

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

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MEETING OF THE NATIONAL ORGANIC
STANDARDS BOARD (NOSB)

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WEDNESDAY
APRIL 27, 2011

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The National Organic Standards Board convened at 8:00 a.m. in the Emerald I Meeting Room at the Red Lion Hotel, 1514 Fifth Avenue, Seattle, Washington, Tracy Miedema, Chairperson, presiding.

MEMBERS PRESENT

TRACY MIEDEMA, Chairperson
COLEHOUR BONDERA
STEVE DEMURI
JOSEPH DICKSON
KRISTINE "TINA" ELLOR
BARRY FLAMM
JOHN FOSTER
WENDY FULWIDER
KATRINA HEINZE
NICHOLAS MARAVELL
ROBERT "MAC" STONE
JENNIFER TAYLOR
C. REUBEN WALKER

STAFF PRESENT

MILES McEVOY, Deputy Administrator, National
Organic Program

MELISSA BAILEY, Director, Standards
Division, National Organic Program

LISA BRINES, Standards Division, National
Organic Program

EMILY BROWN ROSEN, Standards Division,
National Organic Program

LISA AHRAMJIAN, NOSB Executive Director

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C-O-N-T-E-N-T-S

Crops Committee - John Foster, Chairperson	5
Livestock Committee - Wendy Fulwider, Chairperson	192
Handling Committee - Steve DeMuri, Chairperson	220
Materials Committee - Katrina Heinze, Chairperson	256
Compliance, Accreditation and Certification Committee - Joe Dickson, Chairperson	293
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Meeting Adjourned	322

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

2 8:02 a.m.

3 CHAIR MIEDEMA: Good morning,
4 everyone. Day 2 of the Spring 2011 meeting of
5 the National Organic Standards Board is now
6 back in session.

7 I'd like to welcome members of the
8 audience who are here today for the first
9 time. Nice seeing so many of you this
10 morning.

11 And something that a few of us
12 were remarking on, is how many NOSB alums
13 there are in the audience today. So, we
14 wanted to recognize NOSB members who have
15 served in the past.

16 Would you be so kind as to please
17 stand and be recognized?

18 (Applause.)

19 CHAIR MIEDEMA: We've got a full
20 day. And so, we're going to go ahead and get
21 started.

22 First committee that will be

1 reporting back to the full Board this morning
2 is the Crops Committee.

3 Chairman John Foster, would you
4 please proceed?

5 MR. FOSTER: Sure. So, we've got
6 two hours, correct? Two hours, right? So, we
7 have a fairly thick agenda. Lots of things to
8 cover.

9 I'm going to ask, Tracy, if you
10 would help mind the time to make sure that we
11 can hit each of the items for some period of
12 time?

13 There's going to be some materials
14 that take a little bit longer than others.
15 And Crops Committee, we met briefly last night
16 after this meeting, and we talked about some
17 of the materials that are going to require a
18 little bit more time.

19 So, be mindful of that as we hit
20 the ones that, you know, we have a chance at
21 going through fairly smoothly. Let's hit
22 those.

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1 This is a discussion day, and we
2 have a little bit more time to talk on Friday.
3 We can certainly meet between now and Friday
4 to smooth out whatever wrinkles we still have.

5 So, I just ask that we can be
6 mindful of that. It's going to be tough to
7 get through.

8 I spent a fair amount of time
9 yesterday trying to encapsulate everything I
10 heard yesterday. And I never get tired of
11 hearing farmers talk about the art of farming.

12 I love hearing that part. It's
13 actually the neatest part for me, is to listen
14 to that. I really appreciate all the comments
15 that were given.

16 It reminds me that there's a lot
17 more to farming than just the hard work and
18 just everyone slinging arrows at you.

19 And you can hear it in the voices,
20 and that was really refreshing for me. Very
21 invigorating. I very much appreciate that.

22 So, a lot of our Crops Committee

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1 has been focused on sunset review, a couple of
2 petitions and a couple of materials, but a lot
3 of our discussions have been around sunset and
4 I just had a couple things I wanted to throw
5 in here in preparation for discussion.

6 One is that it's a real
7 opportunity for the community, the industry to
8 really think about renewal and review, taking
9 stock taking chances.

10 A lot of us take chances in
11 committee meetings, and there's a lot of
12 facets here. A lot of interested parties.

13 And we've heard from a lot of
14 those in public comment. A lot of the
15 parties, a lot of the facets, and I appreciate
16 that.

17 One thing I was not hearing that I
18 just wanted to throw out in preparation for
19 discussion was that it's - I think it's really
20 easy to forget that materials exist only in
21 the context of a whole.

22 And in - that they're used as a -

1 any single substance, any single material is
2 relatively minor relative to the whole of
3 farming.

4 And that's what I was reminded of
5 yesterday in public comment, that farming is
6 a big thing. It's a big job. It's a big
7 task, and any one material plays a very small
8 role.

9 It's not that materials play an
10 immaterial role, it's just that any one plays
11 a minor role. And I think it's important to
12 keep that in context as we talk about it, as
13 we talk about each material, because it's easy
14 to forget when we're talking as we have a lot
15 about molecules and bonds, all important
16 things.

17 But in the context of the whole,
18 it takes on a new meaning and a richer
19 meaning. And I don't want to lose that,
20 because that was the thing that actually got
21 me into organics twenty years ago is
22 remembering that it's a whole deal and not to

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1 get overly too focused on the too small.
2 That's all.

3 So, the kind of format here, I'm
4 going to ask each of the committee members
5 that kind of headed up the review, the
6 research, took a point on TR review, developed
7 the checklist, to take each material.

8 But I would like just for the sake
9 of organization, would like to take them in
10 order on the agenda. And I'm - Crops
11 Committee, please chime in if you see this
12 differently, but my understanding is we're
13 going to probably spend a little more time on
14 tetracycline. A little more time on
15 streptomycin. Likely a little more time on
16 ethylene. Perhaps pheromones, sulfur dioxide.

17 And then of course my personal
18 favorite, sodium nitrate and corn steep
19 liquor.

20 Unless there's objections from the
21 Committee, I would just ask, Jay, if you could
22 start on tetracycline.

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1 MR. FELDMAN: Good morning,
2 everybody. Great place to begin the
3 discussion. Dive right in with the hard
4 stuff.

5 I put a little PowerPoint together
6 to give you a sense of where the Committee was
7 at on this issue when it made its decision,
8 and then sort of reflecting back on the
9 history. And I'll integrate with this, some
10 of the comments that I heard and read.

11 So, the big issue for this
12 question as John said, this is a tool. It is
13 not sort of the central issue in growing
14 apples and pears, which is what we're focused
15 on with the use of this antibiotic.

16 It is an input in a system. As we
17 all know, the organic system. So we have, as
18 John said, keep that in mind.

19 But as we're having this
20 discussion here in this room, what the
21 Committee became acutely aware of was that
22 there's this larger discussion going on around

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1 us in academic and scientific circles about
2 antibiotic resistance.

3 And you can see that, and this is
4 the cover of a CIBA Foundation symposium on
5 antibiotic resistance.

6 It's a huge issue, and the
7 Committee struggled with how we related to
8 that as a community.

9 Were we exacerbating the problem?
10 Were we recognizing the problem and trying to
11 do something about it?

12 So, basically the conclusion that
13 you come to pretty quickly when you look at
14 the literature, is that antibiotic resistance
15 is an important threat to human health, and
16 that it's costly in society not only in terms
17 of human health costs, but in terms of our
18 ability to protect the public health.

19 Over time there's been a three-
20 fold increase in mortality. I'm not going to
21 go through all these slides, but just I'm
22 picking out the highlights.

1 And the economic cost to the US is
2 estimated between 150 million and \$330 billion
3 a year depending on the number of deaths and
4 the way you calculate it.

5 Antibiotic resistance in human
6 pathogens is increased not only by the
7 pathogen's exposure to antibiotics - so, in
8 other words, our individual exposure that we
9 may get as a result of eating something that
10 may have a residue - but also the pathogen's
11 exposure to other bacteria not necessarily
12 related that become resistant.

13 So, what we're seeing is this
14 horizontal gene transfer. And once you put
15 this antibiotic out in the environment, you're
16 creating resistant genes that move laterally.

17 And the movement of the genetic
18 material from one organism to another is the
19 primary mechanism by which bacteria acquire
20 antibiotic resistance.

21 Spraying antibiotic increases
22 resistance in bacteria exposed such as

1 bacteria in the soil or on plants.

2 And here's an article that we
3 looked at, Emergence, Spread and Environmental
4 Effect of Antimicrobial Resistance.

5 Use of an antimicrobial anywhere
6 can increase resistance to any antimicrobial
7 anywhere else.

8 And this is the difficult concept
9 to get a handle on that when we're putting
10 this out in the environment, we're causing
11 this - we're escalating the problem that we're
12 struggling with.

13 So, we put - as you've got in your
14 packet, we put together the environmental -
15 the evaluation criteria checklist. And we
16 went through all that. And we can circle back
17 to that if people have questions.

18 What has continued to allow
19 antibiotic use done for fire blight management
20 in organic apples and pears?

21 Well, again, depending on your
22 perspective, we have either sort of created

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1 the problem, or we're managing the problem.

2 I guess what we heard in the
3 testimony is that the antibiotic is managing
4 the problem.

5 The other perspective to think
6 about for a moment is that we in our decision,
7 may have - may be contributing to the problem.
8 Because what happened is knowing we have this
9 tool, it appears as though it supported this
10 growth of these varieties. And here you can
11 see the growth in Washington State of Fuji,
12 Gala, Granny Smith, which are the big ones.

13 Regardless of whether it's by
14 consumer demand or grower response to the
15 consumer demand or whatever reason it may be,
16 the fact remains that we have supported this.

17 This is supported. This
18 transition to these varieties is supported by
19 the fact that these antibiotics are out there.

20 So, when you look around in the
21 literature -- Purdue has looked at this - you
22 come up with this sort of list of varieties.

1 We heard referenced yesterday that
2 -- some of the varieties that are highly
3 resistant. And here, they're listing Winesap
4 and Jonafree and all these different
5 varieties.

6 We heard about some others
7 yesterday as well. One person characterized
8 them as inedible.

9 So, you know, you're facing this
10 question of whether these resistant varieties
11 are what consumers will buy and how we educate
12 consumers about that.

13 But the reality is wherever you
14 look in the literature, and I think this was
15 established in the testimony, and nobody sort
16 of disagreed with it, said the varieties we're
17 planting and that are most common in the
18 marketplace are the highly-susceptible
19 varieties. And here, this supports that as
20 well.

21 So, do organic producers and
22 marketers need to follow the lead of chemical-

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1 intensive growers, or shouldn't we market
2 based on our strengths?

3 And this is both a philosophical
4 question, but it's a question that we face
5 with a lot of materials in terms of the
6 appropriateness of introducing a material
7 relative to the particular species or the
8 seasonality of food production or whatever
9 we're looking at in terms of manipulating
10 nature responding to problems.

11 Which would you choose? And this
12 goes to the consumer question that was raised
13 yesterday. I am just as good as Gala, but I'm
14 resistant to fire blight. So, no one sprayed
15 me with antibiotics.

16 And here's the Gala. You know my
17 name, but you don't know that I'm sprayed with
18 antibiotics.

19 So, you know, someone came up to
20 me yesterday and said, well, again, this is a
21 very small use relative to all other organic
22 practices. And my consumers understand that

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1 I'm a responsible user of this material, and
2 that may well be. The organic consumer might
3 respond that way.

4 I think in a larger context where
5 people are more removed from their farmer and
6 shopping in an urbanized area and they go pick
7 up a Gala, I suspect - I don't know what your
8 sense is on this, but I suspect they don't
9 expect it to be sprayed with antibiotics.

10 So, here's the petition comes
11 along. I want to give you the history.

12 We received this petition from the
13 Washington State Horticultural Association.
14 And they want to amend the Annotation 205.601
15 which allows tetracycline for fire blight
16 control only - and for use only until October
17 21, 2012.

18 The Crops Committee requested, but
19 did not receive prior to adopting its
20 recommendation on tetracycline updated TR, but
21 what we had was a 2006 TR, we had a 1995
22 Technical Advisory Panel review.

1 The Committee proceeded based on
2 its own research pending the receipt of a new
3 TR which will be reviewed, and then I've added
4 to this, and was received and reviewed by all
5 of us on April 1. So, we did actually receive
6 the final updated TR on April 1.

