you know, we don't want to go on about Urvashi's hair, but it's still hair.
MR. GIACOMINI: Katrina?

MS. HEINZE: It would be helpful for me to hear John's perspective before we have more debate. Is that possible?

MR. SMILLIE: I was waiting, but then nothing happened.

MR. GIACOMINI: He will be on the list if he raises his hand and lets me know. John?

MR. FOSTER: Why thank you.

MR. GIACOMINI: It's the least I can do.

MR. FOSTER: So, wanting to be mindful of time, I was really heartened actually -- well, first off, I never thought I would ever, ever utter the word "disulfide" as many hundreds of times as I have in the last few months. It just wasn't on my radar for my life plan at all.

MR. GIACOMINI: Welcome to the NOSB.

MR. FOSTER: Yes. Yes. Yes,
really. But I was really heartened by, one, the vigor of the debate and discussion on the Crops Committee, that while frustrating for all at some times, it was very inspiring to me that so many people brought their A game all the time week after week after week. And that's how it should be. So, I appreciate that process and the passion.

I don't generally think of myself as simpleminded, but this is a topic where I start thinking like that because I think I maybe over thought it a little bit. I want to be respectful of time. Like, I think I appreciate Jay's focus on processes, but I think it's not one or the other. I think it's process and product in this case. We are making a determination about a state of being. That's how I see it. Like this mug is green or not. What color is it? It's green. It doesn't really matter to me how it became green. It's green and that's our job. What is it? Okay. It's green. Great. Next
thing. I think of a synthetic state or non-synthetic state of something as a state of being. It exists irrespective of how we're going to use it. And that's how I view this.

And those of you who know me for awhile, and even back in April, I focused a lot on consistency and our rationale that leads to a decision should be consistent from one decision to the next. And I just don't understand how corn steep liquor -- I can't get down in the weeds on the covalent bond thing. I understand how it works, but that to me is a part of a tree and I'm way more about looking at the forest. So I get that there is chemistry. I understand it in a theoretical standpoint, but my grounding is broader than that. And so that's the only way I can look at this.

I don't see how corn steep liquor can be synthetic and the corn starch is not. And clearly corn starch is non-synthetic. Clearly. I think it's important to draw a
distinction between what's allowed in organic
production versus classification. And I think
very often in your discussions we're not
cognizant of that differentiation. We use
words that really are reflecting our
sensibilities around allowability, not about
classification. It's a very hard thing to
keep track of because they intermingle so
well, so intricately. But I know in our world
that we don't consider corn starch synthetic
and it's a product of the same process that
corn steep liquor is. I don't understand a
world where corn starch is synthetic. And
because of that I don't see a world where corn
steep liquor is synthetic. I can't justify
those two things.

I won't go into detail about the
minority opinion. I'm happy enough that it
inspired such vigorous following debate.

But again back to my starting
point, I'm confident that the process was
very, very good, very thorough, very fair.
And on this subject I just admire, Jay, the passion you bring. Really. Seriously, it's challenged my intellectually and I need more of that. I appreciate that and I look forward to more years of that. But truly I do. I don't mean to make light of it. It's exactly how the process should be unfolding. And I'll wrap up there. You know how it can go on, but I won't --

MR. GIACOMINI: I think with all your statements of the state of being and your grounding we have found the philosophical replacement for Dr. Hugh Karreman. He'd look up in the sky and --

MR. FOSTER: Happy to be here.

MR. GIACOMINI: -- find his philosophical base.

Tracy?

MS. MIEDEMA: I'm looking at this as a material that's currently being used and also in this broader context of Chilean nitrate sort of being put on the table in the
future and, you know, are we setting up
potential catastrophe at the farm level
rapidly removing these two inputs. You know,
in an ideal world we don't need them. We
don't want them. They go away. But can we
kind of yank the rug out from farmers?

MR. GIACOMINI: Tina?

MS. ELLOR: There's just a couple
points I'd like to make, and right up front
I'm part of the minority opinion on the Crops
Committee. I just can't see this as a
synthetic. I see it as a food processing
byproduct.

And if you'll indulge me, the
definitions of "processing," cooking, baking,
curing, heating, drying, mixing, grinding,
churning, separating, extracting,
slaughtering, cutting, fermenting, distilling,
eviscerating and on and on. To me the sulphur
dioxide is part of the fermentation process to
prevent putrefaction so that lactic acid
fermentation can take over. That's how I see
it. I also think that it's an input to compost, so it's an input into a liquid fertilizer which goes through a liquid composting process. Corn steep liquor, as we've learned from the technical review, doesn't go directly from corn -- you know, the milling process onto the ground. It goes into another product that's used in organic farming.

So, you know, this process has been amazing and I just harken back to Katrina's chickens when we were looking at what's indoor and what's outdoor. It just seems intuitive. And it just intuitive to me that this is one of many food processing byproducts that are used after composting in organic agriculture. So, I do see Jay's argument very clearly.

And then we were talking about, well, when are those bonds broken, you know? And there was a lot of good discussion on the OTA listserv about, you know, when are those
bonds broken and by what? And I just think why are we even going there? I see why we have to go there, but to me instinctively and intuitively this is an agricultural byproduct and I just can't see it as synthetic.

MR. GIACOMINI: Kevin?

MR. ENGELBERT: I just wanted to briefly respond to Tracy and say that we need to be careful about arguing about whether or not we're taking away inputs with the decision that we've put forward because this material, and sodium nitrate, I guess, aren't really in my opinion compatible with organic agriculture. They're more similar to commercial fertilizers where you are just simply applying something for a quick fix for increase in production. There's no long term building of the soil or organic matter or improvement by using these. These are just a temporary increase-our-production inputs.

MR. GIACOMINI: Tina?

MS. ELLOR: I'm not going to
address sodium nitrate here because that's not on the table, but this is a composted liquid fertilizer product that's used by organic farmers. You know, whether it builds soil or not, I bet the bugs in the soil love it. But anyway, I just want to say I don't want to address sodium nitrate here because I don't know much about that and, you know, that wasn't on our crop discussion for this term. We have discussed it a lot in the past, but I just want to say that I think this liquid fertilizer made from not just corn steep liquor but other ingredients -- I can't say that it doesn't build the soil. I think possibly it might.

MR. GIACOMINI: Steve?

MR. DeMURI: I see a reference in the recommendation to an OMRI decision on this. I'm not familiar with what their decision was. Does anybody on the Committee know what the background of that is?

MR. FELDMAN: They identified it
as synthetic and they support the majority opinion on the Crops Committee.

MR. GIACOMINI: Further discussion? Katrina?

MS. HEINZE: I have some thoughts on this as chair of the joint committee that worked on classification. First I want to say that I agree that compatibility is a question for another day and I thank Jay and John for highlighting that point.

I do feel I need to go on the record to say that I am very disturbed by the majority of the committee voting in conflict with the classification document which passed this Board in the fall of 2009. I understand that folks may not have agreed with that decision. I understand that that did not pass with a unanimous vote. It did pass with a majority of the Board. And I really feel that the idea of not supporting the work of past boards is a problem and perhaps sets us down a troubling path.
So, I wanted to highlight a key outcome of the classification work, because I think it's really relevant for this discussion. And that outcome was that classification is not about a chemistry textbook. And I will tell you, when I started work on classification as a chemist, I thought it was about a chemistry textbook and I thought that science could bring clarity to the topic. And I will tell you I learned it wasn't. It was really important going through that process to learn that this wasn't about being able to look in a chemistry textbook and find the answer.

What I know and what we learned was that chemistry is a dynamic process with atoms attaching and reattaching all the time. So, if we get two chemists in the room, they're going to disagree on whether bonds were broken or weren't broken. And we saw that in the Material Working Group debates time and time again, that we had the vigorous...
debate that happened here. We came to realize that we could not focus on bonds breaking or not, but had to focus on whether a new substance was created, hence our recommendation for the definition of "chemical change." And I want to highlight that so the Board can think about it as they think about this classification. Chemical change as defined by the classification document that passed this Board was "an occurrence whereby the identity of a substance is modified such that the resulting substance possesses a different distinct identity." And we had a ton of discussion about what that was.

My understanding is that corn steep liquor doesn't meet that definition, but everyone needs to form their own opinion on that.

So, finally, what I want to say is I'm really concerned that we're rehashing classification after the really, really hard work that this Board and the Material Working
Group did to reach consensus for that
document. The things we're talking about
today and that have been talked about on the
Crops Committee are the debate that we had on
the Material Working Group and in
classification. And so I am very grateful at
the end of the day for the debate because we
needed a real example to bring to life the
really hard discussions.

As a reminder, we agree on
classification on almost every material.
There are a few materials on which we needed
some help, and that was the classification
document. And CSL is a good example and will
help us formulate the work sheets that we work
through.

And then my final thought is
please remember that today is not the
beginning of classification decisions. This
Board and past boards have been deciding on
classification since the mid-1990s. And I
think it's very, very important that we rest
our decision on the shoulders and hard work of all those previous boards so we provide consistency and aren't seen as swinging from one side to the other. Thank you.

MR. GIACOMINI: Jeff?

MR. MOYER: Katrina, I tend to agree with you about past board decisions, however, it's my understanding that even though we as a board approved that, the Program has not acknowledged that into our policy statement, in fact, has some serious difficulties with the definition of chemical change that we presented. So, as a committee it was difficult for us. While we didn't discount that totally, it's not in our repertoire of things that we could base our decisions on at this point in time.

MR. GIACOMINI: Katrina?

MS. HEINZE: You are right that the Program did have a problem with our definition of chemical change. It was not the October 2009 portion of that definition.
Their concern was with the second sentence that we added last April which I did not include in what I read. That was the part where we talked about if you use something on the National List it didn't count. And you'll hear me say later when we talk about classification that we agree with that. We agree with their position, but that is not this part of the definition.

MR. GIACOMINI: Miles?

MR. McEVOY: Yes, the other point there is that we did not provide the response to the NOSB until after the committee had made their determination. So, you were really working under the November 2009 work and April 2010 work that that committee had conducted.

MR. GIACOMINI: Okay. Jay?

MR. FELDMAN: Thank you. Katrina, I'm as troubled by your reaction to our deliberations as you are troubled by our deliberations because I don't think that was our intent and I believe we were following the
understanding of the Board's policy. And I guess I would like to get clarification on that, because if we're having a discussion about chemical change with a distinct identity change that causes solubility -- and I don't believe it's fermentation that is at issue here, Tina. I believe if you read Biss and Kogen, I believe as we cite, that we're really talking about solubility and we're talking about a process. Yes, fermentation can help that process occur, but it doesn't do the job and therefore the sulfur dioxide is needed.

But in terms of the actual policy, if the Committee believed that there was a chemical change occurring, honestly believed that, why is that not an application of the policy? How have we betrayed the Board's will at that point?

MR. GIACOMINI: Katrina?

MS. HEINZE: I don't you to misunderstand my comments. It's not a betrayal or anything like that. You know,
classification is very, very complicated and in the classification documents and in all of the debates that happened a lot of the points that the Committee considered, or as I read your recommendation and the minority opinion, I think were considered during classification. And I do recognize that since we haven't completed the work sheets it was difficult for the folks on the Crops Committee to fully consider the classification work. So I do recognize that.

With regard to the solubility, that is a point specifically addressed in the classification document, that the use of an input in the process to make a material, when that input is used to change the solubility and then bring it back, if that input does not remain at a significant level -- and I do recognize that significant is problematic as well -- but if that input does not remain, that no chemical changed happened. Our real focus was what is the material in the original
source, and then what is the final material? And that there's a lot of things that can happen in between and inputs that will not affect the classification. And there are some specific examples in the classification recommendation from the fall of 2009 that address that.

MR. FELDMAN: And I guess the understanding from the science that we've looked at shows that there is a change, there is a distinct identifiable identity change. You know, it starts out in one form and ends up in another.

And, you know, it's interesting. One of the things that really caught my attention on this because of dealing with the world of unknowns applied to public policy when it comes to science is a really troubling, I think, challenge that we face as a board. You know, somebody comes to us and says we don't really know the mechanism. We don't really understand what's going on here.
And then you read a document that says and the outcome of the process is very variable. The sulfur content can be five times higher either way depending on the particular process that's used.

So, when you produce that green mug, it could come out different shades of green. It might even come out, you know, pink. I don't know. I mean, but let's stick with different shades of green. We just don't know what's going to happen there according to what the science and the TR is telling us.

So, I guess I am taking aback a little bit by the charge. And, you know, it's relatively serious, because I think I agree with you wholeheartedly, Katrina, that it is the job of the committee to carry out the policies of the Board. That's our job whether we agree with it or not. And the same is true about the law, you know, the underlying statute. It's our job, Joe. You know, the synthetic thing is problematic as a defining
threshold issue. But be that as it may, that's our charge. And so we have to struggle with that.

And so all I was trying to do in sort of laying this out is to try to be honest to the definition of a distinct chemical identity and then move on from that to determine compatibility later. But to meld those two issues together because we believe this is valuable to organic crop production is not the charge we have as a board.

And so just in closing, I guess, we did consider the distinct identity issue, we did consider the process by which that distinct identity occurred, we looked at the TR, we looked at the science that was given to us and, you know, on one level it seemed pretty clear until the minority report popped up. I mean, we did have a good discussion, I agree with you. I mean, it was robust, as we like to say. Everybody put what they had on the table and, you know, I think people will
disagree, yes, but again, where there is
disagreement and unknowns I think we have a
duty under the organic law especially to be
precautionary. That's a principle I think we
should embrace and that's another challenge
that we have. Thanks.

MR. GIACOMINI: Okay. Let's try
to wrap this up. Katrina, are you responding
to Jay? Okay. One last response.

MS. HEINZE: I do not disagree
with you. One of the reasons that our
classification recommendation had several NOSB
procedures that we wanted added and which the
Policy Committee graciously included in our
policy manual now is that we refocus on really
understanding our materials and classify them.
So, yea, we have done that on corn steep
liquor.

And second that we vote on
classification because there will be
differences of opinion. And so, I'm glad that
is happening as well. And there will be
differences of opinion. And if you go back to
the early boards, they disagreed all the time
and I think that is good and it means we're
doing our job.

MR. GIACOMINI: John?

MR. FOSTER: ON the identity
thing, I looked and had a lot of discussions.
No one has been able to tell me what this new
chemical is that has rendered it a change in
identity. No one has brought that certainly
forward. I think the reason why is the same
reason that when you have wine in a cask and
you add sulfur dioxide, it's still wine. The
identity of the product is still wine. Wine
is wine before sulfur dioxide. Wine is wine
after. And again, this is maybe my looking at
the forest and not a tree, but I just don't
see that as an identity change. That's it.

MR. GIACOMINI: Okay. Thank you.

Unless there's any absolutely totally and
completely new on this, I believe we've
wrapped this one up and taken care of it
almost as much as we possibly can for this point in time.

And we're half an hour behind for a break, I believe. So, 15 minutes. 10:45 please be back in your seat.

(Whereupon, at 10:31 a.m. the above-entitled matter went off the record until 10:48 a.m.)

MR. GIACOMINI: Please come to order. Meeting's back in session. We move onto the Livestock Committee. We have a few more board members needing to take their seats, but all the Livestock Committee is present at this time and we have a quorum.

So, Kevin, please proceed with the Livestock items on the agenda.

MR. ENGELBERT: Okay. I think that given the fact that our animal welfare is a discussion document for the first time since I've been on the Board; the livestock recommendations are probably the least controversial of any that we're going to deal
with, and I think we can make up some time because of that.

PARTICIPANT: (Off mic comment.)

MR. ENGELBERT: Well, no, I shouldn't make that assumption.

First I want to build a little bit on what Dan said earlier about the speakers that we had yesterday. I want to make sure everybody that's here that doesn't have contact or has never had contact with plain folk that you don't mistake a lack of formal education for training to be a poly-speaker for a lack of intelligence. Those people are very intelligent people and it's just against their religion to have formal educations. And for them to come forward and speak like they did and interact with the English was just taking an amazing amount of courage.

Before we get to our recommendations, I just want to respond to a couple of the NOP responses to the spring recommendations. First, as we discussed
yesterday, the Livestock Committee went back and looked at our methionine recommendation and at the present time we're going to stay put. The only other option that the Committee would consider was just simply letting it sunset. And unless new information becomes available or if it does become available we are willing to readdress the recommendation. But at the present time we're very comfortable with what we recommended last spring and we're going to stay with that.

On the issue of GMO vaccines, we again believe that we made the right recommendation last spring. We heard testimony yesterday that 80 percent of vaccines used by the poultry industry are GMO with no other options and we remain very concerned about the potential, as Hugh liked to call it, train wrecks and we simply hope they don't happen, but we have put vaccines back on our work plan. We have requested a thorough technical review of vaccines,
including GMOs.

A couple of the questions that we want to have specific answers to are procedures that are used to make vaccines, when a vaccine could become a GMO, if there's anything used in the process that would trigger that or when it's triggered, the viability of vaccines being made strictly for organic use, the economic implications of that and what the realities are out in the world.

I'd also like to comment on two quick sunset recommendation materials. The Crops Committee has deferred their chlorine materials and the copper sulfate. The Livestock Committee is not doing so. We're moving forward and including the recommendations just simply because of the completely different uses that they have in livestock as opposed to crops. For example, the chlorine materials, most milk marketing ordinances, all milk marketing ordinances that I'm aware of require chlorine as a
disinfectant. It's simply has to be present in a milk house to disinfect the pipelines and equipment that's used to milk, and we just didn't think we could take them off separately.

Lastly, I'd also like to reiterate that we very much appreciate having a liaison from the NOP; ours is Mark Keating, on our calls. It's been very helpful. Having the direct contact has allowed us to get answers to questions we have immediately without having to go back to the Program and wait for them. And we're very appreciative of the newfound interaction that we have with the Program, the increasing in the staff that's allowed this to happen and we're very thankful for that.

As we move into our recommendations, it goes without saying that the amount of work -- and I know everyone gets tired of hearing about it, but the amount of work that our committee has put into these is
tremendous. The people that will be presenting each of these recommendations, that have taken the lead have done an incredible amount of work. The most detailed and complicated of course is our animal health recommendations. Wendy has jumped straight into the fire coming on the Board and has handled that just incredibly well.

The first recommendation that we're going to deal with is the petition for formic acid. Jennifer will talk about that, get into the details. It has been fast tracked but we wanted to alleviate any concerns about that and she'll delve into the reasons why.

The next thing we'll talk about is the reaffirmation of the sunset recommendations that were voted on in the spring 2010 meeting. We also had no additional public comments that came in after the meeting, because if you remember the comment period closed after the meeting was
over. We had no additional comments come in regarding that recommendation and none have come in prior to this meeting as well.

Then we'll talk about the rest of our sunset materials, the 12 items; aspirin, the three chlorines, copper sulfate, the two alcohols, furosemide, glucose, glycerine, magnesium sulfate and EPA List 4 inerts of minimal concern. They will be grouped together as a recommendation. Again, we've had no controversy on that and no dissenting comments, no concerns from the public.

Then we'll move into the apiculture recommendation that was originally made in 2001. The Livestock Committee led by Joe and Jennifer together have taken that recommendation, updated it with new information that was provided by the ACA Apiculture Working Group and additional public comments.

And then we will move into our clarifying 205.238(c)(2) recommendation. As
Dan spoke of earlier, a great deal of help was obtained from CCOF and Dan will be handling that recommendation.

And then lastly, we will move into our animal welfare subjects, the stocking rate discussions document and the animal handling, transit and slaughter discussion document. And Wendy will be leading that discussion.

So, if you're ready, Jennifer, we'll move right into the formic acid petition.

MS. HALL: Thank you, Kevin.

I want to make it clear at the outset that the formic acid that is being requested is synthetic, so there's no question about that.

PARTICIPANT: (Off mic comment.)

MS. HALL: What? Yes, I'm positive. At least this formulation, yes.

So, we received a petition to include formic acid in its synthetic form on 205.603 for use specifically as a pesticide
with honeybee hives.

So as a committee we went through and went through the evaluation criteria and the formic acid did pass all of those criteria.

First, I just want to go through the petition itself and then I'll talk about the history. Sorry, I should have said that up front.

And so, as a committee we did first, like I said, unanimously vote that indeed the requested formic acid is synthetic and that annotated for use only with honeybee hives that it was also approved for that use to be added to 205.603.

Now, part of the uniqueness of the process with this is it is a little bit cart before horse. As a part of our evaluation we did also request the technical review. And so typically that is received and examined prior to a formal recommendation. But this petition and the process that it has seen up unto this
point with formic acid is a little bit unique, so I ask you to indulge me for a little bit of that explanation. I think it's pretty important.

The history, as Kevin mentioned, is there was a 2001 Apiculture Task Force that took up apiculture as a full topic and presented a recommendation. And as part of that recommendation there was a list of materials and that list was requested that the NOSB evaluate those items expeditiously for inclusion and recommendation to the NOP to be included on the List. It sat for awhile.

And in that time, originally Hawaii was not infested by the varroa mite. That changed. And before that changed, the beekeepers in Hawaii actually did come together and approach the Department of Agriculture in Hawaii and asked them to not allow barges from New Zealand that typically use Hawaii as a stopping point carrying bees as cargo. Once New Zealand got infected, they
did request that those be denied, that New Zealand could no longer stop at their ports with bees. That request was denied. And in 2007 varroa mites did indeed land in Hawaii. And so, that's somewhat accelerated the issue. And still this Board has been pretty plagued with a lot of high-priority issues and still the apiculture document had not received any attention.

And for those who are not aware, the varroa mite, once it infests, it works pretty quickly and it's fairly devastating and hives can be taken out of production really fairly quickly.

So last spring at the spring meeting some of you who were at that meeting might remember that Dr. Lyle Wong from the Department of Agriculture of Hawaii did present in public testimony his petition and a bit of the reasoning for his request that it be expedited in the approval process.

And the reality is now that Oahu
-- actually that island's hives are pretty much 100 percent gone, including the feral hives due to the varroa mite. The Island of Hawaii is helping repopulate honeybee hives over there, but due to the pollination needs that agriculture requires, it's more than just the honey, it's more than just the bees, it is agriculture in general that is coming to great threat there.

So, after Dr. Wong did his public testimony, timing was kind, and my friends are even kinder, and I actually had a trip planned to Hawaii. And so I did meet with several, four to five of the beekeepers and Dr. Wong again while we were there and learned a little bit more about what they're facing and why other applications are not effective, specifically in that climate and why this request is so imminent.

And so, as part of that process the formic acid that they're requesting, they're actually specifically requesting a
Mite Away II formulation because of the temperature zone that their hives are in, that there are other applications like thymol, other kind of more oil-based and herbal applications that only respond in a certain temperature frame that Hawaii very rarely hits. It's like a max of 85 degrees that those applications can be used and the ambient temperature in Hawaii really prevents that from being useful.

So, though we have tried everything and really done their best to find other applications and work with their own Department of Agriculture in the interim, they've kind of hit this point where it's a very threatening time. And though it may seem like, well, if we lose, you know, organic apiculture in Hawaii, is that a really big deal? And there's two reasons that it is. One is for North American they produced the majority of organic honey. And if the answer for agriculture in general there was to revert
to convention just for the pollination needs, it actually was a bit odd given the economic incentives because imported honey is so much cheaper than honey can be produced on Hawaii. The margin that they get from organic is the only way that apiculture is actually a viable concern. And so it's more than risking just organic, it's actually risking a lot of just apiculture in general.

So for that reason I was willing to kind of ask for my committee's ear and willingness to consider fast tracking this, and not in small part due to the fact that formic acid for honeybee application is already used in both the Canadian and the EU organic standards. So there is also the competitive playing field that is at stake in this instance.

So, that gives a little bit I think of the history and I would open it up to questions from the Board.

MR. GIACOMINI: Kevin?
MR. ENGELBERT: Just to reiterate, we did receive a lot of information on formic acid. The petitioner provided what we thought was a lot of viable information, but we did request another technical review and it will be readdressed in the future. But we were very comfortable with what we received with the annotation that we put on the material to move forward with it. And also we haven't received any negative public comments with regard to this petition.

MR. GIACOMINI: Other comments?

(No audible response.)

MR. GIACOMINI: Seeing none.

Kevin, your next item.

MR. ENGELBERT: Okay. Next we will move to Jeff to talk about the reaffirmation of the prior sunset votes from the April 2010 meeting.

MR. MOYER: Thank you, Kevin.

As everybody will recall and Kevin had just stated in his opening comments, at
the spring 2010 meeting the Livestock Committee did vote or did recommend votes to the Board and the Board did pass on those recommendations, and I'm going to list them here.

And in the interim time we did accept more public comment. We had received actually two comments on materials for listing on 205.603. One of the commenters stated that Oxytocin and Ivermectin should be removed from the National List. The other stated that all materials should remain on the list. No evidence was presented to justify the removal of those two materials, therefore in accordance with our current sunset rules the Livestock Committee recommends now that those votes stand.

So, the public period ended -- I forget the exact dates when that ended.

PARTICIPANT: October 12th.

MR. MOYER: October 12th. We have received no other comments. So, with regard
to 205.603 we're recommending that all 25 of
the sunset materials -- the vote stands on
those.

And then on items 205.604 we
received no additional comments and again the
Livestock Committee recommends that those
takes stand, Mr. Chairman.

MR. GIACOMINI: Jeff, mic, please.

Just so that we understand the mic
situation, we can have two mics on. If a
third mic tries to get in, it can't get on.
I'm taking the chair prerogative and trying to
control discussions. I'm keeping mine on. So
you guys will have to turn yours off.

So, any discussion on the
reaffirmation votes?

(No audible response.)

MR. GIACOMINI: Seeing none.

Kevin, next item?

MR. ENGELBERT: Okay. Now we'll
move into the sunset recommendation on the
remaining 12 materials that are on the
Livestock Committee's sunset list.

These materials were deferred from the spring meeting because the only information that we had on them was what we considered to be -- I don't want to say outdated because it may still be relevant, but it was older information and we at the time wanted to give the chance to -- we requested new technical reviews on these 12 materials and we were hoping that we would get them in time to look them over and make a recommendation for this fall.

Those technical reviews were not forthcoming, but the majority of the Committee decided or felt that, thought that we should move ahead and put them on the agenda for this meeting. I don't believe we received any public comments against relisting of these materials. I will read them off.

First is disinfectants, sanitizer and medical treatments as possible. Alcohols, which are ethanol, as a disinfectant and
sanitizer only, prohibited as a feed
annotation; isopropanol as a disinfectant
only. Two, aspirin, which is approved for
healthcare use to reduce inflammation.
Chlorine materials, which is for disinfecting
and sanitizing facilities and equipment.
Residual chlorine levels in the water shall
not exceed the maximum residual disinfectant
limit under the Safe Drinking Water Act.
Those include calcium hypochlorite, chlorine
dioxide, sodium hypochlorite. Furosemide, CAS
No. 54-31-9. In accordance with approved
labeling except that for use under 7 C.F.R.
Part 205 the NOP requires a withdrawal period
of at least two times that required by the
FDA. Glucose. Glycerine with the annotation
allowed as a life livestock teat dip must be
produced through the hydrolysis of fats or
oils. And magnesium sulfate.

The Livestock Committee did not
defer any votes any other materials under (a),
and we also recommends not renewing any other
materials.

Under (b) as a topical treatment, external parasiticide or local anesthetic as applicable, copper sulfate. We also did not recommend deferral of any vote or not renewing any substances in that category.

We recommend under (a) as synthetic inert ingredients as classified by the Environmental Protection Agency for use with non-synthetic substances or synthetic substances listed in this section and used as an active pesticide ingredient in accordance with any limitations on the use of such substances EPA List 4 - Inerts of Minimal Concern. There were not materials that were deferred or that were recommended not renewing in this category.

I'm not going to go into the List 4 inert situation. I think we're all familiar with that. We have four members that are on the Livestock Committee that are also on the Crops Committee and we worked very well
together and kept each other informed of our positions. And the Crops Committee has taken the lead on that, but the Livestock Committee was actively involved.

Our vote on that motion was six in favor and one no. Again, the no was my vote. I'm just uncomfortable with this current sunset process and I didn't think we should move forward with these materials until we had new information, but I was obviously in the minority and now open the floor up for discussion.

MR. GIACOMINI: Just one clarification, not that it disagrees with you, but one of the reasons that we made that original list of what we wanted new TRs with was because we had not completed the public comment period which is where we were expecting people to come and say what substances they had problems with. So, we had to make a determination of what's easy to pass through at the spring meeting and what's a
little more difficult without knowing what the full public comment was going to be. We submitted all those as TRs. That got bogged down. But one of the reasons that I think, at least in my mind, that we agreed to go along with this without the TRs was because once that public process public comment period was done, there had been no voice of concern. So, that was the reason that, you know, we made the original list without knowing what the voice was going to be. Once we saw that there was no voice of concern, we just decided that we could proceed without needing all those new TRs.

So, any other comments or questions for the Livestock Committee? Kevin?

MR. ENGELBERT: Just to follow up, those TRs are still in the pipeline though. So, these materials will be looked at again when we get those new technical reviews.

MR. GIACOMINI: Right. Nothing further?
(No audible response.)

MR. GIACOMINI: Next item from Livestock, please?

MR. ENGELBERT: Next we'll move into the apiculture recommendation and Joe.

MR. DICKSON: Thank you, Kevin.

So the apiculture recommendation is a committee recommendation for a practice standard for the production of bees, or bees used to produce organic honey as opposed to -- it's not a standard for bees used as pollinators on organically-managed land, and that's an important distinction to make. This is a standard for bees that produce organic honey or other bee products.

Bees are of course livestock, but they're very unique among livestock in that they cannot be contained and they go out every morning and come back to the same hive in the evening. And there's a consensus among producers and certifiers that, you know, the special nature of bees necessitates a practice
standard specific to their unique behavior and etcetera.

The NOSB made an initial apiculture recommendation back in 2001. Due to a lot of competing priorities at NOP, the recommendation was never implemented. In the intervening years a number of honey producers have been certified by a number of certifiers under the existing livestock standard. And at the fall meeting in 2009 the Accredited Certifiers Association submitted a comment with a number of recommended changes to the original NOSB recommendation.

The Livestock Committee has looked at those recommendations. Jennifer and I, who I think we were assigned the task because we're the two beekeepers on the Livestock Committee. Neither of us have organic bee operations because we're in cities, but we at least understand the lingo.

We worked directly with the ACA with some representatives from their working
group, with networks of producers in our sort of home areas and beyond. As Jennifer mentioned she's worked with a number of producers in Hawaii. And we, you know, solicited as much feedback as we could and did our best to integrate that into the revised recommendation that we have posted.

The recommendation is intentionally designed to be harmonious with the expectations of organic consumers for organic honey with current practice and current certifier expectations and with the existing apiculture standards and the Canadian organic standards and the EU standards.

We've received five public comments in support of the recommendation so far with some specific feedback and requests for changes. The Organic Trade Association expressed that we should be sure to solicit adequate feedback from impacted producers. And to clarify, you know, we certainly have worked with a number of producers on this
recommendation. And the ACA's recommendation I think encapsulates a lot of producer feedback through the certifiers who worked on that process and we'll continue to solicit any and all producer feedback on the recommendation.

Vermont organic farmers expressed that the forage zone within our recommendation should be allowed to include sort of lower-risk non-organic land such as residences and the minor commercial landscape without additional inspection or affidavits. And Harriet gave a good rebuttal to that yesterday and we do need to discuss that feedback in committee, and we'll be looking at that. But as it stands the recommendation does not allow for non-organically managed or wild land that would be certifiable within the forage zone.

A commenter yesterday, an oral commenter expressed that she does not use plastic foundation in her hives and Jennifer and I realized that we may have actually
worded the standard to inadvertently require the use of foundations, so we will revisit that as a committee to make sure it accommodate producers who are not using foundation and they're using top bar systems or other beekeeping methods that don't use plastic or other forms of foundation.

And then Jennifer I believe has heard from another individual who will deliver oral comment on Wednesday with some other concerns about the recommendation.

Jennifer, I don't know if you have anything you want to add.

