UNITED STATES DEPARTMENT OF AGRICULTURE

IN RE:	X	HELD APRIL 28, 2004
	X	8:00 A.M.
NATIONAL ORGANIC STANDARDS	X	BEST WESTERN INN OF CHICAGO
BOARD MEETING	X	BUCKINGHAM ROOM
	X	162 E. OHIO STREET
	X	CHICAGO, ILLINOIS 60611

VOLUME I OF III

APPEARANCES:

COMMITTEE CHAIRMAN:	MR. MARK KING
BOARD MEMBERS:	MS. REBECCA J. GOLDBURG
	MR. MICHAEL P. LACY
	MS. GOLDIE CAUGHLAN
	MR. KEVIN O'RELL
	MS. NANCY M. OSTIGUY
	MS. KIM M. DIETZ
	MR. JAMES RIDDLE
	MR. DAVID CARTER
	MR. GEORGE SIEMON
	MS. ANDREA CAROE
	MS. ROSALIE KOENIG
	MS. ANN L. COOPER
ALSO PRESENT:	MS. KATHERINE BENHAM
MS. BARBARA ROBINSON	
	MR. ARTHUR NEAL
REPORTER:	MS. LEAH JOHNSON
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P R O C E E D I N G S

8:12 a.m.

CHAIRMAN KING: Good morning. I'd like to officially call to order the meeting of the National Organic Standards Board.

Welcome to Chicago. Thanks for being here. Thanks for your interest. I look around the room and I see a lot of familiar faces, I see a lot of years of dedication and experience to the industry.

As usual, we have some interesting topics to discuss and deliberate over the next few days, and we'll appreciate your input and your positive focus on that.

Would like to essentially start the meeting with board introductions, so Ann, if you'd like to start.

MS. COOPER: Ann Cooper, I'm a chef from New York, and I'm a consumer.

MS. KOENIG: I'm Rose Koenig, producer, from Gainesville, Florida.

MS. CAROE: Andrea Caroe. I'm the certification director for Protected Harvest and an environmental representative.

MR. SIEMON: George Siemon, from Wisconsin, and I'm the producer rep.

MR. CARTER: Dave Carter, from Colorado, a

consumer rep, but in real life an itinerate farm organizer.

MR. RIDDLE: Jim Riddle, certifier rep, University of Minnesota.

CHAIRMAN KING: Mark King, a retail rep, Indianapolis, Indiana.

MS. DIETZ: Kim (Burton) Dietz, and I'm from California, and I'm a handler representative.

MS. OSTIGUY: Nancy Ostiguy, environmental representative.

MR. O'RELL: Kevin O'Rell, Boulder, Colorado, and I'm a handler representative.

MS. CAUGHLAN: Goldie Caughlan, Seattle, Washington, consumer rep.

MR. LACY: Mike Lacy, Atkins, Georgia, science rep.

MS. GOLDBURG: I'm Becky Goldburg, from New York. I'm an environmental representative.

CHAIRMAN KING: Okay, thank you. At this time has everyone had a chance to approve the agenda? -- I hope. I'd like to officially approve the agenda.

MR. CARTER: You need a motion for the -- second.

CHAIRMAN KING: It's been moved and seconded. All those in favor say aye.

BOARD MEMBERS: Aye.

CHAIRMAN KING: Opposed, same sign.
(No response.)
CHAIRMAN KING: Motion carries.
At this time, in the first tab of your book, you'll see the minutes from the October meeting, 2003. Are there any proposed changes or amendments or edits at this time?
(No response.)
CHAIRMAN KING: I would entertain a motion.
MR. RIDDLE: Yeah, I'd move that we approve the --
MR. SIEMON: I'd second that.
MR. RIDDLE: -- October minutes.
CHAIRMAN KING: Moved by Jim Riddle that we approve the October 2003 minutes, seconded by George Siemon. All those in favor say aye.
BOARD MEMBERS: Aye.
CHAIRMAN KING: Opposed, same sign.
(No response.)
CHAIRMAN KING: Motion carries.
Quick note here, the executive committee meetings are actually listed here, those are on the website for your review, so those who are interested in what the executive committee has talked about over the past few months,

they're there for information purposes.

And one quick announcement I forgot to make: Please, if you would, those of you who have cell phones, turn them off, turn them to vibrate. If you do get a call or something of that nature, we'd greatly appreciate your stepping in the hall to take the call, that sort of thing. So thank you for that.

Are there -- and I do have one quick announcement. Owusu Bandele was not able to make the meeting for medical reasons, so our thoughts are with him and hope that he gets well soon, so we regret that he can't be here.

Are there other announcements? Jim?

MR. RIDDLE: Yeah, Mark, I have a couple of announcements. One went out to the Board -- I believe it was last week, a letter informing the Board of the formation of an accredited certifiers association, and I have a copy of that, if you haven't seen it or didn't make note of it, and I just wanted to mention that for the record.

I see this as a very positive development. There is a need for a network, a professional association, of the accredited certifiers. So I just wanted to call that to everyone's attention.

This is not an inspectors association, we've had that for years, but now there's a similar organization for the certifiers themselves, that are USDA-accredited. And it's currently at an interim address, it's housed at the Vermont Organic Farmers, Nova [phonetic], Vermont, office.

And then also I wanted to bring to people's attention a scientific study that has just been published in Renewable Agriculture & Food Systems, entitled "Profitability of Organic Cropping Systems in Southwestern Minnesota," and that was a 10-year comparative study of organic four-year crop rotation versus 2-year conventional systems, and just to quote one thing from the abstract: with premiums, the 4-year organic strategy had net returns significantly higher than conventional systems. Without premiums, the net returns were statistically equal. So they were looking at yields and profitability in this study and finding that even without organic price premiums it was equivalent profitability.

So that's in Renewable Agriculture & Food Systems, Volume 119, 135 through -46, page numbers. That's it.

CHAIRMAN KING: Are there other announcements?

(No response.)

CHAIRMAN KING: Okay, I have one other

announcement concerning a board member. Many of you are aware that Dennis Holbrook has resigned from the Board. Dennis called me several months ago, and he's had some challenging situations in the family; consequently, he's not only managing his own farm but some of his father's businesses, and so he regretfully resigned, but it appeared to be a wise choice based on the work demands, professional demands before him. So he will be sorely missed, and fortunately we have people, like Nancy, who have stepped up and taken over some of where Dennis left off with crops and that sort of thing, so we're very grateful for that. I did want that to be reflected in the record.

If there are no additional announcements at this time, we're actually a bit ahead of schedule, we're ready for public comment.

And just a quick reminder, and I think Katherine had indicated there are two sheets for the sign-up of public comment, one for today, and of course one for the second session, which is on Friday. So it's important, I think, to sign up in advance, especially for Friday, it appears there may be some additional people coming in for the conferences and the like, so it would be, I think, a good idea to reserve a spot early, if you will.

And I think we're ready for the first -- I don't

know if we have a sheet up here. Oh, an official announcement. Jim Riddle, who has so graciously served as our timekeeper for the last many years --

MR. RIDDLE: I've lost track of time.

(Laughter.)

CHAIRMAN KING: -- has officially handed over his -- well, his sign --

MR. RIDDLE: Yeah, the one-minute sign.

CHAIRMAN KING: -- the one-minute sign, as well as the official timekeeping duties, to Kim Burton today. So you have five minutes to make comment, and you'll get a one-minute warning.

We have two names on the first -- we have John and Merrill Clark.

MS. CLARK: Well, we're not joined at the hip, so we would -- we're two different people.

CHAIRMAN KING: Yes, I'm aware --

MS. DIETZ: So you each want five minutes?

CHAIRMAN KING: So do you each want five minutes, or you're doing this together --

DR. CLARK: Yes.

CHAIRMAN KING: All right. Thank you.

MS. DIETZ: I have my baking timer here, so when you're baked, then it's going to go off.

(Laughter.)

DR. CLARK: Okay, good morning. My name is Dr. John Clark. I am a biochemist who turned organic farmer in 1968, after a long career as a biologist, research chemist, and professor.

My wife, Merrill, was a charter member of the NOSB from '92 to '96. I became a student of the OFPA statute during this period and wrote a number of published analyses of the OFPA, including a complete analysis of the Act in the University of Toledo Law Review in 1995.

This document was based on this statute and was heavily reviewed by student editors, faculty editorial staff, as well as editors at the University of Law Review -- University of Toledo Law Review and University of Toledo Law School itself.

Unfortunately, this review has been roundly ignored by USDA's National Organic Program personnel, the NOSB and the USDA Office of General Counsel, who were all provided with multiple reprints of that review in 1995.

I have furnished copies of that review for everyone, including a copy of my statement.

I'm here to tell you that the Final Rule is rife with multiple violations of the statute. Furthermore, elicitations of those violations can be found in 26 pages

of single-spaced line-by-line, word-by-word comments submitted by me in April 1998 in response to the first proposed Organic Rule.

I spent the entire month of March 1998 grinding out these comments, with recommended deletions, additions, and extensive references to the OFPA. If these comments had been taken seriously, they might have enabled the NOP to quickly publish a final rule and regulation consistent with the OFPA statute. Instead we got a Final Rule 5 years later, ignoring comments by me and others, which persisted in previous inconsistencies and further violations of the OFPA statute.

I ask now that NOSB request a reproduction of these comments for each present NOSB member, as well as obtaining copies of the Law Review. I have done the second thing for you.

I find it shocking that 14 years after OFPA's passage NOSB and NOP persist in the pretense that Congress did not make clear the legislative letter and intent of this law and that members are still trying to substitute their own agenda, their own agendas, on many aspects of the statute, particularly when it comes to the List of synthetic ingredients in processed foods labeled "organic."

The National List procedures for technical

advisory panel reviews have been mishandled, misdirected, and illegitimately done, in many instances, for many substances. They have now ended up with an unbelievable array of questionable materials allowed for organic use, with more being jockeyed up for approval today.

On the second page, Line 3, it's 6518(m), not 6519(m), if you could correct that. TAP reviewers are generally misinformed about three criteria -- about the three criteria, 6517(c)(1)(a) for review qualifications, and the category qualifications, 6517(c)(1)(b), and the applications of the seven criteria under 6518(m).

If, and only if, the criteria in 6517(a) and (b), (c)(1), (a) and (b), are met, NOSB should reject any review not demonstrating this procedure to qualify a material for review under 6518(m). That's what Congress intended, very clearly and concisely, in the law.

Furthermore, all materials must include specific use and application annotations. They rarely do. The Organic Materials Review Institute and Virginia Tech are not necessarily legitimate TAP reviewers because of incompetence, conflicts of interest, or lack of transparency.

USDA must find qualified reviewers, compensate them fairly, and keep permanent files on each petitioned

material, in addition to using a proper tolling period for renewed reviews under the required 5-year Sunset Provision referred to in the statute. This Sunset period does not run from October '02, it runs from the date of the NOSB review to each substance.

Then I call on the National Organic Program director and staff to conduct NOSB information assessments on the content of -- I'll start skipping these things, conduct NOSB information sessions on what is commonly called a precautionary principle as it applies to organic standards. The staff as well as NOSB should avoid the pursuit of risk assessment and take up the more important task of risk avoidance.

MS. DIETZ: Time.

DR. CLARK: The rest of it is fairly clear, I won't insult you by going over my time and reading the rest of it, but the last paragraph, "Violations of the OFPA in USDA's rule are unconstitutional because the administrative branch of the federal government has only the authority to enforce the law and not to make it. Even if there is a precedent for this, nothing can justify making rules which mislead organic food consumers. OFPA is a law which is about making claims to consumers, a generally foreign concept at USDA, where producer and processor groups have

been the focus for decades.

CHAIRMAN KING: Thank you.

DR. CLARK: Thank you.

CHAIRMAN KING: Merrill Clark. Hold on, we have a question. Dr. Clark, Rose has a question for you, if we can get you back up here, that'd be great.

MS. KOENIG: Is this working now?

THE WITNESS: Since you last heard from me, I'm deaf in one year --

CHAIRMAN KING: It's just that the speaker's pointed toward the audience, you can't hear it.

MS. KOENIG: Oh.

Did you have a chance -- we have a Sunset Provision that the materials committee has proposed as far as the process that we're trying to come up with to go through this 5-year Sunset. Did you have the opportunity to take a look at that?

DR. CLARK: I looked at something briefly yesterday and I was kind of surprised that everything dates from '02, and there are materials on the List that have been reviewed 11 years ago.

MS. KOENIG: Yeah, part of that's because the (inaudible) start with when the rules -- it starts on the day of implementation, that's why that '02 date is there.

DR. CLARK: That's not the way I read the statute.

MS. KOENIG: Well, my -- I guess my -- my question was -- I guess my comment now, if you looked at it, would be: it would be helpful -- you seem to be concerned and interested about materials process, if you could perhaps submit, after you take a look at that Sunset Provision, comments on that, that would be very helpful for the materials committee.

DR. CLARK: Okay. I've offered to do -- not only review -- I did some in '94 and '95, and I've never been asked since to do anymore, but I've been, I thought, visibly available to do more and comment on the process as well.

CHAIRMAN KING: Are there other questions?

MR. RIDDLE: I just have a comment.

CHAIRMAN KING: Jim has a quick comment.

MR. RIDDLE: John, I appreciate your concerns. I just want also you and other people in the audience to be aware that, you know, one of the criteria in OFPA, as I'm sure you know, is consistent with a system of sustainable agricultural, and then in the Rule it mentions compatibility with organic farming and handling, and at the Board meeting last October we spent a lot of time working

on a draft to further define and explain what that means, and that has been posted for several -- for two rounds of public comment, and we'll be considering the final draft on that, and I just want to point out that it does embed the spirit of precaution. So I appreciate you bringing that up in your comments, and the Board is trying to address that with the compatibility draft.

DR. CLARK: And I would appreciate having the latest draft of that. I'm not sure I have that.

MR. RIDDLE: Yeah. It's posted on the website leading up to this meeting. There's slight amendment of deleting one line from it, that we'll be considering as we vote, but it's not substantially different than what's been posted for 60 days.

CHAIRMAN KING: Thank you, Dr. Clark. Merrill, now we're really ready for you this time, so --

MS. CLARK: Well, thank you. Merrill Clark, growth on organic farms, and one of the charter members for NOSB back in '92 to '96 and chaired the livestock committee.

I'm here today to embellish about a portion of a letter that I wrote to Jim Riddle back in March, 18, of this year, which I am told he copied you all. One of the issues of that paper -- which I'll talk about the most, but

I have a couple of things to add to that -- is the organic inspection and certification of already USDA FSIS-inspected livestock processing facilities. We feel the addition of another inspector, another work beyond the work of competent FSIS inspectors already at the site at smaller processing plants normally used by most of the small- or medium-size organic livestock producers is redundant, unnecessarily expensive, and actually a major stumbling block to getting any significant quantity of certified organic meat products into the marketplace.

An example of the problem: within the Dallas, Texas, State Burger website, which I looked at recently, is the question: "Is State Burger beef organic?" This is the name of a product. His answer was: "Well, from our research, it appears the federal government now regulates it, so it can be called certified organic, so we have to be careful how we use the term." Then he says, "First of all, I don't believe there is any such thing as a certified organic processing plant, livestock processing plant."

We at Roseland Farms are beginning to agree with them. After having gone through the hassle of searching out now three USDA-inspected processing plants over the course of 20 years, the new rule is forcing additional certification of the same plants, not because the ones we

have been working with through the USDA FSIS inspection are inadequate, with inspectors incapable of ensuring all organic processing standards are met, but because animal slaughter and meat cutting and wrapping seem to be falling into the same handling/processing category as complicated multi-ingredient processed-food products and other categories.

These products do probably require extra oversight because of their additive uses, cooking, mixing, and all the other things that go on with making a processed product, but cutting up a side of beef into T-bone and other cuts and wrapping them is not -- it's not that complicated.

I'm here to say that the continual inspection that is presently at work in these smaller processing plants across the country can easily be expanded to cover the extras required by organic meat slaughter and handling.

Denny Proctor of Great Lakes Processing, the only finally certified organic meat processor in all of Michigan and maybe in a three-, four-, five-state area, in the Great Lakes, told us last February that he was required to make no changes at all in his processing protocol in order to comply with the protocol organic standards that were already in place. In other words, he was doing everything

required already that was being asked by USDA inspection protocols.

I believe that is undoubtedly the case in the plant we are using, that is, USDA FSIS-compliant, in Shipshewana, Indiana, and 400 miles closer to us than the Great Lakes plant that's certified in Sheboygan, Michigan, and our concern is about continuing to ship animals, which we haven't had to do in the past, 400 miles one way.

USDA inspectors are at both of these plants regularly when animals are slaughtered. FSIS inspectors can and do become quickly versed in the other things to look for with respect to organic processing requirements. We have set up a protocol with this processing plant that reflects what we require, animals first in line before any slaughter takes place, preceded by complete segregation of our animals from any others, no conventional feed fed while they're there, Roseland beef sides tagged and hung in separate quarters, all equipment first used for the cutting of our halves, 180-degree water for sterilizing and washing down facilities, et cetera.

FSIS inspectors can and have been carrying out these checks. FSIS and AMS are a part of the same agency. Certainly they can work together on bringing this about.

What are the other options? Well, we could build

our own 500,000 -- or I mean a million-dollar inspected processing plant and then pay the cost for certification we are already using or try to find another processor who wants to be -- who might want to do our work but not terribly concerned about being certified and having another inspector on top of the first inspector come in again.

Organic Valley is probably, I suspect, the biggest operation that can afford to have their own processing plants. I was told, actually, by Pam Saunders that Organic Valley had a phone call not too long ago that this point is well-taken, that I'm bringing up, and should be brought up for a possible rule change.

When I contacted OTA, for instance, for information about certified organic processing facilities, they were able to lead me to no one, period.

Certainly the Rule with respect to requiring additional organic certification and inspection at USDA FSIS-complaint processing plants needs to be reviewed, looked at, or something.

I wanted to add a couple other related issues.

MS. DIETZ: Time.

MS. CLARK: Do we have large animal, otherwise called kayfall [phonetic] processing facilities or livestock facilities in the organic tradition, there seems

to be a concern that there are large dairy operations and the continued need for other antibiotics and parasiticides maybe to accommodate larger dairy, factory, farm, whatever you want to call them, and as far as we can get away from anything relating to a K-fall, the sooner we better do that, because it is not anyplace at all in the Rule on organic animal production.

CHAIRMAN KING: Are there questions for Merrill? Yeah, Dave.

MR. CARTER: Merrill, so you're recommending that we would allow slaughter to be handled in a non-certified facility, organic certified --

MS. CLARK: Well, in an FSIS-inspected and therefore certified -- if there were some way where the certification could take place through FSIS -- I don't understand the reason for having this inspection and then another inspection, because there isn't that much more --

MR. CARTER: Okay. How would you handle it, because even some of the smaller plants now, as a part of their slaughter process, are doing things like rinse and chill, when they run a super-chilled saline solution through the carcass after they stiff the animal or -- or those type of things. I mean, there are some processes, in actually slaughtering the animal and cutting the carcass,

in which some chemicals and some things are utilized. How would we -- how would we --

MS. CLARK: Well, we're -- we're just talking about sterilization of hot-water rinse, first of all, or our particular animals or some other's organic animals would just have a different process, which they would put into their protocol and set it up. It wouldn't have to be: well, here's what we do with all the conventional animals, we have to do it with yours as well. If there's something that's allowed through organic, that FSIS can certify to -- it's -- it's terribly -- I mean, how many people know where these certified livestock processing plants are, and -- otherwise, you know, if we keep it that way, we're -- we're stuck with no certified organic livestock.

CHAIRMAN KING: Jim.

MR. RIDDLE: Yeah, just a quick comment. I promise not to comment on everything that everyone says. (Laughter.)

CHAIRMAN KING: We're going to hold you to do that.

MS. CLARK: Too (inaudible) so far.

CHAIRMAN KING: Yeah.

MR. RIDDLE: On the record (inaudible). Yeah, in the past few months I did a survey of organic livestock

research needs, and one theme that kept coming up was exactly what you're saying: the lack of local, regional processing capabilities for organic livestock.

So it certainly is a need, I think it's a need just in general, not for organic livestock, but we've lost a lot of the --

MS. CLARK: Yeah.

MR. RIDDLE: -- infrastructure out there for slaughtering. But also, I worked for years as an inspector and inspected a number of USDA facilities, slaughter facilities, and found, you know, numerous things happening which didn't meet organic standards, you know, use of pesticides in the kill room, lack of audit control, lack of cleanup procedures that would be necessary. So there's -- you know, I -- I wouldn't support anything to weaken the organic certification of those facilities, but, you know, possibly training FSIS inspectors to understand the organic regulations I think would be a major step forward.

But I did just want to point out that there is at the present time the organic certification cost share, that will reimburse handling facilities as well as farmers up to 75 percent of the certification inspection costs, up to $500 a year. So that would be an incentive for some smaller regional processors, you know, to go that route,

but I think it -- you know, the studies I've done certainly show that this is a valid concern that you bring up.

MS. CLARK: Well, yeah, because the processor we're using now has an inspector coming, FSIS inspector there, and they're there all the time. A certifier inspector, what does he come, once a year? He, she, whoever. I mean, they're always there, and if they know the protocol for organic, why -- that's far better than saying, "Here comes my once-a-year certifier inspector." It's sort of crazy.

And talking about diminishing, I'm very worried that I see antibiotics and parasiticides coming up on all this for animal production. I don't get it.

CHAIRMAN KING: Are there other questions?

(No response.)

CHAIRMAN KING: Thank you, Jim. Thank you, Merrill.

Next we have Mark Kastel.

UNIDENTIFIED MALE VOICE: (Inaudible) Friday.

CHAIRMAN KING: Okay. I think I'm probably going to butcher this next name. Kathy Seus.

MR. RIDDLE: Mr. Chairman, could you say who's on deck, please.

CHAIRMAN KING: Yes. Thank you, Jim. Dr. Bossy

[phonetic] is on deck.

MS. SEUS: Last name is spelled S as in Sam, -e-u-s, as in Sam, like Dr. Seuss, less one S.

UNIDENTIFIED FEMALE VOICE: I'm having real difficulty hearing, whether it's a combination of this -- and the microphone does not seem to be fully functional.

CHAIRMAN KING: Yeah. I don't see our technical soundperson. When he gets in -- okay, sorry for the interruption.

MS. SEUS: That's okay. You all know my name now, right?

CHAIRMAN KING: Yes.

MS. SEUS: Good morning. My name is Kathleen Seus, as you all know. I'm from -- I'm the farm program manager from Food Animal Concerns Trust, which is a non-profit organization founded in 1982 that advocates humane and sustainable farming practices, and I'm pleased to have this opportunity to provide comments on behalf of FACT to the NOSB.

FACT welcomes the animal husbandry standards included in the National Organic Program, specifically Sections 205.236 through 205.239. These standards provide a basis for which elevation by which eligibility for organic certification can be established.

However, while we acknowledge NOSB's effort to create minimum standards for humane animal husbandry, we are concerned that the current standards are very vague and lack clear definition. This lack of clearly-defined standards has left the issue of organic animal husbandry open to interpretation by NOP and producers that undermines the integrity of the organic program and erodes consumer confidence in the USDA Organic label.

FACT is concerned about this lack of clarity for several reasons. First seems to be the inclination of NOP to overstep its authority to override or reinterpret established animal husbandry standards. To illustrate this concern I reference two examples.

The first is the court case Massachusetts Independent Certification v. Ann Veneman, Secretary, U.S. Department of Agriculture, and A.J. Yates, Administrator, Agricultural Marketing Service, regarding country hen.

The second example is the April 13th, 2004, guidance document regarding the origin of livestock and dairy animals.

The relevance of the examples are more completely detailed in my written comments, I don't have time to go through everything. However, the fact is that NOP does not have the authority to override or reinterpret or rewrite

standards as established by the NOSB.

Secondly, FACT is concerned about the impact NOP interpretations may have on animal health and well-being. Here I refer specifically to the guidance document beforementioned. FACT is concerned that the need for any organic dairy operation who's already been 100-percent certified to go outside the organic system for replacement heifers may be indicative of possible animal health problem on the farm, resulting in higher-than-normal mortality.

I quote: "The primary goal of organic agricultural is to optimize the health and productivity of interdependent communities of soil life, plants, animals, and people. Compromised animal health has no place within an organic production system."

FACT is also concerned about the survival of smaller family farms. Organic food production is one of the few remaining niche markets available to smaller farmers. Smaller farmers need these niche markets in order to survive the mass consolidation of the agricultural industry as a whole.

Every time NOP overrides or reinterprets the established standards, particularly in favor of larger factory-style organic farming operations, they un-level the playing field. This places the smaller independent family

farms at a competitive disadvantage and threatens their economic sustainability, which violates the very principle on which organic agricultural is founded.

Finally, FACT believes that clearly-defined standards are crucial to consumer confidence in the Organic label. FACT managed Nest Eggs, a brand of Kaytree [phonetic] eggs, for 18 years. I personally managed that for 2 years. FACT established clearly-defined standards for the production of nest eggs, such as stocking density and the prohibition of force molting. Consumers who purchased nest eggs knew exactly what the production standards were and can count on the enforcement of those standards.

However, because concise animal production standards had not been established by the NOSB, consumers cannot be certain which production practices were used to produce the organic food they see in the stores.

All organic eggs, beef, poultry, pork, or dairy, for that matter, are not the same when it comes to animal production practices. FACT believes this lack of consistent production practice erodes consumer confidence.

Without clearly-defined animal husbandry standards, the current standards will continue to be abused. FACT believes that NOP will continue to interpret

standards as they see fit. This undermines the integrity of the organic program, erodes consumer confidence in the Organic label, and contributes to the disappearance of family farms in rural communities.

FACT would like to call on the NOSB to clarify animal husbandry standards. We'd like to see this done for every animal species covered under the National Organic Program. For example, we'd like to see minimum stocking densities, we'd like to see concise definition of "outdoor access." We welcome the opportunity to work with NOSB to help establish --

MS. DIETZ: Time.

MS. SEUS: -- these standards. Thank you for your time.

CHAIRMAN KING: Questions, comments? George.

MR. SIEMON: So just to your last part there, you would actually like to see us get very specific about stocking densities, the whole nine yards, and do you see issues of doing that nationally? That's one of the authority things we've had.

MS. SEUS: You know, I understand it's -- it is thorny, because, for example, we just completed an investigation of about 70 different egg brands that advocate -- or that indicate they're humane, including

organic brands, and what we found is, stocking densities and whether or not they allow force molting and whether or not they beak trim, et cetera, they really vary from production -- from producer to producer.

The issue is, is that the USDA Organic label is like an eco-label and there needs to be some substantial definition behind it, and I don't think we see that. I mentioned the case of the country hen, you know, outdoor access is not defined.

Some -- we -- I know there are some producers, I've met them at organic trade shows, that let their hens out on pasture, and then there are other ones I talked to on the phone, when I was doing my investigation, that admit the hens rarely, if ever, go outside.

I think that's a problem, and when consumers are looking at different organic eggs, they have no idea what the standards are, they don't know whether those hens got outside or not. To some consumers, that's an issue.

And so it would be nice if there were some -- you know, even if the stocking densities were low, lower than you would normally consider, it would be nice to have some standardized production practices out there so consumers know at a minimum what they're getting when they see the Organic label.

MR. SIEMON: Does your organization have quantitative standards?

MS. SEUS: We don't have quantitative standards. We are working on basically what I would consider guidance documents for standards for different animals. We obviously do for laying hens because we have the nest egg program. Our standards were probably a little higher as far as stocking density, we had two square feet per bird, it was a cage-free operation, it was not organic, so they did not go outside, although they did have access to natural sunlight, they're Amish farms, so there was no -- it was impossible to do lighting systems, so they have to use sunlight.

But I know there are also other organizations out there, Free-Farmed is one example, Humane Farm Animal Care, where they do have, you know, quantitative standards in place, and I know other organizations are doing that as well.

So I think it's something that's very possible. I'm not saying it's not time-consuming, and I'm not saying it's not going to take a lot of effort, but I certainly think it's something that's possible and might -- might -- you know. And I also think that as the organic industry gets bigger and bigger and more big business, and I'm

talking M & M, Mars, and Con-Agra, and they're already in the organic industry, I think -- I think as the industry gets bigger and it's more dominated by these large industries, I think we're going to see animal husbandry standards decrease and decrease unless we do something to establish standards now. It may not happen for 10 years, but the organic industry is not going to grow at 20 percent forever and at some point people are going to start looking to do some cost-cutting to -- you know, to keep their margins, and it's certainly not going to be to give the animals more pasture.

So it'd be nice to have standards in place so those kind of things don't happen in the future.

CHAIRMAN KING: Other comments or questions?

(No response.)

CHAIRMAN KING: Thank you very much for your input.

MS. SEUS: Thank you.

CHAIRMAN KING: Dr. Bossy is next. Thomas Harding is on deck.

MR. HAM: Dr. Bossy was not able to attend, so I am Steve Ham, and Dr. Girish [phonetic] Ganjyal from MGP Ingredients.

We wanted to thank you for -- I think the

National Standard --

CHAIRMAN KING: Steve, just for the record, how do you spell your name?

MR. HAM: Oh, I'm sorry. Steve Ham, H-a-m.

CHAIRMAN KING: Okay. Thank you.

DR. GANJYAL: And I'm Dr. Girish Ganjyal, G-i-r- --

CHAIRMAN KING: We may need a spelling on that.

MR. HAM: It's on the sheet.

DR. GANJYAL: It's on the sheet.

CHAIRMAN KING: Oh, you are on here?

DR. GANJYAL: Yes.

CHAIRMAN KING: Okay, great. Thank you.

MR. HAM: It's much faster.

UNIDENTIFIED MALE VOICE: And please speak into the microphone.

MR. HAM: Okay. We want to thank the National Organic Standards Board for allowing us to present this testimony on behalf of MGP Ingredients, hereinafter MGPI, to support the petition for inclusion of tetra sodium pyrophosphate, hereinafter TSPP, to the National List.

TSPP is an analog of sodium phosphate and is used for buffering and conditioning during the extrusion of wheat gluten. This textured wheat protein is then used as

an ingredient for making organic meat-alternative products.

TSPP is listed on the FDA's Generally Regarded as Safe List and is an ideal processing material for organic products. It is presently being used in dairy-substitute products, cheeses, spreads, meats, poultry, and cereals. TSPP is used in small quantities at levels of .5 percent to 3.5 percent in MGPI's proprietary process to produce this textured wheat protein, which in turn is typically used at about 10 to 12 percent in finished consumable products. Thus the level of TSPP in finished consumer products is even smaller.

Currently no alternatives exist for the functional properties displayed by TSPP when used in small amounts in this proprietary process. Extrusion processing is used in this process and involves high temperature and high-pressure cooking for a short duration. TSPP is unique because it has a high melting temperature and thus withstands the extrusion processing conditions while maintaining its functionality.

Saytan [phonetic] is a product made by mixing gluten with water and spices. It does not generate any fibers, like a textured wheat protein, and has poor sensory characteristics. Other materials have been used at three to four times the amounts of TSPP, which gives distortions

to color and taste.

Furthermore, commonly-used and accepted alternative materials have been tried and offer no serious processing advantages, and none are approved for organic processing.

The following ingredients were tested and their processing effects were as follows. I'm just going to list these, since you have copies. Sodium hydroxide, sodium bicarbonate, sulfur bisulfate, sulfite, metabisulfite, sodium phosphate, disodium phosphate, tetra sodium polyphosphate, sodium polyphosphate, and the last one listing the TSPP.

As mentioned earlier, excluding the TSPP, these materials reduce product quality, functionality, affordability, and cause unwanted product discoloration and undesirable odor and taste to these organic products so cannot be produced from a natural source and has no organic ingredients as substitutes.

TSPP not only aids in the processing of this product, it also retains the digestibility characteristics. Textured wheat protein has an excellent digestibility of 96 percent.

To obtain good textured wheat protein product, the wheat gluten needs to be conditioned to the correct pH

and should flow uniformly and easily in the extruder. TSPP helps to condition and helps the full ability of the wheat gluten in the extruder and thus does not directly texturize the wheat gluten but, rather, creates ideal conditions for the wheat gluten to be textured in the extruder.

Textured wheat proteins provide organic food processors diversity to their product line in the vegetarian, meat analog, and health foods categories.

Finally, in light of the above unique functional properties of tetra sodium pyrophosphate, MGPI is requesting in this petition to expand the sodium phosphate category, which is already approved on the NOSB list for dairy use only, to include milled and processed grains, especially wheat gluten, and TSPP to be added to the sodium phosphate (inaudible) that is already approved. Thank you.

CHAIRMAN KING: Now, does he have an additional--

MR. HAM: No.

CHAIRMAN KING: You're just along, okay.

MR. HAM: To help with questions.

CHAIRMAN KING: Okay, great. Questions? Rose.

MS. KOENIG: The sentence you wrote -- I guess I need some -- I need some clarity. You say it doesn't directly texturize the wheat gluten but, rather, creates ideal conditions for wheat gluten to be textured in the

extruder, and what does that mean?

DR. GANJYAL: What that means is -- like -- like extrusion is basically a high-temperature, high-pressure cooking system in which basically you know, (indiscernible) which will, you know, knead the dough and everything, like cook it nicely, and by the time it comes to us, then the texture -- it forms texture, like when the fibers are formed.

But actually what happens is the cooking system -- the cooking time is very, very short, and that's why we need some agent to actually make it flow easily, otherwise it will -- you know, the wheat gluten is a dough, it sticks to the system, and so that's why we want something which will make it flow easily in the extruder, and that's the main reason why we want to use TSPP. I mean, that basically helps it, to texture it.

CHAIRMAN KING: Sir, just for the record, could you please read your name into the microphone again for the court recorder.

DR. GANJYAL: Yes. My name is Girish Ganjyal.

CHAIRMAN KING: Thank you.

MS. KOENIG: How do you discern between -- I guess that wording -- again, I'm reading your words, I'm just trying to understand what the difference between --

you're saying functionally it's textured so that it can be processed, but does that -- but that texturizing does result in a texturized wheat gluten, doesn't it? I mean, you say it doesn't, but -- so you're saying -- I mean, it doesn't get removed once it's gone through that process, I mean it's still there and it still functions, correct, or no?

DR. GANJYAL: Basically, that's the reason -- it actually processes, and also like -- probably like some of it is gone because -- I mean, at the high temperature, and there's a lot of water in there, okay, so it solidifizes [phonetic], and when it comes out of the extruder, as the pressure is released, the steam evaporates. So probably some of the TSPP is operated, along with the moisture in there. That maybe -- does that answer your --

MS. KOENIG: Not really, sorry.

CHAIRMAN KING: Okay, Kim and then Kevin.

MS. DIETZ: Are you generally going to be here when we actually review this material, are you here for the few days, if we have questions about the process?

MR. HAM: We were going to leave this evening.

CHAIRMAN KING: Kevin.

MR. O'RELL: I would like to try to bring some --

MR. HAM: I'm sorry, can I add a comment.

Dr. Tom -- or Thomas Harding -- Thomas Harding is our consultants. I believe he will be attending the full --

CHAIRMAN KING: Okay. Go ahead.

MR. O'RELL: It might help to have the technical people here at that time as well, though.

Rosie, just to try to bring some clarification to this and maybe simplify some of the conversation that was going back to satisfy Rosie's question: it's my understanding, and maybe it's incorrect, that TSPP is functioning more as a flow agent through the system but the texture's being created by the pressure in the extrusion process, and the heat.

DR. GANJYAL: Exactly.

MR. O'RELL: Is that --

DR. GANJYAL: Yeah. The --

MR. O'RELL: Can you elaborate, just -- I mean, I wanted -- that's my understanding of how the texture is formed.

MR. HAM: The TSPP is added to help the wheat gluten flow through the -- through the extruder. It's helping with pH and flow. The texturization is actually occurring because of the pressures and temperatures of the extruder, it's a cooking --

MR. O'RELL: The texturization is a mechanical

process.

MR. HAM: Right, through -- through pressure and temperature.

CHAIRMAN KING: Andrea and then Jim.

MS. CAROE: On the first page of the document you provided, you go through the alternatives, and for the sodium phosphate, disodium phosphate, tetra sodium phosphate, and sodium polyphosphate, you have a comment in the process effect that the higher levels of use, 9 to 10 percent or more. Could you explain what that means.

MR. HAM: Sure. We were going through an evaluation of different potential alternatives, and in the evaluation of these -- the ones you mentioned, we were finding that we were needing to use significantly higher amounts to achieve similar effects.

MS. CAROE: Higher amounts of the tetra sodium phosphate?

UNIDENTIFIED MALE VOICE: No.

MR. HAM: No, higher amounts of the sodium phosphate, disodium phosphate, tetra sodium polyphosphate, and sodium polyphosphate.

MS. CAROE: Right.

UNIDENTIFIED MALE VOICE: So 10 percent --

MS. CAROE: (Inaudible) 10 percent higher than

what you would have used for the (inaudible) --

MR. HAM: My understanding -- I'm sorry. My understanding -- go ahead, Girish.

DR. GANJYAL: Yes. If you -- what does that mean is, like when we tried using these different materials, actually we had to use a lot more than -- I mean like 10 percent more than what you would use -- the tetra sodium pyrophosphate.

MS. CAROE: Okay. That's what I just wanted to clarify.

MR. HAM: Thank you.

CHAIRMAN KING: Jim.

MR. RIDDLE: Yeah, I had a question about that too. With these other materials, some of which are allowed, were you getting the same texture response, that you find desirable for your product?

DR. GANJYAL: No [phonetic]. The reason -- I mean, especially tetra sodium pyrophosphate, it helps -- I mean, with that you get the desired product more easily, and also the texture is more better when we use that.

MR. RIDDLE: Okay. So it's not -- it's a combination of using this material with the pressure and temperature that creates the texture or improves the texture; correct?

MR. HAM: Correct. The textured wheat protein that we are producing is different than like a saytan-type product, where it's a solid mass, it's more of extruding to have meat-like appearance, although this is not a meat alternative on its own, it's used as an ingredient in those types of products. So to achieve that type of texture, using the higher levels, we -- we're not getting identical texture, but more importantly, we're getting off color, odor, sensory properties by using these higher levels.

MR. RIDDLE: Okay. And those higher levels, 9 to 10 percent, that's in the wheat gluten itself, not in the finished consumer product; correct?

MR. HAM: Correct. We are using -- this finished product would then be hydrated in water and used as a percentage in a finished product formula, probably 10 to 12 percent, in a finished product.

MR. RIDDLE: Okay. Thanks.

CHAIRMAN KING: I have Nancy, then Kevin.

MS. OSTIGUY: Am I correct that any changes in the flow properties will change the texture?

DR. GANJYAL: Do -- say that very briefly -- what again, say -- like when we texturize (inaudible), like you work the dough, you knead the dough very nicely, and you've put a lot of mechanical energy into the dough, and this

extruder -- I mean, say, for example, in a broad sense, what I can say is (indiscernible) then we may have to extend the extruder far, far bigger, okay, because the time which is available to cook in the system is very, very less, so you want to make sure that it flows very nicely and mixes very nicely when the dough is going into the screws [phonetic]. So that's -- I mean, we found that TSPP is basically helping us in that flow, so that it gets a good amount of time to cook properly and uniformly.

CHAIRMAN KING: Kevin.

MR. O'RELL: Yes. The use of orthophosphates was discussed before, and I'm just a little confused, I'd like to get some clarity from you. The use of orthophosphates, we were told before, didn't provide the same functionality in terms of a finished product, but now you're saying here that the orthophosphates require just a higher usage level of 10 percent more. If -- if something that's already approved works at a 10-percent higher level, does it give you the same texture --

DR. GANJYAL: Well, in that case what happens is we don't get like enough of the wheat actually in the final product, like say for example you have like 100%, you add like 12 percent or -- the other products, then the actual level of the wheat in the final product is very, very less

when you compare it with using TSPP. And also it gives like off flavors and, you know, odor and all that sort of stuff.

MR. O'RELL: Well, I guess what I'm asking is: if you can use an already-approved product at 10-percent higher level, do you get the same results or are you saying you get different results that are unacceptable?

DR. GANJYAL: Well, I mean, it gets -- I mean, it gets like other off flavors and, you know, like different other stuff along with that.

MR. HAM: I think, on the sensory properties, it doesn't make as acceptable a finished product, or an acceptable ingredient in our -- to our customers to use in organic products.

CHAIRMAN KING: Rose had a quick question.

MS. KOENIG: I understand it's your -- so you're looking for the substance for your proprietary process, which involves a certain mechanical setup, with pressure and temperature. Is there other wheat proteins available on the market that is commercially being used in products that are currently being labeled as organic or that are doing just different processes and not using the TSPP?

MR. HAM: I think, as far as functionality, I am aware -- well, I've got -- no, I'm not aware that there are

any organic products out there. We do offer a diverse product range. What we are seeking with this is for a few specific products within -- within our diverse product line. To achieve the fibrous texture, it is important to do this. To just simply run product through the extruder and grind it to a powder, for example, may be not necessary.

MS. KOENIG: But -- I mean, I'm a producer too, I mean I pretty much know what my competitors are doing, you know, I'm -- I'm relying on you guys, I guess, you know, as far as -- because my -- I guess my concern, when -- you were talking about specific parameters of a proprietary process, so is it -- what I'm -- my question: is it just unique to your process and because of the parameters, temperature and pressure and mechanical --

MR. SIEMON: You're really asking about the extrusion, aren't you?

MS. KOENIG: Yeah. Well, that's what --

MR. SIEMON: Extrusion --

MS. KOENIG: So I'm just saying: is it specific to your particular proprietary process or is this an industry-wide --

DR. GANJYAL: Well, yeah, I mean, the extrusion process is used industry-wide, sure, but they produce like

different -- like probably some of -- I don't know whether they use that in the organic products, but they use like soy texture and soy products, but the -- the -- you know, they use like rancidity and like different other -- off -- I mean side effects when you actually process soy. So that's -- I mean, this -- I mean, our customers like this product more, better than.

CHAIRMAN KING: Okay. Are there additional questions, comments?

(No response.)

CHAIRMAN KING: If not, I think we'll move on now. Thank you very much for your input.

DR. GANJYAL: Thank you.

CHAIRMAN KING: Next up Thomas Harding; on deck, Jim Pierce.

MR. HARDING: Good morning. It's a pleasure to be here. To be quite honest, I didn't think I was going to be back here talking about tetra sodium pyrophosphate.

As you know, the reason we're here is because of the reconsideration which was handed down through the rulemaking process, where there was a 3-to-3 split and there was some question about the annotations, so I'm told, and that it needed some more review.

But in any case, I'm not going to repeat most of

what's already been said and just jump into some of the critical areas that are important. So with that history, we had to first of all find out what reconsideration was, and we eventually found out, and what I've done is I just prepared a couple notes, and I also have a letter circulating that is from one of the end users who is in support of the use of this material in their made-with-organic product.

So I'm going to pay attention only to the additional page comments [phonetic] so that we can shut this pretty short.

TSPP needs to be permitted in organic ingredients and products, not only in made-with-organic, because there's been a lot of discussion about that at the previous meeting. There is no advantage to the consumer and it causes the manufacturer and end user unnecessary formulation difficulties and unnecessary added cost, and we get to the additional materials that are used, and the other types of materials, it raises the cost and of course it reduces the organic ability. In other words, instead of 95/5, we're now 75/25. And so that's a very important factor.

Plus, allowing TSPP in organic product ingredients raises the bar for manufacturers to use more

organic raw materials and ingredients. The "made with safe" has the opposite effect. In other words, we lower the amount of organic product, as was said before, and we increase the amount of chemical going into it.