7 Now, if you feel confused or
8 conflicted about this, I think you'll be
9 supported by the history on this chemical.
10 So, I want to run through the history quickly.

11 First approved in '95,
12 tetracycline and another antibiotic,
13 streptomycin, which we're going to talk about,
14 the issue of engendering antibiotic resistance
15 in human pathogens in workers was raised at
16 that time in the 1995 TAP review. The
17 annotation permitted for fire blight.

18 Streptomycin antibiotics were to
19 be reviewed again in two years and there was
20 to be a task force to further explore
21 antibiotic use in fruit production.

22 In '98, the proposed rule would

1 have allowed antibiotics is pesticides. There
2 was public opposition to that.

3 When USDA published the next draft
4 rule in early 2000, it removed the NOSB
5 recommendations allowing strep and tetra in
6 order to be consistent with the prohibition of
7 antibiotics.

8 The two antibiotics were
9 reinstated, however, in the December 2000
10 final rule. So, that's a pretty interesting
11 piece of history.

12 The Board discussion regarding the
13 2006 Sunset included concerns about promotion
14 of resistance - same discussion we're having
15 today - natural substitutes, inconsistency
16 with the prohibition of antibiotics in
17 livestock, inconsistency with organic
18 principles, disagreement with the prophylactic
19 use of antibiotics, the Centers for Disease
20 Control and Prevention opposition to the use
21 of strep and tetra in crop production.

22 More on the Board discussion

1 regarding 2006 Sunset included failing to give
2 an incentive for alternatives - we've been
3 discussing that a lot - reaction against
4 organic fruit by consumers, possibility - this
5 is all in the historical record - possibility
6 that antibiotics might be taken up by the
7 fruit - we've actually come across literature
8 which we've cited that shows translocation in
9 the fruit, and low levels in the finished
10 fruit mostly in the core and the peel - need
11 for more research, restrictions on sale of
12 fruit in Europe, disruption of the organic
13 system.

14 The NOSB in 2006, also discussed
15 the lack of data showing impact on resistance.
16 People, you know, back then it wasn't as clear
17 as it becomes as more literature comes out.

18 And of course what we hear
19 consistently is dependency of growers on these
20 materials.

21 The Board vote 2006 after
22 expressing concern about the wish that someone

1 might petition to remove them sooner than the
2 next Sunset, the two antibiotics were renewed
3 with a vote of seven yes, four no, one
4 abstention and two absent. And you'll note
5 that this is not a two-thirds yes vote.

6 In November 2008, the Board took
7 up a petition to add a second form of tetra by
8 removing tetracycline annotation that limit
9 its use to oxytetracycline calcium complex.

10 This would have reset the clock on
11 tetracycline. However, and many of you
12 sitting around the table remember this,
13 however, because there was a general belief
14 that tetracycline could be phased out, the
15 Board voted down the proposal and - sorry,
16 wrong way - and then entertained a motion to
17 reconsider, which resulted in adding the
18 hydrochloride to level the playing field, and
19 ultimately the adoption of the annotation
20 which we have before us today, which is the
21 expiration date of October 21, 2012.

22 Thus seeking, I mean, this is what

1 was intended, to prevent any additional
2 extensions of the Sunset period.

3 So, just imagine sitting - well,
4 some of you don't have to imagine. You can
5 remember. But imagine sitting at the table
6 back then having this very same conversation.

7 Findings of our committee. The
8 Crops Committee was presented with evidence
9 that tetracycline can contribute to antibiotic
10 resistance. At the same time, additional
11 products are available to use against fire
12 blight.

13 We heard yesterday about efficacy
14 issues, problems with that. But,
15 nevertheless, they're out there. There's
16 still ongoing research.

17 The majority of the Committee
18 believes that the first line of defense is the
19 choice of resistant varieties and rootstocks,
20 a concept that the Committee majority believes
21 is a critical organic principle essential to
22 disease or pest prevention in organic systems.

1 Despite this, the pattern of
2 growth in organic apple and pear varieties in
3 certain areas of the country has been skewed
4 toward those varieties most susceptible.

5 And that's what's challenging
6 about this. We don't - I don't think anybody
7 wants to do that.

8 In 2010, the leading organic
9 apples, we've already said this, Gala, Fuji,
10 Granny Smith, 54 percent of apple production
11 acreage highly susceptible.

12 The leading varieties in organic
13 pear productions were Bartlett - you can see
14 the rest here. Eighty percent of organic pear
15 acreage again most susceptible to fire blight.

16 On the other hand, there are
17 numerous apple and pear varieties that are not
18 susceptible to fire blight. We heard they're
19 inedible, yesterday.

20 The majority of the Crops
21 Committee recommends against the adoption of
22 the petition to amend the listing of

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1 tetracycline by removing the expiration date
2 on tetracycline so that the listing could stay
3 tetracycline for fire blight control only,
4 thus allowing tetracycline's use to expire.
5 And that was by the deadline set in 2008. And
6 that was by a vote of five no, because we
7 present these motions in the affirmative,
8 absent two.

9 Now, of course as John mentioned,
10 there's ongoing discussion as to how we
11 balance all of this. Given what we've heard
12 and what the realities are on the ground, we
13 haven't yet worked that out, but I wanted you
14 all to understand what we had discussed in the
15 Committee.

16 And I really would appreciate any
17 input from any other Committee members. Thank
18 you.

19 MR. FOSTER: Thank you, Jay.

20 I want to go straight to - Tracy,
21 I understand you have a specific kind of
22 question protocol in place, or do you want to

1 keep this straight presentation at this time?

2 CHAIR MIEDEMA: Let's just proceed
3 with presentations. And if we start getting
4 into, you know, way over time, then we'll need
5 to impose some of the restrictions.

6 MR. FOSTER: Okay. Thank you.

7 We're going to move -

8 MS. ELLOR: I wanted to add to what
9 Jay said, and there have been further
10 discussions in the Crops Committee about, you
11 know, how much progress has been made since
12 this last deadline was set.

13 And there definitely has been
14 progress, so, you know, we've been talking in
15 committee about, you know, further steps we
16 can take to possibly give more time.

17 CHAIR MIEDEMA: Katrina.

18 MS. HEINZE: I'm a little unclear
19 on our discussion process at this point, I'm
20 sorry, because I know it's a change.

21 Is the Crops Committee going to
22 present all their things and then we're

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1 discussing everything at the end, or are we
2 discussing them after each one?

3 How do you want to proceed?

4 CHAIR MIEDEMA: You know, that's
5 really the purview of the Crops Committee
6 Chair.

7 MR. FOSTER: I think in the
8 interest of covering everything we should
9 right now, I'd rather go through - go through
10 item by item and I think they'll self-
11 prioritize for discussion.

12 Is that all right?

13 Yes, only because it's a long list
14 and I worry that the bottom half won't get
15 covered at all.

16 MR. FELDMAN: John, I would say if
17 there are any burning clarification questions,
18 it might, you know.

19 CHAIR MIEDEMA: I have one.
20 Yesterday it was pointed out to us that this
21 material is called oxytetracycline.

22 Did that come up in your research?

1 I just want to make sure that for
2 the record we're calling this material -

3 MR. FOSTER: Yes.

4 CHAIR MIEDEMA: -- by its proper
5 name.

6 MR. FOSTER: That's what we're
7 talking about. Sorry.

8 Okay. Moving on quickly to
9 nickel, nickel was - this is a petitioned
10 item. It's the second of two petitions in
11 front of the Crops Committee.

12 Nickel has been petitioned to
13 initially just be added to the National List.
14 It was later - the petition was later amended
15 to add nickel to the existing list,
16 205.601(j)(6)(ii), to which - a list that
17 already includes the sulfates, carbonates,
18 oxides or silicates of zinc, copper, iron,
19 manganese, molybdenum, selenium and cobalt.

20 Nickel - I took point on this:
21 Nickel was fairly recently recognized as an
22 essential micronutrient by various agencies

1 that are all in the petition materials, and
2 wasn't on the list of essential micronutrients
3 at the time that the others were added to the
4 National List.

5 So, the use has particular utility
6 for pecan orchards. My understanding is that
7 the physiology of pecans, other nuts too, but
8 pecans particularly, is such that the nickel
9 ions do not translocate particularly well.

10 So, you can have nickel in the
11 soil that doesn't get to the crop itself,
12 causing something called mouse ear and greatly
13 diminish the yields.

14 All of the petition materials, the
15 actual petition submitted by Rich Theuer, was
16 quite thorough, I thought. And unless there
17 are specific questions for clarity, I'll move
18 to the next item.

19 Questions?

20 (No response.)

21 MR. FOSTER: All right. Then next
22 up was chlorine. Give me a minute to take my

1 thumb off the button and find it. These are
2 now moving into Sunset materials.

3 Chlorine as a - it's listed on
4 205.601(a) as an algicide, disinfectant and
5 sanitizer, including irrigation system
6 cleaning systems.

7 The material - the three materials
8 that are pulled out specifically in the
9 listing are calcium hypochlorite, chlorine
10 dioxide and sodium hypochlorite.

11 There's a lot of chemistry in the
12 first part of the recommendation, but where
13 most of our discussion focused was, generally
14 speaking, the Committee felt it should remain
15 on the list. However, with an alternate
16 annotation to bring into better alignment with
17 NOP's draft guidance.

18 Wanting to make those two things
19 more consistent seemed like a good idea to us.
20 And so, the Crops Committee recommended re-
21 listing chlorine compounds with a change to
22 the annotation in the following way:

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1 Chlorine materials, and then
2 parenthetically, calcium hypochlorite;
3 chlorine dioxide and sodium hypochlorite,
4 wherein the residual chlorine levels in the
5 water in direct crop contact or as water from
6 cleaning irrigation systems applied to soil
7 should not exceed the maximum residual
8 disinfectant limit under the Safe Drinking
9 Water Act.

10 Chlorine products may be used up
11 to maximum labeled rates for disinfecting and
12 sanitizing equipment or tools.

13 And, again, the intention was to
14 bring this into alignment with NOP's draft
15 guidance. The vote was five yes, zero no and
16 two absent.

17 Any questions on that?

18 CHAIR MIEDEMA: Nick.

19 MR. MARAVELL: John, on the wording
20 there it said the maximum residual - I can't
21 look backwards and forwards at the same time,
22 but should not exceed.

1 Is that the proper word or are we
2 looking for "shall not exceed"? I just don't
3 recall how we wanted to portray that.

4 MR. FOSTER: I'm trying to find it
5 here in the - yes, it does say right now, says
6 "should not exceed." That may not be the most
7 appropriate word.

8 MR. MARAVELL: Okay. That's fine.
9 Just if you take note of that?

10 MR. McEVOY: Hello.

11 CHAIR MIEDEMA: Miles.

12 MR. McEVOY: Yes, we have a
13 question concerning this proposed annotation
14 change.

15 The Livestock Committee has
16 already approved chlorine for 2012 Sunset
17 without the annotation change. So, we'd just
18 like the Board to clarify as you move forward,
19 if you also intend to have an annotation
20 change for chlorine use in livestock.

21 CHAIR MIEDEMA: Wendy, are you
22 prepared to answer that?

1 MS. FULWIDER: It's something that
2 we would be happy to discuss in Committee
3 meeting at break.

4 CHAIR MIEDEMA: Go ahead, John.

5 MR. FOSTER: Kind of wrapping up on
6 that, some discussion has been had about the
7 use of chlorine in - from 601 in post-harvest
8 handling on farms.

9 And that's probably something we
10 need to discuss as - when the time comes
11 either in Committee or as a Board as a whole,
12 is clarifying our expectation with respect to
13 which chlorine - essentially which chlorine
14 listing applies to post-harvest use on the
15 farm.

16 There is some variability in how
17 that's interpreted from various certifiers.
18 And the intention was that if post-harvest use
19 would pull from a handling definition, because
20 this - the listing here on 601 is fairly
21 specific to other uses in our reading. That
22 was our intention, anyway.

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1 Next materials, I believe, are
2 copper. And Jay took point on that.

3 MR. FELDMAN: Yes. You know, going
4 back to the earliest TAP review on copper,
5 there's concern raised about accumulation of
6 copper in the soil and the environmental
7 implications of that both to aquatic
8 organisms, but also to toxicity to earthworms
9 and fungi, bacteria and most soil animal life.

10 And there is a - in addition to
11 that, anyone that's worked around or with this
12 knows that it has to be handled carefully.
13 And that exposure can cause dermal/eye
14 irritation, and can cause health problems,
15 respiratory problems, et cetera.