MS. HALL: Thanks. Just that it has been a really great collaboration and I also give thanks to the Apiculture Working Group and ACA. And a special thanks -- I did reach out to -- many of you are familiar with Nancy Ostiguy who used to be on the Board and is quite a bee specialist. So I have used her extensively for feedback coming into this and even with some of the feedback we've gotten
recently, so I do want to give her great credit for that.

The feedback that I understand will be presented tomorrow and I think is good is talking about not just excluding GMO crops from our surveillance zone, but to actually be more encompassing with all excluded methods, which I think is a really, really great edit, and talking about some other elements of required records, which we will look at in committee as well.

So, I definitely appreciate everybody's feedback and willingness to contribute to I think what is a really solid recommendation.

MR. GIACOMINI: Okay. Kevin?

MR. ENGELBERT: Yes, I would like to make sure everyone realizes that we will be taking public comment into consideration. And as is standard practice, the Livestock Committee will be meeting tomorrow night to fine tune this recommendation. We realize the
importance of getting this finally across the
goal line and getting it into the NOP's hands
so they can begin with getting an ANPR out.
So, we will address the issues that we have
received and we will have what we believe will
be the best recommendation possible at the
present time for voting on Thursday.

MR. GIACOMINI: The Livestock
Committee also though was very aware that this
will be a major rulemaking process at the NOP
and that unless something really major comes
up, we're not going to let, as they say in
this case, the perfect be the enemy of the
good, that if there are still some minor
errors that may be needing to be corrected,
they will certainly be able to be corrected at
that level with the extensive public comment
that will be required there. So, we'll fix
what we can, but we're going to ready
hopefully to move ahead on this.

Jennifer?

MS. HALL: I'd also just like to
clarify that unlike the 2001 version that did include a list of materials requesting kind of carte blanche recommendation that we are not doing that in this process and that like formic acid if there are additional materials that people want included in apiculture they need to petition those separately.

MR. GIACOMINI: Miles from the Program. I mean Arthur.

PARTICIPANT: Got a promotion.

MR. NEAL: Just a point of clarification. Just wanted to ask whether or not this recommendation replaces the earlier recommendation or this in addition to the 2001-2002 recommendation?

MR. GIACOMINI: Kevin?

MR. ENGELBERT: Yes, this replaces it, Arthur. We've updated that recommendation and this will be the Board's current recommendation.

MR. GIACOMINI: Joe?

MR. SMILLIE: I expressed it
yesterday, but I share VOF's concerns about the, you know, non-commercial residential sites and the process by which the certifiers will have to enforce this recommendation. I think it's a good recommendation. I'm not against it. I'm just worried about the enforceability, especially in light of the new wild crop guidance document from the NOP.

Did you guys have a chance to like review that document while you were working on this one?

MR. GIACOMINI: Not wild.

MR. SMILLIE: Yes. Well, you see this cuts across a couple things. You know, that big area that certifiers are going to be forced to verify, the prohibition for three years on chemicals is a tough enforceability issue. You know, if you're in Northern Saskatchewan or maybe Northern Dakota, yes, it's not going to be that hard. Bureau of Land Management, you go to one source, they say no, there's been no, you know, power line
spraying, there's been no this or no that. But if we're going to have organic beekeeping and organic honey, you know, I just hate to see it pushed away from -- and I just hope that you can just take a look at the wild crop guidance from the NOP and look at it as how it will interface with your document. Because again, as a certifier having done wild crop, to follow the letter of the law as far as inspection of sites and the OSP is a major league job. And, you know, you can't deny anybody's application for certification, but you can certainly say -- you know, you can avoid it by other methodologies. But I just want you to look at that as part of your recommendation. That's all.

MR. GIACOMINI: Kevin?

MR. ENGELBERT: And I agree, Joe, and two points. One is we all know organic is based on trust. This isn't going to be any different with producers and there's always a trust factor involved. And two, I think it's
safe to say that there's probably going to
have to be some training involved with
inspectors and certifiers from the NOP, just
like they did possibly with the new pasture
standards, having training sessions to get
certifiers who are going to certify organic
apiaries up to speed on what they need to do
and how they need to do it.

MR. GIACOMINI: Other comments?

Questions? Katrina?

MS. HEINZE: We heard at the
beginning of this meeting that it's important
that we provide NOP with the support they need
to get recommendations through. In your work
with them were there any concerns or hurdles
that they saw in getting this through
rulemaking?

MR. DICKSON: Not that I'm aware
of. And, Jennifer, I don't know if you have
anything to add there. But from our work with
our NOP representative during the process we
didn't hear any feedback like that.
MS. HEINZE: Thank you. That's good.

MR. GIACOMINI: Miles this time.

MR. McEVOY: Yes, this recommendation looks pretty comprehensive and I think we certainly can work with this. We were moving apiculture into the rulemaking plan with the prior recommendation. This provides a lot more information that we'll be able to utilize in that rulemaking process, so I think this is going to be very, very helpful for us.

MR. GIACOMINI: Thank you.

Further discussion?

(No audible response.)

MR. GIACOMINI: Seeing none.

Kevin, next item?

MR. ENGELBERT: Okay. Then we'll move right back to you, Dan, with the clarifying our 205.238(c)(2) recommendation.

MR. GIACOMINI: Okay. Thank you.

I just want to start by reading the official
name of what we called this document.
"Recommendation to Change § 205.238(c)(2) in
Conjunction With Scientifically Acceptable
Animal Welfare Practices Regarding the Care of
Organic Livestock." It's long, but I think
even that is fairly important.

This was a very difficult document
to prepare in that the time line and the
things that happened were very interweaving.
We discussed much of that yesterday. Again
like to recognize and thank the help done from
CCOF and Rob and Allen, not only in the way
that they helped us deal with this document,
but the way that they helped us deal with this
issue in coming to us and saying this is a
problem instead of it becoming a problem in
the field that then we had to react to
possibly in a way that may not necessarily
always be the best, the best we can in
reacting to it, but not the best way in
dealing with the issue. And we appreciate
them coming this way.
If everyone remember the discussion we had yesterday, the walk through, the adding of the excipients and the changing of the excipient annotation, the reason it's still listed on the agenda with the animal healthcare products; and to bring that up without starting another debate right now, we originally were hoping to deal with this issue by adding the term "animal healthcare products" into the excipient annotation. As we tried to develop that definition and as I will discuss in a minute hopefully, we felt that that was not a way that was going to resolve the problem. In dealing with the program on that we requested comment on whether we would just sort of have the Program leave that aside and sort of ignore it or whether -- well, that's not I'm sure the proper term, or whether we needed to take action to change that suggested annotation. Their recommendation, what we heard back from them was that we did not take formal action on
that part of the recommendation for that annotation change.

Arthur is looking at me very concerned and I'm hoping that's --

MR. NEAL: (Off microphone.)

MR. GIACOMINI: Oh, okay. But the reason I bring that up is because that was an annotation change recommendation that was made before the sunset review and it was very good of us not to have reviewed that suggested annotation change in the sunset recommendation so that we would have to go back and reconsider that one or re-review it. What we reasserted for relisting on sunset at the last meeting was the current existing annotation as it is listed, and then there is a recommendation for an annotation change that is still pending.

But specifically then to the details of this, when OFPA was written in the 1980s veterinary medicine was mainly a proactive intervention of clinical and stand
alone disease. It mainly involved infectious
disease and stand alone occurrences. During
that time of that era of veterinary medicine,
the pretreating in the absence of a disease
became a common practice and it was that
action that seems to have been the main
concern when OFPA was written.

OFPA, as it has stated, prohibits
medications except vaccines in the absence of
illness. The rule clarified that prohibition
to prohibit the administration of animal drugs
in the absence of illness and defined animal
drug with an FDA definition that essentially
included everything. It includes everything
that you deal with an animal, everything that
you look at animal with, everything that you
use in the evaluation of the health of that
animal and could include homeopathic, it could
include teat dips, it could be stretched in
the strictest sense of the term to include
absolutely everything including all of the
pain relief medication and other preventative
practices which have over time since the late '80s become more common use.

So in the 1980s scientific studies began to be published that showed that disease not a stand alone occurrence, but a cascading series of disorders, illnesses and diseases. Research of this type changed animal healthcare from intervention to a systemic and holistic management program to maintain health. The scientific approach has become much of the animal health and welfare practices recommended and encouraged at this time and required in many health welfare certification programs today.

The reason we found that relevant was in testimony before this Board regarding animal welfare in 2007, now Deputy Secretary Dr. Merrigan stated that at the time of the passage of OFPA it was understood that organic livestock production would eventually include standards for animal health and welfare. She acknowledged that rulemaking is a dynamic
process and standards must be amended as science emerges to suggest alternative strategies.

So, while we were dealing with a situation in -- if a strict enforcement of the current language was enforced, there would almost be nothing that would be allowed within the preventative category of healthcare, pain relief category of healthcare, and the science of animal welfare has simply gone way beyond that point.

So, the recommendation that we are making from the Committee is for a rule change to amend § 203.238(c)(2) to be stated as administer any drug other than vaccinations, preventatives and plan relief medications in the absence of illness. We do not feel this is a deviation from OFPA. We feel it is a clarification of the new science of animal welfare and we feel that it is a positive step in the right direction. Because if you were not allowed to use pain relief medication in
dehorning, which is not an illness, if you
were not allowed to use pain relief medication
in surgeries that are not based on illness but
for some other reason, if we were not allowed
on the diary side to use teat dip, which is
the major preventative against mastitis,
allowing the cow to get mastitis where we
would then need to take very -- use
potentially very prohibited and undesirable
treatments, it's just not sound animal welfare
at this time.

So, that's the recommendation of
Livestock Committee. I think I can say the
vast majority of the public comment was in
support of this document.

Kevin?

MR. ENGELBERT: And also to add in
that the Committee saw no potential for abuse
or any type of a loophole with this
recommendation. We think it's absolutely
sound and deals with a significant issue that
has come up.
MR. GIACOMINI: Further comment?

Questions? John?

MR. FOSTER: I think this is great example of getting ahead of problems before they become problems, and I can see this being very confusing three years from now. And think it's really great work on the part of the Livestock Committee to be ahead of the curve like that. It's a great example of that and I think the future livestock producers will be thankful without even knowing what they're thankful for because of this coming in. Yes, I mean, assuming this comes through this process.

MR. GIACOMINI: And that process.

MR. FOSTER: And this process. It's a very good example of getting ahead of problems and keeping something from becoming a problem down the road.

MR. GIACOMINI: And again, we appreciate CCOF's help and letting us do that. Katrina?
MS. HEINZE: This is certainly not my area of expertise, but in looking at the public comment there were two public comments received that asked some questions about how the recommendation would be implemented. And I was wondering if you could speak to those either today or on Thursday so that we could better understand.

MR. GIACOMINI: If you have that in front of you, I would appreciate the prompting. I remember one of those. I believe those were from the OMRI comment. One was whether it was to include the excipients. Absolutely. We fully intended to. As we discussed in the document, one of the problems has been the active ingredient nature of the National List as opposed to the products that are developed that are available for the treatment of the animal. That's why the excipient language was inserted into the National List. And we felt that it was a stretch that that part of the regulation --
that was not included in our recommendation.

And do you remember the other one, Kevin?

Does OMRI remember what the other -- the OMRI rep?

MS. HEINZE: You are correct, one was from OMRI. One was I don't know from who. I just have it in my notes that they had asked some questions. I could find them, but I could get them to you later today and perhaps you could look at them and respond on Thursday.

MR. GIACOMINI: Yes.

MS. HEINZE: Okay.

MR. GIACOMINI: Yes, we evaluated those. We discussed them in committee. We did not feel it justified to change in the document.


MR. GIACOMINI: Yes. Further comments or questions? Jay?
MR. FELDMAN: Just for clarification. So, the result of this would be more prophylactic drug use essentially?

MR. GIACOMINI: No.

MR. FELDMAN: No? You don't see it that way?

MR. GIACOMINI: No. No.

MR. FELDMAN: Okay. Preventive. A greater degree of preventive drug use. I mean, how --

MR. GIACOMINI: No, this would codify the status quo, which because the status quo has not been in the majority of the cases. In all the cases that I know there has never been a full and complete enforcement of this section of the statute to the letter. It's the potential impact of in the age of enforcement a full and complete to the letter enforcement of this line, this item that would cause the huge impact and change on the industry. We do not believe that what we're recommending would be any significant change
at all. And if that change were made, the
firestorm that we would receive from animal
welfare where we were not allowing pain relief
in the case of dehorning and castration, we
were not allowing pain relief in the case of
surgery, where we were not allowing, to use
the same example, teat dip to prevent
mastitis, that is where the problems would
come from.

This is to reassert essentially
what is being done now. I have not heard from
any certifiers that say, well, we enforce this
to the letter and we don't allow any of the
things that were put on the National List.

You know, the majority of these
things are -- this includes both 603 and the
non-synthetic, you know, homeopathic type of
products. In most cases when they've been on
the list their use has actually been
encouraged when it's necessary. A full
enforcement of the way it stands right now
would be a huge disaster to animal welfare and
to the industry we feel.

MR. FELDMAN: So I guess my question is whether we're sufficiently enumerating the situations in which use would be allowed or --

MR. GIACOMINI: We're not telling the producers how to be dairy farmers or livestock producers, and to deal with that we specifically say that we're not defining illness. We decided that that would not be the best route, because as Secretary Merrigan stated, it the evolution based on science. And if they had defined illness to the definition of it at the time that OFPA was written, it would not be a definition that was applicable and current in its use today. And we did not want to stand in the way of that scientific progress, not that we were wanting to allow more things to be used in the future, but we did not want to tie the hands of science on how the treatment of illness and animal healthcare proceeded.
MR. FOSTER: Thanks.

MR. GIACOMINI: Kevin?

MR. ENGELBERT: Yes, Jay, we're not opening up the door for any type of abuse whatsoever. I probably should have reiterated that farther. We're referring to items that are already on the National List for use in livestock production that don't technically deal with an illness, but are under the old phrase an ounce of prevention is worth a pound of cure. It's sometimes tough to determine exactly when you move from a situation to where an animal may have a health issue to one that definitely does have an illness. That's why we stay away from trying to define that. But like Dan said, we want producers to be able to use these materials that are on the National List to do what's best for their animals, to help them with the animal welfare issues that have currently come to light.

MR. GIACOMINI: Any further comments or questions?
(No audible response.)

MR. GIACOMINI: Seeing none.

Kevin, proceed please.

MR. ENGELBERT: Okay. With that, we will move into our animal welfare discussion documents and Wendy will guide us across those coals and explain how we have gotten to where we are today from where we were last April.

MS. FULWIDER: Thank you. I assume you've all had a chance to read the documents, and I'll just hit the highlights here, in the essence of time.

The document does not address free stalls, tie stalls or stanchions. That's really kind of a separate thing and would be very prescriptive, and I think something addressing that would belong in a guidance type of document. But the document does contain stocking density tables that include bedded space requirements and space for an outdoor run.
And when we put this together we were looking at minimum space requirements for winter or temporary confinement. So that's why they would not be, you know, as a rule a huge space requirement.

Some animals, you know, just don't have standards put together in all of the different standards that we reviewed, and that would be why some of them seem really different from what producers are currently using, and we heard some public comment about that yesterday.

I think the most important reason for the standards that have been developed and that are in use is because most animals are confined. And so I think it's really important that we kind of go down our own path and I think the outcome-based standards are probably in our best interest and the best interest of our farmers.

Stocking density would best serve as a guidance document I think for all of the
different production models, because I know we had one lady was talking about her lambing jug area. And I know a lot of farmers that don't use lambing jug areas. They just let the lambs, you know, come out in the pasture. And I don't use lambing jugs with my sheep.

Ventilation is something that we put in there, and that's standard across animal welfare documents from all the different programs. And it's important because when they do winter confinement, animals and people can have burns to the eyes and to the lungs. And so it's below 25 parts per million is industry standard. And I think it's important to realize that there are many welfare programs and at some point all of those are going to have to put together some sort of a reciprocity agreement.

So with that, if you have some questions?

MR. GIACOMINI: Questions or comments for Wendy on the stocking document?
Jay?

MR. FELDMAN: So we heard a lot on this yesterday in terms of the actual rates, stocking rates. What is the process going to be at this point to address those? Is the Committee regrouping on the actual numbers?

MS. FULWIDER: Well, yes, that's going to be foremost on our docket.

MR. GIACOMINI: Kevin?

MR. ENGELBERT: Yes, I don't think we can say anything in this is solid yet, Jay. It's still definitely a work in progress.

MR. GIACOMINI: Joe?

MR. SMILLIE: I remember in the previous discussion that some of this was built on the Canadian standard. And I'm just wondering if you followed up on the Canadian experience with that standard from CFIA or the certifiers?

MS. FULWIDER: We didn't because the Canadian standard is very different and the producers have a very different program.
You know, they have quotas and the economics are different, so we did not go down the Canadian path.

MR. SMILLIE: But originally it was cited, the first iteration. Oh, so that's just gone? You've gone and revamped? Okay.

MR. GIACOMINI: Joe, the original discussion document was based around essentially sort of their set of numbers to get the topic going. This document is based much more on all of the U.S.-based animal welfare certification programs and the public comments that we've received. It's just we've continued on the discussion without it being the main point.

Jeff?

MR. MOYER: Yes, I was just going to reiterate what I think you said, Dan, but also to acknowledge the fact that we are sort of focusing in with public comment from the last meeting through the written comment, the public comment we heard yesterday; we may hear
more again tomorrow, as it helps us focus in on what these stocking -- the square footage of space that we're recommending for allowance. And, yes, while we did start with some Canadian standards and ideas, Wendy's correct in that the economic situation is different, and that was pointed out to us by public comment. And so, that's helping us focus in.

And what I heard yesterday was the numbers we're talking about are no longer real small indoors or real big. I mean, we started to hear the same numbers repeated over and over, what people can live with and can't live with as minimums, and that's really the point of this process. So, the continued feedback from the producer side, the processor side of the public comment is extremely important as we begin to narrow this down and hopefully in spring have a voting document that we can put out.

MR. GIACOMINI: Further comment?
(No audible response.)

MR. GIACOMINI: Seeing none. Next item?

MR. ENGELBERT: Okay. Next we'll move into the animal handling, transit and slaughter discussion document. And again, Wendy will lead us through this document.

MS. FULWIDER: Thank you. And this document addresses minimizing stress on the animals due to the tremendous negative effect that stress has on meat quality in particular. And the information on beef, hogs and sheep came from the newly released American Meat Institute document that was written by Temple Grandin, so that's industry standard. And all of the others were referenced from grandin.com or personal communications I had with other folks within industry or other experts in the field.

And slaughter is the current industry standard with the exception of where I banned prod use. And I know that there are...
organic slaughter plants that do not allow
prods, and so that would give us a leg up.

So, any comments?

MR. GIACOMINI: Comments on that

item? Joe?

MR. SMILLIE: I read some of the
comments. I was particularly interested in
the kosher and halal response to stunning and
I'm wondering -- it wasn't really clear from
your document really where you stood on their
comments, and they cited temple also on this
where that it would basically put those very
old certification organizations out of
business in a certain sense, and I'd hate to
see that happen. So I just wanted to hear
what your response would be to especially the
kosher one, which was, you know, a two-page
response.

MS. FULWIDER: Yes, the kosher and
halal, it's in there that that's allowed for
-- I had it for the beef and pigs. I didn't
reference it again in avian. But honestly I
have not been in a kosher halal poultry. I
don't know what that involves, but kosher and
halal is certainly allowed.

MR. ENGELBERT: Yes, they're going
to be taken into account, Joe. We don't want
to exclude them from that. And if they have
special circumstances, we'll take that under
consideration. We, you know, obviously are
still soliciting input and that's important
input that we'll take into account.

MR. SMILLIE: Just to follow up
just to be sure that I'm on the right track
here, your document was requiring stunning
though, is that correct?

MS. FULWIDER: Yes, stunning is
required, but the kosher and halal lots of
times they, you know, have their own way to do
it and then you don't need to do the stunning.

MR. GIACOMINI: Jeff?

MR. MOYER: Yes, Joe, to answer
your question, I mean, I think that's the kind
of public comment just like Dave Carter said
with buffalo or bison, we don't want to piss them off.

MR. GIACOMINI: Officially on the record.

MR. MOYER: Officially. Or Dave Carter, we don't want to piss him off either. You know, but taking all that into our public comment. This is just a discussion document. We're going to take that all back to committee, reformulate that and I think what you see next time will be supportive of those other actions.

MR. GIACOMINI: Further items?

Kevin?

(No audible response.)

MR. GIACOMINI: I would just like to go back. I found the issues that Katrina addressed. If I could take a few minutes. Regarding the 238(c)(2) document and OMRI's comments, they questioned the need for a definition for the word "preventative" and "pain relief medication." We don't feel those
are necessary at this time. They asked whether this included excipients of 603(f).

We believe that it does without question. And they stated here for preventative products that are not typically registered as drugs with APHIS, herbal tonics and teat dips does the use of synthetic excipients also apply? The definition that we use for animal drugs is the FDA definition. And I believe if you look at that definition, which is included in the document which includes all the various forms of homeopathic, articles intended to use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or in animals. Articles other than food intended to affect the structure and the function of the body of the man or the animals would certainly include all of those substances. So, I believe they're all included in the definition that has been used from FDA, or FDA CA official, and that they are part of this recommendation.
Kevin, wrap up livestock, please.

MR. ENGELBERT: Yes, I'd like to
wrap up livestock with just a couple quick
comments.

First, I didn't think individual
presenters as they finished and it wasn't
neglectful. I simply wanted to do it as a
group and make sure all of you realize my deep
gratitude and the amount of time and work that
each and every one of you has put into these
documents. And I'm just extremely
appreciative of the work that we did and the
contributions that were made.

Second, I'd like to recognize
Annette Riherd. Even though she's not here,
she did contribute to all of these documents
and we're very appreciative of the
contribution that she did make and we're sad
that she's no longer going to be on the Board.

Lastly, even though Tina didn't
make a presentation, she is by far the busiest
person that I know of and she contributed
greatly to these as well. And even though she's been silent, she was very, very much a part of all our discussions and I'm very grateful to all of her insights and contributions along with all the other presenters. And just overall thanks to everybody for all the work that we've done. I'm very, very appreciative.

MR. GIACOMINI: Thank you. We are almost 12:00. We are half an hour behind schedule, but let's take an hour for lunch. Be back here at 1:00 and we will proceed with the afternoon's set.

(Whereupon, then above-entitled matter went off the record at 11:55 a.m. and resumed at 1:00 p.m.)
MR. GIACOMINI: This meeting is back in session. We are a half an hour behind schedule, which for many of us that have been associated with the Board before, that means we're on schedule. At least not far enough behind to worry about it at this point, but we will try to work towards catching up when possible and trying to finish up on time if the Board would always keep that in mind.

Next up is the Handling Committee Chairperson, Steve DeMuri.

MR. DeMURI: Thank you, fellow Giants fan Dan. I appreciate that.

Well, we've had a very busy six months. I've been on the Board now for almost four years, and I keep thinking, well, it can't get any worse than this, but it always does.

We have quite a few things before us on the agenda today. First, I'd like to
thank both Lisa and Valerie. They both participated in our calls. The transition between Valerie and Lisa as the executive director was seamless, in my opinion. And Lisa picked right up where Valerie left off, so that's been great. And then, having Valerie on our calls every other week or more has been a big help, as well. So, thanks to both of you.

And to the Handling Committee, you guys all stepped up this year, especially this last six months, and we got a lot of work done. And I really appreciate all your hard work. So like has been mentioned a few times by other folks here, we did split up the activities and the duties, and being the master of delegation that I am, passed off most of these things everybody else on the team.

So we'll start off with the petition materials recommendations. We've got yeast and pectin that Joe will handle, and
then we had a petition to add glucosamine hydrochloride that Tracy will discuss. Then, back to Joe for the famous hops petition to remove.

Once we get through those four, we'll talk a little bit about reaffirmation of some prior sunset recommendations for the meeting in Woodland. We did separate out one item out of that reaffirmation due to some public comments we received. So I will talk about the general list, and then John Foster will briefly touch on the glycerides, mono- and di-, that we broke out of that reaffirmation and listed separately.

Following that, we have a colors annotation recommendation that Katrina will handle.

Then we go into our Sunset 2012 recommendations. There are three: 205.605(a), two that I will handle and one that Joe will handle.

Then we have nine Sunset 2012
recommendations for 605(b).

Then we have a total of eight 2012 recommendations for 606 for sunset. One of those is a large group of 18 colors, and we have those split up. And then we've also separated one of those out, as well. Under the colors, we separated out the annatto, and Katrina is handling all the colors and the annatto. And then the other six or seven that we have are split up amongst us. We'll go through those.

And then, last but not least, Tracy will talk with us about the Nutrient Vitamins and Minerals Discussion Document that we've had some brief discussions on already.

So, without further ado, let's get started. Joe, you're up first with yeast. Go ahead and take it away.

MR. SMILLIE: Paul, as a graduate of the History Department, I'm pleased to present, hopefully, the final chapter in the Great Yeast Saga. It's been going on for a
while and there's been a pretty good divide of opinion on yeast and whether it's agricultural or not. And the petition, which has been deferred, tabled, resubmitted, has come and gone a number of times, and we've looked at it and we've always been sort of lurching towards a solution. I think one of the more interesting ones was regarding yeast as livestock. But obviously, we didn't move forward with it that way.

So there's a lot of history. You can read all about it in the transcripts of the NOSB meetings.

Where we are now is that we think we've got a solution that hopefully will please everyone, and hopefully we can move forward and have organic yeast as a proud member of the organic family.

So, we did two documents. The document that you see above is the document in a format by which petitions are presented. I'm going to read from a different document,
which is the mother document to that document, from which we created it, because apparently that's more proper formatting than the document that we originally worked with. So just bear with me. It's not that long.

"The petitioner requested that yeast be moved to 606 so that organic production methodology would be required. There has been a long history to this petition. Clearly, the petitioner has pointed out the ecological differences between organic and conventional production methodology.

"The issue of whether yeast production is agricultural is controversial, with vocal adherents on each side. This makes its placement on 205.606 problematic. Organic yeast is now available in many forms for human consumption, so the committee wants the industry to use these organic sources.

"The NOP has recently allowed yeast to be certified after examining the certification of the process and the product.
In discussion with members of the Livestock Committee, another concern became clear."

So again, in our process, we have to understand the ramifications of our decision for everyone. And as far as handling goes, we were clear; we knew where we were going. But Livestock was also involved. So, we networked with the Livestock Committee, and Dan gave more of his time to attend some of our meetings and present the issues that our decision would create for livestock.

Moving yeast to 606 would cause hardship to livestock producers because they are required to use only organic agricultural materials with no commercial availability option. Unlike 606, which requires commercial availability -- I know you haven't heard that before, but I just thought I'd mention it -- they don't have that option. You must use organic. And there is a possibility, has Dan told us, that organic yeast might even be available for feed use. But the other uses of
yeast in livestock health preparations could not comply to this organic requirement.

So, in other words, from a sympathetic point of view, we didn't want to hurt the livestock producers, and from a vote point of view, if we didn't solve their problems, we wouldn't get enough votes to put it on 606. So, basically, we looked at it every way from Sunday and took everything into consideration and came up with a compromise that leaves yeast on 205.605, but adds an annotation that requires "organic if available for human consumption," and that seems to have solved most of the issues. Not all, but most of the issues.

The old annotation would be changed to -- so we're changing the annotation; we're leaving in on 605 and we're moving, and we're changing the annotation -- the new annotation will be -- can you move to that one, Lisa? -- "Yeast. When used as a food fermentation agent or supplement, yeast
must be organic if its end use is for human consumption. Non-organic yeast may be used when equivalent organic yeast is not commercially available." And then, "Growth on petrochemical substrate and sulfite waste liquor is prohibited."

The committee, needless to say, talked to the Livestock Committee and other people in the industry and made this recommendation. In response to that recommendation, we had seven comments, which I must say were glowing in their support, and one comment that was opposed.

So basically, we think we've come up with a compromise that hopefully will satisfy most everyone.

MR. GIACOMINI: Comments and questions? Jeff?

MR. MOYER: I just wanted to go on the record for thanking you, Joe, for being so masterful in your work to find some common ground that the Livestock Committee and you
could live with. I know that was a challenge, and we've worked on this since I've been here for five years and probably before that.

So, I think it's nice that it's finally coming to some sort of a conclusion, and I think you were masterful in shepherding that through there. And the industry owes you a debt of gratitude for that for sure.

I did have one question for you though. In terms of the annotation change, are you going to do anything with the part that's in there now talking about nutritional and smoked? Is that going to stay, or is that disappearing?

MR. SMILLIE: No, we're dropping out.

MR. MOYER: You're dropping that, okay.

I'm sorry.

MR. GIACOMINI: Any other comments or questions? Katrina?

MS. HEINZE: I know you said this,
Joe, but I wanted to reiterate this. I'm very happy with this recommendation because it acknowledges that these, what I affectionately call the microbiological thingies and the products microbiological thingies were not solved in the classification document because there's still just a ton of information we need to learn about how they should be classified, and I think this acknowledges that and leaves room for us to continue that work.

And it's also in line with feedback that we got from the NOP that, while we can't do commercial availability unilaterally for 605, that in cases where it is appropriate, it might apply to unique individual materials.

MR. SMILLIE: My understanding is we did get the okay to move ahead with this recommendation from the NOP.

MR. McEVOY: Uh, yeah --

(Laughter.)

MR. McEVOY: -- we haven't run
this through legal review in terms of having commercial availability on 605. I have expressed to the Board of being general uncomfortable with the idea of having commercial availability criteria throughout 605 because that was the question.

So, we will check that out, but we will try to support this particular recommendation. I think it's a very elegant solution to a long-term problem that makes a lot of sense from our perspective.

Just one question I have for Joe is that you're proposing to delete the section on the annotation, "autolysate, bakers, brewers, nutritional and smoked." And do you have any background of why you're proposing to delete that part, and is that in the -- can you put that into the public record?

MR. DeMURI: Microphone, please, Miles.

MR. SMILLIE: That was, those were examples. That wasn't an inclusive, those
weren't inclusive; there's other things. So we thought our annotation really covers a much broader array of possible materials. And our annotation read -- I'm sorry; you'll have to throw it up again -- "when used as a food fermentation agent or supplement," and we feel that that covers much more than listing brewers, bakers, blah, blah, blah, smoked, unsmoked, menthol, filter-tip, whatever.

MR. DeMURI: Jeff.

MR. MOYER: But at the end of that part of the annotation, it all says that those things must be documented. I guess the word 'documented' isn't included in your new annotation?

MR. GIACOMINI: Well, I think if we're, if they are eliminating the list of what type of yeast it is, the type of yeast that it is becomes less important to document.

MR. SMILLIE: Remember, it's got to be organic if available, so the documentation for the organic will be there,
and that's why we left the prohibitions for
the conventional yeast, because if it isn't
available in organic form, we wanted to make
sure that the conventional yeast would not be
grown on a petrochemical substrate or sulfide.

I was going to withdraw that, and
Katrina caught that, I think, if I recall
correctly. She said, wait a second, what
about the conventional yeast that could
possibly be used? And I said, good, we'll
leave it.

I think that covers documentation
if that's what you meant.

MR. MOYER: It is. I think that
covers it. Thank you.

MR. GIACOMINI: And as I read
that, Jeff, it's only the smoke flavoring
process that is in this annotation that must
be documented.

MR. MOYER: Okay.

MR. GIACOMINI: Miles?

MR. McEVOY: Yes, I guess the
question would be, it appears from the current annotation that if you're doing smoke flavoring, it would have to be done through non-synthetic methods with conventional yeast. So if you remove that part of the annotation, would that mean that if organic yeast is not available and you were using non-organic yeast, could you then use a synthetic smoke flavoring process? You'd be removing that from the annotation because, currently, it restricts it to a non-synthetic flavoring process for conventional yeast.

So, you just have to really think through carefully of, if you're removing that part of the annotation, what are the implications of that? There must have been some reasoning when this was originally put in there. Was it from an original NOSB recommendation from a long time ago? Why did they put in that part, "Non-synthetic smoke flavoring process must be documented"?

MR. GIACOMINI: I think the
Handling Committee will take that under consideration.