The prepared value-added organic food products, including meat analogs, are experiencing significant growth, representing major consumer interest in consumption. TSPP adds to the quantitative values -- the qualitative values of these new products. We must provide the consumer with safe product choice, not decide for them what organic products they can eat. End users support the use of TSPP -- please reference the letter that I'm circulating -- and recognize they have been -- and they have been at other NOSB meetings, supporting this process, and I want to be very clear that our intent was not to have TSPP singled out as a new ingredient but to make it part of the sodium phosphate analog, which is now restricted under annotation to dairy.

So we're not trying to restrict it for, quote, our proprietary, because there's nothing proprietary about this very important question you raise. Our formulation is very simple, it's .5 percent for one product, and 3.5 percent for another, and the rest is wheat gluten and organic flour. In both cases those organic ingredients are

the principal products.

In the end use of this product, we're talking about, in one case, seven percent, in another case somewhere between 10 and 12 percent, in -- as an ingredient in the actual finished organic product. So we're talking about rather low levels of use.

The other thing was that in this process, in all the research I did -- and I'm certainly not the technical person that these gentlemen are, but: This a thermal mechanical process. That's actually what ends up forming the texture, the flow legency [phonetic], which is so important, where TSPP, because of its high melting point, it's very essential to be able to do that. Otherwise you'd have an extruder about a quarter of a mile long. So it's really important to get that through the system, to cook it only for a period of time, without destroying the overall qualitative values of it, and then at the same time get it through the system and into the finished product.

So those are very important points there. MGP ingredients, the organic ingredient manufacturers here, and you've heard from them and gave compelling testimony about TSPP and its functionality, quality values, safeness-in-low-use rate, and clearly stated their research has found no alterative to TSPP.

There was some concern that TSPP does not show up in the final product ingredient panel. That is true. However, it is not required by FDA. I must point out that TSPP is listed on the ingredients we manufacture at MGP, it simply says, "organic wheat flour, organic gluten, and TSPP." It's not our fault that the labeling system does not require it on the labeling of the finished product, somewhere between seven and ten percent.

Thank you very much. Any questions?

CHAIRMAN KING: Questions? Jim.

MR. RIDDLE: Yeah, Tom. The statement you handed out to the Board from Kevin Scott, President, (inaudible) Foods Company, has a line that I find curious. It says, "Our current line of certified made-with-organic meatless burgers and breakfast products currently contain certified-organic ingredients with TSPP."

MR. HARDING: That's correct.

MR. RIDDLE: Well, TSPP is not on the National List.

MR. HARDING: TSPP was being used prior to the implementation of the National List, we petitioned that, and, as was said at this board two previous times, it was approved for our use pending the final rulemaking and being placed in the National List, and that's the way it was

handled.

MR. RIDDLE: Well, I understand what you're saying, but everything that didn't make it on the National List is prohibited, and recommendation of the Board doesn't allow the use of a substance until it's gone through the rulemaking process. So I guess I'd like a little more background on this, who's certifying this, how many companies, certifiers, are allowing this.

MR. HARDING: Well, I think you'll have to go back into your own history a little bit. The way the material was handled, as I understand, anyway, that, first of all, it was being certified as a product before the final implementation. When the petition was place forward, that's one of the issues we raised. That same document was submitted before, and we addressed that, that the certifier had given us a continuance pending the final review of the petition and at such time would then make a decision whether we would continue to use it or not if in fact it was approved by the NOSB and was then placed on the List eventually. That's the history.

MS. DIETZ: I have a comment.

CHAIRMAN KING: Kim has a quick concern.

MS. DIETZ: That was brought up, and I don't think that's a place for this board -- that's a compliance

issue with USDA, and we -- that -- we can go back to our minutes, and we discussed this in detail --

UNIDENTIFIED MALE VOICE: Exactly. I agree with you.

MS. DIETZ: -- so I don't think we need to bring it up.

MR. RIDDLE: It's very clear that a substance is not allowed for use --

MS. DIETZ: Right.

MR. RIDDLE: -- until it's on the National List, and that was made clear previously when this was discussed, and it hasn't changed.

MS. DIETZ: Well, we don't need to know who certified it.

MR. RIDDLE: Well, I think it is public knowledge and public information who certified it.

MR. HARDING: What we've done, this -- being very open and honest about what's happened, over the period of the implementation of the Rule, what transacted and what you think or what somebody else thinks, so I'm not going to get into an argument here about that, Jim.

MR. SIEMON: And that's an industry-wide issue about a whole --

MR. HARDING: Exactly.

MR. SIEMON: -- host of materials and not just this one alone.

MR. HARDING: And I would bet there are a whole host of them. But anyway, thank you all very much, I appreciate it.

CHAIRMAN KING: Other comments or questions for Tom?

MS. DIETZ: And I just have one -- in fact this board did recommend that materials could be used until on the National List, and that was a formal recommendation, even though it's not being -- taken place, so --

MR. HARDING: Right. And the vote was clear that it was an approved material to go on the List, and I have to be honest with you, I was totally shocked that we had it sent back to reconsideration, because we advised them that the annotation could be problematic.

MS. DIETZ: That's the process, and that's okay.

MR. HARDING: Exactly. Thank you very much.

CHAIRMAN KING: Thank you, Tom. Next up is Jim Pierce, on deck is Haim Gunner, with Eco Organics.

MR. PIERCE: Good morning, Mr. Chairman, NOSB, NOP staff, ladies and gentlemen of the gallery. I'm Jim Pierce, self-appointed certification czar at Organic Valley.

In the interests of total transparency, I would like to point out and state for the record that I work with and for NOSB member George Siemon at Organic Valley. George, like the rest of you, struggles to put aside professional affiliations in this forum in order to stay true to your appointed constituency, in George's case farmer producer.

I will do no such thing. I stand before you, devoted on behalf of my constituency, the 650 family farmers who together, with over 250 employees and 65 processing plants, make up the largest and most successful organic dairy farming co-op on the planet, and we're upset. (Laughter.)

MR. PIERCE: Since we're in the Windy City in the midst of baseball and Billy Goat fever, let me summarize our concern in baseball paraphrase by saying: there is no joy in organic mudville.

I would respectfully direct your attention now to the diagram on the back of this testament. Some of you might be familiar with the heighth curve. The heighth curve is a visual tool to track -- used to track progress of many things, including business start-ups, technology, and personal relationships.

Today I would like to use it to describe the

National Organic Program and your role in its future. The classic heighth curve is comprised of five distinct parts: the trigger event, the peak of inflated expectations, the trough of despair, the slope of enlightenment, and the plateau of success.

The trigger event in this heighth curve starts on October 21, 2001, at a whole foods store in Washington, D.C. When Deputy Secretary of Agriculture A.J. Yates announced the implementation of the National Organic Program, we all had a big collective hug. The ensuing peak of inflated expectations contained enough momentum to establish the USDA Organic seal as the single most successful eco-label in the food industry.

Now cue the piano into minor key as we slip into the evitable but always disturbing trough of despair. Bake [phonetic], the bottom of the trough, April 14, 2004, the date that three so-called guidance documents were issued by NOP, representing what the organic dairy farmers in my co-op feel is the most serious threat to organic integrity to date, a greater threat even than any previous assault by far, in fact, because in contrast to previous assaults by unscrupulous operators and corrupt politicians, these maladies are from the inside, from the National Organic Program staff, from the very guardians and managers

responsible for the ultimate oversight of our livelihood.

The scope document which guides fraudulent salesmen of organic sewage sludge and organic kitty litter to go ahead and use the word "organic" and leave the USDA out of it and let the buyer beware is short-sighted and shallow.

The livestock feed document, which guides immoral feed manufacturers to use fishmeal regardless of sustainability, contamination, and prohibited materials, in direct contract to the hardworking good advice that you, the NOSB, provided them, is an insult.

But the document titled Dairy Replacement, that erroneously guides organic dairy producers to use antibiotics anytime, on any organic farm, on any calf or cow, is a travesty, setting the organic standards back by a decade and threatening to destroy the reputation of organic much faster than wild-caught salmon or imprisoned poultry.

So we're pissed, but we're far from giving up, and despite rumblings that we hear from you all of burnout and brick wall head-banging, we're not going to let you give up either. We're counting on every member of the National Organic Standards board, present and future, to lead our national organic program out of the trough of despair and up the slope of enlightenment. That's your

job, clean, pure, and simple.

In the coming hours and days you'll hear a myriad of suggested solutions, many of which you're already familiar with. Weigh the proposals, make the wise decisions we know you're capable of, and get organic back in the limelight.

Thank you, as usual, but no less sincerely, for your attention, for this opportunity to address the Board directly. I look forward to watching you work through the material decisions that are before you. By posting committee recommendations on your website, your transparency has improved tremendously. After reading all the petitions, TAPs, and committee recommendations, I would so much like to assure you that you are faultless in your decisions, but alas, you are not.

Particularly, the crop committee has, in my opinion, arrived at the wrong decision in two cases. Hopefully there's people here today from the cotton industry to address the hydrogen chloride issues and from the apple growers to address the 6-benzyladenine -- I knew I'd do that wrong.

If my comments have moved anybody beyond motivation to enragement, I apologize. God bless you, and thank you.

CHAIRMAN KING: Jim, as always, thank you for your animated comments, it's very encouraging to get your input, and I think that we're all aware there's some ongoing challenges and you, you know, have the support, certainly, of the Board to work together with the program.

I know later today that the program has a few minutes and perhaps they can address some of the issues at that time in their presentation.

Do people have questions or comments for Jim?

(No response.)

CHAIRMAN KING: Thank you, Jim.

MR. PIERCE: Thank you.

CHAIRMAN KING: Mr. Gunner is up next, and Lori Johnson is on deck.

DR. GUNNER: As the Board knows, the reason I'm here is because the TAP committee recommendations were directed to the use of soy protein isolate as a food, and in fact our submission is for soy protein isolate as a soil amendment, and in the hope of avoiding a deferral of a decision for soy protein isolate, I asked to come here to supplement the recommendations and the questions which the NOSB asked, in the hope that this would fulfill what you want to know and so that we could get a decision early, rather than late, particularly in view of the fact that

we've been hunting for a decision for some 4 years.

I should start by saying that I'm a microbial ecologist by training, and my interest in soy protein isolate was sparked by the fact that -- applied an experiment having to do with microbial treatments, the soy protein isolate stimulated an extraordinary explosion of microbial growth. Then considering the isolate, because of its very high nitrogen content, anywhere up to 15.5 percent, and a very, very low C/N ratio, at the level of about 2, it turns out that this could be an extraordinarily effective fertilizer as well as overall stimulus to the soil ecosystem.

Very briefly, since I've already submitted the responses to the questions that you felt the TAP group had not provided you with, let me simply review the questions that you asked and our responses to them.

One, use of the material as a soy -- soil amendment. Well, I've already indicated that we get an explosion, sometimes a 6- to 800-percent increase in microbial populations. This has both the effect of stimulating further organic matter decomposition so that in addition to the nutritional value provided directly by the soy protein isolate, you get a second (indiscernible) of fertilizer.

The explosion of microbial communities is -- also turns out to be effective in suppressing microbial pathogenic attack on crops simply by competitive exclusion. We've submitted data to show the effects on turf grass growth, on clippings, on root expansion, and I won't take up the committee's time by reviewing this.

In short, what we have is not only an extraordinarily effective fertilizer effect but a very large ecosystem series of beneficial effects.

The question for the committee, of course: is the material synthetic or non-synthetic? Well, it's very difficult to synthesize protein. This, of course, is synthesized in the -- in the soybean and the issue is really the manner in which the protein is released from the bean.

Our contention is that this is compatible with Regulation 205.605(j)(1), in which the plant extracts which use sodium hydroxide as a neutralizing agent, as well as humates, are available for registration and we feel that under this regulation, that soy protein isolate also qualifies.

Other questions which the committee asked is in terms of genetic modification. The high rate of microbial decomposition and the virtual disappearance of the soy

fertilizer makes this a moot point. In addition, whatever nucleic acids carry the genetic information is simply not part of the protein isolates.

The basic manufacturing process leaves a very, very trivial amount of sodium hydroxide. Essentially the sodium is what we're concerned with, and at the rate of application, it is truly a meaningless residue.

Are there adverse effects in the environment from manufacture, use, and disposal? None that we have been able to determine, and none has ever been described.

No toxic or adverse effects. Undesirable persistence, no, I've already indicated that the material is very, very rapidly decomposed by microbial communities.

And finally the question "Are there other natural organic fertilizers?", and indeed there are. Natural manures with a nitrogen content of about 4 percent, municipal waste, 6.5 percent, crop residues, about 7.5, fishmeal, higher, 12 percent, fish emulsions, 5 percent, kelp or seaweed.

The problem with these, of course, is that fishmeal, fish emulsions, and others are highly undesirable because of their odor, and most undesirable, of course, is their extraordinarily carbon-to-nitrogen ratio, which means that they are very long-term residues in the soil.

In short, I feel we have an exceptional soil amendment, certainly natural in its derivation and certainly equivalent to other treatments which are registered, such as the humates and the kelp extracts. Thank you.

CHAIRMAN KING: Thank you, sir. We have questions. I have Nancy first, Kim second.

MS. OSTIGUY: Did I understand you correctly when you said that the question of GMOs was irrelevant because the protein doesn't contain the product in GMOs and it's your source --

DR. GUNNER: No. I said it's irrelevant because the amount of residue is negligible, and we get such a high rate of decomposition, the cell [phonetic] is -- virtual total disappearance because of microbial activity.

MS. OSTIGUY: But the source of the soy could be soy that --

DR. GUNNER: Oh, yes, it could be, yes.

MS. OSTIGUY: -- has been genetically modified.

DR. GUNNER: Yes.

MS. OSTIGUY: Okay. That's what I wanted to know.

CHAIRMAN KING: Okay, I have Kim, and then Becky.

MS. DIETZ: Hello, Haim.

DR. GUNNER: Kim.

MS. DIETZ: I have to just go on record that this gentleman has probably the long-lasting record of the materials review process, he started with this in 2001, so I just need to officially say that. Whether it's a positive thing or a negative thing, I think you've certainly (inaudible) --

DR. GUNNER: It's a tribute to my endurance and commitment to this product.

(Laughter.)

MS. DIETZ: Yeah. I think that, you know, it is a very difficult product, and I'm going to have a long lengthy discussion when we actually review this material, so, one, are you going to be staying through the meeting, that's my question for you, when we actually review the material?

DR. GUNNER: To my great regret, I have a plane to catch --

MS. DIETZ: Okay.

DR. GUNNER: -- but I -- I would like -- perhaps during the break we could meet. I have to leave at 12:10.

MS. DIETZ: Okay. That's really all my comment. But he has been in this process for 5 years, between OMRI and the petition process and having confusion, so I hope we

can at least get something done --

DR. GUNNER: Did you all get copies of the material I submitted?

MS. DIETZ: Yes. There are public comments in the book, I believe.

UNIDENTIFIED MALE VOICE: Yeah, and a flow chart.

CHAIRMAN KING: Becky, then Rose.

MS. GOLDBURG: I want to thank you for supplying us with so much information. I wanted to follow up on the question that Nancy asked about the residues, and you argue that they're trivial. Are you speaking of the nucleic acid residues or of the --

DR. GUNNER: Well, there's total decomposition

MS. GOLDBURG: Total --

DR. GUNNER: Yeah. We've done this -- you know, my basic training is in microbiology, and we find that you have virtually -- not virtually, you have total decomposition and you get microbial cessation of growth until you add another dose of material, then you get a typical dose response.

So that -- because it is so available, you have, you know, short-chain amino acids, peptides there, there's virtually no residue in the soil, that we've been able to detect.

MS. GOLDBURG: So -- I'm still not sure. Are you arguing there's no residue of the GM protein itself or the --

DR. GUNNER: There's just no residue on the material, it is --

MS. GOLDBURG: On the material itself.

DR. GUNNER: Yeah.

MS. GOLDBURG: Okay.

DR. GUNNER: It is either -- because the carbon-to-nitrogen ratio is so narrow, it's so immediately available, and, as I said, the turnover in native organic matter, just a -- really an extraordinary array of beneficial effects, and to include this material I think is -- from organic registration, and we've had a lot of people who are very interested in using it in organic growth, I feel is doing an injustice to potential growers. It's simply extraordinary, very high -- the highest nitrogen level of -- unless you're going to bridge [phonetic] products, with urea and the like, of an organic material eminently available, and certainly comparable, in its manufacture, to kelps or humates.

CHAIRMAN KING: Okay, Rose, and then George.

MS. KOENIG: A couple questions. What was the nitrogen level of the protein, what are you saying the

percentage was?

DR. GUNNER: It goes anywhere -- the ultimate product has anywhere from 13.5 to 15.5 percent.

MS. KOENIG: Okay. If there is feather meal, which is a protein, which is pretty readily available, that's about 12 percent nitrogen --

DR. GUNNER: Right.

MS. KOENIG: -- other than the ones you listed which would be comparable. Additionally, did you see the committee's recommendation? I mean, there is -- on the website the committee has proposed a recommendation --

DR. GUNNER: Yes. But the recommendations were based on a misapprehension, they treated it as a food ingredient.

MS. KOENIG: No, what I was going to say was that the process that went through is -- you know, it did go and -- was technically reviewed as a crop and a soil amendment. What the -- and you can access the web to see that report. And if you have web access and you haven't viewed that --

DR. GUNNER: Of course I haven't, but the reports we --

MS. KOENIG: -- it might make sense --

DR. GUNNER: -- got demonstrated that the ultimate response was to turn it down, they simply were not

-- was not adequate presentation by the TAP recommendations. Is there anything beyond that?

MS. KOENIG: I think that the TAP kind of went through some of those --

DR. GUNNER: I saw that it did [phonetic] --

MS. KOENIG: -- the issues that you had, and maybe -- through -- because it was a long process, that in 2001 it may have been, I wasn't aware of that, but I can assure you that the TAP that we looked at did look at it based on the OFPA criteria and as a crop soil amendment, so just to clarify that.

DR. GUNNER: Certainly the latest staff recommendations which were turned down by NOSB --

UNIDENTIFIED FEMALE VOICE: It was deferred.

DR. GUNNER: -- seemed to be inadequate.

UNIDENTIFIED FEMALE VOICE: The recommendation was deferred, and he has read that, and his response is in the public comments, I think he's (inaudible) asking.

MS. KOENIG: Okay. And then I guess, finally, back to Becky's question on the GMO issue, because it was something that was discussed by the crops committee, do you have any sign [phonetic] -- the question is not whether the protein -- the soy protein gets degraded, it's the fact that I guess the source of soy -- there's so much GMO soy

now, the -- it's really the BT toxin, what the effects would be not on the microbial population within the soil but other, you know, insect populations that might exist in the soil that would be affected by that toxin, and do you know of any -- because we did not have that information provided in the TAP, and I think that's what --

DR. GUNNER: I have not seen any data on use -- since this is a novel application of soy protein, as a fertilizer, virtually no data exists. But again, the rapid uptake and decomposition suggests that the danger to any insect population is minimal. We're talking about the disappearance of this material applied to soil and fertilizer amounts within -- you get activity within the first 24 hours. So the notion that this would be a danger to any incidental population is -- is very remote, in our -- and by the way, as an ecologist, I'm not unconcerned with this.

And also, as one of the (indiscernible) environmentalists here, of the -- one of the first departments of environmental science, I can claim some credibility in my concern for the environment.

CHAIRMAN KING: I have George, then Jim.

MR. SIEMON: I just needed to understand the commercial use here. You said it's 13 to 15 and a half

percent nitrogen, and what is the recommended use per acre, like pounds --

DR. GUNNER: We use it -- you have to appreciate that this is not inexpensive, it about .5 pounds per thousand square feet, we speak in terms of applications of turf and the like, on golf courses, so it's not designed for broad agronomic use, it's --

MR. SIEMON: So you said 25 pounds per thousand --

DR. GUNNER: .5 pounds.

MR. SIEMON: Point --

DR. GUNNER: .5. It's a very minimal amount.

MR. SIEMON: And what's the cost, does any -- what would a farmer --

DR. GUNNER: Oh --

MR. SIEMON: Just so I understand.

DR. GUNNER: It costs about -- you have to say -- it would be at the level of about --

(Pause.)

MR. SIEMON: That's okay, if you can't answer it.

DR. GUNNER: It would be -- it depends on volumes, of course, but it's roughly about a buck and a half a pound, not inexpensive.

CHAIRMAN KING: Okay. Jim.

MR. RIDDLE: Yeah. Well, I agree with your comment that the TAP review addressed who would use this soy protein isolate and I found it wholly inadequate and I think that was part of the basis of the crops committee recommending deferral, but you provided much more detailed information, and I thank you for that, and one of the questions I had, that the TAP didn't address, it discussed various manufacturing processes but said that the petitioner had not supplied the information. Well, now I see that you have, and it's clear in your flow chart that this is a hexane-extracted --

DR. GUNNER: No hexane residue.

MR. RIDDLE: Yeah. We're not talking residues, we're talking processing methods and inputs. But it's hexane-extracted, made from non-segregated soybeans; correct?

DR. GUNNER: Right.

MR. RIDDLE: Okay. And then in -- your information you provided and the TAP provided looked at the, you know, nitrogen on an input substitution type of basis rather than looking at the whole-systems approach, which --

DR. GUNNER: Right.

MR. RIDDLE: -- under the regulation, soil-

building crop rotations are mandatory. So your nitrogen needs to be coming from the natural nitrogen cycle to begin with, and that aspect is not addressed in either your information or in the TAP.

The question I have is, can your company or another company produce this material from segregated non-GMO soybeans? -- because we're not talking about or debating the effects of the residues, it's a fact that the regulation prohibits the use of excluded methods, so can you produce this substance from --

DR. GUNNER: Yes. I mean, the question is not the nature of the soy, the question is the process itself, and whether or not it's genetically modified does not determine ultimately the protein concentration in which we are interested.

MR. RIDDLE: Yeah.

DR. GUNNER: Now, the --

MR. RIDDLE: So that's a possibility.

DR. GUNNER: Yes. But non-GMO, of course --

MR. RIDDLE: Because --

DR. GUNNER: -- would add to the expense enormously and (inaudible) --

MR. RIDDLE: Yeah, but that's not our worry.

And then the other is just whether -- you know,

the committee's recommended to defer, and would you rather that we take action one way or another?

DR. GUNNER: Yes, we would, because I'm assuming there is an appeals process and after all of these years, the committee has been as steeped in this problem as we are, so that I would -- yes, we would prefer a decision, hopefully on the basis of adequate information available to you.

MR. RIDDLE: Thank you.

CHAIRMAN KING: Okay. Other questions? Kim?

DIETZ: Just -- I was going to save this comment, but I'm going to -- while you're here I'm just going to state this. In 2001 Mr. Gunner petitioned to OMRI for the material because it truly is a brand-name material, so I'm going to go on the record and say that it's a brand-name material.

The reason that it was in the system so long was because it's a brand-name material, and now it's before the Board as a material to be placed on the National List. So we have a lot of confusion on this board because we shouldn't be reviewing the soy protein isolate, in my opinion, we should be reviewing the two materials, the -- I think it's the hydroxide, the sodium hydroxide, the two materials, and I have my notes, when we actually review

this material I'll go through it.

So I'm not sure what we're going to do with this, in my opinion, as a board. I would like to sit down and talk to the crops chair and the NOP because I'm confused over it, and I've been just as involved in it as you have for the last 4 years, intimately.

So I'd like to get it settled, and yes, I would like to come to some resolution for this meeting [phonetic] Mr. Gunner and figure out what exactly it is and where's the problem. But again, I believe it's a brand name and it should be handled differently.

DR. GUNNER: Well, thanks to the Board and its patience.

UNIDENTIFIED MALE VOICE: And your patience.

CHAIRMAN KING: And yours as well. Thank you.

DR. GUNNER: Thank you.

CHAIRMAN KING: Let's see who we have next. Maury Johnson, and Ray Boughton is on deck.

MR. JOHNSON: Good morning. My name is Maury Johnson. I'm with NC Plus Organic Seed, in Lincoln, Nebraska. I'm also a member of the American Seed Trade Association committee on organic seed, and I just wanted to share with you this morning a little bit of our view of organic seed.

I think one of the things that has been a little bit frustrating to us and perhaps to some other people is that the concept of organic seed and why it is a good concept has in many cases been lost to the organic grower. In many cases he sees this as just another rule or just another burden for him to carry, and what we're trying to do at NC Plus and what I've encouraged the American Seed Trade Association to do is to focus, instead of on the negative side, what are the positive aspects of organic seed and how can organic seed contribute to the organic effort.

And in the little brochure that I passed out to you, I would like to talk a little bit about some of the benefits as we see them and we think should be emphasized, as well as some of the specific issues relating to not just organic seed but seed in general.

At NC Plus and, I believe, other seed companies attempting to do organic seed we're trying to provide seed products that meet the unique demands agronomically of organic farmers, as well as the markets that they're trying to serve.

One of our main crops, of course, is corn, and raising corn organically, in the organic environment, is quite different than on conventional. The products, the

hybrids, need to be different. But the organic farmer's also looking to market his products to a different set of consumers, and in the case of soybeans, for instance, there is much greater interest among organic farmers for food-type soybeans as opposed in the conventional, where the emphasis is on a commodity.

So organic seed producers and organic seed companies and public entities can concentrate on the kinds of products that the organic consumers are asking for.

A second advantage of organic seed that is sometimes lost is that purchase of organic seed by organic farmers helps to support other organic farmers rather than a multi-national corporation that doesn't really care one way or the other about the organic farmer.

At NC Plus, we have organic seed production on about 3500 acres involving corn, soybeans, red clover, alfalfa, two or three grass species, and organic -- and sorghum, Sudan grass, we have production from Michigan to Texas to Wyoming to Minnesota, and we are working with farmers in all of those states, who now have another opportunity, if they want to pursue it, for a crop to raise.

The third advantage, I think, is that organic seed has the potential to be less in GMO content than

conventional seed, non-GMO content will be a very high priority, and I'm not here to debate, you know, whether -- the GMO levels and all that, but if the organic seed grower tests his seed stock, if he's very thorough and dedicated to cleaning the equipment, if you have a facility where the seed is being conditioned and bagged, that is non-GMO, and if you have the final testing of the organic seed product before it goes out to a customer, those are all things which we have found in our experience have greatly limited GMO content.

But those are all things that the conventional seed producer is not likely to pay as much attention to as an organic seed producer.

CHAIRMAN KING: One minute.

MR. JOHNSON: Just briefly on some other issues: Will organic seed be as good as conventional seed? It certainly can be, but seed quality is often determined by the environment and by experience, and those are things that organic seed producers are going to have to gain very quickly.

How about cost, and I know cost is not supposed to be part of the equation, but cost is merely a --

CHAIRMAN KING: Time.

MR. JOHNSON: Okay.

CHAIRMAN KING: Questions, concerns? George.

MR. SIEMON: Are you satisfied with the present rule on organic seed?

MR. JOHNSON: We would like to see greater consistency of the implementation of the Rule. As a for instance, we estimate on field corn that probably no more than 40 percent of the organic corn acres in the United States are being planted to -- with organic seed. The problem is not the shortage, the problem is implementation.

MR. SIEMON: Do you think there's adequate organic seed corn available and that it's not -- you said it's not shortage. You feel it's available?

MR. JOHNSON: It's kind of hard to say for sure how many acres are out there, but using USDA statistics, NC Plus by itself, just knowing what we can supply, we could -- by ourselves we could probably supply 80 percent of the market, and there's five or six other organic seed providers for corn. So in the case of corn, I think the supply is there. I think in the case of soybeans the supply is there.

In the case of alfalfa and some other crops, it's going to take a little time to build those supplies, but a lot of seed producers are kind of sitting on the sidelines,

wondering what kind of a market is there going to be. We have taken kind of an aggressive approach, but many other folks are kind of waiting to see.

The supply will come pretty quickly, because it's -- again, it's a relatively small market, but in the field crops that I'm familiar with, I'm convinced the supply can be filled pretty quickly.

MR. SIEMON: Of course, some of the problem is the availability, you've got to order months ahead of time and often you run out of corn right that moment, so it's that infrastructure development too, is a another other part of it.

MR. JOHNSON: Well -- and again, I'll just speak for our company, but we have maturities that can go from Texas to North Dakota, you can call us now and get -- maybe not every one of our hybrids in any particular seed size, but you can get any hybrid maturity we have available.

And one of the discouraging things to us is that last year, and even this year, we will be obsolescing a fair amount of seed, organic seed, because we couldn't get it sold, and that's kind of discouraging.

CHAIRMAN KING: Jim, and then Andrea and Dave.

MR. RIDDLE: Yeah. Maury, thanks for your comments. Besides the need for better consistency in how

it's being implemented and enforced, a question -- if you see any deficiencies or problems with the Rule itself as it applies to organic seed, that's one question; and then also, the Board has a recommendation, that we'll be discussing tomorrow morning, on the whole commercial availability issue, to help clarify and bring consistency to that. But that recommendation was written in the context of minor ingredients for processed foods, but it would also impact the organic seed, and so I will appreciate -- will you still be here tomorrow?

MR. JOHNSON: No. I have seed stock to deliver (chuckles).

MR. RIDDLE: Okay. Well, if you have any comments on that, it would be very helpful, but also just -- as the Rule is written, are there some things that you would like to see changed, that maybe the Board should, you know, form a task force or cost committee, do some work on?

MR. JOHNSON: Well, in the Rule there is reference to equivalent varieties, is a variety from company A equivalent to a variety of company B, and that's a pretty tricky question, because, you know, we're dealing with a living entity here, a seed, and the crop that it produces, and what is equivalent, so that the whole notion of equivalency is a little bit hard to get a grasp on.

We have always felt, at NC Plus, and I think other companies as well, that our goal is to make our seed good enough that you, as an organic grower, would buy it even if the Rule wasn't in place. We don't want the coercion there.

But by the same token, farmers and growers are creatures of habit, and if they're used to going to a particular seed provider and now all of a sudden you're asking them to change, there's some resistance, but all we're saying is: give organic seed a chance, recognizing that there are some long-term benefits out there, and so give it a chance, and I guess again concentrating on the long-term payoff and potential for use of organic seed.

I guess the other thing -- the other comment that I would make is -- and I have suggested this to our ASTA group as well, I think this has to go on a crop-by-crop basis. I mentioned corn. There's adequate supplies of field corn out there. Grain sorghum acres are very small and rain sorghum production requirements are such that you have to have fairly large fields to grow the crop. It is unlikely that in the near future there would be sufficient demand to produce organically grain sorghum seed. I mention ed alfalfa. Alfalfa takes some time to get going. So I think you have to kind of look at it on a crop-by-

crop basis.

But I guess what I would like to see is that the use of organic seed be kind of like using treated seed on certain crops. In other words, people who use treated seed can lose certification, but if there is supplies of organic seed of a given crop, then maybe we need to get to the point where they lose certification on that. I hate to be suggesting something that strong, but maybe that's what it's going to take.

CHAIRMAN KING: So if I'm hearing you correctly, and then I have several people that want to speak, you're saying if we could get more specific and look at it literally on a crop-by-crop basis, that may help define --

MR. JOHNSON: Right.

CHAIRMAN KING: -- commercial availability.

MR. JOHNSON: Because there's some crops where the number of acres are so small and the production requirements are so -- are such a nature, it's going to be difficult, from a business point of view, to justify producing that seed organically.

CHAIRMAN KING: Andrea, then Dave.

MS. CAROE: Well, as Jim mentioned, we will be discussing a recommendation on commercial availability for minor ingredients. One of the controllers [phonetic] that

we looked at and had included in that is a requirement that both the user of that ingredient and the certifier that is certifying use of a non-organic ingredient maintain a certain effort to look for the particular ingredient in organic, and by doing that, they need to use tools which are clearinghouses of availability.

To your knowledge, and you mentioned that you're involved in a C group, is there a list of availability of organic seed, is there a list of different vendors that are selling different types of seeds?

MR. JOHNSON: On, I believe it was, March 25th, our American Seed Trade committee group -- and we've met three or four times over the last year, and we have been working on a proposal for a database of organic seed suppliers, that first of all you'd have to be certified organic to be on the List, and it would be on kind of a crop-by-crop-type basis, and that was brought up and it was discussed in a meeting between our American Seed Trade committee group and some folks from the USDA, Kevin and Rick Matthews, for their -- it was just something that was discussed, it's something that our American Seed Trade group has to look more carefully at. We're meeting in Philadelphia at the end of June and I think we're going to try to finalize a recommendation as far as a national

database that would list organic seed suppliers.

MS. KOENIG: I have a question.

CHAIRMAN KING: Rose.

MS. KOENIG: Two things. There are databases out there, because I did a presentation on organic seed. I mean, it doesn't give you the quantities and varieties, but there's certainly sources, if you type in -- so there's -- there's some efforts out there by various organizations that at least list the manufacturers.

I wanted to go in a different direction, because we're -- the cost committee was looking at a material that was used for de-linting cotton, hydrochloric acid, and I just wanted to know, as I started looking -- you know, part of the issue was treatment versus a process, and I didn't -- I still haven't, I guess, got the answer, as far as how much chemical processing goes on, in terms of, you know, taking the raw seed and making it a marketable product for either -- precision planting, is there other crops, other than cotton, where the physical structure -- you know, the properties of the seed have to be removed for planting, and do you view that kind of removal as a process or a treatment, or association?

MR. JOHNSON: First of all I have to tell you that the crops that we work with, there is no treatment or

processing going on of those -- of those particular crops.

MS. KOENIG: But you still have to clean it, correctly [sic.] -- or --

MR. JOHNSON: Right. We clean it with mechanical means. Our group, though, has discussed other seed crops, primarily in the area of vegetables, and certain coating materials that are -- have been used there on the seed itself, and at NC Plus we are looking at some of these materials to use on the seed, because one of the things about untreated seed is that it -- in some ways it does kind of add to the cost to the farmer at some point because, you know, he may have stem loss [phonetic] or -- or whatever. As a seed producer, the fact that we never use seed treatment or coatings of any kind puts us at greater risk as well.

But this issue that you talked about is primarily with the smaller seeds, especially the vegetable seeds, where they're made -- need to be some sort of coating just to be able to plant those, and I'll have to tell you, I'm not very knowledgeable on those kinds of crops.

I guess one other comment, if I could make it here: at NC Plus, we have done a lot of testing for GMOs in the seed stock and in the seed that we sell, and we think that that has been an important service to the

customers that we sell to and the customers -- and the people they're trying to sell to, and we've invested a lot of money in that over the years, and I guess one of the things that we would like to see is maybe some identification by the seed seller of what he has done, in terms of GMO content, not that there maybe necessarily needs to be a standard, but just identify if the seed has been tested or not tested or whatever.

CHAIRMAN KING: Thank you very much.

MR. JOHNSON: Thank you.

CHAIRMAN KING: At this time I think we'll take a quick break, 15-minute break, and have -- who do we have next here. Ray. Ray, you're up when we come back, and what's the official time, 9:58, so we'll reconvene at about 10:12, 10:15.

(Off the record at 9:58 a.m. and reconvened at 10:20 a.m.)

(Tape change.)

CHAIRMAN KING: All right, let's officially get started here. The next member for public comment is Ray Boughton.

MR. BOUGHTON: Thank you, board. I'm Ray Boughton, I'm from Colfax, Wisconsin, up about 60 miles straight east of St. Paul, Minneapolis, and up northwest of Eau Claire.

I'm here today because I'm concerned, like Maury is, on production of organic hybrids. Lake Organics is located in Colfax, Wisconsin, which is 25 miles northwest of Eau Claire or 60 miles east of St. Paul, Minnesota. Lakeland Farm was established in 1929 by my grandfather, and it's a third-generation farming operation. We are farmers.

We currently farm 900 acres of organic certified corn, soybeans, food-grade soybeans, and hybrid seed corn. Our organic hybrid seed corn is marketed in five states by another family-owned business, Bruner [phonetic] Seed Farm in Durand, Wisconsin. I believe in Wisconsin there's only about three or four family-owned seed companies left; everything else has been bought up.

I am president of the Wisconsin Organic Crop Improvement Association Number 1 and a member of the International Standards Committee for OCIA International in Lincoln, Nebraska.

A problem has developed where untreated foundation seed cannot be purchased. Nearly all the seed purchased for seed production has been treated with Capitan [phonetic] or Apron, which is a prohibited material by the NOP. This material is used to protect the seed from seed diseases, including seed rot, which Maury just mentioned

just a few minutes ago.

The hybrid being produced from these foundation seeds are not only specific to the Wisconsin area but are the product of decades of seed breeding. In the past Bruner's has bought the foundation seed variety, only licensed seed company that can purchase this seed, that we cross-breed to produce various hybrids, which are harvested and processed for resale the following year. We've got a full one year in between. This process is one full generation from the actual sale to the organic farmer who plants a seed which is untreated.

Monsanto is buying up many of the foundation seed stock companies. Last year the seed company where we purchased the majority of our seed stock from, Holden Seed (indiscernible) was purchased by Monsanto, which will most likely limit the availability of untreated seed. It was -- just as a little after-thing: it was purchased at an enormous price, I don't know how many millions more than the actual company was worth, if that kind of relates what they're looking at.

Our concern is that as long as organic seed producers can only use untreated seed and foundation seed continues to be treated, organic seed developers and seed producers will be very limited in their hybrid selections.

Large corporate seed stock companies, like Pioneer International, Northrup King, and Garst will continue to sell untreated seed to the organic farmers, that had been grown from treated seed stock, using chemicals, commercial fertilizer, and all conventional farming methods, while the organic producer, on the other hand, using all organic farming practices, is prohibited from producing the seed stock from the treated foundation stock.

Because of this disadvantage, organic seed producers will probably meet their demise in the future.

Thank you very much. I'll take questions.

CHAIRMAN KING: Questions. George.

MR. SIEMON: I'm a little confused. You say that the problems that developed were untreated -- I guess I -- I just answered my own question; no wonder I was confused. (No response.)

MR. BOUGHTON: (Chuckles.) As I put, two -- there's two other letters, and one shows our attempt last year to buy untreated seed foundation stock, you'll see Holden Seed, at the bottom you'll see a little clip there called a -- Monsanto Company.

MR. SIEMON: So basically your certifier is telling you -- you're saying there's no commercially-

available alternative and they're still telling you no because it's treated.

MR. BOUGHTON: It's treated, yes. And where we have to compete, as he mentioned before, you can call up your local Pioneer dealer, he will have untreated seed if you order it far enough ahead for him, but that same seed that you're allowing Pioneer's person to sell, we can't sell, and they have treated theirs with chemicals and everything else, but us, using all organic -- and the only thing different that we use is the foundation stock, which is one whole generation away from the actual end user, probably two, actually, two generations.

MR. SIEMON: And this is -- your certifiers determine that.

MR. BOUGHTON: Yes. It's NOP's standard.

CHAIRMAN KING: Just a point of clarity.

MR. BOUGHTON: Yes.

CHAIRMAN KING: It sounds like, in the foundation seed production, you're talking about two different --

MR. BOUGHTON: Right.

CHAIRMAN KING: -- production systems, one clearly conventional, but in your example, it's your intent to use this foundation seed on land that's managed organically?

MR. BOUGHTON: All organic, completely organic.

MR. SIEMON: And then the land will qualify.

CHAIRMAN KING: Yeah.

MR. BOUGHTON: It's all qualified, certified.

CHAIRMAN KING: So it would be a prohibited -- use of a prohibited (inaudible) --

MR. BOUGHTON: Jim, you could probably clarify that a little bit, what happened when the standards were written.

MR. RIDDLE: Well -- right.

(Laughter.)

UNIDENTIFIED MALE VOICE: Thanks, Jim.

(Laughter.)

MR. RIDDLE: You know, historically, the requirement was for organic farmers to use untreated seed, and if you couldn't get untreated, then you could use treated; and then it went up a notch, you know, to the organic; and then total prohibition on the treatment; and then, simultaneous, having the organic seed requirement has implications for the production of organic seed, so you can't use a treated foundation stock to produce an organic hybrid that would then be planted by an organic farmer, and, you know, I just want to be clear on what you're requesting, and that is, as I understand it, and you

correct me if I'm wrong --

MR. BOUGHTON: Yes.

MR. RIDDLE: -- that there would be a change in the Rule or a clarification of the Rule as it applies to organic seed production, that there be an allowance for treated seeds or certain treatments to be used for production of organic seed, not the production of an organic crop.

MR. BOUGHTON: Right. Strictly for foundation seed stock only.

MR. RIDDLE: Right now, the way, instead of a rule change, that that could be accomplished would be: to petition the use of the treatments for that specific use, for the preservation of foundation seed, or however the use would be annotated.

MR. BOUGHTON: Yes.

MR. RIDDLE: So that the door is open for that approach without a rule change right now.

MR. BOUGHTON: Right. That's what we are requesting, to go -- go that route.

CHAIRMAN KING: Okay, Rose.

MS. KOENIG: I guess the -- so the foundation stock is controlled by you? The foundation seed.

MR. BOUGHTON: Very few companies. One of them

here is, as you have in front of you, Holden Seed out of Iowa. What is happening now is Monsanto is buying up the seed stock companies. You can see where that's going to be heading down the road.

MS. KOENIG: But -- so -- I mean, have you requested just non-treated --

MR. BOUGHTON: Yes. Yes, we have.

MS. KOENIG: -- and they --

MR. BOUGHTON: We have requested seed stock. There are certain numbers, when you're plant breeding --

MS. KOENIG: Right, I know.

MR. BOUGHTON: -- when you start breeding different numbers, we have to have like a certain male or a certain --

MS. KOENIG: Right, I know.

MR. BOUGHTON: -- female to create a hybrid, and that's where -- we're running into our major, major problem on that.

MS. KOENIG: But there's no -- I mean, the treatment for your parental lines -- just like an organic grower has to purchase a hybrid, I mean we have to go through, say, the same commercial -- you know, like Opito [phonetic] Seed or some of the -- the larger companies. Again, like George said, it may take six months in advance

to request non-treatment, but that's something that, when asked, they have been able to accommodate, but it does take a lot of planning. There's -- why won't they do that with the parental stock?

MR. BOUGHTON: We raise 168 acres of seed corn. When I go to Holden's, which is a multi-million-dollar company, and walk in the door and ask for five bags of seed, you can see where I'm coming from.

MS. KOENIG: But it's a post -- the thing is, is -- same thing, I mean, I'm buying a pound of onion seed, so it's even less than 150 pounds, from Opito. The thing is, is that is a post -- I mean they have the untreated seed, and then at a certain point it's treated --

MR. BOUGHTON: Much of it --

MS. KOENIG: -- because it doesn't come off of. So -- so I guess --

MR. BOUGHTON: No, all of it -- no.

MS. KOENIG: I guess what I would say is that we need to make sure there's due diligence that that in fact is the case, because I know as a producer requesting a pound of seed, it is obtainable. It does take extra effort. And what the seed companies have told me is that "that's no problem, we just need to know because we don't" -- you know, again, it comes -- it doesn't come off the

plant treated, there's a process where they do take those lots and do it at a certain time, but you can perhaps request those before that time.

MR. BOUGHTON: We do not have the ability, as a small company, to go a year in advance and ask for five bags of seed. It would be -- you'd -- when you're talking about Monsanto, you're not talking like -- I don't know where you buy -- where you purchase your seed, what type of seed you're planting, but corn seed is a completely different -- we're -- we're talking corn, that's all I'm talking is corn, and that's a completely different product. As you mentioned, it's specific to this one -- one product.

CHAIRMAN KING: First of all, thank you for attaching these letters, and I think Rose is on the right track here. We understand, I think, your challenge, as you've communicated it. As with everything we do these days, documentation is key --

MR. BOUGHTON: Right.

CHAIRMAN KING: -- and being able to forward that to perhaps further define the issues so we can somehow resolve it.

Are there other questions or comments?

(No response.)

CHAIRMAN KING: Just a quick housekeeping note. Please --

MR. BOUGHTON: Thank you.