16 The labels on these products that
17 are registered with EPA are pretty strict in
18 terms of personal protective equipment and
19 reentry, as many of you know.

20 So, the Committee addressed these
21 two aspects, the environmental implications of
22 its use, and the worker protection issues, and

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1 proposed a slight change to the annotation.

2 On the first issue, it's proposing
3 what we have here, coppers fixed, copper
4 hydroxide, copper oxide, copper oxychloride,
5 includes products exempted from EPA tolerance
6 provided that copper-based - what am I missing
7 here - copper-based materials must be used in
8 a manner that minimizes accumulation, which is
9 what's been in the annotation historically, in
10 the soil and documented through - this is the
11 new part - documented through periodic testing
12 and shall not be used as herbicides.

13 So, it's that documentation that
14 the Committee is suggesting we require. And
15 the same thing for the copper sulfate. Must
16 be used in a manner that minimizes
17 accumulation, which has been the historic
18 wording, and documented through periodic
19 testing.

20 On the health effect issue, we
21 didn't - we're not suggesting an annotation,
22 but we are suggesting that we work with the

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1 Program to address this as an issue to be
2 aware of in terms of inspections and oversight
3 of organic farms, that is, that there is
4 strict - because of the acute impacts on
5 health to workers, and because of the pretty
6 serious label restrictions that we not just
7 assume that there is compliance and
8 enforcement which is technically regulated by
9 EPA and its delegated State agencies, but that
10 we integrate those enforcement issues through
11 program guidance into NOP's guidance and
12 oversight of inspection certification.

13 That way, bringing some of the
14 questions of human health impacts to workers
15 into the mind's eye and into our focus. And
16 I think that would go a long way in offering
17 better protection for those who handle and are
18 exposed to this on the farm.

19 MR. FOSTER: Thank you, Jay.

20 Clarifying questions?

21 (No response.)

22 MR. FOSTER: Okay. Moving on.

1 Alcohols. This is both isopropanol and
2 ethanol. Again, a Sunset item.

3 MS. ELLOR: This item actually was
4 one that wasn't too controversial and we are
5 recommending listing - leaving the listing as
6 it stands. 205.601 Synthetic substances
7 allowed for use in organic crop production as
8 algicide, disinfectants and sanitizer,
9 including irrigation system cleaning systems,
10 alcohols, ethanol and isopropanol.

11 The vote was six yes to keep it on
12 the list, and zero no. We had very little
13 public comment on this.

14 Again, we had one public comment,
15 as we did last time, about organic ethanol
16 being available and we did discuss that in the
17 Committee, but there's not that much of it
18 available for this purpose.

19 We looked at the original TR, and
20 we also got an updated TR on this through the
21 Livestock Committee. Which, you know, the
22 Livestock Committee requested it.

1 So, I think there's not much more
2 to say about this material, but that we would
3 re-list it as stands.

4 MR. FOSTER: Questions?

5 Clarifications?

6 (No response.)

7 MR. FOSTER: Thank you, Tina.

8 Barry, newspapers. And I believe
9 you also had plastic mulch covers.

10 MR. FLAMM: Yes, thank you.

11 There are three items that I'll
12 make a general statement about this group of
13 newspapers and plastic mulches, but - and then
14 I'll address each one individually.

15 These three materials were put on
16 the list in 1995 apparently by action of the
17 Board, because there's no record of petitions.
18 I'll have to say the record is fairly scanty
19 on these materials. We did request TRs, but
20 these were not received.

21 However, saying that, these
22 materials are relatively non-controversial.

1 And the points of controversy I'll bring up in
2 a moment.

3 Generally on the newspapers, and I
4 want to first say that newspapers has two
5 listings. The first is under essentially as
6 a weed barrier, herbicide, weed barrier mulch.

7 And the record although scanty,
8 does not indicate any particular health or
9 environmental problem. It's been used by some
10 in organics for quite a long while. So, there
11 is no adverse comments on the use of that.

12 The Committee voted six yes, zero
13 no and one absent to continue the listing.

14 The second mulch item is a plastic
15 mulch. And in this case, we received a number
16 of interesting comments.

17 I'd like to point out the Act
18 itself prohibits the use of plastic mulch
19 unless the mulches are removed from the ground
20 at the end of the growing season. And that's
21 where we got comments from people who want to
22 leave the mulch on the ground.

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1 We also got a number of comments
2 discussing bioplastics partly for the purpose
3 of being able just to leave them and have them
4 decompose.

5 And this might be an attractive
6 use at some point, and there's been efforts in
7 the past to try to solicit a petition on
8 bioplastics. But that has not come forward,
9 and I think there are a lot of issues.

10 For example, one commenter who
11 makes bioplastics, but is using corn, it was
12 not mentioned whether that's conventional corn
13 or not. And of course if it was conventional,
14 it would be GMO, and that raises a whole host
15 of other problems.

16 In any case, the Committee did
17 vote. Again, six yes, and zero no, and one
18 absent to continue that use.

19 And, finally, the other use of
20 newspapers is in composting, and that turns
21 out it's mostly in a sort of auxiliary kind of
22 use where papers are mixed with other

1 compostable materials.

2 And the public comments agreed
3 with the continued use of that material, and
4 so did the Committee. And the vote was the
5 same as on the other materials.

6 MR. FOSTER: Questions?
7 Clarification?

8 It is important to note that the
9 newspapers are two separate listings as Barry
10 pointed out, just to make sure that's clear.

11 Question, Mac?

12 MR. STONE: I just point out that
13 there are agronomic situations where the
14 plastic, you could double-crop it and come in
15 with a second crop behind. Or in our climate,
16 we go into winter harvesting the crop up until
17 freeze.

18 And if it's in good shape, it
19 would be nice to go back in it in the spring
20 without pulling it up and relaying a new
21 sheet.

22 So, there are some situations

1 where that annotation is a little bit costly,
2 if you will.

3 MR. FLAMM: And if I could comment,
4 that is in the Act itself. So, that presents
5 a unique problem.

6 MR. FOSTER: Thank you. More
7 questions there?

8 (No response.)

9 MR. FOSTER: Moving on, Jay, I
10 believe you had pheromones. Let's bear in
11 mind we want to leave as much time for
12 question and answer at the - in front of the
13 whole Board, too.

14 MR. FELDMAN: Since this is
15 somewhat controversial, I just put a quick
16 PowerPoint - this is quicker than the other
17 one.

18 Okay. So, what we're talking
19 about here are pheromones. These are alarm
20 pheromones, bring bees to sting an intruder.
21 Aggregation pheromones bring together clusters
22 of butterflies or lady beetles. Ants lay down

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1 trails of pheromones. Many kinds of insects
2 release pheromones to attract a mate.

3 Now, when you look for actually
4 what we're talking about in terms of
5 pheromones, it's such a vast number of
6 chemicals and I just listed some here.

7 But if you go to this website
8 Pherobase, you can see the hundreds of
9 different compounds that we're talking about.
10 And then they can be classified by functional
11 group.

12 I just want to just put these two
13 slides up here to show you the complexity of
14 what we're dealing with here.

15 Pheromones are volatile, effective
16 in very tiny amounts as varied as the species
17 that produce them.

18 We use pheromones to attract
19 insects to a trap, which has been quite
20 effective. And as we've heard in public
21 comment, incredibly important to organic
22 production.

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1 Attracting insects works with
2 small amounts that insects can follow to the
3 source. And it's also used to confuse
4 insects. Larger concentrations confuse
5 insects because they can't follow the trail.

6 The pheromones produced by us,
7 these are synthetic chemicals that may be
8 identical to the pheromone produced by an
9 insect or a stereochemical isomer of the
10 chemical produced by the insect, another
11 chemical that the insect recognizes as being
12 the same as the actual pheromone - and this is
13 the key, this next point -- in formulations
14 that usually contain a high proportion of so-
15 called inert ingredients.

16 So, evaluating pheromone products
17 also means evaluating the inerts. Inert
18 ingredients are not biologically chemical
19 active always. In fact, probably most of the
20 time inert ingredients are those ingredients
21 in the pesticide formulations for which no
22 pesticidal activity is claimed.

1 That doesn't mean it's not
2 biologically and chemically active, as the
3 next bullet says.

4 And then, inert ingredients are
5 not disclosed on the product label. So, an
6 individual farmer user doesn't have that
7 information by looking at the label.

8 Pheromone products then contain a
9 very small amount of volatile chemical that
10 acts like an insect pheromone. A much larger
11 amount of the volatile chemicals that have
12 various uses and effects to dilute, to carry
13 as synergists in many more uses. Other
14 ingredients, as you well know, include glues
15 in cardboard and plastic. So, it's on the
16 National List. It's 601(f) as an insect
17 management tool.

18 And then we have under - and in
19 that context under 601(m), synthetic inert
20 ingredients are classified by EPA for use with
21 non-synthetic substances or synthetic
22 substances listed in this section and used as

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1 an active pesticide ingredient in accordance
2 with any limitations on the use of such
3 substances. And then one is EPA List 4,
4 inerts of minimal concern, which are allowed.

5 And then we also allow in this
6 annotation, inerts of unknown toxicity. And
7 key to this is that inerts are used in passive
8 pheromone dispensers.

9 So, that's in our current law.
10 That's the current annotation, inerts used in
11 passive pheromone dispensers.

12 So, our job obviously in the
13 Sunset is to review these exemptions and
14 prohibitions provided in this section every
15 five years.

16 If you go back in the history of
17 this category of chemical either active
18 ingredients or so-called inert ingredients, we
19 requested a Technical Review, but it was not
20 performed, which is key to this discussion.

21 Even though the inerts are not up
22 for Sunset now, we need to take them into

1 account.

2 You would think the Board needs to
3 - needs an appropriate course of action for
4 dealing with huge uncertainties.

5 So, here are our choices: If the
6 Board chooses to renew the listing with no
7 change, then we are not doing our duty to
8 renew them - to review them. Sorry.

9 If we delist them all, then we are
10 removing products that have enabled organic
11 growers to avoid much more toxic chemicals.

12 We need to identify a group of
13 pheromone products that are reasonably sure to
14 be safe. That's our goal here.

15 Now, when EPA creates its category
16 of so-called 25(b) pesticides, it lists
17 pheromones and pheromone traps, pheromone and
18 identical - these are ones that are exempt
19 from registration. I'm not going to go
20 through that.

21 And then the Crops Committee
22 recommendation is to amend the current listing

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1 of pheromones to read as insect management
2 pheromones provided that they are in passive
3 dispensers - and this is what we've added -
4 without added toxicants and with only approved
5 inerts.

6 So, let's take that in two
7 sections. Without added toxicants means we're
8 basically holding harmless what is - when
9 pheromones first came out, as you remember
10 probably thinking back, a relatively narrow
11 group of products.

12 It has exploded, and that's
13 probably a good thing, but we haven't
14 evaluated them.

15 The question is we need to
16 evaluate them. How are we going to evaluate
17 them? And what should we do in the interim?

18 So, this language is intended to
19 basically hold harmless what's in place until
20 we have a chance to evaluate them rather than
21 letting the market triple, quadruple or
22 whatever during that time frame.

1 And with only approved inert
2 ingredients, well, all the List 3s are
3 currently approved, but this gives us the
4 ability if and when, through the working group
5 and other actions of this Board, we decide to
6 limit List 3 or re-categorize them in some way
7 as EPA has done, then this language will
8 apply. This language will go into effect.

9 It will curtail the inerts that we
10 as a Board later on down the road decide to
11 curtail.

12 There was one comment that came in
13 that - actually, full disclosure came in from
14 Beyond Pesticides and was endorsed by National
15 Organic Coalition -- that would say are
16 identical to or substantially similar to
17 natural pheromones as defined in the EPA
18 exempt from registration. So, that's
19 something we can discuss tomorrow or later
20 today.

21 OMRI commented on this further.
22 We suggest that you consult with EPA on the

1 definition of "passive dispenser," because
2 this has been a question.

3 As many of you may know, OMRI
4 currently understands it to be dispensers that
5 do not come into direct contact with organic
6 crops.

7 For example, OMRI has been unable
8 to determine if a putty-like pheromone
9 dispenser intended to adhere to the organic
10 tree trunk can be considered passive.

11 And I talked to some growers
12 yesterday, Washington State growers, and the
13 common use here, apparently, is the - are the
14 ties, which I think most of us think of when
15 we think of those ties that you put on the
16 branches.

17 Now, this just came in recently
18 from an e-mail conversation with Chris Pfeifer
19 who is the EPA rep on the Inert Working Group.