MR. SMILLIE: The Handling Committee's got a meeting, and we'll take that under advisement. It's not going to be a complicated fix to put it back in, so --

MR. GIACOMINI: Katrina.

MS. HEINZE: I do believe we did discuss that, so we should start by looking back at our Handling Committee minutes. I am not recollecting what we concluded, but I do believe we discussed it. So that might be our first start.

The other thing is we did have some discussion about the fact this is a 605(a) item, so it does need to be non-synthetic. So we might want to consider that in our discussion, as well.

But I would start with the Handling Committee minutes because we covered this topic.

MR. GIACOMINI: Yes, Kevin?
MR. ENGELBERT: Most of my concerns have already been addressed, but two. I think, if I remember right, Joe, the negative comment -- there was an assumption in there that it was going to be put on 605(a) and 606. Was that the negative comment that you recall?

MR. GIACOMINI: You're on, Joe.

MR. SMILLIE: No. No, there's no, that is never come up.

The comment was very specific that while they didn't -- the commenter was OMRI and the comment was very specifically that, while they didn't argue with the intent or the meaning of our change and the fact it was a solution to the problem, they found that they didn't like the precedent of the logic of having a non-organic -- I mean a non-agricultural -- material.

But my response to that is that had already been decided by the NOP when their policy came out allowing for the certification
of a non-agricultural material.

I'm not sure if that answers your question, but that was the objection. I can find it someplace.

Yes, go ahead please.

MR. FELDMAN: OMRI does not support the recommendation for the following reasons: As stated in 205.2, terms define the term organic is, "a labeling term that refers to an agricultural product produced in accordance with the Act and the regulations in this part."

And then back to OMRI -- "How can yeast remain on 205.605(a) as a non-agricultural, non-organic substance when the NOSB is recommending that it be organic when used in human consumption? How can a substance be agricultural for one use and non-agricultural for another? This recommendation sets a precedent that is not based in logic, and we ask the NOSB to reconsider."
MR. SMILLIE: As the quote was in Shakespeare in Love, it's a miracle. It can be both things.

(Laughter.)

MR. SMILLIE: The answer is, if it can be certified under the NOP Program, then we don't see a problem in that illogic.

I'd like to remind people that the scientific community often accuses us of non-logic, and I've become very comfortable with other methods other than logic.

(Laughter.)

MR. SMILLIE: Logic's a wonderful, wonderful scientific tool, and organic isn't necessarily always logical, but that doesn't mean it's wrong.

MR. GIACOMINO: Katrina?

MS. HEINZE: That's hard to follow up.

(Laughter.)

MS. HEINZE: I have a slightly, maybe an addition to that. I'm back to that
classification document again, which is going
to dog me for another year.

We specifically addressed that
concern in the classification document, and
it's one of the reasons that those
'microbiological thingies' were not handled in
the document, classification of them wasn't
handled. That classification depends on the
process and the source of the material. And
for things like yeast, there's different
processes and different inputs and different
sources.

One of our principles in the
classification document was that, in fact, the
same material, if processed differently or
from different inputs, could be classified two
different ways. And I believe that that is
what is happening here with yeast.

MR. GIACOMINI: I think, to go
back to the question that Kevin had, of the
dual listing. The dual listing, if accepted
by the Program, could have been a solution now
that would have handled both the human food side and the livestock feed side. But with the dual listing where the listings would not be coupled, it would be very easy down the road for a board to just say, it's on 605; it's on 606; if it's on 606; we'll just delete, we'll just drop the 605. And that would have been, if the other issues are not resolved, that would be very problematic.

This solution tries to do as close as possible to the same thing but keeping it all within one listing.

Yes, Kevin?

MR. ENGELBERT: One other quick follow-up. What does the committee think the implications are with other 605(a) items with all of a sudden applying a commercial availability clause to this, to yeast, for example, dairy cultures or any other of those?

MR. SMILLIE: As usual, a very good question. There are implications. We see them. And I don't want to bring up another
red herring or can of worms or whatever
appropriate analogy, but flavors are indeed in
the same position really. Some flavors should
be on 606, not 605.

So there are implications and we
hope that perhaps this is a precedent
"somewhat illogical" but not necessarily. It
could be a precedent to solve some other
problems, like flavors, and so, there are, you
know, it is a precedent-setting. But again,
we're not asking for commercial availability
on 605. We're asking for specific commercial
availability for this item only as part of the
annotation.

MR. GIACOMINI: And responding,
also, Kevin, on that, we have animal enzymes,
we have dairy cultures, enzymes. If whatever
means came before the Program and for whatever
reason, they came out with a similar type of
decision on any of those substances that they
have on yeast. It could be very good
situation.
MR. ENGELBERT: Yes, I didn't mean implying it would all be bad.

MR. GIACOMINI: Yes.

MR. ENGELBERT: I'm saying that potentially maybe there's, it's a good precedent-setting here as well.

MR. GIACOMINI: John.

MR. FOSTER: That's, that was the point I wanted to make, was that it's driving, the implication for me is that it's driving things, it could start driving more things to be produced agriculturally, and therefore eligible for certification, which is, I think we have pretty much 100-percent agreement. One of the rare things I suspect all of us on the board agree on is a good thing. And to open that door, I think, is a very positive direction.

But also, Joe, I think what you meant was that there are some flavors on 605 that should be considered agricultural and therefore certifiable; not necessarily on 606.
MR. SMILLIE: Right.

MR. ENGELBERT: Okay. Okay.

MR. GIACOMINI: Further comment?

(No response.)

MR. GIACOMINI: Okay -- nothing else for the Program on the one? Okay.

MR. SMILLIE: I would be remiss in not again thanking you Dan for your excellent help on getting us through that one. Appreciate it.

MR. GIACOMINI: Thank you.

MR. DeMURI: One comment, Kevin.

If you pick up quite a few food packages in the marketplace, you'll see that in the organic food, there's quite a bit of non-organic yeast being used, so this will drive even a higher percentage of organic, organic products.

All right, now that Joe's warmed up, we're going to move right into pectin.

Go for it.

MR. SMILLIE: I've got to tell
you, I really love this one. This one's a lot of fun.

(Laughter.)

MR. SMILLIE: Pectin's petition was 2005. For those of you keeping track, and I know Emily's one of them, this has been sitting around for a long, long time. I'm not sure why the process was so slow, but all I know is when I got the job and I looked at it, I went, oh, my gosh, this has been here for a long time. It was like, brush off the dust and dig in.

The first thing we did was we asked for a TR on it. We got a TR, and the honest truth is that the TR didn't answer the question we asked it, so we sent it back. So we were part of the delay. Again, I don't have the dates of those TRs. I think it was 2007. And that TR just didn't do the job.

So we asked for another one. We had to wait to get the next one, even though we specifically said, just answer this
specific question. It was just as specific as you could possibly be. And we finally got that TR, and other than the polygalacturonic universe that I had to enter to read it, it sort of indicated where it was supposed to go.

So, the first thing I did was go back to 1995 when the decision on pectin -- now this, again, is a petition to move -- that low-methoxy pectin be moved to, the original petition was that low-methoxy pectin be moved from 605 to 606. And as those of you policy wonks that read the National List know, there's high-methoxy and low-methoxy in different columns.

Of course, being naïve and innocent, I said, gee, there must be a reason for that. I don't quite understand it from reading the TRs and the scientific information. So I went back to the '95 decision-making process, read all the transcripts, looked through it all, and still couldn't figure out why they had come to that
conclusion. And then the word 'amidation'
entered my life, and they implied --

MR. DeMURI: You were never quite
the same.

MR. SMILLIE: -- no, I've never
been the same since.

(Laughter.)

MR. SMILLIE: But it's going to
gel. Trust me on that.

(Laughter.)

MR. SMILLIE: Stop.

So we looked at it.

Rather than spend more time on it,
I went to the source and started a long
dialogue with Richard Theuer, who was the
chair of the committee that made that
decision. And one of my favorite sets of
email back and forth was Richard and I talking
about science, of which he knew a lot and I
didn't know very much. But I was dogged in my
pursuit that I could not see a difference
between low-methoxy and high-methoxy.
And we get back into the whole idea of what is chemical change, and is transesterification chemical change? And the difference between the low-methoxy and the high-methoxy pectin is the amount of time the extraction process takes to pull the pectin out. And to me, that wasn't a significant enough difference to separate the two.

So Richard and I went back and forth, and finally, the final comment was -- it's quite interesting because I think it throws light on the subject we all love to talk about. He said, I understand your argument that the difference between low-methoxy and high-methoxy is extraction time and less molecular weight. The semantic difference seems much greater 15 years ago than the chemical difference does now.

(Laughter.)

MR. SMILLIE: This is one of those materials where extraction and chemical change are hard to separate, which makes me see the
argument to move both to 605 as nonagricultural.

Your proposed annotation is a significant improvement and clarification. Basically, what that group at the time felt was that low-methoxy and high-methoxy were differentiated by the extraction time to pull out, but then somehow, amidation got confused with it. We've looked at it, and amidation is a distinct, different process that happens after the transesterification, and we have made a series of recommendations guided by, once again, Katrina.

My recommendation was a little garbled, and we've straightened it out to make a series of recommendations -- that pectin, low-methoxy, be removed from listing on 605(b); that pectin, high-methoxy, be removed from listing on 205.606; and that pectin, non-amidated forms only, be added to 205.606, which we feel is good science and supported by both of the history and precedent and the
classification document.

   The nice thing about all of this
is it's not horribly controversial. At least,
it hasn't been up until this point. Again,
the TRs talked about this, and again, when
you're dealing in scientific terms, especially
those of us who are not scientists, you have
to try and simplify it.

   The simplification is that it's an
extraction, that basically the pectin is
extracted from the pomace, in this extraction
time varies, and the product you get is
differentiated because of the molecular
weight. And I think, if I'm correct -- and I
can't seem to find it in my document -- but
the uses are different in that the difference
in pectins is the degree of esterification
that subsequently changes how the pectins
work.

   High-methoxy pectin binds with
sugars at the bricks range of 60 to 65. Low-
methoxy pectins require a cation bridge,
usually calcium, to bind with sugars and
function at lower sugar levels, particularly
40 to 45 bricks. So basically, your low-sugar
jams use the low-methoxy pectins, and your
higher-sugar jams use the high-methoxy.

But as far as our committee could
see, high-methoxy and low-methoxy are the same
process and product with different uses, and
our recommendation is to move them both to
606. They are agricultural. It's apple
pomace, extracted, and amidation is the
treatment with ammonia after, and that is
chemical modification to create an amidated
pectin.

I think it's possible, Richard
wasn't sure, but today it may have thought
that amidation was a part of the product of
low-methoxy, but that it is not. But Rich
isn't here and he can't defend himself.

MR. GIACOMINI: I have a question
for clarification. The current listing on
605(b), synthetic, is pectin, low-methoxy.
You're looking to -- so do I understand that that's all forms of pectin, low-methoxy. And by the recommendation you're doing here, are we eliminating the low-methoxy -- granted, you're saying it doesn't exist -- but is low-methoxy, amidated, currently allowed in the current listing?

MR. SMILLIE: It's not precluded.

MR. GIACOMINI: So you are intentionally eliminating amidated from 605(b)?

MR. SMILLIE: Correct.

MR. GIACOMINI: Okay.

Any further questions?

MR. SMILLIE: Well, we didn't do that in -- I mean, we looked at it and then we talked to a number of industry people who use pectin, and they confirmed that they thought that that was the right thing, that they don't use the amidated forms in organic, and they thought there was no good reason why you would need to.
The comments -- there wasn't a lot of comments, but we did have two comments from the industry. There may have been more. I only saw two; I'd love to be corrected if that's not right. But we got comments from Smuckers and White Wave saying that they supported this move and that they didn't see a reason for the use of amidated forms of pectin because that is chemical change.

MR. GIACOMINI: What is amidated pectin used for, as opposed to non-amidated?

MR. SMILLIE: It used for the same -- well, my have to ask Kim --

MR. GIACOMINI: Kim?

MR. SMILLIE: -- to give us some scientific -- but basically, it's used for the same reasons; low-sugar jam production.

MS. DEITZ: Kim Deitz, Smucker Natural Foods. I did talk to our supplier, and the amidated means that there's an ammonia process when they make the pectin and that most -- pectins are not made that way anymore,
so most pectins are non-amidated if that
answers your question.

MR. GIACOMINI: But is there any
use for that rarely-used, made, used form that
we might be eliminating here that we're
creating --

MS. DEITZ: Not to my knowledge.

MR. SMILLIE: The one thing I
didn't mention, of course, is the petitioner
is a jam maker, an organic jam maker. And you
know, the basis of that petition was that they
didn't think that amidated forms should be
used in organic production. They saw no need
for it. So there's the petitioner and two
supporting industry members on that.

MR. GIACOMINI: Steve?

MR. DeMURI: When we were going
through this, I looked up that amidation
process, and there were some literature
references that the amidation process possibly
produced a more pure form of pectin, but it's
also cheaper. So that's why it was used a
little more often in the past.

MR. GIACOMINI: I love that, we're going to add and make it pure.

Okay, Jay.

MR. FELDMAN: Thanks, committee and Joe. I notice on the TR there's reference to the demethylation. Did that come up as this issue gelled for you?

MR. SMILLIE: That's part of the polygalacturonic process.

MR. FELDMAN: But then there's a reference to that being the process used in the low, the LMP, the low-methyl.

MR. GIACOMINI: Mic, please, Jay -- if you're done.

MR. FELDMAN: Sorry.

MR. SMILLIE: Yes, I found the TR troublesome. I really did. I mean, I was looking for a clear answer. What I asked very specifically was, is there a difference in the chemical process or in the extraction process, the transesterification, between high-methoxy
and low-methoxy? I just had one question. I wanted the answer to that one question. And a TR came back, and it really didn't answer that question.

But in consultation with the petitioner and other people, basically, the answer came back the same every time, that it's simply a matter of extraction time. And I forgot the demethylation part, but I think that's different -- again, there's chemists in the room. I'm sure someone will leap to our help -- but the transesterification process has a lot of different processes within it, and that may be one of the things you're referring to.

I haven't got the TR right in front of me, unfortunately.

MR. GIACOMINI: Katrina?

MS. HEINZE: Okay, so your chemist is going to try to help here. I'm going to start by saying, remember, it's not about the chemistry.
When we talked about this -- so as the extraction process proceeds, it's really about time. The chemistry or the process to make low-methoxy is the same as high-methoxy. Low-methoxy is just a longer time for the process.

As a result, there are different bonds, but it is the same substance. It is clearly the same substance. So, as a result -- and I was going to bring this up -- the committee voted to classify low-methoxy non-amidated, and we voted that it was non-synthetic agricultural.

What I'm trying to say, Jay, is we evaluated that TR information. We had that discussion, and our classification vote was non-synthetic.

MR. GIACOMINI: Steve?

MR. DeMURI: And I know we mentioned this a thousand times over the last couple years, but don't forget, we're moving this from 605 to 606, which now subjects it to
commercial availability scrutiny. And the

forms that are being removed were on 605. So

anybody could use it anytime they wanted to,
in an organic product within the five percent
tolerance.

This was a petition to move, not
to remove, so we substantially cleaned this up
and made even tougher by doing what we're
doing.

MR. GIACOMINI: Question for the

Program. A lot of things are going on in this
recommendation, including the moving of
something from synthetic to agricultural,
going sort of the opposite of the last
problem.

Any problems the Program sees in
rulemaking on all of this manipulation?

MR. McEVOY: No, we don't see any

problems with this.

MR. GIACOMINI: Thank you.

Further comments, questions?

(No response.)
MR. GIACOMINI: Seeing none, next item please.

MR. DeMURI: Thank you, Joe. Once again, good job.

We'll give Joe a quick break and move to Tracy for a petition to add glucosamine hydrochloride.

MS. MIEDEMA: Thank you, Steve. Hopefully this one will be short and sweet.

Glucosamine hydrochloride is a dietary supplement. The material was petitioned to 605(b) three years ago. After some back and forth trying to help petitioner understand some critical errors they had in their petition, it was brought to us for review about two years ago. We requested a TR, and it did take two years to receive that technical review.

There was only one comment received during public comment period, and it was from the petitioner asking us to withdraw the petition. I reviewed our policy and
procedures manual, and it is considered in keeping with our policy and procedures to allow the withdrawal of petitions right up until the moment of voting if the petition is for the purposes of improvement only.

Now there were some misgivings in our committee because a TAP had been performed. There was this notion that we had put some work into it. As the lead reviewer, I would not be opposed to it being withdrawn personally. Just in respect to the petitioner, three years is a long time to have your petition sort of languish, and things can change, and the petition actually needs a fair amount of improvement.

We voted five no, one absent, zero yes, to add the material to 605(b), and we did so in large part because of unanswered questions about impact to the environment and the production of the material, which an improved petition might clarify.

I'm not going to fall on my sword,
I guess, for this though. If my fellow committee members really feel like we want to go ahead and vote this through, I'm open to that as well. But three years is a long time to wait. There are new people that are handling this material and weren't even aware that it was still under consideration.

I can go into the technical aspects of the material, but it's basically a synthetic. This form of glucosamine is derived from synthetic materials, as opposed to sea shell, which is the main form of glucosamine. It's typically used in dietary supplements as a joint, for purported joint benefits. They noted that a non-shellfish form would be helpful for seafood allergies and that sort of thing. That's not really one of our bases for adding something to the National List though.

That's about it.

MR. GIACOMINI: Just a clarification on the document. That should be
marked as rejected from the committee, correct, the recommendation to reject on the box up on the screen? There should be a checkmark on rejected; correct?

MR. DeMURI: That's correct.

MR. GIACOMINI: Okay. I just want make sure.

So, further comments?

(No response.)

MR. GIACOMINI: Katrina.

MS. HEINZE: Tracy, I would support having this withdrawn. I was taken by the public comment where they concurred with our assessment of the environmental impact of their process and where the petitioners said that they were under the impression that they had withdrawn it, but due to some -- I liked your word, Joe -- scarfuffel within their own organization, they were not aware that they had not withdrawn it until our recommendation was posted. So I appreciated their transparency on that.
MR. GIACOMINI: Okay. I think that's ultimately up to the committee. So, you know, we've try to not allow someone, just like we've talked before, to turn it over to a different group of people on the board with different ideas. But if the committee thinks that it's a legitimate argument and not a new creative way to do that same thing, then that's up to you guys.

Next item, Mr. Chairperson.

MR. DeMURI: Thank you, Tracy.

Well, now we're going to turn it back here to Joe in a second two discuss the hops petition to remove.

I would like to preface his comments by saying that we all appreciate everybody's comments that were made, both here and at the meeting. We'll probably hear some more tomorrow. And written comments were received as well. You did a good job of flooding the NOP website with comments. I commend you for that.
One particular comment, I think, kind of summed up what I heard, and that is: Dude, organic beer should have organic hops. No non-organic hops in the organic beer. Otherwise, not so organic, you know. I mean, hops is one of the most important ingredients. That is all.

So that was the probably the most succinct and to-the-point comment I saw in all of them, but very good.

So, with that, I'll hand it over to Joe for a discussion of the hops petition.

MR. SMILLIE: I think that's another example of, sometimes the least polished has the most shine.

We've had a lot of discussion yesterday on this, so I won't go through it all again.

A couple things to point out -- again, we talked about it a lot, but again, I'm still of the belief that I could be the only one left in the room that believes that
actually putting on hops on 606 originally was
a really, really a good thing to do. It
brought attention to it, it gave the organic
beer industry a good start, and now it's time
to remove it.

That's the process that I want to
see 606 work. I believe that's the way it
should work. I believe putting something on
606 is setting up a target for entrepreneurs
to make it organic and bring it in. If you
don't put it on 606, maybe -- who knows? --
there wouldn't have been an organic beer
industry. They just would have said, well, I
can't get organic hops, so forget it; I'm not
going to make organic beer.

That's the purpose of 606. I
believe that's the driving reason, and
whatever we can do to make that work, we
should. And the first thing we need to do to
make it work is to get lecithin off 606
because we voted it off, and we will now get
hops off 606.
Incidentally, also, I'd like to point out that the petition was to remove hops from 606. There was no date. It didn't say remove immediately. It just said remove. Thank you, Megan. That gave us a little face-saving ability so that we can now remove it, but on a date that allows for an orderly transition.

And again, there was a lot of emotion on this. We understand it. We appreciate it. It's good emotion. But then there was also some very good reasoning from the hops growers themselves. They said, look, you know, we understand it; we want to see an orderly transition. We greatly appreciated those comments also. It enabled us to move forward. I think you showed a lot of mature judgment, after the initial editorial headlines were passed.

So bottom line, we think that we're in agreement now. One of the problems we had that was brought up in the NOSB and
outside by the academics -- I think they were both academics -- was the process, that the process of our deliberations on the Handling Committee were not clear, transparent and democratic. We'll have to work on that.

Obviously, I was little emotional most of yesterday in responding to that sort of charge. We will work on it. We will work on process. We will try and make it as open, transparent and democratic as possible within reason.

I think one of the mistakes we made was -- it wasn't quite the, you know, the pet dog killing the computer mistake -- but we made a similar mistake, Tina, in that we had two different forms we were working with at the same time, and basically, we created this long form, which is in front of you now, for the hops.

We originally had shortened it and put it into a form that you just saw for the yeast, and a lot of words got clipped and
changed. And some of the errors that we may, talking about significant public comments and all that, I think part of the reason why was shifting the old cut-and-paste. Some things got cut and pasted that maybe shouldn't have.

So there were mistakes made in our original thing about significant public comment. We still believe the public comment was significant, but we made it -- the accusation was we made it look like there was more than what was there, other than what we have followed.

I think our revised document sort of responded directly to that criticism as quickly as we could possibly do it, and we laid out who we talked to and when we talked to them and all that sort of thing.

So, all that having been said, it was a learning process and hopefully as new boards, long they don't repeat the same mistakes, because we all know what the definition of insanity is: doing the same
thing again and expecting a different result.

Let's hope that the process is as democratic
as it can possibly be and that everyone is
consulted to the best of our ability.

So that having been said, we'll
scroll quickly through it. Basically, there's
still, I think, a few issues. Petitioner
claims differences in quality of cultivars of
hops are not an issue. Some brewers still
feel, yes, this is still an issue.

We, in the second, in a comment
the petitioner made the follow-up comment
delineating the types of activity that hops
provide; not specific varieties, but floral --
I can't remember them all -- bitterness,
floral, aroma, piney, citrusy -- all of those
characteristics. That was very helpful in
helping us understand that maybe one cultivar
doesn't substitute directly for a cultivar,
but if they both contribute a floral note,
then they could substitute. So we learned
from that, and other people learned from it.
Brewers are still out there making marketing claims based on their exquisite blend of hops, and that's still valid. And the way that I think we're going to deal with that is that as of January 1, 2013, our recommendation is that organic beers must use organic hops. I think everybody's happy with that. I think the transition period is adequate for brewers to forward contract or find brokers that will supply the hops that they need.

And if, indeed, there are brewers it firmly believe that their particular variety of hops, which their whole commercial enterprise is based on, is not available, then they can go to the wonderful process the hop growers went through and they can petition that particular hop variety for inclusion on 606. That's their injunctive relief as of January 1, 2013.

Once again, it really illustrated and brought to the fore that age-old
complicated -- Miles doesn't like it much, but
it's there -- the old idea of commercial
availability, that we certifiers have to apply
the screen of commercial availability for
material from 606 that's used.

And again, we did issue a guidance
document. I'm sorry; I can't follow the same
screen that you guys are following. We did
issue a guidance document in 2007 talking
about further guidance on the establishment of
commercial availability criteria, and I think
that that's important because the ACAs are
trying already. But again, there's more work
needed to make sure that we're all
consistently following the same commercial
availability rules.

So, the bottom line is that in the
words of Patrick Smith, we think we've laid
out a roadmap for both the brewers, the
malters, the barley growers and the hop
growers to all get together and have a joyful
celebration on January 1, 2013, the end of the
Prohibition era on conventional hops.

Okay, so the recommendation is that hops, Humulus lupulus, be removed from 205.606 on January 1, 2013, and the committee was unanimous on the, except for one Committee member who was lost in the Pacific someplace, I think, as I recall.


MR. FOSTER: So, I read each of the comments that came in after the first recommendation went out, and it was really frustrating for me that none of those commenters recognized the certifier's role in commercial availability. I think it's, that was a large oversight on those commenters' part.

It's not necessarily a fault or something like that, but it is a terribly incomplete argument to talk about hops as solely a decision of the NOSB. It's incorrect, it's not consistent and it's
frustrating. And as challenging as it is for certifiers, it's a very challenging thing to deal with. But a lot of the dissent that was expressed did not recognize that second door that certifiers hold the key to.

So I think this recommendation we have in front of us is a good one. It's the right one. But I don't want the opportunity pass without recognizing that any time we talk about commercial availability, we as a Board, we have to talk about it in conjunction with the certifier's role with respect to case-by-case, OSP-by-OSP determinations about commercial availability, not to lose sight of that.

MR. GIACOMINI: Further comments? Program? Miles?

MR. McEVOY: Yes, I like what you said there, John.

Commercial availability is difficult for certifiers to implement consistently, and that's my, I guess,
reluctance to have broad acceptance of commercial availability for everything that the NOP regulations includes, is because it's really challenging.

It's really nice that is done on a case-by-case basis, but we see in the comments that were provided here that something's not working in the system, because people should know, the certifiers should be very diligent, and I think they generally are. But something was missing here because it doesn't seem like they were consistently requiring a very rigorous process for commercial availability around hops.

So it's something that we're going to look into, work with the certifiers, try to understand how they're implementing commercial availability for seeds for a 606 list, to build consistency in this process, to build a better process for commercial availability.

A very important part.

MR. GIACOMINI: Further comments?
(No response.)

MR. GIACOMINI: Joe, I would just like to say that, based on your initial comments on this, I, too, was there in spring of '07. Of all the things that we had been looking at for 606, I think hops was one of the easiest votes I had in voting to put it on the list.

I was quite dismayed and surprised with the thrashing to within an inch of their life that the Program went through after that was posted. I think that was unfortunate because in reviewing the information we had and looking into it, and the difficulty, certainly at the time, with the tools that were available in providing a hops to the brewer that was in a good, non-moldy form, was difficult. So I certainly have no problem and no question in my mind that we made the right decision then.

At this point in time, I would still like to hear from more brewers. We did
hear from one who uses all organic hops now. I would certainly hope that tomorrow we can hear from some that don't currently use all organic hops, and they can address to us if this will cause any problems.

The one thing that I have a question with -- I'll be willing to support this document and this recommendation. The one thing that I have a question with that I just have not had a satisfied response to, is in my dealing with livestock and livestock feed, I deal with crop years all the time, and I don't understand cutting it off in the middle of a crop-year usage.

If they're saying, well, we want to be able to use conventional hops until we're through the holiday beer season, but then when we get into spring and summer beers, we'll be ready to use all the organic forms, I can understand that. But when it's not, doesn't seem to be related to the dates of a harvest season and a crop year, I don't
understand where the date came from.

But other than that -- I'm willing
to go along with it. I just have, it just
doesn't make sense to me, and I haven't had
that understood.

MR. SMILLIE: We can take time to
discuss it and I can explain it, but if it's
not material to the vote or that -- it does
make sense.

MR. GIACOMINI: The only
materialness to the vote would be based on
what we hear from any brewers tomorrow, if
they're seeing --

MR. SMILLIE: Well, if we get some
up, we can follow up with questions.

But basically it is the end of the
crop year. It's the end of the 2012 crop
year. If you haven't got your hops in by
January 1st, you're in trouble.

MR. GIACOMINI: No, but a crop
year is based on harvest.

MR. SMILLIE: Yes, that's what I'm
saying. It's at the end of the 2012 crop year. Harvest is in.

MR. GIACOMINI: The harvest, the hops that are available on January 2nd are the hops that were harvested in the previous summer/early fall.

MR. SMILLIE: Well, or two years ago. They keep -- pelletized hops can keep for years.

MR. GIACOMINI: Right, so -- okay. Katrina.

MS. HEINZE: I was just going to suggest that perhaps we talk about it as a committee. I think, Dan, your point is not crop year but use of the crop year -- right? -- so that the 2011 crop of hops needs to last through the brewing year until the 2012 hops crop is harvested.

MR. SMILLIE: Yes.

MS. HEINZE: And we put our date in the middle of that. I'm not saying that's right or wrong, but I just think that's Dan's
point. So perhaps we'll just talk about it in
community and decide if we have any concerns,
to come back to address Dan's point.

MR. GIACOMINI: Further questions?
Comments?

(No response.)

MR. GIACOMINI: Seeing none, Mr.
Chairperson, next topic.

MR. DeMURI: Thank you again, Joe.
I'd also like to recognize that
Joe Dixon and John helped Joe a lot on this
recommendation, especially after we got the
flood of comments a month or so ago, six weeks
ago. They quickly crafted a response -- and
I appreciate you guys jumping in and helping
Joe out with that. All right, that's all for
petitions for this meeting.

Now we're going to move into the
reaffirmations of prior sunset, 2012
recommendations. These are the
recommendations that were made in Woodland,
California, in the spring.
I won't read them all off, but Lisa, if you can kind of scan through them real quick, down at the bottom of each recommendation is a list of what we are going to reaffirm for 605(a). They're on separate recommendations. Those are the 605(a) items.

There should be another recommendation for 605(b). There you go.

And then the last one would be for 606.

The Committee is recommending, by the votes that you see up there, that we reaffirm all of these votes from the last meeting.

We did receive one public comment, maybe two -- I can't recall now -- for glycerides, mono- and diglycerides. So we pulled that one out, and I asked John Foster to take a look at that to make sure that we didn't need to go back and rethink that decision.

So John, if you want to give us a
brief update on what you found there.

MR. GIACOMINI: John?

MR. FOSTER: I just want to do it by the book here. That's all.

So, we did at the time, following our April vote, we did have one comment speaking to diglycerides. And consistent with our decision in April to pull those out before reaffirming at this meeting, that was enough to pull glycerides out.

So in, so having that set aside independent of the other votes, it kind of gave us an opportunity to focus on that a little bit more closely. This recommendation went out -- obviously, we finished it in August. And at the time, that Committee summary reflected a true statement.

Since then, as a function of the public comment we've gotten in this most recent round that ended October 12, we got several comments -- I'm recalling it's seven or eight -- speaking to mono- and
diglycerides. The majority of the comments that have come in in this last, recent period were very strongly in support of removal of mono- and diglycerides. That, of course, is very different than our vote in April.

I would say that all of those comments are pretty compelling. There were a couple who said that that they needed to keep mono- and diglycerides on 605, not because there wasn't any replacement for them but that the replacement on the market was only useful in partially replacing mono- and diglycerides in various product formulations.

So the comments that asked to retain it did note that agricultural, in fact, organic alternatives were in place and partially helpful. The majority of the comments, like I said, said that it was the agricultural and certified-organic replacements were completely, would be able to completely replace mono- and diglycerides in product formulations.
Among them, our friend Rich Theuer, again, who has a fairly deep experience with this, he was on the NOSB at the time that this was first voted on and wrote a very compelling and, I thought, very insightful both history of the vote then and what he's come to understand now about these agricultural alternatives.

So I think as a committee, we need to reconsider this recommendation that was posted in light of the public comment. It's substantial and compelling, I would say.

MR. GIACOMINI: Further comments or questions?

Steve, there was one list, one version of the reaffirmation that went around. I don't remember whether it was in (a), (b), or 606, where one substance didn't make the cut-and-paste. That has been corrected, right?

MR. DeMURI: I believe we corrected that. Didn't we?
MR. GIACOMINI: Okay. I don't remember what --

MR. DemURI: We'll double-check.

I believe we got that corrected.

MR. GIACOMINI: I want to make sure we get them all.

MR. DemURI: Okay.

MR. GIACOMINI: Any further comments?

MR. DemURI: I have a question.

John, those comments that came in that were opposed to relisting, did they come in after the October 12th deadline for comments for the first, for the Woodland meeting, or after October 12th? Do you know?

MR. FOSTER: All of the comment, the public comment I'm referring to, that is compelling, came in within the time period of public comment that closed October 12th. It's on regulations.gov.

MR. GIACOMINI: Questions?

Comments?
All right. Mr. Chairman, next item.