CHAIRMAN KING: -- try to refrain from talking while we're doing public input, we'd like to concentrate on the conversation at hand.

I simply have a company name for the next, it's Valent BioSciences, so if there's a representative from Valent BioSciences, please give your name for the record, for the court reporter, please.

MR. FILAJDIC: Hello, my name is Nenad Filajdic. I'm a product development manager of Valent BioSciences. First of all I'd like to thank you for an opportunity to be here and say a few words about 6-benzyladenine, which is used in apple thinning.

What was available before were commercial products such as Promalin and Accel, and they also, in addition to 6-benzyladenine, contain giberellic acid. This new product that we have, Accel, is only based on 6BA, so basically what it's used for is thinning and sizing, also fruit quality, mostly used in apples.

What is important about this product is that it's basically naturally-occurring in plants, it's cytokinin, and we synthesize it basically just because it's a big

savings. It would be fairly impossible to produce it straight from the plants because of the quantities, but we do synthesize it, and it's naturally-occurring cytokinin. It's non-toxic, it doesn't harm any beneficials, it's very low toxicity and very low persistence in the environment.

In addition to that, there's no other chemical thinners or any -- I should say effective thinners available in organic production, even though some are tried, with limited success. What non-apple growers have as an alternative is NAA, basically, and 7-carberyl, which are not very environmentally-friendly compounds, so this is basically the only -- the only other alternative that organic growers could use, in case that this is approved.

Right now we don't have a formulation that is organic because our commercial products have other ingredients that are -- two ingredients that are actually category 3, but if this -- if 6BA is included in the List, we would be ready to produce organic formulation, because the research has been performed on it.

This would enable organic growers to save -- to save on its production, because the (inaudible) thinning would be pretty much avoided, and as most of you know, that is the single most -- single biggest cost for apple producer, is thinning.

So I need to apologize because I don't know if my document got to you in time, I e-mailed it, but if not, we also submitted this document before, it was just not updated for 6BA alone product, it was mostly based on 6BA plus giberellic, so I updated that and I sent it. It has a lot of information in addition to what I just said, but if you have any other questions, I would be glad to answer those. Thank you very much, again, for your time.

CHAIRMAN KING: People have questions? Rose, did I see your hand go up?

MS. KOENIG: I did. If anybody has one, I just want to check before I answer the question -- ask the question, but I guess one of the questions I had, and I'm not sure if we have it, was public comment from apple growers as far as the need for the product.

I mean, one of the things that the committee discussed was the -- you know, the optional -- the labor-intensive -- I mean not -- again, I'm a producer, and, you know, weeding and hoeing is -- is labor-intensive, but that's what we do.

So can you just speak to -- to those -- to the hand-thinning option.

MR. FILAJDIC: Sure. There are some numbers also in the report that came out and it basically states on

average the cost for hand-thinning to be $1680 for a 20-acre farm, and that's four or five times higher than what non-organic producers can spend, because basically these other compounds, like NAA and 7, are fairly cheap.

So that is basically, in a nutshell, what -- where it would come out economically. As I mentioned, I'm fairly certain that's the biggest single cost in apple production.

If we talk about sustainability, I see this product as being sustainable because one of the -- one of the important objectives in production is to stay in business, and this will allow a lot more flexibility. So that's how we see this, we see this as a help to organic growers.

There is a lot of interest for this product in Europe also, we're working -- that's basically why we started working on this formulation that is going to be organic.

CHAIRMAN KING: Jim.

MR. RIDDLE: Yeah. You mentioned Europe. Is this substance allowed in Europe at the present time?

MR. FILAJDIC: We submitted for registration in key countries a couple of months ago, so what we're looking at is sales in a few major countries in 2005, most of the

countries 2006. This is not organic. So --

MR. RIDDLE: Oh, that's just for conventional use.

MR. FILAJDIC: Yes.

MR. RIDDLE: Okay. So it's not approved for organic use --

MR. FILAJDIC: Not yet --

MR. RIDDLE: -- in Europe yet.

MR. FILAJDIC: -- no. No.

CHAIRMAN KING: Dave.

MR. CARTER: Yeah. Just a question on the handling of it during application, because the TAP noted that, you know, it's not harmful as long as you have the proper protection, which you can say about just about anything, so, you know, as far as in your intent or something like that, but --

MR. FILAJDIC: Nothing unusual. I'm not sure of the numbers, but there's (indiscernible) four hours, which I believe is pretty much the minimum. I'm not aware of any -- any additional requirements that we have other than -- other --

MR. CARTER: What are the main problems with exposure to it, I mean what would you run into?

MR. FILAJDIC: I'm not really aware of anything.

Our toxicity is fairly low. There is a little bit of an eye irritation, but other than that, toxicity -- I have numbers in a document that I submitted. It's very low. And persistency in the environment is also very short.

MR. SIEMON: Did we get the document he's referring to?

CHAIRMAN KING: I don't know, I can't seem to find it, unless someone else --

UNIDENTIFIED MALE VOICE: No, I didn't either (inaudible) --

CHAIRMAN KING: -- so I don't know if that's something that Katherine had received --

UNIDENTIFIED MALE VOICE: Can we make copies?

CHAIRMAN KING: Do you have copies with you?

UNIDENTIFIED FEMALE VOICE: I have some copies. I downloaded one, it was on the website, so I'll get copies.

CHAIRMAN KING: All right. Rose had another quick comment.

MS. KOENIG: I have just one more question. Are you familiar -- I know the Organic Materials Review Institute has a brand name of a natural source of cytokinin on there. Are you familiar with that product, and do you --

MR. FILAJDIC: No, I'm not. As far as I know, this is -- as far as I know, Valent BioSciences is the only company actually doing extensive research on this. There are other companies that use generic products. There is actually a 6BA that is already registered in the United States for non-organic production by Fine Agrichemicals [phonetic] but only at a -- at a low rate, so --

MS. KOENIG: This would be a naturally-derived form. I think it's from --

MR. FILAJDIC: No, I'm not.

MS. KOENIG: -- fish or --

MR. FILAJDIC: Oh. No, I'm not.

CHAIRMAN KING: Additional questions?

(No response.)

CHAIRMAN KING: Thank you.

MR. FILAJDIC: Thank you very much.

CHAIRMAN KING: Next is Zea Sonnabend, CCOF; on deck, David Engel.

MS. SONNABEND: Hello. I'm Zea Sonnabend, from California Certified Organic Farmers. Most of you have seen me up here many times. Of course I would like to comment on pretty much every subject brought up today, but I'm going to confine myself to a few subjects that have been brought up yet, that I think are important.

First of all, the petition that you'll be dealing with concerning urea in pheromone traps for olive fruit fly. I understand that the urea was petitioned as an active ingredient, which in use in the field, at least in California for olives, it is not, it is the -- and the TAP review is really inadequate to explain the situation in which it is used, and so I feel like I need to fill this in, because we have a lot of olive growers that would probably like to use the material as an inert in a pheromone trap.

These traps are for a fly, not a moth, and the traps need to have urea in liquid form to be able to work effectively, and therefore it's like a little bottle that is hung in the trees, and the sticky part with the pheromone is at the top of the bottle and then a solution of ammonium carbonate and perhaps urea is used in the bottom of the bottle to provide the smell like rotting meat that attracts the flies to the traps.

So far my personal interpretation of the exemption that you gave to list three inerts for pheromones would apply to urea for this use because it is on List 3, it's registered for -- as an active pesticide not for this use, but it is also on EPA List 3 as an inert, and it is serving the function of the -- the equivalent function of

the other List 3 inerts in the other types of twist-tie traps.

Anyway, I understand that you don't want to allow it as an active, perhaps, but I do urge you to word your -- whatever vote you take on it so it does not prevent its use, perhaps, as -- under the pheromone exemption for List 3 inerts in traps.

So far as actually haven't let our growers use it because it was under petition and I didn't understand exactly the finer points of the petition, but the ammonium carbonate by itself is not working that well, we have a really bad olive fruit fly problem that's evolved in the last couple of years. And I will be here when you discuss it, if you need more background information.

Secondly, as sort of the historical voice of the past materials reviews for the NOSB, I was quite concerned that the letter that the department issued concerning phosphoric acid in aquatic plant products.

The original NOSB, when they put things on the National List, had no intention for other synthetic things that were not mentioned in the annotation to be allowed in those products. Not -- and I don't want to say that I'm opposed to the phosphoric acid, possibly, in aquatic plant products, I think it might be a very appropriate thing,

because they do need something to preserve and stabilize it, but it should be reviewed by a TAP review, because there are other alternatives calcium proprionate and -- or sodium proprionate and sorbates and things like that, that could also serve the same functions, and not just blanketly allowed without a TAP review for that purpose.

It, you know, leaves the door open potentially to elemental sulfur with emulsifiers, fish products with urea in them, all kinds of additives that could be used with things on the National List.

I urge you to put a statement at the beginning of 205.601 which says that things on the National List may only be used in the -- with the restrictions in the section to say that they should only be used with the annotations as presented, not with additional products in them.

Okay, I also wanted to comment on the Sunset document for the National List. I read this very quickly. I think it is really important to set up a procedure for -- you know, to review the -- re-review the materials.

I do really hope that you don't base it entirely just on technical information, because the technical information from the original reviews is not equivalent to the technical information you get today and you'll be creating a lot of work.

I do think it's a good -- the part about going for public comment to suggest priorities for review is a good idea. Review the controversial ones and -- but make a streamlined procedure for the ones that aren't going to have a lot of controversy or else you're going to really be in for an amount of work you're not going to be able to complete.

And last of all, I was on the Compost Tea Task Force, we made a very thoughtful document and recommendation, and I will be here to help with background information on that and to provide anything you might need from that task force. Thank you.

CHAIRMAN KING: Questions for Zea. Kim.

MS. DIETZ: Zea, on the phosphoric acid, I'm a -- as a historian, I'm going to ask your opinion, and also Steve Harper here is a past NOSB member so I might ask Steve --

MS. SONNABEND: And Merrill. Actually, Merrill was on the NOSB at that time.

MS. DIETZ: Since we've been reviewing materials at this board, we asked to see the whole manufacturing process, and it's been part of our discussions that if we approve a material, then we're approving everything that it takes to make that material function on the National List,

so that would be anything that's used in that manufacturing process of that material, unless we specifically annotate against or restrict.

So what you said is contradictory to what I believe we've (inaudible) --

MS. SONNABEND: No, they did -- well, they did look at the things that were used in aquatic plant products --

MS. DIETZ: Okay --

MS. SONNABEND: -- and decided to only allow --

MS. DIETZ: Okay. Right.

MS. SONNABEND: -- hydroxide stabilization, potassium hydroxide stabilization. Or extraction, excuse me.

MS. DIETZ: Okay.

MS. SONNABEND: However, not as much information was available at the time they did that review about other additives, about the need for preservatives in the products.

MS. DIETZ: Right. But from a board standpoint, we can't go back until the re-review of the material and look at an entire process, but our function of this board and the material on the National List is it's allowed unless it has a specific annotation that --

MS. SONNABEND: This does have a specific annotation and --

MS. DIETZ: Right. I'm talking in general, I'm not --

MS. SONNABEND: Right.

MS. DIETZ: -- specifically talking about the phosphoric acid issue --

MS. SONNABEND: Okay. But --

MS. DIETZ: -- but just as a blanket so that --

MS. SONNABEND: Yeah. It's just that that annotation was expanded upon by the NOP, and I don't believe that was the intention when it was voted into the --

MS. DIETZ: Okay, and I'm not commenting on that, other than as a historian and as how we have to look at a material on a National List --

MS. SONNABEND: Uh-huh.

MS. DIETZ: -- and there's many, many, many that are on there. I mean, natural flavors is a typical example that --

MS. SONNABEND: Uh-huh.

MS. DIETZ: -- and there's many, that if it's on there, then we have to assume that the process to make it is allowed unless it's restricted by the annotation.

MS. SONNABEND: Right.

MS. DIETZ: Okay. Okay.

CHAIRMAN KING: Jim, then Rose.

MR. RIDDLE: No, Rose was first.

CHAIRMAN KING: Okay, Rose, then Jim.

MS. KOENIG: Which gets me back, I guess, to sort of Kim's point and what you brought up in terms of the Sunset Provision. The Sunset Provision that was proposed by the committee allows for that -- the calling of more technical information on issues that have kind of surfaced, such as perhaps the fish in aquatic plants, and also allows, I guess, the NOSB to re-look at some of those earlier materials that were put on in the early years, that as I understand it -- and again, I wasn't on the board -- were in page formats and very abridged versions, not really a technical review at all but sort of just a compilation of information that people could gather.

Could you comment --

MS. SONNABEND: Okay --

MS. KOENIG: -- to those reviews, because --

MS. SONNABEND: Uh-huh.

MS. KOENIG: -- you know, there is a suggestion that those -- that technical information was adequate, and that's what --

MS. SONNABEND: Right.

MS. KOENIG: -- I'm trying to understand, is the adequacy of that technical --

MS. SONNABEND: They varied a lot. There were 160 -- or -54 products reviewed in three NOSB meetings, or four. I mean, we had days where 40 were done in a day. But the background information varied from some that I have huge volumes in my files on just one material, to the one-page format.

They did receive technical review in the sense that each material got sent to three experts in the field, who did offer their opinions, just like today, but the source documentation that those three experts had to deal with was skimpier than it is today, and what they -- some of those three experts did actually write papers about it, and others just checked the box, "okay, synthetic," or "not okay, synthetic." So it varies.

That source document does exist still. You can go back over it. But, you know, my concern with your -- the version that you showed me, that -- the way it's written, is that -- and I apologize for saying this, but some of the clarity of it is mired in proposing future guidance documents (chuckles), and it doesn't make clear that there could be things that won't need supplemental

review to just be able to go through. So it would be good if it could just elaborate a little bit more on that, maybe.

CHAIRMAN KING: Okay. I have Jim, then Nancy, then Ann.

MR. RIDDLE: One comment, not a question. I appreciate your historical perspective on the aquatic plant extracts and that the only substances which can't be used are those which are allowed under the annotation, and I'd just like to read something from the preamble, that Rose had brought to my attention, Page 80612, where the NOP said that synthetic ingredients in any formulated products used as organic production inputs, including pesticides, fertilizers, animal drugs and feeds, must be included on the National List. As sanctioned by OFPA, synthetic substances can be used in organic production and handling as long as they appear on the National List.

So, you know, that really is the precedent that we're working under.

MS. SONNABEND: And that's why aquatic plant products is on there in the first place, because most people think: oh, that's a natural, but the extraction process renders it to be a synthetic, and that was decided by the original NOSB.

MR. RIDDLE: And my question is about the urea in the traps, and I -- I heard this interpretation, that it could fall under the EPA List 3 allowance that's already become part of the amended rule, and the question I have is about the removal of those traps as standard practice.

Are these something which actually can be recovered and removed or are we looking at --

MS. SONNABEND: Yes.

MR. RIDDLE: -- soil application here?

MS. SONNABEND: No, no. It's a little bottle.

MR. RIDDLE: Yeah.

MS. SONNABEND: It does not leave the bottle. The bottles are pulled down at the end of the year. The material gradually evaporates over time.

MR. RIDDLE: But the bottles themselves and any residues or remaining materials are removed.

MS. SONNABEND: (Nods head.)

MR. RIDDLE: Okay.

MS. SONNABEND: I do want to make it clear that, you know, so far, that is my interpretation, but I have not advised these UF growers that they could use this yet --

MR. RIDDLE: Yeah.

MS. SONNABEND: -- until the petition got clarified.

MR. RIDDLE: Right.

CHAIRMAN KING: Okay, Nancy, and then Rose has an additional comment.

MS. OSTIGUY: Zea, my question is on urea still. Explain to me your reasoning for looking at urea as a pheromone rather than an attractant. It is not a standard pheromone for an insect.

MS. SONNABEND: Okay. A pheromone twist-tie, for instance, or a pheromone wing trap contains the pheromone, and then it contains additional substances that help the pheromone disperse, that keep it from breaking down too fast, that maybe -- you know, additional attractant-type things. We don't know what all the List 3s are. We looked at a couple of them, but we don't know what they all are, in all the different pheromone traps, and the problem with reviewing them all is what led to there being an overall exemption. This -- it all comes in one package that you buy from the company.

In the olive fruit fly traps, mostly the growers put them together themselves. There is -- University of California has been providing pre-made traps to some -- in some counties, but mostly the grower has to get the pheromone, get the bottle, get the ammonium carbonate, and put it together themselves.

I see it as being an equivalent thing, although the grower made it themselves, but they do have to get the urea and the ammonium carbonate component from -- you know, it's a different thing, when they buy it, and they put it together themselves.

MS. OSTIGUY: Well, the logic --

MS. SONNABEND: So maybe you do -- I mean, it is your prerogative, but I'm just saying if you're going to reject the petition as it stands, word it carefully with whether you want to allow that, its use as an inert, or not, because otherwise it's still in limbo, the way it's actually used.

MS. OSTIGUY: But what I would -- what I'm trying to understand from what you're describing is the difference between inert and active when the material is an attraction. That is an active ingredient, in my understanding of the definition, of active versus inert.

MS. SONNABEND: I think the pheromone companies don't see it that way necessarily. You know, I -- it's your determination to make.

MS. KOENIG: I think the problems you get with this, what you're describing -- and again, I have to think a little bit more about it, but my gut is, is that if there's a commercial product, okay, that contains urea, it

would be under the inerts, it wouldn't be listed on that product, then based on what we voted on as far as the List 3s for those types of traps, it would be okay.

But what you're saying to me: with these homemade jobs it's a totally different story because it's not a commercial product, so in fact we can't -- you know, our hands are tied on this one, we can't approve it as an -- you know, an item, we can't approve it if it's not registered with the EPA. I mean, for the first step is -- if it is -- so I'm saying if you can find a commercially available product that has it as an inert --

MS. SONNABEND: How -- I mean, I just have trouble understanding how farm advisors are recommending it if it's not approved by the EPA.

MS. KOENIG: But farm advisors are not recommending it to the NOP --

MS. SONNABEND: Right, I understand that.

MS. KOENIG: -- you know, that's not our -- you know. So anyway, that's -- that's I think --

MS. SONNABEND: You know, it's another example of: the commercial companies get to sell the product but the farmer doesn't get to make it themselves.

CHAIRMAN KING: Other questions for Zea?

(No response.)

CHAIRMAN KING: Zea, thank you. David Engel is next, and Leslie Zuck is on deck.

MR. ENGEL: Good morning. My name is David Engel. I'm a dairy farmer from Wisconsin, still. (Laughter.)

MR. ENGEL: I'm also the executive director of the Midwest Organic Services Association, and recently I am what would be called an interim board member, interim steering committee member, of the recently-formed Accredited Certifiers Association.

So my comments today, as they have been in the past, I tend to like to kind of step back and look at the larger picture and get a sense of what we're doing with the pieces that we have.

You know, like when we were growing up, our mother said, "Well, you pick them up and put them away." Well, as mature adults now, we have a lot of pieces out there that we're working with, and sometimes they get kind of messy, they're not really where they should be, they're not working properly, and, as several people have expressed today, when we come to a meeting like this, it's a mess, it seems like, to some of us, but I -- I don't take that view.

I think the pieces are very positive. Obviously they are what we have to work with. They are pieces like

the NOSB, the national rule, the federal rule, the National Organic Program and their staff, the different certifiers, companies that are petitioning products, the petition process itself, all of these pieces go together, and we are working with them now.

So to repeat, then: process is everything to me, and we need to make sure that these pieces are working together. For example, one thing that has been mentioned before that we think would be very, very positive would be an executive director for the National Organic Standards Board, because that would help you people coordinate within yourselves and provide a go-between between the NOSB and the NOP. We think that would be very positive.

Another issue that has come up in the past, that I'm not sure where it's at, at a certain point -- I believe it was last year, I can't remember, the peer review panel was brought to the table by the National Organic Program and a certain kind of process was put in place. It didn't appear to me that it was what the Organic Food Production Act required in terms of a peer-review panel, but neverthe-less, there was something started, and I'd be interested to see where that comes from -- or how it ends up.

Another issue that has come up in terms of process has been timely publication of the ingredients that

the Board recommends in the federal docket so that they can be brought into production, into use, by producers. Generally speaking, the community has felt -- and this was brought up today earlier -- that a recommendation and an approval by the National Organic Standards Board then would result in a timely publication in a federal docket and it could be used in a reasonable manner. That has not happened, and it's caused a lot of problems.

Another issue that has been brought up today and that I feel that some of these, you know, issues could be addressed by looking at the process we have, is: whose authority is it to provide guidelines, and what kind of relationship are there in answering these questions, that we all have, to what they mean on the ground, and an example of that has to do with the treated seed, for example.

The dairy interpretations that have been made by the National Organic Program, that seem to fly in the face of what everybody's been doing, and yet now there's an interpretation, so -- it's a guideline, it's an interpretation.

What does this mean to a certifier and how they apply it? One good example of process that has occurred, I think -- and I've talked with several of you about this,

and that's the feedback that I've gotten -- is last -- the last NOSB meeting, you all went through a -- you stepped back, you went within and you addressed the compatibility issue, and this was based on a need, perceived by everybody, to put together better --

MS. DIETZ: Time. You're baked.

CHAIRMAN KING: Finish that sentence and then we'll have some questions.

MR. ENGEL: To provide better review of materials. Thank you.

CHAIRMAN KING: Questions for David about any of the items he brought up?

(No response.)

MR. ENGEL: Thank you.

CHAIRMAN KING: Thank you. Leslie Zuck, and Urvashi is on deck.

MS. ZUCK: My name is Leslie Zuck. I'm the Director of Pennsylvania Certified Organic. We certify about 300 operations in Pennsylvania, a lot of chickens and cows. I'm also on the interim steering committee with Dave Engel for the Accredited -- the newly-formed Accredited Certifiers Association, and I would like to make a couple quick comments, at the beginning of my comment, about two of your draft recommendations, since you're going to be

talking about those in the next couple days.

On the accredited certifying agents' procedure for determining minor non-compliances, I would really -- I know that you originally were asked to take out the term "major" as it applied to non-compliances, but I really would like to have you reconsider using the designations "major" and "minor" non-compliances because -- we've even just tried to discuss this document, and the issue -- it just becomes a semantic nightmare, and it could become a legal nightmare as well when we're dealing with clients, because having the word "non-compliance" refer only to major non-compliances makes things unnecessarily difficult, because when you say "non-compliance," the word usually would refer to both of those types of compliance -- non-compliances.

So it should -- the plain "non-compliance" should refer to either and we need to bring back the "major" and "minor" so that we can be clear what we're talking about. I mean, it's hard enough for certifiers to really understand, we're having a discussion in the staff -- you know, with the staff, and we have to convey that information to our -- our clients and our farmers.

On the commercial availability draft recommendation, Number 2-B, 3 and 6, these -- actually,

these two first comments were also on behalf of the Northeast Certifiers Association, or group. B-3 is asking -- or requiring certifiers to verify the non-availability of a material by checking current lists of some sort, and we believe this burden should be placed on the producer to produce to us the Lists that were checked and, you know, bring that as part of their Organic System Plan. The burden is on the producer to verify that.

And Number 6, submitting a list to the NOP of all materials that we approve, and we would just like to know why -- what would that information be used for and why would that additional burden be placed on certifiers.

Okay, my main comment is about the guidance statements -- the guidance statement on the use of fishmeal as a protein supplement in the feeding of organic livestock.

After reading the document, it occurred to me that it would be extremely important to have a definition, a better definition, of what a protein supplement is. Since it doesn't have to be organic and it can be fed in any amount, I fear that without more specific information defining it, that it would open the door to a lot of things. What one producer or certifying agent would call a supplement another producer or certifying agent could just

as easily call a feed ingredient, which would then have to be organic.

So we need a little help here. In fact, the current definition does -- it says -- it defines a feed supplement as a combination of feed nutrients, some even saying fishmeal as a stretch, to get under that definition, if it's not a combination of feed nutrients. So I think we just need some help with that there.

I would also like to ask for clarification from either the NOSB or NOP regarding Section 205.237 and as to whether the non-synthetics referred to there cover both agricultural and non-agricultural materials. The fishmeal guidance statement doesn't clarify whether the fishmeal is allowed because it's non-synthetic or because it's non-agricultural, or doesn't it matter.

As an accredited certifying agent, it's important for us to have this clarification. It affects things like the use of maybe molasses, kelp, alfalfa meal, or, depending on the definition, even soybean meal as a protein supplement. So we need a little help with that too.

It's important for us to know whether we must prohibit these non-synthetic materials and supplements that are allowed under .237 if they also contain a synthetic ingredient that is not on the National List. PCO has

allowed the use of fishmeal as a non-synthetic under .237 as long as it did not contain a synthetic ingredient not on the National List, such as a synthetic preservative, ethoxyquin, but fishmeal preserved with the natural preservative Nature would be allowed. Did I say we did allow -- we did not allow the use of fishmeal with ethoxyquin but we do allow the use of fishmeal with the natural preservative Naturox.

So since the statement -- as long as it does not contain synthetic ingredients is missing from that guidance statement, I'm just wondering why that issue wasn't mentioned and whether, as a certifying agent, I should be allowing or prohibiting these materials.

CHAIRMAN KING: Thank you. Questions? Andrea, Ann.

MS. CAROE: Do you have your comments written, Leslie?

MS. ZUCK: I do not. I could write them.

MS. CAROE: I mean, you've got a lot of good comments in there about a lot of recommendations.

MS. ZUCK: Yeah.

MS. CAROE: We're going to be discussing that, and I tried to take as good notes as possible, but --

MS. ZUCK: Well, I'll tell you what, my next

sentence was going to be a recap of those three things, the three basic -- the three basic questions I have, which are: a need for a better definition of supplement, especially protein supplement, which there is no definition for; and can the non-synthetics allowed under 205.237 be agricultural or non-agricultural; and three, is fishmeal allowed even if it contains a prohibited material, and if so, are other non-synthetic supplements also allowed if they contain prohibited materials.

So that's kind of a summary of my questions.

CHAIRMAN KING: Well, and I think it would be important if we could get copies of those questions somehow, even if --

MS. ZUCK: I'll do that. I have it on my computer, but I couldn't print out.

CHAIRMAN KING: Oh, yeah. But they're very well thought out, so I think it's important to go ahead --

MS. CAROE: And also your comments on the minor non-compliance and commercial availability.

MS. ZUCK: Okay.

MS. CAROE: Well, I guess this was under the commercial --

MS. ZUCK: Yeah, that was --

MS. CAROE: Yeah, the commercial availability as

well.

MS. ZUCK: The commercial --

MS. CAROE: Those comments that you made as well, I'd like to see those written down, if I could.

MS. ZUCK: Sure, I'd be happy to.

CHAIRMAN KING: You're passing --

MS. ZUCK: I wrote these on the train, so you don't want a copy of this.

CHAIRMAN: We're going to get to you eventually, okay?

MS. ZUCK: I can hardly read it.

CHAIRMAN KING: Third time's a charm, right? Jim, you --

MR. RIDDLE: Yeah. On the commercial availability, we did receive some other comments that were posted on the website, similar to yours, and I don't have the draft open in front of me right now, but I do believe that we've made some changes --

MS. ZUCK: Good.

MR. RIDDLE: -- but we will -- I'll be presenting that tomorrow morning. So you'll be here?

MS. ZUCK: I will be.

MR. RIDDLE: Great. Yeah. So if they're not being addressed, then speak up, you know, at that time, if

they haven't, but it would sure be helpful to get them in writing.

MS. ZUCK: Will do.

MR. RIDDLE: As far as answering those other questions about the implication of the feed -- fishmeal, I think we have the same, similar questions.

CHAIRMAN KING: Other questions for Leslie? (No response.)

CHAIRMAN KING: Okay. Thank you.

MS. ZUCK: Thank you.

CHAIRMAN KING: Urvashi, you're up, and James Wettle is on deck.

MS. RANGAN: Good morning. My name is Urvashi Rangan. I'm an environmental health scientist for Consumers Union. We're the publisher of Consumer Reports magazine. I also direct the eco-labels project at Consumers Union, where we rate environmental labels on lots of products, and organic is definitely one of them. So one of the main missions of that is to educate consumers as to what organic means, which is why I come here to every National Organic Standards Board meeting.

We want to thank you again for your tireless efforts to guard the standard and guard this label for consumers. Without you, without these open public forums,

it would be very difficult for us to express our concerns on a regular basis about these things. It also gives us an opportunity to regroup, to learn what new things have been issued.

We also want to commend the NOP for prohibiting the use of the USDA label or any NOP approval implications on personal-care products, on dietary supplements, and on aquaculture. We think that consumers are better served by that, and for those -- for all of those for a variety of different reasons, but we commend them for their actions on that.

However, these guidance statements that have been issued in the last week, of which I think there were four new ones, I'm not sure what this is. Some of these come with significant changes to the regulations and to the law. This is a public program. That process that needs to be in place is that these things need to be proposed in regulations for public comment. It's really difficult when we have clarification statements that are also subject to change at any time without public comment. This is not what guidance needs to be, this isn't how this program needs to be run.

There's one of these directives that's of particular concern to Consumers Union, and I think I'm

going to probably spend most of my time today talking about that, but there are other issues that I'm going to be bringing up on Friday concerning labeling inconsistencies, concerning the fishmeal, concerning the antibiotics in livestock.

But this one I'm going to talk about today is of most concern to Consumers Union. I don't think there's been an issue as important to maintaining consumer confidence in the label, and that has to do with this compliance and enforcement directive for pesticide use in organic production.

We don't see this as a compliance and enforcement strengthening; we see it as a loosening of compliance and enforcement. Consumers expect -- and this is what the regs and the law say -- that there are no synthetic pesticides reviewed unless otherwise reviewed by the National Organic Standards Board and approved for use on the National List.

We get this question all the time from consumers: what is on organic produce, are there pesticides being used, are there synthetic pesticides being used. To be honest with you, I get it internally at Consumers Union. People don't quite understand. And it's already convoluted enough to explain that well, it's not that there aren't any synthetic pesticides, but those that are used are approved

by this board. That is the very essence of the law and the regulations, and it is before they are used they are reviewed and approved.

This entire document disregards that fact, that these compounds and these agents need to be reviewed before they are used. Many of you may recall the Consumers Union has tested organic produce for pesticide residue, we did that before the National Organic Program. Because there have been assurances now that there is a process in place for reviewing these materials, the question has not been opened again, as to whether or not these things need to be tested. This document opens that question. These prohibited pesticide residues could be found now on organic products that include ingredients on EPA's List 2 and 3 that are prohibited for use in organic production.

Consumers rely on this board to make sure that that doesn't happen. It cannot happen. It is serious erosion of what the organic label means to consumers. And this guidance document makes significant changes to that and makes a serious shift of the standards.

It's based in secrecy, these ingredients are not required to be listed, it is under confidential business information. Based on a conversation I had with EPA yesterday: only the manufacturer really has access to what

ingredients are in those formulations. EPA is the only one that can crack that code. That's why EPA proposed a pesticide registration guidance for manufacturers of pesticides who want to get extra labeling that their pesticide is okay for the National Organic Program. We would like to see this board mandate that pesticide manufacturers have to go get that NOP label from NOP -- from EPA. EPA has offered to do it. We need to take them up on that opportunity.

CHAIRMAN KING: Questions or comments for Urvashi?

(No response.)

CHAIRMAN KING: Thank you very much.

MS. RANGAN: Okay. You're welcome.

CHAIRMAN KING: I have James Wettle up next, and then Marty Mesh is on deck.

(Pause.)

CHAIRMAN KING: This is your official proxy, I see. So we'll have the opportunity to see Marty for ten minutes.

UNIDENTIFIED MALE VOICE: I think he needs a handicap for doing this to me.

(Laughter.)

MR. MESH: They asked me to. As the primary --

my name's Marty Mesh, reading comments on behalf of the Texas Organic Cotton Marketing Cooperative.

As the primary marketer of organic cotton grown in Texas, the Texas Organic Cotton Marketing Cooperative is against the NOSB's crops committee's proposal that hydrogen chloride not be added to the List of allowed or regulated substances. Our reasons and comments on recommendations and the TAP reviews are detailed below.

As stated in the co-op petition, we are requesting that the NOSB allow the restricted use of hydrogen chloride in the process of de-linting organic cotton seed because we have no alternatives.

First of all, there is no commercially-available organic cotton seed; second, there is not any commercially-available non-organic cotton seed that is not acid-delimited; third, planting un-de-linted or fuzzy seed is not an option with mechanized planting; and fourth, there are no commercially-available alternative processes for de-linting the seed or otherwise making the fuzzy seed suitable for planting.

The crops committee and TAP reviewers suggest the use of lactic or acetic acid as alternatives but acknowledge that these may not be effective. All of the de-linters and others with expertise in dealing -- in the

de-linting process, that we have talked to, agree that these acids would not work satisfactorily.

One of the persons we discussed this with was Dr. Gay Jevedin [phonetic], retired senior director of research for Cotton, Inc., who is the co-developer of the dilute acid-de-linting process using sulfuric acid. Dr. Jevedin stated in a phone conversation April 14th, '04, quote, "Acetic acid and lactic acid would not be suitable alternatives for commercial de-linting of cotton seed. These acids are too weak to remove the lint in a short enough time to prevent damage to the seed," unquote.

As far as alternative processes of de-linting, we have pursued and are continuing to pursue any possibilities that we find. We're working with Tom Wiedengardner [phonetic], director of cotton seed research and marketing for Cotton, Inc., on starch coating the fuzzy cotton seed to make it usable in mechanical planters. Wiedengardner, who has been involved with Cotton, Inc., in the development of easy-flow cotton seed for the feed industry is now trying to improve the process for planting seed. We have sent him 250 pounds of fuzzy cotton seed for trial in his pilot plant, if he is able to get it going.

However, Wiedengardner indicates that at best commercial availability of planting seed using this process

is several years away.

Also another company, LT Kinzer Company, is working on an enzyme de-linting process, but here again, it is in developmental stage and is a few years away from commercial availability.

We've also looked into the mechanical de-linting options but because of the various problems have not found anything that's a viable solution. One of the best hindrances to finding an alternative to de-linting with hydrogen chloride, whether it would be trying organic acids or special mechanical de-linting, is that no commercial de-linting company is willing to do anything out of the ordinary for the small quantity of planting seed needed by organic producers. We have difficulty even obtaining acid-de-linted seed that is not treated with various chemical seed treatments.

The large seed companies will not provide untreated seed at all. We are fortunate that one small seed company has been very good to provide us with untreated planting seed, and a few local de-linters will de-lint producer cotton seed and leave it black, with no chemical seed treatments. However, even these who have provided us black seed are not at all interested when approached about alternatives to hydrogen chloride because

our volume is so small.

The TAP review mentions that, quote, "organic cotton production is more than a hundred-million-dollar-a-year business," unquote. However, the current annual farm value of cotton sold in the organic market is approximately 2 million -- that's a 98-percent error -- for production in the United States and 15 million worldwide.

The TAP review also touches on the issue of whether the use of hydrogen chloride as a de-linter means HCI is being used as a processing aid or a seed treatment. It is our position that it is a processing aid, not a seed treatment, because of, among other reasons, the fact that EPA does not require that it be registered as a seed treatment.

The criticalness of the issue of organic cotton producers' ability to plant seed that has been de-linted using hydrogen chloride cannot be overemphasized.

The members of our cooperative produce a large majority of the organic cotton grown in the U.S. --

MS. DIETZ: Time.

CHAIRMAN KING: Finish your summary, please.

MS. DIETZ: Your time on your first five minutes up, so you can finish it up --

MR. MESH: Well, let me finish the sentence.

MS. DIETZ: That's fine.

MR. MESH: All of our numbers you see that has been de-linted with HCI, as far as we know, all other producers in the country do also, and I'll give part of my five minutes to the Texas Organic Cotton Cooperative, to finish their letter.

MR. RIDDLE: Okay. Go ahead and then finish and then we'll see if there are any questions on this.

MR. MESH: As has been previously stated, we have no alternatives at this time. If organic producers were to be decertified for the use of this seed, it would eliminate organic cotton production in the U.S. If that happens, 4,000 or more acres would return to conventional cotton production because there are no other economically viable crops in this arid region, west Texas.

It would be especially regrettable for this to happen at this time because the demand for organic cotton appears to be finally taking off, our cooperative and others have worked very hard for many years to develop the organic cotton industry. It would be a tragedy if just at the point that there's potential for converting significant acres of cotton to organic with the accompanying reduction in pesticide use. I don't know if you're aware of how much pesticides are used in conventional cotton. It's

substantial. In fact, there's none -- no other crop more.

The seed issue is allowed to eliminate domestic organic cotton production. We urge you to recommend that hydrogen chloride used for de-linting cotton seed be considered a processing aid and to allow hydrogen chloride for use in organic production for de-linting cotton seed.

The Texas Organic Cotton Marketing Cooperative will continue to pursue both mechanical and organic solutions for the process and will inform you as soon as we have found one.

MR. RIDDLE: And Marty, my clock shows you used just a little over a minute of your own time, so why don't you start --

MR. MESH: I think Kim was the timekeeper, I thought we were going to make improvements in the ability for timekeeping.

(Laughter.)

MR. RIDDLE: It's hard to let go of that (inaudible). But you'll have about four minutes on your own is what --

MR. MESH: "About" is the critical --

UNIDENTIFIED MALE VOICE: Your reputation precedes you.

MR. MESH: You know, if there's questions on the

de-linting -- I mean, I would also add that your TAP review is suspect, you have a Ph.D. of -- associate professor of chemistry in the middle of the U.S., you have a masters with biochemistry in forensic drug testing in the eastern U.S., and you have the U.S. --

CHAIRMAN KING: Marty, let me just interrupt. Are there questions for Marty concerning the de-linting process?

MR. MESH: Or the TAP reviews, I would take either one.

MS. KOENIG: No, and -- you know, Marty and I had talked as I know he had -- we had concerns with the TAP report, I mean, and that's what I wanted to make clear to individuals sitting in the room, is that when we vote and when we submit a recommendation for either crops or -- you know, any of the committees, I mean, it's based on the information at hand, and that's why it's really important, now that we're following that process and having it on the website in advance, that hopefully we'll get more of this public input and -- which means, you know, back to Jim's comment, that: yeah, there's some decisions in there that the committees made, but again, those decisions were made based on the information at hand, and we worked to try to let people know about that so that if there was other

information that we didn't have within the TAP, that we could consider that. So I thank you and I thank the Texas cotton growers for coming forth with that information, because one of the big things was the -- that gray area of alternatives, and the fact that they have brought forth an expert really helps the process, as far as being able to reconsider and think about this thing before the final vote.

The question I had was -- and what wasn't clear was whether the co-op -- and I think you made it clear. When you say organic seed production, were they -- are they in fact producing organic seed that they're trying to use themselves or is this an issue in both the non-commercially-available -- you know, that organic seed is noncommercially-available and therefore it's just a process similar to the foundation seed that's occurring and therefore cotton is not even being able to be grown?

I mean, I assume that they're using seed that is already being processed, or de-linted. I don't know. What's the current situation?

MR. MESH: Right. The petition is so that organic cotton producers can use organic cotton seed in planting. It has to be processed as a processing aid with hydrogen chloride, so that they can continue to do that.

If you deny the petition, then the only thing they have left to do is find -- there is no alternative. You know, I was going to say find treated -- I mean find conventional seed, but that's going to be treated with HCI as well. There is no alternative.

MS. KOENIG: Thank you, because that wasn't clear.

MR. MESH: So their goal is to use organic cotton seed.

CHAIRMAN KING: Nancy has a question, then Dave.

MS. OSTIGUY: One of the points that you read in the letter, that I have a question about: since cost is not an issue that we can consider, one of the items is that planting of the linted version of the seed is impossible with the mechanical planting process.

MR. MESH: It's not possible. I mean, you plant cotton on thousands of acres --

MS. OSTIGUY: Right. Well, that's what I said, is it's not possible, right. But is mechanical processing -- is that a cost issue? What's the reason for mechanical planting?

MR. SIEMON: Compared to doing it by hand?

UNIDENTIFIED FEMALE VOICE: You mean mechanical -- any mechanical de-linting?

MS. OSTIGUY: Well, yeah, I'm supposing.

MR. SIEMON: Mechanical de-linting?

MS. OSTIGUY: No, I'm talking about planting, because it says that you can't plant linted cotton. One of the ideas is -- linted cotton seed because it messes up the planter. I'm not a farmer, okay, I --

MR. SIEMON: So you mean as compared to planting by hand?

MS. OSTIGUY: I know honey bees really well, you ask anything about honey bees, I can do that, but farming I don't know. And so the question is: is there any other way to plant?

MR. MESH: No, there's not any other way to plant --

UNIDENTIFIED FEMALE VOICE: Not commercially.

MR. MESH: -- cotton on -- I mean, you know, you can't grow cotton planting by hand. And, you know, Keith was a cotton farmer, or your dad was a cotton farmer, and maybe he could add some expertise, you know. I mean, I can tell you all about watermelons but not --

UNIDENTIFIED MALE VOICE: We don't hold that against the cotton industry.

(Laughter.)

MR. MESH: But as far as I know, there is no

other way to plant cotton except mechanically planted.

MS. OSTIGUY: Which is what the question was: is there another alternative to planting.

UNIDENTIFIED FEMALE VOICE: To the best of his knowledge.

CHAIRMAN KING: Okay. All right, Dave, you had a question.

MR. CARTER: Well, mine was almost along the same line of Nancy in that I need, you know, cotton 101. Coming from Colorado, it's not a big crop up there.

MS. OSTIGUY: Yeah.

MR. CARTER: But in planting it, I mean, is the de-linting -- the planting is the only issue that the de-linting is relevant? I mean, are there other -- other reasons that you need to de-lint the cotton seed before planting it or is it just because of the -- the mechanically planting?

MR. MESH: Mechanically planting.

MR. CARTER: Okay. There -- I mean, is there any other ways of -- is it drilled, like you drill wheat, is it --

CHAIRMAN KING: Keith, please, come forward. You'll have to come to the mic, otherwise I'll be in trouble with the court recorder.

MR. MESH: Just for the record state your name. (Laughter.)

MR. JONES: I'm Keith Jones, with the National Organic Program, and unfortunately, I have been a cotton farmer, so --

The last fuzzy cotton that was planted in the cotton belt was probably in the 1950s. My dad switched over from fuzzy planting to acid-de-linting planting in the mid to early '50s. You can't even find planters today that will plant fuzzy seed. If you look at planting systems today, it's primarily vacuum planters, and even when you were using plate-type planters, that technology was really not available even up until the mid '50s, was really the last fuzzy plate-type planters that were -- that were available.

So you're -- so because you're using vacuum planters today, de-linting is even a -- more of an issue than it was, say, even, you know, 30 years ago, because what you're trying to do is move that seed through essentially a tube, a plastic tube, about three-quarters of an inch, and you're trying to move that seed through vacuum from the seed hopper into the ground. So it's a planting issue, pure and simple. And when these folks say the technology is not available to plant fuzzy seed, that's a

hundred percent correct, it's not available.

CHAIRMAN KING: Quick question, someone who spends a fair amount of time among collectors of antique and old equipment and that sort of thing. What you begin to see over time is sort of the "what comes around goes around" adage and that, you know, technology does sort of reappear, and in your opinion, with this experience, Keith, would there ever be a point in the future where a planter would be remanufactured to plant fuzzy seed; if so, why; if not, why?

MR. JONES: Now, in my opinion, Mark, that's not going to happen, for two reasons. One, all the fuzzy planters of that era essentially went to Mexico and got junk, that's where all our planters went, okay. You might find a 4-O planter somewhere, stuck in a tree row, that could still plant fuzzy seed, but farmers out on the high plains of Texas use 12-, 16-, 24-row equipment, okay, it's very sophisticated. And so to go back -- to go back to that 4-O operation is just out of the question.