20 He said in the original anthropod
21 pheromone rule, EPA defined "passive
22 dispensers" as those in retrievable polymeric

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1 matrix dispensers.

2 As I understand it, the definition
3 was created to characterize the products that
4 were out at the time, and to guard against eco
5 fate issues, plastics, plasticizers littering
6 the landscape.

7 That was a big concern
8 historically. Passive dispensers are those
9 which emit pheromones by volatilization rather
10 than by spray, and produce a concentration of
11 pheromones in a limited area.

12 In that session toward the end of
13 our day yesterday, I asked the question as to
14 whether puffers were being used, these are
15 emitters of materials, as opposed to the ties
16 which create their effect through volatility,
17 volatilization.

18 And the response I got from the
19 Washington State rep or professor was that
20 they are not used at least to his knowledge in
21 Washington State in organic production. Thank
22 you.

1 MR. FOSTER: Thank you, Jay.

2 Clarifying questions? Thoughts?

3 (No response.)

4 MR. FOSTER: Moving along, I
5 recall, is sulfur dioxide. We have Tina, I
6 believe.

7 MS. ELLOR: Yes. And sulfur
8 dioxide turned out to be -- we thought that it
9 wouldn't be a very controversial thing, but
10 once we got the TR and got some new
11 information, we realized that possibly it is.

12 What we found out from the new TR,
13 and I think it will probably be up on the
14 board in a minute, is that the US EPA has not
15 registered sulfur dioxide for use as a
16 rodenticide.

17 However, US EPA has registered
18 rodent control smoke bombs with the active
19 ingredients sulfur, charcoal, carbon and
20 sodium nitrate or potassium nitrate,
21 saltpeter.

22 So, what we have on the list is

1 something that's actually not approved for
2 this use. And, you know, we sort of counted
3 on people giving us comments about, you know,
4 whether they were using them or not. And it
5 turns out they are being used and are a pretty
6 important part of rodent control, you know.

7 However -- and I hope we'll
8 discuss this further because, you know, I find
9 it a little confusing. But since it's not
10 approved for this use, we voted as a Committee
11 not to re-list it for this use unanimously,
12 with one absent.

13 MR. FOSTER: Clarifying questions
14 on this kind of sleeper of a material?

15 (No response.)

16 MR. FOSTER: Okay. Okay. Next up,
17 another material with rodents in mind.
18 Vitamin D3.

19 MS. ELLOR: Since there are few
20 available rodent controls in crop production,
21 we voted to keep Vitamin D3 on the list. Five
22 yes, zero no, two absent.

1 We had a lot of discussion within
2 the Committee about collateral damage. And I
3 think it was Nick that looked up some labeling
4 information. And it is very strictly labeled
5 for use in traps -- or as bait.

6 MR. MARAVELL: Bait stations, to
7 minimize collateral damage to non-target
8 animals.

9 MS. ELLOR: Right, and that was our
10 major concern in our discussions. So, this
11 one actually, I think, is not all that
12 controversial and we did vote to re-list it.

13 MR. FOSTER: Any clarification
14 there?

15 (No response.)

16 MR. FOSTER: Next, Jay.
17 Streptomycin, right? Is that right, Jay?

18 MR. FELDMAN: I'm not going to go
19 through all the issues again because they were
20 already stated. I'll just tell you what we
21 decided based on the information we had.

22 The Committee took the same vote

1 on this as it did on the streptomycin and
2 again looked at the - I'm sorry - on
3 tetracycline and looked at the history.

4 And on the motion to re-list
5 streptomycin on 205.601 for fire blight
6 control in apples and pears, the vote was five
7 no, and two absent. Thank you.

8 MR. FOSTER: Thank you. Thanks,
9 Jay.

10 Clarifying questions?

11 (No response.)

12 MR. FOSTER: Just worth noting very
13 often -- we talk about streptomycin and
14 tetracycline in concert very often. So, one
15 has effects on the other. So, I assume we'll
16 get some questions on that eventually.

17 MR. FELDMAN: Yes, I mean, just to
18 clarify that there, they do operate somewhat
19 differently, as we heard yesterday, in that
20 streptomycin is used in a more curative sense.
21 You can use it after the blight is recognized.

22 Tetracycline has to be used

1 preventively, in a sense, based on some
2 modeling. And applications occur, in a sense,
3 prophylactically with the assurance based on
4 the modeling that there's a fire blight on the
5 way.

6 Yes, but the resistance issues
7 seem to be similar. Although, we did hear
8 testimony yesterday that they don't see
9 resistance in Washington state to
10 tetracycline. Although, there is some
11 literature and certainly in the human area,
12 we're seeing resistance to tetracycline along
13 with streptomycin.

14 So, the resistance issue weighs
15 heavy in both cases.

16 MR. FOSTER: Just a reminder there,
17 microphones are good.

18 MR. MARAVELL: Based on what we
19 heard yesterday, I am not exactly confused,
20 but I think that, while the mode of action is
21 different in tetracycline and streptomycin,
22 that actual practices for spraying based on

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1 the models and based on the window of when the
2 crop is most susceptible, the actual practices
3 of spraying are probably fairly similar.

4 So, if there's any other members
5 of the Committee that could clarify that, but
6 it seems like it can be sprayed preventively
7 in both cases, you know.

8 It's a fine line. It's a very
9 fine line between what's preventative and
10 what's prudent.

11 MR. FOSTER: Thanks. Thank you for
12 that.

13 Next up, lignin sulfonate.

14 MS. ELLOR: Okay. Lignin
15 sulfonate. If we can get this up so I can see
16 it, lignin sulfonate has two listings on
17 205.601(j) as plant or soil amendments, lignin
18 sulfonate chelating agent, dust suppressant
19 and flotation agent, and (l) as floating
20 agents in post-harvest handling.

21 So, it was pointed out in
22 Committee that that's a duplicate listing.

1 And I guess we could fix that, you know, with
2 this docket.

3 So, it's listed twice as a
4 flotation agent. So, we could just remove
5 that first one and it would be consistent.

6 We went back through old testimony
7 on this from the last Sunset, and also I do
8 believe we did get a new TR on this one.

9 And we did have some public
10 comment on lignin sulfonate as well from a
11 couple people saying that it was just mostly
12 used for pears. And that there's equivalency
13 difficulties, I think it was with Japan, so
14 that, you know, it was suggested we adjust the
15 annotation to say as flotation agent with
16 pears, for pears or whatever. But we haven't
17 discussed that as a Committee, and we might do
18 that later.

19 The Crops Committee, the big issue
20 that came up in the last Sunset discussion and
21 one that came up in our discussions as a
22 Committee this time, was the fate of the

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1 lignin sulfonate in the environment.

2 So, addressing that, the Committee
3 recommendation is to re-list lignin sulfonate
4 on 205.601(1) with the amended annotation as
5 floating agents in post-harvest handling
6 subject to wastewater disposal documentation
7 in the Organic Systems Plan to prevent impact
8 to aquatic life.

9 And the second one is re-list
10 lignin sulfonate on 205.601(j)(4) with the
11 amended annotation chelating agent, dust
12 suppressant, just cutting off the duplicate
13 listing for -- as a flotation agent.

14 The Committee vote was five yes to
15 re-list with the annotation, zero no, and two
16 absent.

17 MR. FOSTER: Clarification
18 questions there?

19 (No response.)

20 MR. FOSTER: Thank you, Tina.

21 Next up is magnesium sulfate.

22 MS. ELLOR: Magnesium sulfate, and

1 I have to, in the interest of full disclosure,
2 say that I was in the minority on this one.
3 So, if anyone in the majority wants to jump in
4 on this, but the Crops Committee has
5 recommended letting this drop off the list.

6 It's listing is (j) as plant or
7 soil amendments. Magnesium sulfate allowed
8 with a documented soil deficiency.

9 The Committee vote was two yes to
10 re-list, and three no. So, It's a very split
11 vote.

12 We did not have the Technical
13 Review in our hand, you know, as we took this
14 vote. And that came up a lot in public
15 comment.

16 The two of us who voted to keep it
17 on, you know, cited that, without that
18 information -- and we did send it back for
19 additional information, and I can -- I can --
20 we can, you know, look at those questions
21 during discussion -- that it has a long
22 history of use in organic and we'd like to

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1 keep it on.

2 And I think that the majority, we
3 were kind of told in our Committee
4 deliberations that there were fully natural
5 alternatives to this synthetic.

6 And that turns out -- we had a lot
7 of public comment saying that that indeed is
8 not true. So, that's what's going on with
9 that material.

10 MR. FOSTER: Thank you, Tina.

11 Clarifying questions?

12 Katrina.

13 MS. HEINZE: Am I properly
14 interpreting your last statement to mean that
15 the Committee is now recommending re-listing?

16 MS. ELLOR: I think we'd have to
17 leave that up to the individual Committee
18 members based on public comment.

19 So, we didn't go back into
20 Committee and change our recommendation. But
21 based on public comment, you know, it's
22 possible that Committee members might have

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1 changed their mind on that.

2 MS. HEINZE: Thank you.

3 MR. FOSTER: Thank you for that.

4 Next up, Colehour. Ethylene --
5 oh, I'm sorry.

6 MR. WALKER: You mentioned there
7 were some possible natural alternatives; could
8 you name some of those? Did the Committee
9 come up with possible alternatives to
10 magnesium sulfate?

11 MS. ELLOR: And that's the
12 interesting, I guess, the interesting point
13 is, in fact, there are none commercially
14 available, apparently. And OMRI sent that
15 comment through.

16 MR. FOSTER: Okay. Thank you.

17 Next up, Colehour. Ethylene gas.

18 MR. BONDERA: Okay. I will try to
19 be straight and simple, but we'll see. I
20 haven't done this before. So, bear with me.

21 So, ethylene gas, it's on
22 205.601(k) for regulation of pineapple

1 flowering.

2 So, the Crops Committee, we had a
3 Supplemental Information Report on the
4 induction of pineapple flowering. And there's
5 reference in it about various, you know,
6 pineapples are grown only in Hawaii and
7 California in the United States. It doesn't
8 make up very much of the global production.

9 We found the report to be
10 sufficient, but still sought additional
11 information from where pineapples are mostly
12 grown.

13 I think we talked about scaled
14 operation and impacts on others. Discussed --
15 we discussed alternatives from Africa to
16 Taiwan in terms of the research on this,
17 because there are other methods that are used
18 internationally for induction of flowering in
19 pineapples.

20 And I think, you know, one of the
21 big things that we talked about really is
22 operation size and location, you know.

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1 Unnatural pineapple flower induction
2 facilitated through synthetic -- this is a
3 synthetic -- synthetically sourced petroleum
4 ethylene gas, we discussed in the Committee
5 how it's inconsistent in a lot of different
6 ways with overall organic standards.

7 And the motion that we considered
8 was to continue the listing in a positive way
9 of ethylene gas as a plant growth regulator
10 for the induction of pineapple flowering.

11 So, you know, since then we've had
12 public comment. And I am certain that we will
13 have some public comment tomorrow primarily
14 from Costa Rica. But it essentially comes
15 down to the export from a country where there
16 is an export market that was created about
17 this allowance of ethylene gas being used for
18 the induction of flowering.

19 I think that, you know, that one
20 case example, in my opinion, is not adequate
21 information in terms of what is -- it's not
22 the whole picture.

1 I think that, you know, I'll throw
2 out to you the fact I am from Hawaii. And,
3 you know, in terms of a conflict of interest,
4 the truth is I have organic pineapples on my
5 farm.

6 And not only do I not consider the
7 induction of flowering, I think that the truth
8 is the consumer demand is such that there's
9 absolutely no reason for it.

10 I think, you know, talking to --
11 and at this point in time and if you look
12 historically, it's not true, but at this point
13 in time there is not very much large-scale
14 pineapple production.

15 There used to be Dole. There used
16 to be a large scale in the state of Hawaii,
17 but that's no longer the case.

18 I mean, there's essentially one
19 large-scale, and large in quotations,
20 pineapple producer in Hawaii. And, you know,
21 the goal is to be able to harvest and ship the
22 product for export in volume.

1 And I think that, you know, I will
2 in a few seconds, wrap this up by trying to
3 address that.

4 I think, you know, I think that
5 John will tap me on the shoulder when this
6 gets too weary, because I think the truth is
7 that, you know, are we basing -- can organic
8 standards really be exclusively based on the
9 needs of large-scale operations, or do we have
10 to look at the overall -- do we have to look
11 at the bigger picture like John introduced
12 this?