MR. DeMURI: All right. So that completes the reaffirmation work for this meeting as a result of last meeting's votes.

Next we have a colors annotation recommendation that Katrina will provide for us now.

MS. HEINZE: Thank you. So I'm going to give a bit of a history lesson as well, following in Joe's footsteps. There are currently 19 colors listed on 205.606. I'm not going to read them to you, but they are in the recommendation up there. You'll be familiar with them by the end of our handling discussions today.

These 19 colors were added as a result of a 605(a) listing of colors, non-synthetic, being allowed to sunset off the list. So, originally on the National List, colors was listed as a group, but there was some debate about that. So, at the appropriate time, five or six years ago, the
Handling Committee recommended that those sunset.

As a result of that, a number of petitions were presented to the NOSB for colors to be listed on 606. The Handling Committee reviewed each of those petitions, made recommendations to list those materials. Some of those colors were not added by the NOSB. These 19 colors were recommended for listing, and that was done at the March 2007 NOSB meeting.

At that March 2007 meeting, there was quite a bit of debate about annotations for these colors, so I wanted to summarize that a bit for you. For each of these, the petitions talked about the extraction of the color from the raw material happening either through oil or water extraction plus some sort of physical processing; so, for example, the raw material being cut, ground or dried.

For 10 of the colors, the petitioner very specifically identified that
process and in fact said that their process was certified organic, but the raw material is not. And obviously, that's not -- whether they should be listed or not is not the point of this recommendation.

The other nine petitions did not indicate that solvents beyond water or oil were used. And that point was strongly supported by public comment during the meeting because we were really trying to understand how these were made and had discussion on it.

Further, actually, for two of the colors, annatto and paprika, the Handling Committee had originally recommended that the oil extraction be restricted to using organic oil. That March 2007 meeting was the first time that the Handling Committee had reviewed 606 items, so it was a new process for us. All that was heavily debated, and what happened at the March 2007 meeting was quite a bit of debate on how restrictive an annotation could be on a material that was not
organic.

The result of that discussion was that we should not do annotations that were restrictive beyond what was available in the commercial marketplace. After all that discussion, the result was that we did not include any annotation for the colors with regards to how they were extracted.

Since that March meeting, it's come to our attention that folks may be confused about that, so, since we didn't have an annotation at all, we have gotten question that said, does that mean that synthetic solvents can be used? And that certainly was not the intention of the Board at the time of that recommendation.

After reviewing all the transcripts, looking at the original petitions, looking at the public comment that we received at that meeting, as well as the general TR on colors that was done originally, the Handling Committee believes that none of
the colors that were reviewed included synthetic solvent extraction as a possible manufacturing process. Well, it may be possible. That isn't what we reviewed and that's not what was available in the marketplace.

Further, the Handling Committee believes that use of synthetic solvents for extraction of these colors isn't necessary since each of the colors was petitioned as available without synthetic solvent extraction. Since there does seem to be some confusion as to the original intent, what we wanted to do was add a recommended annotation for colors to kind of clarify this confusion.

We are recommending that the listing for colors derived from agricultural products on 205.606 be changed to, "Colors derived from agricultural products must not be produced using synthetic solvents and carrier systems or any artificial preservative." We picked that annotation because it matches the
listing for flavors on 605(a), so we thought
the language was understandable by the folks
who needed to use the list, and addressed what
we wanted to address.

We don't feel that this is overly
restrictive, because we don't think anybody is
using colors extracted with synthetic
solvents. This is really perhaps a technical
correction to address some confusion that's
out there.

Finally, in response to the notice
for this meeting, we have received two public
comments, both of which supported this change.

And then, finally, our vote for
this was five yes; zero no; two absent.

Any questions?

MR. GIACOMINI: Any questions?

Jay?

MR. FELDMAN: Thank you. This
sounds good.

So my question goes to issues
around consistency. And again, I may be
missing something here, but how does this jibe
with the classification materials policy,
given that some people take the position that
this simple addition or use of a synthetic in
the extraction process which doesn't result in
a chemical change does not make it a
synthetic, and therefore, wouldn't cause us to
restrict the substance?

MS. HEINZE: Thank you for the
question. This gets exactly to the point you
made earlier about the difference between
classification and compatibility. These are
agricultural products which would be
classified as agricultural even if they had
been extracted with the synthetic solvent.
However, we don't think that is compatible in
this case. So it's separate from
classification.

What we're saying is it's not
compatible and we want to be clear on that.

MR. FELDMAN: May I?

MR. GIACOMINI: Yes.
MR. FELDMAN: Again, I'm just looking for consistency here. I mean, I agree with you, but why is it not compatible? It's not compatible because it produces -- I assume the process by which these colors are being produced is a synthetic process.

MR. GIACOMINI: No.

MR. FELDMAN: That's not why it's incompatible? Why is it incompatible?

MR. GIACOMINI: It's incompatible because of the synthetic substance that it adds to the system. The extraction with hexane of soybean oil from soybeans does not constitute the soybean meal that is left over as a synthetic substance. It's still an agricultural substance that has been extracted with a hexane solvent.

What we have said is that it's not that it makes it synthetic; it is not compatible with the organics.

Katrina.

MS. HEINZE: This would be one of
those gray areas. We have the luxury on
colors of taking this step because materials
exist that are not synthetic
solvent-extracted, and similar to our decision
on yeast, we in Handling feel that we should
continue to step things up on the continuum,
and this is one of those areas where, when
colors were originally listed on 605, there's
colors that very well may have been used that
were processed in less desirable ways. And so
then we were able to move them to 606, where
commercial availability applies, and you'll
hear about that later in our sunset
discussions.

At the same time, this allows us
to say, you know what? We don't want
synthetic solvents here. We don't think our
consumers want it and so we're going to do
that because in the marketplace there exists
both kinds of colors. And so we're able to
say "no synthetic solvents."

I guess the other thing that I
would say is, that was the original intent in 2007 when the Board debated these and listed these. But we reviewed so many materials at that meeting and so many of us were new, and the whole annotation thing was so confusing -- that was my first public board meeting -- and, speaking just for myself, it was overwhelming.

I think if we had had the time at that meeting, the Board would have spent more time on this and would have realized that this is the annotation it wanted to include, but we got buried in the confusion.

MR. FOSTER: Just to clarify, I think I got it. These substances are deemed synthetic?

MS. HEINZE: No.

MR. FOSTER: They're not deemed synthetic? Okay, that's where I'm confused, okay.

So, here, we have substances deemed not synthetic that are not -- however, they're extracted with a synthetic material?
MS. HEINZE: No.

MR. FOSTER: Hexane?

MR. GIACOMINI: That's what we're not allowing.

MR. FOSTER: Right, but they're non-synthetic -- I'm sorry -- they're non-synthetic materials that are deemed nonessential to organic production essentially, okay.

Thank you.

MR. GIACOMINI: Okay, anything else?

(No response.)

MR. GIACOMINI: I have one question for the Program, and I apologize to Melissa that you're top dog here right now.

(Laughter.)

MR. GIACOMINI: Yes, I was almost going to interrupt, "Miles, don't go."

I would like to address the question to the Program of the necessity of this recommendation. It is very clear when
you look through the petitions and the
discussion that occurred in putting these
items on the National List, on 606 to begin
with, that we were only talking about water
extraction.

Would any hexane-extracted
materials in these, this category of colors
even be allowed? Is this simply a
clarification, or is this something that would
be needed?

MS. BROWN-ROSEN: This is Emily
Brown-Rosen, Standards Division. That's a big
question, and there's been a lot of requests
from certifiers ever since this has been
passed to clarify this, but we still have not
done that.

So I think in terms of our
synthetic carriers on, as specified, I think
it's 301, allowed in materials that are listed
on 606, and that's not really clear. We need
to work on a major policy to address that
coherently. So I think, in the meantime, it's
a very good idea for you to recommend clarifying your annotation now because it was clear to the certifiers, after these things suddenly were listed, that there are many, many ways of making these colors, not just the ones that you looked at.

So they did not have the guidance that they needed to determine what, you know, how to enforce that intent. So I think it's fine.

Any questions?

MR. GIACOMINI: Well, that still doesn't answer my question. Maybe Arthur would like to put in his two cents.

We're discussing the annotation change on colors on 606, adding the restriction that hexane-extracted, solvent-extracted and synthetic preservatives are not allowed. Since the entire process of this was, in 2007 -- and I don't remember if you were still at that meeting or not -- was obviously only representing the
water-extracted, non-preserved forms, is this petition even necessary, or would those forms of hexane- and solvent-extracted even be allowed?

MR. NEAL: Because I was not involved in the initial discussion and it appears that I can't remember if Kim had made a comment on it yesterday about the CAS numbers being wrong for, I don't know if it was for flavors or colors -- okay.

So, if this recommendation with changing annotation to specify non-hexane-extracted -- if the petition is necessary, that's the question, is the petition necessary?

MR. GIACOMINI: No, is this recommendation necessary --

MR. NEAL: Oh, you said --

MR. GIACOMINI: -- when the consideration that was done in '07 was only to discuss the discussion of water-extracted forms?
MR. NEAL: It appears that there's been confusion around the issue. People have asked for clarification about that, whether or not -- if we adequately captured the fact that we were only looking at or allowing those colors that were not extracted using hexane and only water-based. So I think you could add clarification.

MR. GIACOMINI: I didn't -- is it necessary --

MR. NEAL: Who requested it?

MR. GIACOMINI: -- to prohibit --

MR. NEAL: Who requested it? I know --

MR. GIACOMINI: I believe we could say the Program requested it because it came through communication with Valerie when she was executive director.

MR. NEAL: Okay.

Let us touch base and get back to you.

MR. GIACOMINI: Well, I'll put my
cards on the table. I think this is a very important question that I'm asking you because, if you were to say that it is required, that even though the only thing we had been discussing was water but because of the annotation listing, hexane was allowed, I think that has -- one way or another, we have a huge conflict with what you're saying the Board is reviewing and what becomes allowed in relation to your GMO vaccine comments.

These are both issues of how something was claimed to have been reviewed by the Board, how it's listed, and if you're going to say one versus -- but in this case, this is required because since we didn't annotate specifically not allowing hexane when it was specifically discussed as not even existing, I would hope that your response to the necessity of this would be consistent.

MR. NEAL: All right, and the reason why I said I wanted to touch base with you, one, is because, with the CAS number, I'm
not sure if that CAS number is already taking
into consideration that hexane is not used. It
doesn't?

Okay, so then, that would dictate,
if it does not specify hexane is not used,
then that addition would be helpful in terms
of specifying that hexane is not allowed for
use and is water-based only. That would
clarify the original intent of the National
Organic Standards Board concerning the listing
of those colors.

MR. GIACOMINI: And I would
contend that that's in conflict with the
statement of the policy that you're making and
telling us regarding GMO vaccines.

Miles, do you want to get in the
middle of this?

(Laughter.)

MR. McEVOY: No thanks.

MR. GIACOMINI: Okay. Arthur is
looking at me like he doesn't understand the
connection. We can discuss it later, but I
wanted to get it on the record.

Steve?

MR. DeMURI: Where was I? Oh.

Katrina, were you complete? Or do you have further questions for Katrina? I tried to wait until we were done.

Jeff?

MR. MOYER: I just want to ask you, Katrina, and I could easily have missed it, were there any public comments out there regarding this decision?

MS. HEINZE: We had two public comments supporting it.

MR. MOYER: Supporting making that annotation change?

MS. HEINZE: Correct.

MR. GIACOMINI: If there's no further discussion and debate, Steve, next item.

MR. DeMURI: Thank you, Dan.

After that, we move into Sunset 2012 recommendations, and let me preface this
section by saying that there is a little bit
of complication in here because some of the
items that we're considering for sunset have
also already been considered for petitions, so
it made things a little bit complicated.

   Generally, I think, in all cases,
the person that worked on the petition also
worked on the sunset so they could try to keep
everything straight on dates, what would
happen if this didn't happen, how we're going
to handle a sunset failure with a petition,
that kind of thing. So you'll see how that
plays out as we get through this list.

   We'll be jumping around a little
bit. We're going to do the first three,
205.605(a) items. I've got the first two.
Joe's going to follow up with the yeast sunset
2012 recommendation.

   The first one is flavors, and
flavors is up for sunset this year -- or in
2012. And as we all know, it's a very complex
subject. We've had several commenters suggest
that the Handling Committee needs to form a
task force and work with NOP to wrestle with
the whole flavor issue. We intend to do that
as we move forward.

But, as far as sunset of the
flavors goes, as it currently stands with the
current annotation, the committee did vote to
relist that. The vote was six yes, zero no,
and one absent. And so the listing would be
flavors with its current annotation,
"non-synthetic sources only and must not be
produced using synthetic solvents and carrier
systems or any artificial preservative."

That's flavors.

MR. GIACOMINI: Comments or
questions?

Okay, Jay?

MR. FELDMAN: Thanks, Steve.

The Committee's comment that you
are recommending relisting but are also
communicating the belief that the full
category should not be relisted in five years,
is that correct? Am I reading the right
document?

MR. DeMURI: That's correct.

MR. FELDMAN: When next reviewed

for sunset. If not now, why not now? Why

then if not now? You know, why?

MR. GIACOMINI: Jay, mic.

MR. FELDMAN: We fully intend to
develop a task force working with the industry

and NOP to wrestle with the entire flavors

issue. There's a lot of organic flavors on

the market now, so we anticipate that a lot of

flavor should be moved over to 606 and off of

the 605(a) listing.

We fully intend, by the time the

next sunset comes along, we'll have all this

worked out, and it will be a moot point at

that point.

MR. GIACOMINI: Any more, further

questions?

(No response.)

MR. GIACOMINI: Mr. Chairman, we
are due for a break. Would you like to finish
up the two 605(a) items or would you -- if you
think they can be quick? If not --

MR. DEMURI: They should be
relatively quick, so we'll blow through them
here.

MR. GIACOMINI: Okay. Let's
proceed and break at the end of 605(a).

MR. DeMURI: All right, the next
205.605(a) item is magnesium sulfate with an
annotation, "non-synthetic sources only."
It's used a nutrient, a firming agent and a
flavor enhancer, first listed in 1995. It's
also used as a fermentation aid in the
processing of beer and malt beverages. It
naturally occurs in seawater and mineral
springs. Other sources are possible, but only
the nonsynthetic sources are allowed in this
listing.

There were no comments opposed to
relisting. There were several in favor of
relisting, and Handling Committee voted five
yes, zero no, with zero abstentions and two absent, to relist the substance.

    MR. GIACOMINI: Questions?

    (No response.)

    MR. GIACOMINI: Go.

    MR. DeMURI: All right, the last one on 605(a) is yeast. I'll let Joe handle that. He's the yeast guy.

    MR. SMILLIE: Yes, basically, we're -- it's up for sunset. We've obviously made a response and a recommendation to the petition to move it to 606. We've talked about that.

    We want to relist it for sunset and let the federal process make its way through so that we don't lose it entirely while we wait for the changes to happen to it, as per our recommendations.

    So the recommendation is to relist yeast as a nonsynthetic allowed, 605(a). Basically, there's no issues itself with the material, so the Handling Committee recommends
a renewal of the following substances in the use category published in the final rule:
"Yeast, nonsynthetic growth in petrochemical substrate and sulfite waste liquor is prohibited. Autolysate, bakers, brewers, nutritional and smoked, non-synthetic smoke flavoring process must be documented."

The vote was six for, no one against, no abstentions, and one absent.

MR. GIACOMINI: Any further discussion? Questions?

(No response.)

MR. GIACOMINI: Seeing none, we will proceed for our break, 15 minutes. I have 2:40 -- 2:55.

Please be prompt. We've got a lot more work to do.

(Whereupon, the above-entitled matter went off the record at 2:40 p.m. and resumed at 3:00 p.m.)

MR. GIACOMINI: Take a seat. If you're in the middle of a conversation, please
take it outside. We need to continue.

Steve.

MR. DeMURI: Thank you, Dan.

Okay, the next group, our nine 205.605(b) items that are up for sunset in 2012. As I mentioned, we'll be jumping around a little bit on these, but John Foster has the first two, chlorine materials and ferrous sulfate.

So, John, why don't you go ahead and do those two?

MR. FOSTER: Okay, thank you, Steve, and thank you, Joe Dixon, for bringing a little chocolate to perk me up.

So, chlorine materials up for sunset, they've been used for a long time as sanitation materials. At the time this recommendation was put out, this was prior to draft guidance issued by NOP, which came out, I think, about two weeks ago, Draft Guidance for Included Chlorine and for Other Materials.

I don't believe that the draft
guidance significantly changes it's recommendation, or, if the draft guidance were to become guidance, I don't think that would change this recommendation at all, but that draft guidance is helpful.

Chlorines are pretty much the most common, very common equipment and food contact sanitizers used in food processing and handling. Recognized by the FDA as being appropriate for their intended use, they've been used -- as far as I know, always used -- in organic production along with non-organic production.

The recommendation outlines just the real basics of what's known about their hazards. The Federal Register notice brought forth no public comments against relisting. Several commenters supported relisting the material without change, no change to the annotation.

We reviewed original recommendations, all the historic documents,
past public comments, past NOSB discussions.

No new information came forward. And then the last line of the discussion recognized that we anticipated the NOP would provide further guidance and clarification, which is in draft form now.

We voted, as a committee, six in favor and one absent, to relist as is the chlorine. And that is, "Chlorine materials, disinfecting and sanitizing food contact surfaces, accept that residual chlorine levels in the water shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act." And then three chlorine compounds are listed: calcium hypochlorite, chlorine dioxide, and sodium hypochlorite.

The only thing I would add to this is that in among the public comments submitted in the period closing October 12th was one very articulate suggestion that we look at hypochlorous acid in the future as an additional form of chlorine that has many
benefits to it.

    I don't think that changes, it
certainly was not working against this
recommendation. It was an adjunct to that,
but I think that's worth considering in future
work plans, and I'll bring that forward in the
committee after that.

That's it, Dan, on chlorine.

MR. GIACOMINI: Questions?

Comments? Jay?

MR. FELDMAN: Thank you.

Thanks, John.

I wanted to make a comment about
the background statement, and I don't know if
this has implications or if people would agree
that we should consider changing the language,
actually. I know this is a public document
for publication, so maybe this is with an eye
toward the future.

Obviously, chlorine raises a lot
of red flags in terms of environmental
contamination, public health threats, and we
have to be very careful. I understand the value it has in the organic industry as well as the conventional side, but when we talk about chlorine and we recognize that it's acceptable and compatible, I think we should not use language like 'the food safety concerns outweigh the risks' because that's not our standard.

Our standard is to protect against adverse effects, as suggested on the checklist that we use in reviewing these things, and to look at harmful effects on the environment. So language like 'support of food safety concerns outweigh risks' and the 'protection against' -- further down on that page, which I can't find right now -- but "protection against unreasonable adverse events" -- or unreasonable risks. Unacceptable risks. It's, "Review of the original recommendation, historical documents, and public comments does not reveal unacceptable risks to the environment."
Again, that isn't the standard to which we're regulating under our statute. We're regulating against harmful effects and adverse effects. So, we have to be careful when we a material like this, I think, to categorize it in that way; otherwise, we slip into another agency's, another statute's standards. I'm not speaking against the proposal. I just want to make sure that we have clarity around what our responsibility is when we do this.

The other issue I would raise is whether we looked at the allowable levels on food in addition to the effluent that's associated with residuals as a result of use. That may be in the NOP guidance, but is that something you all considered when you went through this?

MR. GIACOMINI: John.

MR. FOSTER: Yes, inasmuch as that opening paragraph was supposed to be an encapsulation of Committee discussion --
summary of our discussion. It's a summary of the discussion. It's, I think, very consistent with other Committee discussions. Sometimes we touch on things that are not precisely codified in law. We do it all the time. We've done it a dozen times today. This is a summary of discussion, that's all it is.

Yes, we did consider some of the food contact questions, concentrations in contact with food, and that is spoken to in some of the draft guidance.

I guess I agree that, yes, we should be careful with language, but I think this language accurately reflects the discussion. It is a good summary. And so I'd stand by it.

MR. GIACOMINI: Katrina.

MS. HEINZE: I was going to add to what John said, that the residual levels of chlorine has been a perennial topic when we discussed sanitizers as a board, and it's
under constant review, so certainly that was considered. It was heavily considered when the Board initially listed those materials, and nothing with regards to it has changed.

MR. GIACOMINI: Jay.

MR. FELDMAN: I guess my question is why -- in point of information -- why are we not annotating to a residual on food residues but we're annotating to a residual in drinking water?

MR. GIACOMINI: Katrina.

MS. HEINZE: That was heavily reviewed and discussed at the original listing. There is a lot of history to why it is the way it is. It's also a part of why the Program has issued guidance on these materials, and so it's covered there. That's not part of our sunset review.

The purpose of our sunset review is to determine if our sunset as it currently exists is, is there new information that we have to consider that would affect us
relisting this material? And speaking for me, not for the committee, we felt that there was not, and that it should be relisted as is.

MR. GIACOMINI: Jay.

MR. FELDMAN: Could we get some clarification from the Department on this, just to get on the record whether the current guidance addresses issues of residuals?

I mean, I hear you, I hear about the history. Unfortunately, the science is changing on this daily. We're learning about chlorinated compounds and their impact on endocrine disruption, reproductive effects, new science all the time. And so this is an area we, especially in organics, we have to hold to a high level of scrutiny. I just, you know, I think the area of food residues as a result has become a more critical issue.

I just want to make sure that it's in our view, within our view, and I'm not suggesting we should change this proposal, but I think we need to have some clarity that this
is an issue of concern in the short and long term.

    MR. GIACOMINI: So, you're asking --

    MR. FELDMAN: I'm asking whether
the guidance addresses residuals in food.

    MR. GIACOMINI: Program?

    MR. FOSTER: No, the guidance does
not address residues in food. The guidance is
a draft guidance that provides our
interpretation of the current listing of
chlorine materials on the National List and
recognizes that water is used in many
different ways in organic production and
handling -- as irrigation water, as processing
water, as an ingredient -- and, therefore, the
use of chlorine in all those different ways
that water is used is described in that draft
guidance.

    I would say that the annotation on
chlorine materials needs some work, and that's
what the draft guidance is trying to provide,
an interpretation of how chlorine can be used in organic production and handling.

When it talks about residual chlorine, it's talking about residual chlorine in the water, not on the food product.

MR. GIACOMINI: Steve.

MR. DeMURI: And if I remember correctly, back in '95 when all these discussions were taking place, the Safe Drinking Water Act came up because processors wanted a method by which they could check residual of rinse water on equipment, fruit coming out of flumes, that kind of thing, and that was a standard that was developed so they could do that, to show their certifiers that they had removed most of that chlorine from their food contact surfaces.

MR. GIACOMINI: Further comment?

(No response.)

MR. GIACOMINI: Okay, Mr. Chairman. Steve?

MR. DeMURI: John, you can carry
on with ferrous sulfate.

MR. FOSTER: Let's see. Ferrous sulfate -- I was about to say, fairly noncontroversial, but --

(Laughter.)

MR. FOSTER: -- I'm never going to say that again.

Perhaps less controversial is ferrous sulfates used as food fortification. No public comment came forward against relisting. Again, several commenters in public comment supported relisting the material.

We reviewed original recommendations, past public comments, past NOSB discussions. Those did not reveal any unacceptable risks to the environment, human or animal health. No new information came forward on a -- I did Google and Wikipedia searches for recent revelations about ferrous sulfate and found none. And so we did a pretty straightforward recommendation to
relist here.

"Ferrous sulfate for iron enrichment or fortification of foods, when required by regulation or recommended by an independent organization" -- I don't know the origin of the annotation, but it's certainly consistent with our discussions around nutrient vitamins and minerals. If for no other reason, it would fit in there. I think it's pretty clear that it's a mineral supplement.

So we voted six for, none against, one absent, to relist.

MR. GIACOMINI: Discussion?

(No response.)

MR. GIACOMINI: Seeing none -- Mr. Chairman.

MR. DeMURI: Thank you. The next one is pectin, low-methoxy. That's Joe Smillie.

MR. SMILLIE: There's a mistake. It's a 605(b) item. Whoops. It should be --
it's probably my mistake. I don't mean it's your mistake, Lisa. We need to change that, though. It's (b), "Synthetics allowed."

Pectin, low-methoxy, is currently on 605(b), and basically, we're going to relist it on 605(b) until the Program and the federal process takes place and we move both pectin methoxies to 606.

Again, not horribly controversial, and again, we're moving something from a synthetic allowed to an agricultural, which hopefully in the future will be organic.

I've not received any comment on this one. In our research on this material for the petition, there seems to be some agreement that there are some issues regarding the interpretation of how it's produced and all of that. But for this purpose, basically, we're simply going to relist it on the sunset process and, I think, let the NOP work their process to move it to 606.

There was no comment that I know
of on this one, so basically, the recommendation is to relist -- six yes, zero no, no abstain, and one absent.

Everything else is correct in the document. It's just the top on the synthetic and non-synthetic.

MR. GIACOMINI: Kevin.

MR. ENGELBERT: Joe, I know we don't have time to go into this right now, but Thursday, could you have an explanation for me, as brief as need be, about the history of pectin, why it was put on 605 to begin with.

I know you talked about the nonamidated and that process and why you now believe it's on 606. But in keeping with respect of previous boards' decisions and the long-time listing of pectin on 605, I'd appreciate more information on that. And I know that you're now ruling that it's agricultural, but also on Thursday, could you let me know whether there was any thought to making this an additional commercial
availability issue on another 605 item?

MR. SMILLIE: Briefly, now, no, because this one, I thought was much clearer, that we believe that for whatever reasons -- and it's lost in the mists of time; it is 15 years ago, but they just didn't have the information or misread the information for their original decision.

I do have this email chain, which I will lend to you, and if we need to discuss it more on Thursday, we can. But basically, I think that getting the permission of the person that moved it and shepherded it through that process in '95 and going back and reading the transcripts, I think we discovered where they -- I won't say "made a mistake" -- but where their information was limited or they had wrong information to make that original decision.

So I don't think we're changing. I think the chair of that committee at the time, the person who moved it, would agree
that we're making the right decision now. But I'll give you the documents, and if you want to discuss it some more, we can.

The other thing is back to where I started my research on it, was the '95 transcripts, so it's all there.

MR. GIACOMINI: Further comments?

(No response.)

MR. GIACOMINI: Seeing none, next item, Mr. Chairman.

MR. DeMURI: Okay, let me mention that the transcripts that are in the record for '95 really aren't transcripts. They're meeting notes, so they're very skinny. There's hardly any information in there at all. It's not like a word for word verbatim of what happened. It's just very brief notes on what was said and what was done, so they're almost useless.

All right, the next one is phosphoric acid, and Joe Dixon reviewed that for us.
MR. DIXON: Phosphoric acid is annotated to restrict its use to the cleaning of food contact surfaces and equipment only. It's used in the cleaning of food-service food contact surfaces to remove mineral scale and encrusted matter in boilers and on other equipment that produces steam. It reacts chemically with minerals found in the deposits and makes them more water-soluble and thus easy to remove.

We reviewed the original recommendation, the original TAP review, historical documents and public comments. We received a few comments in support of relisting and none in opposition.

The Committee voted six in favor of relisting, zero not in favor, one absent.

Any questions?

MR. GIACOMINI: Any questions?

Jay?

MR. FELDMAN: When you did this review, did you look at any alternative
materials that have come along or not come
along in the market?

    MR. DIXON: I did do some basic, you know, internet searches for information about the material and its uses and stuff and did talk to some of our facilities folks, and nothing came up.

    MR. FELDMAN: Related to that type of a question, what was the public comment based on this recommendation?

    MR. DIXON: There was comment from, I think, one or two food processors that they use the substance, without elaboration.

    MR. FELDMAN: Okay. No discussion of alternatives and getting rid of it?

    MR. DIXON: Not that I recall from reading the comment. I can go back and double check those, but --

    MR. GIACOMINI: Any further questions? Steve?

    MR. DeMURI: Actually, a comment. We do use phosphoric acid in all of our
facilities that run organic, and it's one of the few things you can use to do what Joe described.

MR. GIACOMINI: All right.

MR. DIXON: Thank you, Steve.

MR. GIACOMINI: Okay, next.

MR. DeMURI: Thank you, Joe.

John, you're next.

Silicon dioxide -- John Foster.

MR. FOSTER: Silicon dioxide -- a common additive in production of foods; often uses a flow agent; also used as a filtering agent in some processing; occasionally also used as a desiccant both in food as well as in pest control materials. It's generally what's makes diatomaceous earth work as well as it does.

Okay, so in 2007, there was public comment noting that silicon dioxide was no longer necessary due to the availability of a certified organic alternative substance. This would be -- this alternative is the same one
that was put forward as being a replacement for mono- and diglycerides, for what it's worth, or actually, a similar product; same manufacturer.

Unlike the public comment provided in response to mono- and diglycerides, the comments provided in this last public comment period for silicon dioxide were not as one-sided and not as substantive. All of that's on regulations.gov. But there were fewer comments, I think, three or four, and they were fairly evenly split between supporting the relisting and supporting the -- not relisting.

The science provided in the comments provided about silicon dioxide was not as thorough as it was for mono- and diglycerides.

Let's see. Just before the April NOSB meeting, several commenters in generic fashion asked to relist it. But really, there was much more discussion in this last, most
recent public comment period.

We did a review, our kind of
standard review, of past recommendations, past
discussions, and didn't find any new science
that shows that changes to the risks to
environment, human or animal health, anything
new was uncovered, as far as I could tell.

The Handling Committee is also
aware of a petition to remove silicone dioxide
from the National List. That's in play.
However, the completed petition, it had been
submitted and sent back for more information,
and by the time the complete petition had been
provided, it was past the window in time to
consider for this meeting. But I'm assuming
it'll get handled in the spring meeting if the
petition now looks complete.

So, anyway, we're aware of that
petition. And at the time we wrote this
recommendation, it was still in the NOP review
process and it hadn't reached the Handling
Committee. It has now. We intend on
reviewing that petition as soon as we can with the work plan.

So, at the time of our discussion, we recommended the renewal and inclusion of silicon dioxide on the National List again, a vote of six yes, zero no, and one absent.

MR. GIACOMINI: Jay?

MR. FELDMAN: Thanks, John.

Have you had a chance to look at the petition? Do they talk about their alternative? I assume it's a competitor?

MR. GIACOMINI: John?

MR. FOSTER: Yes, I've looked at it and I haven't reviewed it to the detail I would, you know, when we're going to review it, but I have looked at it. It's a rice product, certified organic. It has some of the -- based on the petition, it has some of the same characteristics, and I could see it working as an alternative in some cases.

The comments that were submitted in this last round, many of them spoke to
trialing this alternative as a replacement for silicon dioxide. Some says it works fine; others said it works okay and allows us to reduce the amount of silicon dioxide but not eliminate it.

So, I would expect that when we review the petition in more detail as a Committee, we'll definitely take into account that public comment. It seems very relevant and it may lead to -- when we review it as a petitioned item, I could see it very much affecting the decision.

I think there's some utility to this alternative.

MR. GIACOMINI: Jay?

MR. FELDMAN: I'm just wondering if that, if that petition could inform the sunset deliberations -- I mean, could postpone this decision until spring -- if there's enough, if in your preliminary look at this, it looks like there's sufficient data.

MR. FOSTER: I think it could
inform, but at this point, I'd be hesitant to 
replace, to change our sunset decision based 
on the petition, just because we haven't time 
to give it its due. And I would be hesitant 
to -- yes, I think it can inform, but I 
wouldn't want to put off sunset necessarily. 

Either the petition is going to be 

enough to get us to remove it or it won't, but 

I think it's a good petition.

MR. GIACOMINI: Jay?

MR. FELDMAN: I'm just suggesting 
this because it might expedite -- as we know, 
the petitions sometimes take a very long time. 
So, if this could expedite the process and 
inform, you know, a reduction in use of a 
synthetic, then why not go for it? Because, 
we still have the opportunity to revisit this 
in the spring -- it's just something to 
consider -- revisit it in the spring and allow 
it to go through or relist it.

MR. GIACOMINI: Do you want to 
respond?
MR. FOSTER: I would just defer to the Chair. But it's a reasonable suggestion though.