There's actually no demand even to do so, for an equipment manufacturer to do that, because nobody plants fuzzy seed anymore. The chosen path beginning in the 1950s for seed production was acid de-linting, and the reason for that is it's primarily a fungal issue. You take -- I mean,

you get a better distribution in the stand [phonetic] because it's easier to plant, but it's also a fungus issue, because what you've got in fuzzy seed is you've got the ability to create disease and fungus problems. If you eliminate that seed, particularly in areas that's got high ambient temperatures, if you eliminate that fuzz around the seed, you eliminate any place for that fungus to grow, okay.

And so we were able to move from -- and this is off the top of my head, but we were able to move from planting about 20 to 24 pounds per acre fuzzy to, at the time of our latest technology, which was in the early '80s, anywhere from 6 to 10 pounds per acre de-linted, okay.

CHAIRMAN KING: Nancy.

MS. OSTIGUY: Keith, the -- so -- but did the de-linting decrease application of fungicides or any of that sort of -- or did it just increase your ability to -- increase the density?

MR. JONES: Yeah, the issue, Nancy, is that -- one of the things that these guys are wrestling with is that when you -- when you de-lint seed, you routinely apply some sort of fungicide too. Okay, that's just -- that's just the process. If you go to the de-linter, they're applying -- they're not only de-linting but they're

applying a fungicide.

MS. OSTIGUY: With conventional seed.

MR. JONES: With conventional seed. So the challenge for the folks in Texas is to -- is to essentially get the seed de-linted, pull that seed out of the line so that the fungicide doesn't get attached to it, and it's my understanding that the -- the cotton industry, because these guys are not using GMO materials, it's still a save-your-seed kind of industry.

I mean, we saved all our seed when I was growing up, you would catch your planting seed from the gin, you would take it to the de-linter, have it de-linted, and that was -- that was what you would use. We used foundation seed that we saved for about 4 years and then we bought foundation seed about every 4th year.

And it's my understanding that JIMI [phonetic] is adopting a similar practice, and that is, they are harvesting organic cotton grown in -- according with the regulations, they are catching the seed at the gin, they're then taking that seed to the de-linter, and because they have to have it de-linted in order to plant the next crop, they have to have the HCI applied to it, and then the HCI essentially kicks it out from being organic again.

So they're caught in this kind of catch-22 that

they're never going to be able to get out of the cycle, so --

MS. OSTIGUY: Okay.

CHAIRMAN KING: Are there additional questions or comments for Keith?

(No response.)

CHAIRMAN KING: Thank you very much, Keith.

MR. MESH: So moving into my four and a half minutes or so, the --

(Laughter.)

UNIDENTIFIED FEMALE VOICE: We'll see (inaudible) --

CHAIRMAN KING: Yeah. It may be less at this point.

(Laughter.)

MR. MESH: You know, again, my question is about the TAP reviewers having no -- no history with cotton production and relying on them for expertise. I view this petition similar to methionine, I mean here's an industry trying and looking at doing -- you know, creating alternatives, trying to be in search of alternatives, thinking that there is an alternative in the future, doing some research, but clearly it's a few years away, and this board approved methionine, you know, for a limited amount

of time, saying, "Let's do the research and try to find something that's more compatible with organic."

I will also bring up the issue that organic cotton seed is a huge feed source not treated with HCI, that seed is captured before the de-linting process and then it goes into being a component of livestock feed, and if you -- you're going to do away with a huge potential source of livestock feed, and Jim Pierce could probably give you some figures on how many producers are using organic cotton seed as a livestock feed source.

So, now moving on to Quality Certification Services, that's who I'm here to represent, a USDA-accredited certifier. We sent a letter to the USDA and the past secretary of the NOSB by mistake, but I hope that he forwarded to the rest of the members of the Board our letter, requesting a revision -- you know, re-looking at the scope document.

We're specifically concerned about aquaculture, which has been certified to the national rule prior. It was an excellently-written letter, and I'll make sure you get a copy eventually from Jim.

(Laughter.)

MR. MESH: And fabric, we think -- we're a little confused on that. It's not the worst thing to make a

mistake or issue a guidance document or a direction that should be reexamined; it is much worse to not be willing to admit a mistake and remain adamant that driving down the wrong way -- driving down the wrong way of a one-way road is okay because it's only going one way.

We request the NOSB to pass a resolution requesting the USDA to take the steps we outlined in our letter, which your past secretary has, to protect the organic farmer and confidence of the organic consumer, and I could go into it, but because the clock is ticking, I wouldn't get very far, I reckon, but, you know --

MS. DIETZ: Now you've got a minute.

MR. MESH: But basically, you know, there was a May '02 policy statement, and there's been public statements made by the program, saying if you can certify something to the Rule, it can be by an accredited certifier, you can label it as organic and put a USDA seal on it. People have invested hundreds of thousands of dollars in organic production practices, meeting that, based upon information -- in legal terms they call it detrimental reliance, when you clarify something with an authority and then act upon that, and those people are being put out of business immediately based upon that scope document, or scope change, without any public process.

So just know that I've finished early, I think this is a first.

(Laughter.)

CHAIRMAN KING: Okay. Kim has a question.

MS. DIETZ: While you were commenting on people -- reviewers of the TAPs, I just had one comment I was going to make, but since it's kind of brought out --.

One of the reviewers for a number of TAPS on the crops committees was an accredited certifier, and I --

MR. MESH: Can they certify cotton?

MS. DIETZ: -- I had a problem with that. There was a number of materials. So I just questioned having accredited certifiers actually conduct TAP reviews, I see somewhat of a conflict of interest there, and so we just probably need to address that.

MR. MESH: And did that certifier have experience in cotton?

MS. DIETZ: It was on three or four materials that we're going to be reviewing (inaudible) --

MR. MESH: Right, but my guess is they've never certified a cotton farm.

MS. DIETZ: Probably not, but it was -- it was an accredited certifier that -- I think it's a potential conflict.

MR. MESH: I think that's a comment to a process, you know, but --.

CHAIRMAN KING: Additional questions for Marty? Jim?

MR. RIDDLE: Yeah. Not a question, but I did receive your letter, and it was excellent and very well-written.

MR. MESH: I couldn't hear you, what? It was what?

(Laughter.)

MR. RIDDLE: And I will forward it to the rest of the Board. I thought you'd sent it to all the Board members, so I'm sorry for that. But, you know, the concern you raise is major and a change in the rules of the game after companies have made investments when the previous scope document said: if you can certify, if you can produce to the Rule as written, you're eligible for certification, and companies in a number of sectors have done that, and I -- you know, I think it's something that we probably need to hear a response from the NOP on how they came to that conclusion and also what their response is to the companies that are suffering economic harm because of this reversal in scope.

CHAIRMAN KING: Other questions?

(No response.)

CHAIRMAN KING: Thank you, Marty.

MR. MESH: Finished early.

CHAIRMAN KING: Indeed, nice. I don't know if Steve Harper's in the room, I have him down for public comment.

UNIDENTIFIED MALE VOICE: He is.

CHAIRMAN KING: He is?

UNIDENTIFIED FEMALE VOICE: We at least can acknowledge that he's here.

CHAIRMAN KING: He's saying no -- okay.

MR. HARPER: I'm Steven Harper, from Small Planet Foods. I guess I just want to acknowledge all the hard work that the NOSB continues to put forth. I'm sorry. I just wanted to acknowledge the incredible work that the NOSB continues to put forth. And I have a lot of concerns, but I did not have time to put some comments together, but I do want to make some positive comments on the 606 Task Force and the direction of the commercial availability and the clarification of the national -- the National List as it regards processing, and I think that is a very good direction for the Board as far as a recommendation, and I guess I'm going to leave my comments there. So I think that's a really good direction to help clarify that whole

situation.

CHAIRMAN KING: Well, it's very good to see you and very nice to have you here, and we appreciate any comments you have.

I think now -- it's 11:45. What we'll do is break for lunch and come back, unless there are additional -- anyone who has not signed up, that wishes to give public comment, okay, and after lunch we'll begin with the NOP comments. We're scheduled to start at 1:15. I would literally like to start at 1:15, so please be back before that. Thank you.

(Off the record at 11:45 a.m. and reconvened at 1:17 p.m.)

CHAIRMAN KING: I'll reconvene the meeting of the National Organic Standards Board. First up is our comments form the National Organic Program, Rick Matthews. Rick has indicated that he has a number of slides, and I would entertain questions from the Board as he goes through his presentation; however, he may at some point say, for example, "the next slide may answer this question." So we'd like to get this through this efficiently, knowing that we have limited time. So if you do have a question, please feel free to make note and we'll recognize it. It's all yours, Rick.

MR. MATTHEWS: Okay. I would stand up, but we do

need to be able to work the microphones. Katherine, take it to full screen.

Okay, I'm Richard Matthews, I'm program manager of the National Organics Program, and I've got about 40 slides here that we're going to try and answer a lot of the questions that have been coming up, and the first one is we're going to talk about the cost-share program.

There currently are two different cost-share programs, there's what we refer to as the AMA, which stands for Agricultural Marketing Assistance program, and then there's the National Organics Program.

The purpose of these two cost-share programs is to assist with costs of the NOP certification. Under this program, the -- under both programs, actually, the AMA and the National,

Certified operations are entitled up to 75 percent reimbursement of their cost of being certified. The maximum amount that they can receive is $500. This is actually per year, so somebody who is renewing their certification is also entitled to receive cost-share funding.

Both programs are administered cooperatively between the USDA and the participating states. USDA allocates the funds to the states and the states process

the applications and distribute the funds to the people who apply for cost-share.

The AMA cost-share program is a $1 million program. It's currently funded yearly. It's for producers only. There are 15 states that are eligible to participate in this program. 13 of them are found in the Northeast. The two exceptions to that are Utah and Wyoming.

We currently have 14 states participating. The state that is not participating is Rhode Island. Rhode Island has historically not participated because Rhode Island has historically not charged for certification. They are going to, however, begin participating in this program with the next fiscal year.

For our purposes, a fiscal year runs from October 1st through September 30th, so beginning fiscal year 2005, which begins October 1 of this year, Rhode Island will join the group.

The national cost-share program is a $5 million program. It's a one-time funding. To date we have allocated -- or obligated 3.6 million of that $5 million, which means that there is 1.4 million that remains, that can be obligated to the states that are participating in the program.

The national program is for both producers and

handlers, but because of the AMA program, those 15 states that are under the AMA program, it's only handlers that apply under the national program in those 15 states.

We currently have --

CHAIRMAN KING: Rick, you've got a quick question, I think, about cost-share.

MR. RIDDLE: Yeah. You say there's 1.4 million left that hasn't been allocated, so at the current rate of allocation, by the end of this year or next year, would you anticipate --

MR. MATTHEWS: We have no idea when it'll run out. As states need additional funding, we provide that additional funding based on the history of the use of the funds within the state.

MR. RIDDLE: Would it be safe to say by the end of 2005 it could be short of funds?

(Laughter.)

MR. MATTHEWS: I --

MR. RIDDLE: Well, I'll say that. You don't need to. Okay, thanks.

MR. MATTHEWS: All right. We have 45 states participating in the national program. The two that would be eligible for both producers and handlers that are not participating are Arizona and Louisiana. Delaware, Nevada,

and Rhode Island are those states that are in the AMA program, their handlers are not being served under the national program.

The next one is a category that we seem to have had a lot of interest in lately, and that's the NOP budget. The total budget of the National Organics Program is $1,443,000. The Department, meaning USDA, and the Agricultural Marketing Service take overhead from that. The overhead that is expended is $180,756. That leaves, for salaries and benefits, 741,846, which is actually an increase over previous years. The NOSB is budgeted this year at $90,000. Now, what comes out of that budget is the cost of travel for board members, the printing of all of the documents for the board members' meetings, renting this room, paying for the airline tickets, things like that.

Then also included in there, for example, this year is the nominations process for new board members. Other non-paid category is $430,400. This includes travel, staff travel, parcel post, rent, communications, utilities, contracts, printing, supplies, equipment. Under contracts you will find TAP reviews, you will find our contract for doing compliance work, contract on copier maintenance. So that's where the contracts come in, mainly copier, compliance, TAP reviews, and some other miscellaneous

things that we've done in the past, you know, 40,000 here for -- for example, I believe it was with ATRA we did a $40,000 contract. So that's the kind of thing that goes into that.

UNIDENTIFIED FEMALE VOICE: (Inaudible.)

MR. MATTHEWS: Yeah. And in the non-pay area, contracts takes up the lion's share of that, there's very little that goes into these other areas.

Okay, now moving on to compliance cases, for fiscal year 2003 we had 114 cases that were opened by the compliance staff. 16 of those 2003 compliance cases remain open, seven of them are still in NOP compliance, nine of them have been referred to the NOP staff for follow-up work, and out of the nine that have been referred back to us, we have gone to the attorneys and requested the filing of a complaint for revocation of certification, so we have one now that has gone to the hearing clerks, to be assigned to a judicial officer. Three cases have been combined into one of the seven open cases in the NOP compliance.

That means that 96 of the cases that were open -- three cases have been combined into one of the seven open cases in the NOP compliance. That means that 96 of the cases that were opened in 2003 have been closed. 32 of those were closed because there was no NOP violation. Six

of them were also closed because there was a lack of evidence in order to pursue the case. 58 of the cases resulted in corrective action.

You'll note that from the Listing below, most of these deal with labeling issues. The second most common violation is: not being certified. So out of the 58 corrective actions taken, 26 have corrected the labeling, 12 have removed organic labeling from their products, seven chose to become certified, and that was basically the violation, they weren't certified, and 13 other corrective actions.

Now, I can't sit right here and tell you what each one was, but they're single occurrences of a violation that were not of a labeling or a certification nature.

In fiscal year 2004, so far we've opened 18 new cases. Seven have --

UNIDENTIFIED FEMALE VOICE: (Inaudible.)

MR. MATTHEWS: I'm reading from the wrong slide. 43 cases were opened. 25 remain open. Of the 25 that remain open, 21 are still with NOP compliance, they're all under investigation. Four of them have been referred back to the NOP, and we'll be taking additional action.

Now we go to the closed cases. 18 of those cases that were open so far this year have been closed. Seven of

them, again, no NOP violation. In fact, one of those seven involved an exempt operation. Eleven others have taken corrective action: three corrected labeling, three removed organic labeling, and then five other corrective actions.

Again, you can see that the primary reason for the cases that we're receiving have to do with either the person is not certified, which is the second most common, and then the most common is the labeling issue.

Okay, new members for the --

CHAIRMAN KING: We've got a quick question from Andrea.

MR. MATTHEWS: Andrea.

MS. CAROE: These cases where there is a representation of organic that is not certified, what surveillance is picking these folks up, is it complaints that you're receiving from the public or is this some other type of surveillance that's --

MR. MATTHEWS: Well, the compliance staff also does surveillance by going into supermarkets and buying product.

MS. CAROE: Is that primarily where you're seeing -- because I mean there was always a question, we knew that --

MR. MATTHEWS: Some of them are a result of an

NOC compliance staff buying products and then following up with the sellers of those products. The other way is through people who are filing complaints, and I don't have a breakout of how many of them were the result of complaints versus how many of them were the result of the compliance staff going into supermarkets and buying product.

For the Board, as I'm sure that many of you are aware, there is going to be five openings effective January 24th of 2005. Two of those are producers, one is a handler position, one is an environmentalist position, and one is the retailer position. These are 5-year terms of office. We have gone out with an announcement, and the resumes -- for those people who are interested in being board members, the resumes are due June 14th of 2004.

To date, we have published the news release that was published on March 8th of 2004. We've also issued a Federal Register notice, which was published on March 16th of 2004. That is what we have done in the past, a news release and a Federal Register notice. This year, for the first time, we are able to do something entirely different, and what that is, is that using the client lists that are supplied by certifying agents, we have been able to compile a list of 8,646 producers and handlers operating within the

United States. Every one of them has been mailed a postcard with the information that was found in the news release and the Federal Register notice. So every certified operation has been mailed a postcard, inviting them to submit their own names for nomination to this board.

We've also e-mailed postcards to 41 land-grant universities and three USDA outreach programs. We have not finished. We are still trying to do more. We are trying to contact environmental organizations as well as retailers. So we're doing quite a bit of outreach, trying to get a good slate of nominees for this board.

So far, as of April 23rd, we've received ten resumes; two producers, one handler, two retailers, and five environmentalists have submitted the resume needed for us to process their nomination. We've also got four nominations where we think these are really people who are serious and we're just waiting for the resumes; three of those are producers, one of those producers also qualifies as a handler, and the other one is a retailer. We've also received 25 inquiries, these are people that we really don't know, in some cases, who they are, but we do know that we have 11 producers who have inquired, we have one retailer who has inquired, and then 13, we don't have

enough information, but they have contacted us about board membership. Jim?

MR. RIDDLE: Yeah. Does a person need to state which seat they're seeking or you make that determination?

MR. MATTHEWS: We would prefer they tell us what they're seeking.

MR. RIDDLE: Okay.

MR. MATTHEWS: It helps in screening them. And you can apply for more than one position. A producer who is also a handler could say that "I want to run for a producer or a handler position."

Okay, we're going to move on now to accreditation. To date we've received 137 applications for accreditation. For those of you who looked at the preamble to the Final Rule, we were estimating that we might get about 50 of these, so we kind of underestimated the interest in the program from certifying agents.

53 of those 137 are private domestic certifying bodies. Now, four of them have withdrawn since they submitted their application. 20 of these applicants are states. One of those states has withdrawn its application; the state that withdrew is Connecticut. 64 foreign certifying agents have applied, and two of them have subsequently withdrawn their application.

Out of the 137, we have to date accredited 92. 38 of them are private organizations operating in the United States, 15 of them are states, and 39 of them are certifying agents operating in foreign countries. George?

MR. SIEMON: Are there physical visits for the foreign people yet, or what's the status of that?

MR. MATTHEWS: The auditors are performing site visits for the foreign, yeah. We've got one team in South America right now, don't we?

UNIDENTIFIED MALE VOICE: They'll start in June.

MR. MATTHEWS: In June.

UNIDENTIFIED MALE VOICE: Starting in June.

MR. SIEMON: Okay.

MR. MATTHEWS: Okay. For those that have not been yet accredited, and we don't -- we don't turn anybody down, we just don't approve them, okay, we just -- so for those that have not been neither -- they have neither been turned down nor approved, 12 of those are with the auditors, five of those are private domestic, three are states, and four are foreign.

26 are still waiting for information. Now, what that means is they haven't made it to an auditor, they have sent in information, the information is woefully deficient, and the auditors can't do anything with it, so what they do

is they go back to the applicant and request additional information. So right now you have six privates, domestic, that are in that boat, you have one state in that boat, and you have 19 foreign.

Okay, now we'll move on to the arrangements for export. We still only have one export agreement, and that is with Japan. We have five recognitions; those are with British Columbia, Denmark, New Zealand, Quebec, and the United Kingdom.

The difference between arrangement and recognition: An arrangement, in the case of Japan, is where Japan has agreed that our standards are equivalent to theirs and they recognize product produced to the National Organics Program for export to Japan.

A recognition is where we have recognized that foreign government's accrediting process as equivalent to ours, and it allows the governments in those five countries to accredit certified operations to certify to the National Organic Program. Okay.

The final of the three categories for how people get in is that of equivalency. As of today, we still do not have an equivalency agreement with any foreign country. The closest we are is with the negotiations with the EU, and we're not there yet, but we're still working on it.

MR. O'RELL: A question.

MR. MATTHEWS: Yes.

MR. O'RELL: Is there any foreseeable time frame for the EU equivalency agreement?

MR. MATTHEWS: You want to answer that one, Keith? Keith's our chief negotiator. You know I couldn't let that one go by, Keith, after all the discussions we've had.

MR. JONES: No, I understand. I'm --

CHAIRMAN KING: The question was: is there a time line for the EU negotiations?

MR. JONES: The question is, is there a time line for the EU negotiations. There is a joint E.U.-U.S. summit that will be held in Dublin, Ireland, in June, late June, that is providing some impetus on both sides for the conclusion of an agreement. There is significant kind of process questions that we still have to address, both externally through the EU process and internally within the U.S. government, as to how best to conclude the recognition agreement.

We have made significant steady progress towards the -- essentially the dilution, if you would, of any technical issues that are outstanding. There are some, obviously, but we have, over the last 18 months, really

whittled those down just to the absolute essence.

You know, Kevin, you're asking me to gaze into a crystal ball, and I think my best guess is: There is certainly a strong desire on both sides to conclude an agreement. There's strong trade interests on both sides that would like to see the agreement concluded. If it's going to happen, it will happen this summer, I'm convinced of that, okay, because I think the timing and the momentum and everything is coming together, that if this is really going to happen, it will happen this summer.

MR. O'RELL: Keith, would this be a blanket equivalency for the full regulations, or will there be sections carved out where differences do occur --?

MR. JONES: Well, when we speak in terms of equivalence, at least from the perspective of AMS, we never assume that there will be 100-percent equivalency. When we talk and use the phrase "equivalence," we are assuming a combination of equivalence and compliance on both sides, okay. So that's the way we -- that's the way we view it.

At the current time we have carved off no sector, we have carved off -- there's not been any products carved off, with the exception of honey. It appears that the Europeans are not going to accept any U.S. honey at this point. Okay. And keep in mind those -- those -- the

issues that I'm talking about are still in negotiation, so that might, again, work itself out, but at this time, that'd be the only product area that's not under consideration.

MS. CAROE: Keith, one more question. Just educate me a little bit on government process. When this gets signed by both countries of origin if an agreement is reached, is that effective immediately or is there some other government process that happens? I mean, if this were to happen this summer, would it be effective this summer or --

MR. JONES: No, that's -- that's a good question. Usually, Andrea, the way the process works is that when it's -- when it's signed off by the representatives of the respective government, U.S. government, the European Commission, it would be effective at a date certain.

There might be a lag time between the signing of the documents and the effective date just because there may need to be some things, you know, put in place to make certain things happen, but it would be a very short time frame that we've been looking at, after -- after signature.

So I think you can take some comfort in the fact that if we're going to do this, it can happen relatively quickly.

MS. CAROE: Thank you.

MR. MATTHEWS: Any other questions?

(No response.)

MR. MATTHEWS: Okay, the next area is the area of the directives, and let me explain something about directives first. We probably use some words that are a little bit foreign to the organic community as a whole, we use terms like "guidance" and "directive," and when we issued the program scope, the antibiotics, and the fishmeal guidance statement, when we sent that to the Board and to OTA the day before it was published, what we should have done was to say that that was a directive and not a guidance, and the reason for that is that directives basically tell you what you have to do to comply with the Act and the regulations; guidance, on the other hand, would tell you: here is our best thinking of one way for you to be within compliance of the Act and the regulations; you might find a better way yourself and still be within compliance. So the guidance is -- you don't necessarily have to follow the guidance as long as you still maintain compliance; a directive, however, tells you: this is the only way to do it.

So we will be changing the title on the first three from "guidance" to "directive." If there's a better

term that is less inflammatory, please let us know, but we are rather limited by government-speak as to what we can call these, so we hope that we're not inflaming situations simply because of a word that we have to use to describe what it is that we have to do.

MR. MESH: What about "proposed" (inaudible)?

UNIDENTIFIED FEMALE VOICE: Yeah.

MR. MATTHEWS: But they're not proposed, they're not proposed, Marty. Okay, let's move on to the next --

CHAIRMAN KING: Hold on, Rick, Dave just had a quick question.

MR. CARTER: I do want to extend on that, I mean as far as directives, and I think one of the things that at least some of the Board is a little bit concerned about is, on these things -- and we recognize that it's NOP's job to issue the directives, but in our role, statutory role, to advise the Secretary on implementation of the Rule, you know, I continually ask about works in progress, and when directives are developed, what is the opportunity for the Board to have some participation in some discussion as a work in progress, rather than -- and particularly when directives come down on very short notice before the Board meeting, and so then the public, you know, feels like they've been shortchanged, as well as being prepared to

even come in and give public comment after the fact.

MR. MATTHEWS: Well, those really aren't out for public comment. Those are actually documents that are vetted with the USDA attorneys, that are vetted with management, and they're based on the regulations and the statute. You'll notice that what we've done with these documents is we excerpt portions of the Act and the regulations, and that's where we're basing the directive.

CHAIRMAN KING: Barbara had a quick comment.

MS. ROBINSON: Barbara Robinson, Deputy Administrator, Transportation Marketing Programs.

The reason we don't ask you for public comment -- a better way to think of these directives is: they are the law and the regulations. All we did was try to figure out a way to make it easier to understand, they're written, and that's why you see in every directive, before you get to what NOP is saying, first you see all the citations from the preamble, from the regulations, and the statements from the law, and so -- and we do that because we strongly believe that if we are about to issue anything, if it can't be anchored directly to the law or the regulations, we shouldn't be saying it.

But you should think of it, certifying agents should think of it, as just: this is the law and these are

the regs; we're simply saying it in a different way.

CHAIRMAN KING: Rose.

MS. KOENIG: I had a question. I guess I saw the three -- well, I guess they came last week. The pesticide use lists three inerts. Somebody just notified me, I guess on Monday, at a meeting, that there was some directive there. But, you know, in terms of the reg, I don't understand how that would fit. And, again, I -- you know, I apologize for not having time to process that, but according to my knowledge -- and again, I'm not a lawyer, but it's pretty specific in terms of the National List, that only List 4s are allowed, and we've been systematically putting on List 3 as they've been petitioned, and I -- as I read it: it allows for a use if somebody is not knowledgeable. But I don't see where that can be justified except in the sense of a regulatory -- I guess that's your regulatory discretion.

MR. MATTHEWS: We -- and the next few slides are going to tell you what these documents do and that they do not do. We have always taken the position: if we tell you that you can do something at a certain point, the flip of that is that you can't do something at a different point; or if we say it's okay to use this, then it's the opposite, you know?

For example, speaking ahead of what we've got here, somebody said, "Well, what if we give the antibiotic to the breeder stock in the last third of gestation?" Well, if we said you can apply it to -- administer it to the animal before the last third of gestation and the calf is still organic, if we say that, then it really means that if you do it in the last third of gestation, it's not organic.

And I guess -- it seems to me that it's almost like we're going to have to say both sides of the coin every time we go out with something, but I'm going to try and explain these things as we go along.

MS. KOENIG: Okay. I'll wait till then.

MR. SIEMON: I just want to clarify, because there's a lot of -- a lot of questions about these documents. Are we going to go through a discussion now about these documents?

MR. MATTHEWS: I'm going to give you the dos and the --

MR. SIEMON: We are going to?

UNIDENTIFIED FEMALE VOICE: We are.

MR. MATTHEWS: -- what they do and what they don't do. Okay?

MR. SIEMON: I'm glad for that.

CHAIRMAN KING: Okay, and Jim, just one quick comment --

MR. RIDDLE: Yeah, before you get to the specifics of the documents. Barbara addressed the public comment limitations or non-existence but didn't -- you didn't really respond to Dave's question about the role of the Board, where we're charged under OFPA to provide advice to the Secretary on implementation, and I look back --

UNIDENTIFIED FEMALE VOICE: And this is already being implemented [phonetic] --

MR. MATTHEWS: This is already implemented.

MR. RIDDLE: Well, it's implemented continuously. That's why you have to --

MR. MATTHEWS: Well, it's --

MR. RIDDLE: -- give guidances on an ongoing implementation.

MR. MATTHEWS: These sections of the regs have already been implemented. What we are finding is inconsistent application across certifying agents.

MR. RIDDLE: Right.

MR. MATTHEWS: And so what we have done is taken what we know to be inconsistent practices by certifying agents and tried to bring uniformity to these issues.

MR. RIDDLE: But, if I could continue, I look

back at a policy, what probably would be considered now a directive, that was developed a while back in collaboration with the Board, and that was how to calculate percent organic ingredients and the role of added water, and I see that as a model example where the Board was consulted, drawn into the process, and came up with a directive which has not been open to criticism, it's really stood. People understand it, and it's the best example that I can think of where the Board was drawn in, we were able to exercise our responsibility, and the end product then has the support of the Board and the public.

So, you know, I just hope we can use that as an example and move in that direction more than, you know, this blindsiding or catching us by surprise, where -- it's just not a healthy situation.

CHAIRMAN KING: And simply put, just to follow up on Dave and Jim's comments, I think it's safe to say that the Board really would like to be involved in the process, we feel we're here to assist and advise, and if there's something that we can do to help that process improve, then we're certainly open to that. So --

MR. MATTHEWS: Okay, we hear that. The next slide, please. Okay, we're going to start with program scope. What does the program scope do? It identifies

product categories not covered by OFPA. Those include personal-care products, body-care products, cosmetics, dietary supplements, over-the-counter medications, health aids, fertilizers, soil amendments, manure.

It also identifies product categories covered by OFPA for which we have not engaged in rulemaking. Those two areas are: aquatic animals and pet food. We just have not done rulemaking, and we can't require, we can't enforce, our standards on industries that have not been afforded the opportunities of the Administrative Procedures Act, which requires formal rulemaking in order to bring them into the fold.

Again, what the directive does, it states that the products not covered by OFPA cannot be certified to the National Organics Program. It states that aquatic animals and pet foods, in the absence of standards, cannot be certified to the NOP. It does not mean that they will never be covered by the NOP; it's just that there are no standards, and in the absence of standards, you cannot be certified to the NOP.

It states that products that cannot be certified to the NOP cannot carry the USDA seal. That's both for those that are not covered by OFPA as well as those that are covered by OFPA, that have not yet had rulemaking

performed.

Now, what the directive does not do, it does not prohibit certification of such products to other standards. You'll recall in the preamble to the Final Rule we say that certifying agents who want to certify products that are not -- that are not covered by the NOP standards may do so, so this means that Dave Engel's group can go ahead and create standards for cosmetics, if that's what they want to do.

MR. RIDDLE: For organic cosmetics.

MR. MATTHEWS: For organic cosmetics. They can do that if they want. We have not said that certifying agents cannot create their own standards for the products not covered by OFPA.

This directive does not allow the identification of non-organic agricultural ingredients as organic. As the directive clearly states, all agricultural products produced and handled in the United States must be certified to the National Organics Program to carry the word "organic." Okay, so we're not saying that you can use conventional products in these products as an ingredient and call it organic unless it is an organic ingredient.

MS. CAROE: Excuse me.

MR. MATTHEWS: Yes.

MS. CAROE: So that's the enforcement of the ingredient deck of these products that are outside of OFPA?

MR. MATTHEWS: The entire labeling of those products is outside of OFPA, but if they're going to say that an agricultural ingredient within that product is organic, then it has to be organic, it has to be a truthful label claim.

MS. CAROE: So does that --

UNIDENTIFIED MALE VOICE: That --

MS. CAROE: Let me finish that. So does that mean that NOP compliance could actually enforce that if --

MR. MATTHEWS: No. We would probably turn that over to Commerce.

MS. CAROE: Okay.

UNIDENTIFIED FEMALE VOICE: Justice.

CHAIRMAN KING: Okay, I think George had -- okay, Kim.

MS. DIETZ: One of the questions we're hearing out there is the use of the word "certified." We'll have USDA-certified agricultural products and we will have QAI-certified or, you know, Joe Smith-certified. Will they be able to use the word "Certified Organic"?

MR. MATTHEWS: Yeah. Yes.

MS. DIETZ: Thank you.

MR. MATTHEWS: They can --

MS. DIETZ: As long as it's truthful labeling.

MR. MATTHEWS: -- make any truthful claim. What they cannot do is represent it to be USDA/NOP-certified.

MS. DIETZ: That's a question out there, that people are asking.

MR. MATTHEWS: That's right. It does not prohibit identifying organic agricultural ingredients as organic, as I said, it does not prohibit labeling such products as organic.

UNIDENTIFIED MALE VOICE: And it doesn't matter what standard.

MR. MATTHEWS: It doesn't matter what standard. Because cosmetics are not covered, for example, by the Organic Foods Production Act. We cover agricultural products, and a cosmetic's not an agricultural product.

CHAIRMAN KING: Barbara.

MS. ROBINSON: Just to add to what Rick is explaining there, just to make it perfectly clear to people, in case you don't realize:

USDA is given its authority by the Congress. USDA cannot unilaterally wake up one day and decide that it now has jurisdiction over another agency's regulated entities. Those products that are not covered by OFPA

because of Congress are covered by the FDA, and we have no authority to change that, we cannot enforce against products over which we have no jurisdiction.

If you have issues with that, you must take it up with the Congress. You cannot ask USDA to do it differently; they have no authority to. It's just a simple fact of government.

CHAIRMAN KING: Dave, then Becky.

MR. CARTER: What, if any, discussions have been held with other agencies, such as FDA, that if entities under their jurisdiction are going to use the term "organic," that there is some sort of consistency with the USDA Organic Rules, has there been formal discussions or informal discussions with those agencies on that issue?

MS. ROBINSON: I think we've probably had a few informal discussions, but nothing of any seriousness, and frankly, given that we do not have the enforcement authority for those areas, we expect those industries to do just as this industry did. USDA is not going to propose standards and we're not going to propose regulatory behavior to the FDA. We expect the industry to come forward and -- Keith -- Keith can add to this.

MR. JONES: Dave, that's actually an excellent question, because we're required to consult, we actually

have consulted with FDA, we've consulted with FDA extensively on this. I just had a conversation with FDA last week.

FDA is not certain -- and I can't speak for FDA and wouldn't speak for FDA. They're not certainly exactly what they're -- what they're going to do. FDA has been quite clear in all of the discussions that it has had with USDA and with industry that our rendering is correct. You know, laws have limits, the Organic Foods Production Act has limits, and these areas that we're talking about are squarely within FDA's purview for their labeling, okay?

So we've been very diligent in making sure that FDA has been involved in the process and that FDA concurs with where we're at in this.

CHAIRMAN KING: Hold on, I've got people ahead of you, Andrea. Becky and George.

MS. GOLDBURG: Barbara or Keith. I'd like to better understand the limits of this directive when you're dealing with agricultural products. I understand what you're saying about cosmetics and so on not being covered by the law, but let's take fish or pet foods. I'm not --

MR. MATTHEWS: That's the next slide, I'm going to address fish and pet food on the next slide.

MS. GOLDBURG: Okay.

MR. SIEMON: Same question here.

MS. GOLDBURG: Well, can I ask my question --

MR. MATTHEWS: Sure.

MS. GOLDBURG: -- and then you can tell me it's on the next slide. I want to understand what the limits of the certification of those types of products outside the USDA program are. For example, how does part of the statute and the regs that deal with prohibited methods apply to, say, salmon? Could we have organic transgenic salmon? I guess I'm trying to jive in my mind how --

UNIDENTIFIED FEMALE VOICE: That's a (inaudible), that's a totally different issue, Becky.

MS. GOLDBURG: Well, I --

UNIDENTIFIED FEMALE VOICE: We don't have standards, so they can't be certified.

MS. GOLDBURG: I know. So basically --

UNIDENTIFIED FEMALE VOICE: There is no certified organic salmon to the USDA standard.

MS. GOLDBURG: I know. I know. But that's my question. I understand that. So in other words, outside -- certifiers can certify to their own standards --

UNIDENTIFIED FEMALE VOICE: Right.

MS. GOLDBURG: -- that they create.

UNIDENTIFIED FEMALE VOICE: Right.

MS. GOLDBURG: And I'm not -- I don't (inaudible) any certifiers about to do this, but I want to understand how open the scope of potential organic certification for agricultural products is.

UNIDENTIFIED MALE VOICE: It's open.

MS. GOLDBURG: Is it entirely open, is it partially constrained by --

UNIDENTIFIED FEMALE VOICE: What do you mean by open, what do you mean is it open?

MS. DIETZ: I think what the question is, and this is where the industry was 20 years ago, whether it's OTA developing standards or whether a private entity develops standards, they're going to be allowed to do that, as long as they certify to a standard. There's no -- USDA is not going to step in and say "those are approved" or "not approved." It's going to be --

MS. ROBINSON: Industry can bring us standards for those -- what you're going to see from Rick on the next slide, pet food can come forward, fish can come forward, they -- as you saw in the previous slide, they are covered by OFPA, but we have no standards. Ergo, if the industry brings us standards, we go into our rulemaking mode, we publish them, we ask for comment, we take the comment, we work with it, we publish a Final Rule, boom, they're

covered. From that point on, any private standards go away.

MS. DIETZ: But until that point --

MS. GOLDBURG: But until that point, when there are only private standards, they can be highly variable --

MS. ROBINSON: That is true.

MS. GOLDBURG: -- and my question is: are there constraints on what those private standards can say?

MS. ROBINSON: No.

UNIDENTIFIED FEMALE VOICE: No.

UNIDENTIFIED MALE VOICE: No.

MS. ROBINSON: No.

MS. GOLDBURG: So, for example, prohibited methods are not prohibited from the private standards --

MS. ROBINSON: It is pre-October 21, 2002, for those commodities. That's what you have to go back to.

MS. GOLDBURG: Okay. Thank you.

MR. SIEMON: I'd rather see the slide, but -- it just fits in so well. So we couldn't have just said: since we don't have standards, we're going to use livestock feed for pet food, or something like that, you couldn't have had that discretion is what you're saying, until we developed standards?

MR. MATTHEWS: We -- in order to fully comply

with the Administrative Procedures Act, we have to go through rulemaking that involves the pet food industry. Okay? Let's move on to the next slide, Katherine.

CHAIRMAN KING: Andrea, did you have -- Keith, then Andrea, then Rick.

MR. JONES: Let me walk you guys through this, because I think there's -- I think there's a disconnect, there's a serious disconnect between what certain parties believe that USDA can do under its authority and what we've actually done.

Through the Organic Foods Production Act, essentially what you had, through the promulgation of the Final Rule, was a federalization of standards for certain products, okay, so this -- the point that I'm trying to make here, folks, is that this is not anything new. What we are finally setting out in writing is in fact 100-percent consistent with what USDA has done since day one under the authority that is vested in it by the Organic Foods Production Act. We have in no way, okay, changed the process.

As we go through notice and comment rulemaking, which is the only way we can promulgate standards, we cannot assent to voluntary standards and then somehow say that they're under the Rule and you can carry the seal.

The only way that we can have standards which carry the USDA seal is to go through notice and comment rulemaking. There are areas, which we spell out in this directive, where that has not happened.

There's also, in the case of pet food, a cross-jurisdictional issue, pet food is regulated by the Food & Drug Administration, so not only have we not only gone through no notice and comment rulemaking for the sake of pet food, there will be additional consultation that will have to occur with FDA to ensure that they want us to essentially reach into their labeling protocols and regulate the labeling of pet food when the modifier "organic" is attached to it. Okay.

Now, in certain cases -- and again, this is quite consistent with what we have set out from day one, is that we regulate up to farm gate, okay? We do this with cotton. Cotton has always been regulated under the regulations as they're written, up to and including the farm gate. We have no textile standards; we have said that. We have no processing standards for textiles; we've said that.

Therefore, the ability for cotton, once it is spun and woven into fabric, that is essentially unregulated by OFPA, okay? And so what we've said, in an analogous way, is that there are certain products that -- if you want

to use this to get your head around -- that are like cotton, that we simply either, one, do not have the authority to regulate, nor have we gone through the process that we are required to go through to promulgate standards.

So what I want to leave you with is this single notion, and if there's a lack of clarity, I want to stay up here until we get this, okay, because this is no different, we have done nothing different in this directive that is inconsistent with anything that we have said in terms of the concept and how we regulate things, this kind of march of federalization, if you want to call it that, and the notion that our limit -- that our authority sometimes is limited to farm gate certification.

So those are the two things that you really need to take away from this presentation, is that there's an authority question and there's a process question. Okay.

CHAIRMAN KING: Okay, I have Andrea, Jim, then Rose.

MS. CAROE: Okay, I just want to clarify something in my own mind. The relationship and the arrangement that the program has with BATF and alcoholic beverages, is that possible only because alcoholic beverages fall within OFPA but outside the labeling authority of the program?

MR. JONES: Well, that relationship is actually codified through a memorandum of understanding, okay, so there has been consultation, BATF's -- which is now -- what is it -- TTB, their attorneys sat down with our attorneys and said, "Okay, we think we can play in the same sandbox with you, okay?" That's how that piece of the puzzle got put together, is because there was a meting of the legal minds in terms of the respective authorities that are contained in various statutes, and then there was an MOU that was put together that linked those various authorities. Okay.

MR. NEAL: Also, there are legal responsibilities -- Arthur Neal. There are legal responsibilities that USDA/NOP has that TTB cannot perform on behalf of USDA regarding their products, so TTB does not have the legal authority to say whether or not -- if an organic claim on a wine product is legal, because USDA has not granted them that authority, and it would be the same instance if USDA tried to say that an organic claim on an FDA-regulated product was compliant, because FDA has not granted us that authority.

MS. CAROE: My question is really geared at why this relationship couldn't be duplicated with other products.

MR. MATTHEWS: Let me answer that. Let me answer that. The issue of alcohol beverage was always contemplated to be covered, for example the sulfites issue, and as -- you'll recall that originally all the sulfites were prohibited from any wine product, and the industry went to Congress and was able to get Congress to agree to saying that sulfites can be used as long as that wine product is only labeled as a "made with." So in that case, the alcohol beverages were always included in the original rulemaking. The pet food has not. That's the difference. Okay?

CHAIRMAN KING: Okay, I have Jim, then Rose, then George.

MR. RIDDLE: Yeah. You know, Keith, when you were talking about the march of federalization and this is a part of a continuum, I guess some of the confusion that's happening out there is, you know, people read the May 2002 Scope policy, which said these sectors are eligible, and they proceeded to set up systems which followed the regulations, certifiers certified to that, they made major investments, and now that's been turned on its head for certain sectors. And I understand what you're saying in that -- you know, like pet food, I've talked about this, you can make pet food to the human food standards, label it

to the human food standards, but it's just packaged for pets. Why can't you continue to do that, and what I'm hearing, and correct me if I'm wrong, is that there is a need for an MOU with FDA, something like that, because they have code jurisdiction or they have jurisdiction over --

UNIDENTIFIED FEMALE VOICE: They have jurisdiction --

MR. RIDDLE: -- pet food labeling, that NOP doesn't have.

MR. JONES: Right.

MR. RIDDLE: So that's standing in the way, even though it can be produced and --

UNIDENTIFIED FEMALE VOICE: Yes.

MR. JONES: Yes.

MR. RIDDLE: -- and certified --

MR. JONES: Yes.

UNIDENTIFIED FEMALE VOICE: That is a labeling issue (inaudible).

MR. JONES: Yeah. And Jim, let me respond to the last point first, and then I'll get into the March policy statement.

This is a labeling authority issue, okay, and FDA has the labeling authority, full stop, for the products that we have delineated in that scope direction. Full

stop, okay, they have the authority.

Now, this in -- the knitting together of NOP and FDA authority I think is much more -- personally, this is a personal opinion, don't take it as gospel from USDA, but it is my personal opinion, in looking at the authorities, that the knitting together of those authorities is much more complex than sitting putting an MOU, okay?

Now, it may not be so, we are in continuing consultation with FDA and will be in consultation with FDA on these issues for the foreseeable future, okay? Because one of the things that you've got to understand is that we desire the same thing that you desire, okay, and that is, we want clarity in labeling, we want consumers protected, okay, we want consumers to understand what they're buying, but we also want people to understand that our authority is limited.

I know this is hard to believe, but we are not the all-knowing, all-seeing individuals that you think we are, okay? We're limited, okay? We're limited as to where we can go, and that's something you're just going to have to get your arms around, okay?

Now, in terms of the March policy statement, okay: in hindsight, it is unfortunate that that document was written the way that it was, okay, but let me say this,

Jim: It wouldn't matter if we had published that statement 40 times or one time, we cannot give authority we don't have, okay?