13 Do we want pineapples, for
14 example, year-round? Pineapples don't grow
15 year-round.

16 Do we want pineapples to compete
17 in the marketplace with the chemical
18 approaches, or do we look at the whole
19 picture?

20 Do we look at the environmental
21 and the health and the whole cost with that?
22 And I think that that's a big question.

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1 The Crops Committee recommended
2 against the continued listing of ethylene gas.
3 And I want -- excuse me -- I just want to make
4 a few comments.

5 You know, you may or may not be
6 that familiar with ethylene gas. But, you
7 know, from a physical perspective, you can
8 look really quickly and there's a long list of
9 many things you are familiar with and many
10 things you may not be that familiar with.

11 But from apples to honeydew
12 melons, to kiwi, to pears, to plums, you know,
13 to all kinds of other things, passion fruit
14 and papayas, you have a natural release of
15 ethylene gas. It's not that it doesn't exist
16 naturally. It does exist naturally.

17 However, I just for a second want
18 to say that, you know, based on public
19 comments and on the basic understanding or
20 organic foundation blocks, I really don't
21 think that a decision on, like I said,
22 international and export rationale, we really

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1 need to look, in my opinion, towards a gold
2 standard.

3 And I think that the question is
4 are we as the NOSB, and I think that this goes
5 back to my personal truth and, you know, is
6 our goal to simply ensure the status quo, or
7 are we looking to make sure that we have a
8 clean and pure crop as much as -- sorry.
9 Excuse me.

10 Do we want to maintain that
11 present system is one conclusion, whereas the
12 whole goal to maintain and ensure organic
13 integrity, I think, is the other question.

14 And I think that we have to look
15 at that whole question about compatibility
16 with the system of sustainable agriculture.

17 And I think that just -- and I am
18 going to wrap up. You know, for me, I think
19 that this is all -- I'm considering this all
20 off-topic in some ways because, you know, am
21 I talking about process here, or am I talking
22 about the subject of ethylene gas?

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1 And I think that we really need to
2 decide -- sorry. I'm just going to read this
3 briefly.

4 If we're making a recommendation
5 to the NOP and if we're going to make an
6 informed presentation, you know, like I said,
7 are we going to default to the status quo, or
8 are we going to try to resolve the question by
9 saying that there's unanswered questions about
10 this.

11 In our -- the information we have
12 that we were considering the decision upon
13 honestly and seriously was not sufficient
14 information.

15 If you look, you can go -- and if
16 you go to African countries, you go to other
17 parts of the world, you know, there's
18 companies like TIFBio who is doing organic
19 farming, compatible flower induction treatment
20 of pineapples without ethylene gas.

21 And this is not uncommon if you
22 look -- I'm sorry. I think that, you know, we

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1 have to review and look at who is going to
2 testify about this coming up in this context.

3 Who are we going to get input
4 from? I'm not going to get input from people
5 in Taiwan or people in Africa. They're not
6 going to send -- this doesn't affect them
7 because they're talking about -- we're talking
8 about US expert, essentially, getting
9 pineapples to the United States instead of
10 backing off and looking at the whole picture,
11 and I thank you for bearing with me.

12 MR. FOSTER: Thank you. Any
13 clarifying questions on there?

14 (No response.)

15 MR. FOSTER: All right. Moving on.
16 Last of the 601 Sunset items. Sodium
17 silicate.

18 MS. ELLOR: I don't have that as
19 one of mine, but I'd be more than happy to
20 talk about it.

21 MR. FOSTER: Would you, please?

22 MS. ELLOR: Sure. Yes, I don't

1 remember who did that. Was that you, Jay?

2 MR. FELDMAN: I did.

3 MS. ELLOR: Okay. Do you want to
4 take it?

5 MR. FELDMAN: Thank you. Too
6 focused on CSO right now.

7 So, this is 601(l) as a floating
8 agent or floating agents in post-harvest
9 handling. Sodium silicate for tree fruit and
10 fiber processing.

11 We requested, but at the time we
12 did this we didn't have the TR. And, again,
13 as you pointed out, Tina, we received a fair
14 amount of criticism on that fact that for some
15 of these we didn't have TRs.

16 But in many cases, we did get a TR
17 shortly after we made the Committee decision.
18 But in this case, we didn't.

19 But, again, we looked at this and
20 we were hoping to get public comment on this,
21 as we have, as a way of informing the
22 Committee.

1 But we took the position that
2 lacking the information in this case, at least
3 the majority did that, and knowing what we
4 knew about its use pattern, that we were --
5 five nos, two absents.

6 So, we're recommending against the
7 continued listing of sodium silicate allowed
8 for tree fruit and fiber processing as a
9 floating agent and post-harvest handling.

10 And, again, the motion was in the
11 positive. So, again, the vote was five no,
12 two absent.

13 So, my sense is we'll consider the
14 public comment on this, which we didn't have
15 the benefit of when we looked at this. And I
16 imagine this will be on our agenda when we
17 regroup between now and Friday. And we're
18 looking forward to more public comment on
19 this.

20 MR. FOSTER: Thank you, Jay.

21 Any clarifying questions?

22 (No response.)

1 MR. FOSTER: Thank you. Moving on
2 to, next sodium nitrate. This is a bit of an
3 oddity in that it's a 602 listing, a
4 prohibited natural, that is up for Sunset.

5 The current listing is 205.602(g)
6 sodium nitrate, unless use is restricted to no
7 more than twenty percent of the crop's total
8 nitrogen requirement.

9 This twenty percent was a
10 derivative of pre-NOP -- many pre-NOP private
11 standards.

12 Interesting here, it's a little
13 interesting in that it was typically called a
14 restricted material. So, restricted allowance
15 as opposed to how it's structured here, which
16 is prohibited with an exception, and that that
17 exception is a little unwieldy.

18 So, I just want to make sure
19 everyone is clear on where it falls on the
20 list, and that makes the Sunset clause a
21 little more -- a little different in that if
22 the material were to come off of 602, then it

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1 would -- then the material would be allowed
2 without restriction.

3 That's a little different than any
4 other of the materials that we have
5 encountered so far. So, I just want to make
6 sure we're all clear on that.

7 Hold on. I'm scrolling and --
8 this recommendation was designed also to
9 address the NOP's request that we review it in
10 the context of essentially export
11 requirements.

12 The Committee spent a fair amount
13 of time discussing that and wanted to
14 recognize the need to respond to the NOP. We
15 hopefully did that in the context of this
16 recommendation.

17 The consensus was that, since
18 export requirements are not a decision-making
19 criteria in OFPA, or the regulation, that we
20 wanted to be respectful of their request, but
21 chose instead to look at what the -- kind of
22 the foundation principles were that led other

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1 countries to make their consideration that
2 sodium nitrate was not appropriate or allowed
3 in organic production.

4 That being said, the Committee
5 recommendation was to re-list sodium nitrate
6 on 205.602(g) without an annotation. And this
7 would be a complete prohibition. The twenty
8 percent allowance would no longer be in place.

9 So, the vote there was seven yes,
10 zero no, and zero absent.

11 Any clarifying questions?

12 (No response.)

13 MR. FOSTER: Okay. Last on our
14 list is again something of a unique situation
15 where the Program asked us to deliberate on
16 the determination of the synthetic or non-
17 synthetic status of corn steep liquor.

18 Those of you who have been part of
19 the discussion for some time now are likely
20 aware it's been fairly contentious.

21 There's been a great deal of
22 public comment on this. All of which we have

1 listened to and absorbed. I assume this will
2 take some of our discussion time close after.

3 I would prefer to spend most of
4 our time in discussion on this. So, I'm going
5 to keep the majority opinion on this very
6 brief.

7 I think also, Jay, if you could
8 keep a minority discussion fairly brief just
9 to allow more time for discussion; is that
10 okay?

11 MR. FELDMAN: Yes.

12 MR. FOSTER: Thank you. Real
13 quick: in an Action Memorandum dated April
14 23rd, the NOP requested the NOSB review corn
15 steep liquor concerning its classification as
16 synthetic or non-synthetic as an input for
17 crop production. This was for the fall 2010
18 NOSB meeting.

19 The Crops Committee was asked --
20 asked a number of questions of the Office of
21 Science and Technology, who at the time was,
22 my understanding at the time, the contracted

1 party for the NOP to answer some of these
2 questions.

3 We had questions around changes in
4 molecular structure and the significance of
5 those changes, questions about the physical
6 reorientation of atoms, whether or not that
7 constituted a chemical change, what other
8 materials were made from this process that are
9 currently on the National List and how would
10 those be affected if we determine that this
11 process causes chemical change sufficient to
12 be designated as organic, also asking the
13 question, can corn steep liquor be made
14 without the use of prohibited substances, and
15 are there other materials that are more benign
16 that can be used to make CSL or corn steep
17 liquor, and then are there other permitted
18 materials that could be used instead of CSL
19 for its current use?

20 The Technical Review was received
21 in February of 2010, and did not answer these
22 questions directly. However, we knew we

1 needed to proceed with discussions.

2 This determination was discussed
3 over the course of a number of weekly Crops
4 Committee meetings. It took a substantial
5 amount of time, all well worth it.

6 The eight-page recommendation also
7 includes a number of -- a formal minority
8 opinion which I'll let Jay summarize, a
9 synopsis.

10 But in the end, the recommendation
11 at this time, this was in January, Crops
12 Committee recommended that corn steep liquor
13 produced via the countercurrent corn wet
14 milling process be considered as non-synthetic
15 and allowed for use in organic crop
16 production. The vote was four yes, three no,
17 and zero absent.

18 Jay, do you want to summarize the
19 minority?

20 MR. FELDMAN: Can I have five
21 minutes to go through this just for the --

22 MR. FOSTER: I would prefer

1 shorter, but also we'll have time for
2 discussion beyond that.

3 MR. FELDMAN: For the new members,
4 I'd just like to lay this out.

5 I mean, what happened was we at
6 our last Board meeting, we had a discussion on
7 this and the Committee decided to pull back
8 the decision because we were given new
9 information.

10 What was presented as new
11 information during the Board meeting, we felt
12 we needed to evaluate that new information.

13 The TR concluded that there was
14 chemical change occurring. The TR we received
15 as a Committee, concluded that there's
16 chemical change occurring.

17 CHAIR MIEDEMA: Jay, we can't hear
18 you very well. Can you move your mic closer?

19 MR. FELDMAN: Yes. And since
20 there's chemical change occurring, we voted --
21 the majority of the Committee initially voted
22 that this was a synthetic process resulting in

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1 synthetic material.

2 When we received testimony similar
3 to this meeting that was so contrary to that,
4 we pulled the recommendation, the motion to
5 try to get some independent verification of
6 the position that this was in fact not a
7 synthetic process, not a chemical-change
8 process. That was our task as a committee.

9 So, we found a researcher who
10 works -- basically has worked on the corn wet
11 milling process for about almost two decades.
12 And works, coincidentally, for the
13 Agricultural Research Service in Wyndmoor,
14 Pennsylvania.

15 And he's written thirty different
16 articles on corn wet milling. He's researched
17 it. He knows most of the plants in the
18 country and he knows the process. So, we felt
19 he was a perfect candidate.

20 I'm just going to run really
21 quickly through this. So, this is a question
22 of organic integrity for us on the minority

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1 side. We want to see an objective review and
2 transparency.

3 The process, and this was the
4 conclusion which is in the minority, the
5 process of making corn steep liquor is
6 different from natural practices that are
7 defined in our standards expressly because the
8 process requires adding a synthetic chemical
9 to an otherwise natural steeping lactic acid
10 fermentation process to effect chemical change
11 necessary to the end product being created.

12 Now, that's not enough, of course.
13 We're not judging the usefulness of whether
14 this could be a useful material for farmers.
15 That's not the question before us. It's a
16 foundational issue of how we define chemical
17 change.

18 But we can't just say that a
19 synthetic's been added and, therefore, it's
20 chemical change. That's not what this
21 committee or the minority is saying.

22 We have to evaluate this in

1 accordance with the Board policy, which is
2 three guiding principles, that the
3 classification of materials determined by both
4 the source of the inputs and the process used
5 to make the material, the same chemical can be
6 agricultural, non-synthetic or synthetic,
7 depending on the source.

8 If a material is processed such
9 that it is classified as synthetic, then the
10 material is classified as synthetic regardless
11 of source.

12 In the case of corn steep liquor,
13 we have a material whose source is non-
14 synthetic. However, the source is only the
15 first issue of concern.