MR. GIACOMINI: Steve, respond?

MR. DeMURI: Yes, we'll discuss it, but I'm inclined right now just to move forward with it, to go through the sunset process. We've put the work into it. We've got a full plate coming up in the spring. I'd hate to just start piling on.

MR. SMILLIE: I was just going to echo what Steve said. I think we need to go through with it. I think that the feedback is good and we can see that there's progress there. But you know, when you get a comment that says, "Yes, I'm trying to use it, and it's, I can substitute part of it but not all of it", you know, that's the kind of comments I really like to see because if somebody is really working with it and they're saying, "Yes, it's promising, but not quite yet; we're getting there".
So, I'd like to just have it sunseted, and then we'll have a fuller examination on the petition.

MR. GIACOMINI: As a inquiry, is the product in the new petition unique enough to justify the request of a new TR?

MR. FOSTER: The petition that I was speaking to was a petition to remove silicone dioxide.

MR. FELDMAN: Correct.

MR. FOSTER: So it's not petitioning a new material to add to the National List.

MR. FELDMAN: But it could justify a new TR that evaluates the scientific basis in the information that's available out there alternatives?

MR. FOSTER: On alternatives, yes. Yes, it could justify the request for a TR.

MR. GIACOMINI: Which would make its way past the next spring meeting?

MR. DeMURI: Maybe not.
MR. GIACOMINI: Okay. Steve.

MR. DeMURI: We would request a very specific TR --

MR. GIACOMINI: Miles, could you turn yours off for one second? Thank you.

MR. DeMURI: It might be a short turnaround on something with just a couple of questions.

MR. GIACOMINI: Miles?

MR. McEVOY: We've already requested a TR on silicon dioxide.

MR. GIACOMINI: Okay.

Further comments on this item?

(No response.)

MR. GIACOMINI: Next item, Mr. Chairman.

MR. DeMURI: Thank you, Dan.

The next four are all Joe Dixon's, so Joe, I'll just let you take those bang, bang, bang, bang.

MR. DIXON: Thank you, Steve.

Sodium citrate is sort of
shorthand for the three sodium salts of citric acid, monosodium, disodium and trisodium citrate, trisodium being most commonly used in food. They're used as pH adjusters, buffering agents, stabilizers, and I don't know how I left this off here, but trisodium citrate is used largely as an antioxidant in food production.

The original technical review found sodium citrate, the three substances, to be consistent with OFPA criteria. These are very widely used in organic food production; no new information after review of the original recommendation, historical documents, public comments. We did receive three public comments in support of the relisting of the substance, none in opposition.

The Committee voted six in favor of relisting; none opposing; and one absent.

MR. GIACOMINI: Comments?

Questions?

MR. DIXON: Any questions?
MR. GIACOMINI: Oh, I'm sorry.

MR. DIXON: I was just saying, "Any questions?"

MR. GIACOMINI: Any questions?

Comments?

(No response.)

MR. GIACOMINI: All right. Next item.

MR. DIXON: Sodium hydroxide -- annotated to prohibit its use in the lye-peeling of fruits and vegetables. It is lye. Its utility in food production is that it's a very strong base used a pH adjuster.

Traditional pretzel producers will tell you that it is the only additive to put in the water to produce a traditional pretzel. It's used in olive production and curing. It's used in cocoa manufacture, in processing with alkali. It is prohibited in lye peeling of fruits and vegetables because of the adverse environmental impact of that process.

Again, the information presented
in the original discussion recommendation TAP
review appears to hold up. We have received,
once again, three comments in support the
relisting of sodium hydroxide.

The Committee voted six in favor;
none against; with one absent.

Any questions on sodium hydroxide?
MR. GIACOMINI: Questions and
comments for the committee?
(No response.)
MR. GIACOMINI: Seeing none, move
ahead. Onward.

MR. DIXON: Sodium phosphates with
an annotation restricting their use to, only
in dairy foods -- used an emulsifier,
coagulant, stabilizer, an emulsifier,
sequestrant, and pH control agent in food
production.

It's used in dairy foods as an
emulsifier largely to keep them from
separating.

We have reviewed the original
technical review, the original recommendation, and once again received three public comments in support of the relisting of this material. We had three very diligent materials commenters and have found that it's still in wide use in organic food production and that there are no issues with this one.

The Committee voted six in favor of relisting; none against; and one was absent.

Questions? Comments?

MR. GIACOMINI: Questions and comments?

(No response.)

MR. GIACOMINI: Move on.

MR. DIXON: All right.

Sulfur dioxide, with an annotation restricting its use to wines labeled as, "Made with organic grapes provided that the total sulfite concentration does not exceed 100 ppm." -- the Program has received a petition to remove the annotation and allow the use of
sulfur dioxide in all wine production.

That is in process and will be considered by the committee in due course. I'm not sure if it's on the spring docket or where that will sort of emerge, but we are aware of that petition, but performing the sunset review, regardless. Sulfur dioxide is a preservative used for preventing the oxidization of wine. It has been a part of traditional wine-making for several hundred years.

We have reviewed the original technical review, the recommendation, historical documents; other materials. I mean, it's still used as it has been with very little variation. It's very widely used in wine production.

The Committee voted six in favor of relisting with the existing annotation; none against; and one member absent.

Questions?

MR. GIACOMINI: Jeff?
MR. MOYER: I'm just wondering, Joe, about public comment. I did see something in public comment about that, but maybe it was about the petition to remove the annotation. I don't remember.

Could you expand on that?

MR. DIXON: Yes, the public comments that I saw were related to the petition, which is not yet on the Board agenda.

MR. MOYER: Thank you. I wasn't sure.

MR. GIACOMINI: Any other questions or comments?

(No response.)

MR. GIACOMINI: Next item, please.

MR. DeMURI: All right, that finishes up the 205.605(a) and (b) items.

Now we're moving into the 205.606 items. The first one is a group of 18 colors and annatto extract, which is related, of course, and Katrina is going to handle both of
those together.

MS. HEINZE: Okay, to follow up on our earlier colors discussion, there are 19 colors on 205.606 that were listed in June of 2007. The 19 colors are listed in the recommendation.

First, I'm going to talk about 18 of them, so all of them except for annatto, which is handled in a separate recommendation that I'll discuss in a minute. I won't go into the history again for how these were listed, but if you have questions, I can follow up on that.

In the March 2007 meeting where we reviewed colors, these 18 colors plus annatto were recommended for listing by the NOSB. To briefly summarize the public comment we received at that meeting and the petitions that were received, what we learned was that to make color very specific varieties of a particular raw material are needed and that these specific varieties have to be high in
color compounds.

A purple carrot would be a good example. The purple carrot used to make purple carrot color is a different variety than the purple carrot that I might buy at my farmer's market and eat. So there are very specific varieties that are needed for color.

The other thing that we learned is that processing of the raw material has to happen in very close time proximity to when it's harvested because you're going to lose the color compounds very quickly. So a key contributor to why some of these colors were not available is that there was a disconnect between where you could process a color and where you could grow the raw material.

The other thing was that colors are used at extremely low percentages in the finished products, typically much less than one percent, so there wasn't an incentive for color manufacturers to get into this business at that time, and there was certainly hope
that as organic grew that that would change.

The final contributing factor was that in cases where you could use similar varieties, it was frankly more lucrative for farmers to sell into the fresh market than to sell to ingredient manufacturers because they can get a better price for the raw material. So the color manufacturers were not able to contract for this, because farmers wanted to have the flexibility.

The public comment we perceived in support of relisting this -- we received nine public comments supporting relisting these 18 colors; no public comments opposed to relisting, and that was to the original sunset publication. In addition, we received six public comments at the spring meeting supporting relisting these items as well as the others, 606. Specific to this meeting, we received two additional public comments supporting relisting and none opposed. So in all that public comment, we perceived none
opposed to relisting.

I do want to highlight that we've received several public comments over the history of this listing that the CAS numbers are incorrect. In a review of it, it looks like the CAS numbers that are included in the rule are the CAS numbers for the individual color compounds.

So, for example, purple carrot color has carotenoid, which has CAS number whatever it is, but that's red. Any of these colors that has red in it has the CAS number for carotenoid. So I would concur with the public comment, the CAS numbers are not right. We included in this recommendation a request to the Program that you sort through the CAS numbers and do a technical correction when you relist these to get the CAS numbers right because I think that's very confusing for folks who are trying to use the list.

With that, the Handling Committee recommends a relisting, and I will briefly
read the colors here. The following colors are on 606:

Beet juice extract color;
Beta-carotene extract color from carrots;
Black currant juice color;
Black-purple carrot juice color;
Blueberry juice color;
Carrot juice color;
Cherry juice color;
Chokeberry (aronia) juice color;
Elderberry juice color;
Grape juice color;
Grape skin extract color;
Paprika color;
Dried powder and vegetable oil extract;
Pumpkin juice color;
Purple potato juice color;
Red cabbage extract color;
Red radish extract color;
Saffron extract color; and
Turmeric extract color.

And then we also include at the bottom that we're asking the Program to review the CAS numbers and fix them.

This passed the committee five yes; zero noes; two absent.

MR. GIACOMINI: Jeff?

MR. MOYER: I just wanted to say that when these colors were first put on the list, I was one of the folks who probably voted against every one of them; I don't remember exactly.

But I hope this is a case where Joe is proven right in the future and I'm proven wrong, and that the 606 listing on these does spur people to find organic sources of these materials to be used as colors. I hope so.

MR. GIACOMINI: Further comments?

Jay?

MR. FELDMAN: As a follow-up to that, what is the process during this review
for evaluating the alternatives, the organic alternatives?

    MS. HEINZE: Well, certainly, part of the process is public comment, and I appreciate the intro to annatto, which I'll get to in a minute, because you'll see there that we did receive public comment that there are alternatives. So certainly public comment informs us.

    I also, as the reviewer, did an internet search for each of these materials to see if I could find an alternative, and did not; and then, our familiarity with products. So there is review.

    I would ask you to hold that a little bit because you'll see in our recommendation, there's a reason annatto is not included in these, and that's because we believe that is a material where 606 has worked.

    MR. GIACOMINI: Jay?

    MR. FELDMAN: Your statement talks
about the disincentive, really, for growers to
sell to the ingredient market as opposed to
the fresh market. So I'm wondering whether
annatto might be an exception, or it might be
a trend. We don't know. But I'm wondering
whether we could consider some other type of
incentive.

This might be a contract situation
where a formulator needs to contract for
organic production because the law knows you
can grow carrots organically or you can grow
a lot of these crops organically that could
then end up as colors. But we know that the
marketplace is not going to drive production
in that direction for obvious reasons.

MR. GIACOMINI: Katrina?

MS. HEINZE: I guess what I would
ask you to consider is, remember that all of
these materials have to be listed as
ingredients in the ingredient index of the
products that use them, so I think there is a
natural incentive for companies that use these
materials to continue to make progress.

The other thing is, remember, you
have to prove to you're certifier. I mean, I
can tell you that the company I work for uses
a couple 606 items, and we go through a
rigorous process every year to -- okay, what
else is out there? What else can we try?
Because, it is about continuous improvement.

You'll see that that worked in
annatto, and these items that we've talked
about today have only been on the list for
five years. I know five years sounds really
long, but in this process it's really short.

I'm pleased to see that as a
Handling Committee we're moving things off the
list. I think that's great. We moved
lecithin off the list; you know, we're
recommending annatto. So I think we're making
progress. I'm hoping that in a couple years,
we'll prove that 606 is working nicely.

MR. GIACOMINI: Well, we're making
progress there, but unfortunately, I think on
our time slot on our agenda, we're definitely not. Rough looks, we are probably at least two and a half hours behind schedule. We need to continue to be thorough and not give anything -- certainly not looking to cut off any debates, but let's try to be as succinct as possible.

So with that, I will be quiet and move on to the next item.

MS. HEINZE: Okay, annatto. Annatto extract color is the 19th color on the list. Annatto extract color, water and oil soluble, was added to the National List in June of 2007, and this is the first time it's been reviewed for sunset.

When this material was reviewed, and I touched on this briefly during the annotation change recommendation, we had a lot of debate about the annotation for annatto. Originally, the Handling Committee had recommended that only organic oil be used for the extraction. That was considered too
restrictive, so it wasn't included in the final Board recommendation.

There was a lot of discussion at that meeting, as well, about a liquid form and a powdered form and how to include both of them in the annotation. If you read the transcripts, the result of those two days of discussions -- or the different discussions on different days -- the final result was that it reads, "Oil and water extracted," and doesn't highlight the specific forms, even though we were very aware of them and discussed them in great detail.

In response to the sunset listing, we received 10 public comments on the relisting of annatto extract color. Five supported the relisting. One handler specifically identified that they had been unable to source as organic a powdered version of annatto extract color, which is necessary for the product. They have a liquid form, but it's not suitable for use in their product.
They've also tested a 100-percent ground annatto seed powder, so rather than an annatto extract that's in a powdered form, this is an annatto seed that's ground up. This is highly variable in color and doesn't meet the consumer desire for consistency. This is used in a mac & cheese product, you know, where consumers want a very uniform looking product. Additionally, the use of the seed powder resulted in off flavors that consumers did not want.

Then we had three public comments asking that annatto extract color be removed from the National List because a sufficient organic supply was now available. And finally, one public comment from a supplier of organic liquid annatto extract color said that they had enough to supply.

So needless to say, the public comment was very mixed, and we knew that we had to proceed with that. The initial take on
the public comment was it looked like liquid was available but powdered was not available.

So I did two things as a reviewer. I did an internet search to see what I could find. I found liquid organic annatto available from the company that provided the public comment. I called their customer service number. They did not have a powdered form available. This was in the spring. I also found the ground up annatto seed powder in organic form. But I did not find anything else.

Then what I did what I called in the recommendation an "informal market survey," I want to be very transparent on what this was. I went to my local grocery store, and I walked up and down all the aisles, and I picked up all the products that were orange and looked at their ingredient deck to see what they included. This was informal, but I thought it was good.

What I found was that, in general,
things that I would have expected to use powdered -- things like potato chips, cheese puffs, I'm thinking Cheetos, but the organic version, which my son loves, mac & cheese -- so things like that used a conventional annatto, or least according to their ingredient deck, they were not using an organic form.

When I picked up things like yogurt and cheese, like a Colby cheese, they had organic annatto listed on their ingredient deck. Those are products that I would expect to use liquid annatto.

So my informal market survey matched the information we received from the public comment and seemed to indicate that liquid was available but powdered was not. Based on that, our recommendation -- you'll see we have two recommendations, both listed in the affirmative because that's our habit or our practice -- so we recommended that the liquid form of annatto extract, color water-
and oil-soluble, be relisted.

That recommendation failed the committee, with zero yes; five no; two absent.

Then we recommended that the powdered form, water- and oil-soluble, be relisted. That passed the committee, with five yes; zero no; two absent.

Since that, we have received additional public comment, which I thought I had summarized here and I don't -- hold on.

We did receive public comment on this, most supporting. We did receive a public comment from the supplier of the liquid annatto that says that they now have a powdered version available. It's unclear to me -- they said that it had become available very recently, so it's possible that that was after I did my research. It's unclear to me why that didn't come up when I called their 800 number.

We have also received a petition to remove annatto, from that supplier. We
have not had time to look at that at all.

So that's where we are. The public comment supports these recommendations. I do expect that we'll have some additional public comment on this tomorrow.

MR. GIACOMINI: Additional questions and comments? Jeff?

MR. MOYER: I support your decision, but I have a question about the procedure. Since 205.606 doesn't differentiate between liquid and powdered, how do we do that? How do we actually accomplish what you're trying to accomplish, since it doesn't differentiate between them in the current listing?

MS. HEINZE: Yes, we discussed that; and hence, the two recommendations. Similar to our discussion of the recommendation to change the annotation, annotations on these colors were muddled up at that meeting.

When you read the transcripts, at
least my read of the transcripts, it appears
that the intent of the Board at the time was
to list the liquid and powdered forms. But as
they thought of the words, this is what came
out. So we've specifically said that's why
we've listed our recommendations that way.
We're recommending relisting the liquid form
of the material that's currently listed and
relisting the powdered form of exactly what's
listed.

We're going to give it to the
Program, and they're going to figure out what
they need to do.

MR. GIACOMINI: Further questions
and comments?

(No response.)

MR. GIACOMINI: The Chair
appreciates and agrees with the work that the
Handling Committee has done on the yeast, on
colors, the other colors, on hops. The Chair
is still seeing this -- is very likely to
still see this as an annotation change.
Unless I can see it differently by Thursday, I would be happy to walk anyone who wants to through the process of appealing the rule of the Chair, but I think I would be leaning right now towards calling this motion out of order unless someone can -- either in public comment or somewhere else along the line, someone can explain to me how this is not an annotation change within the sunset recommendation -- which we currently do not allow in our procedures.

So I may be setting myself up for a short night's sleep, but I just wanted to let you know, that's where I'm leaning -- the Chair is leaning at this time.

Katrina first?

MS. HEINZE: I would ask you to note that we are not recommending an annotation change. We are saying there's two forms of this material available, and we are recommending that one be relisted and one not be relisted.
MR. GIACOMINI: Jeff?

MR. MOYER: Yes, that was the reason for my question, Katrina, because you're asking for something to be relisted that isn't even listed. So that's why, procedurally, should we be removing this from the list but adding the powdered form in that terminology? And then it's not an annotation change, which we can't do.

But you're asking us to relist something that doesn't even show up here, it's not listed as a powdered form. That's why I'm asking about the process or the procedure and why I said I liked your part about dumping it on them, to let them straighten it out, so that we can get past Dan's concern as well.

MR. GIACOMINI: Further questions?

Comments?

MS. HEINZE: The Handling Committee will discuss it, but two forms got listed in March of 2007, and two forms were debated and discussed.
MR. GIACOMINI: Further questions or comments?

(No response.)

Mr. Chairman. Next item please.

MR. DeMURI: Yes, one last comment on that. We talked about all that in Committee and decided to push the envelope a little bit and try to promote the growth of organic, which I think is what we should be doing. And so that's what we're going to do.

All right, next we have a few more 606 items. The next one is one that I'm going to talk about, and that's fructooligosaccharides, otherwise known as FOS, which is what I will call it from now on.

FOS is produced on a commercial scale by natural fermentation from a mixture of sucrose using an enzyme derived from Aspergillus. The sucrose is then combined with the enzyme and heated, and once the enzyme reaction is completed, the process is filtered, concentrated and packaged.
FOS is used as a prebiotic fiber inclusion in food and feed processing and is a selective source of energy by probiotic bacteria in the guts of humans and animals. You can find it in milk, bars, baby foods, beverages, biscuits, confectionery, cookies and yogurt, to name a few.

We had no only comments against relisting of the material on 205.606, and several in favor, so the Handling Committee took a vote on this substance, and the vote was five yes and zero no for a relisting, with zero abstentions and two persons absent.

MR. GIACOMINI: Questions or comments?

(No response.)

MR. GIACOMINI: Seeing none, next item.

MR. DeMURI: The next one on the docket is hops, and we all know who that one goes to -- Mr. Smillie.

MR. SMILLIE: You'll notice the
first sentence listed in public comments against relisting. We certainly did that.

Again, with our recommendation to the petition, we're recommending that it be taken off the list January 1, 2013, but while that is in process, we think it's very important to relist it as-is during the sunset process.

Now, obviously, new information has come to light, but that information also leads us to believe that we need that transition period, less than five years, and we believe that the process we have in place will do exactly that. We are trusting that the Program will act expeditiously to meet that January 1, 2013 guideline.

So with that, with that faith in that process, we're recommending that hops be relisted on 205.606.

MR. GIACOMINI: Comments or question?

Just the one comment -- I think
the Program should take due note. Joe just
said he has confidence in his government and
the Program, so that's good.

  (Laughter.)

MR. GIACOMINI: Next item.

MR. SMILLIE: It's the tone.

  (Laughter.)

MR. GIACOMINI: Next item, Mr. Chairman.

MR. DeMURI: All right. The next one for 205.606 is inulin. This oligofructose
enriched, first listed in 2007, and it's produced by extracting inulin from the roots
of the chicory plant with hot water, treating a portion of the solution of extracted inulin
with enzymes to effect a mild hydrolysis to obtain oligofructose, and then spray-drying a
solution of a mixture of the long-chain length inulin and oligofructose to yield a dry
powder.

Everybody understand that?

The process is analogous to
extracting sugar from the roots of sugar beets
and creating maltodextrin from cornstarch.
It's very similar to that process.

It's an agricultural ingredient
added to yogurt products to improve the
absorption of calcium from the yogurt, to add
soluble dietary fiber, and to yield a
satisfactory texture and consistency of the
yogurt during its shelf life.

There were no public comments
objecting to our recommendation for the
relisting, and several that were in favor of
that.

The vote by the Handling Committee
was five yes and zero no for relisting, with
no abstentions and two persons absent.

MR. GIACOMINI: Comments or
questions?

(No response.)

MR. GIACOMINI: Next item, Mr.
Chairman.

MR. DeMURI: Okay, back to Joe for
high-methoxy pectin.

MR. SMILLIE: Right. High-methoxy is on 205.606. We elicited no public comments against relisting. Once again, we want to move to relist until the Program takes our recommendation on pectins for 606. But until that time, same procedures -- we'd like to make sure that it's relisted so that people can continue using it. And hopefully, we'll start to see some activity on organic pectin in the very near future.

The vote was six yes to relist; zero no; zero abstained; one absent.

MR. GIACOMINI: Comments or questions?

(No response.)

MR. GIACOMINI: Next item, Mr. Chairman.

MR. DeMURI: Okay. The next one, John Foster is going to handle. It's cornstarch.

MR. FOSTER: I just realized we've
already talked about cornstarch. That conversation notwithstanding, we have, for 606, cornstarch up for sunset review.

We had no one bringing forth comment against relisting. Several public comments, again, were in generic faction, requesting the relisting of this material.

It's obtained from the endosperm of corn kernels, often included as an anti-caking agent in baking powders. It's also often used in powdered sugar and as a thickening agent of soups or other liquid foods, sauces, gravies, custards, dressings.

We reviewed original recommendations. This is one that's been on the 606 for a long time, pre-Harvey, and has a fair amount of older documentation that we looked at. Let's see -- did not find any unacceptable risks to the environment. Again, my favorite Google and Wikipedia searches didn't unearth any big changes in its production that, in my opinion, would question
the classification as an agricultural substance.

We looked at the basis for previous and NOSB decisions, and again, we just want to again remind everyone that if it does go on the list, it should be subject to commercial availability determinations by ACAs.

That's going to be my mantra for a couple of years, I think.

MR. GIACOMINI: Questions, comments on cornstarch? Jay?

MR. FELDMAN: Thanks, John.

I couldn't hear what you said about classification materials and whether you guys did an analysis of that and made a finding on the synthetic/non-synthetic issue?

MR. FOSTER: Consistent with our discussions around classification of materials, this came out. We didn't do a separate questioning of whether or not this was to be reconsidered. But the determination
has always been that it's been agricultural
and appropriate to be listed on 606.

MR. GIACOMINI: Katrina?

MS. HEINZE: It's my understanding
that review of classification is not part of
the sunset review at this time.

MR. GIACOMINI: Further questions
and comments? John?

MR. FOSTER: I should have also
said the vote was six to relist; none against;
and one absent.

MR. GIACOMINI: Thank you.

Anything else on that item?

(No response.)

MR. GIACOMINI: Seeing none, Mr.
Chairman.

MR. DeMURI: All right, our last
2012 sunset item for this meeting, and the
last one on 606, is whey protein.

Whey protein concentrate is used
in culture, dairy and yogurt products at a
level of less than one percent and typically
used to maintain the physical texture and consistency that would otherwise be contributed by the fat; often used in nonfat and low-fat yogurt as a fat replacer.

It's manufactured from mozzarella cheese whey using an ultra-filtration process to remove a large portion of the lactose and minerals. The process does not involve the use of any chemicals. Whey protein concentrate is then spray-dried and sold as a dry ingredient.

We received no public comments objecting to the relisting of this material. And again, we had several that favored its relisting, usually as part of a general comment on relisting what was up for sunset.

The Handling Committee voted five yes and zero no for relisting, with zero abstentions and two persons absent.

MR. GIACOMINI: Discussion? Joe?

MR. SMILLIE: I'm hoping to hear that that's one of the target items for the
entrepreneurs out there, as we've got a functioning organic dairy industry, and I don't know of any ways that whey couldn't be produced organically.

So I'm hoping that that will be a target, unless during your research, you -- there's some reason why we shouldn't see that as a target for dairy entrepreneurs to come up with an whey, in which case, being on 606, if that's available, they've got an exciting new product to sell.

MR. GIACOMINI: Other comments and questions?

(No response.)

MR. GIACOMINI: That may end up, Joe, being a supply issue on the demand for whey product versus the supply of what's coming out of the organic cheese industry, which has floundered, fluid milk and other things, in the organic industry for consumption.

So, Mr. Chairman, one more item.
MR. DeMURI: Thank you. Yes, our last item for the day, Tracy's going to handle for us. It's a discussion document on nutrient vitamins and minerals.

MS. MIEDEMA: Thank you, Mr. Chair. This is a discussion document, so we won't be voting on it.

This topic of nutrient vitamins and minerals, and more generally, supplementation and nutrient fortification of organic foods, was precipitated by a few things. The big one was, as some of you who were at the last meeting would remember, the announcement by NOP revising a previously held interpretation of 21 CFR 104.20, which previously allowed certain accessory nutrients to be included under that National List listing of 605(b).

The reinterpretation was that, first of all, the Program asked us to withdraw our sunset consideration that we had presented for the material. It is up for relisting in...
2012, so there's definitely some urgency around the material generally. But the Program asked us to table our recommendation for the time being, kind of go back to the drawing board and look more generally at fortification policy.

So, in the spirit of really being a conduit to the public, to business, to NGOs, we took this opportunity of this meeting to pose questions to the industry to help shed light on nutrient fortification of organic foods and some of the specifics around the annotation. So -- let's take a quick look at those, and I'll try to review what's come in so far.

There were nine comments, I believe, that came in during this session, and I think one of the most illuminating things we found is that there's a 21 CFR 101.9 listing that is much more up to date that FDA uses as nutritional guidelines for foods, it's actually for labeling. Whereas, the 21 CFR
annotation that we have hasn't been updated since 1995.

The intent of that '95 FDA title was really to prevent over-fortification or under-fortification and just give some restricting principle to fortification of foods. At that same time in '95, that's when the NOSB first added nutrient vitamins and minerals to the National List.

I'm doing a little bit of recap here from the last meeting, but I think it's really important to go back to what the intent of the NOSB was in '95 and to what happened because that's the most salient point to why we are where we are today.

In their '95 recommendation, it was very clear that this topic of fortification was not a static one. It was very changeable. Research was burgeoning and continues to burgeon, and there's a lot of unknowns about human health. Processing of food does things to our nutrients. We don't
eat the same way we always have and always
did, and the science is just really blossoming
out there. When you read the '95
recommendation, there seems to be a real sort
of open door that organic foods shouldn't
become sort of static and nutritionally
inferior to the mainstream food system.

Now, the specific restricting
principle that the '95 Board used was
independent professional associations: If
they vet these nutrients, then that would
qualify a material. Well, it is a big wide
door open, and it was something that the
Program really couldn't work with at the time,
and they needed to find something that fit
more into a regulatory framework.

I don't know that we have a
crystal clear answer on why that particular
portion of the CFR was settled upon. In a
way, it doesn't necessarily matter; we are
where we are today. But what I believe we
could really agree on is that something
changed from the time the board made their recommendation to the time when the annotation was listed -- or, the annotation was added, sorry.

The confusion about the future Programs and staff within the Program trying to interpret that -- they went back to the recommendation from the board and read one thing, and to the CFR and read another. There's also a little confusion just in looking at the 21 CFR 104.2.

So, Organic Health did a really nice job of charting out the differences between the 21 CFR 104.2, the 21 CFR 101.9, and our own TAPs that we perform for nutrient vitamins and minerals, and none of these columns of actual nutrients align across the board.

So the upshot is we've got a lot of great information that has poured in during this session, and I believe it will be very helpful as we move into the next phase for us
as a board and the material sunsetting, and
how we approach the sunset of nutrient
vitamins and minerals specifically.

I also hope that this material
that came in through the Federal Register
helps the Program, and I know on the first day
when they gave us our update yesterday, said
that there was revised guidance on this topic
was in clearance. I hope it's not too late to
incorporate the information that has come in,
because this was our one time to open the door
for that information to flow in.

We, in good faith, went ahead,
took your advice, put it out there, and
hopefully, that material will really become
informative to what you all are working on.

MR. GIACOMINI: Comments and
discussions?

(No response.)

MR. GIACOMINI: Seeing none -- oh,
Miles? Joe?

MS. MIEDEMA: Miles? Miles?
MR. GIACOMINI: Tracy, turn yours off.
Joe? Or Miles, did you have a statement?
MR. SMILLIE: I'm sorry; who was first, Miles or me? Sorry.
MR. GIACOMINI: Fine. I'm only the Chairman.
Go ahead, Miles.
MR. McEVOY: Okay. All the public comment is going to be very, very helpful for us in terms of how we move forward on this.
First of all, the draft guidance that we have that's in clearance would be published as draft guidance. There would be a 60-day comment period, and additional information would come in that we'd then be able to publish as final guidance.
What that is specifically about is our correction of our misinterpretation in the past of the reference, "nutrient vitamins and minerals," in accordance with 21 CFR 104.20.
In addition, though, the actual annotation that's in the NOP regulations is not aligned with the original '95 recommendation from the board.

So that's why we're asking the Board to go back and look at the original recommendation, update that recommendation, and then make a recommendation, should that annotation be changed to something that more specifically addresses what substances the Board wants to have to be allowed as nutrient vitamins and minerals, or accessory nutrients or nutrients in infant formula.

You know, more specifically, what does the Board, with your statutory authority of what's allowed in processed organic foods, we want to that guidance from you or recommendation from you. And then we can do the rule making necessary to get that into the Federal Register.

This also points to the perspective of the Board. This is a perfect
reason why annotations should be looked at by
the Board during the sunset process, because
you have a perfect opportunity to make a
recommendation to fix this reference to
104.20. If that's not what the intent of the
NOSB, that you want something different than
that, then you could do that if you change
your policy to it to look at annotations
during this sunset review process.

MR. GIACOMINI: Joe?

MR. SMILLIE: Miles answered a
couple. I would just appreciate it -- I don't
know if the rest of the Board would like you
-- but, Tracy, if you could just walk us
through some of your overview of the responses
to the six questions.

MS. MIEDEMA: I'll do the best I
can here. The folks in the audience are
really the experts on this, and I feel like
much more of a conduit than an expert here.
But scientific developments -- we had a whole
host of scientific developments that were
spelled out in various comments, especially in the areas of brain development.

   On the second question, legal developments, one of the big developments is the 21 CFR 101.9 revisions of 2005 that came forward. You know, even the final rule happened, so that's salient there.

   The rationale was really the crux of what we're trying to get at here. I've started abandoning the idea that we need to unravel what the rationale was because, you know, it is what it is now, and the Program needed to choose a restricting principle, and that's what this is.

   I guess where we could get some really great guidance from the Program is, what does the Program consider an acceptable restricting principle since "independent professional associations" was inadequate and there seems to be a real feeling that what was given by the Program, imposed upon this, was also inadequate? So there's the two choices
that don't work. What do you all think are even in our realm of options of restricting principles? Or do we drop the annotation altogether?

The fourth question is a bit philosophical, about whether we think organic food should be fortified differently than conventional food, and commenters weighed in. Of the nine commenters, there was a strong sentiment toward allowing more novel nutrients into organic food.

Then questions five and six are really questions that -- this has to do with the role of the NOP, the role of the NOSB -- what is our statutory authority? Now, we know that we can, from a statutory perspective, make annotation change, but we can't currently do that with our policy and procedures manual.

How much influence should the NOP have had over that restricting principle? Can they take something that the NOSB does and kind of tweak it and mash it into a box to
make it fit?

And that was kind of what we were probing there.