So that's what you need to keep in mind, is that we cannot give authority where we have not been delegated that authority by Congress. So it is unfortunate, again, that that statement was written the way it was, you know, we recognize that people made some decisions on that, that's why we think we've been kind of recognizing that, you know, in this -- in this -- but we can't give authority -- no matter how much you would force us to do something, short of notice and comment rulemaking and short of FDA saying, "Yes, we're going to allow you to regulate the labeling of this product when 'organic' is attached to it," we just don't have the authority to give, okay, and that's straight up.

CHAIRMAN KING: Okay. We'll have Rose, George, then Dave.

MS. KOENIG: So -- and that's, I think, the sense of confusion, because I know I've (chuckles) -- I've been to so many presentations where they say, "The only difference now is that the USDA owns the word 'organic.'"

So what you are saying is, is that if you -- if it's an agricultural product within your authority, yes,

you do own that word in the sense, but you don't own the word in things that are not -- beyond the -- your authority.

MR. JONES: Right, and --

MS. KOENIG: So -- and that's where this -- and that's why on these body-care products, if it's an agricultural product, you still -- you may not -- you know, you may send it to a different office, but you -- it is still under -- within our regs if it's agricultural organic --

MR. JONES: Well, but --

MS. KOENIG: -- but anything else, body-care products, things outside of that, you don't own the word, anybody can own the word.

MR. JONES: Yeah, and let me -- let me pick up on that. I think that's -- if I understand you right, Rose --

MS. KOENIG: I know what you're saying.

MR. JONES: -- that's a correct rendering of where we're at. Now, when -- and I was guilty early on of saying we own the word "organic" --

MS. KOENIG: Yes, you did, and that's why -- and that's why I'm saying that the communication has been always "we own the word" and that's what --

MR. JONES: We own the word organic, for the products we own the word --

MS. KOENIG: Organic on.
MR. JONES: -- organic on --
MS. KOENIG: Exactly.
MR. JONES: -- okay, and --
MS. KOENIG: But we've taken that all the way, as: you own the word and that, you know, the word is -- you know, and there's going to be regs, so --
UNIDENTIFIED MALE VOICE: First there was the word --.
(Laughter.)
MR. JONES: Yeah. And I guess in response, there should -- there should have been some sort of understanding that the term "organic" when it's applied to chemistry is not regulated by the Organic Foods Production Act.
Okay, so there are certain -- there are certain uses of the modifier "organic" that we don't regulate. So despite my inarticulate nature, you should have picked up on the fact that: well, okay, well, I think I kind of know what he's talking about here, even though -- if he's not exactly using the right words. Fair enough?
MS. KOENIG: That's fair. But I think that sense of confusion -- I mean, I take things literally, and I think most people that are not accustomed to this regulatory arena and the way the federal government works

in terms of departments -- I mean, half of the confusion among the Board is -- you know, and I was telling somebody, you know, the learning curve in this, you know, as far as people being on the Board, is incredible. I mean, we don't -- we don't function on a day-to-day level, so it just seems, you know, in some ways incredibly inefficient, but I understand what you're saying. I think it's just going to be a process of us trying to --

MR. JONES: Well, and one of the things that we're --

MS. KOENIG: So give us time.

MR. JONES: One of the things that we're trying to do, we're trying to do exactly what you're asking us to do, and that is: speak with clarity, you know, don't use shorthand, and we're guilty of that, we're guilty in assuming that you just know what we're talking about, okay, and I -- I own that, okay.

So what we're doing, I think, now for -- for -- perhaps better than we've ever done before is we're saying in our writing and in our speech: okay, this is really where it's at, this is where you draw the lines, okay?

MS. KOENIG: Just one thing, and I'm just going to make this assumption, it's a statement. I think -- and maybe -- this is my observation, and I don't know if it's

true, but it seems like there's a learning curve even within your agency, as far as how you're extending to these other agencies, and I think the alcohol was a good example, that there are some groups that are easier to kind of mesh your programs with but there are others that are also bogged down in bureaucratic and regulatory language that is not such an easy fit, and those are the ones where you're not -- where we're seeing this kind of -- there may never be an agreement. So I'm reading into that that --

MS. ROBINSON: You're right, Rose, but let me just say, this is not in defense of the Department at all, but there probably has not been a new program created in USDA for probably 35 years, so -- and this is -- this is brand-new, it's

MS. KOENIG: And what --

MS. ROBINSON: -- it's from the ground up --

MS. KOENIG: So I think that the way that the industry sees these directives is: aha, they knew this all the time, and now they're finally -- you know, it's -- I am understanding that it's a learning process for you, it's not something that you've decided to just change the playing field midstream or anything like that, and so -- okay, I understand.

MS. ROBINSON: Okay.

CHAIRMAN KING: Okay, all right.

MS. ROBINSON: I think we should try and get back on track here.

CHAIRMAN KING: So how's that next slide coming, Rick?

MR. MATTHEWS: Yeah, it's -- yeah, we really do need to get back on track because --

CHAIRMAN KING: Hold on, hold on, I do have a couple other people with comments, but Rose, you're done on this one.

MR. MATTHEWS: Okay, but let me just say this one thing. There's still 43 percent of the presentation yet to go.

CHAIRMAN KING: And it is near 2:30, so -- we appreciate the math on that. I have George, then Dave, then Jim.

MR. SIEMON: Just a point of clarification, then, because I'm concerned for the pet food industry. They can now go to a certifier, get them to adopt standards that are -- they can't say they're equal or -- to NOP standards, but they could do them equal to NOP standards and use the word "organic" on the front of -- the labels, so they can go forward without the USDA seal and we can avoid most of the disruption, but they can't imply that it equals NOP

standards, even though they do.

MS. ROBINSON: The products that we don't cover, George, are still bound, as all products in the United States are, by truth-in-labeling clauses.

MR. SIEMON: I know, but it's truthful if they meet the human standards for NOP, it's truthful.

MS. ROBINSON: If it's truthful, they can say it.

MR. SIEMON: But it says right in your document they may not imply --

MR. MATTHEWS: Okay, hold on a second, hold on a second. What we have said is that pet food, like fish, can be certified to any standard that is out there, with the exception of the NOP.

MS. ROBINSON: Right. Right.

MR. SIEMON: I don't understand that [phonetic], but okay --

MR. MATTHEWS: Okay. Now, the ingredients in that pet food, the corn, the beef, the rice, whatever, if it's produced here in the United States, it has to be produced to the NOP. We're regulating the labeling. The only reason why we're not covering labeling at this time is that we have not gone through the rulemaking for that process, when it comes to pet food, that --

MR. SIEMON: But there's no reason why all those

agricultural ingredients, they can't have an asterisk down below that it's USDA certified ingredients --

MR. MATTHEWS: That's -- they --

MR. SIEMON: -- and complies with all USDA things.

MR. MATTHEWS: -- they can make all truthful --

MR. SIEMON: I mean, we've got to help these people here.

MR. MATTHEWS: They can make all truthful label claims, they can say the rice was produced to the National Organic Standards. They can say the beef was produced to the National Organic Standards. They cannot say that this dog food --

MR. SIEMON: I understand.

MR. MATTHEWS: -- was produced to the National Organic Standards.

MS. ROBINSON: And just for sake -- you know, the pet food folks, they -- one of the reasons we haven't brought them under is they have their own labeling guidelines, they have -- you know, AFCO has its own labeling. They did come to USDA before implementation and they asked us to change our labeling regs to accommodate them, and we said no, we were not going to change the labeling regulations in this program to accommodate the pet

food industry, we thought that there had to be another way to work this out and that we wanted to see some activity on their part, so --

MR. MATTHEWS: Okay, let's kind of slide on to the next slide.

CHAIRMAN KING: Well, hold on, I've got Dave, Jim, and then we're moving on, and it is approaching 2:30, I'll remind the Board of that.

MS. DIETZ: Five minutes each?

CHAIRMAN KING: Yeah.

MR. CARTER: I recognize there's 43 percent, but that's not 43 percent by weight. This is really one of the heaviest issues in this presentation.

(Laughter and applause.)

MR. MATTHEWS: I don't know that that is true. You haven't seen the rest yet.

(Laughter.)

UNIDENTIFIED MALE VOICE: I think we're just warming up.

MR. CARTER: And also, just let me put into the record, I'm going to try and avoid entering into discussions pertaining specifically with pet food, because I am involved in a pet food project that is not organic but is at least familiar enough to know that there's a lot of

folks out there playing fast and loose with definitions on pet food.

The question, though -- I guess the comment that I would make is to encourage -- and I recognize, Keith, that it's more difficult than just doing a memorandum of understanding with FDA on some things, but that would sure be a great place to start, is to enter into a memorandum of understanding as a first step.

MR. RIDDLE: And my question --

CHAIRMAN KING: Yes, go ahead, Jim. Next and last.

MR. RIDDLE: I just want to make clear that an accredited certifier can have this other certification to any standard and still have their name, you know, similar, same basic claim, "certified by," you know, who they are, X-Y-Z certifier, that would appear on an NOP product, they don't have to set up a separate entity or something. You know, as far as what the consumer would read would be the same name of the same certifier that's certifying an NOP/USDA organic product. Correct?

MR. MATTHEWS: That's what we've said.

MR. RIDDLE: Okay, yeah. All right. Then I just -- I also have a suggestion that I think might bring some comfort, and that is: if there was information posted

about how to file a complaint with the Justice Department, if you have concerns about truth in labeling or untruthful labeling, you file a complaint to us when it's something we regulate, you've already got that, but here's where you go and how you do it --

UNIDENTIFIED FEMALE VOICE: We can put the link over to FTC's Truth in Labeling, and they have that right on their website, how to file a complaint.

MR. RIDDLE: Uh-huh, yeah.

UNIDENTIFIED FEMALE VOICE: And they will also tell you how to go to your state attorney generals.

MR. RIDDLE: Right.

UNIDENTIFIED FEMALE VOICE: We can put the link on, that's not a problem.

CHAIRMAN KING: Rick, next slide.

MR. MATTHEWS: All right. What do we need for aquatic animals and pet food to be certified to the National Organic Program? We need industry submission of proposed standards. In reality, we need three things: we need a proposed standard; we need them to tell us why this particular standard; and they need to provide us with information about the industry to be regulated. Okay.

You know, we recognize that pet food is something that probably doesn't take an awful lot of changes to the

regulations to make pet food possible under the NOP. The problem is, we haven't done the rulemaking. Okay.

I can tell you that there's three areas of concern. Labeling is number one. Number two, are they using any kind of synthetics that the rest of the food industry doesn't do. I don't know the answer to that. The other thing is that in .237, livestock feed, we talk about by-products. How many of these by-products are being fed to mammals. Dogs and cats are mammals. So you'll have to take a look at that section as well

But other than that, it looks like it's pretty -- pretty easy for this Board or the pet food industry, or this Board and the pet food industry, or even a consultant for the pet food industry, and I know there's a couple of you on this Board, that if you want to throw together some standards and submit them, we'll start the rulemaking process.

MR. SIEMON: Is that a livestock committee process?

MR. MATTHEWS: The livestock committee can work on it.

MR. SIEMON: I don't know, I'm just asking.

UNIDENTIFIED MALE VOICE: Or a pet food task force.

(Laughter.)

MR. MATTHEWS: The bottom line is, you guys can work on that, and will we take that from you? Of course we will.

CHAIRMAN KING: Okay, and we can talk about that later.

MR. MATTHEWS: Now let's move on to the next slide, Katherine.

CHAIRMAN KING: All right, next slide.

MR. MATTHEWS: There's also been some questions about whether or not we'll extend the October 21st, 2005, deadline for using up existing supplies. When it comes to those products that are not covered by OFPA -- again, those being cosmetics, body-care products, fertilizers, things like that -- the answer is: no, because we're -- we're not regulating those areas, so no, we won't extend that deadline.

But when it comes to fish -- aquatic animals actually, because there's more to it than just fish, but -- aquatic animals or pet food, the answer is: possibly. It really depends on what's happening within the industry as far as creating standards that we can then put through the rulemaking process.

MS. CAROE: Rick?

MR. MATTHEWS: Yes.

MS. CAROE: So the only thing that's non-compliant about those labels is if they actually have the USDA seal or represented as USDA organic certified?

MR. MATTHEWS: That's correct.

MS. CAROE: So if they say organic and they have a certifier's name, that label's still complying as long as the certifier has something they're certifying to --

MR. MATTHEWS: That's correct.

MS. CAROE: -- and it does meet it.

MR. MATTHEWS: The ones that have to be changed are those that are using the USDA seal or say "certified to the NOP" or something to that effect.

Does that affect a lot of people? It'll affect some. Some people will run out of the labels before the deadline, and what they'll have to do is get new plates printed up, or made up, so that they can get new packaging printed without those claims. Otherwise they'll still in business for making organic cat and dog food.

MS. CAROE: Now, some of these things have really long shelf lives, that are on the shelves. They're not going to -- they're not going to have to do recall or anything, those --

MR. MATTHEWS: It's going to be --

MS. CAROE: It's in commerce --

MR. MATTHEWS: It's going to be another one of these old product deals.

MS. CAROE: Okay.

MR. RIDDLE: And the thing about animal by-product use, that would really be applicable if you were going to certify the pets.

(Laughter.)

MR. RIDDLE: I mean, that's prohibited, if you wanted to certify the pets -- I'm not trying to be cute, I --

MR. MATTHEWS: What I'm saying is that some people have raised that issue and I'm saying take a look at it to see if it's a problem.

MR. RIDDLE: Right.

MR. MATTHEWS: I've heard people from both sides of it saying, "Well, that's not a problem," other people say it is a problem, so I'm saying that's one area to look at for determining whether or not it's a problem. Okay? Other than that, the only things I've heard about is: well, is that particular paragraph a problem, yes or no; what about materials; and what about the proper labeling scheme for pet food. So that's -- that seems to be the challenge for the pet food industry. Okay.

Let's move on to the List 3 inerts. See, Dave, this one's going to be probably more than 43 percent. (Laughter.)

MR. MATTHEWS: It reminds producers and ACAs that pesticides can only be used when pest-management practices fail, and that's something that everyone has to keep in mind. You have pest-management practices within the standards. Those come first. Just because something is on the National List doesn't give you carte blanche to just use it, it has to be a part of the organic systems plan.

Use of List 3 inerts is prohibited. You cannot knowingly use a List 3 inert. The producers and the accredited certifying agents must try to determine what List 3s are in the pesticide product that the producer is proposing to use. Okay. They have to try.

The pesticide use must be listed in the organic systems plan, and the organic systems plan must be negotiated, enacted, and amended through dialogue between the certifying agent and the producer. None of those requirements have changed. Okay.

This directive acknowledges that List 3 inerts are not listed on the pesticide label. The farmer has no way -- when he goes into the farm supply store and picks up a container of a pesticide that has an approved ingredient

listed, the approved active is listed on the product, he has no way of knowing what's in there, with the exception of the List 3, which EPA requires to be listed. Okay. So he's got to be able to -- he has to then try to find out what is the inert in that product, unless it's listed someplace else, for example an OMRI listing, or maybe the certifying agents have been able to find out what it is and maybe this new certifying agents organization can help us pull together a listing of all products that may not be on OMRI'S list but certifying agents know whether or not they contain List 3s. So that's work to be done.

Now, the producers and the ACAs may not be able to find out what is in that product. We're looking for them to contact the manufacturer, we're looking to them to contact the EPA, we're looking to them to contact other ACAs in order to try to find that out, but it's very likely they're not going to be able to get that information.

What this directive does is it says that after due diligence the ACA will approve the use of pesticides with unidentified inerts. Okay. Due diligence means contacting the manufacturer, contacting EPA, and contacting other ACAs.

This directive also requires that the producer be informed of the requirement to immediately stop the use of

this product should it come to the attention of the certifying agent that that product does indeed contain a List 3 inert. They have -- the certifying agent should be telling the producer that up front. Once that is identified as a problem, then they have to tell them again, okay, "We have since found out that it has a List 3, you have to stop." Okay.

They also need to document this notification, both times, document it when they first tell them, "Okay, we're going to approve the plan with this material," and also when they tell them to stop using it. They would take no adverse action on the producer that used one of those products that was later found to have a List 3 inert.

Now, if the producer used something that was later found out to have been prohibited, they would have to stop immediately. If they chose to use it again after having received written notification to stop, then the certifying agent must initiate procedures to revoke certification. There's only one way of correcting a non-compliance for use of a prohibited substance on your acreage, and that is to go through a whole new period, which is a minimum of three years.

So in the case of somebody who willingly used it, knowingly, willfully used it, they're going to get revoked

for 3 -- for 5 years. Now, that's -- that's just the way it's going to be. Yes, Rose.

MS. KOENIG: Now, this, to me, is an example of sort of what -- I guess Jim's example of the -- what was the process -- the water, going back to the percent water. I under- -- you know, I'm not -- so the question is not to the -- to what you're saying there, it's more of an alternative that I think is a more responsible approach.

MR. MATTHEWS: What is?

MS. KOENIG: My approach.

(Laughter.)

MR. MATTHEWS: All right. What's your approach?

MS. KOENIG: I mean, EPA -- I mean, everything that is a pesticide has to be registered with EPA, okay.

MR. MATTHEWS: Right.

MS. KOENIG: You can take the active and you could probably -- I'm assuming it has a database, you could get a list of every active that we've approved, natural and things on the List, and EPA could pretty easily -- maybe not tell us what the List 3 is, but they could probably go through all of those and tell us which are List -- which have List 4 inerts and which have List 3 or List 1 or List 2 --

MR. MATTHEWS: If that was --

MS. KOENIG: -- and we could provide that information so that you could avoid even having that loop-- I don't want to call it necessarily a loophole, because it isn't a loophole if in fact the procedures are followed that way, but I think that the information is there, there's two federal agencies involved. We had Bob Tourlet [phonetic] come, they made that proposal as far as the alternative voluntary labeling scheme, that I know that that's not required, but it seems like there should be some interagency communication that you guys could facilitate and provide that information to your certifiers, that would provide that information, and we wouldn't need this directive.

MR. MATTHEWS: There's no requirement for the manufacturer to give up that information, and in many cases EPA doesn't have that information. So it's not an easy matter for the certifying agent just to call them up and say, "Does it have a List 3?" Now, that is the key way to do it, is you don't say, "Tell me what's in the product," but you can ask them, "Your inerts, are they on a List 4 or a List 2 or a List 1?"

MS. KOENIG: That's what I'm saying, I'm not saying -- no, I'm not saying to disclose a particular inert, but doesn't the -- can the EPA just inform the ones

that are compliant and the ones that aren't compliant by brand name? You know --

MR. MATTHEWS: I don't know that they can.

MS. KOENIG: Well, that, to me, is the question. I mean, that seems like --

MR. MATTHEWS: Well, right now we can't get that information.

MS. KOENIG: Well, then I -- you know -- okay.

MR. MATTHEWS: That's what this problem with the List 3 is all about.

MS. KOENIG: But we --

MR. MATTHEWS: What you have done is you have prohibited the use of a product that farmers in many cases have no way of knowing whether or not they're in compliance.

MS. KOENIG: But I'll go back -- again -- you know, because -- I was on the List, the inerts task force, and I will argue that this example, whether it's inerts or formulated -- formulations of natural fertilizers, it's the same issue. Things that are not -- there's things that don't require -- again, it's a labeling issue, that growers may, you know, purchase, that they then find, even though it says, you know, organic manure or organic stuff, that -- and they don't really realize that there's other --

UNIDENTIFIED MALE VOICE: Correct.

MS. KOENIG: -- other examples. Like for example, a good example of it is soil mixes, okay, a lot of -- metromix. It says metromix, you're buying metromix, it doesn't tell you necessarily that there's 10-10-10 piters [phonetic] in those things. Growers have to find that information out through using Organic Materials Review Institute or working through their certifiers.

So this issue is not unique, necessarily, to List 3 inerts. I think the solution is easier with List 3 inerts because we actually have a federal agency that regulates it and that does somehow have that information, that perhaps could be, you know, conveyed to us in a format that would be acceptable to them as an agency. So I'm just putting that out.

CHAIRMAN KING: I think what Rose is asking is: could we explore that, in your opinion, and you don't have to answer that now; please take it into consideration.

MR. MATTHEWS: Okay.

CHAIRMAN KING: Goldie, then Jim.

MS. CAUGHLAN: Help me understand, Richard, how we can come to this position of saying we -- we can't find out whether it's in there or not. I mean, I was reading that thing and I thought, you know, it was leading to say

therefore not being able to find a disclosure, therefore not being able to find out would lead us to assume: okay, you can't use it, which is precautionary principle. How in the hell can we come to this opposite -- how do I go and talk to consumers? I don't -- it's -- I'm sorry: it's nuts. That is so backasswards.

(Laugher.)

MR. RIDDLE: Yeah. Well, I'll say that in a different way.

(Laughter.)

MR. RIDDLE: It's my understanding that, you know, the burden of proof is on an applicant to demonstrate compliance and the use of approved materials when they enter the process, but now it -- as I understand this, it's rewarding producers and manufacturers for withholding information, and this applies not just to List 3 but also List 2 inerts.

UNIDENTIFIED FEMALE VOICE: And List 1.

MR. RIDDLE: Well, List 1s are required to be labeled by EPA, is my understanding. So that information is revealed. But List 2s and 3s are not, and 4s. So it could fall anywhere there, so it's not just List 3s.

I guess, you know, I'm assuming that you develop this in consultation with EPA, and I'm just wondering what

their opinion has been, because I know they do have a lot of this information and have that pesticide, you know, labeling program that this impacts, cross-jurisdictional, like we were talking about before. I'm just wondering what they've said about this to you, to help move this forward.

MR. MATTHEWS: When it comes to this program, they defer to us.

MR. RIDDLE: But have you talked -- I mean did they review this, did they review this --

MR. MATTHEWS: No, they did not review this.

MR. RIDDLE: Okay.

CHAIRMAN KING: Other comments? We have just one, Zea, quick comment.

MS. SONNABEND: Can I just make a really quick comment?

CHAIRMAN KING: Yes; very quick, please.

MS. SONNABEND: You said at the beginning that these directives were things about the way the Rule always was, and this is not what you've been saying to us up until this point. In fact, you know, I know on several phone calls you said, "You can't use it if you don't know what's in it." So now we've been going along and -- you know, California, the materials capital of the world, practically, right? So we've got our growers all trained

now, we're issuing these -- I forget what you call them, we call them cease-and-desist orders: you stop using it if you can't find out what's in it, we get them 30 days. Now we have them all trained. This is a step backwards now, we have to retrain them.

The directive gives no phase-in, it says it's effective instantaneously. We don't have internal process developed for this new thing. You know, it's not guidance, it's -- it throws us into a tizzy about it.

CHAIRMAN KING: Thank you. Go ahead.

MR. MATTHEWS: Okay, let's move on. What the directive does not do, we do not see it as allowing List 3 inerts. It's recognized -- what we are doing is -- and why we have taken this position is that we recognize that the farmer doesn't know, and in many cases the certifying agent doesn't know. Okay? They can't identify this stuff. Without this ruling, it's: when in doubt, go without. In other words, anyone who uses that substance is going to be out of organic for 5 years.

UNIDENTIFIED MALE VOICE: When in doubt?

MR. MATTHEWS: When -- well, if you don't know what it is and you're -- part of the problem is that certifying agents are all over the map on this one. What you have to remember is that when a prohibited substance is

applied to your land, you're out of organic production for 5 years. You're revoked.

CHAIRMAN KING: Knowingly.

MR. MATTHEWS: That's your revocation.

CHAIRMAN KING: Knowingly.

MR. MATTHEWS: That's when you knowingly do it. Okay. So the only option is, the only other option that we see, is to go out there and tell people: yes, the active is allowed, but no, you can't use the product, and not through any fault of your own, but because manufacturers won't give you the information.

CHAIRMAN KING: Kevin.

MR. O'RELL: Rick, the directives, as I understand it, are based off of legal substance, so what -- in this case of this interpretation, this is based off of legal advice, legal counsel, with the USDA, or is this --

MR. MATTHEWS: It becomes an enforcement issue, how do we enforce this thing.

MS. CAUGHLAN: You have to know.

UNIDENTIFIED FEMALE VOICE: You have to know where you don't use it.

UNIDENTIFIED FEMALE VOICE: "When in doubt, do without."

CHAIRMAN KING: Rose?

MR. MATTHEWS: How about some certifying agents, any certifying agents want to weigh in on this?

MS. DIETZ: I think we need to --a

(Rapping.)

MS. DIETZ: It's 3 o'clock, and we haven't started even our agenda yet.

MR. MATTHEWS: That's right.

CHAIRMAN KING: Yes, that's right. Very quick question, not a statement, I have Rose, then you, Kim.

MS. KOENIG: I just want to reiterate, I guess, what Jim said, that your policy directive talks about List 3, but List 2 falls into the same category --

UNIDENTIFIED FEMALE VOICE: Same thing.

MS. KOENIG: -- which is an area -- okay, 3 is of unknown toxicology, and again, we feel that that issue, once EPA goes through those, is going to be resolved, but we still have the same issue that none of the -- you know, the List 2s aren't also. So the directive, Number 1, what about List 2s? So if we find out that it's a List 2, then they've lost it for 5 years? So the directive, if you're going to go for this, needs to cover -- you know, and I don't recommend it, because I don't agree with it, but it probably needs to entail also List 2 inerts because they're subject to the same concern, if that's the way you're

thinking.

Again, I am not proposing that, because I don't agree with the directive, but again, I would just -- you know, "when in doubt, go without." I feel, as a producer, okay, and I'm a user, okay, forget the certifiers, you know, I live -- this is my living, you know, this -- the program -- and that's what I always says, "You are my servants" (chuckles), "I am your stakeholder, the program is to serve me, and I am just one producer," but that is my job, just like it's your job to manage a program. My job -- if I want to get certification, I have to come to the plate, I have to find the information out, I have a serviced called the Organic Materials Review Institute that I utilize, I utilize my certifier, I do that due diligence, and if I can't find the information, I do without, I don't risk it.

MS. DIETZ: It's 3:00. They should do public comments on Friday.

CHAIRMAN KING: Yeah. Sorry, we have to keep moving forward. So Kim, did you have a quick comment, or no?

MR. MATTHEWS: Do you want to keep going or do you want to --

CHAIRMAN KING: I do want to keep going. I just

want to say one quick thing, and I understand that this is a heavy issue, if you will, but let's focus on one thing that Rick just commented on, and I think you may have caught it, and that is: this is an enforcement issue. So if we have suggestions, ideas, so on and so forth, in the future, not at this particular moment, perhaps you would want to focus on that. Rick.

MR. MATTHEWS: Okay, let's move on to the antibiotic hot button. Again, what the directive does, this one reminds producers and ACAs that sub-therapeutic antibiotic doses are strictly prohibited under the Organic Foods Production Act.

The use of antibiotics is allowed to treat illness when preventive practices and veterinary biologics fail. Okay. They are -- it is allowed, to use. The problem is that there are effects from doing that.

So the next slide provides that this directive identifies the effects of using antibiotics. An animal that has been treated with an antibiotic can never be sold, labeled, represented as organic. Products from slaughter animals cannot be sold, labeled, or represented as organic. Dairy animals must be managed organically for 12 months before milk can be sold, labeled, or represented as organic. Breeder stock treated prior to the last third of

gestation can give birth to an organic animal. Okay.

Again, what the directive does, it clarifies that OFPA and the regulations do not prohibit dairy farmers from treating sick dairy animals with antibiotics, and I repeat from what we had said just at the last slide, treated dairy animals must be managed organically for 12 months following treatment before milk can be sold, labeled, or represented as organic.

Now, when we say "managed organically," that means 100-percent managed organically. Okay. George?

MR. SIEMON: You know, my biggest question about -- I don't know what's my biggest question, but this of course brings up the whole issue of all prohibited medications, not limited to antibiotics.

UNIDENTIFIED FEMALE VOICE: Correct.

MR. SIEMON: If I read this correctly, any medication can be used now as long as you have the 12-month window prior.

MR. MATTHEWS: We're only talking antibiotics here. We're only talking antibiotics. That was the issue that was of contention between certifying agents and what is the issue that we have addressed.

MR. SIEMON: But this is a clarification of the law, as you've said.

MR. MATTHEWS: For antibiotics.

MR. SIEMON: So I can't take this logic and not see that this applies itself equally to all medication, this whole document as well.

MR. MATTHEWS: We've only addressed the issue of antibiotics --

MR. SIEMON: Okay.

MR. MATTHEWS: -- with this directive.

MR. SIEMON: So then for right now the -- since you've only addressed that, the understanding of the community should be: this is only for antibiotics and not for any other forms of prohibited medication.

MR. MATTHEWS: Yes.

MR. SIEMON: Should that be the understanding of the community?

MR. MATTHEWS: Until we review it for other things. We've only reviewed it for antibiotics.

MR. SIEMON: Okay.

MR. MATTHEWS: That was the issue that was put to us. Okay.

What this directive does not do: it does not allow sub-therapeutic doses; it does not permit milk from treated animals to be fed to organic animals; it does not permit milk from treated animals to be sold, labeled, or

represented as organic; it does not allow treated animals to be sold, labeled, represented as organic slaughter stock; it does not allow the feeding of non-organic feed, in any quantity, to treated animals.

And that's where I said on the last slide: managed organically. You can give this animal that is ill a dose of an antibiotic; if that animal was an organic animal, it loses organic status for meat. That animal then has to go through organic management for 12 months from the date of the last administering of that antibiotic, for the purpose of saving that animal's life, before it can produce organic milk.

MR. SIEMON: I'm so glad you brought that up too, because that was my next question, about the feed, because it really brings open the whole feed issue. But just so I'm clear about the 12 months: is that managed organically for 12 months? If you give that calf an antibiotic 16 months prior to milking, what -- I just need clarification on the whole organic feed on the certain class of dairy animals, we have two classes of dairy herds --

MR. MATTHEWS: We have changed nothing. We have only clarified that a dairy animal can receive an antibiotic and go through a 12-month management organically and still be able to produce organic milk. We have changed

nothing related to origin of livestock.

MR. SIEMON: So if it's 16 months -- I have two questions. If it's at 16 months, they've still got to be fed organically all the way through --

MR. MATTHEWS: Oh, yes.

MR. SIEMON: -- and the 12 months not relevant.

MR. MATTHEWS: Yes. You cannot -- you cannot manage that animal organic- -- as a conventional animal after giving that dose and still have it become organic again, you have to continue to manage that animal organically, with this one exception, that you could give it a shot or a suppository, whatever, you know, to correct the animal's illness at that point. It's really a humane issue, in my mind, you're taking a very sick animal, you have a choice, you can take it off your farm or you can treat the animal. Now, where -- in real terms, where is this going to be important? It's going to be important for young stock, because the farmer already is faced with a 24-month period before that animal is going to be productive, okay. So if you're treating it within the first three months, it's still got to go through the same organic management that it would have, but that animal has lost its meat status as organic. You still have to manage him organically all the way through.

Now, is it practical to think that a farmer is going to treat a mature animal and then keep it on its farm for a year? I doubt it. They're going to get rid of that animal. Okay?

MR. SIEMON: And by your chart, this is -- we have two streams of dairy animals, in the dairy world, and this chart shows that this is for all streams, and so I have another question that's kind of a broader question. Are we real clear that those in the dairy stream that come in with the 12-month have to feed their calves organically from day of birth, last third of gestation forward? I'm not clear on that. But this -- if I'm to follow this conversation and read this chart, we're all clear that no matter what stream you come in, you must raise your calves organically, feed and everything else, besides for this antibiotic exception now, from the day of birth. That is not the case in the field right now. We need to address that.

MR. MATTHEWS: George, go ahead and run that by me again. I missed it. I was getting corrected on a point that I made before.

MR. SIEMON: No matter how you come into the dairy program, this is a little off-subject, but it's very relevant. How you come into the dairy program, we know

there's two streams, no matter what stream you come through, you must raise your calves, that are born on your farm, organically.

MR. MATTHEWS: Right.

MR. SIEMON: And you can't take them off the farm in any way or bring them back, and I'm just referring to your chart here.

MR. MATTHEWS: Yeah. And --

MR. SIEMON: And then I'm informing you that is not the present enforcement out there in the field right now, our understanding. That's maybe another clarification we --

MR. MATTHEWS: And there may be -- the document itself may have created a bit of misunderstanding, because you're -- we're not really contemplating that you take the thing off the farm and then bring it back a day later, or a year later, or anything like that, you treat the animal, you mark it, and then you manage it organically without using any of that milk, to either be sold to consumers or even used as feed for other -- for young stock, for example.

And George, a technical correction a previous statement.

MR. SIEMON: Okay.

MR. MATTHEWS: Yes, the only question posed to us was antibiotics, but by extension it would apply to other medications.

MR. SIEMON: I think so too.

MR. MATTHEWS: Okay. Becky.

CHAIRMAN KING: Becky.

MS. GOLDBURG: I'm curious whether the NOP has a definition of sub-therapeutic antibiotic use pertinent to this directive. As I understand it, there is no widely-accepted definition of sub-therapeutic, there are a variety of definitions. I know that FDA has no definition. So I'm curious whether -- how you're making the distinction between sub-therapeutic and therapeutic antibiotic use.

MR. MATTHEWS: To me, and the way we mean it --

UNIDENTIFIED MALE VOICE: That's in the Act.

MS. GOLDBURG: It is actually in the Act?

UNIDENTIFIED MALE VOICE: Yes. That's (inaudible) statutory --

MR. MATTHEWS: Sub-therapeutic is a requirement within the Act.

MS. GOLDBURG: Yeah, but I don't think it's defined.

UNIDENTIFIED MALE VOICE: And I think that's covered in FDA as well.

MS. GOLDBURG: No, there is no FDA definition.

UNIDENTIFIED MALE VOICE: Sub-therapeutic?

MS. GOLDBURG: There is not.

MR. MATTHEWS: Okay. But basically what we're saying is that in the presence of illness that would dictate that you have to bring -- that you have to use an antibiotic in order to save that animal's life, or -- if you're a veterinarian -- basically it's an issue call by a veterinarian. If your animal is so sick that it has to have an antibiotic, or I suppose even if it had gone through a surgery and you needed to have an antibiotic to prevent an infection, this is where the humane part of it comes in, you can go ahead and do it, but there are costs for having treated your animal in a humane way. One of those is that you lose the organic status of that animal for meat purposes.

MS. GOLDBURG: Yeah, I understand that, but just --

MR. MATTHEWS: And this only applies, really, to dairy animals, okay?

MS. GOLDBURG: Yeah.

MR. MATTHEWS: Any other animal, it loses its meat status, it's out of the organic anyway.

CHAIRMAN KING: Jim, then Andrea.

MR. RIDDLE: Yeah. You've said -- and you have it stated up there -- that this does not permit milk from treated animals to be sold/labeled as organic --

MR. MATTHEWS: Right.

MR. RIDDLE: -- but yet I've heard you say verbally that yes, an animal can be treated with an antibiotic and 12 months later its milk sold/labeled as organic. So it does allow --

MR. MATTHEWS: Well, but it doesn't allow it during the 12-month period.

MR. RIDDLE: Yeah, but it was a treated animal. So it does allow the milk from a treated animal to be --

MR. MATTHEWS: After 12 --

MR. RIDDLE: Yeah, with conditions.

MR. MATTHEWS: -- months of organic management.

MR. RIDDLE: Okay. So I just want to address that. And then what I -- this correction you've made about: it applies to other medications --

MR. MATTHEWS: Uh-huh.

MR. RIDDLE: -- so that would include hormones as well. So there --

MR. MATTHEWS: No. Hormones are specific --

MR. RIDDLE: If they're used for therapeutic purposes --

MR. MATTHEWS: This is for illness.
MR. RIDDLE: -- treatment -- yes.
UNIDENTIFIED FEMALE VOICE: Illness.
MR. RIDDLE: Yes. I mean, I don't see the line. It applies to other medications of any category --
UNIDENTIFIED FEMALE VOICE: I'm not a livestock expert, but do you give hormones for illnesses?
UNIDENTIFIED MALE VOICE: Yeah.
UNIDENTIFIED FEMALE VOICE: Yeah.
UNIDENTIFIED MALE VOICE: Sure you do.
MR. SIEMON: Just breeding problems.
MR. RIDDLE: Breeding problems.
CHAIRMAN KING: Next example, Barbara.
UNIDENTIFIED MALE VOICE: Viagra?
UNIDENTIFIED MALE VOICE: Menopause.
(Laughter.)
UNIDENTIFIED MALE VOICE: Just to support -- we have to remember, in the dairy, which is so complex, in the new herd clauses, those animals coming into the program could have previously had antibiotics, could have previously had hormones.
UNIDENTIFIED MALE VOICE: Right.
UNIDENTIFIED MALE VOICE: So we have to be somewhat even here about this because some understand. Not

that I agree with the document, don't anybody misunderstand me, but still, I can agree (inaudible) --

MR. MATTHEWS: But it does -- but it does address in some respect the concerns of dairy farmers of the unlevel playing field with regard to health care for the young stock that they have on their farm, that are organic.

MR. RIDDLE: Okay, so that's the --

MR. MATTHEWS: But we're not -- but we're really not --

MR. RIDDLE: The origin of stock allows prior treatment in an animal's life, before it comes into the organic program; then the livestock health care practice must be followed, and it says a producer must not sell, label, or represent as organic any animal or edible product derived from any animal treated with antibiotics. It doesn't say within a year; it says "must not." So I just -- I --

MS. CAUGHLAN: So where does this come from?

MR. RIDDLE: Yeah, where does this come from? I think -- you know, what's driving this?

UNIDENTIFIED FEMALE VOICE: What about the level playing field for the consumer?

MR. RIDDLE: Edible product --

MR. NEAL: In Section 236 -- Arthur Neal is my

name.

CHAIRMAN KING: Arthur.

MR. NEAL: In Section 236 there is no -- what happens, it says that organic animals must be managed continuously for 12 months. Those animals can be considered to -- the milk from those animals can be sold as organic. It says that --

MR. RIDDLE: Uh-huh. Origin of stock.

MR. NEAL: It doesn't say "unless treated with a prohibited substance." It can't -- that's under "Origin."

MR. RIDDLE: Right.

MR. SIEMON: Then how come you're requiring the feed -- a 100% organic feed on the second stream, then?

UNIDENTIFIED MALE VOICE: What was that?

MR. SIEMON: Then why would you require a 100-percent organic feed on that one stream of dairy that you're requiring --

MR. NEAL: Because it must continuously be managed organically.

MR. MATTHEWS: The exception to the 100-percent organic feed is only found for whole herd conversion, it is not found for any other situation.

MR. SIEMON: But it -- so you're differentiating between feed and medication at that time.

MR. MATTHEWS: Yeah, we're differentiating between feed and medication.

MR. SIEMON: Except for replacements.

MR. MATTHEWS: One heals, the other one keeps them nourished.

MR. SIEMON: Except for replacements on the one stream. That's another subject.

CHAIRMAN KING: Andrea.

MS. CAROE: Okay, I just wanted -- I really don't have a question but I just -- I want to make a comment on two things that are kind of a by-product of this directive, and one is that an unenforceable section of this rule has been: we have never been able to identify a farmer that's withholding treatment of a sick animal, and this will hopefully prevent some of that from happening, because that's -- that's in the regulation, you can't withhold treatment from an animal that's sick, but if a certifier goes a year later, after the animal's died, they have no idea that that happened that way. So that -- I just want to put that in the mind, because I really think that's an important thing, that we've never been able to address.

And then the other thing is, there is a discrepancy between buying a replacement animal at a sale barn and transitioning them and somebody that's growing

their own.

UNIDENTIFIED MALE VOICE: Speak up, Andrea.

UNIDENTIFIED MALE VOICE: We can't hear you.

MS. CAROE: I don't think which mic works.

MS. ROBINSON: I don't think it is working.

MS. CAROE: I'll speak loudly. Now, the other issue was the discrepancy between somebody that's raising their young on their farm and buying from a sales barn and transitioning, because those animals could have been treated and fed, and anything could have happened to them. It almost -- it's almost counter-productive to promoting growing the young animals on the farm, if it's easier to buy them from the sale barn and transition them, than to deal with a young animal that is more susceptible to disease.

MR. SIEMON: They just clearly said that all those people that qualify for that have to raise their calves and keep their heifers rather than go out and buy other heifers as a shortcome, they just clarified that -- I hope all the ACAs hear that so they can do it.

UNIDENTIFIED MALE VOICE: What was that?

UNIDENTIFIED FEMALE VOICE: I didn't hear that.

CHAIRMAN KING: I think we all missed that one, George.

MR. SIEMON: They just said about the two streams of dairy, the ones that qualify for the 12 month, they must raise their heifers organically and cannot be selling them and buying back heifers elsewhere as some way to get around and cheapen the cost of replacements, which you were just referring to.

MR. MATTHEWS: That's always been in there, we haven't changed that regulation.

MS. CAROE: I'm missing something.

MR. MATTHEWS: We have not changed any standards related to the origin of livestock. We have simply addressed whether or not a dairy animal can receive treatment for illness and still remain on the organic farm, and the answer is: yes, you can treat it, you can stay on the organic farm, it can never be used as organic meat, it cannot be used for the production of organic milk for 12 full months, and during that full 12 months it must be managed organically.

UNIDENTIFIED MALE VOICE: And longer.

MS. CAROE: Well, let me just say this, I mean --

MR. MATTHEWS: And it could be longer if you treated a two-day-old calf.

MS. CAROE: Okay. But if -- I understand that origin of livestock has not changed by this directive, but

if a farmer had an animal born on their farm, two-day-old baby, that gets pneumonia, okay --

MR. MATTHEWS: Right. And it was born as an organic animal.

MS. CAROE: It was born as an organic cow.

MR. MATTHEWS: All right.

MS. CAROE: They treat that animal, they sell the animal, they cull it out. Another organic farm --

MR. MATTHEWS: That is sold as a conventional animal.

MS. CAROE: Sold as a conventional animal.

MR. MATTHEWS: Right.

MS. CAROE: Another --

MR. MATTHEWS: Cannot come back.

MS. CAROE: -- organic farmer is looking for a replacement animal, buys one at a sale barn, which is not required to have any lineage on that animal, buys that animal, unknowing that it was an organic animal that's gone conventional, bring it in, transition it for 12 months, in effect they're doing exactly what the directive is saying.

MR. MATTHEWS: Well, yes, that -- there is always the risk that an animal that was born organic was treated and then culled from the herd, went into the conventional market. There is the possibility that if the -- if the

buyer of that animal, who is organic, did not do due diligence of trying to find out the history of that animal, you might possibly have that animal come back onto the farm.

MS. CAROE: So --

MR. MATTHEWS: Under the regulations, it's not allowed to come, but it is possible that one would.

MS. CAROE: Right, and that was my point. My point is that it allows it to stay on the farm and it doesn't weaken it in any way.

MR. MATTHEWS: Right. That's right. This option actually would create an opportunity where that is less likely to happen, hopefully. You're more confused?

MR. RIDDLE: Just --

MR. MATTHEWS: Then we should have just left it the way it was, Jim (chuckles).

MR. SIEMON: But again, I made an assumption earlier, but after listening to this, I've got to go back -- assumptions, always gotta worry about them. If you bring in through the one-time exception, you're still qualified for this same use of antibiotics.

MR. MATTHEWS: Yes.

MR. SIEMON: Okay.

MR. MATTHEWS: You're -- the animal that you're

bringing in is converted. Now, again, the likelihood of treating a mature animal --

MR. SIEMON: I'm talking about calves, I'm talking about a calf.

MR. MATTHEWS: -- and keeping it on the farm is pretty slim.

MR. SIEMON: I'm talking about calves.

MR. MATTHEWS: Okay.

MR. SIEMON: Because we have two different replacement clauses for dairy, and it doesn't matter which one you're in, all of them qualify for this antibiotic use.