16 The standard requires an
17 assessment of the wet milling process to which
18 the corn is subjected to determine whether it
19 should be classified as synthetic.

20 We have a lot of materials, as you
21 know, in organic that start from an
22 agricultural material or food waste. The

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1 question is, then what happens to it.

2 So, we have to look at the
3 classification and ask ourselves a series of
4 questions. The source of the material is not
5 from mineral plant or animal matter, and not
6 a substance by naturally occurring biological
7 processes -- this is how our Board policy
8 reads, or the process used to manufacture
9 material is synthetic, or the material
10 contains a significant level of synthetic
11 substance not on the National List of allowed
12 synthetics. This is our policy.

13 It's our belief that chemical
14 change occurs -- that occurs when an
15 agricultural material is processed by itself
16 or in combination with other agricultural
17 materials, the resulting materials should
18 continue to be classified as agricultural.

19 Clearly, chemical change happens
20 in these cases if looked at from a purely
21 chemistry perspective. But from a consumer
22 perspective, these materials are agricultural.

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1 So, this was the Materials Working
2 Group. A little bit of history for the new
3 people.

4 Synthetic, again the definition in
5 our policy is substance as formulated or
6 manufactured by a chemical process, or by a
7 process that chemically changes a substance
8 extracted from a naturally occurring plant,
9 animal, mineral sources, except that such term
10 shall not apply to substances created by
11 naturally occurring biological processes.

12 So, what you'll hear in testimony
13 is that in fact what's happening to corn steep
14 liquor is a natural process. And this is what
15 we had to ask David Johnson.

16 So, I'm going to skip over all of
17 this because you'll read in the minority
18 opinion that we met all the thresholds for
19 what our policy says in terms of synthetic
20 chemical change, but who have we heard from?

21 This is where the crux of the
22 matter is. We get a lot of information on

1 this Board. Some of it comes from industry,
2 some of it comes from academia, some of it
3 comes from government, some of it comes from
4 public interest, and we have to sort all this
5 out.

6 What's happened in this particular
7 case is we have two sets of information. We
8 have government information coming from the TR
9 and a government researcher, and we have
10 industry information coming from the
11 manufacturer, the formulator and from the
12 organic -- or the trade groups and the trades.
13 And, basically, those two positions are at
14 odds with each other.

15 So, we're in a situation where we
16 have to judge this thing on its merits and we
17 have to go through, I think, almost a decision
18 tree. And I hope we have time to do this in
19 discussion or in side conversation.

20 But when Dr. Johnson met with us,
21 we threw these questions up at him. Is corn
22 steep liquor a different substance? These are

1 all the criteria that the Board has
2 traditionally used in terms of defining
3 chemical change.

4 And he's saying as, again, a
5 third-party independent source of scientific
6 information, he's saying he's agreeing with
7 the Technical Report because the sulfur
8 dioxide, the sulfur dioxide, again a synthetic
9 material, is needed to break the disulfide
10 bonds. And that's the mechanism that's
11 working here.

12 There are new chemicals formed.
13 Again, another criteria established by the
14 Board. There are new chemicals formed due to
15 the addition of the sulfur dioxide. These are
16 formed during the breaking of the disulfide
17 bonds.

18 And if we go through some of the
19 other questions, is the breaking of the bonds
20 in the corn matrix a necessary part of the
21 countercurrent wet milling process?

22 Again, here's a guy who's worked

1 in this field as a food technologist. It is
2 also clear from these studies, that without
3 the addition of SO₂, that the protein matrix
4 is not degraded sufficiently to produce good
5 starch yields.

6 So, I'm going to stop there, but I
7 realize this, you know, we've been at this a
8 long time and I realize people are going to
9 bring different perspectives to this. But if
10 we don't get this right, I think we have a
11 problem going down the road.

12 We've heard a term that came up in
13 our pre-meeting that we had before the NOSB
14 meeting where somebody said you can't be
15 married to the outcome going into these
16 conversations. Because if you're married to
17 the outcome, then you're going to try to find
18 justification for what you want the outcome to
19 be.

20 And I think if you read David
21 Johnson's responses, and I urge you to do that
22 before you vote on Friday, it's included in

1 the Crops Committee comment portion of our
2 packet, you'll see that he's answered every
3 question that the Board has required us to ask
4 in the context of chemical change.

5 Are we breaking bonds? Are we
6 creating new chemicals? Are there resulting
7 residues? Would this happen naturally? Would
8 it happen on its own? Is it purely a
9 fermentation process? How it is not like
10 adding wine to sulfites. This is not a
11 processing aid. This is a manufacturing
12 process.

13 And so, if you look at those
14 questions clearly and you're not married to
15 the outcome, I think the minority believes we
16 really don't have a choice. And that's not,
17 again, a judgment as to whether this could be
18 a valuable product, whether it has qualities
19 that can aid in the organic system approach.

20 I just urge you to take a --
21 before you vote, sit down ten minutes, read
22 through Dr. Johnson's response carefully and

1 take it for what it is.

2 I mean, the guy doesn't have a
3 horse in the race. He's a government
4 researcher and I think he offers us some
5 insights that will help us down the road as we
6 look at these questions, unfortunately,
7 somewhat technical questions that we have to
8 look at when we define chemical change. Thank
9 you.

10 CHAIR MIEDEMA: Katrina.

11 MS. HEINZE: I have a process
12 question for John. I'm apparently an old dog
13 who's hard to retrain on the discussion. So
14 sorry.

15 How do you want to organize the
16 discussion? I was going to suggest perhaps we
17 do petition materials, get those done, then
18 Sunset and then CSL or some sort of order so
19 we're not jumping between everything.

20 But maybe you could just say how
21 you'd like this to go so that we can respond
22 accordingly.

1 MR. FOSTER: In general, I would
2 prefer to start with Sunset. We've
3 prioritized things. We've deprioritized
4 things that were not Sunset, in many cases.
5 I want to make sure that we cover those
6 things. I think that's our first, you know.

7 Now, having said that, obviously
8 some of the issues before us, the most
9 contentious ones are either petition or
10 something else still, but I think our first
11 job ought to be Sunset.

12 CHAIR MIEDEMA: John, we asked Mr.
13 David Johnson to hang around for us this
14 morning as an expert in-house on
15 oxytetracycline. And I would just ask that
16 respecting his time since we told him we were
17 going to take that one up first thing in the
18 morning, that we get that one to the top of
19 the queue.

20 MR. FOSTER: With that in mind, I
21 am happy to oblige that. Tetracycline first,
22 then Sunset? Suitable? Sorry, yes. Then CSL

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1 or sodium nitrate.

2 I mean, we've got a lot to cover.
3 But, yes, tetracycline first, Tracy, to your
4 point.

5 CHAIR MIEDEMA: Okay. We're not
6 going to have enough time to get through our
7 discussion before we're going to want to take
8 a break, but let's do try to get a couple of
9 these bears wrestled before we take a break.

10 MR. FOSTER: All right. Questions
11 about tetracycline.

12 CHAIR MIEDEMA: I have one.

13 Where did the Committee come up
14 with this information about the blight-
15 resistant items tasting just as good or being
16 just as good?

17 And this is going to be a
18 completely single data point of my household,
19 but the amount of organic apples consumed in
20 our house is pretty extraordinary, and I can't
21 get my kids to eat Red Delicious, Golden
22 Delicious and Granny Smith anymore.

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1 And my apologies to any growers in
2 the room that those are their pride and joy,
3 but they don't taste very good.

4 And the idea of tossing out all
5 the great-tasting apples is something I'm not
6 very comfortable with as a consumer.

7 MS. HEINZE: Okay. So, that's
8 really funny because my written note here says
9 exactly the same thing.

10 So, we eat -- I buy 20 apples
11 every week for our family. And every couple
12 weeks I buy Red Delicious because they're a
13 buck cheaper at my local co-op. And at 20
14 apples, you know, that's kind of like it
15 actually moves the dial on the grocery
16 receipt, and they won't eat them.

17 So, if that's all I buy that week,
18 I am eating 20 Red Delicious apples that week.
19 So, that's funny that you said that. So, we
20 have two data points.

21 So, that being said, I was, Jay,
22 all levity aside, you had one slide in your

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1 presentation that I just wanted to make a
2 comment on. So, you had the picture of the
3 two apples with their little labels, hi, I
4 wasn't sprayed, and, hi, I was sprayed.

5 The apples aren't sprayed, right?
6 The flower -- we heard testimony that there's
7 virtually no residue of the antibiotics in the
8 apples. So, I just want to remind everyone
9 that we did hear that testimony.

10 And so, it's a little bit
11 misleading to have had that label.

12 MR. FELDMAN: The data we received
13 in the TR, again, you know, we're going to
14 hear testimony, but we have to rely on the
15 science that we receive and then balance that,
16 you know, the Committee receives a TR and we
17 base our decision on that.

18 Now, if we open up the Committee
19 process and disclose the minutes, we might
20 have gotten these comments earlier. But the
21 comment we had was from the TR that the
22 material is sprayed in apple production,

1 translocates through the plant material, and
2 residues are found in the fruit principally in
3 the core and the peel.

4 That's the data we received in our
5 Technical Review.

6 CHAIR MIEDEMA: Katrina.

7 MS. HEINZE: I understand that
8 that's what the Committee got in their
9 Technical Review. Part of the reason we have
10 public comment is so that people can bring
11 other data.

12 So, I was just highlighting for
13 people as you make your decision, that we've
14 had public comment that has other data.

15 CHAIR MIEDEMA: Barry.

16 MR. FLAMM: As an apple -- previous
17 apple grower and apple eater, I'd like to
18 comment on this quality.

19 I grew eight different varieties
20 of apples, none of which were Gala or Fuji
21 because I wouldn't plant them, because I knew
22 they had disease problems. And I didn't have

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1 any Red Delicious, because I think that's a
2 misnomer.

3 I had eight different varieties --

4 (Laughter.)

5 MR. FLAMM: -- eight different
6 varieties of delicious -- of good-tasting
7 apples, I should use the word. The most
8 common was McIntosh which was the premier
9 apple in Bitterroot and in Montana. And it's
10 been kind of driven off the market and off the
11 market shelves because of the apples being
12 grown elsewhere mostly in Washington and just
13 flooded our market.

14 But this was a premier apple, and
15 it's a great-tasting apple, so I have to raise
16 objections that there isn't any other good --
17 there's heritage apples out there that are
18 better than anything that -- and these all of
19 a sudden, you know, we're talking about
20 varieties that are really new on the market
21 that you couldn't even find a couple years
22 ago. At least not on any store shelves in

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1 Montana. And now, they have occupied the
2 apple space.

3 So, I have to dig deep in my root
4 cellar to get the apples that taste good.
5 Excuse me for that.

6 CHAIR MIEDEMA: I'd like to hear
7 from our experts a brief summary of the
8 research on alternatives. Just again for the
9 benefit of this Board, when we might expect to
10 see some alternatives, promising research, you
11 know.

12 I don't feel like we have to hold,
13 you know, anybody -- pin anybody's ears back
14 that this is absolutely going to happen, but
15 just a forecast of what's out there.

16 David Johnson, would you mind
17 approaching the podium?

18 Ken Johnson. Thank you. I'm
19 sorry. Come on up.

20 DR. JOHNSON: So, what I crammed in
21 three minutes yesterday was a pretty good
22 summary, but it happened in three minutes.

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1 So, I think that the alternative
2 that people are most interested in is this
3 yeast product. And it is -- currently it is
4 registered in Europe for fire blight control.

5 My understanding is it isn't used
6 that much there because they also have a lot
7 of issues with apple scab in Europe. So, they
8 were putting fungicides on the tree, which of
9 course hurts the yeast.

10 In the desert climates that we
11 have in eastern Washington, we don't really
12 have apple scab. So, it looks like this yeast
13 product can have a life out there.

14 The company that's bringing it
15 into the United States is Westbridge, which
16 has a big history in organic materials.

17 And they have it in EPA review
18 now, and that review is supposed to be
19 completed by August or so of this year, is my
20 understanding. So, we are expecting this
21 material to be useful this coming -- 2012.

22 There's one issue with the yeast

1 material, and it's still, I think, needs some
2 research, is that the Germans that developed
3 it are -- you put on like a pound and a half
4 of yeast per acre, which is quite a bit of
5 yeast. But they're also recommending that you
6 put on about nine to ten pounds of this acidic
7 buffer.