MR. GIACOMINI: Just one clarification there, Tracy. We can make annotation changes, and it is within our policy and procedure manual. It's just that we're currently not allowed to do it in conjunction, piggybacked -- however you want to tie together -- with sunset. That's the restriction, not that we can't do it, not that we can't do it as the Handling Committee did in a number of cases today. We can do it. It's just whether we tie it to sunset. So to say that we can do it is not quite accurate.

Any further questions or comments? Kevin?

MR. ENGELBERT: Tracy, what has triggered the surfacing of this issue of nutrient vitamins and minerals and the request from the Program for some recommendations from the Board?
MS. MIEDEMA: Would you like to?

MR. GIACOMINI: Go ahead.

MS. MIEDEMA: Well, this is the hornet's nest. We're going to kick it a little here.

You know, the supplementation in infant formula has helped precipitate this issue. I can remember, three or four years ago, public comment that was very volatile, very emotional on this topic. It had to do with hexane extraction within these accessory nutrients. I think we used a very blunt tool to deal with this when we really needed to probably -- I'm talking about the Program -- needed to use more of a scalpel.

If we're talking about how synthetics are produced, hexane is a big issue all on its own. I don't think we should just look at it in terms of one material on the National List. If we have a problem with the way synthetics are produced, we should look at that more broadly. So that was part of it.
And there was a fair amount of media attention about a year ago, just some real coalescing of some consumer concerns and a very orchestrated and well-publicized effort on the part of NGOs and watchdogs to gather opinion. That's me editorializing. That's my opinion.

MR. GIACOMINI: Kevin?

MR. ENGELBERT: I think it's important to have this as part of the public record. That's all. I thought that was it, but I just think it's important that we're transparent, this is how things are dealt with and, you know, we will live up to our responsibilities when they're put to us.

MR. GIACOMINI: Further comments? Questions? Discussion?

(No response.)

MR. GIACOMINI: Okay, seeing none, Mr. Chairman.

MR. DeMURI: I'm happy to report that completes our presentations for today.
MR. GIACOMINI: All right. The Chair is looking at the clock. We are still way behind. We are coming up on a scheduled break, but I think we're going to try and see if we can at least get through one more committee before we do that, Materials Committee.

Katrina.

MS. HEINZE: I do have three things on the Materials agenda today. Two are listed, so if folks need a break, we could handle the first two and get to nano third. So if that is necessary, wave to the Chair.

Okay, for the Materials Committee update, there are two items listed on the agenda today. I also want to provide an update on a significant work plan item that the committee has started around process improvement for our materials process. I'd like to start with that and then give the update on classification of materials and our progress. And then, finally, we'll talk about
engineered nanomaterials in our recommended guidance.

First, before we talk about that, I want to thank Lisa Brines, the NOP National List coordinator, for her collaboration with our committee. Her work has significantly improved our ability to track materials through the process and stay on top of our deadlines.

Personally, from the Chair who had to do the bulk of that in the past, I am very, very grateful, and I think Dan would second that as the previous Materials Chair. Lisa is doing a phenomenal job for us, and it is a huge, huge improvement for the Board to have her there helping us.

Second, I want to thank the committee for their very thoughtful and respectful debate on engineered nanomaterials since the spring meeting that has taken up every Committee call that we've had, countless hours of email. Really, this is a topic where
every single one of us recognized that our consumers wanted us to take immediate action, but on which we deferred on how to take that action.

I really appreciate that everyone was very engaged in the discussion and debate and worked hard to develop a recommendation that we all felt would have Board support, but did it in a really respectful way. That speaks to the quality of the folks that we have on the Board, and I appreciate it.

Materials process -- the Board, the NOSB identified at the spring meeting that there was work to be done to improve our petition, technical review, and evaluation of materials. The Material Committee agreed to put that on our work plan and to work in collaboration with the NOP. I think Dan's the one who always says, "The process is broken," so we are attempting to fix that.

So I just want to give the Board a brief update on our progress so you know what
to expect as we continue to work on this.
I'll expect we'll have a much more detailed
update at the spring meeting.

As a committee, what we did is we
spent part of one of our calls really giving
everyone a chance to talk about all the things
that they didn't like about the process or
that they had heard that other folks did not
like about the process, and we bundled that
into a series of categories or a series of
actions that we could take. I'll just list
these.

One was to really tackle the whole
petition process as a whole.

The second one was to tackle
pieces of the petition process and maybe fix
individual parts of the petition process.

Next was to revise the current
Materials Evaluation Checklist to handle some
of the more complex material evaluations that
we have now, such as annotation changes,
change of location on the list, material
review, that don't fit neatly into that checklist.

Next was to tackle the TR process as a whole and then to tackle it in pieces.

And just finally, to look at the whole process flow.

So those were the six things that we ended up brainstorming.

We've had some preliminary discussion on how to prioritize this, and we looked at three things: whatever we decide to work on, how it would impact the quality of our Board reviews of the materials.

The second was, how easy would it be to get done? We talked about wanting to have some quick wins so we could really start making progress on this and give folks on the Board, as well as the public, some confidence that we were improving our processes.

And then, finally, impacts on the concerns we'd heard about the process.

So based on that, our current
thought is that we have the capacity to tackle working with the rest of the NOSB committees and the Program -- probably two or three items on our list -- and then that we could build a roadmap for the next several years. So we're thinking that we would kind of map out for about two years, two or three years, here's how we're going to tackle it to really make some improvement.

We're intending to take what we hear at this meeting, feedback we get from the Board, as well as, you know, hallway chatter, to finish getting input. And then we'll finalize our roadmap, make sure that the rest of the Board and the Program knows what that is, and begin our work.

A preliminary thought right now is that we would focus on revising the current Materials Evaluation Checklist, as I talked about, and then tackle the TR process in pieces. Right now, we're looking at two pieces.
One is to develop a TR request form -- and we've talked about it a lot when we talked about materials today -- that TRs are not one-size-fits-all. There's a lot of unique circumstances. You know, "removal" is different than "list"; "moving" is different. Sometimes we want to look at alternative materials. So, having a form that would make it easier to request TRs but customize them to a specific situation seemed like that would have a lot of value. It is something that we could accomplish fairly quickly.

And then the second was to define, what does a good TR look like? I know the Program has spent a lot of work on that, so that's something that perhaps we could tweak with the rest of the Board and really improve the quality of our TRs, which will make our reviews better.

That's kind of what we're looking at. I wanted you to be aware. If you have questions, I'd be happy to entertain them, but
like I said, there will be more work on this.

MR. GIACOMINI: Questions or comments? Steve?

MR. DeMURI: Maybe I missed it.

What's your target for having something to us? Before the next meeting?

MS. HEINZE: I think our thought is, we meet monthly, so at our next meeting, we'd finalize what the plan is, get that to you guys for some feedback. That would happen for the vice chairs of the Crops, Livestock and Handling Committees. And then if no one disagrees, we'll start the work and hopefully have some documents for the spring meeting if not before.

MR. GIACOMINI: Questions or comments?

(No response.)

MR. GIACOMINI: Seeing none, we are at 4:40.

MS. HEINZE: Okay. Next is just a quick update on classification.
When we were building the agenda for today's meeting, we felt that it was really important to give a verbal update because there's been so much public interest on classification. It's been an ongoing dialogue between the Board and the public and the Program, so we wanted to just make sure that folks knew how we are progressing after our recommendations of October 2009 and April 2010.

I'll be honest, we have not worked on classification as much as we would have liked, given the heavy sunset load that folks had this summer. But we've refocused in the last month, and we're picking things back up.

Really, the focus is on developing some draft worksheets that would aid in classification. We got very clear feedback that we need different worksheets for crops, livestock, and handling. We agree with that and so we're starting to work on that.

We also received the NOP feedback
on our recommendations at the end of September. We really thank them for their careful consideration of our two recommendations. Just some key highlights from those recommendations: they agreed that worksheets should be by use of the material. That matches the other feedback we got and so we're going to work on that.

They did suggest that we include livestock feed as a material use and consider a separate worksheet for that. So we'll look into that.

They did ask about one of our guiding principles, which was that the same material can be agricultural, non-synthetic or synthetic depending on source and process, and wondered if that was redundant from the first one. It may be. We included that because that was a really critical turning point in the Material Working Group discussions and in the Board discussions. So that's why we included that.
They supported our voting practices on chemical change. We talked about this a little bit earlier. They provided some detailed feedback on our proposed definition. Specifically, the Program did not agree with the sentence that we added in our addendum in April of 2010.

Then they had some additional questions on the other definitions. Ideally, those questions would have come up during all our work on the document, but I do understand we had a lot of personnel transition and you got it to us as soon as you could. Nevertheless, we do believe that most of those questions, we did talk about in our discussions. And what we're hoping is that, as we work on the draft worksheets, all those questions will be addressed and we can work through it.

Specific to the April 2010 addendum, we did that addendum because of public comments we'd received in November of
2009. And now it's possible that working through the worksheets, we can address those public comments in worksheets. But we'll be working with the Program to figure that out.

We've also received a number of comments in preparation for this meeting that offer additional perspective on classification. We appreciate that the public is continuing to be engaged in the topic, and we're going to focus on the worksheets and incorporate your comments.

So we'll continue to work with the other committees. I'm hoping to have draft worksheets completed prior to the April 2011 meeting so we can get those finalized.

So that's our timeline. That's our update. We didn't want folks to think we'd forgotten this and had stopped working on it.

Any questions?

MR. GIACOMINI: Questions or comments?
(No response.)

MR. GIACOMINI: Okay, we are at 4:40, which is the timeframe, it's on the agenda as recess, but it is also the timeframe for our break. We can either try and complete materials with the nanotechnology discussion or take a break. We will take a break after that, so it's really a matter of now or then. What's the feeling of the Board?

MR. DeMURI: What time is the shuttle leaving?

MR. GIACOMINI: 6:10. The bus is leaving at 6:10. We need to try and shoot for six o'clock here, folks. But that really doesn't change whether you want -- I mean, we're going to take another break before we quit. There's no way to go that length of time.

MR. ENGELBERT: Could we just take individual breaks, Dan? Would that work so we can just keep going if somebody has to leave?

MR. GIACOMINI: I think we've got
a couple of pretty significant items here that
I would hate to have members of the Board
having to be gone for personal reasons.

   Let's take a ten-minute break.

   (Whereupon, the above-entitled
   matter went off the record at 4:43 p.m. and
   resumed at 4:52 p.m.)

   MR. GIACOMINI: We're back in
   session. A quorum is present.

   Okay, Katrina, we're back to you
   as Materials Chair.

   MS. HEINZE: Okay, we have our
   major item, which is engineered nanomaterials.
   And I want to thank Dan for being our lead
   person on this topic and championing it
   through the debate. So Dan is going to
   present it. Is that correct?

   MR. GIACOMINI: Thank you.

   The Materials Committee and this
   Board have been working on nanotechnology,
   with various documents being submitted for
   discussion, vote, withdrawal, discussion, for
two years. There was a request from public
comment for a scientific input on a technical
review. We thought that was a good idea, and
we did do that to proceed with help in
creating a definition of what, within
nanotechnology, we were most interested in.

Regarding this document, I want to
be real clear on some things -- and I
apologize, I don't think it will take any more
time, but I'm going to be a little redundant.
No one wants to allow nanotechnology in
organic production and processing now.
However, there is confusion into what it is
and what we are talking about.

When we come to define what we
want to prohibit, do we want to prohibit
homogenized milk? Do we want to prohibit
aspects of grain milling? The general feeling
is that we didn't. We then went to the TR and
we tried to craft a definition of what we
defined as engineered nanomaterials, as the
portion of intentionally created nano products
that we felt the industry saw the most importance in. That's been posted. I'm not going to read it here.

But even within that definition, we had debate, particularly over the use of size. Do we limit it to 100 nanos? Do we limit it to 300 nanos? Do we limit it to 500 nanos? We have an FDA document that talks about 1,000 nanometers, but that document says it's only relevant to that document and their drugs, so we really don't know where that's going to go.

But we also -- and simply the debate over whether we even really include size at all -- because there were members of the committee who felt that it's really the change in the functionality from the bulk substance to the nanosubstance that is the significant factor. So, do we want to be constrained with a size limitation at all was all part of our discussion.

We did include it in the
definition, but we were very specific in saying that it was the small size that created specific properties and compositions, such as shape, surface properties, and chemistry.

    No one wants nano in organic right now. However, there's difference of opinion and concern over what the Program is going to be able to enforce. Of course there is concern on the use of nano in the production systems, but from the production system to consumer consumption, there is just as much of a concern over nano as contaminating organic products, the products that are certified in the various categories.

    There's great concern over whether the Program will be able to really enforce aspects such as the contamination that would come about from food contact surfaces and primary packaging.

    No one wants nano in organic production and processing right now, but it is unclear exactly how to handle what some people
in public comment have criticized us for. But we felt that it is valid to consider the 'what ifs.' What if a factory with a single water supply source or a farm with a single water supply source has, from that supply, nanofilter technology included in that water supply, and there's some contamination of that water? Do they lose organic certification? Are they forced to close? Will they be forced to move? What exactly is the consequence of those types of 'what ifs?'

Those are the things that we are asking the Program to evaluate. At the last meeting, the Program requested that we bring forth the Materials Working Group classification of material document more as guidance, to see how it worked, and we felt that was a sound process to proceed with in this situation because we would be very concerned with putting forth a document that, in the long run, the Program ended up in a position where they couldn't enforce what we
were requesting and the ramifications that could yield.

Nobody wants nano in organic right now. But how do we restrict it? Do we restrict it with a huge, solid wall? Or do we restrict it with a huge solid wall with a door in it that, right now, we lock? What is the best way to proceed? There is certainly a portion of the public comment that says, put up the wall, and there is also other comment that says, it is new technology and we are concerned about it, but because of the fact that it is new technology and we don't know where it's going to go, let's not be quite so ready to proceed to throw, as they say, the baby out with the bathwater, without knowing what we are going to be fully and completely eliminating.

And again, no one wants nano in organic right now. But as I just mentioned, we don't know where it's going, and as a result, we called for a symposium to discuss
the issues that we've already talked about, to
discuss some of the developments of the
industry, not for the industry to be able to
come in and do a ganged-up cheerleading
expedition of how great nanotechnology is, but
at the same time, not just a trashing session
without a consideration of where certain
aspects of the industry might be going.

Thoughtful consideration, looking
at the questions that we've evaluated, that
we've considered, and trying to, again, as we
bring this forth, we're going to need to
continue to look at it as a Board, the Board
is constantly turning over members, and we're
going to need to get new members up to speed
as well.

No one wants nano in organic right
now. But Jay and I both sat down and we
counted the votes. And between all of these
different issues, there's a lot of differences
of opinions. Certain people like something
because of one thing that would be included.
Certain people didn't like it because of something else that was included. And both Jay and I, independently looking at our best guess of the votes, could not find a definitive way of listing a prohibition or an 'it's a synthetic' recommendation that was going to be long-term, lasting, that would pass.

We were all concerned on the committee that the worst possible thing we could possibly do would be to come forth with a nanotechnology document that failed. And all across the organic press and the media would be that the NOSB failed to restrict nanotechnology. We wouldn't feel that that -- whether that's fair or not, that could be up for debate, but we felt that one of the worst possible things that we could do would be to present a document that doesn't pass.

And remember, our documents require a two-thirds vote. So we would need 10 people. We came up with a lot of eights and
nines, but we didn't come up with any 10s.

So what is this document doing?
It is creating a definition which we believes
fits within the definition in terms of the
regulations in the category of 'synthetic'.
We believe that there is enough evidence that
the substances that qualify under this
definition are synthetic and fit under the
definition of 'synthetic' now.

We're requesting the Program to
recognize that anything currently on the list
is on the list in a bulk form and was never
reviewed by this board in a nano form, and
that the current listing on the National List
is not an allowance for a nanoparticle-size
substance.

It is also requesting the Program
to look at the level and ability of what they
are going to be able to enforce, and it is
requesting the Program to look at the what-if
situations so that the Board is well aware of
what they are going to be imposing on the
industry if some of these unintended contaminations arise in the future.

So we do not feel this is nothing. We do not feel that this is a compromise in that sense. It is a compromise versus the pure, absolute prohibitions of 105 and always just saying it's synthetic. But we feel that it is giving the Program something to recognize and prohibit now, and it is requesting cooperation from the Program to work together to resolve these issues so that we can proceed forward in the future with whatever further restrictions the Board desires to request.

Any questions and comments?

MR. GIACOMINI: I think we could have done that before the restroom break.

Okay, Joe?

MR. SMILLIE: I think the enforceability issue is really key. We've got to come up with something that's enforceable. If it's a total, complete ban, we could do
damage, and I think that my favorite aspect of all the great points that you brought out is we've got to make sure that it's enforceable because, as the representative of the enforcement wing here, we're going to see complications, and I want to make sure that whatever we come up with at the end of the day, the certifiers can enforce.

MR. GIACOMINI: Jeff.

MR. MOYER: I think your point is well taken, Dan, that this is a topic that we have been discussing for several years. We worked on it a few times in the past. I know when I was chair, we worked on it.

I think the document that we have in front of the Board today is a fairly reasonable compromise that allows us to move forward and do something because I agree with you that the damage of doing nothing far outweighs the damage of doing something good.

While this does close the door, it's not as tight as some of us on the Board
would like it to be. We have created a door. Some of us don't like that. But the door is closed and locked, and I think at this point it's probably the only thing that we can do as a board.

You do have broad support for this document. That's why you're not getting a lot of comment. We've beat this puppy pretty hard.

MR. GIACOMINI: But this document also does not eliminate the elimination of the door. Right now, it sets it as synthetic. We believe it's synthetic. It gives the Program something to work with.

Yes, it's a possibility that the door could be opened in the future, but there's also the possibility that the Board could remove the door.

MR. MOYER: Yes, I guess as a follow-up, I would just say you repeatedly said that we don't want nanotechnology now. You said that more than once, and I just
wanted to state that there are those of us who say "now and forever," but we're realistic enough to know that we have to do something.

   MR. GIACOMINI: The reason we went this route was to get the "at least now."

   MR. MOYER: I got you. That's what I said; we beat this puppy.

   MR. GIACOMINI: No, this is a document for voting to -- we called it guidance. I guess the Program may have some suggestions for things that we call guidance documents in the future. But right now, to our historical reference, we've referred to it as a guidance document.

   Kevin.

   MR. ENGELBERT: So you're convinced and the committee is convinced that a simple recommendation banning nanotechnology now and in the future, with the details left to public comments and ANPR and the Program, with guidance from the Board as needed, would not pass; is that what you're saying?
MR. GIACOMINI: With all the considerations for the debate about size, debate about enforceability, debate about the 'what ifs,' neither Jay or I -- and we are not in lockstep; we're not necessarily on opposite sides of the fence, but we're not exactly in the same place either -- when we were doing our best considerations, neither one of us could come up with 10 votes in either way, that or saying it's just synthetic. Barry?

MR. FLAMM: I read all the comments, and they seem to be strongly oriented, except some of the ones directly involved with the industry. Most of the comments were very strongly in favor of doing it now, and even if there's a symposium, learn from that and improve, but shut the door now. Has that influenced your -- has the committee looked at this in light of these very strong and direct comments?

MR. GIACOMINI: Well, those are
similar comments to what we've heard on all the previous discussions with the documents that we've put forth on this topic. The initial 'we want it now' is fairly universal until you start getting into the details of it; of, what do you want now? What do you want restricted now? What is the size of what you want restricted now? Do you want to include homogenized milk and grain dust or not? Should it limit it to 100 nanometers, or does it go up to a thousand? Should it include processing contamination or not? What happens to the factory if it's imposed on them? Those are all the things.

There's a fairly universal, and always has been, initial response of now, and that's an easy first question to do in a survey. But when you then get into the details of the things that you are going to include as the 'now', it starts breaking up in a lot of different directions.

And even with the TR, even with
the other documents that we worked with, there
was enough consideration of different ideas
from size and everything else on the
committee, and in our counting, we could not
envision a definite passing recommendation
that would not put us in the potential
situation of a nine-vote affirmative that
failed, and we're put in a position of, the
NOSB could not restrict nano.

This restricts nano. It's not the
end, but we feel that it does give the Program
enough to restrict it now.

Jay?

MR. FELDMAN: Thanks, Dan.

I agree with Kevin and Barry on
this in terms of where I'd like to see things
go. I think we have to find a voice here that
is clear to the public, as Dan has said, and
we should hopefully do it as a consensus vote.

I mean, there are other ways to
achieve this, but again, I think there's
hesitancy on the part of those that see some
future need to provide them with an opportunity to explore some of these issues in more -- I don't know much more depth we can go in after two years -- but to do some more work on this.

For instance, we could achieve the same thing by closing the door, banning it, essentially, putting it into it as an excluded practice, and then have the symposium, and then come back and say, at the end of the symposium, a petition could be fashioned if, in fact, elements of what the Board had done needed to change.

There are other ways of doing that, but those who see a potential future need feel that that biases the process against some future opportunity to allow it, which I, given where I'm at on this and the comments you referred to, would fight. And you know that, Dan. I think this falls in the same category as GMO radiation and sewage sludge basically.
Having said all that, I'm curious as to whether the Department thinks the 'now' that we're trying to establish with, no use now pending this symposium and some further deliberation, is an enforceable proposal. I don't know if the Department has looked at it and whether we could get a response from NOP.

MR. GIACOMINI: Program?

MR. McEVOY: Yes, we need to look at this a little more carefully before we make a response to this, so this will be very helpful. But we'll need to look at this very closely before we can give you a definitive answer on that.

MR. GIACOMINI: The other aspect of what we did here is that we specifically did not request any regulation change. We felt that it can just be done within, hopefully within the guidance accepting of that definition, that that definition fits within the current synthetic.

MR. McEVOY: And I think that's
part of what we need to look at.

   MR. GIACOMINI: Right.

   MR. McEVOY: Can this be done through just guidance or a policy memo, or do we need to do some rulemaking in this area? So we'll take a look at that and get back to you as soon as we can.

   MR. GIACOMINI: Joe?

   MR. SMILLIE: Could you elaborate on the enforceability of what we need to give to you? In other words, the enforcement aspect is what obviously bothers me about it.

   You know, 'We want to ban nanotech.' But enforceability of a complete ban, can you see problems with that? I don't mean future possible good uses of nanotech. I'm talking about inadvertent contamination, unavoidable environmental contamination, and that sort of thing.

   MR. McEVOY: So you're asking how, how could we verify, or how could certifiers verify that nanotechnology's not being used?
Good question. In terms of all the inputs that are currently being used, certifiers are evaluating all of those inputs to determine if they meet the NOP regulations.

Are there specific criteria that they need to incorporate in terms of getting statements from manufacturers that these products have not been produced through nanotechnology, kind of like what they do for GMOs? Is there any kind of list of nanotechnology products out there that an independent organization has available or a government organization has available? It's relatively easy to find what genetically modified products are out there, but I'm not sure on terms of nanotechnology.

So those are some of the questions in terms of how does a certifier verify that nanotechnology has not been used as an input.

Then you're also bringing in questions of contamination. We certainly have questions in terms of contamination with GMOs.
What is contamination? There is no tolerance level for GMOs. GMOs are excluded and can't be used in any part of organic production or handling, but if there's the presence of GMOs in an organically produced or handled product and that presence isn't there from a purposeful, intentional use of excluded methods, it's not specifically prohibited.

We still have a lot of things to work out on GMOs, so does that mean that we don't move forward on prohibiting nanotechnology? If that's what the organic community expects, that nanotechnology is not part of organic production handling, then it seems like that's the recommendation that the Board should come forward with. And then we will figure out how to define, how to verify that nanotechnology is not part of the process.

So it will be a work in progress, but it's something that's very important to consider. How do you verify that
nanotechnology is not part of the process?
How deep do we need to go? How deep do the
certifiers need to go to verify this?

MR. GIACOMINI: One more question.

Kevin?

MR. ENGELBERT: Just one more and
then I'm going to be quiet. I'm just very
cconcerned that time is going to elapse and
we're not going to accomplish anything,
because I'm afraid that all your concerns and
questions are never going to have definitive
answers. There's simply too many unknowns.
There are too many possibilities that can
never be anticipated.

In all honesty, I hope I'm wrong.
I hope that this is the right step to take,
but I'm concerned that not putting up a wall
immediately, right now, with no exceptions,
we're going to rue the day that that didn't
happen.

MR. SMILLIE: I don't want to go
on forever either, but it's my last meeting.
It's my last chance to say something about it.

You know, I'm against nanotechnology completely, but I also realize the contamination issue, not future possible good uses of nanotech. I'm not there. I'm talking about contamination. And putting people out of business -- well, you just can't do organic in that county because of the nanofilters in the water supply, or whatever the other contamination packaging issues come up that we have to face.

We just went through, we are still going through, the GMO vaccines issue. I mean, there it is right in front of you. It's the elephant in the room. You know, we want the vaccines, they are GMO, we've got a huge problem. That's the kind of lesson that we have learned. We are learning that we've got to be really careful about unforeseen consequences of some of the outrights.

There's a couple of solutions to it. We do want to reassure -- we do want to
act. We want the ban on nanotechnology, and
maybe we're closer than we think we are about
going the wording right. I don't know, I
didn't participate in the Materials Committee
discussions. But I think we're close. I
don't think it'll be forever.

I think we can come up with
something pretty soon that's going to work for
everyone, including the enforcement, and
prevent the kind of problem we discovered with
the GMO vaccines.

The other thing about GMOs, and
the analogy is, I think, a good analogy, is
now they're getting slicker at disguising the
GMOs so that it's not quite as easy to find
out the penetration of GMOs into our food
supply. I mean, that's the latest
development, and now it's getting harder to
track that penetration.

I'm sure we're going to experience
the same thing with nanotech penetration,
especially into the packaging, filters, all
sorts of things. We're a small little minority out in the trade world, and they're going to move forward with their technologies regardless of what we say. So we just have to take that into account and figure out a way.

I like the analogy of the solid wall with the locked door. You see, that's what I would want to vote for. As far as getting onto the voting thing, you've got to be careful because we don't want the votes to fail. But if there's two votes, I would vote for terming it synthetic and locking the door. I wouldn't want to vote for the wall; I'd want to vote for the locked door. That would be my preference as a voter on the NOSB.

We don't want to get into a -- what's that called? -- Mexican standoff, where, you know, who's going to blink first as to which option wins. I want everybody to agree on the final option that we choose and we get a solid unanimous vote from the NOSB.

That's all I have.
MR. GIACOMINI: Comments?
Anything further? Katrina?

MS. HEINZE: Dan, thank you so much for leading this discussion. I thought it would be useful if you could just go through the bullet points of what our recommendation actually does. I think that's worth putting on the transcript.

MR. GIACOMINI: Okay. The Materials Committee moved to accept this document as a guidance document specifically asking the NOP to accept as a working definition:

Engineered nanomaterials: substances deliberately designed, engineered and produced by human activity to be in the nanoscale range, approx 1-300 nm, because of very specific properties or compositions, for example, shape, surface properties, or chemistry, that result only in that nanoscale. Incidental particles in the nanoscale range created during traditional food processing
such as homogenization, milling, churning, and
freezing, and naturally occurring particles in
the nanoscale range are not intended to be
included in this definition. All
nanomaterials, without exception, containing
capping reagents or other synthetic components
are intended to be included in this
definition.

  o Point number 2: disallow the
engineered nanomaterial form of substances
currently on the NL since nothing on the NL
has been reviewed or a TR performed that
included any aspect of the manufacture, use
and disposal of the listed substances in a
nanomaterial form.

  o Three: accept materials that
meet the working definition of engineered
nanomaterials as synthetic substances.

  o Four: accept that engineered
nanomaterials may have unique properties that
distinguish them from all listings of these
substances in the bulk form, and that they are
not allowed by a listing of the bulk form of
the substance on the National List, pending a
further recommendation from the NOSB, and
implementation thereof by the NOP, on the use
or prohibition of engineered nanomaterials in
organic production processing and packaging.

  o Work with the NOSB to determine
whether enforcement of restrictions in primary
packaging and food contact surfaces is
possible, practical, and legal.

  o Work with the NOSB to schedule a
symposium on the topic of engineered
nanomaterials to aid in evaluating (i) the
adequacy of the definition, (ii) any potential
areas of concern that may not be included in
this definition, (iii) the enforceability of
the various parts of the definition, (iv)
possible adjustments to the approximate size
constraints that may be needed, and (v) the
effect of different regulatory approaches,
including, but not limited to, a complete
§205.105 prohibition, a §205.105 prohibition
unless as provided in the National List, or a statement that these substance are synthetic and all the prohibitions regarding that policy would be in place; all for the purpose of considering the development of a rule change on their use or prohibition.

Katrina.

MS. HEINZE: Thank you. The reason I asked you to do that is I voted affirmatively for this document because it asks the NOP to take specific action right now. And we worded it very carefully that way, right? We asked them to accept the definition. We asked them to recognize that it's synthetic. So, while this builds a roadmap to help us figure it out, it also asks the Program to take action right now so that we can start working on this.

MR. GIACOMINI: Kevin.

MR. ENGELBERT: I'm going to break my promise, sorry. One more quick comment, Joe. I like the way we're doing analogies at
this meeting. It's really good.

(Laughter.)

MR. ENGELBERT: We're really
breaking new ground here. And I understand
the analogy with the wall and leaving the door
locked.

I still, even though GMOs may be
the elephant in the room and the wall was put
up, it may very well turn out that it was a
good thing it did and we aren't able to create
a door in the wall. But we still are going to
try now. And I would still rather have the
wall and have a door have to be created, not
just unlocked.

MR. GIACOMINI: It's not a rabbit
hole.

Any further comments?
Okay, Katrina, any more from
Materials? Materials is --
Joe, I'm sorry.

MR. SMILLIE: That's okay. Can you
scroll down? Up. Where am I?
MR. GIACOMINI: One or the other.

MR. SMILLIE: It's the second-to-last point that's not fleshed out enough for me. I mean, I like the recommendation. I'd vote for it, no problem, it's good. But that last point, "Work with the NOSB to determine whether" -- you mean the NOSB?

MR. GIACOMINI: We're requesting that they evaluate the process, evaluate -- that's the enforcement issue, right?

MR. SMILLIE: Yes, "Work with the NOSB."

MR. GIACOMINI: Yes, to evaluate the enforcement possibilities and to work with us so that we understand really what is going to be enforceable and what's not.

It's asking the NOP to work with us after they evaluate what they're going to be able to enforce.

MR. SMILLIE: Yes, so we're asking them those specific questions?
MR. GIACOMINI: Yes.

MR. SMILLIE: So we're back to the food contact substances and surfaces issue.

MR. GIACOMINI: Food contact surfaces --

MR. SMILLIE: And substances.

MR. GIACOMINI: -- primary packaging --

MR. SMILLIE: Right.

MR. GIACOMINI: -- and other aspects of enforcement.

MR. SMILLIE: My point is the same, though. Maybe it's too late, but I would like to see a little more on that, a little more prohibitory language or thoughtful discussion on that point. But that's okay. We can move on.

MR. GIACOMINI: Okay.

Further discussion on this topic?

Katrina?

MS. HEINZE: That is it for the Materials Committee. Thank you.
MR. GIACOMINI: Thank you. Next up is CACC: Joe Smillie, Chairperson.

MR. SMILLIE: Well, usually we've got some heavy-duty recommendations. In this case, we've got two small but, I think, important recommendations. We'll try and get through them as quickly as possible. They're not as weighty items as what we've been talking about, but they are important.

We're going to start off with our recommendation on the 'Made With Organic' claim. The history of that work plan item was basically a request from the Program, not the current Program but the previous Program, to put it on our work plan.

At that time, it was felt that the 'made with' claim hasn't been properly presented and that it needed a lot more impact to it. They requested us to look at and analyze the possibilities of creating an alternate seal or a type of seal for the 'made with' product.
We looked at it, we had a couple suggestions. We floated it out to the community. And it was a hanging curve ball, and it's in San Francisco Bay right now, and the kayakers are looking for it.

So we went back and came out with a recommendation that said, okay, well, seals may be too dramatic, but we really do want to honor that particular legal label claim and make sure that the public knows that a product that is a 'made with' product is actually certified to the U.S. National Organic Program regulation, and we want to be clear about that.