UNIDENTIFIED FEMALE VOICE: Yeah, that's right.

CHAIRMAN KING: That's a true statement.

MR. MATTHEWS: Yes. Remember --

MR. SIEMON: It's not totally logical, but --

MR. MATTHEWS: Remember that the 80/20 rule for feed is only available to a whole herd conversion.

MR. RIDDLE: During the conversion process.

UNIDENTIFIED FEMALE VOICE: Right.

MR. RIDDLE: Once they've converted --

MR. MATTHEWS: During the conversion process.

MR. RIDDLE: -- all animals must be organic from the last third of gestation. If someone comes in through the 1-year clause -- I'm really confused, coming out of

this -- what about those calves? They're fed organic? It's required that they have to be fed organic?

MR. MATTHEWS: Yes.

UNIDENTIFIED MALE VOICE: Yes.

MR. MATTHEWS: Yes. Yes.

MR. RIDDLE: But that's contrary to your --

MR. MATTHEWS: Managed 100-percent.

MR. RIDDLE: And that's contrary to your prior policy statement on the two herds, where you had that chart?

MR. MATTHEWS: No, it isn't. No, it isn't. We are not addressing the origin of livestock at all.

MR. SIEMON: Jim, that previous one was replacements, bought replacements. But I hope NOP is hearing: there's a lot of confusion about raising those on those farms that qualify for the 12-month. You need to hear that. There's a lot of confusion.

UNIDENTIFIED MALE VOICE: They're being fed conventional.

MR. SIEMON: Because that's the shadow here -- it's not even the subject we're on, but that's the shadow that's still confusing us.

UNIDENTIFIED MALE VOICE: Yeah.

MR. SIEMON: That document on replacement says

brought in replacements, bought, they're saying no matter which way you come in, you have to raise your calves organically, organic feed and all, until we come up with this new exception here, and you can't sell your calves off and buy heifers back for the one year, which is going on right now.

UNIDENTIFIED MALE VOICE: Totally.

MR. SIEMON: So we need to deal with this, it's going on, it's --

UNIDENTIFIED MALE VOICE: That's what the chart says.

UNIDENTIFIED MALE VOICE: Yeah, that's what your prior chart says.

MR. SIEMON: You need to deal with this, so you all need to hear it. There's a lot of -- we need a directive on this one.

CHAIRMAN KING: But this is -- but, yeah, that's -- so that's another issue that we need to clarify --

MR. MATTHEWS: That's a different issue.

CHAIRMAN KING: -- clearly. I think I need to be heavily medicated right now, I don't know about you. (Laughter.)

UNIDENTIFIED FEMALE VOICE: Don't ask for directives (chuckles).

MR. SIEMON: Let's move on. Let's move on.

UNIDENTIFIED FEMALE VOICE: Life's like a breakout issue.

CHAIRMAN KING: Yeah, there you go. All right. So Rick, how close are we to --

MR. MATTHEWS: Oh, we're getting a lot closer.

CHAIRMAN KING: Well --

UNIDENTIFIED FEMALE VOICE: We'll move on.

MR. MATTHEWS: I'm not sure that it's going to be any quicker. Now, we can cut it off --

CHAIRMAN KING: I'm just wondering if at some point people would need to go to the bathroom and take a break, so let's --

MR. MATTHEWS: The only thing left is fishmeal and the materials review process.

CHAIRMAN KING: Let's get through antibiotics, at least. Are we done?

MR. SIEMON: We're done. Let's move on.

MR. MATTHEWS: Antibiotics, we're done.

CHAIRMAN KING: What's the will of the Board, do you want to take a quick break now or do you want to finish --

UNIDENTIFIED MALE VOICE: I think we're so off schedule we ought to keep moving, myself.

UNIDENTIFIED MALE VOICE: Let's just finish NOP.

CHAIRMAN KING: I'm hearing "Let's finish NOP." Rick, if you have to go to the bathroom, tough luck. (Laughter.)

MS. ROBINSON: We've got seven more slides.

UNIDENTIFIED MALE VOICE: Do you want to try to define "sub-therapeutic"?

UNIDENTIFIED FEMALE VOICE: No, not now.

UNIDENTIFIED FEMALE VOICE: Not right now.

UNIDENTIFIED MALE VOICE: Not right now. (Laughter.)

UNIDENTIFIED FEMALE VOICE: And whether it's -- (Pause.)

CHAIRMAN KING: Okay, Rick, I guess you're off and running on the next subject.

MR. MATTHEWS: All right, now we're on to fishmeal. Go ahead and click again, right button.

What the directive does: reminds producers and ACAs that Section 205.237(a) allows the use of non-synthetic feed additives and supplements in organic production. Fishmeal is an allowed protein supplement. It's neither organic -- it's natural.

What if the fishmeal contains a synthetic substance? Fishmeal is a natural. All naturals are

allowed unless prohibited. Fishmeal is not organic. How much fishmeal constitutes a supplement?

MR. SIEMON: No, no, no, no, go back.

UNIDENTIFIED FEMALE VOICE: Go back.

UNIDENTIFIED FEMALE VOICE: Go back.

UNIDENTIFIED FEMALE VOICE: Put it back on.

UNIDENTIFIED MALE VOICE: Back up.

MR. SIEMON: You had a good question but there wasn't the answer. Synthetic is defined in our rule that if a substance is formulated or manufactured by a chemical --

MR. MATTHEWS: Fishmeal has never been determined by this Board to be a synthetic product.

MR. SIEMON: But it has synthetic ingredients.

MR. MATTHEWS: It doesn't have synthetic ingredients.

UNIDENTIFIED FEMALE VOICE: Yes, it does.

MR. MATTHEWS: It may have a synthetic ingredient.

UNIDENTIFIED MALE VOICE: Fish emulsion is listed --

MR. SIEMON: The question is: what if it contains synthetic --

MR. MATTHEWS: But fishmeal it --

MR. SIEMON: What if it contains a synthetic substance? That's your question up there.

MR. MATTHEWS: It has never been ruled to be a synthetic substance by this Board.

UNIDENTIFIED MALE VOICE: What if it contains a synthetic substance?

UNIDENTIFIED FEMALE VOICE: Yeah.

UNIDENTIFIED FEMALE VOICE: Yeah.

MR. MATTHEWS: It doesn't matter.

UNIDENTIFIED FEMALE VOICE: Why?

MR. MATTHEWS: It doesn't matter. It's a natural product.

(Cross-talk.)

MR. SIEMON: So if they would --

MR. MATTHEWS: Okay, we're not going to meet -- or meeting of the mind on this, and it's -- under --

MR. SIEMON: Okay, so the answer should be --

MR. MATTHEWS: -- under the rulemaking that has already been done, if you go to the preamble, it says that fishmeal is allowed, and all we're doing is reiterating the fact that a determination has already been made that fishmeal is allowed, and there's no criteria put on that fishmeal.

MR. SIEMON: So as long as it's an FDA product,

it doesn't matter what's involved in the fishmeal, if they want to put amino acids in there or something like that and it still be called fishmeal, fortified fishmeal --

MR. MATTHEWS: As long as it meets the definition of what a fishmeal is.

MR. SIEMON: By the FDA.

MR. MATTHEWS: Right.

MR. SIEMON: This is based on the determination of synthetic, and you said it's never been determined to be synthetic, so in order to be determined synthetic, someone would have to go through the TAP review process, to have it declared as a prohibited material, right, prohibited natural?

MR. NEAL: That's right. That's right, because fishmeal -- fishmeal has not been prohibited, because all naturals are allowed unless prohibited.

MR. SIEMON: But all of us thought that if a natural had a synthetic in it --

MR. MATTHEWS: But you have to remember that all naturals, including naturals that are used in an organic food, the natural, if it was created using synthetics, it doesn't matter, it's allowed, in the last 5 percent of human food.

UNIDENTIFIED MALE VOICE: It's got to be on the

List.

UNIDENTIFIED MALE VOICE: Only if it's on the List and we've reviewed it.

MR. MATTHEWS: The same thing doesn't -- no.

MR. SIEMON: Okay, next --

MR. MATTHEWS: No, naturals are allowed unless prohibited under crops and livestock.

MR. SIEMON: So if an FDA-approved additive has a prohibited material in it, that's on our list, then clearly it's not allowed? If an FDA-approved additive has in it a synthetic -- prohibited synthetic that's on the NOP list, then clearly wouldn't that mean it wouldn't be allowed?

MR. MATTHEWS: I'm still not following the question.

MS. KOENIG: I have an explanation, I think I have clarity.

CHAIRMAN KING: Rose, go ahead.

MS. KOENIG: I think fish -- it's like aquatic -- it's like fish emulsion or aquatic plants, that in reality, if it's a processed product that involves a synthetic substance, that it -- I -- this is my personal opinion, so -- I mean, this is not -- I'm not speaking from a regulatory view, but I view fishmeal as -- what people are saying, if it's -- if there's anything -- if it's, you

know, processed in some way, it may in fact have to be petitioned, because similar to aquatic plants or similar to fish emulsion, there may be a procedure, to get to the finished product, that would require it to be petitioned and then perhaps annotated.

MR. MATTHEWS: Yeah. Now, to confuse it even more: If there were fish standards in place, the fish would have to be organic and then it would have to have gone through the process, but it's -- right now fish are outside our scope, and it's a natural, and so it's allowed.

UNIDENTIFIED MALE VOICE: Even if adulterated?

UNIDENTIFIED FEMALE VOICE: Yeah, but fish -- that's --

CHAIRMAN KING: Jim, then George, then Becky.

MR. RIDDLE: I'm going to come back to that preamble that I read earlier today and ask you how it squares with that when it says "Synthetic ingredients in any formulated products used as organic production inputs, including pesticides, fertilizers, animal drug and feeds, must be included on the National List," and feed supplement is defined as "feeds." So to me, when it says "feeds," that's a broad category. And so here, you're saying that it doesn't matter if it has synthetic ingredients, where you said earlier that they must be on the National List.

MR. MATTHEWS: .237 allows non-synthetic substances to be used as a supplement in organic feed.

MR. RIDDLE: Well, yeah, I have no problem with that. Fishmeal without synthetics. But once you've added a synthetic --

UNIDENTIFIED FEMALE VOICE: Right.

UNIDENTIFIED FEMALE VOICE: -- then you've got a different --

MR. RIDDLE: It's a different issue.

MS. DIETZ: It sounds like a certifier issue to validate that there are no synthetics in that --

UNIDENTIFIED FEMALE VOICE: But not if they're given a directive that doesn't call for that.

CHAIRMAN KING: Hold on, let's stay on track.

MS. KOENIG: But fishmeal becomes fish emulsion, it's a natural that is changed once it's -- unless the fish -- if the fishmeal is purely fishmeal, then I agree with that, but what that question begs is: if it contains a synthetic substance, it then -- that's what I'm saying, then it becomes fish emulsion and it has to go through the process of going -- it's a natural that now has been altered and it gets reviewed.

MR. MATTHEWS: Well, fish emulsion would. We're not talking about fish emulsion, we're talking about

fishmeal.

MS. KOENIG: No, but --

MR. NEAL: Just a second, guys, just a second.

CHAIRMAN KING: Point of clarity?

MR. NEAL: Yeah.

CHAIRMAN KING: We're looking for that.

MR. NEAL: There are a lot of issues, that are trying to be hashed out right now, that are a point of contention, and it all revolves around what can and cannot be reviewed by the Board. What does the Act allow to be included on the National List. If you turn to 6517 of the Act, this is the issue that we face. But it's in there. You go -- it's on the right-hand column of the page, 21-18.

CHAIRMAN KING: 21-18 or 6517, same thing.

MR. NEAL: Okay, (c)(1)(b).

CHAIRMAN KING: Okay.

MR. NEAL: It says -- and let's read --

CHAIRMAN KING: Where are we starting?

MR. NEAL: This says that -- (c)(1) says "The National List may provide for the use of substances in an organic farming or handling operation that are otherwise prohibited under this title only if: (b) the substance is used in production and contains an active synthetic ingredient in the following categories: copper and sulfur

compounds, toxins derived from bacteria, pheromones, soaps, horticultural oils, fish emulsions, treated seed, vitamin and minerals, livestock parasiticides and medicines, and production aids."

Now, this is -- what was that, Nancy?

CHAIRMAN KING: Never mind, move on.

MR. NEAL: This talks about active synthetic ingredients.

Now, it sounds like we're back at a phosphoric acid issue, where there may be a preservative used that's not an active ingredient. Well, how do you petition the Board to include a non-active ingredient in a feed formulation for inclusion on the National List if there's no entry point for it by the Act? Because the Act says "active synthetic ingredients."

CHAIRMAN KING: Nancy, then Rose.

MS. OSTIGUY: Am I understanding you correctly that your reading of this says that we can -- and there's part of this I wouldn't have a problem with. The only things that go on the List are things that are in the category that you just read, and it must be inactive, otherwise it's prohibited?

MR. NEAL: No.

MS. OSTIGUY: So you are saying that if it's not

an active, then it's okay even if it otherwise would be prohibited if it was active?

MR. NEAL: Correct.

MR. SIEMON: Then why did we go through all that about the aloe preservatives?

MR. NEAL: I don't know.

MR. SIEMON: You don't know. Good, I'm glad you said that.

(Laughter.)

MR. SIEMON: No, I'm agreeing with you, I don't know either.

MR. NEAL: Now, listen, listen, and if you think I'm wrong --

MS. OSTIGUY: Why did we do anything with inerts, then? They're not actives.

MR. NEAL: Inerts is specifically identified in Paragraph 2. Now, if you'll take a look at vitamins that are allowed, on the National List, there are I'm sure some carriers invited that are not on the National List. The Act did not envision for every inert -- well, I won't say inert -- inactive ingredient that's used in a feed formulation or any other product to be considered by the Board because it's too expansive. That means that there are products that are on the market right now that could

potentially be in violation under the standards.

UNIDENTIFIED MALE VOICE: You're missing something in the law right now, I'll tell you what it is --

CHAIRMAN KING: Hold on.

MR. SIEMON: You've got to be recognized.

CHAIRMAN KING: Friday, please, public comment can go forth --

UNIDENTIFIED MALE VOICE: I can help you --

CHAIRMAN KING: Hold on.

UNIDENTIFIED MALE VOICE: -- out immensely on this right now.

CHAIRMAN KING: Not right now.

MR. SIEMON: I've got a new question, just -- because I can see we're really going to be (inaudible) about this. This -- just like my question about antibiotics -- then covers crabmeal and any non-synthetic, non-agricultural material, whether it's got synthetics or not, as long as it's FDA-approved, anything, any and all?

MR. MATTHEWS: Yes. And all of those marine products would change if there were standards for aquatic animals.

CHAIRMAN KING: Rose.

MS. KOENIG: Can you clarify that, Richard. I assume most -- it would change if there were standards for

wild aquatic animals, since all fishmeal at the moment is made from -- or virtually all, I should say -- from wild fish.

MR. MATTHEWS: Well, yeah, it's -- I guess -- I say that if we had standards, I'm a little -- I don't know the correct word. Let's say that I fail to see at this point -- and I could be convinced differently, but I fail to see how you're going to be able to open this up to all aquaculture without a source of organic fishmeal, okay, because there are -- you're going to have to be feeding carnivores fish, and so --

MS. GOLDBURG: Right. But that's assuming that you need -- want to or need to open it up to all aquaculture.

MR. MATTHEWS: Well, that's assuming that it was all opened up.

MS. GOLDBURG: Right.

MR. MATTHEWS: Now, I guess, to use Keith's phrase, I should be a little more precise in the wording, that if there were standards in place, then the -- and it included wild-caught or even aquaculture-raised fish that was available for the production of fishmeal, then that fishmeal would have to be organic, okay.

The real problem is, right now, in the organic

system, you wouldn't be able to turn a carnivore into an herbivore, so they're going to have to have a source of food for your aquatic animals that are carnivores, if -- if you went to --

MS. GOLDBURG: If you decided that you need organic carnivores.

MR. MATTHEWS: That's right, if you went to the stage of having carnivores covered by the standards. But right now there are no standards for any aquatic animals.

I'm just saying that the position that we take now is subject to change should there be rulemaking done in the future that would affect this position, okay?

CHAIRMAN KING: Okay, I have Rose, Kevin, George.

MS. KOENIG: I've had -- this is back to Arthur's statement, and I've had time to kind of think about this and rethink about it, and then the other day I was looking through the preamble of the Rule on Page 8612, and it's Subpart (g), administrative, where it talks about -- and the interpretation or the -- you know, how the National List of Allowed and Prohibited Substances -- descriptions of regulations, okay?

You go into the second column, looks like the second paragraph, where it starts "In this Final Rule," talks about only -- the EPA lists four inerts in that

section, but if you go down midway, and I'll read it, "Synthetic ingredients in any formulated products used as organic production inputs, including pesticides, fertilizer, animal drugs and feeds, must be included on the National List. As sanctioned by OFPA, synthetic substances can be used in organic production and handling as long as they appear on the National List."

But again, synthetic ingredients is not the same as active, it's all, and they talk about formulations of.

MR. NEAL: And I truly do understand the confusion of that text, of that language, but when you go back to the Act, this is the authority, this is what we can and cannot look at. The window that's opened are for active synthetic ingredients.

UNIDENTIFIED FEMALE VOICE: Where?

MR. NEAL: (c)(1)(b)(i).

MR. RIDDLE: And everything else is prohibited --

UNIDENTIFIED FEMALE VOICE: No. He's saying --

MR. RIDDLE: -- every other synthetic --

MR. MATTHEWS: No.

MR. RIDDLE: I know. You're turning it on his head from what we've understood before: synthetics are prohibited unless they're on the List, but what I'm hearing you say is synthetics are allowed, but only this category

needs to be reviewed.

MR. NEAL: Watch [phonetic] the acknowledgement of the Act, it says, "the substance" --

MS. OSTIGUY: Where are you reading?

MR. NEAL: This is (c)(1)(b)(i). "The substance is used in production" and does what? -- "and contains an active synthetic ingredient." It does not say "the substance is used in production and it contains itself," there's something else in with this active synthetic ingredient that's being considered, "it contains," "the substance contains an active synthetic ingredient."

MR. MATTHEWS: Mark, you've still got a full afternoon of material to go.

CHAIRMAN KING: Yeah, I know. I know. It just seems -- okay.

UNIDENTIFIED MALE VOICE: You've already wasted a half an hour I could have saved you.

CHAIRMAN KING: Okay. Friday you can do public comment. We need to come back, but thank you.

MR. SIEMON: Can I ask one more question that's a new subject on this one? Just so I understand, of course we all know there's limitations of fish, and I hope there's no other fishmeals out there, but there's no limit on the percent that can be fed here --

MR. MATTHEWS: That's the next slide.

CHAIRMAN KING: Next slide.

MR. SIEMON: I just (inaudible), Rick, trying to help you out the best I can.

MR. MATTHEWS: Next slide.

(Laughter.)

MR. MATTHEWS: The regulation defines what a supplement is. I've included in brackets there as a supplement to help clarify what that statement is. Clearly it's really intended as something to supplement the feed, it's not meant to be a wholesale replacement of, say, a grain, it's not meant to be fed at an 80-percent level. 80 percent of a protein is no longer a supplement, it's feed. So it's -- it's what is there as a supplement, and you really need to be going back to AFCO and what they regulate for putting together a feed.

And you also have to remember too that fishmeal is going to have an impact on the quality of the meat or the ags or whatever, so your farmer is not going to be -- is not going to be feeding levels that are going to destroy his market.

MS. GOLDBURG: Can I ask you a question, Richard?

MR. MATTHEWS: Yes.

MS. GOLDBURG: Earlier you made a statement about

the need for fishmeal if you're going to farm carnivores, particularly aquatic carnivores, but here you're allowing fishmeal as a supplement, and I'm arguing that there should be a limit on how much of a -- what percentage of the feed it could be in order to be considered a supplement. Is there an implication there for farming of aquatic carnivores?

MR. MATTHEWS: There I don't see -- for example, feeding fishmeal to salmon, I don't see that as a supplement.

MS. GOLDBURG: Okay. If it's 45 percent of the feed.

MR. MATTHEWS: That is their main -- that's one of their main ingredients for their feed.

MS. GOLDBURG: Okay.

MR. MATTHEWS: Okay? You know, when it comes to feeding fish fish, that's -- that's what they eat, that's not a dietary supplement. But again, they're outside the current scope.

MS. GOLDBURG: Right, I understand that.

MR. MATTHEWS: Okay, let's go on to materials review. This one will probably be no less a debate.

There are currently the following stages to a materials review: a petition is received, the NOP reviews

the petition, there's a scientific review and reporting on that, there's a requirement for a technical advisory panel to be involved in the process, the NOSB committee will review and make a recommendation to the full board, and the full board will review and then make a recommendation to the Secretary, and then the NOSB -- I mean the NOP -- goes through the rulemaking process. So those are the things that are happening under a materials review.

Let's go to the next slide, please.

UNIDENTIFIED FEMALE VOICE: Wait a minute, wait a minute.

MR. MATTHEWS: Go back.

UNIDENTIFIED FEMALE VOICE: Go back. Are these going to be available --

CHAIRMAN KING: Could we just get copies of this, these slides printed out, posted, something?

MS. DIETZ: Are the slides going to be posted on the website?

CHAIRMAN KING: Knowing that we're sort of moving along --?

MR. MATTHEWS: Well, the -- yeah, we could probably make -- yeah, we could make the slides available. I'm not sure that out of context they'll always be clear.

MS. DIETZ: But at least so we can --

CHAIRMAN KING: Well, we can put a disclaimer on the top.

MR. MATTHEWS: But this just says the different things that a material goes through in order to be added to the National List.

CHAIRMAN KING: Yeah.

MR. MATTHEWS: Okay.

CHAIRMAN KING: The identified stages.

MR. MATTHEWS: Right.

CHAIRMAN KING: Okay.

MR. MATTHEWS: You had a question, Goldie?

MS. CAUGHLAN: (No audible response.)

MR. MATTHEWS: Okay. NOP is working diligently to redesign the materials review process. We recognize, just as the Board recognizes, that there are a lot of problems with the way the materials review process is working. All too often petitions have been deficient or the report has been deficient, there's been questions about whether or not there's enough in the report to satisfy the needs of the Board in making a determination as to whether something should be recommended or not.

So we're seeing all kinds of problems with this, we're seeing problems with things getting sent forward for review that probably should have never been sent forward.

So we're -- we're really doing an evaluation of the entire review process and we're trying to work through some changes.

We're taking a global approach to this, and the ultimate product is going to be a materials review manual that'll be published up on the website.

The first step in this was the checksheets that we created for the Board's use in the review of materials. We are currently working on NOP procedures, a standard operating procedure for how the NOP reviews a material from the time it's reviewed -- or from the time it's received as a petition until the time that it moves on to the scientists for analysis.

So we're really developing a standard operating procedure for us. We had hoped to have this for the Board before the meeting, but putting it in print has made it a whole lot bigger than we ever thought it was, and it hasn't been fine-tuned to our satisfaction yet, so we're not quite ready to share it with the Board.

We are also at the same time working on developing procedures for scientific review and reporting. We will be sharing this with the Board and seeking their input, because this is essentially the document that is going to be -- these procedures will help the reviewers

create the document that you're going to be receiving and then using, in company with your checksheets, to create your recommendation. So we see that as a critical part of this process. We're getting that started; we will share it with you.

Okay. Next one is that we're taking a look at the way the technical panel has been working, we think that there are rooms -- or that there is room for improvement on that as well, and we are proposing a new technical advisory panel approach which would increase the NOSB's involvement in the review process.

We're looking at this as probably being a five-member panel. The materials committee chair would definitely be a member of that, and then two of the following, which would be the livestock crop or handling, would also serve on that panel.

So you would have at all times three board members a part of the TAP review panel, and instead of the TAP review being done in conjunction with the report from the scientists, it would actually occur after the scientists have put together their report.

This panel would also include somebody from the Environmental Protection Agency and somebody from the Food & Drug Administration, the idea being that this new stage

in the review process would enable representatives of the Board to review the report at an early stage, to give feedback to the scientific organization, to say, "This just doesn't cut it and we need you to go back and work on this," or you might find that what they did was fine and the panel may vote to move it forward -- with a recommendation, maybe -- to the committee that the material appropriately belongs with. So then the next stage is to go to a committee of the Board.

Now, we're also looking for that committee --

CHAIRMAN KING: Wait, I think back up a second. Could we back up real quick, Barbara. Thank you.

MR. MATTHEWS: Okay, so you've got -- that's your committee, okay?

MS. DIETZ: So that the petition has been forwarded for a TAP review, the TAP review's in process, there's a time period --

MR. MATTHEWS: We would change the title of that from TAP review to -- it's been sent --

MS. DIETZ: -- scientific --

MR. MATTHEWS: -- forward for scientific analysis, so they would take and where the petition leaves off create the scientific background that is needed now for this new panel to then review it and then to make

recommendation over to the Board.

MS. DIETZ: So we are in a sense --

MR. MATTHEWS: Or to send it back to the scientists to gather more information.

CHAIRMAN KING: Did you mean to say "to the committee"?

MR. MATTHEWS: To the committee, yes.

CHAIRMAN KING: Thank you.

UNIDENTIFIED FEMALE VOICE: Well, this panel will get it sooner, but it really might stretch out the review process longer --

MR. MATTHEWS: It might, or it might shorten it. The idea is to do away with the problem of deficient reports --

UNIDENTIFIED FEMALE VOICE: Deferred TAPS.

MR. MATTHEWS: -- and deferred TAPS, and what we're thinking is that if we change -- if we create essentially a new statement of work for the scientists and they follow that procedure and then it comes to this body of five and that body of five then analyzes that report for its sufficiency, then it can go on to the committee of the Board, whether it be the crops committee, the livestock committee, or the handling committee, and then that committee would do essentially what it already does. It

may want to do something else, I don't know, but it would then go to that committee.

But if it wasn't ready to go to that committee, then this panel would tell these people "this isn't ready to come to the Board, and therefore this is what you need to do to make this report ready to come to the Board."

MR. RIDDLE: So, yeah, just to be clear, so this five-member panel would replace the three-member TAP reviewers right now --

MR. MATTHEWS: Probably so.

MR. RIDDLE: -- in the stages, is that --

MR. MATTHEWS: Probably so.

MR. RIDDLE: -- what you're thinking, you're proposing?

MR. MATTHEWS: Yeah, that's what we're thinking, that it would actually be the Board that would take over that function, they would do it after the scientific information was gathered. This technical advisory panel would then advise the scientists on whether or not they did an adequate job. If they didn't, it would go back to the scientists, they would fill in the gaps, then it would come back to this panel, and then the panel would then make its determination and send it on to the committee of the Board, for them to do their review, okay, and then that committee

of the Board has already got a member from the technical advisory panel on it, that would also be able to speak intelligently as to what transpired at the technical advisory panel.

CHAIRMAN KING: Well, and clearly there are a lot of things that can be worked on in terms of the format of the report as it comes to the panel --

MR. MATTHEWS: Oh, yeah.

CHAIRMAN KING: -- those are not things we're going to deal with at this moment --

MR. MATTHEWS: Right.

CHAIRMAN KING: -- but we understand that that's kind of work in progress. I have Rose and Andrea next.

MS. KOENIG: And this is from experience, it's just my gut reaction, because it's -- again: in my opinion, the problem has never been with the outside reviewers. You're saying doing away -- as I understand, and maybe I'm not correct. I'm understanding you're saying that you do away with those three external reviewers and you replace them with this five-member panel.

MR. MATTHEWS: That's what we're saying, yeah.

MS. KOENIG: And what I am --

MR. MATTHEWS: In other words, it would go through a true technical advisory panel.

MS. KOENIG: Well -- but what I am -- what I would argue is that if you have three competent industry-focused and true experts looking at that scientific evaluation, they are much -- and I'm not trying to insult anyone on this Board, but they --

UNIDENTIFIED MALE VOICE: Just everyone.

(Laughter.)

MS. KOENIG: Yeah, just everyone, including myself.

(Laughter.)

MS. KOENIG: -- but I think that they theoretically have much more expertise than -- than any single board member. Because we -- we face this when we're looking at it, that we -- I really personally rely sometimes more heavily on those three outside reviewers than I do on the technical report, depending on the -- you know, the competency of the person who has filled out that review.

So I don't think -- and again, this is my personal opinion: this just makes our process more internal, there's no doubt in that, but I don't -- the problem is not: we need more involvement at that level. What we're doing is internalizing things and not -- we're bypassing getting even more information, which that three-

panel discussion really allows.

I think the best part of the whole process now is that external evaluation by those three individuals, other than the board members. So I would argue that -- that this does not increase the breadth of the program.

CHAIRMAN KING: Okay, Andrea, and then Jim.

MS. CAROE: Well, just -- I've got two things now, because I'm going to talk a little bit about what Rose just said and --

I agree that there are technical expertise that we get from those outside reviewers, but I also think that there are times that we read what the technical reviewers have written and realize that they don't have a full grasp of organic, and so it flips both ways sometimes. So that was something we would replace. I don't know if -- you know, it's just something we weigh out.

But my question to you, Rick, is: The two positions that you have, the environmental -- the EPA person and the FDA person, do you see these as a couple of people that are identified for working on this or randomly people that would be interchanging? I'm just worried about the efficiency of -- you know, if we get a different EPA person every time, it might be difficult.

MR. MATTHEWS: Well, we haven't worked out all

the details, obviously, because I'm trying to tell you, in advance, of what we're thinking as possible ways to solve the problems that have cropped up over the last several years from doing materials review, and so the idea is that these would be experts in the areas of the materials that are under review. Okay?

So that when the three Board members are sitting there and they -- the scientists would also be there to answer the questions -- the people that put together the report would be there to answer the questions of the Board, but also you could have EPA and FDA people there to help answer questions of the three panel members from the Board, so that in essence you're getting --

MS. CAROE: I guess my question was more --

MR. MATTHEWS: -- you're getting the Board involved in the scientific information at an earlier stage and at a stage where they've got access to the people who have done the report, as well as people who regulate the products.

MS. CAROE: I guess my question was more in matter of reporting that information that the committee is going to see and the procedures that eventually we'll have, you know, that -- the check -- the check form that we have, the first time we used it, we weren't very efficient at

it --

MR. MATTHEWS: Right.

MS. CAROE: -- and we got better at it --

MR. MATTHEWS: Right.

MS. CAROE: -- you know, and I don't know if you're kind of thinking we're going to be going through the learning curve constantly or if there's some way that we can kind of alleviate that a little bit.

MR. MATTHEWS: We're two -- this is the danger with putting out any proposal while it's -- while it's still very -- very young, you know. I mean, the egg has just been inseminated on this one.

MS. CAROE: Well, just take it, then, as something to consider in going forward.

CHAIRMAN KING: Jim, then Dave.

MR. RIDDLE: Yeah. Well, I appreciate being part of a discussion that's predecisional.

(Laughter.)

MR. RIDDLE: I mean, it's what we've been wanting, so here we are.

(Laughter.)

CHAIRMAN KING: So be nice.

MR. RIDDLE: Yeah. For better or for worse.

(Laughter.)

MR. RIDDLE: I guess, you know, I would like to just propose that this composition -- which I really like this composition, having somebody from EPA and FDA -- that that --

MR. MATTHEWS: It's good to hear you like that, Jim.

MR. RIDDLE: Yeah. -- be applied at the review of the petition, because, you know, OFPA says that someone shall petition the Board and the Board shall convene a TAP. You know, so the Board has authority at that stage, and if we have expertise from FDA and EPA helping screen those petitions, they can give the expert advice on legality, as they regulate a lot of these substances, and then also the NOSB members on there can help direct the TAP on -- specific to that material, help customize it: "Okay, from our experience, organic experts, here are some things to look at."

So, you know, it could really lead to a higher-quality TAP, which has been a big problem, that scientific review. So I would just like to suggest that we apply this concept at that first step and maybe come back to the people to rescreen the scientific work --

MR. MATTHEWS: So you would like this step to be used in two different places.

MR. RIDDLE: Yeah. I'm just -- just thinking -- this is a lot to think about, but --

MR. MATTHEWS: Yeah.

CHAIRMAN KING: But just a quick proposal --

UNIDENTIFIED FEMALE VOICE: It gives continuity to the flow (inaudible).

CHAIRMAN KING: Yeah. Dave, and then Kim.

MR. CARTER: I just want to build on that, because I think -- you're right, Rick, you talk about the danger of announcing this, but this is what -- I think if we really think this through and what we're trying to accomplish, you know, this -- this has got a lot of merit to it. I don't want to see completely doing away with the external reviewers, I think they have some value too, so if we can -- if we can keep them as a part of the process but continue this, I think this makes this a really good process.

MR. MATTHEWS: Right. Well, and the reason why we're bringing it up now is because we know that the Board has been kind of antsy as to: what is it that the Department is doing with regard to materials review, and what we're trying to tell you is that we're not doing anything secret, what we're really doing is sitting back and saying, "Where are the problems, and what are the

different things that we think we need to do in order to address these problems?", and there is a role in here for the Board in helping us to address the problems.

Now if we could -- if there's no other questions --

CHAIRMAN KING: Kim had one quick question, and then we'll move on.

MS. DIETZ: Jim, when you had talked about having EPA and FDA involved at a step when we review the petition: actually, that's the way it's currently --

UNIDENTIFIED FEMALE VOICE: It's supposed to be going that way.

MS. DIETZ: -- supposed to be, is that --

UNIDENTIFIED MALE VOICE: Well --

MS. DIETZ: Let me finish. -- that before a petition gets forwarded to the chair of the committee, that it has already passed that screen; in other words, whatever they're recommending has been already passed by EPA or FDA or allowed for its petitioned use. So now you're actually really saying three places in the petition process, but that's just minutiae.

MR. MATTHEWS: Yeah. Well --

MS. DIETZ: And then my other comment is: This is the first time that I've seen this, and earlier I had

mentioned about a potential conflict of a certifier reviewing the materials, I see this kind of opening up a little bit for conflict of interest for Board members in that, you know, they have -- they'll be the first ones to see a petition. So I'm just -- I'm a little leery there, that if you have Board members reviewing materials and making recommendations versus outside reviewers, that it could be perceived as a conflict. So that's a first gut instinct that I think we need to just develop.

MR. MATTHEWS: Right. Well, conflict of interest is definitely something that we would have to take into consideration when --

MS. DIETZ: (Inaudible) perception --

MR. MATTHEWS: -- appointing people to that TAP review committee.

MS. ROBINSON: For example, it might be the case that it's not necessarily the chair of the committee that sits on that panel.

UNIDENTIFIED MALE VOICE: Right.

UNIDENTIFIED FEMALE VOICE: (Inaudible.)

CHAIRMAN KING: Okay. So --

MR. MATTHEWS: No. But it's true, especially let's say that it was a material that -- let's say Ann's organization wanted to have a material reviewed and Ann was

involved in it and she happened to be the chair of the committee that would have responsibility for it, so obviously procedures would have to be in place that Ann would not be the one participating; even though she's the chair of the committee, somebody else on the committee would have to be involved in it.

So -- I mean -- but you're bringing up things that we haven't reached yet.

CHAIRMAN KING: Yeah.

MR. MATTHEWS: I mean, this is just, really, bare bones of an idea that we have and just an acknowledgment of the fact that we're looking at every single stage of the review process, to bring a much better product to the Board so that they have the tools that they need in order to make the recommendation that they're charged with making, okay, and that's all we're trying to do right now.

CHAIRMAN KING: And in general terms, I think you're aware, Rick, that the comments we're making are simply -- this is the first time we've seen the document --

MR. MATTHEWS: Right. Right.

CHAIRMAN KING: -- in general terms, we like it; however, what about this, let's think out loud, let's try to improve the process.

MR. MATTHEWS: Yeah. But I guess I'm not -- I'm

not trying to shut off the debate, I'm just saying that --

CHAIRMAN KING: No, I understand.

MR. MATTHEWS: -- this probably isn't the time --

CHAIRMAN KING: It's 4 o'clock.

MR. MATTHEWS: -- to be doing the debate.

CHAIRMAN KING: It's 4 o'clock, and you were supposed to be done before lunch, pal.

MR. MATTHEWS: Yeah.

(Laughter.)

MR. RIDDLE: Yeah. 15 minutes, I think, I remember.

UNIDENTIFIED FEMALE VOICE: You asked for the whole thing.

MR. MATTHEWS: I was prepared to give you 30 minutes. You asked for it. I guess NASOP's [phonetic] in trouble for theirs on Saturday, because they get the same presentation.

Okay, last slide, I believe. No, second-to-last slide. We're also going to be asking the Board, as a part of this global approach, to develop a standard operating procedure for what it is that the committee does when it does its review and recommendation.

Now, I know you've already got some stuff written up, but the idea is to put it into a standard operating

procedure format, and we would be asking the full Board to do the same thing, take what it is you do, put it into a standard operating procedure.

Then those two pieces would then come in to us, okay, and it would become a part of this manual that we're planning to publish on the web.

We're also planning, under this process, to do a standard operating procedure within the NOP on how we go about the rulemaking process. Now, keep in mind that if the scientific -- if the analysis of the scientific work that creates the work product creates an impact on the petition, we would then also have to go back and amend the petition procedures themselves.

So in essence, what we have done so far is we have said: okay, these are the -- here -- these are the checksheets that the Board needs to use to document the decisions that it is making. We're looking to go back a step and say: this is what the scientific community needs to put together for the Board to complete those checksheets. Then we're going to go back to the petitioner and say: this is what you need to supply to the scientific community, for them to do the job that they need to do, so that the Board can do the job that it needs to do, so that it can provide a recommendation to the Secretary for

publication in the Federal Register. Okay?

CHAIRMAN KING: Jim.

MR. RIDDLE: Yeah, and I just -- I really appreciate this and see it as collaborative process, and I just want to come back to OFPA, where it says: The Board shall establish procedures under which persons may petition the Board for the purpose of evaluating substances." So I --

MR. MATTHEWS: The petition procedures are out there, and what we're going to do is we're going to be working together --

MR. RIDDLE: Right.

MR. MATTHEWS: -- to figure out: is there a need for the change in the petition procedures?

MR. RIDDLE: Agree [phonetic].

MR. MATTHEWS: Okay. And the end result on all of these standard operating procedures and statements of work for each of the different stages will come together in the end as a manual for materials review, which would be published on the web, which then says, to the entire world: petitioner, this is what you have to do, this is what your material is going to go through, this is what you can expect.

So now the petitioner is no longer in the dark as

to what really happens once they submit a petition, and right now, they're in the dark more than anybody else.

CHAIRMAN KING: Rose.

MS. KOENIG: I would -- I just want -- as the materials chair, I want to, you know, I guess put in the public record that I feel that as you're going through this process, that the materials committee should be fully engaged from this day on in this process as a cooperative approach to this. I mean, you know, we've been asking for this for a few months, and I -- you know, I hope this move is -- this directive is -- not directive, I better not use that word -- that this is, you know, going towards that, you know, and I'd love to put it on our work plan as -- as something that we can do, but we need to work together, because things can be done a lot more efficiently if we're working together.

CHAIRMAN KING: Yeah, and I think we -- we recognize we're going to do that.

MR. MATTHEWS: Well, but, you know, all we were saying is that, you know, just be calm, let us work through what it is that we think we're going to need to do and where we're going to need the assistance of the Board, and, you know, really we were trying to identify things, and so now we're telling you exactly what we're thinking, and now

you can tell us what you think.

CHAIRMAN KING: Well, okay.

MR. SIEMON: Good work.

CHAIRMAN KING: Yes. That's it.

MR. MATTHEWS: That's it. That is the longest 30 minutes of my life.

CHAIRMAN KING: We do need a break. It's 3 -- essentially 4 o'clock. Be back by 4:15, please.

(Off the record and reconvened.)

CHAIRMAN KING: I'm going to reconvene the meeting. We're going to start with Rose, who's going to do a presentation on the materials review process. This is a presentation on where we currently are.

MS. KOENIG: And I'm going to do it -- I was requested to do it really quickly, so I'm -- instead of bypassing it, I'm going to go through it quickly and just -- just highlight -- okay, so this is the materials process update.

UNIDENTIFIED FEMALE VOICE: Today.

MS. KOENIG: Today. Go ahead, Ann, next. And that's basically what I'm going to talk about next. Go ahead. Okay, so as many people said, that a lot -- and I wanted to put it in perspective, because I know many of you have sat through these procedures, but a lot have not, and

I think it's really important to set the foundation of why we're here and what we're doing and how these decisions are made.

So basically, again, the Organic Food Production Act provided the National List of Approved and Prohibited Substances, it established the guideline for the substances on the List, and it outlined the role of the NOSB in the procedure of publishing and amending the National List. Go ahead, next.

And then just for people -- the -- Section 205.600 of the Organic Rule describes the criteria that shall be used in the evaluation of substances or ingredients in the organic production and handling sections of the National List, and basically it's the -- we deal with the synthetic and non-synthetic substances that are either allowed or prohibited. Go ahead, next.

If you go back to OFPA, the 6517, that's come up a number of times, there's guidelines for prohibitions or exemptions, and basically that is what we're doing. The National List is an exemption. It's not a given. The National List may provide the use of substances in an organic farming or handling operation that are otherwise prohibited under this title, okay, if the Secretary determines basically that it's safe, with other agencies,

it's necessarily to the production or handling of the agricultural product because of an unavailability of a wholly-natural substitute product and is consistent with organic farming and handling. Next.

(B), again, "The substance" -- this is what Arthur was saying -- "contains an active synthetic ingredient in the following categories," and it lists them. These categories are found in the National List section of the Rule.

Again, I look at these as the categories upon which we base our things. The NOP has taken a strict definition of "active" in this case. Next.

It is used in the production and contains synthetic inert ingredients that are not classified by the administrator of the EPA as inerts of toxilogical concern or is used in the handling and is non-synthetic but is not organically produced and a specific exemption is developed using procedures described in Subsection (d). Next.

And then there's things -- again, the National List can prohibit natural substances, and we discussed that earlier. Next.

And then the Secretary basically has to consult, again, in that section, to determine if it's harmful to the health of the environment, is inconsistent with organic

farming or handling and the purposes of this title. And then the specific prohibition is developed using the procedures again defined in Subsection (b). Next.

Subsection (d) is now what they refer to. These are the procedures for establishing the List. Next.

There can be no additions except for those that are proposed by the NOSB or amendments. Prohibited substances in no instances can be included, which are prohibited by the FDA or other federal regulatory bodies. Next.

And then notice and comment, this -- again, as the Department says, there is a procedure which they need to follow in terms of publishing the proposed National List and getting public comment and then doing the final. Next, Ann.

And then this just talks about how a publication has to be proceeded through by the NOP. Next.

And then this section outlines what we'll be discussing in a moment about the Sunset Provision, it tells what our authority is, and we'll be talking about a proposal that the materials committee has come up with to satisfy the Sunset Provision. Next.

And now these are the requirements, and the requirements are kind of embodied in that petition process

that we were talking about earlier in that -- what the NOP is looking at.

Basically, if you look at the petition process, we already are supposed to be reviewing the available information from -- I've got some tables -- the EPA, the -- you know, the departments of health and such, and looking for, you know, other agencies for these types of information. Next.

We have to work with manufacturers to find out how they're made and if they contain inert materials that are synthetically produced. Next.

And then it has to be submitted to the Secretary, along with the proposed National List, or any amendments such, after we convene a technical advisory panel as what to be considered for the National List. Next.

And then evaluation, and the evaluation procedure is basically the procedure that we're going to be following through the meeting.

When we look at these materials, we're not pulling things out of the air. Within OFPA, there are specific questions that have to be satisfied in order for us to place this on the National List, and one -- you can go, next -- basically -- go ahead, skip.

But these are -- again, if you go in reference to

this, for the sake of time, these are the things that we will be discussing. Compatibility with the system of sustainable ag, this is a documentation that we're going to be discussing again. Next.