8 And my understanding is the buffer
9 is mostly citrate and skim milk mixed
10 together, but it's nine to ten pounds per
11 acre. So, it's a lot of material. So, you're
12 going to be putting on about 12 pounds of
13 material of this and there really hasn't been
14 any pricing yet on that or what it's going to
15 cost. In a desert environment, do we need
16 that much of this buffer when it goes on? And
17 so, those are some big questions about it.

18 CHAIR MIEDEMA: Do any other Board
19 members have questions of Ken Johnson while
20 he's still here? Nick.

21 MR. MARAVELL: Yes, I do. I may
22 have a lot of questions. So, could you give

1 me some guidance on how we should proceed
2 here?

3 I find this fascinating.

4 CHAIR MIEDEMA: Fire away.

5 (Laughter.)

6 MR. MARAVELL: Okay. It's a
7 pleasure to have you here, Dr. Johnson.

8 Is this type of research into
9 alternatives going on in other parts of the
10 country? In other words, are there other
11 research stations working on this in other
12 climates?

13 DR. JOHNSON: Well, there's about
14 three groups that work on fire blight in the
15 country; our group at Oregon State; Jim
16 Adaskaveg down in Riverside; George Sundin at
17 Michigan State; and Herb Aldwinckle at
18 Cornell.

19 I guess in terms of alternatives,
20 the eastern half of the United States, because
21 their temperatures and their humidities come
22 up so much faster and it gets warmer so they

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1 can get into these severe risk periods with
2 fire blight quicker in the east, they've kind
3 of soured on these alternative project
4 materials quite a bit.

5 But when you look at where organic
6 production is, you see it's really
7 concentrated, you know, in the western states
8 here.

9 So, they don't think about organic
10 production that much. So, there's sort of
11 that two sides of it.

12 So, in the west here we've had
13 this -- we've had a remarkable growth in the
14 number of organic acres in production. And
15 so, there is interest in these softer
16 products.

17 I mentioned yesterday we do have
18 growers that are producing under international
19 standards or EU standards, and they are not
20 using antibiotics.

21 Some of those, again, you would
22 find more apples in that probably than pears,

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1 because pears are riskier. You're going to
2 find those kind of places like in drier
3 climates like in the Okanagan Valley as
4 opposed to, say, the Columbia Basin because
5 it's easier to -- it's a lower risk for fire
6 blight area. It's a little bit cooler and
7 it's a little bit drier.

8 So, IOP has kind of found its
9 niche out there as opposed to where other
10 growers in higher-risk areas are under the NOP
11 standard.

12 MR. MARAVELL: So, in terms of the
13 interest in the viability of attracting
14 research funds for doing alternative work, the
15 west would be a more fertile ground.

16 What can we offer the people in
17 the midwest and on the east coast as potential
18 alternatives?

19 I realize this is not your area of
20 expertise --

21 DR. JOHNSON: Yes, well --

22 MR. MARAVELL: -- but we have to

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1 consider all of our -

2 DR. JOHNSON: Right. And I don't
3 think anybody has looked hard at the yeast
4 product. I mean, we sort of picked it up a
5 couple of years ago as it came in. And we
6 heard Westbridge was interested in this.

7 And I was actually in Poland last
8 summer at an international meeting, and I met
9 the Germans that developed this product and so
10 it's really pretty new to us and it was kind
11 of a new way of thinking about fire blight.

12 We had looked at yeast before, but
13 we hadn't really done any extensive work with
14 them.

15 And myself and Tim Smith at
16 Washington State in Wenatchee, we were -- we
17 test a lot of products for fire blight control
18 over the years. And we've kind of got this
19 thing like, oh, yes, we'll try it. Probably
20 not going to work, you know.

21 And but we got this yeast material
22 and we put it on some trees, and we were

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1 pretty impressed with what we saw.

2 And so, we were just kind of -- it
3 opened our eyes a little bit. And so, we're
4 still really on the learning curve as to
5 really how to use the material.

6 The first time the company asked
7 us to try it, they said, well, put it on at
8 five percent bloom, 20 percent bloom, you
9 know. So, it was like four treatments.

10 And I said, well, that's a lot of
11 treatments. And I -- and my own thinking
12 about it was as I was presenting yesterday,
13 was it would probably do well in that floral
14 cup because yeast -- I mean, the literature
15 says that's where yeast like to grow.

16 And sure enough, we've been using
17 it now as a late-bloom product and that's
18 where we're seeing the good benefits from that
19 material.

20 MR. MARAVELL: So, you would be
21 developing -- you feel the efficacy is there,
22 but you'd be developing information that would

1 be useful to evaluate cost, protocol --

2 DR. JOHNSON: Cost, and then I
3 mentioned yesterday the scale-up issue
4 because, you know, I've got four, you know,
5 about half acre to an acre orchards down in
6 Corvallis. And we're out there with high-
7 quality materials and the time to, you know,
8 put the sprays on the trees. And we're
9 essentially, you know, as close to as good as
10 you can get when we do our work in terms of
11 research.

12 And when you scale up now, you
13 start talking about 50, hundred acres and many
14 times blocks are more than one cultivar there.
15 That's not one cultivar.

16 And what that means is that one
17 cultivar can be at this stage of bloom, and
18 then one, you know, it might be three rows of
19 that, and then three rows over here is another
20 cultivar. And so, the whole thing becomes a
21 little more messy.

22 And so, what does this mean in

1 terms of scale-up and how practical this is
2 going to be to somebody that's operating
3 something at that size?

4 MR. MARAVELL: Let's go to the
5 other alternatives that were discussed, which
6 was resistant rootstocks.

7 DR. JOHNSON: Right.

8 MR. MARAVELL: Is that applicable
9 to the three different climates, if you will,
10 the east and the west and --

11 DR. JOHNSON: Oh, yes. Absolutely.
12 I mean, we've heard the various testimony on
13 the rootstocks yesterday.

14 Most of the modern apple orchards
15 now are going to very high-density trees. So,
16 you want the rootstock that dwarfs the tree
17 the most.

18 And then the one that's used most
19 commonly now is called M9 or some variation of
20 M9, and M9 is very susceptible to fire blight.

21 The problem is, is with the Geneva
22 alternative to M9 is that it's just very,

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1 very, very difficult to propagate. And that's
2 the problem is why the Geneva rootstock that
3 would replace M9 is not getting out there very
4 quickly, is that the nurseries are just
5 struggling with how to propagate it.

6 MR. MARAVELL: But does it have the
7 dwarf characteristic?

8 DR. JOHNSON: Absolutely, yes.
9 There's this whole series of Genevas. And so,
10 they would go through the various sizes that
11 you can control an apple tree at.

12 But the one that makes this small
13 apple tree that's appropriate to the high-
14 density plantings turns out, of course, as the
15 most difficult to propagate.

16 MR. MARAVELL: And so, you could
17 use that with Gala and Fuji?

18 DR. JOHNSON: That's my
19 understanding, yes. Yes.

20 MR. MARAVELL: In terms of your
21 view -

22 DR. JOHNSON: Let me just make a -

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1 but a resistant rootstock doesn't make Gala or
2 Fuji more resistant to fire blight. Okay.

3 So, okay. So, the problem with
4 the rootstock is, is that if you get a little
5 bit of blight up on Gala or Fuji, then as
6 Debbie said, the bacteria moves through the
7 tree systemically and it floats down.

8 And it - you don't really see
9 disease. And so, you get a strike up here.
10 And then the cells just float down the tree.

11 And then when they hit the graft
12 union -- because you've changed genetics there
13 at the graft union, so now you're into M9 --
14 M9 is hypersusceptible, and the blight
15 reignites right there.

16 Well, it's like getting blight
17 around your neck, you know. Your head's going
18 to fall off, right?

19 (Laughter.)

20 MR. MARAVELL: But what you're
21 saying is, in effect, even if you have the
22 Geneva rootstock, your rootstock would be

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1 resistant.

2 DR. JOHNSON: Yes.

3 MR. MARAVELL: But the Gala and the
4 Fuji apples would - the upper part of the tree
5 would still be high -

6 DR. JOHNSON: Would still be the
7 same. And as the question was yesterday, in
8 their younger years, you know, their first six
9 to seven years, they're very susceptible to
10 blight.

11 And then they start to settle down
12 a little bit after that point in time, and
13 blight in apples doesn't become quite so much
14 of a problem.

15 MR. MARAVELL: Could you envision a
16 strategy on the part of the National Organic
17 program where there are multiple approaches,
18 but one might include restrictions or - I
19 don't know how to put this exactly - the most
20 appropriate time to use antibiotics in terms
21 of - we use stage of development for
22 livestock, for example.

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1 Is stage of development a viable
2 concept for fruit production?

3 DR. JOHNSON: I think that's true
4 in apples. In pears, it's not really true.
5 Pears settle down a little bit, but pears are
6 almost always susceptible to blight.

7 And what happens in a big pear
8 tree is that the tree just has a little bit
9 more strength to recover from blight after
10 you've done a lot of cutting on it.

11 I've got like -- for example, in
12 Corvallis right now, I have an 11-year-old
13 Bartlett block. And this is the first year
14 I've used it for a fire blight experiment.
15 It's 11 years old.

16 If I went in there before that, it
17 just scares me to death, you know, and I would
18 lose it. So, I'd lose my investment.

19 I do most of my work in pears in a
20 55-year-old Bartlett block, and we smash on
21 those things. And they're very susceptible,
22 but the trees are big enough that they'll push

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1 out new growth, and most of the trees will
2 recover over a period of a year or two.

3 So, pears are always susceptible.
4 Apples tend to settle down a little bit.
5 Though, there are some apples that are out
6 there now like Pink Ladies. I'm not sure they
7 ever really settle down.

8 But I have a Gala block, and in
9 the first years I used that I would lose trees
10 pretty routinely.

11 But now that they're also about
12 ten years old now, I go in and do blight
13 experiments in there, and I don't really lose
14 trees. The trees - the resistance in the tree
15 is higher as they get older.

16 CHAIR MIEDEMA: I have a process
17 question for the Crops Committee.

18 This material is not being
19 considered for Sunset, is my understanding,
20 because it was up for expiration instead of
21 Sunsetting? Is that correct so far?

22 MR. FOSTER: Yes.

1 CHAIR MIEDEMA: Okay. So, just a
2 for instance. If we were to accept the
3 reasoning of this petition or remove the
4 expiration and put the material back into the
5 Sunset process, it would still be renewed, you
6 know, it would still be up for re-listing
7 every five years. And new information would
8 still be imposed upon its existence on the
9 National List, correct?

10 Am I still correct so far?

11 MR. FOSTER: Yes, that's correct.

12 CHAIR MIEDEMA: Okay. So, given
13 those two things, is it an option for us at
14 this meeting, to accept the petitioner and get
15 this material back into the Sunset list
16 process, and can we make this docket? As
17 we've been warned, we have some pretty serious
18 problems on timing.

19 MR. FOSTER: I believe that's in
20 the realm of possibility. If the Program
21 would care to correct me, that's fine.

22 MR. McEVOY: Well, we're

1 conferring. We'll have to get back to you.

2 CHAIR MIEDEMA: Okay. Please do.
3 That would be a critical answer in our
4 considerations.

5 MR. FOSTER: So, I think I'm just
6 going to wait to see if I'm going to get
7 corrected. So, that's fine. That's fine.

8 Yes, please. Go ahead, Nick.

9 MR. MARAVELL: We're talking about
10 timeline issues right now. And so, I'd like
11 to get an idea - you've been working on this
12 for 20 years. You've seen development of
13 research strategies over these 20 years.

14 We're looking at -- our maximum
15 time horizon is five years before things are
16 re-Sunsetted or -- if that's even a word.

17 All right. But what would five
18 years - what sort of a feeling does five years
19 give you in terms of the research progress?

20 In other words, you view this over
21 multiple seasons. What does five years look
22 like in terms of your assessment of the

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1 various alternative strategies to get away
2 from antibiotics?

3 DR. JOHNSON: Yes. So, like I say,
4 I started on this 20 years ago. And I would
5 say that 20 years ago there was more
6 enthusiasm in general about biological
7 control. And then there was a pretty intense
8 effort - this is not just talking about fire
9 blight, but any kind of plant disease in
10 general during the '90s.

11 And I think what sort of came out
12 of it at the end of it was that, well, we've
13 done a lot of work on biological control. And
14 certainly biological controls do some good,
15 but there seems to be asymptotic limits to how
16 far biological control can take you.