That was the work, and Jennifer took the lead on that, and she's going to be presenting our recommendation.

MS. HALL: Thanks, Joe.

As Joe indicated, the original request did come from the Program for us to look at this and, I think, also with some hope that it would help distinguish the legitimate
'made with' products from some of the labeling issues that are happening out there with products that are masquerading as organic because of different things we've been unsuccessful from excluding from the marketplace to date.

So we have continued to try and work with your organic community to find language that aptly represents the legitimate status of the 'made with' category but does not draw away from the higher categories, the organic and 100-percent categories.

So that is what our intent was with this new recommendation, and I think people are fairly familiar with it. But the core of it does come down to allowing, on the principal display panel, a statement that indicates to consumers at a glance the fact that it has been inspected, that it has gone through all of the rigor of the regulation.

Certainly, last time, we tried to suggest that it might be appropriate to use
the 'USDA Organic' seal, and that was not
warmly received, and understandably, that it
might add some confusion since the word
'organic' is so strongly stated on the seal.

So, we have come back with the
idea of putting a statement on there that says
"Certified to the USDA guidelines." In
discussion, clearly, initially we were looking
at just the 'made with' category but did not
want to be exclusive with that right and add
further confusion, that just that category
would have access to that statement. And so
we did suggest the option that any category
could use it that might want to.

The feedback -- one very
consistent item in the feedback that I
mentioned yesterday and will re-mention for
those who were not there who are now here, is
that on the document that we presented on
Thursday for a vote, we will change the word
'guidelines' to 'regulations' so that the
statement is "Certified to USDA regulations."
That was the intent. It was poor wording, and
that is the beauty of getting feedback and
being able to re-do that and edit it to be
more accurate. So, definitely, thank you for
that.

The rest of the feedback was still
primarily negative. I think there was one
comment in support from Vermont, but the
remainder of it was still fairly negative,
ranging from folks who just purely didn't
think we needed it to those who still question
the legitimacy of it and/or the credibility of
the category.

Our committee did vote in favor of
it -- five yes; one absent; no noes; no
abstentions -- and though we've presented it
before, I think that I have a little different
perspective on it than maybe some, and I'd
like the opportunity, and I ask your patience,
to kind of explain a little bit of the scope
of perspective that I bring to it. I don't
think I've done a great job of that in the
past, so bear with me.

I did write it out to make sure I kind of hit the points because, even if the Board does vote in favor of it, it clearly would require the support of the full community to make it successful. So I'd just like the opportunity to kind of share my thoughts about it.

Again, you know, we requested to do this, and despite whether or not it's requested, I still think it's a really legitimate cause, and that we are not talking about -- there was a comment that it was still referencing the use of the seal. So, again, I want to make it clear that we are not promoting the use of the seal on the 'made with' category products -- that we are promoting the simple statement, "Certified to the USDA regulations," on the principal display panel to give it the legitimacy of the USDA, and again, to make it easier to recognize that fact on the front panel.
So I just kind of want to review some basics in my mind, and that is that the regulation, as it was originally established, does have three legitimate categories of organic food production.

The 'made with' organic is a minimum 70 percent, but in my mind, 70 percent is a lot more than nothing. It is considerably more organic content than conventional and is still subject to 205.301(f)(1)-(3), which are the three items that none of the products have. So I think it's still head and shoulders above conventional and is still a good product category.

On a couple of levels, I think, yesterday -- and perhaps we'll hear more -- organic has a little bit of a PR issue, and I think that this category can help overcome that. What it isn't, and how much it costs, are still things of the organic category I think could make some headway on. We're
working, as always, on bolstering the requirements, but I don't feel an equal concern with making it more accessible to more people.

An example of kind of the perception that's out there -- I honestly just found this as I was reading on the way here -- it's in the latest New York Times Magazine that is completely dedicated to food issues. This article is talking about incubator businesses, food businesses in particular, and talking about good food that is being sold for a good value.

And I quote -- I'm using an anecdote about one of the participants, the owner of a shop they're talking about, telling an interviewer that she didn't use organic ingredients. "She finally admitted that actually she does but avoids saying so because, to many of her customers, it simply sounds expensive."

I think that is a perception that
is out there most definitely. I constantly hear in my work and from a lot of people that organic is seen as elitist, and I don't think that's a good place for us to be. So I think, again, that this category can help, and that we need to work on that perception. We have food access issues in this country. We have health issues in this country. Organic food is better for people, organic food is better for the planet, and how do we get it in more mouths is one of my concerns.

While I don't disagree with some of the comments suggesting a concerted consumer education campaign, the majority of the comments received from the community don't lead me to believe that that will occur soon. The gold standard bias toward 95 percent or greater has been clearly articulated and is understandable, but many people are cash-poor right now, and making tough choices. We need more affordable options for those who want to consume or manufacture better foods, but are
not a position to go the full extent every
time.

I include myself in that group of
people, struggling to deliver on my own
commitment to organics, given my own budget.
Like many consumers out there, I need an
option between the gold bar and a Hershey bar,
one that the industry supports with equal
commitment.

I fully agree that organic and 100
percent organic are more organic. I
respectfully disagree that the 70 percent
category is less credible by its nature. I do
believe we are in the process of potentially
making that true by consistently questioning
its value, and frowning on every attempt to
recognize it more fully.

There are those who treat the
'made with' organic category as though it is
cheating. To the contrary, from the
beginning, it has offered another available
organic production and labeling option.
Mark Lipson shared yesterday the goal that the Secretary added to the USDA's strategic plan of 25 percent growth for organic by 2015. While I'm not sure if that is exclusively, in their mind, a revenue goal, my goals would be 25 percent increase in the number of consumers buying it -- in any and all organic categories -- and the number of acres in organic production. We will greatly enhance our ability to achieve those increases if the organic industry can embrace all of the labeling categories.

USDA's slogan, "Know Your Farmer, Know Your Food," is an important stride forward in outward communication. It is also the common goal of a marketing program to know your customer. Without having to invest a considerable amount in consumer research, we have a variety of observed and reported cases of customers telling us with their dollars, with their shopping habits, what they want, by choosing to purchase non-organic items that
either mean more to them or are within their budget.

The marketplace is still difficult to navigate with confidence due to product mislabeling. From my work and personal interactions, I believe I represent a significant percentage of current and potential organic customers who need a reliable way to identify legitimate and credible 'made with' organic products.

We do have this 'made with' organic tool at our disposal. I hope we can fully recognize it as one of the original labels under the National Organic Program and the umbrella of the Agricultural Marketing Service, and market it.

Thank you.

MR. GIACOMINI: Questions? Comments? Katrina?

MS. HEINZE: Jennifer, I really appreciate you going through the goals that you have for this recommendation. I think
that's very helpful, and I really do appreciate the work.

You know, I was at Expo East for the first time this year, and it was really a fabulous experience. There was a lot of chatter in the hall about the goals that you have, and there was a lot of really good ideas about what to do with labeling that might address it.

It's clear from the public comment that there isn't support for the recommendation. I'm wondering if the committee has considered throwing it to industry, because I think they recognize the goals and share the goals, but maybe as folks who are labeling all the time, they might have some creative ideas. I heard some very good ones in the hall that I think industry could really get behind and could support, to accomplish the goals that you have.

MS. HALL: To answer your direct question, we haven't talked about doing that.
There certainly may be room to do so, and we can talk about that in committee before Thursday.

MR. GIACOMINI: Miles.

MR. McEVOY: I appreciate the work on this recommendation, but I think there's some problems with the wording. For instance, it says that the recommendation is "certified to the USDA regulations" now. 'Certified' what? Certified organic is what the category says, 205.304. And, USDA -- what? There's lots of USDA Programs. So if you want this to mean something, it's got to clarify that it's about organic or made with organic, just like the regs say, 205.304.

The 'made with' category I think is an important category, but we're seeing some, what we would categorize as misrepresentation in that category, and we're trying to address that. We're working on draft guidance to clarify what the interpretation of the current regulations are.
And as I've expressed previously, we see some, what we think is misrepresentation by using organic in the company or brand name of the product on the principal display panel.

I'm not sure if this is the right time to try to move this forward, when we're trying to make sure that this category is representing the category in an appropriate way and not misrepresenting it, over-representing it as the organic category.

So, those are just a couple of comments.

MR. GIACOMINI: Response to Miles, or any other comments?

Going once, going twice --

(No response.)

MR. GIACOMINI: Okay, Joe, back to you.

MR. SMILLIE: The next item is a small but a very important guidance recommendation that we believe is going to close what a lot of us consider to be a
loophole in the regulations. It doesn't call
for a change. It calls for just a re-look at
this particular category, at this particular
regulation. John took the lead on this
document and will describe its intent.

MR. FOSTER: Thank you, Joe.

Being mindful of time, I'm hoping that this is
not particularly controversial, actually.

The intent was to just cull out --
I wouldn't necessarily call it a loophole --
I would call it something that hasn't gotten
enough attention in recent years. There's
been a lot of important things to focus on,
and this is just emerging as one of the
inevitable refinements that I think is to be
expected in any new program.

The idea is to ask the NOP to call
attention to the limitations on exclusions, as
noted in 205.101(b). It's the contention of
the recommendation here that there are
significant limitations on the kinds of
activities that should be covered by the
exclusion and that they are limited by the
degree to which a product is packaged or
contained, and how those goods either stay or
don't stay in packages or containers.

I don't want to read through the
whole thing, but it asks NOP to clarify, to
look into this and be very clear as to whether
or not they see the current regulatory
language covering some of the activities that
are going on around trading, brokering, buying
and selling of things like hay and cattle and
bulk grains, bulk fluids.

It does not ask for regulatory
change, and that was one of the big advantages
of this, as I saw it, and as we as a committee
saw it.

It does ask -- let's see -- it
focuses on the fact that the limitations here,
the exclusions are relevant only if handling
operations or portions of them sell organic
agricultural products that are packaged or
otherwise enclosed in a container prior to
being received or acquired by the operation, and remain in the same package or container and are not otherwise processed while in the control of the handling operation. It's important that the conjunction there is 'and', not 'or', so both conditions have to be met.

The comments that have been expressed have been generally favorable in concept. However, there is some concern over unintended consequences, and some question about how far this would be construed as -- how far this would go. It wasn't the intent to get all truckers, all transporters certified, necessarily.

If, in the wisdom of the NOP, that those activities that are a direct function of, say, getting milk from a farm to a processor or from a farm to an elevator. If that's a direct activity of the farmer, of the producer, it wasn't necessarily the intent to make sure all of those trucking operations get certified.
I certainly don't want to be responsible for any unintended aftereffects here, but we focused mostly on discussions around brokers, traders who are uncertified, taking either title or possession, storing products. And we want to work against those who would misrepresent conventional products mixed in with organic products by uncertified operators.

We give some examples in here. Again, I won't go through them all. We'd prefer to spend time on questions. This passed with a vote of four yes, zero no, and one absent.

I'm going to call it good there, and see if there's questions.

MR. GIACOMINI: Questions? Comments?

(No response.)

MR. GIACOMINI: Well, if there's no one else, I'll do it -- I'll go. I just -- I'm going to preface this and say, I
completely oppose organic fraud.

(Laughter.)

MR. GIACOMINI: And I don't want to be misconstrued by anything I'm going to say, but if there's a problem in the audit trail or if there's a problem in some other process in the inspection and certification of these issues, I think they do need to be addressed.

But a lot of these are farmers, whether they're dairy farmers or livestock farmers or grain farmers. I don't have a direct access to a lot of organic grain farmers, but I do know a lot of organic dairy farmers, and things are pretty darned tight. The added cost of every broker needing to be certified or all the brokers who want to play within the organic hay business, all the truckers who are going to be hauling hay, the cost of each one of those guys is going to go up and the competition is going to go down.

I know dairymen and milk companies
where the company hauling that milk has one truck. If that truck -- if they're certified and that truck breaks down and nobody else is certified or nobody else that's certified is willing to give them a truck, they can't haul their milk.

I think the cost of this is going to be outrageous, compared to the value of it. I think if there's somebody that's buying cows, buying 10 organic animals, taking them to a facility, unloading 10 and loading 15 back up, that's fraud, and we need to fix it. And I wish the book would get thrown at them.

But I don't think that just because we say, they have to be certified -- and all the additional cost that's going to go into that and all the dominoes that potentially could be affected by this recommendation -- I don't agree with it. I think the impact and the cost on the farmer is going to be huge and unnecessary.

Kevin?
MR. ENGELBERT: I think the problem, from what I've been able to gather from talking to people, listening to comment, your recommendation, and the people that are gaming the system, is that there has been a possible misunderstanding or a lack of enforcement, based on ownership versus possession.

A milk company contracts with someone to haul their milk, and there's no reason for the hauler to be certified because, the instant that milk is on the truck, it's owned by the company. If their truck breaks down and they have to hire somebody else, they don't need to be certified either, because the ownership is clearly from the farmer, and then instantly to the company they sell to when it's on the truck.

The same with cows; the same with hay. If you've got a broker that is storing it in his facility, then he's taking ownership of it, and he needs to be part of the trail.
But if he's just someone that's been contracted to deliver from one owner to another, then there's no broken audit trail.

I'm not sure the exact way we need to go with this, but it's not as complicated, I think, as it may appear.

MR. GIACOMINI: John.

MR. FOSTER: In those examples -- I don't think those examples would require either Dan or Kevin -- I don't think this would apply there. I really don't. I think the definitions of 'handle' and 'handling operation' and 'handler' sufficiently exclude those kinds of activities. This is really focused on uncertified operations, which aren't what you're talking about.

You're talking about either growers that are certified or processors, receivers that are certified, and have a truck or a fleet of trucks or whatever that's already covered. This doesn't -- wasn't intended on dealing with that. It's intended
on dealing with operations that aren't
certified and have no audit trail and have no
oversight.

With respect to, Dan, your
comments about the cost, what we're asking is
the NOP to review what limitations already
exist in regulation. That's it. No new
language; just please look at the limitations
and see where they apply.

If -- if the NOP sees that there
are some uncertified operations that shouldn't
be uncertified, call that out. That's what
this is asking. No language change.

Enforcement of what already is
just hasn't had a spotlight on it. That's
all.

MR. GIACOMINI: So, a specific
example: A farmer grows alfalfa hay, and a
dairyman wants to buy it. The dairyman calls
the local broker that he works with, that he
regularly gets hay from, and says, I need a
load of alfalfa hay.
The broker has access and knowledge to hay in the marketplace. He goes out. He secures a load of hay. He gets someone with a truck, who's obviously and oftentimes not the broker's truck but a separate trucking company, gets somebody with a truck to go haul that hay. It's picked up at the farm and it's taken to the dairy farmer, but the contract, the bill is actually paid from the farmer. The dairyman is actually paying the broker for the hay.

And you're saying: Would? Would not? What?

MR. FOSTER: I'm just saying I'd like the NOP to look at the limitations on 101(b), and if they apply, apply them.

MR. GIACOMINI: Okay.

Miles?

MR. FOSTER: That's what I like.

MR. McEVOY: We're looking into this and working on guidance in this particular area around the exemptions and
I just want to mention that in the Washington State Program, before the implementation of the National Organic Program, we had a much more restrictive exemptions from who needed to be certified. So brokers had to be certified and all the currently excluded categories had to be certified. We found that it really wasn't a problem. We didn't have people opposing getting certified. It actually -- most of those people retained their organic certification after they were no longer required to be certified, because it helped them out in terms of their own business interests.

It clarified what the standards are. They're verified. They have that certificate. They don't have to disclose where they're buying their product from. They don't have to have that certificate from the grower, because they can provide the
certificate as a certified broker. And it makes the audit trail much more complete, a much more verifiable system.

So, anyway, I don't think it's going to cause a lot of problems. We are looking at this particular area to provide more clarification. If there are operations that should currently be certified that are claiming that they're excluded from the certification, we'll take a look at that. If you believe there are operations like that, you can file a complaint and we'll look into it. So this could be very useful for the NOP at this point.

Mr. Giacomini: Kevin.

Mr. Engelbert: With your example, Dan, if I understand it correctly, if the farmer pays the entire amount to the broker, not just a commission, then he has taken ownership of that hay, and he would be responsible for the transaction certificate for that hay, along with a certification of
organic.

If that is cost-prohibitive, then he should, the farmer, or, tell the -- to pay directly to the farmer that is selling hay and be responsible for the affidavit for that hay and cut basically two checks, one for his commission and one for the hay; right?


MR. MOYER: I just wanted a point of clarification from Miles. Am I to understand that you said this document would help you in carrying out your review of this process?

MR. McEVOY: Yes. It provides the Board's perspective on this particular area, so yes. It could be very helpful for us, yes.

MR. GIACOMINI: Further comment, questions? Joe?

MR. SMILLIE: That concludes the CACC report.

MR. GIACOMINI: Thank you. Off to
the last policy discussions of the day, and
we're supposed to be getting on the bus. I
understand it's going to be held up a little
late for us, but let's see what we can do.

Barry, Policy.

MR. FLAMM: Thank you. We'll do
our best to keep it down. We're scheduled for
40 minutes.

We have four recommendations,
three involving changes to the policy and
procedures manual, and one on the new member
guide. On the new member guide, Annette was
the lead on that in working with Lisa, but
Kevin has graciously agreed to make that
presentation.

The first one is a request that
you made, Mr. Chair, of the Policy Committee
to examine establishing ad hoc committees, et
cetera, and Steve will present that. He was
the lead on it.

MR. DeMURI: Thank you, Barry.

Well, this one was pretty simple, actually.
A request came to the committee to insert into the policy manual a mechanism for establishing ad hoc committees, something's that has been done in the past. A good example would be the joint materials and handling committee that's worked on classification materials for the last few years. It was put together as an ad hoc committee, and we didn't really have a mechanism for that. It just kind of happened.

So we did insert some language into Section 4 of the NOSB policy and procedure manual to allow for formation of ad hoc committees. Hopefully, everybody's had a chance to read that. I won't take it the time to do that. It's just one paragraph of verbiage in there.

We do understand that there has been a request, possibly, for some changes to that, to that insertion, and we would entertain a friendly amendment to that when the time comes, either today or Thursday when we vote on it. So if the person that's
interested in doing that would like to do that, we'd be happy to entertain that friendly amendment

MR. GIACOMINI: Yes, first of all, the board, the Chair requested that you look at the issue, not to definitely put it in. The reason the Chair requested that was that the burden of committee selection, within the structure of a joint committee, is -- adds a huge, cumbersome, geometric complexity to the issue.

That didn't seem to be necessary. It created a huge committee, and the logistics of who was on what committee -- and where else they could be because, by being on A, they also had to be on C -- was a problem that I faced in doing this.

I was also the person who, in reviewing this, had a couple of suggestions, and I will include it as a friendly amendment, but to delete the last sentence of the paragraph and to add the sentences, "Ad hoc
committees can be dissolved at the recommendation of the NOSB chairperson, with approval of the executive committee." And the second sentence, "Ad hoc committee chairperson is a nonvoting member of the executive committee."

MR. DeMURI: Okay.

MR. GIACOMINI: Any other questions or comments?

(No response.)

MR. GIACOMINI: The reason for the first part is to match more the way the committee was formed, and the reason for the second is not adding one more person as a voting member of the committee -- they may already be a chairperson of another committee -- but making sure that they're present on the executive calls for updates.

Any further comments?

MR. DeMURI: I'd just say, I did poll the committee informally.

MR. GIACOMINI: Okay.
MR. DeMURI: It was a little late to do it formally. Everybody was in agreement, so we thought that just a friendly amendment would be the way to take care of that.

MR. GIACOMINI: We'll do that on Thursday.

Next item, Mr. Chairman.

MR. DeMURI: Okay. The second item, I will take, and that's an item that was on for discussion in the spring meeting. That's NOP-NOSB collaboration. We wanted to update that in the manual for number of reasons, with the changes in NOP and more resources, and we wanted to try to simplify it.

In any case, we had several discussions with Miles. He joined in one of our calls, and it's been a moving target. In fact, almost everything that we've recommended has been implemented right now, in terms of developing work plans, and we have technical
expertise attending meetings, and those were couple of key points. In developing this, there was a collaboration between the NOP and NOSB in doing this, and Lisa has just been terrific in terms of helping out the committee.

And, really, some process things, but working closer and making sure everybody's on board in terms of the work plans, that's one point. And the other biggie is having NOP technical people on our calls for assistance.

Any questions?

MR. GIACOMINI: Questions?

Comments?

(No response.)

MR. GIACOMINI: Next item please.

MR. FLAMM: The next item may not go so quick. It's our review of the sunset policy. Jay has been the lead on that in working with, I think, all the committees and talking to everybody.

MR. FELDMAN: Thanks, Barry.
This is an amazingly noncontroversial proposal.

(Laughter.)

MR. FELDMAN: We expect this to go very quickly and smoothly.

The proposal you have in front of you passed unanimously, after a lot of consultations, Barry noted, with a range of people. I don't think we hit everybody, but we did hit -- I believe we had gotten feedback from all the committees.

The comments we've received -- I count nine -- and with one exception, I think everybody is in favor of some sort of annotation during sunset, so that's a good development.

You all may differ on this, but I didn't see anything new from what we'd heard during our discussion, during the discussion document that we had discussed at the last board meeting. But I broke the comments down into three categories; maybe four.
We had some organizations that basically supported the proposal as is, two organizations. One suggested that we are very clear about needing a TAP review in addition to a TR, have the authority and utilize a TAP review, which would include more perspectives than we might get from a TR. And another one of the supporters suggested we strengthen it by providing for the authority to annotate between the five-year period between sunset, or during the five-year period between sunsets.

There were four groups that basically agreed with annotation but are worried that their isn't sufficient opportunity for public comments, should the proposal to annotate emerge at the board meeting. I will address all these issues. I think the proposal -- I should've said up front -- addresses these issues, and I think we can discuss that.

And then I interpreted one comment
to suggest that we need to somehow restrict the ability of board members to amend annotations -- or come up with new annotations -- during the board meeting.

Then, as I say, there's one comment that was very clear in saying that the proposal should not allow annotations except during the petition process, which is the authority we currently have.

So the kinds of comments that came up -- I count about nine different types of comments that span these categories or these topic areas --

1. Respect the work of previous boards, number one;

2. Ensure public comments on possible annotation amendments introduced at board meetings, even though committee rejected those; concern that there is inadequate opportunity in that situation for the public to comment;

3. Annotations -- good idea,
but only through the petition process;

4. Allow annotations not only to restrict but to expand the uses, an issue the committee addressed and rejected;

5. That we should not be concerned about the number of synthetics but their compatibility with organic;

6. Add authority to annotate between the five years, which I mentioned, and there are some examples of where we needed to do that, such as aquatic plant extracts and micronutrients; and then --

7. Another issue on public comment in support of removal. This goes to the 602 and 604 lists, that it would be more logical to require public comment in support of their removal rather than their continuing on the list. Again, something we addressed I'll get to it; and

8. Require the TAP reviews as a part of the sunset process.

So that's an overview of the
issues that came up. I'd like to walk you
quickly through the process that we
established, which I believe addresses most of
these issues. We certainly, as a committee,
discussed all these issues.

So I'll go right to the specific
amendments, but let me preface all this by
saying that I think the committee believes
that being put in a position, as board
members, of either accepting or rejecting the
listing of a material in the National List
does not give us sufficient authority to
restrain and limit the use of materials that
may have value and compatibility with organic,
but whose uses have been expanded in such a
way, given their original listing, so as to
create potential problems for organic.

Formulations that we weren't aware
of or didn't exist at the time that the list
was originally created or that particular
substance was put on the list; situations in
which new science alerts us to a problem with
a formulation -- this will become particularly important as we scrutinize inert ingredients or full formulations, as opposed to just active ingredients, because one formulation may not be problematic; another may. And, of course, we're hoping for collaboration on that with NOP and EPA.

There are questions of essentiality that come into this. Some formulations of a particular active ingredient in a pesticide may be necessary or essential; others may not. These may evolve over time, so we'd want the ability to restrict those limitations. I mean, we sort of had that discussion today on annatto, and do we have the authority to parse out different uses and changes in the market for those individual materials?

So this isn't a question of, I don't think, trying to do anything other than to protect the market, to be sensitive to continuing needs for materials -- at the same
time knowing that we have a statutory duty to
restrict to the extent possible the inputs
that we put on the National List of
synthetics. That's our duty as board members,
to constantly review that.

The use of the petition process --
Dan, you said it's broken -- that the repair
of it I think is necessary, but that shouldn't
preclude us -- I think the committee
unanimously thinks it should not preclude us
from using the sunset process to constrict or
restrict in certain ways continuing uses of
materials that are either deemed unacceptable,
because of adverse properties, or deemed
unnecessary, because of new data on
essentiality.

I believe I'm characterizing this
properly, that the program, the NOP concurs
with this idea, that they feel it is an
authority that we have under the statute, and
that the only thing precluding us from moving
forward is the adoption of this policy as a
board.

So, getting back to where I thought I was a few minutes ago, and that is the steps followed in the sunset process, I just want to walk you through how we apply this orientation to the process. It's interesting, when you actually look at the number of words of edits to the actual language in the policy Program manual, there aren't that many edits, really. And the edits in your document, which start on page 5, Steps followed in sunset process, are in italics. The deleted text, in most cases, is in parentheses, although I see we have some things in parentheses that we don't intend to delete. Hopefully, that's obvious.

So the first step in this process is, as it's always been, a public notice is placed in the Federal Register, Advance Notice of Proposed Rulemaking of the Pending Sunset. Nothing has changed there. We go through that same process. The public has 60 days. The
committee may request a third-party technical review in anticipation of scientific evidence and claims likely to be made during the public comment.

Here's where the suggestion comes in -- to add TAP review as well.

Secondly, the public comments are collected and forwarded to the NOSB. Again, this is part of our current process.

Three, "The appropriate NOSB committee begins review of the material in an intent to provide a recommendation to the entire board" -- again, current process, and here's where the change begins, "to the entire board for the material's removal, renewal" -- and this is the new language -- "or renewal, with the addition of an annotation. The review is conducted based on force of evidence." And the rest of the process is the same as it currently is. "The committee may request a third-party technical review if needed, verify scientific evidence and claims made during the
public comments through the ANPR."

And then the fourth step probably has the largest number of edits in it. This is a process that emerged out of the discussion on the discussion document. It was an attempt to merge concept of petition for changes and separate that out from the decision as to whether to list or delist, so that people at the committee level, with the benefit of full board discussion and the benefit of public input, could discuss those specific annotations, prior to making a determination as to whether it was appropriate to annotate or not.

So the new language says, "The recommendation may consist of (1) a simple motion to remove or renew the listing of the substance, or (2) a motion to renew accompanied by an amendment containing the addition of an annotation to the listing. If there is to be an annotation," -- so, regarding the addition of an annotation --
"the committee will utilize a two-step process. First, vote on the amendment with the annotation." This gives everybody an opportunity to bring forward annotations and debate whether that's legitimate or not. That's where we hash out whether the annotation is really viable, justifiable, enforceable, all that stuff. "Should the amendment prevail, then" -- I'm sorry, missed a step there.

So we're debating this annotation. We're voting. "The committee will first vote on the amendment and then the motion to renew." That gives someone who feels that, for instance, there's a really problematic annotation, or there's a very serious annotation that needs to be adopted that is not adopted in the first round of voting, that person then has the ability to vote against the relisting of that material. That's an important ability.

At the same time -- hopefully, we
wouldn't get to that; hopefully, through informed discussion, we'd be able to get to consensus on those annotations -- but at least you have an opportunity as a member of that committee to, at the end of the day, looking at the annotations with the science and the data on production issues, essentiality, to make an informed decision on whether you believe that material should be relisted or delisted.

So the committee is done with it. It brings that package to the board meeting. It publishes that in the Federal Register. Once that goes to the board, the board has the same opportunity -- to vote in a two-step process. So,

"If the amendment prevails, the board, in its consideration, will also first vote on the amendment to annotate, and then the motion to renew." Now here -- this is key because obviously, as we all experience at every meeting -- board discussion informs us,
as does the public discussion, informs us on whether we, the committee has done the right thing. So we want to give the board the opportunity to discuss that annotation fully, and then the board members individually to decide whether it's appropriate to list with that annotation or delist.

So that really isn't a change. It just brings the annotation ability into the process.

Here's where there was a challenge to the ability of the public to address a change that we might consider through the board voting process. And it's that last sentence in number four. "If the amendment to annotate does not advance out of committee, the board will vote on the motion to renew, and per its normal process, entertain amendments from the board."

This is where there is a concern - as I heard and you heard from the public comments -- that if someone were to bring
forward an amendment to annotate that was rejected by the committee, then the board -- the public wouldn't have an opportunity to vote on that amendment.

I don't think that's a correct characterization of our process. Think about it; we can change anything at a board meeting. Anybody can raise their hand and propose an amendment on anything. That's part of the democratic process; Robert's Rules of Order. We have that ability, and it could alienate the public -- feeling left out of that process.

But I think the reason that hasn't happened, generally -- I mean, there's probably some exceptions to that over the history of the board -- the reason that hasn't happened is because we have the ability in the committee to present all the data that we considered. And if we're doing our job correctly, we've presented fully in the background document to the proposal that we've
published in the Federal Register, the full range of opinions that were brought forward. We've provided an opportunity for minority opinions, and we have fully disclosed and are fully transparent on the process.

So it is unlikely, first of all, that any amendment that circumvented that whole process and wasn't fully recorded in the process would prevail at a board meeting. As I said yesterday, we had this issue with methionine. New issues came up at the board meeting that may or may not have been discussed at the committee level. We deal with it as a board.

The other part of it here is that the format of these board meetings offers a second day of public comment, as we'll experience tomorrow, so that if in fact a new idea comes up during this process -- unlikely, but if it does -- the public would have another opportunity to comment on this.

So I think, I hope that we've
addressed the concern -- a valid concern --
that the public wouldn't have sufficient
opportunity to comment. In fact, I think this
offers perhaps even more opportunity for the
public to get into the details of the
discussion by virtue of the disclosure of the
annotation.

The rest of five and six are
really the current process. There are no
changes. You know, we have the NOSB business
meeting. It explains the process.

There's a second part to 6,
though, that is a change, and this is intended
to ensure that we don't inadvertently allow a
sunset material to delist by virtue of
inaction by the board. We do not want that to
happen. We want a fail-safe provision, should
the unlikely event occur -- and we are told by
NOP this is highly unlikely, because the OMB
does not typically intervene on these sunset
issues. But should that occur,
there's a fail-safe provision in here that
enables the NOSB to take action, prior to that material being delisted. We figured out the time frame, and the final rule process would not go forward without the board opportunity to list, in the absence of an OMB decision or NOP clearance, OMB clearance, OGC clearance, or any other department or congressional review.

And then the last -- I'm sorry, got ahead of myself -- that's the last section, that, "If the clearance process," number seven, "required for an annotation during sunset is not able to be completed prior to the substance's expiration under the sunset process, the board has the authority to revisit the question of the sunset's removal prior to expiration."

I think this can work. I think -- you know, our discussion was robust, as we like to say in these situations -- and I believe we've addressed the public's concerns here and have -- I guess we'll hear about that
tomorrow again, but -- and have put in place
a process that enables us to fulfill our
statutory duty to remove when necessary, to
protect products needed in organic production,
and to do that in a way that is streamlined
and expeditious and turns us into a leaner
machine to move organic into a growth mode as
we move forward in the future.

So, thanks for listening.

MR. GIACOMINI: Comments and
questions? Jeff.

MR. MOYER: Jay, I just -- while I
fully support the concept of making annotation
changes at the time of sunset, as you're
mentioning here, I do have concerns about item
number four in that last sentence that you
mentioned, specifically as it pertains to
annotations coming to the board from within
this meeting without having the public -- and
I understand you're saying the public has an
opportunity to comment on that -- but
realistically, no offense to the people in the
audience, but that's not the only public. I mean, there's a much larger public that does view or has an opportunity to view our documents online and comment via electronic, or however they want to do it.

So I have some issues with that, and I understand and share the concerns that we've heard from the public, and I think there's a difference between -- what we've done in the past at these meetings tends to be a little bit more wordsmithing on documents or an annotation that came up, and people want to make some changes.