And then in addition to the criteria set forth in the Act, there's sections of the Rule that look at processing aids or adjuvants and processing criteria that wasn't necessarily spelled out in the Act, and these are the criteria that we look at in terms of processed products.

Go ahead, next. So you can find that again in Section 205. I'm not going to go through it, but I just want to highlight again: there are parts of the Rule that you need to look at, and these are what we're going to be looking at in terms of some of the petitions, like the tetra sodium pyrophosphate and such.

Next. Next. Next. Next. Sorry, guys. So crops, just want to call the attention, the categories of the Rule that we'll be adding, may, or may amend during this meeting would be either 205.601, which are synthetic substances allowed for the use in organic production, and there's a number of items that we're going to consider for this category. None of the materials during this meeting will be considered for the category 205.602. Next.

Similar, livestock has a category 205.603, one of the -- the two that we're looking at in livestock are petitioned for that section of the Rule. Next.

Same with the processing, the 205.605 and .606. Next.

So the National List update, this is -- Rick would probably be better at explaining this, but when I spoke with him before I made the slide, basically, the Federal Register of May 22nd, 2003, contained the handling materials; the Federal Register as of April 16th, 2003, included the crops materials and technical corrections; and the Final Rule, everyone knows, of 2000 contained the recommendations. As of when I made the slides in February, that was the last update, the livestock materials had not gone to the docket. Next.

So the stuff that -- oh, actually, excuse me. Materials finalized May 22nd, 2003. As of March 10th, 2003, there were two draft dockets containing the materials of everything the NOSB approved prior to April of 2004 meeting of the NOP. Next.

Then so as far as the petition status -- okay, next. These are the materials that we're going to be looking for in the handling committee during this meeting. Next.

Two from the livestock, the moxidectin and the proteinated tea chelates. Next. And then these four substances for the crops committee will be reviewed during this meeting. Next.

These four have been sent for technical review by the NOP, and I just wanted to make people aware that those four did not follow the materials procedure that is outlined following this (indiscernible). They have been sent by the NOP directly to the TAP contractor. Next.

These two substances are under NOP review, they've come, and there is one additional petition, I don't think Arthur's here, but he had told me there was only one other one, and he can update us on that, because he left a message on my phone machine last week. Next.

And then petitions and other status, the potassium silicate was a petition that we looked at, the crops committee wanted to consider it as a pest control, fungal control, for crops, but it's not currently registered under EPA for that, so we're waiting on the manufacturer, as far as the fate of that.

And then the cryolite has been determined from the committee not to be forwarded for a TAP because there was no new additional information, the product had -- substance had been reviewed, it had been repetitioned, but

there was no new information to indicate that it needed further technical review. Next.

This is the materials process. I know Rick talked about this new procedure, but this is the materials process that currently the Board has been following, although there has been some deviations from that.

Basically, the minimum time frame for the National Material Review List is 145 days. In reality, if you look at -- you know, there's some that have been -- like soy protein isolate, as Kim said, that's been on the record since 2001. So there is some problems in terms of the timing on some of the materials for -- for various reasons. Next.

Day one through fourteen. Really the NOP staff has evolved at this point, they're supposed to take the petition for completeness, they are supposed to liaison at this point with the FDA or the EPA or any other federal agency that might be involved in a specific material, and make sure that that material is consistent with that other agency, federal agency. So that is the procedure. Next.

After that -- this is -- the materials chairperson should be sending a copy of that -- the materials chairperson should receive a copy of that petition, that petition should then go to the vice chair of

the materials committee and the vice chair of the designated NOSB committee, such as the crops, livestock, or handling.

And then really the vice chair of those committees convenes that committee, and they vote, basically, if that petition should go on for a technical review and -- at that point or if they feel right at that point that they can make a determination that it does not need to go, and make a recommendation at that point.

Again, this step has not been followed with some of the current materials, so I just wanted to make, I guess, the public aware that the NOP has -- on those four materials that I indicated previously, has gone ahead and set those for a TAP, bypassing that process. Next.

60 days prior to the NOSB meeting we should receive copies of the review from the NOP, and then our committees come together and we start reviewing that report and -- to get to a decision. Next.

30 days, by that time we've made a decision, we've now filled out these evaluation forms, and you should be able to access that through the website. Next.

And then, again, if you need to petition for documents, you can go to the NOP website. Next.

The work that we have pending as far as our

committee is: we've submitted -- which I'll review next -- the draft for the Sunset Provision, and within our Sunset Provision we have guidance documents to come up with how we're going to prioritize substances for Sunset Review, and also that we need to produce some guidance documents for defining what constitutes a review process for the Sunset Provision.

So, basically, those two -- somebody had asked: well, why don't you have those guidance documents? Well, partly because we need to buy into our process before we go through the painful agony of kind of developing these guidance documents, so the first step is really to buy into our concept of the process, and at that point, if there is agreements, the committee would then go forth and do that work. And then as you can see, through the conversation we had earlier, we'll probably be more engaged in redefining the materials process. Next.

Okay. Hopefully that was -- I'm sorry it was rush, but -- I did intend to do the full Kim Burton-style presentation, but I didn't get the opportunity at this meeting.

CHAIRMAN KING: Well, and just a quick point. I want to thank Rose for all of her hard work, and Rose, I apologize for the fact that you did have to rush, because I

know you put a lot of time in this.

MS. KOENIG: It's okay.

CHAIRMAN KING: It's important work, and it's ongoing work.

MS. KOENIG: Right.

CHAIRMAN KING: So thank you for your commitment to that.

MS. KOENIG: So did you want me to go through the Sunset Proposal?

CHAIRMAN KING: Yeah, I think we're now on to Sunset Provision.

MS. KOENIG: Okay. So as set forth, as I explained, in OFPA Section -- and I ask the Board I guess to refer to the section, your tab will say "Sunset Provision Report." For those who -- it was on the web almost a month before this meeting, so hopefully people have had the opportunity to look at it.

I will review it in as much detail as time permits. But basically, in our background information, we just said that this is the reason why we're going through this: because OFPA has told us that we need to come up with a policy for the provision.

And first the committee said to date -- this is the work -- you know, this is what we have in front of us.

Basically, if you look at all the sections within the National List, going from 205.601 to 205.606, there -- my count was approximately 154 substances currently on the National List.

This number is not the same that NOP comes up with, because I went through, and if one material was in multiple categories, I counted it as one rather than three. Assuming that if a review was to be done, say, on chlorine materials that are listed, that that review would cover all uses. So anyway, that's where my 154 come from.

And then basically we have, according to the OFPA, 5 years of -- when the National List has become fully implemented, to do some kind of review of these materials.

So what our committee came up with, and this was proposed as an internal policy and procedure for the review of substances in accordance with 7 USC 6517(e), that basically the National Organic Standards Board and the NOP shall compile and manage a materials database for exemptions and prohibitions, including an official Sunset date for each substance on the National List.

According to the NOP, they are in the process of developing and have already a working database. We have kind of our own working database. So this is something that we feel could be easily achieved.

All materials appearing on the National List as published in the Federal Register Final Rule dated October 21st, 2002, must be reviewed by October 21st, 2007. There are materials, as my slides show, that were amended after that date in other dockets, and those would have to be reviewed 5 years from their final Federal Register notice.

So based on the number of materials in any given 5-year period, the NOSB would select approximately one-fifth of the National List for review, you know, each meeting, under -- to comply with that section of Sunset Provision.

Upon the National Organic Standards' approval of the Sunset Provision -- and we're not going to be able to vote on approval this meeting because this document was not into the NOP 30 days prior to the meeting, so this is just for discussion -- the NOP will publish the entire list of materials, 605.601 to .606 inclusive, which shall be reviewed by October 21st, 2007, in the Federal Register and request public comments on the prioritization of materials for review.

So basically the committee decided that in terms of public transparency, that, you know, upon approval we would say okay, all 156 of these are going to be reviewed in the next 5 years, you, public, give us some input in

terms of how you think priorities should occur. Okay.

Then the -- after that public comment period would end, then the livestock, crop, and handling committees would choose approximately one-fifth of the substances from each applicable section of the National List each year for review. Committees will consider public comments regarding prioritization of materials for review.

In addition, the materials committee shall provide guidance documents to the committees on how to prioritize materials for review. The materials representative for each committee will be responsible for providing the list of substances that are proposed for review during the calendar year to the materials chairs persons, who will maintain the database. Each committee will work with their representative to the materials committee to determine which of the substances will require supplemental technical information, as set forth in 7 USC 6518(k)(3).

Substances that have adequate technical information provided by prior reviews, petitions, or other documentation may be reviewed based on that information. So this is -- again, the committees would determine if on-hand we have enough technical information to do our review.

The materials committee will provide guidance

documents on what is adequate technical information, so upon, again, agreement that this is the procedure, we as the materials committee would come up with a guidance document, a working document, basically, for the committee, to give guidance as to, you know, "Do you have a TAP that was adequate?", for example.

Requests for supplemental technical review will be provided in writing by the committee's representative to the materials committee -- to the materials chairperson. Then the materials chairperson is responsible for communicating the status and supplemental review needs, if applicable, of materials to the NOP representative to the materials committee.

Now, that's a little wordy, but basically, this allows -- if the committee determines that there's not enough technical information, it allows the NOSB to again go to an outside review process to gain more technical information on some substances. And as Zea commented earlier, there were many substances earlier on in the process that may have only had one sheet of information, in terms of their technical review, whereas substances today that are being reviewed, we're getting a lot more information and they're following the OFPA criteria, we have good form.

So certainly the workload is going to be heavier on materials that just don't have adequate information, and it was the materials committee's opinion that we wanted to reserve the right, based on review, to ought to have a TAP performed on materials that we felt were insufficient, in terms of providing scientific evaluation of materials.

So the NOP is responsible for requesting technical reviews and communicating the needs of the NOSB to their contractor, and, when necessary, the materials chairperson may interact directly with the contractor regarding the status of a substance review. However -- I should say however, but the NOP representative is responsible for making contact arrangements and communicating in the communication.

In other words, in this provision we wanted the materials chairperson to have the ability to talk to the TAP contractor but we also respect the right of the NOP and actually require them to be engaged in the process and participate in those phone calls so that, you know, there's consistency with what the NOSB is doing and what the NOP requires in terms of their contract with the contractor.

Okay, 60 days prior to the NOSB meeting the list of substances that will be reviewed for the Sunset Provision will be published in the Federal Register for

public comment. Committee recommendations for the substances to be reviewed for the Sunset Provision will be posted on the NOP website 30 days prior to the NOSB meeting, and substances that have been -- have specific expiration dates will not be included in the selection process.

So in other words, there are materials, I guess such as methionine, on the List that have a Sunset, within the National List, that stops their use, and those would not be subject to Sunset Provision Review. They're basically off the List.

Recommendation --

MS. CAUGHLAN: Rose, did you count how many of those, actually?

MS. KOENIG: I didn't. There are not many, but I haven't sat down and counted them, but we just wanted to acknowledge --

MS. CAUGHLAN: Was the Sunsetting commonly done prior to this last few years?

CHAIRMAN KING: Accelerated you mean?

MS. KOENIG: There's just a few, I think --

CHAIRMAN KING: I think there are five or so.

MS. KOENIG: Yeah. Like spirolina --

MS. CAUGHLAN: Right.

MS. KOENIG: -- there was a provision for the use of chilean nitrate, I think --

MS. CAUGHLAN: Boiler chemicals.

MS. KOENIG: So there's a few -- boiler chemicals. So there's a few, not many. But I guess what we wanted to acknowledge, it was that the intent of the Board was to Sunset and end those but -- the meaning of their provision on the List.

Okay, so the third recommendation was on public communication. The NOSB recommends that the NOP post a Federal Register notice on an annual basis, beginning in 2005, amending those materials that have passed through the Sunset process. This is intended to result in requiring future boards to have to review fewer substances in a given year and to facilitate the work of future boards.

In other words, we wanted to acknowledge that this workload for the next 5 years, it's going to be tremendous, because everything -- all 156 or so materials are on -- became official, I guess, October 21st, 2002, but what we're saying in this recommendation is that as we go through the first one-fifth of the List, once we proceed, we want the NOP to engage in rulemaking on those so that the workload then gets spread out over time and future boards would then not have to deal with such a large amount

of materials at one time. So it's an effort, again, to just look towards the future and look at workloads and make things a little bit more doable. And it can be achieved through the rulemaking process. We just have more dockets over time.

Committee recommendations. So basically we recommend the adoption of procedures set forth in this document to meet the requires of the 7 USC 6517(e) of the Organic Foods Production Act, which requires us, again, to review each substance on the National List within three years of its publication, and then materials committee shall write guidance documents to provide a framework for committees on how to effectively and efficiently manage the process. The procedures outlined above may be modified by future boards to more efficiently manage the process, just acknowledging that you can write a lot of things down and have a great plan, but as people go through the process, there may have to be changes in the provision to really -- to meet obstacles that may come forth, that we just can't perceive at this point in time.

That's it.

CHAIRMAN KING: Thank you very much, Rose. I'll remind everyone tomorrow we'll actually be voting on recommendations in the afternoon. Does anyone have

questions or comments?

MS. DIETZ: This one we can't vote on because it wasn't --

MR. RIDDLE: We're not voting on this one.

MS. KOENIG: We can't -- we're not -- this is --

MR. RIDDLE: Yeah, I would like to address that, because, you know, we set up the 60-day window as a goal, and this, what, came in about 57 days out. So it certainly has been posted for a good long time. We also have a 30-day window for the materials committee recommendations, and the ones from the crops committee did not meet that. Those are goals. Those are targets. But the intent is to have it posted for public comment and for the Board to be able to have plenty of time to consider it.

So I think this is a very important and timely topic and we need to have a sense of the Board, so I would like to have us vote on accepting -- not at this moment, right now, but tomorrow, vote on accepting the committee's report so that we officially go on record as accepting the committee's report.

MS. KOENIG: Starting with those deadlines of time, Richard Matthews, on the phone, you know, as I spoke with him, indicated that he didn't have a problem with us kind of voting on it as a working document and then

officially voting on it during the next meeting, so there is that provision and we should consider that.

However, on -- I was out of town, so it was sometime last week, when I got home I had received an e-mail from Arthur Neal, indicating their position on the Sunset Provision, which is -- it's pretty different from our position. So we need to come to terms with where we're at on this policy, we need to communicate kind of that -- where that -- and my question to Arthur -- I'm not sure if he's here, oh, there he is -- was I -- and I didn't get a chance to correspond with you because I was out of town, and then -- I still haven't, again, you know, digested all of what you had corresponded to me, but my question, I guess, to you was: I assume that your correspondence to me was your recommendation on a policy, kind of your alternative. I just don't know where we are. I understand from OFPA that it is pretty clear that we establish our procedures, so I'm not sure how you wanted us to process the information that was in your correspondence to me.

MR. NEAL: The e-mail that we sent to you all was a very well-vetted document with senior management at USDA. We took you guys' recommendation that you sent and we built upon it, to take into consideration the federal process that has to take place to reestablish these materials that

have exemptions under the National Organic Program. We did reject your recommendation, we actually accepted the majority of it, but we had to tailor it to fit the federal process, because, as noted, it takes about, what, three years to finish it?

CHAIRMAN KING: A little over, yeah.

MR. NEAL: Yeah, over three years to finish the process. Because there's going to be a Federal Register notice that states what's about to take place, then there's going to be public comment, then there's going to be the development of a proposed rule, then there's going to be more public comment, that helps the NOSB to prioritize the materials that need to be reviewed, that the public is saying: okay, there's no longer a need for this exemption, for the use of this particular synthetic substance, under the National Organic Program, and it gives the NOSB time to also make the recommendations to the Department in regards to which materials should be considered for inclusion on the National Organic -- I mean the National List.

But it also takes into consideration, you know, legal review by the Office of General Counsel, Office of Management & Budget, the departmental and administrative review, it -- there's a lot of time that is integrated into the particular proposal that we sent to you.

MS. DIETZ: I think the question was what do we do with our document, because we had prepared a document, just as a working draft for the Sunset --

MR. NEAL: Uh-huh.

MS. DIETZ: -- and I didn't think we could vote on it, with the timeline, but -- I mean, we could take it as a committee recommendation and give it formally to the NOP. And then this week we received your Sunset Review.

So I think from a materials standpoint we're not really prepared to move forward on the recommendation that you brought to us.

MR. NEAL: Well --

MS. DIETZ: We could acknowledge both of them, Rosie, I think we formally acknowledge --

MS. KOENIG: Yeah. No, I --

MS. DIETZ: -- them and take it back to the group, but to vote on our docket, I don't feel comfortable doing that.

MS. KOENIG: No, I'm not recommending kind of a vote -- I feel that --

MS. DIETZ: We need to look at them, we haven't had time --

MS. KOENIG: Yeah, we need to really sit down and meet as a committee, and maybe we'll have an opportunity at

that time --

MR. NEAL: Well, the issue with that document is that that's the Department's position on Sunset --

UNIDENTIFIED FEMALE VOICE: Sure, we understand that, that's understood.

MS. DIETZ: But the question is -- and I guess maybe Barbara or you -- how do you define your position versus what the policy -- I mean, your position I do think incorporated a lot of our -- you know, the spirit of, I guess, our proposal. There were some, I think, substantial differences in -- and again, I mean, I haven't thoroughly processed what you had written, but what I gleaned from that was that things would automatically be just allowed unless there was substantial documentation from the public or, you know, some entity came forth with new information regarding the OFPA criteria.

So -- and what I didn't understand in your document -- I mean, our -- our document allows for public comment but it gives the Board the power to convene TAPs based on the fact that there's some -- let me go back.

Your document assumes that all TAPs were adequate, it pretty strongly stated that, and as I state my position again, and this is my opinion, I'm not speaking for the Board, my position, and what we heard from some of

the public today, was that in fact many of the substances that came on very early did not have adequate technical information, and that is the largest concern, I think, certainly of myself personally and of the materials committee, is that we feel there are many substances that were added on early, some of them that probably will remain on the List, but we want to, you know, for the future of the industry, the future of the process, be able to have adequate technical information for everything that's on that list so that we can kind of defend --

MS. DIETZ: I think they address that in the document, because there is a section that says -- and again, I didn't think we would be reviewing this today --

UNIDENTIFIED FEMALE VOICE: Right.

MS. DIETZ: -- but it does say, "Based on public comments received, the NOSB may decide that certain substances warrant a more in-depth review, requiring additional information or research that considers new scientific data and technological and market advances," so I think they've left that open, and I don't know if we want to waste all our discussion time on a document that we've had two days to review, so --

CHAIRMAN KING: In fact, I think we should acknowledge it's a work in progress, it's not perfect, that

there will be ongoing dialogue with the Department --

MS. DIETZ: But there's urgency.

CHAIRMAN KING: There is urgency, and this does need to happen. And so I guess what we're -- the last thing here is just to see -- that we can work with you on this document, knowing that there is a sense of urgency to get this process started, and move forward with our agenda today and (inaudible).

MR. NEAL: I don't know about the document portion, because the process has to begin.

MS. DIETZ: It does have to begin.

MR. NEAL: It has to begin.

CHAIRMAN KING: Uh-huh.

MR. NEAL: I don't foresee any changes to that document. I don't. I don't foresee any changes to that document, because it acknowledges the fact that the Board may want additional information on materials. I don't know what else there would be --

MS. KOENIG: Well, what I'll suggest, I will convene a meeting of the materials committee, we will discuss the document, and hopefully before the end of the meeting we'll provide at least a position on it, and maybe we can resolve -- we'll make a recommendation on how we can proceed, after we discuss it, by the materials committee.

So let's just leave it at that, because, again, we can work with you guys and try to work this out.

CHAIRMAN KING: Okay.

MR. NEAL: One of the things I want to leave you with is that the process should be driven by the comments, because you want to take into consideration that that particular process helps the process to be unarbitrary and uncapricious, non-capricious, and it's fully transparent to the entire public, and it has to fit within a federal process.

MR. RIDDLE: Yeah. And as I read both of these drafts, that's something I see in common.

MR. NEAL: Uh-huh.

CHAIRMAN KING: All right. Next, Andrea, accreditation.

MS. CAROE: Okay. Jim, do you have the copies?

MR. RIDDLE: Yes.

MS. CAROE: In the meeting books is version 7, or draft 7, of the accreditation certification agent compliance procedure for a minor non-compliance. We actually have version 8, or draft 8, and there are minor changes, they've been left in track mode so you can see the changes. They are based on comments, and the back section of this document does discuss each of the comments that we

received.

We received comments from one commenter only, but I did address every portion of those comments, so you can see -- and this was sent to the committee, and Jim made some additional changes to it, and there was none further.

But this has been voted on by the committee. It's been sitting around for a long time. I hope to vote on this tomorrow. I think we've all seen this document quite a bit. I mean, it actually was authored before I was even on the Board, let alone the committee. So, you know, I'm going to defer to Jim a lot on some of the history questions here because I just -- you know. I commented on this outside the Board, so that's, you know, where I started with it.

I don't know that we need to waste a lot of time on this, based on our schedule, other than, you know, take a look at it and -- unless any of these -- there's very few changes, there's some definitions and title changes, and we did hear one commenter this morning ask for the word "major" to be used, and I talked to Jim a little bit about this, I have not had a chance to talk to Michael and Rebecca about this, but there is an opportunity, I think, for a hybrid, where we can put "major" in parens so that we keep the integrity of the language that's used in the Rule

but perhaps more clarifying to the users of this document.

CHAIRMAN KING: Okay, Jim.

MR. RIDDLE: Yeah. And in the draft that I just passed around, where you'll really see the most changes is on Page 7, which is the addendum section, and that's where what Andrea was saying about the definitions and the use of the word "major" non-compliance in parentheses there, to clarify the difference between minor non-compliances and major non-compliances. And then there are also some changes to the headings of the tables that have been recommended by the commenter. But that's basically the substantive changes.

CHAIRMAN KING: Questions, comments?

(No response.)

CHAIRMAN KING: Thank you. Crops committee, Nancy.

MS. OSTIGUY: We don't have anything at this point. The only thing the crops committee will be bringing up actually comes up later, on the compost tea. That's on Friday, I guess.

CHAIRMAN KING: All right. Thank you. Kevin, handling committee.

MR. O'RELL: Handling committee, we have an update on materials used as food contact substances. This

was submitted on April 15th, so, again, it wasn't published for 30 days. I think it's our intent to acknowledge food contact substances and give a quick update and then move on in our work plan, essentially, without going in -- I know we're pressed for time, without going into a lot of details on the background information on food contact substances, other than to state that the NOP did acknowledge that food contact substances were outside of the scope of the NOP, or the NOSB, for material review.

The NOSB has recommended the materials from past meetings to be added to the National List, and there were six materials: activated carbon and periacetic acid and four boiler water additives: ammonium hydroxide, cyclohexlamine, diethylaminoethanol, and octadecylamine. These materials may be considered as food contact substances.

It's the handling committee's recommendation that since these materials were previously petitioned and approved, that the NOSB would place them on the National List. We understand there's still a lot of confusion in the industry regarding food contact substances, and as part of our action of the handling committee, we will be prioritizing our work plan to clarify the qualification of materials for the food contact substance list. This is the

quick version.

CHAIRMAN KING: Yes, I understand, and thank all of your patience. I know it's difficult to do some of these justice in the limited amount of time. Did you have a comment?

MR. RIDDLE: A question. I mean, once again, what are we going to do with this?

MS. DIETZ: I think the -- the intent of it was that there's -- the confusion out there is twofold: one, there's confusions on the materials that we did make a recommendation for, and those were the only materials that never appeared on a docket.

So, as a handler rep, I kept receiving calls from people, saying, "Well, I know you have periacetic acid, but my certifier's saying I can't use it," and I'm saying, "Well, it's a food contact substance," and people don't know how to read that list. So until we understand how to read the List, and the public understands, this recommendation was at least put forth so we acknowledge those materials were recommended at one point and that they be placed back on the -- or that they be placed on the National List.

So, again, it's mainly just an acknowledgment, and then the committee is going to go forward and try to

hash out exactly how to interpret food contact substance list for handlers, because there's great confusion about that. Does that satisfy you?

MR. RIDDLE: Well, kind of, I mean it gives me more basis for the rationale, but it still doesn't tell me what we're going to do, if we're going to vote to accept this as a committee report or, you know --

MS. DIETZ: It was not sent to the committee in time for that.

MR. RIDDLE: To the NOP?

MS. DIETZ: To the NOP.

MR. O'RELL: To the NOP. I mean, that's -- otherwise, it was our intent to vote on it as a committee recommendation, so then the Board would vote for the --

MR. RIDDLE: You know, I really appreciate the confusion that this attempts to clarify as far as the status of those six substances, because that whole food contact substance list, it's like a square peg in a round hole, it really doesn't fit our needs, and we've reviewed these, on the food contact substance list they have different names or they're combined with other ingredients, they're more a formulated product for a specific use, whereas here, this is generic substance that fits the rest of our format for the National List.

So I support moving that part of it forward.

MR. O'RELL: If it's possible for us to do a vote on that, maybe we can discuss that with the NOP. We certainly would be in favor, on the handling committee, to put this up for a vote with the NOSB full committee.

MR. RIDDLE: It's not a change, exactly, we're not --

MR. O'RELL: No, it's not a change, it's a clarification --

MS. DIETZ: It's an acknowledgement.

MR. O'RELL: -- and continuing to say that our recommendation for these materials, which we all voted on and approved at previous meetings, that we still have that position: that these should be placed on the National List.

CHAIRMAN KING: And it's connecting it to the food contact substance aspect of it.

MR. O'RELL: And it's recognizing the fact that these could also be considered as food contact substances, but there needs to be a lot of clarification on food contact substances as far as the pre-market notification with the FDA on food contact substances, the definition of it.

CHAIRMAN KING: I think it would be difficult to

argue with clarity at this point, Kevin, so --
(Laughter.)
CHAIRMAN KING: Questions or concerns?
(No response.)
CHAIRMAN KING: Okay. Livestock.
MR. SIEMON: We have no non-materials standards, so really -- so livestock's so clear we didn't need to clarify anything.
(Laughter.)
CHAIRMAN KING: Policy development committee, Mr. Carter.
MR. CARTER: Okay. We have two items. Number one is our Board policy manual, which is a living document, that gets addressed as new policies come down the pike. We have two things that have come forward for that in our changes being incorporated, proposed incorporated, in our Board policy manual.
One of them has specifically to do with confidentiality procedures, and particularly with non-public information, confidential business information, and how the Board handles that.
The second is the incorporation or the substitution now of the new materials review forms based upon the forms that NOP developed, that we utilized at our

last meeting, so we'll be bringing those forward for your consideration.

Then you're getting circulated around the draft of the statement on compatibility with organic production and handling. The process on that is that NOP had requested a recommendation on the following question, which is:

What are the factors (reasons, issues, parameters, strictures, limitations) and constraints that the National Organic Standards Board should use to determine a substance's compatibility with a system of sustainable agriculture and its consistency with organic farming and handling?

As of the last meeting, we had developed 13 criteria, which is listed in the book. That was posted for public comment. There were six public comments that were received. All of those public comments suggested that we drop the 13th item, which was Item M, which is: does the substance facilitate the development of new organic products? There was a lot of discussion saying that that really was not a good criteria, you could use that as justification to approve a lot of items just because they would spur the development of other organic things. So that was dropped, and that is the only change that is in,

then, the draft that was just distributed around. Seeing as how there were 13 and one was dropped, we now have a 12-step program for organic compatibility, I guess.

UNIDENTIFIED FEMALE VOICE: Is that in our book or did you pass it around?

MR. CARTER: I circulated -- it must have gone this way and not -- I'm sorry, I thought you split them in half.

MR. RIDDLE: No, I gave it all to you.

MR. CARTER: All to me, okay.

MR. RIDDLE: Yeah. I didn't want (inaudible).

(Pause.)

MR. RIDDLE: I just want to add that it also, in the draft that is getting passed around now, explains there on Page 2 and 3 how the comments were dealt with, so it summarizes what comments were received and then how they were addressed. It's less than 22 pages in length.

(Laughter.)

CHAIRMAN KING: And we thank you for that. Okay, additional comments, questions?

(No response.)

CHAIRMAN KING: Okay, great. Now we're on to presentation -- we're on to the 2 o'clock slot, "Presentation of Materials Recommendations," crops

committee, and --

MS. DIETZ: Since it's after 5, can you inform the public of what you're going to do, because we're past the agenda time. Are we going to keep going?

CHAIRMAN KING: I think we should present the agenda items, and certainly if there are suggestions from the Board I'm willing to entertain those, but I see no reason not to present the materials recommendations. We may not have as extensive a discussion as we would have had we started at 2 o'clock. So we'll go through that.

Tomorrow we do have a time slot allotted in the breakout session for additional work, if that comes up, for any recommendations in the morning, and then of course we'll be voting on recommendations in the afternoon.

So at this time, I mean, if you have a specific question, a concern, a point about the recommendation at hand, then certainly make it, recognizing that we're asking everyone here who may have family, friends, plans, things of that nature, to stay over. So let's do it justice but do it effectively and efficiently.

UNIDENTIFIED FEMALE VOICE: A life?

CHAIRMAN KING: Yes, "a life?", Julie [phonetic] says. Yes, Jim.

MR. RIDDLE: Yeah, before we go to those

materials recommendations, I would just like to hand out the current draft on the 606 Task Force, the commercial availability, and I'll be making that presentation tomorrow morning.

CHAIRMAN KING: Okay.

MR. RIDDLE: But that way people will have it in hand, and it's highlighted with nice hot pink, that shows the changes.

CHAIRMAN KING: Okay.

MR. RIDDLE: Okay.

CHAIRMAN KING: I think you need to talk about the recommendation and if there are questions or concerns and --

UNIDENTIFIED MALE VOICE: Do you want any quick background information?

CHAIRMAN KING: I think that in the past -- and I'm just -- in the past -- and please bear with us, this is the first time we've used the checksheets, so Nancy's question is: how are we going to do a quick overview.

In the past we had an introduction, a background, what the issue was, what the committee recommendation was, and we would present it in that format, and I see no reason why we can't have a similar format based on the information in front of you, with some chair discretion, Nancy, so --

MS. OSTIGUY: There's going to need to be (chuckles).

MS. DIETZ: Let me, for a minute -- the checklist forms, if you have not seen them, I think they vastly have improved our process, and I think every one of us have agreed on that. The back sheet really is the one that has the recommendation on it, so if that's what they're going to be going to, if you have copies --

MR. RIDDLE: Yeah, that's the problem. I understood they'd be in the meeting book, and they aren't, so --

MS. DIETZ: So the committee does not have them?

MR. RIDDLE: I didn't print them out, I don't have them.

MS. CAROE: Because they were on the website (inaudible) --

MR. RIDDLE: Right, they were on the website, in the meeting book, so I assumed they'd be in the physical meeting book once we got here.

UNIDENTIFIED FEMALE VOICE: And they're not.

CHAIRMAN KING: Katherine, do you have any copies available that we could share, at least, from a board standpoint? I have a copy here, so I can certainly --

MS. DIETZ: I have a copy.

CHAIRMAN KING: -- and Kim has a copy, so --

UNIDENTIFIED MALE VOICE: I have a copy.

CHAIRMAN KING: Okay. So I think we can get through this. Those who don't have copies or need a copy, raise your hand and --

UNIDENTIFIED FEMALE VOICE: We'll share.

CHAIRMAN KING: We can have a shared experience.

MR. RIDDLE: I do have another question about the process, and -- as I understand it, you know, the draft we have -- or don't have -- is from the committee, but really what we submit to NOP is from the Board, not just the voting form but the actual evaluation form.

So the whole thing is open for consideration. If we feel that, you know, the committee is recommending that something be a yes but we think it should be a no and there's additional comments, that should be amended, or open for amendment, per se, so that we come up with a composite from the Board.

MS. OSTIGUY: Right, that is my view also.

MS. DIETZ: And then a point of clarification: Who's making those amendments, is it the committee chairs, is it the Secretary who's doing that, or would it be --

MS. OSTIGUY: Well, I would hope it's the committee chairs.

MS. DIETZ: Okay.

CHAIRMAN KING: Committee chairs, yeah.

MS. DIETZ: Okay.

UNIDENTIFIED MALE VOICE: Anyone can make them, but then they record them.

MS. DIETZ: They would record them and turn them in, okay.

UNIDENTIFIED MALE VOICE: That'd be good.

MS. OSTIGUY: I don't know if the rest of the Board -- I have no idea how much my comments, my mumblings here, have been out, but what I indicated is I thought the committee chair should do it, partly because we know what's going on, and it's too much work for the Secretary to try and put it all together.

MS. DIETZ: Thank you.

CHAIRMAN KING: I think, yes, that's what we'll be doing. Jim's point is just that people can make a motion to amend, so --

MS. OSTIGUY: Correct. Yeah, that would make sense.

CHAIRMAN KING: But the recording part will be the responsibility of the committee chair.

MS. BENHAM: Mark, I have an extra copy here that somebody from (inaudible) printed themself, their own self.

MS. CAROE: I think the vice chair is the materials person, so they're really the one, it wouldn't be the chair of the committee but the vice chair.

MS. OSTIGUY: Yeah, that's fine.

CHAIRMAN KING: It's the chair's discretion at the committee level on how it gets recorded. We do know it must be recorded. Nancy.

MS. OSTIGUY: We'll try again?

CHAIRMAN KING: Yes.

MS. OSTIGUY: Okay. So we're going to start with -- as the agenda has -- with the order for the agenda, even though I love alphabetical and it's not.

Soy protein isolate is the one we're starting with, petitioned for use as a fertilizer. The committee's recommendation was to reject the TAP because it did not address the use of the material as a soil amendment, it was focused on food, so we were recommending a deferral.

Do you want any more detail than that or --

CHAIRMAN KING: Do you give a vote --

MS. OSTIGUY: Oh, I'm sorry, you can give the vote, yes. I can do that. The vote was 3 yes, zero no, zero abstained, on that one.

MR. SIEMON: And is that genuinely because we needed this information to make a decision obviously or was

it just kind of an irritation that TAP couldn't get it straight?

MS. OSTIGUY: No, it was not an irritation. Yes, there was irritation, but no, we weren't making a point (chuckles).

MR. SIEMON: Okay.

MS. OSTIGUY: The part of it -- some of the questions we had did get answered this morning, so there was supplemental information, so in our breakout section tomorrow morning the committee will talk about it again and we may change our recommendation at that time. I don't know. It depends on what everybody says. But I'm presenting what we decided, and we didn't have any of the information that was presented this morning, and we felt we needed that, to give it a fair hearing, because the response was: if we were going to do it based upon the TAP as it stood, the recommendation was going to be No, and that didn't seem right.

CHAIRMAN KING: Kim.

MS. DIETZ: Again, I commented this morning on this material, being somewhat involved with it as past chair, I'd like -- I'd like to see if perhaps Arthur and Bob and I could join your committee, because I want to just make sure we have some resolution to -- to this material

and what the direction is we need to go with it, whether we vote on it this week or defer it on specific reasons.

And then I also had a problem with this TAP, that, again, that third reviewer was a certified entity. So if we're going to defer it, then I think we need to ask for a third reviewer to re-review it.

CHAIRMAN KING: Jim.

MR. RIDDLE: I just -- I don't understand what your concern is, Kim. I mean --

MS. DIETZ: My concern with -- if I look at -- and this is a blanket concern on the TAP reports, but if I -- reviewer number 3, I think, on most of these materials is a USDA-accredited certifier from the Midwest, and I don't know whether NOP has a comment on that, but to me, I don't know if that's the place for an accredited certifier to be, a reviewer, because they could be -- they could have a biased opinion innately because their material isn't from that region or --

UNIDENTIFIED MALE VOICE: Certifying the person (inaudible) --

MS. DIETZ: -- or they could certify it -- I -- it just -- it strikes me as very awkward, so I question it. I don't know if it's right or wrong, but I would question an accredited certifier being a reviewer of a TAP report.

MS. KOENIG: I would just -- I think that it -- as long as it's fully disclosed, which, you know, we know that they're an accredited certifier -- I mean, I think it's analogous -- I mean, there's an accredited certifier on the -- well, I guess nobody is right now an accredited certifier, on the Board, but we all -- we all vote on things and we represent sections of the industry too, so we actually have, probably, more impact, but we do do conflict of interest, and I think as long as it's disclosed and -- so the answer, to me, lies in the contractor -- how the contractor screens those and makes sure that if they do have a conflict of --

MS. DIETZ: But the same one reviewed like six TAPs, so -- I just question it.

MS. CAROE: Yeah, it just --

CHAIRMAN KING: Andrea.

MS. CAROE: They should have --

CHAIRMAN KING: Rose --

MS. CAROE: -- a conflict-of-interest policy (inaudible) --

CHAIRMAN KING: Okay. Thank you. Andrea.

UNIDENTIFIED FEMALE VOICE: (Inaudible) the contractor.

MS. CAROE: I just -- I think there's a big

difference between being a stakeholder and being a reviewer of petitions. You know, innately this group of stakeholders all have a conflict, at one time or another we all have a conflict, that's why we're here, we represent that facet, that's why we're one vote of 15, or 14 at the present time. But providing information in this way, in order to make decisions, can -- if the person truly does have a conflict, can sway the entire vote of the Board because of the information that is selected to be included on this report.

I don't know for sure if I -- if I agree, but I -- as -- in my past life as an accredited certifier, I could see that certain materials being put on the List were advantageous to me, as a certifier, and promoted business. So there very well may be that conflict, I don't know --

CHAIRMAN KING: Guys, I don't really want to cut this off, but I'm going to in the sense that I see this as a policy or procedure issue in terms of how the review process happens, unless -- does one individual or one individual from a specific sector of the industry have any more of a conflict than anyone else, so let's move on.

MS. OSTIGUY: Okay, the second item on the List was 6-benzyladenine.

And I think I know why I'm doing so many of the

materials: is because I can pronounce chemical names. (Laughter.)

UNIDENTIFIED MALE VOICE: Amen.

MR. RIDDLE: I wasn't -- I had a few points I wanted the committee -- you're going to be meeting again on soy protein isolate, right?

MS. OSTIGUY: Yes.

MR. RIDDLE: In the morning.

CHAIRMAN KING: Yeah, breakout session.

MR. RIDDLE: Yeah, I was -- I mean, we got distracted on the whole discussion of conflict of interest of a reviewer, but I had a few points I just wanted to bring to -- I'm not on the committee, so now is my chance, unless I come to that breakout.

MS. OSTIGUY: Some points on --?

MR. RIDDLE: Yes, on the --

CHAIRMAN KING: Soy protein isolate.

MR. RIDDLE: -- soy protein isolate itself. Now that we've learned that it is hexane-extracted, you know, I'd like to add -- if it is deferred and questions about the environmental impact of that -- the only thing that the TAP says is that it's done in full compliance with environmental regulations. Well, of course it is. But I want some science on how the effluent or -- whatever, what

the environmental impacts of that, now that we know what the extraction process is, and if we are deferring it, also like to have more of a whole-systems approach reflected; this is not just input substitution, we're talking about a source of nitrogen, and nitrogen should come from legumes in a mandatory crop rotation, and I'd like to see that addressed in the TAP.

So I just wanted to make those points for the committee to take.

MS. OSTIGUY: Any others?

(No audible response.)

MS. OSTIGUY: Okay. On to 6-benzyladenine, the -- this material is petitioned for use as an apple fruit thinner. What it does is cause you to lose a certain portion of the fruit on the apple trees, eventually enhancing production.

The committee's conclusions on this material was that it was agricultural, synthetic, and voted to reject the material because hand pruning is an alternative practice that is available and currently used. One of the quotes from the TAP that we used was: "Switching to chemical solutions as an alternative to farmers working in the field is not an example of sustainability, regardless of economic profitability."

The vote on this was 4 yes, zero no, zero abstained. To reject, yes. Failed on Criterias 2 and 3.

CHAIRMAN KING: Comments, questions?

MR. SIEMON: You said that hand thinning is presently commercially being --

MS. OSTIGUY: Oh, yes. It is the only thing that is used.

UNIDENTIFIED FEMALE VOICE: Organic, yes.

MS. CAROE: Nancy, we had a commenter this morning from Valent BioScience that had apparently sent in a comment on this, and have you considered that comment, that came in late? Have you even seen it?

MS. OSTIGUY: That one I am not sure, but again, you know, the crops committee will be meeting in the morning and we will take into account all comments that have been made.

MS. CAROE: Okay. Because it sounded like there was quite a bit of substance in that document that should be considered.

MS. CAUGHLAN: And Rose indicated that there was an OMRI-approved source -- formulation, with a natural source of this substance.

MR. RIDDLE: I did have a question about how the committee came up with the answers yes and no to the

question about it being consistent with organic farming, "No," and I understand the rationale, and then --

MS. OSTIGUY: Okay, where are you?

MR. RIDDLE: Yeah, I'm sorry. Category 3, on the table there.

MS. OSTIGUY: 2 and 3?

MR. RIDDLE: Yeah.

MS. OSTIGUY: Uh-huh.

MR. RIDDLE: Yeah, 2 and 3. -- that it's not consistent, but yes, it is compatible. That doesn't quite seem consistent to me (chuckles).

(Laughter.)

UNIDENTIFIED MALE VOICE: No, but it is compatible.

MR. RIDDLE: But it is compatible (chuckles).

MS. OSTIGUY: Yes, but it is compatible. I think some of the logic here was that it does reduce production costs so it might increase [sic.] the economic liability of the farm, so that would increase sustainability. So there were -- the difficulty on this one was that there were aspects that made it sustainable and aspects that made it non-sustainable.

MR. RIDDLE: Okay. Yeah. And I can --

MS. OSTIGUY: And we're forced to do a yes or no.

MR. RIDDLE: Yeah, I understand it better, where you came up --

MS. OSTIGUY: So that's --

MR. RIDDLE: Okay.

(Pause.)

MS. OSTIGUY: Anything else?

(No response.)

MS. OSTIGUY: Okay, the next one was urea. Urea was petitioned for use as an insect fruit fly attractant. Contrary to what it says on the agenda, the committee actually had finished its work. What we had been told after the TAP was completed was that the material is not approved for the petitioned use, so we can't approve or not approve it because it doesn't meet EPA's criteria.

So as far as I can tell, we don't do anything on this one. Anybody have an alternative view, that we're supposed to do something?

CHAIRMAN KING: It was my understanding that it didn't meet -- it wasn't a legal label claim --

MS. OSTIGUY: Right.

CHAIRMAN KING: -- the petitioned use and therefore --

MS. OSTIGUY: -- we couldn't --

CHAIRMAN KING: -- we couldn't move it forward.

Rick?

MS. OSTIGUY: So I don't know if we officially reject or what we do with it, but --

CHAIRMAN KING: Do you need us to officially reject a material that does -- the petitioned use does not have a legal label claim?

MS. DIETZ: Can I comment?

CHAIRMAN KING: (Nods head.)

MS. DIETZ: In the past, something similar to this has happened and they've withdrawn the petition versus reject the material, so if you could -- if there's no EPA allowance for it, it's up to petitioner to do that, I suppose, but from a committee standpoint --

MR. MATTHEWS: If there's no EPA allowance, we don't take action.

MS. OSTIGUY: That was my assumption.

CHAIRMAN KING: So we'll just move on with that.

MS. OSTIGUY: Yes.

CHAIRMAN KING: Okay.

MS. OSTIGUY: So --

CHAIRMAN KING: Quick comment?

MS. DIETZ: Again, this is not -- this is, I guess, intended for the public to understand the process: you know, we're all human, we all make mistakes, and I

think --

UNIDENTIFIED MALE VOICE: Speak up.