Those kinds of small changes done in a transparent manner here at this board meeting is one thing. Bringing something completely from out of the blue almost in terms of what the public would consider, and then voting on that and making an annotation change, which could drastically affect -- one way or the other, positively or negatively, depending on which side of the fence you're on
-- business, I think, is unfair for us to take on that responsibility.

    MR. GIACOMINI: Jay?

    MR. FELDMAN: I appreciate responding to that.

    You know, I'm happy to restrict, in any way the board thinks necessary, the ability of the board to participate in the typical decision-making process. But what you're describing, Jeff, is in no way written in policy. We don't preclude board members, that I could find, in policy from introducing anything they want at a board meeting and asking the board to vote on it. There is no restriction on that ability.

    But if there is --

    MR. GIACOMINI: It's in sunset. We don't allow annotations at sunset. That is in our policy and it's there now. You can't say it doesn't exist currently.

    MR. FELDMAN: Right, but we're talking about changing that.
MR. GIACOMINI: Right, we're talking about changing it, but you can't say it doesn't exist. It does. It's current.

MR. MOYER: Okay. Well, I would argue that we don't vote on anything that isn't in our agenda, which is why Dan brought up the conversation that we had earlier on inerts, and we're working out a way around that.

But for us to just bring something to the meeting without having the public having access to that and then voting on it is something we don't do. No.

MR. GIACOMINI: Jennifer.

MS. HALL: Thank you, Mr. Chair. I share the same feeling, my only concern being with that last sentence and the ability to kind of change it on the fly here. A little different in that I think that the board's decision-making capacity on materials is very different than other recommendations that get further massaged through the Program,
and then the draft rule comes out for them
that also has public testimony opportunity,
which, when we vote on materials, is not the
case.

So I see that landscape a little
bit differently.

MR. GIACOMINI: Steve.

MR. DeMURI: It could be a bit
cumbersome, but, for instance, on this 2012
batch of sunset, we had three meetings to go
through those. As long as you don't wait
until the last meeting to go through them all,
we can make an annotation change on the fly
and go through another process and try to
approve it at the next meeting. But that only
works if we don't wait till the 11th hour to
do that.

MR. GIACOMINI: John.

MR. FOSTER: So I remember very
clearly what I refer to in my head as the
'methionine incident' at the April meeting,
which I was really uncomfortable with. It
felt rushed. I don't think we considered things very well or very thoroughly. We didn't think about ramifications. It got very confusing very fast.

And while I agree with you, Jay, there is an opportunity to, you know, at any time, for a board member to bring up anything he or she wants. But I don't want to codify that. I don't want to legitimate that. Yes, the process -- any board member can bring it up any time and then can be outvoted. That's true. We have that opportunity.

But I don't want to institutionalize, I don't want to institutionalize the conditions that led to the methionine discussion. 'Discussion' is a generous term, in my opinion. I don't want to set it up to where that's going to happen again. I don't want to support or encourage that at all. I was really uncomfortable with it, don't want to do anything. And I think the language, as written in here, starts to
codify that. I want to stay far away from that.

MR. GIACOMINI: Tracy.

MS. MIEDEMA: Today, Miles raised the idea of us making an annotation change during sunset as a clarification that would really be an elegant solution to a nagging problem. And so we have the ability to make that kind of change at this meeting and have a potential fix for the future.

I think the one important catch here is that we make those kinds of changes before the posting of the Federal Register, not during the meetings. There seems to be all kinds of consensus in the room. I see heads bobbing at the table. Are we there? It sounds like, if we all agree on that part, we've gotten to the heart of the matter.

MR. GIACOMINI: Jay?

MR. FELDMAN: I mean, if that's the pleasure of the board. You know, I was writing this and in consultation with people,
conceptualizing this in the context of the authority of board members sort of carrying out their responsibility to weigh in on decisions. And, you know, if you all envision the process breaking down as a result of people bringing things up outside the context of the deliberations that go on at the committee level, that's fine.

I mean, you can restrict this whole proposal to the committee level and then bring to the board the final decision of the committee and then request the board to make an up or down vote on that decision.

But, you know, typically, you want to give your board members, who are on a four other committees and don't have the time to be engaged in all of these, you want to give them the opportunity to weigh in some substantively and then debate that with other board members so as to inform that debate and enable the board to make the best decision possible.

I guess there are ways of
restricting that, depending on how the board feels about that. But, I think the key thing is here -- yes, Tracy, I agree. The key thing here is to enable the process to elegantly address annotations. And if the board wants to restrict its authority to change those annotations at a board meeting, or proposed annotations at a board meeting, the board is welcome to do that.

I think that undermines, to some degree, the ability of us as a full board to participate and benefit from the incredible expertise we have around the table.

MR. GIACOMINI: Barry.

MR. FLAMM: I think Jay has explained very well what the purpose was, but I think based on these comments, the committee will get together tomorrow sometime, and we'll look at that language again and try to satisfy the comments that have been made.

MR. GIACOMINI: Tina.

MS. ELLOR: This is one matter I'm
completely schizophrenic on because I see the usefulness of being able to deal with annotations, especially during sunset, and I have some particular materials in mind. On the other hand, I know how much information we need to make responsible decisions, and I don't want that to happen, you know, in five minutes on a Thursday afternoon during the voting discussion. But I definitely appreciate that. I think that some sort of ability to make annotations is important.

MR. GIACOMINI: Any other? Miles.

MR. McEVOY: Yes, I would, I'm concerned about the ability of the public to comment on any proposed annotation changes that the board is considering.

When we presented this issue to the board previously, we said that statutorily you had the authority to address annotations during the sunset review process, but you want to be very careful about that authority. If you change your policy to allow that, I think
you should use it very narrowly, very
carefully because you have a lot of work to
do, and mostly for clarifying annotations that
weren't quite right the first time.

But it has to be done, from our
perspective, in a very public manner. So if
you're going to propose a change annotation,
it should be published at least at the same
time frame so that the public has a chance to
comment on any proposed annotation changes.

This occurred, not during sunset,
but it occurred doing the tetracycline
petition process. During the petition
process, the annotation was changed
significantly to put an expiration date of
2012 for tetracycline at a board meeting, and
there were a lot of tree fruit growers that
did not have that information that that was
going to happen. They didn't have a chance to
do public comment.

So it's a very unfair process if
you don't allow some kind of public
notification of what you're intending to do, and you just do it at the board meeting.

    MR. GIACOMINI: Kevin.

    MR. ENGELBERT: Yes, I think I can safely say that we will address that last line in number four, and we appreciate the input. But make sure we all understand the board's reasoning. And like, you know, Jay and Steve eloquently stated, that was our position, but we fully hear the Program and the rest of the board members and the public.

    MR. GIACOMINI: Arthur.

    MR. NEAL: I just wanted to add another point of clarification. When we begin rulemaking on recommendations that we receive from the board, particularly with material recommendations, the consultation process in terms of the informal back-and-forth that we have is limited.

And so, if there are issues surrounding a certain recommendation that we received concerning a material, we would have
to wait until the board gathers back together again before we can actually get the formal input that we need from the board to clarify something that either we did not understand or that we believed would be a problem in moving the docket forward.

MR. GIACOMINI: Any more comments?

Katrina.

MS. HEINZE: One is very small, and one is related to what Arthur just said.

So, my very small one is, during your presentation, I think I heard you say that words in parentheses were to be deleted. Did I hear that correctly?

MR. FELDMAN: Yes. Some of them obviously are not. They're just references to the charts and stuff.

MS. HEINZE: So, that may be the only one, but that was totally not obvious to me when I read this, and I should have, I suppose, compared to two documents. I didn't. And this may be asking too much, but it wasn't
clear to me what's to be deleted.

Is there any way to go through and
do strikeouts instead, so that when we review
it on Thursday, it's more clear to us what's
being deleted? So, like I said, it was
totally small. It's just that surprised me.
I didn't catch it.

MR. FELDMAN: There are probably
better ways to do this, but it does say in the
text, "In parentheses indicates language to be
deleted." So, I mean, that was a suggestion
that came out of committee, and we can
certainly make it clearer. But all the
language you see in front of you is the
current language. Additions are in italics,
and deletions are in parentheses.

MS. HEINZE: Like I said, I just,
I should have caught it. I didn't.

MR. FELDMAN: Yes.

MS. HEINZE: I'm used to
strikeouts. I missed it.

My other is actually question for
the Program related to point number seven, and
whether you see that working or if there's --
you know, one of the suggestions that was
bandied about as we were talking about this
was that we vote on the annotation and then
vote to relist as is, similar to what we did
with, kind of related to what we did like with
yeast at this meeting.

MR. GIACOMINI: Well, that's what
we did with hops.

MS. HEINZE: Right.

MR. GIACOMINI: That's exactly
what we did with hops.

MS. HEINZE: Right, where we have
two completely separate votes that go to the
Program so that they can work them out,
understanding that our preference timing-wise
is that the annotation change happens first.
But I'm wondering if that would work better
for the Program and if they have concerns
about seven.

MR. GIACOMINI: Arthur.
MR. NEAL: When you're dealing with sunset, it's best to give it to us the way it needs to be, period. Because we're dealing with a time line, we don't have time for the back-and-forth. That's kind of the reason things were set up the way that they were.

I can understand the need to clarify annotations or clarify the use of a substance because it's been, there's a lot of confusion around its use, but when you make that recommendation during a sunset process, you have to remember we're dealing with a time line.

The board doesn't meet but twice a year, so the time for us to get the feedback we need once we start the rulemaking process is limited because we can't do it just over the telephone because the whole board is not together and it's not considered a public meeting that's been published in the Federal Register.
MR. GIACOMINI: Katrina.

MS. HEINZE: So I just need to clarify. Would you prefer that we handle it the way we did with hops where we have 'relist as-is' and then a separate vote, or prefer how I think I'm reading a recommendation, which is that we would vote on the annotation change -- so what we did on hops -- and then vote to relist that annotation change?

MR. GIACOMINI: Miles.

MR. FELDMAN: Yes, I think how you're doing it with hops makes sense, and we can work with that. You offered two scenarios there, so I think -- yes, I'm not sure if I got the distinction between the two scenarios.

MR. GIACOMINI: Arthur.

MR. NEAL: The way that it's recommended, with the committee coming up with a proposed amendment to the annotation and that being voted on first, and then whether or not a substance is going to be renewed and that looked at by the board in a similar
fashion makes sense. That means the public
will have already had an opportunity look at
it before the meeting.

If the board votes down the
annotation at the meeting, it's voted down.
Then they have to make a decision of whether
or not we renew or we do not renew. It's as
simple as that.

The trump card or the confusion
comes in when we start playing around with it
on the fly, and additional confusion is
introduced if the board is not sure about the
recommendation they're going to put forth to
the Program. There's confusion around that,
then we get it, and we're stuck with it.

(Laughter.)

MR. NEAL: When I say that -- the
USDA is stuck with it, and we all know that
the Secretary cannot add or remove. So that
means we can't make any changes to the
recommendation on the substance if we know
that there are problems with it. You got it?
So, if there problems with it, we can't do anything about it because the board did recommend it the way that we received it.

MR. GIACOMINI: And if the only reassertion for relisting was the new annotated change and not the old listing, then you don't have the authority, and you may not have the time, in number seven, to relist the old listing; would you?

MR. NEAL: Well, the one thing that's a saving grace a little bit if it's a simple, just kind of grammatical error, is the public comment period in the proposed rulemaking process? But even then, when it comes down the materials, you know, that's always been a point of contention between USDA, the board, and the public, is that USDA has tinkered with some language that we didn't necessarily recommend to them or we didn't approve.

So, to keep the confusion down, it would be great if we can get the materials
recommendations the way that they should be so that we do not have to introduce, you know, all the different factors into the puzzle.

MR. GIACOMINI: But even that assumption you just made, that's assuming you can get to the proposed rule. If you can't get to the proposed rule with the language and you did not have the authorization to relist the old listing, you can't relist the old listing, and it would go off the list and disrupt the industry.

MR. NEAL: You're right, but hopefully, we'll not --

MR. GIACOMINI: But that's what we're dealing -- that's the potential we're dealing with here.

Jeff.

MR. MOYER: Well, my point to -- I'm sorry -- my point to Katrina then is, that's why I brought up about annatto, because we're going to face that on Thursday when you're making changes to this listing, when
there is no dry powdered annatto here. And we're doing the same thing with pectin too. I mean, we're moving in. We're making major changes at sunset to pectin.

MR. GIACOMINI: But we included pectin in the sunset votes. We made a recommendation, a changing recommendation --

MR. MOYER: Right, but --

MR. GIACOMINI: -- but we also have a recommendation, a sunset recommendation.

MR. MOYER: I understand that.

MR. GIACOMINI: We have the two, just like we do with hops. We have the two.

MR. MOYER: Do we with annatto? I don't think we do.

MR. GIACOMINI: No, we don't with annatto.

MR. MOYER: This proposal requires that you have the two votes at the same time, so you're presenting the Program with a decision to relist or delist, and that
decision to relist may or may not be accompanied by an annotation.

So it's one. It's a package that goes to the Department. It's not a separate process. Is sort of like, the analogy would be the decision on synthetic, and then voting on the material. In the committee, we first vote on synthetic, and then we make the next decision as to whether it's compatible and meets all the other criteria.

MR. GIACOMINI: There's no question, there's no question that the sunset review process is the most likely time when the board will find an aspect of an annotation that needs to be changed. Now, there are other ways to do it that we can deal with. But that's going to be a predominant place that they will find an aspect of an annotation needs to be changed.

The problem with this entire discussion, in my mind, and the problem with this document is linking the two of them
together. We have a responsibility to
reassert a listing or non-listing or not
reassert the listing of existing listings in
the National List. That is entirely separate
from our discussion and consideration of an
annotation change.

The fact that we were tying them
together is making them look like they are
really related. And there is a small time
when they are related, as you've heard
expressed in yours, where, if the annotation
that you think needs to be made fails, then
you want the opportunity to remove, to vote
down the relisting.

Well, the alternative that is you
have your annotation change, whether it does
-- and you get, let's say you even get that to
pass and you reassert the old listing but you
reassert the old listing because you assume
the annotation change that you voted on is
going to get through the Program.

If the Program comes back and
says, we can't make that change for whatever reason, there's always the opportunity for the recommendation, however it comes forth, through repetition as the committees did on their own initiative, however, to make a recommendation for removal. You could always do that once the Program says, we can't make this change.

But when you make an annotation change and then you link it to the sunset document, if there's a problem with that annotation change, they do not have the authority to relist the existing listing, and the solution in number seven is completely unpractical.

We're dealing with them deciding that they are going to make the deadline or not to make the deadline; we have two meetings a year; we got it done two months before the meetings for posting documents. We could be looking at a year to a year and a half before their deadline for them to say, we don't know
if we can make this; maybe you guys need to reconsider this original listing.

    MR. FELDMAN: Just for the record, we developed this timeframe with the Program. I mean, Melissa was, I think -- somebody --

    MR. GIACOMINI: Tina, you were on the list and I seem to have lost you.

    MS. ELLOR: We can talk about this more on Thursday, I realize, but there are three things that have been very helpful in how I'm looking at this. Number one is Jennifer's point to how materials are different from other recommendations.

    Number two -- I mean, I can see an instance very clearly, and I'm not falling on one side or the other of how I feel about this material, but sodium nitrate would be a perfect thing to put through this stepwise to see how it would come out and how it would work. I would be more comfortable seeing that work like hops has worked, but we do not have a petition to change that annotation or do
whatever.

The third thing is that this is a very powerful tool, and it should be wielded extremely prudently, so however we end up wording this, it would be a very delicate thing.

MR. GIACOMINI: Program?

MS. BAILEY: Yes, Melissa Bailey. So, I was on, I think, two of the calls with the Policy Development Committee and I think --

Jay, could you just clarify what you mean by the time line you were referring to?

MR. FELDMAN: My question to you was whether there would be sufficient time to go through clearance so as to not force an unintended delisting, and that's how we came up with this language. And I believe, I mean, my -- obviously, there's room for error here -- but it was my belief that the Program viewed this as a workable scenario.
MR. GIACOMINI: It gets to the question Katrina asked on reviewing number seven.

MS. BAILEY: Yes, so I think in that discussion, what I think I had tried to communicate number of times with the clearance process is that, I mean, internally we know what we have to do to approve dockets to go out, but that we don't control beyond the Program how long the clearance process will take once we get legal review of the dockets. Then it comes back. We may have to make changes. Then that has to go out for departmental clearance and so on, all the way up to OMB.

We just don't control that beyond, I guess, our doors and the Program, so it's hard to give a time line on those particular aspect of it, which I think is what I had tried to at least communicate on those calls.

MR. GIACOMINI: Katrina.

MS. HEINZE: I think some of the
confusion -- so, I'm going to try to ask the question asked a while back, differently. How I read number four was that the first vote that the board took would be on the annotation change. The second vote -- so let me finish my whole question before you answer -- the second vote that we took would be relisting of the material with the annotation change.

What I'm hearing -- two questions. One, was that your intention? Because what I'm hearing from other folks is they would be more comfortable if that second vote was to relist the material as it's currently listed on the National List, which goes back to my original question to the Program, what the two options are. Option number one is that the second vote is to relist with the annotation change, and option number two is to relist as is.

So, as I understood the document, number seven was option number one. We vote to relist with the annotation change, and then
if you can't get that through, you have to
come back to us to have us vote to relist with
the original listing because we didn't ever
vote on that.

So first, my question is to Jay:
Have I properly understood the document and
then articulated the question?

MR. FELDMAN: Yes.

MS. HEINZE: Okay.

MR. FELDMAN: The intent here is
to incorporate a failsafe provision so that,
should the Program have a problem either with
timing or content, the package would return to
the board, at which point the board could vote
to delist or relist. That's the intent here.
Whether it's adequately articulated or not,
that was the intent.

MR. GIACOMINI: Program?

MR. McEVOY: Yes, I think number
seven is certainly a problem. I would suggest
that you delete number seven in the last
sentence of number four, and then it's a
workable document.

We need to confer little bit about this to vote, what exactly do we need? I mean, there's a few different options that could come out of looking at the annotation. You could approve an annotation change, and then you could also have two additional votes. One could be to relist the material without the annotation change, one could be to relist material with the annotation change, and one could be on the annotation change itself.

So I think we need to confer a little bit to give you a recommendation of what would be the best in terms of our process, but I think separating it, at least how you have it here, in those two different sections -- an annotation vote and the relisting vote -- is an important first step in deleting that last sentence. And point number seven in particular seems pretty problematical from our perspective.

MR. GIACOMINI: And a successful
process of getting an annotation changed through rulemaking by definition resets the sunset clock. The new annotation change being effected in rulemaking doesn't need a sunset vote. It's only whether we're going to keep the existing listing. The clock for sunset is our review of the material.

(Off mic comment.)

MR. GIACOMINI: That's correct, but it's our review of the material and the successful rulemaking that goes along with that.

Our review of the material that results in an annotation change and results in subsequent rulemaking would reset the sunset clock for that material. There's no reason to include the new annotation change in a sunset document. The only thing that matters is whether we're reasserting the existing listing.

Jeff, and then Joe, and then Tracy.
MR. MOYER: My suggestion was going to be that we as a board ask this to go back to the committee. Whether they can do it overnight or not, I don't know. There's a lot of nuances here that are extremely important and critical in this process, and I would even be in favor of delaying a vote until spring, if we had to, on this document to get right. It's, there's a lot of pieces that we've got to get right here, and I would feel very uncomfortable. Even if we struck number seven and the last line of number four, I would feel very uncomfortable thinking that I got it right.

And then, off the record, Dan, I just wanted to tell you, Dan, I'm getting thirsty.

(Laughter.)

MR. GIACOMINI: We all are, but I think this topic deserves --

MR. MOYER: I understand.

MR. GIACOMINI: It came up in the
agenda when it did. It deserves its fair, representative discussion just as whatever was the first thing we talked about this morning.

MR. MOYER: I agree, Dan, I do think there's a lot of wordsmithing in here that we have to get straight.

MR. GIACOMINI: Joe --

I don't think there's that many.

It's whether the committee would agree to it or not.

MR. SMILLIE: Yes, I thought I had until this resetting of the clock speech that you just gave, Dan, I thought I understood everything perfectly until that.

One of the things that I think we really need to take note of, because being five years on the board and having seen what's happened, is that when you restrict the use of a material that's already in existence in the industry, you can almost count on the fact that OMB is going to get involved.

I mean, you're taking away
something from the industry that it's had, and
again, your document only allows for
restrictions, not expansions. So I think we
should anticipate those restrictive
annotations being problematic, not necessarily
with the Program but maybe with OMB, et
cetera. That's political reality.

    So the intent you had, Jay, of
making it failsafe -- if the newly annotated
material doesn't go through, we automatically
renew the original -- if somehow the committee
can, you know, make that in the document very
clear, that would assuage my fears about
losing the whole thing because the annotation
doesn't go through. That's number one.

    And number two is, definitely the
feeling of a community on the board is -- deal
with that at committee. Let the public here
about it. Those are the two things.

    MR. GIACOMINI: Tracy and then
Kevin.

    MS. MIEDEMA: I was just going to
respectfully ask that we do table this
discussion. We have spent over an hour, and
I think we're a bit fatigued. I don't know
that we're going to do any more of our best
thinking this evening and would request that
Policy Committee collaborate with the Program
tomorrow during breaks to flesh out these
details.

MR. GIACOMINI: Was that a motion?

MS. MIEDEMA: I'll make it a

motion.

MR. GIACOMINI: Please make it in

the form of --

MR. MOYER: I'll second it.

MR. SMILLIE: Second.

(Laughter.)

MR. GIACOMINI: Okay. It has been

-- give me my book here. I've got to make

sure I do this right -- to table; correct?

MS. MIEDEMA: Just the discussion.

MR. GIACOMINI: Table the
discussion?
MS. MIEDEMA: Yes.

MR. SMILLIE: Be careful. You're not tabling it.

MR. GIACOMINI: That's why asked her to specifically state the motion.

MS. MIEDEMA: Let me make this a little less formal. I would respectively ask that we move on.

(Laughter.)

MR. GIACOMINI: Okay. It's been --

MR. SMILLIE: That's sounds like a motion for an adjournment to me.

MR. GIACOMINI: The request has been made for us to move on. That's not a formal request in that sense, so the best procedure is, is there any further debate?

MR. ENGELBERT: Just very quickly.

MR. GIACOMINI: Kevin?

MR. ENGELBERT: Just very quickly, one. We have to bear in mind that sunset is ongoing. None of these materials ever drop
off the radar at any time during their five-year period.

The other thing we want to bear in mind is that we have something that we're going through right now that's going to be very similar, and that's methionine. Even though it was a petitioned item, the process that we went through was the same thing that we'll be looking at with sunsets and the potentials there.

So we've addressed that. We've looked at it and I think it's all going to come out all right. The only thing we may have done differently is to have that failsafe vote that, if it did not go through with the new annotation, it would still stay on the list with the old annotation. I agree with Dan, I don't think this is that complicated. I think we can get through that, and I think it's important to do so.

The other last point is we need to decide or we need to know, if this is voted on
Thursday and passes, is it effective immediately? Is it next meeting? Next year? If we voted on it first, would it be effective Thursday?

MR. GIACOMINI: It would go into the policy and procedure manual for the next meeting because it was the last thing voted on at this meeting.

MR. ENGELBERT: Right, but I'm saying --

MR. GIACOMINI: Right. It wouldn't affect these votes.

MR. ENGELBERT: Right, unless it was voted on.

MR. GIACOMINI: And as far as being simple, delete seven, remove the sentence on four, and change what you're voting on in sunset to be the existing listing and I think it would be a successful document.

Barry.

MR. FLAMM: Thank you. We plan to get together tomorrow and address all the good
questions and issues that came up together.

Mr. Chair, we do have one more item on our Policy Committee agenda, and Kevin is waiting anxiously to present it.

MR. GIACOMINI: Proceed at your own risk, Mr. Chairman.

MR. FLAMM: I think Kevin can probably do it pretty quickly.

MR. ENGELBERT: I'm happy and honored to make the last presentation of a recommendation at my last meeting. And I think it's very uncontroversial. Some of us are disappointed in that, but that's the fact, so let's get right to it.

This is a proposed recommendation on the new member guide. As you all know, every year the new member guide is updated with staff, NOP staff names, phone numbers, et cetera. The outgoing executive director, Valerie, made the suggestion to Lisa and Annette that this might be a good time with two new, fresh sets of eyes to completely go
through the new member guide, and that's what they did.

There's nothing on the recommendation that is, well, here's what was there before, here's what here now, because the entire thing was completely gone over. There were things moved. It's completely different.

The proposed updates to the new member guide are intended to help new board members acclimate to their unique role in the organic community in a variety of ways. It serves as a general orientation for the new members. It provides a streamlined view of the organic regulatory framework.

It describes processes related to one's role as an OSB member, including the rulemaking and Federal Register process, the National List, the role of public comment, conflict of interest, technical information, et cetera, et cetera.

It identifies useful technical
resources, including a list of recommended reading, federal agencies, organic organizations, ACAs, et cetera.

It improves the aesthetics and navigation of the new member guide. It reflects changes to the NOSB policy and procedures manual. It suggests best practices for efficiency and organization, and again, it does update committee rosters and NOP staff listings.

The one technical change that was made throughout the document was the old document referred to tabs all the way through. That was taken out and replaced with technical information, which is more of a blanket statement for all of the information that the policy or the board members receive and research or whatever.

That's basically the gist of this entire document. It's a refurbishing from top to bottom. Again, Annette needs to be thanked for her work on this, and also Lisa.
And I'd like to make one more quick point. The transformation from Valerie to Lisa has been completely smooth, and I neglected to mention that when I was presenting the Livestock Committee recommendations in the discussion items. That's simply a reflection of just how smooth the transition has been and how appreciative we all are of that.

MR. GIACOMINI: Jeff.

MR. MOYER: Kevin, I'm looking for it now and can't seem to find it, but I saw something in there about mentors being assigned to new members. Is that something that really is happening since we have it in our new member guide? I don't know if new members got assigned mentors.

MR. GIACOMINI: We call them buddies.

MR. MOYER: Buddies?

MR. GIACOMINI: Yes. Go ahead, Kevin.
MR. ENGELBERT: No, Dan, you can address this because you basically did that when you were making up assignments and talking with people.

MR. GIACOMINI: Yes, we called them buddies. We did assign. The only other thing I would say for this document is, if this document is going to be posted potentially like this in a public setting, all personal contact information needs to be completely removed from it and put into another document that would never be posted quite like this.

Joe.

MR. SMILLIE: Motion to adjourn.

MR. GIACOMINI: It's been properly moved and seconded too. We don't adjourn, we recess. You want to go home? You don't want to vote on anything or do anything?

MR. SMILLIE: All right. Move to recess.

MR. GIACOMINI: We have completed
our business for the day. Meeting is in
recess.

(Appause.)

(Whereupon, the meeting was
recessed at 7:11 p.m.)
California 248:22
call 3:2 27:6 131:19
200:4 331:15
357:21 381:11
416:1,10,11,17
419:15 424:12
493:18
called 31:8 34:10
63:11,16 70:17
80:3 163:1 324:7
324:13 326:19
374:22 381:9
393:17 494:5
calling 329:5
calls 20:21 35:7
105:10 133:9
191:2,7 359:5
416:2 424:19
432:18 433:19
434:11 477:9
478:20
campaign 409:14
Canadian 142:15
153:13 180:16,17
180:21 181:3
182:5
capacity 361:1
455:20
capping 395:6
captured 268:4
carcinogen 65:7
86:20
card 469:9
cards 53:16 269:1
care 128:22 163:4
433:4
careful 47:6 114:9
282:1 283:4
284:14 365:3
391:19 393:10
461:21 487:2
carefully 105:8
204:14 386:10
397:12 462:2
cargo 138:22
carotenoid 315:10
315:13
carried 21:5
carrier 258:20
273:12
 carriers 265:18
carrot 313:2,3,4,5
315:9 316:7,9
carrots 316:5
319:11
carry 125:17
288:22
carrying 138:21
428:13 459:2
cart 137:17
carte 158:3
Carter 185:22
186:6
CAS 27:18 70:16
70:18,19 147:11
267:8 269:22
270:1 315:4,6,7
315:10,12,14,16
315:18 317:4
cascading 167:5
case 32:11 43:1,8
45:4 67:4 87:8
92:22 93:3,4,8
108:16 157:13
174:4,5 260:17
269:14 317:13
341:9 401:5
433:17 456:4
cases 34:11 43:8
104:6 173:14,14
174:18 200:14
272:6 300:20
314:3 353:13
411:19 442:13
case-by-case 242:13 243:6
cash-poor 409:19
cask 128:12
castration 174:4
cat 22:18
catastrophe 112:2
catch 458:11 465:7
catching 190:9
categories 359:10
372:14 403:11,12
407:4 411:8,12
426:8 435:22
437:12
categorize 283:6
414:18
category 80:10
108:16 147:11
300:17 372:13
402:12 404:7,22
406:18 414:8,9,10
418:14,22 420:17
421:2,4,4,15
422:11,15 423:18
423:19 424:2
426:6,7,9,11,14
427:18
CBI 27:18
CCOF 136:2
163:12
CCOF's 170:21
celebration 240:22
cents 266:14
certain 141:5
184:14 342:16
375:7,21 376:1
441:12 463:21
certify 60:11
61:12 74:8 76:6
77:15 80:16 104:7
128:10 153:21
157:16 160:13
162:6 171:1 185:3
187:18 244:15,18
245:2 257:14
certifiable 154:18
212:22
certificate 426:19
426:21 427:1,21
certification 3:18
96:8 160:12
167:14 181:12
184:13 195:22
206:22 212:13
373:8 420:7
426:13 427:10,22
195:21 208:6
256:2 297:21
300:17 372:13
402:12 404:7,22
406:18 414:8,9,10
418:14,22 420:17
421:2,4,4,15
422:11,15 423:18
423:19 424:2
426:6,7,9,11,14
427:1,8
certified-organic 251:19
certifier 7:19
153:12 160:8
200:2 388:18
certifiers 151:21
152:8,11 154:3
159:3,15 161:3,6
174:12 180:19
240:3 242:2,5,21
243:9,16 265:14
266:3 288:15
379:8 387:21
388:2 390:3
certifier's 241:14
242:12
certify 161:6
cetera 429:19
485:7 490:19
491:21,21 492:3
CFA 180:18
CFR 342:15 343:19
343:22 345:19
346:9,11,14,14
348:22 351:5
chain 293:9
chains 98:6
chair 15:18 23:6
60:8 61:12 92:21
116:6 145:12
216:16 293:21
303:2 328:17,20
329:4,15 342:6
356:2,13 357:10
357:13 369:11
379:14 429:17
431:5,7 455:15
490:2
Chairman 1:12,15
20:4 78:9 90:20
92:7 93:15 145:7
254:1 274:22
288:21 290:17
294:10 305:16
331:4 334:9
335:21 336:18
339:16 341:22
348:8 355:20
433:8 490:6
chairperson 5:9
20:2 190:13
232:10 248:8
401:2 432:2,4,16
chairs 363:11
challenge 13:5
124:19 127:5
199:1 144:11
challenged 111:3
challenging 242:1
242:2 243:4
championing 369:15
chance 19:2 89:2
146:8 159:9
177:11 300:9
flame

flames

flavor

flavors

flavoring

floundered

flawed

fleet

flex

flexibility

float

flown

fluid

fluids

foam

focus

focused

focuses

focusing

fits

five

five-year

flames

fit

fix

fixing

foam

foams

form

formatted

formal

formally

formanto

formulator

formulate

formulation

formulated

forms

follow

following

followed

follow-up

follow-up

follow-up

follow-ups

folks

forage

force

forces

fore

foremost

forest

forever

forever

foreword

former

formerly

formic

formulas

formulator

formulate

formulation

formats

formulate

formulated

formulations

formally

formant

formulas

formulator

formulate

formulator

formulate
Neal R. Gross & Co., Inc.
202-234-4433
CERTIFICATE

This is to certify that the foregoing transcript

In the matter of: National Organic Standards Board

Before: US Department of Agriculture

Date: 10-26-10

Place: Madison, Wisconsin

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

[Signature]
Court Reporter