MS. DIETZ: I said we're all human and we all make mistakes. Unfortunately, this -- in our procedure, as we follow it -- and I explained, between zero -- days one and fourteen the NOP is supposed to review the -- you review the petition for the intended use. In this case, it was urea as the active ingredient in a pheromone, and the petitioner was from a different country, it wasn't a US country, and we assumed when the committee got it the first time that that -- that they had looked at -- that NOP had actually done that research.

Somewhere in the process, it wasn't done. This should never have -- we shouldn't be here even looking at this. So this normally should not have occurred. I don't want people to think that this is how procedures occur, because it shouldn't have gone to this process, but it has, it's unfortunate, and that's where the committee stands on it.

CHAIRMAN KING: Okay. Nancy.

MS. OSTIGUY: It actually sounds like a reasonably good idea, so maybe somebody should talk to EPA.

Anyway: Hydrogen chloride, this was petitioned for use in cotton seed de-linting process. The committee

voted that the material was agricultural, synthetic, and to reject it, indicated that the criteria -- both -- well, Criterias 1, 2, and 3 caused the failure of this chemical because of its extreme corrosivity, very reactive; if released, very damaging to soil and plant life; and, as we heard this morning, this is not true, that alternative organic acids may be used.

The vote was 4 yes to reject, zero no, zero abstained. And, again, we will be talking about this one in the morning.

CHAIRMAN KING: Rose, go ahead.

MS. KOENIG: I just want to say: I think it was the spirit of this vote -- again, I think you need to go into that a little bit -- was that we acknowledged the -- you know, the two criteria. Our biggest question as a committee, when we voted on it, was whether there was alternative substitutes.

Based on that TAP report, the TAP report indicated that. We voted based on that information. So this will be one that -- I think that we will definitely reconsider, because we did get the public comment that we thought we would get, so -- that's just -- all I wanted to say.

MS. DIETZ: I would like to request that crops

committee reviews this material that -- take into these things [sic.] for the following consideration.

Number 2, on category 1, where "Is there environmental contamination during manufacture?", you have very good justification that there is, but at the same time, this is a grass material and that -- GMPs should be followed, and that's why we have GMPs, so that potentially things don't happen.

So I think this is one where there is, but you also need to acknowledge that in the TAP it does say that as long as Good Manufacturing Practices are followed, as every material has those, that -- that are considered potentially dangerous. So that was number 2.

On number 3, "Is the substance harmful to the environment?" On the TAP, Page 6, it's specifically stated that there was no residue left on the seed, and so I would like to see that added, even though it is -- the substance is harmful, that they do acknowledge that there's -- it's a pH neutral by the time they receive a seed.

MS. OSTIGUY: Uh-huh.

MS. DIETZ: Same thing on number 5, "Is there potential for detrimental chemical interaction?", as long as Good Manufacturing Practices are followed, you know, that -- that's your deterrent there. And that also this

material is considered a food sanitizer, so I would have also included it in that section.

MS. OSTIGUY: In number 5.

MS. DIETZ: In number 5. Next page, under category 2, "Is there a wholly-natural substitute product?", yes, there are products that identify --

MS. OSTIGUY: Oh, this isn't applicable.

MS. DIETZ: Pardon me?

MS. OSTIGUY: It's not applicable.

MS. DIETZ: Right. Number 4 says yes --

MS. OSTIGUY: Oh, number 2, okay. Number 2.

MS. DIETZ: Number 4 --

MS. OSTIGUY: Okay.

MS. DIETZ: -- you say, "Yes, there are substitutes" --

MS. OSTIGUY: Uh-huh.

MS. DIETZ: -- whereas the --

MS. OSTIGUY: Yeah.

MS. DIETZ: -- TAPs said they might not be applicable; and also in your comments that you received from the petitioner, they said they were not.

MR. SIEMON: And lactic and acetic acid is considered wholly-natural? Am I wrong?

MS. OSTIGUY: It's an organic acid.

MS. DIETZ: And then the only -- the only other comments I had, in the handling committee, if there's alternatives mentioned, then we would have gone forth and asked the -- before we checked new material, we would have gone and asked to have a response from the petitioner, whether or not they've tested those alternatives, so I don't see anywhere in here where we've tried to see whether they've really tested the alternatives. Those are my only comments.

(Pause.)

MR. RIDDLE: This is a tough one for me, I mean as -- if people haven't figured out by now, I'm kind of a conservative when it comes to synthetic substances and didn't think I supported this, but hearing what I heard today has certainly opened my mind to change, and I think as the committee revisits it, it's really going to hinge on annotation; if you do move it forward, there's got to be a very limited use, you know, for --

UNIDENTIFIED FEMALE VOICE: De-linting.

MR. RIDDLE: Yeah. -- for de-linting cotton seed for use in planting. We're not talking about for livestock feed or something like this. This is to be planted. So that's basically it, for me.

CHAIRMAN KING: Other comments?

(No response.)

CHAIRMAN KING: Anything else, Nancy?

MS. OSTIGUY: No. I think that's all four of them.

CHAIRMAN KING: Okay, great. Now we're supposed to have a break.

(Laughter.)

CHAIRMAN KING: Kevin.

MR. O'RELL: Nitrous oxide was petitioned for use as a whipping propellant for food-grade aerosols, and I know that you want the condensed version of all this, so I'll try to make it condense.

Most of the concern was around the environmental aspects of nitrous oxide and the fact that it is a potent greenhouse gas and has a half-life of 120 years. Also considered -- we answered Question Number 1, adverse effects, yes, but we also considered a magazine article which said that it was an infinitesimal amount, 2 parts per million for total production, but we still felt -- that was answered yes on most of the environmental questions.

It is a grass item, and harmful effects on human health, mostly resulting from the misuse of the product, so we answered yes, but -- from inhalation of laughing gas --

UNIDENTIFIED FEMALE VOICE: Which we all thought

we needed at the time we got finished with this.
(Laughter.)
MR. O'RELL: I think we're there now.
VOICES: Yeah.
(Laughter.)
MR. O'RELL: "Is there a natural source?" Not that's practical for commercial availability. It naturally occurs -- nitrous oxide naturally occurs due to the action of soil bacteria. Jim, this is one I'm going to answer before you get to, but on question number 3, we put yes and no, so I know you'll probably ask us that. And that is the substance essential for organic -- for handling of organically-produced agricultural products.
In the petition there were stated uses -- alternatives using already-approved materials but there was some dispute from the petitioner on the effectiveness of these substances to yield a product that's acceptable for the consumer, so we tried to recognize both aspects of it since there was conflicting information.
However, the petitioner did say he was unaware of any tests that have been done on a gas mixture of nitrogen and CO2.
On alternative substances, again we answered yes/no, and under the same conflict: that the TAP had

indicated there were but the petitioner said that they were not acceptable to produce a product for consumer quality.

I'm trying to see any other questions that people might have, but maybe we'll just go right to the committee recommendation.

That was first -- we had voted on synthetic non-agricultural, and that was yes 5 votes, with zero nos, zero abstentions, and 1 absent. And then there was a motion to allow nitrous oxide for addition to 205.6, and there were zero yeses, 5 nos, no abstentions, and 1 absence, so the material was voted not to be allowed.

I don't know if there's any questions on that.

MR. RIDDLE: I just had one, and that is, on Criteria -- in category 3, number 6, the whole thing about "Is primary purpose to recreate or improve flavors, colors, textures," et cetera, you explained why you said no as far as recreating texture, because it creates the texture --

MR. O'RELL: That's correct.

MR. RIDDLE: -- but I would say that it should be answered yes on improving the texture, that it does -- its purpose is to --

MR. O'RELL: Do you want us to go yes/no on this one?

MR. RIDDLE: Well, you can do that, yeah, sure,

we can be schizophrenic and --
(Laughter.)
MR. O'RELL: We discussed that aspect, Jim --
MR. RIDDLE: Uh-huh.
MR. O'RELL: -- but -- you know, I guess it's how you -- you know, I'm not going to say is, is, but the -- we actually felt that it creates the texture and that's not improving it because there is no texture without it.
MR. RIDDLE: Well, it's -- it's a liquid --
MR. O'RELL: It's a liquid.
MR. RIDDLE: -- so it has texture, but now you pump in the gas, and now it's a whipped liquid.
MR. O'RELL: And that's creating a whipped texture, from a liquid.
MR. RIDDLE: But it's improving it compared to if you just kind of squeeze the can and this liquid came out --
(Laughter.)
MR. O'RELL: Okay.
MR. RIDDLE: -- people wouldn't be very impressed.
UNIDENTIFIED VOICE: (Inaudible.)
(Laughter.)
MR. RIDDLE: It makes it much more sale-able.

MR. O'RELL: Duly noted.

MS. DIETZ: Well, I think our -- our dilemma was, is that does it create or recreate, and it does neither --

MR. RIDDLE: Yeah, I understand.

MS. DIETZ: -- and so that was -- that was one of the sticklers that we (inaudible), but you could note that, that could be noted on the comments (inaudible).

UNIDENTIFIED MALE VOICE: Thank you.

MR. O'RELL: We could note that on the comments.

MS. DIETZ: It's a tough one. I had one comment, that this committee also -- we had a lot of -- we put a lot of time and effort into this petition, we reviewed it the first time, we did not take any vote on it, we decided at that time we needed further contact with the petitioner, we graciously -- with Arthur Neal and Kevin we set up a series of questions ahead of time, we sent those to the petitioner, we got a conference call, we got our questions answered, and -- so I think that we can really say that we did a very thorough review of this material.

The one area -- that I do want to go on record -- that we struggled with was setting precedents for this material, because a lot of the discussion was around the ozone gas and the environmental aspects of it. There are materials on the National List currently that do the same

thing, and CO2 is one of those. So when we go to re-review materials, we need to look at that, and I will tell you that one of the primary reasons this was rejected was because it was for such a specific use, it was really for one use, and we didn't want to open up the world to having everything as a propellant for one specific use. So I just want to put that on the record, it is -- the greenhouse effect is a detrimental aspect, but there are other materials on the National List that are currently doing that.

MR. O'RELL: And we did recognize that in the comments on the TAP, particularly when we were doing the "substance consistent with organic farming and handling," noting that other greenhouse gases, such as CO2, are on the National List.

Next, tetra sodium pyrophosphate, TSPP, tetra sodium phosphate was petitioned a specific use as a pH buffer and dough conditioner for use in organic meat-alternative products.

This is a substance that we had reviewed and voted on at our last meeting and had voted to approve as a committee, the NOSB Board voted to approve TSPP, and it came back from the NOP with the request that we re-review this not only with the new forms that were given to us but

addressing a specific issue, which is the reason why I'm not going to go into the full explanation of all of the other factors, because we spent a lot of time on TSPP, so I'll focus it around the specific issues which were alternative substances, which we have gotten additional information and determined that there may be alternative substances but we had indicated that these would produce, from information we got from the petitioner, an undesirable product in terms of quality, functionality, unwanted discoloration, undesirable odor, and foul taste.

The other issue primarily centered around this -- the product used to recreate texture, and after consulting with the petitioner and understanding, as we heard today in public comments, the intended use of this as a pH buffer and dough conditioner, that it actually is working too as a processing aid to condition the dough through the extrusion process. The actual texture is being formed by a thermomechanical process, as opposed to the sole use of tetra sodium phosphate.

So we put this through its review again, and the committee recommendation to a motion to allow under 205.605(b), the committee vote was 4 yes, zero no, no abstentions, and 2 absent, and it's synthetic, non-agricultural.

MR. SIEMON: I just need to understand once again: why was this brought back to us? I mean, I had it clear [phonetic] the first time, but --

(Laughter.)

MR. SIEMON: I'm serious, I don't understand.

MR. O'RELL: It's my understanding -- and if NOP would -- wants to -- maybe Rick would be the best to -- let's not take my understanding. Rick is going to come up and address specifically why.

CHAIRMAN KING: Ladies and gentlemen, Rick Matthews.

MR. MATTHEWS: For the record, Richard Matthews.

This material, the first time that you approved it, we included it in a rulemaking action, to add it to the National List. Commenters came back, and about half of the commenters were opposed to adding it to the National List and basically they said that it violated one of the criteria, and it's the criteria that Kevin has been going over, about creating the texture.

So we, in reviewing the record, were unable to support the Board's position, so we did not submit it to the Final Rule, okay, so it has been referred back to the Board to address the issues that the commenters had raised during the rulemaking process the first time around.

So you're being asked at this time: Is this what you want to do? -- and if so, you need to justify why you're doing it to a greater extent than was done the first time. Okay?

And this is not only affecting this material, but it's also affecting the rulemaking that we're doing now on other materials, we're being challenged more and more to put in better justification for the actions of the Board, and that's why we went to these sheets.

Any other questions on this?

MR. SIEMON: So the bulk of what we're gaining, really, is this form, the category 1, 2, 3, with the explanations there, that's the bulk of --

MR. MATTHEWS: Yeah. Well, what'll happen is that in the future, when somebody comes forward and challenges one of your decisions, we'll have these forms to go back to in order to try and respond to the commenter in the Final Rule, explaining why you went ahead and did something that the commenter thinks is contrary to the Act.

CHAIRMAN KING: Kim, then Rose.

MS. DIETZ: The specific comment, like Richard said, was that the -- they felt that the primary use of the material was as a texture -- to alter the texture, and so we went back through and revised these materials.

I also just need to put another thing on the record, because this -- this section of criteria was originally drafted by Joan Gasau [phonetic] in Nineteen Ninety -- actually, 1998. I was asked to help her draft this language for this criteria.

And I want to read to this group the exact language that we wrote, because it's a little bit different than what's in the Rule, a little it's almost -- similar, and we -- Joan had been asked to work with the MPPL committee, which is OTA's manufacturing committee, on this criteria, and we had said that the material has to be reviewed and it may be used if -- and you would have to go through these principles, but its primary use or its primary purpose is not as a preservative or used only to recreate improved flavors, colors, textures, or nutritive value lost during processing, so there's key words in there, except that the latter case is required by law.

So our intent was that, one, the material's primary purpose is not: to recreate any of those categories or recreate something that's lost during processing.

So we really focused on this language when we reviewed because, one, we -- the comments that we have -- and we have a lot of public comments and comments from the

petitioner, that its primary use is a pH adjuster, okay, so we focused on that, and yes, it is a dough conditioner and yes, it does alter the texture, but its primary use is: a pH adjuster, and that that is something that wasn't lost during processing, it was actually -- the purpose of the material was to aid in that flow.

So we felt that we covered this criteria very well, if that makes sense to everybody. But you're going to come up against this as you re-review a lot of processing materials, so I really urge -- you know, I'm going to be off the Board, but I urge the handling committee and this Board to really look at how that reads, because it says "primary purpose," and another criteria is "lost during processing." So you have to have both of those to reject a material based on this criteria, in my opinion, as one of the original authors.

UNIDENTIFIED MALE VOICE: Thank you.

CHAIRMAN KING: Rose, then Jim.

MS. KOENIG: I had -- I have a question on the process the committee went through in terms of exploring the alternatives and the additional information that you received. And, again, it's really to question the process, not necessarily the information that you obtained, just to kind of think about how we go about those things.

So you went to the petitioner to get -- collect the data, or how was that -- refresh me again, you know, because --

MS. DIETZ: We actually pulled all of the public minutes from the last meeting, where we interrogated them, and they provided public testimony, and they provided us with documentation, so we really went back and said -- and re-reviewed it at that point. So that's what we did to -- to validate things had been tested, and you can see where the comments are.

MS. KOENIG: The question I have, again, and -- you know, and it's -- again, you know, I'm not picking on this particular product, but I think we need to be careful in terms of kind of the data or the information sources that we use. I mean, the petitioners, you know, have a vested interest, in many ways, if it's on the List, so we --

MS. DIETZ: But we'd already voted on this, so we felt we didn't need to focus on that, our focus was: --

MR. O'RELL: Right.

MS. DIETZ: -- was its primary purpose a textured product, and so we -- we just went back as justification, we didn't go back and re-review the material, because we'd already voted on it once; we just put the justification to

it.

MR. O'RELL: And we went back and reviewed the Board's comments at the time during this discussion for approval of this -- this substance. So that was just a re-review of everything, with new information where -- in dealing with the one point, that threw it back from the NOP to us.

CHAIRMAN KING: Jim.

MR. RIDDLE: Yeah, I will. I guess I'm uncomfortable with the Board's document, if we are to just accept the committee's form here, stating, as it does in several places, all of these organic products have high consumer acceptance and are certified by responsible accreted certifiers, when the substance is being used and is not on the National List. I mean, that -- that's a bit awkward, to me, for the Board to be putting in a document, which becomes permanent record, that we acknowledge that a violation is occurring by responsible accredited certifiers, you know, the use of a non-listed substance.

I really don't want the Board to go on record with that --

MS. OSTIGUY: But do we know that? Because what -- because being certified doesn't meant that --

MR. RIDDLE: Well, I assume if we put it in our

document, that we've verified that it's true.

MR. O'RELL: What page are you looking at?

MR. RIDDLE: Well, it's category 3, three one, three three. I mean, I have to accept that that is a true statement.

MR. O'RELL: Well, it was statements taken from public comment.

MR. RIDDLE: Yeah.

MS. DIETZ: Do you have a suggestion, should we just remove it, is that --

MR. SIEMON: It's a compliance --

MR. RIDDLE: I don't --

MS. DIETZ: I mean, I don't -- it's not really relevant to what we're doing.

MS. CAROE: But --

UNIDENTIFIED MALE VOICE: We're --

MS. CAROE: Hold on one second. Sodium phosphates -- sodium phosphates is on the List, and some can interpret that to say all sodium phosphates. Tetra sodium phosphate is a sodium phosphate. I don't agree with the argument, I'm just saying that I've heard it.

CHAIRMAN KING: -- it could be made. All right.

MR. O'RELL: It has been brought up that there is confusion as to whether -- if you go back to the actual

approval of sodium phosphate, it specifically indicates it was for the orthophosphates and not for classes of pryo- or polyphosphates; however, that --

MS. CAROE: The way it's in the List, in the regulation --

MR. O'RELL: -- there is confusion -- there is confusion in the industry, but --

MS. CAROE: -- you could justify it.

MR. RIDDLE: Your Honor, I would be much more comfortable --

MR. O'RELL: -- if we strike --

MR. RIDDLE: -- if those boxes contain the findings of the committee rather than the opinion of a public commenter, who also is the petitioner.

MS. DIETZ: Well, I --

CHAIRMAN KING: Is this work that can be accomplished tomorrow during the breakout session?

MS. DIETZ: I think public --

MR. O'RELL: Yeah, we can do this at the breakout session. We'll review that --

MR. RIDDLE: Yeah. It's just -- I would just be --

MR. O'RELL: It's just for cleaning up --

MS. DIETZ: Public comment is important.

MR. RIDDLE: Well, I understand, but it should be -- I think you get my point.

MS. DIETZ: I do.

MR. RIDDLE: And then it does --

MR. O'RELL: We can -- we will review those references on our breakout session.

MR. RIDDLE: Yeah. And then I have the same comment about improving texture. I mean, we heard this morning in the testimony that it's a combination of the substance and temperature and pressure but temperature and pressure alone do not get the resultant texture that they want, and these other materials they tried don't get the texture. This substance get the texture, it improves the texture. Those meat analogs would not have the consumer appeal, they would not be improved without this substance, so --

MS. CAROE: I disagree --

MR. RIDDLE: I do think that -- there should be an answer of maybe yes and no in explaining it, but I do think it improves the texture of this substance, just in all honesty.

MS. CAROE: No, I --

CHAIRMAN KING: Andrea.

MS. CAROE: I actually disagree with that,

because I do believe that the temperature and pressure does create the texture. The material is facilitating that process, but it doesn't create the texture.

MR. RIDDLE: I'm not talking about creating; I'm talking about improving. It says --

MS. CAROE: Improve --

MR. RIDDLE: -- recreate or improve, and I think on improve, the honest answer is yes.

MS. CAROE: I don't believe so, because it's heat and pressure that's improving the texture. It's not doing anything to the texture other than allowing it to use the equipment.

MS. DIETZ: In number 6 it is addressed, and you'll see it there, that yes, the TAPs indicate that it is used for texture, but it is not stated to recreate the texture, and as I went -- and as I tried to explain, that this category says the primary use, and everywhere in the TAP and everywhere in public comment, and the fact that we already approved this based on this material's primary use as a pH adjuster we felt was very relevant, and I think it is put in there.

If you would like us to put something else, I think we certainly can put it in there, but its primary use is not to recreate or create texture. So the committee --

at least -- I can't speak for everybody, but we went round and round on this and made sure we had the right answer, so I'm -- I'm not willing to redo this form, so --

MR. O'RELL: I think --

MR. RIDDLE: I just think acknowledgment that a function is to improve texture and then explanation that maybe primary purpose, these others, as you've said.

MR. O'RELL: I think we can add some language in that, recognizing that, Jim, that --

MS. CAUGHLAN: It facilitates extrusion --

UNIDENTIFIED FEMALE VOICE: Yeah.

MS. CAUGHLAN: -- and by facilitating extrusion it does --

UNIDENTIFIED FEMALE VOICE: Yes.

UNIDENTIFIED MALE VOICE: -- improve the -- creating it.

MS. CAUGHLAN: But it seems like a secondary --

(Pause.)

CHAIRMAN KING: Rose.

MS. KOENIG: I just I guess had a question on the voting. Is there any way -- and again, I didn't look at the minutes to -- to find out. The original vote was what on this, during the --

MS. DIETZ: Actually, I have the original vote.

MS. KOENIG: And can you give us who -- the individuals, what we voted (chuckles), how we stood, because --

UNIDENTIFIED MALE VOICE: What? Tell us how we voted last time?

MS. KOENIG: -- I mean, I'm saying there's --

MR. SIEMON: (Inaudible) tell me how we voted last time.

(Laughter.)

MS. KOENIG: There may be a reason why there's a few people that are not comfortable with it, because there was some -- I'm just trying to recall.

MS. DIETZ: We actually had a lot of different votes on this one, different amendments.

UNIDENTIFIED MALE VOICE: Yeah.

MS. DIETZ: But -- and some withdrawns, this was a very painful material, as everybody remembers, but the -- it was -- a motion was made to allow TSPP as a synthetic under 205.605(b) for use only in textured meat-analog products. The vote was 8 favored, 3 opposed, 2 absent, 1 abstained.

MS. KOENIG: Do you know the recording of those individuals' --

UNIDENTIFIED MALE VOICE: I'm sure (audible)

voted against it.

MS. KOENIG: No, I mean, I'm just -- do you know how the -- do you know the individual votes, just -- I'll just try to get that later.

MS. DIETZ: But if you want to look at all the minutes, I have them, you're more than welcome to take them.

CHAIRMAN KING: George.

MR. SIEMON: Andrea brought up the issue about broadening the present phosphate sodium policy. I'd just like to know, did the committee even discuss that, or -- you know, whether to go back and look at that, the annotation that we have, did you all look at that?

MR. O'RELL: Well, it was discussed in the committee, but, again, you know, the specific petition was for a specific use, and although we acknowledged that the orthophosphates are approved for dairy applications only, at one point they were asked -- petitioned for expansion for soy products. That was voted down.

That's before I was on the Board. I don't know the exact discussion that went into that, but we were trying to address the specific use of tetra sodium pyrophosphate for its specific application it was petitioned for. Because we felt that that was following up

from the vote that we had had as a committee, or as a board, at the last meeting. I didn't think we wanted to muddy up the issue.

MR. RIDDLE: But the committee's recommendation doesn't have any annotation; correct?

UNIDENTIFIED FEMALE VOICE: No.

UNIDENTIFIED MALE VOICE: No.

MR. RIDDLE: So even though you only considered it for this one use, it's not being --

MR. SIEMON: -- limited.

MR. RIDDLE: -- limited, yeah, there's no annotation. Did you talk about that?

MR. O'RELL: Unfortunately, in the final vote, I was one of the absent, so I will defer to Kim.

UNIDENTIFIED FEMALE VOICE: I know we didn't.

MS. CAROE: Well, actually, I think we did. I think, in discussion, the -- the annotation was one of the things that flagged this as a texturizer, because of the ways that that was written, and we -- as I remember, and Kim, refresh my memory, but I believe we talked about what other possible uses and would any of those be -- we looked at all the uses that were in the TAP and would any of those be a problem for us, and it didn't appear to be, so we just took the annotation out, for clarity, to simplify,

simplification.

MS. DIETZ: Yeah, and, again, the original annotation was for use only in textured meat-analog products, and the comments were specifically against the word "textured meat," and since it -- again, since the primary use of the material is a pH adjuster, we did not want to turn this back around and say -- and confuse it even more, so we just made the recommendation that you have in front of you.

MS. KOENIG: So the implications of that is that if we put it on without annotation, it can be used in processing of any product, for any use, even though what you just said, as far as your research --

MS. DIETZ: Yeah.

MS. KOENIG: -- in terms of pH, you know, that --

MS. DIETZ: The other reason that we didn't put an annotation is that we have gone through phosphates four or five times and put four or five different phosphates on the National List, and every one has been for a specific use, and if we're -- either we're going to allow phosphates or we're not going to allow them, and we said, look, you know, if this keeps coming back because we're being very restrictive with annotations and then somebody comes back and says, "Well, it's for dairy" or "it's for this," either

we want them or we don't, and this committee said: we're going to put it forth without an annotation.

So the Board has -- you know, they can make a recommendation, but this committee's was: no annotation.

MR. RIDDLE: Yeah. I think the more we learn, the more we know how important annotations are, the more we learn about how broadly the List is being interpreted. And so, to me, the lesson is: just like OFPA says, petition for a specific use, and that -- I would support an annotation, and maybe you can talk about that, see if the committee wants to bring anything forward, but somebody else probably will.

MR. O'RELL: We'll revisit it as a committee.

MS. DIETZ: We could bring the original annotation back, but we've done the justification that we were asked to do.

UNIDENTIFIED MALE VOICE: All right. Thanks.

CHAIRMAN KING: Kevin, is that --

MR. O'RELL: (Nods head.)

CHAIRMAN KING: Okay. I don't know if George or Nancy is doing livestock.

MS. OSTIGUY: I am.

MR. SIEMON: Since I can't pronounce any of the words, Nancy's going to.

(Laughter.)

MS. OSTIGUY: The first one on the livestock list is moxidectin, which is used as a -- it's a topically-applied broad-spectrum parasiticide effective against both internal and external parasites.

We actually considered this one a couple of marketings [phonetic], at least it feels like it. The committee recommended that it was agricultural, synthetic, and that it be allowed -- is that correct? Yes. -- with an annotation for control of internal parasites only.

This was despite the fact that it, in our opinion, failed on Criteria 1, and that was the reason for the proposed annotation: because of concern about the half-life of the material and impact on soil organisms.

We recognized that it is also less problematic than a material that's currently on the list, ivermectin, but the annotation was to respond to the issue of its half-life and soil-organism impact. Much less chance of any kind of contamination if it was for internal parasites versus external.

Go ahead, Jim.

MR. RIDDLE: Yeah, I missed the call, I'm on the livestock committee, so I apologize, but I just had a question. As I recall, this substance is applied as a

pour-on, a (indiscernible) external application.

MS. OSTIGUY: Correct.

MR. RIDDLE: And so -- and it does provide external parasite control as well.

MS. OSTIGUY: Correct.

MR. RIDDLE: So as an inspector, you know, and you have this annotation: it's only for control of internals --

MS. OSTIGUY: Uh-huh.

MR. RIDDLE: -- but it's applied to the external, and it controls externals --

MS. OSTIGUY: Uh-huh.

MR. RIDDLE: -- how can that be --

MS. OSTIGUY: Well, the reason for the -- that very instruction to use the material is because of internal parasites only.

MR. RIDDLE: Okay. So someone would have -- the inspector -- I mean the farmer would have to keep records showing that that is the reason, and still not routine use, it has to be --

MS. OSTIGUY: Oh, yeah.

MR. RIDDLE: Yeah, all these other conditions that are already in the Rule.

MS. OSTIGUY: Right.

MR. RIDDLE: So they'd have to have --
MS. OSTIGUY: There should --
MR. RIDDLE: -- documentation --
MS. OSTIGUY: One would hope that there would be records for the animal, of why they were treated, and so the records would indicate that it was for internal parasites.
MR. RIDDLE: Uh-huh.
MS. OSTIGUY: Because then you avoid also dip operations and that sort of thing.
MS. KOENIG: A question. Isn't -- I know it was petitioned for an anti-parasitic, it's a parasiticide (chuckles), but, you know, when I went back and looked at it again, the executive summary, I notice that it's a by-product of, actually, an antibiotic. I just wanted to clarify that -- is it in fact an antibiotic or is it a parasiticide?
UNIDENTIFIED MALE VOICE: Can I address that?
MR. RIDDLE: We went through all that.
MS. OSTIGUY: It's an antibi- -- it's a parasiticide.
UNIDENTIFIED FEMALE VOICE: Yeah.
MS. OSTIGUY: It's not an antibiotic. I know that we talked about that before. And the petitioner is

here also, if you want to ask him --

UNIDENTIFIED MALE VOICE: That was not responsive to the TAP committee (inaudible).

MR. SIEMON: That's why we delayed it (inaudible).

MS. OSTIGUY: Well, and I remember we asked that and you gave --

MS. KOENIG: Right.

MS. OSTIGUY: -- you got us that information about it too, so that was last time around that we'd asked that question and then checked up on it.

But it is not an antibiotic, it is actually a parasiticide, and I just don't have that piece of paper with me that indicates that.

MS. KOENIG: You know, it's just one of those that has been around and --

MS. OSTIGUY: Yes.

MS. KOENIG: -- I just was trying to clarify that, because I'm not --

MS. OSTIGUY: Around and around.

Any other --?

(No response.)

MS. OSTIGUY: Okay, the last one was the proteinated and chelated mineral complexes, used as a

supplement in livestock. The committee voted that it was synthetic, allowed, non-agricultural. The vote was 4 yes, zero no, zero abstained.

There was some concern about copper and zinc, on the effect in soil and on soil organisms, but we didn't feel that an annotation was reasonable, so -- so the -- voted for approval.

MS. KOENIG: Is there an annotation? I didn't get that thing that you said --

MS. OSTIGUY: No, no annotation.

MR. RIDDLE: Once again, that was the same call I missed, and I do have a concern about the source of the protein, and I do have documentation here, Dr. Alfred Walker, who's looked at some of the background on this, and it is a possibility that the protein source could be an animal -- of animal origin, and, you know, I don't know if the committee's going to meet in the morning on breakout or not; if so, I'd just hold this discussion for the livestock committee; but if not, I will like to suggest an annotation that protein source must be -- must not be of animal origin.

And then there is the issue of excluded methods as well. If it's a soy source, it's possible that it would be a product of excluded methods.

MS. OSTIGUY: Right, but those aren't allowed.

MR. RIDDLE: Yeah. The animal by-products, though, I do think needs to be specified.

UNIDENTIFIED FEMALE VOICE: Is that available, commercially available?

MR. RIDDLE: Yes. It's commercially available from non-animal, non-GMO protein sources, so, yeah, it shouldn't be a problem.

MR. SIEMON: We are meeting tomorrow.

MR. RIDDLE: Yeah, okay.

MS. KOENIG: I have a question on -- getting back to Jim's point, it's a question for Rick.

Is that your interpretation of the excluded method as far as GMO when we place that on there, that that's something that the NOP regulates, on these materials?

UNIDENTIFIED MALE VOICE: (Inaudible) the use of (inaudible).

MS. KOENIG: Well, GMO-derived, for --

MR. NEAL: What's the particular issue, though?

MS. OSTIGUY: The issue is: whether or not, as a -- if you have a non-animal protein, your primary source is probably going to be soybeans. Soybeans are going to most typically be Roundup-ready, which is GMO. Could they use a

GMO material for the proteinated chelates, and would that meet the Rule, or does the Rule exclude it because GMOs are prohibited.

MR. NEAL: I won't answer that right off the top of my head. There's a question that I've got for you, though. When you think about this type of annotation, how do you enforce it, how does a certifying agent enforce it, and where do they get their information from?

MS. OSTIGUY: The sourcing from the person manufacturing it.

MR. NEAL: So everybody will provide all of this information for --

MS. OSTIGUY: Well, you'd know your source.

MR. NEAL: I'm just asking, because that's going to be -- that's going to be an issue, is enforcement.

MR. SIEMON: The average farmer won't have a clue.

MS. OSTIGUY: Well, the farmer won't --

UNIDENTIFIED FEMALE VOICE: But the agent.

MR. NEAL: I'm just asking a question.

MS. OSTIGUY: -- but the manufacturing source would know.

MR. NEAL: Okay. Because what could end up happening is that you eventually have an issue where some

farmers may not know, some will, and so you've got another enforcement and compliance issue that you've got to address. That's all I'm -- that's all I'm -- I mean, that's the only question that I've really got.

MS. KOENIG: I guess that that -- I mean -- and it's been on my radar screen for a while, and that's why I'm asking it, and you don't have to answer it now, but the question is, is: again, when NOP looks at those excluded methods, do they just simply look at "no GMO seed," or do they take it to the step of materials, both natural and things that are on the List, such as even soybean meal, are you checking to see -- or like the soybean isolate, are they from non-GMO sources, when it comes to that -- that --

MR. NEAL: There -- we say that manure from non-organic operations may be used as a soil amendment. We say the crop residues from non-organic operations can be used as a soil amendment. These could be -- I mean, these are soil amendments.

MR. RIDDLE: Unless annotated. Unless annotated.

MR. NEAL: Those are naturals. Those are crop -- those are agricultural products we're talking about, those are not synthetics.

MR. SIEMON: Even if they're GMO, is what you're saying.

MR. NEAL: I'm applying it to my soil as a soil amendment, and we acknowledge that.

MS. CAROE: There is nowhere in the Rule that it specifies that a crop input has to be non-GMO, it's not in there. In fact, the cover crop can be GMO. It's not in there.

MR. NEAL: Well, the seeds --

MS. CAROE: The rotation can include a GMO crop that's not sold as organic.

MR. NEAL: Seeds could not be GMO.

MS. KOENIG: Well, that -- that's -- I really -- you know, as we especially look at these protein issues, and soy, you know, and we're getting into the National List of these products, I think there's a lack of -- you know, I don't know if it needs to be in a directive, but there certainly is a lack of clarity in terms of what -- how you view your GMO policy, because contrary to what Andrea's saying -- I mean, I would assume the cover crop in an organic-production practice could not be GMO seed.

MS. CAROE: It's not in the Rule.

MS. KOENIG: So I don't -- and that does have some implications, because, again, I think, personally, when I'm putting something on the List, I'm assuming that if it is a soy protein isolate, or if it's a protein

chelate, in this case, I assume that the GMO policy is covering the materials list, and if it isn't, I think we need clarity on that.

CHAIRMAN KING: Goldie has a comment, then Andrea, then Jim.

MS. CAUGHLAN: I mean, that's the whole point, is that if in fact this is a learning experience, just as the whole program is revealing itself as we go, it seems like moment by moment, and the fact of the matter is: we all know that GMOs are becoming a far bigger problem in terms of every aspect of the conventional manure and the conventional crop more and more and more. I mean, it flags everything.

So to me it's an issue of: how do we fix it, how do we make bloody sure that those aspects do get incorporated, whether it means additional call for rulemaking, in the interim directives, advisories to the -- but we have to fix it, we cannot just accept it.

MR. NEAL: I'd note that there may be a need for clarification on: how far do you go back, in the process, in terms of this "excluded methods" definition.

CHAIRMAN KING: Andrea.

MS. CAROE: To answer the question you asked first, about enforcing annotations: I can't speak from the

crop inputs as much as I can speak from non-organic ingredients in processed products, in which case you do run into a situation where a vendor of an ingredient has no idea what that original carrier corn was grown and whether it was GMO or not, so it is being enforced in -- the best possible, but incomplete, at best, because the information's not there.

Now, I don't know, every time you buy a feed supplement, if you're not buying it from a distributor that may not have that information because he's, you know, several points away from the growing of that.

CHAIRMAN KING: Jim.

MR. RIDDLE: Yeah. Well, the burden of proof is always on the person who wants to use the substance, to make sure they use approved materials, and I look at the List currently, under feed supplements, and I see it as very similar to the milk replacer, where there's annotation there: without antibiotics, emergency use only, no non-milk products or products from BST-treated animals. So there the GMO issue has been singled out, and so I think it would be appropriate for that to be part of the annotation.

And then the animal-origin issue would be another one that I think we would be very wise to include, and they are commercially available, the source is available,

according to the petitioner -- I don't have it in writing, but verbally -- and so I think it makes sense, verifiable.

MS. CAUGHLAN: I remember we had a discussion two or three meetings ago specifically on pulling back from so many annotations, and Keith spoke to this issue, saying that we were creating, by these extra annotations, more problems, but I think if -- you know, in -- that that is not necessarily it, and I think I would rather have it be redundant to the state that we state it every single time, "non-GMO" or "non-excluded methods," rather than to assume that it's somehow going to magically (inaudible).

UNIDENTIFIED FEMALE VOICE: Yeah.

MR. JONES: Let me just address this. As you know, annotations are one of my passions, okay --

(Laughter.)

MR. JONES: -- and the reason they're one of my passions is because -- I think, in many cases, they make you feel good, but they mean nothing in the field, okay? In other words, you walk away thinking you've done the right thing, but unless there's a data set out there you can capture, unless you have a verifiable annotation, you have created a lot of nice language without any regulatory impact, okay?

So you need to be very careful that when you use

an annotation to prohibit a practice, that the data set that you're going to rest on exists, okay, and: it's readily available, in other words you can pick up the phone and call your supplier and they will know whether or not X, Y, or Z exists.

That's my only caveat: just be very careful.

MS. CAUGHLAN: Well, we should be much closer to that now, given our greater development of databases having to do with --

MR. JONES: You would think so, Goldie. Maybe, or maybe not. I mean, one of the things I think -- it's still amazing: out there, when you pick up the phone to some of these folks, they don't have a clue and don't have any way actually to even know --

MS. CAUGHLAN: Well, if we're not punching it home all the time, they're not even going to create that or look for it.

MR. JONES: Fair enough. But all I'm saying is that: don't just add language for the sake of adding language; make sure that you know, and that you've consulted with certifiers who are certain that they can verify the point that you want verified, because if you can't do that, then you have just created a lot of nice language.

CHAIRMAN KING: Another quick question, then Becky, then Andrea.

But please stay here for a moment, Keith. I understand what you're saying, and I think this message has been clear for a while. From your perspective -- and I -- as it pertains to this specific issue, "excluded methods":

Do you feel, in your opinion, there is another path, to ensure that what we're trying to accomplish in this particular case is realistic?

MR. JONES: Well, let me give you my best professional judgment on where you're wanting to go. You have the ability to add annotation and say: we don't want this product being derived from excluded methods; but when you do that, you have created a dichotomy within your own regulation, okay, because now you're saying: well, in some areas we don't want this to happen, but in other areas --

In other words, if I go -- let's say I want to soybean meal as a nitrogen source for organic production, and I go down to Southern states, or wherever, and get ten 50-pound bags of soybean meal: I have no idea of knowing where that soybean has come from; and, further, there is nothing in the regulation that prevents me from using that soybean meal as a nitrogen source for fertility.

So just be careful, just be care- -- because

soybean meal is a natural, naturals are unregulated, okay, we can't get at 'em, okay?

So be careful, as you're thinking through this, that you're not creating this huge dichotomy in your own regulation, where you're being quite schizophrenic as to what you want to -- what you want to do.

CHAIRMAN KING: Becky, Andrea, Dave, then Rose.

MS. GOLDBURG: I just wanted to make a point, which Keith partially made. I worry about singling out products for no GMO and implying that others -- therefore GMO is okay? and I think we really need consistent policy on it. I don't know, do we need a task force, do we need some directive from the NOP, do we need the policy development committee, or whatever, to consider the issue, but this is not something to deal with scattershot.

CHAIRMAN KING: Andrea.

MS. CAROE: Yes. I just want to remind this Board that these materials on the list are not organic, they're conventional materials, they were manufactured in conventional facilities, for conventional production, and, you know, going back and asking for this: yes, you'll get a supplier that says, "Yeah, it's non-GMO, we never use GMO," they'll say that, they may not -- the information that you're getting is questionable, and I think that kind

of talks to Keith's data set: there is not hard -- we're relying on affidavits and comfort language instead of hard facts on it, and taking that back too far into the conventional world, where there is no regulation and the distributor of that product doesn't have to have that information, it makes it very difficult.

I do understand what you're saying, Jim, the onus is on the user of that material to justify it, but, you know, that -- that is a bit of an issue, and this industry is still, you know, 2 percent, 2 percent, and more likely, if you're going to be a pain in the butt to a vendor to try to get them to track it back all the way to the farm, they're going to say, you know, "forget it, take your business elsewhere," because that five pounds of soybean meal doesn't really mean anything to them.

CHAIRMAN KING: Dave.

MR. CARTER: Yeah. I'm a little more concerned on the -- and I agree with Rebecca on the GMO issue, but on the other one, that Jim brought up, about the animal source, I think that's something where we need to be very specific, because I think, you know, if FDA is moving forward and saying that they're prohibiting animal by-products in feed, you know, there are some things -- and I've been concerned for some time -- that there are some

things, such as Vitamin E12 and some other things, that ranchers and farmers routinely use, that they don't know are -- come from animal base, and so I think we need to flag that on this, that there has to be a distinction, that we're putting the stake in the ground on that, to make sure that we're not going to cross that line.

CHAIRMAN KING: Rose.

MS. KOENIG: And, you know, just to Keith, I guess, although he sat down: You know, I only beg the question because I think it's an area that -- I know, again, OMRI is not NOP, I'm not implying that, but when they look through their technical review of brand names, that is one of the questions that they -- they're posing for -- for inputs, so that it can be in compliance, you know, with the NOP.

So I think there is either a misunderstanding or non-clarity out there in the industry as far as: how far do you take those excluded methods, is it just simply seed source at the farm, you know, does it go to medications that might be derived from GMOs? I mean, there's so many processes now that involve it, and -- and if the NOP's position is it just ends at seeds, that's -- that's your position, but I think it just needs to be clear, so that -- again, you know, this "equal playing field" concept, that

everybody has a clear understanding towards that policy.

CHAIRMAN KING: George.

MR. SIEMON: No (laughs).

CHAIRMAN KING: I just wanted to wake you up. Kim.

MS. DIETZ: Maybe just a recommendation. Becky's already suggested maybe a task force be formed, and I know there's GMO decision trees out there, and there's lots of data and worksheets that we could certainly bring together (inaudible) --

MS. KOENIG: But, Kim, I would like -- I mean, I think the directive is much more clear, to the point, because if there is -- it sounds like there -- there is already a thought process and a way that NOP is viewing it. So I don't want to go through a whole task force to come up with a recommendation --

MS. DIETZ: My point was, there's information out there, that you need to look at it, before we have a lengthy discussion like this.

CHAIRMAN KING: Yeah. Okay, so where were we?

MS. OSTIGUY: We're done.

CHAIRMAN KING: You're done.

UNIDENTIFIED MALE VOICE: Yeah.

CHAIRMAN KING: Okay. Well, let's officially

recess, and we will reconvene tomorrow at 8 a.m. Please be here promptly as we have lots of work to do again tomorrow. Thank you all very much for your patience.

(Whereupon, at 6:30 p.m., the meeting was recessed, to reconvene at 8:00 a.m. on Thursday, April 29, 2004, in the same place.)

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CERTIFICATE

In Re: NATIONAL ORGANIC STANDARDS BOARD MEETING
Place: CHICAGO, ILLINOIS
Date Held: APRIL 28, 2004
Time Held: 8:00 A.M.

We, the undersigneds, do hereby certify that the foregoing pages, number 1 through 360, inclusive, is the true, accurate and complete transcript prepared from the reporting by LEAH JOHNSON in attendance at the above-identified hearings, in accordance with applicable provisions of the current USDA contract, and the below-signed persons have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the hearings and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the hearing.

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