17 So, that being said, I think that
18 there's a little less enthusiasm these days
19 about biological control in general. But I
20 think in fire blight, we have a unique
21 situation where we're seeing efficacy in with
22 products and strategies.

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1 And when we started on this, there
2 really wasn't anything registered. And so the
3 registration process actually takes, you know,
4 you identify something, you do some science,
5 you start to see results, you convince
6 somebody that, well, maybe this could be a
7 product and then - so, over those 20 years,
8 now we've got the BlightBan A506, we've got
9 Serenade, we've got the Bloomtime Biological
10 which is actually made in central Washington
11 locally, we've got this yeast that's come
12 along now.

13 So, the list of materials has gone
14 up over time. And so what our strategy right
15 now in research is, is how do we put these
16 things together to do the best that we can?

17 And so, I would say that in that
18 regard with this yeast material and what I
19 showed you yesterday, you know, we're starting
20 - we're making progress on that, and that's
21 really not that far away, you know.

22 If that's the rules that people

1 have to live by to grow organic fruit, then I
2 think that they can be up and running in that
3 in a fairly short period of time. We're not
4 talking about 20 years. We're talking about
5 several years.

6 So, I do still - I think that the
7 scale-up issues, the pricing issues, the cost
8 issues are still out there. And those really
9 aren't so much about science - the scale-up to
10 some degree, is about science, but some of
11 these other things, they kind of get out of
12 the realm of science.

13 MR. FOSTER: I have Jay up with -

14 MR. FELDMAN: Thanks for sticking
15 around and thanks for the work you're doing.

16 Are your research plots, are they
17 in organic - certified organic production?

18 DR. JOHNSON: I've got them in what
19 I call transition right now. And, in fact, I
20 really have only ever used manure in there to
21 fertilize them and things like that.

22 I'm trying to keep the nitrogen as

1 a susceptibility factor in fire blight. So,
2 if you put the N up in a block of trees, you
3 make it worse.

4 So, I have very low - I call them
5 low-input orchards. We don't spray the
6 insecticides or anything in there.

7 I do a little bit of scab control
8 because of our cooler climate.

9 MR. FELDMAN: I'm just wondering if
10 you've noticed over the years or suspected any
11 changes in cultural or management practices -
12 you mentioned the N - or other types of
13 management practices that have reduced the
14 pressure, the fire blight pressure.

15 DR. JOHNSON: Well, you know,
16 nitrogen is not - I mean, if you're going to
17 grow apples for storage, nitrogen is an
18 important factor for like post-harvest rots
19 and things like that.

20 So, nitrogen is very carefully
21 managed in fruit trees. You don't want too
22 much of it.

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1 You have to replace the wood, you
2 have to grow the fruit, but you don't want any
3 extra nitrogen in those fruit when they hit
4 the storage. So, it's very, very carefully
5 managed in a commercial orchard.

6 I would say I'm sub - because I'm
7 not interested so much in producing fruit,
8 that I am suboptimal with nitrogen in my
9 research orchards.

10 MR. FELDMAN: But can you imagine
11 that there are other factors, say in an
12 organic system, that might contribute to
13 increase tree health, greater resistance,
14 aside from the variety issue, greater tree
15 health, ability to manage, withstand the
16 pressure, the fire blight pressure?

17 DR. JOHNSON: Yes. Yes. Sure.
18 It's - I mean, the way you look at most modern
19 high-density production orchards right now, I
20 would say that in an organic situation those
21 are minimal.

22 I've got another project that

1 doesn't deal with organics at all. It's in
2 conventional. But we're working on systemic-
3 acquired resistance, which are synthetics that
4 can manage susceptibility of trees and health.

5 If you do get fire blight, you can
6 slow the run of - but I don't really - I don't
7 think that that would be an organic strategy,
8 but that is something we're actively involved
9 with, as well.

10 MR. FELDMAN: Thank you.

11 CHAIR MIEDEMA: Thank you.

12 DR. JOHNSON: All right. Thanks.

13 MR. McEVOY: Clarification on the
14 tetracycline question. Tetracycline is not
15 part of Sunset 2012. So, any action that you
16 made on changing the expiration date or the
17 annotation for tetracycline would be a
18 separate rulemaking action by the Program.

19 But we do those kinds of things
20 all the time, but it would not be part of
21 Sunset 2012.

22 CHAIR MIEDEMA: Thank you. John,

1 please proceed. Let's try to work through
2 another material or two.

3 Any more discussion on
4 oxytetracycline?

5 MR. FELDMAN: I just - I want to
6 sort of integrate some of these issues,
7 because there's some similarities emerging for
8 me in these patterns.

9 And going back to what Colehour
10 said on the ethylene gas, I heard testimony
11 yesterday, and then follow-up conversation,
12 about this issue of attention to soil health
13 and diversity - biodiversity in the orchard
14 affecting decreased pressures of, you know, in
15 terms of fire blight, which I think we're
16 missing in some of this discussion.

17 Some of that may go to scale.
18 Again, you know, which we were talking about
19 with the pineapples, you know. So, I don't
20 know how we sort that out.

21 But it seems to me if we're aware
22 of a scale issue that is creating - scale

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1 meaning size of production - lack of attention
2 to diversity on the farm and plant health, and
3 if that -- if somehow the size of the
4 production is affecting the vulnerability to
5 or the pressures of fire blight, we should
6 know that. We should factor that in to our
7 conversation.

8 We may want to hear more from the
9 organic fruit tree folks who are here today
10 and tomorrow on that issue. Because if we're
11 dealing with, you know, commercial operations
12 that have converted from -- which is a good
13 thing -- converted from conventional
14 operations, and somehow we're missing
15 something in the management practices that are
16 incorporated into smaller scale operations
17 that have reduced the pressures of fire
18 blight, I think we're missing an important
19 part of the discussion, which we seem to be
20 getting into with the ethylene gas discussion.

21 MR. FOSTER: I'm sorry. What?

22 CHAIR MIEDEMA: John, I'm going to

1 give the control of the meeting back to you.

2 MR. FOSTER: Thank you.

3 I'm thinking now if we can jump
4 quickly to nickel before the break. I sense
5 a break is not far away, and I suspect that we
6 might be able to cover nickel and be done with
7 petitioned items, hopefully.

8 That's just a guess, thinking it
9 might happen quickly, if we could do that
10 before our break.

11 I think some of the more
12 contentious Sunset items are not going to get
13 done before our break. So, I'd rather have a
14 clean break, as it were.

15 So, questions about nickel
16 petition, a petitioned item. The nickel being
17 added to the list of allowed micronutrients.

18 Katrina.

19 MS. HEINZE: I'm not sure how to
20 organize my questions on this one. I guess
21 I'm confused by the criteria - the material
22 evaluation checklist, I can't remember what we

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1 call it, and some of the Committee's
2 responses.

3 So - and I just have some
4 examples. I'm not sure you want me to go
5 through all of them.

6 So, for example, in Category 1
7 where there's a question about -- is the
8 material harmful. So, Question Number 9.

9 So, the Committee said yes. But
10 the TR says if this material is used
11 correctly, there are no effects.

12 And I saw that in a couple places
13 where it appears that what the Committee said
14 is, if the material is used outside of the
15 normal realms, there could be harm. And that
16 feels like a different approach in how we've
17 usually evaluated materials.

18 So, I was hoping that we could
19 have some discussion on that, maybe first. I
20 have some other questions.

21 MR. FOSTER: Okay. This did come
22 up and we discussed kind of as background and

1 foreground a little bit the question about
2 whether we should be using this checklist and
3 considering substances in what I call the more
4 global sense, that is, all of the - in the
5 case of nickel, all of the mining, all of the
6 smelting, all of the refining, or do we look
7 at the checklist in the context of a specific
8 use?

9 And this - we actually had a fair
10 amount of discussion on this and intend to ask
11 the Materials Committee for direction.

12 Because I think that when you're
13 looking at petitioned items, particularly on
14 the checklist, there are certain assumptions
15 made by everyone bringing, you know, their
16 expertise to the table.

17 And whether or not you consider
18 materials in this more global sense -- or this
19 more acute, directed, annotated sense -- will
20 change how the checklist gets filled out. So,
21 that was a question for me.

22 I was in the minority opinion on

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1 this particular vote, in terms of full
2 disclosure. So, I tend to look at it, I
3 think, a little bit differently than the
4 majority did.

5 And, hence, the - I don't want to
6 be the one to speak for the majority on this,
7 which - yes, I'll stop there.

8 Katrina.

9 MS. HEINZE: Okay. So, I can say
10 that I think I believe that past practice of
11 the Board has been to review it in the
12 petitioned use.

13 But I know that we, specifically
14 Jennifer, has agreed to work with the Program
15 and collect some of that historical record to
16 come to the Committee with a recommendation so
17 we can provide some guidance on that.

18 MR. FOSTER: Yes, that would be
19 helpful.

20 Does that help kind of somewhat
21 answer your question?

22 MS. HEINZE: It does. I guess what

1 I would take from that is it appears that some
2 of these answers are different, or that the
3 majority chose to answer in a way that's
4 different than our historical practice.

5 That may or may not be material,
6 but just -- folks should be aware of that.

7 MR. FOSTER: Thank you. More
8 questions on nickel? Jay.

9 MR. FELDMAN: Well, can I quickly
10 respond to that?

11 I'm glad the Committee is taking
12 this up, the Materials Committee, in terms of
13 settling this issue, because I believe that
14 the Act, you know, the law really does
15 instruct us to look comprehensively at the
16 impact of products across our environment in
17 terms of organic being a steward and leader,
18 gold standard for how we think about the
19 impact of our practices on the sustainability
20 of our planet.

21 So, if we're relying on a material
22 that in some way is harmful in its production

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1 or is harmful in its secondary impacts,
2 organic tells us and instructs us by law to
3 consider those factors.

4 Because as organic consumers are
5 telling us, we don't want to take an action in
6 terms of the purchasing of food, that could
7 have adverse impact on the sustainability of
8 the planet.

9 We may be doing something that
10 contributes to global warming, but in
11 ingesting the food commodity that we just
12 purchase as having no adverse affect on us.

13 Does organic require us to look at
14 the impacts and input we'd be having on global
15 warming? I believe it does.

16 We should know that, at least. We
17 should consider it, at least, as an adverse
18 affect.

19 Now, in the case of nickel, we
20 have that issue because of the harmful issues
21 associated with manufacture, production,
22 disposal, etcetera.

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1 But we also do have a material
2 that is a known human carcinogen - and, by the
3 way, there aren't many known human carcinogens
4 identified by EPA.

5 One of the other - coincidentally,
6 one of the other known human carcinogens
7 identified by EPA is arsenic. And we as a
8 community, regulated arsenic well, well, way,
9 way, way before EPA ever did, because we
10 brought this ethic of harm to our decision-
11 making process.

12 We didn't use another agency
13 standard, which is very different than the
14 Organic Foods Production Act ethic.

15 And so with nickel being a known
16 human carcinogen and the canopies of pecan
17 trees being 150 - as high as 150 feet, and
18 knowing about drift, volatility, vaporization,
19 movement off target site, it's a very
20 difficult balancing act when you're talking
21 about a known human carcinogen being used in
22 that manner.

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1 I mean, we had the discussion
2 earlier about pheromones and all these inerts
3 which we accept in the context of a very
4 narrow use where we're not emitting sprays,
5 because we know what emitting sprays means.
6 It means it goes off the target site, it has
7 unintended affects, it's not organic in that
8 context.

9 This is another example of that.
10 This is a product that is a known human
11 carcinogen being used in a manner that you
12 can't control, unfortunately.

13 MR. FOSTER: Katrina.

14 MS. HEINZE: I understand that
15 perspective. Mine is more of a procedural
16 question.

17 So, for example, looking at
18 Category 1, Question Number 9, which says "Is
19 there undesirable persistence or concentration
20 of the material or breakdown products in the
21 environment?"

22 So, that's one of our criteria.

1 The Committee answered yes, and then quoted
2 from the TR which says, and I'm reading from
3 what you guys filled out, "When used
4 correctly, the TR notes no such effects."

5 So, this is - my question is more
6 procedural, so that we're all kind of reading
7 from the same playbook here.

8 So, I'm glad the Materials
9 Committee is taking this up. It is confusing
10 to me that the TR says there's no such
11 effects, but that you answered yes to the
12 question.

13 And I know I can pull up other
14 questions like that. And, again, I think not
15 probably material to how people are going to
16 vote, because everyone can read that, but I -
17 we probably just need to get aligned on how
18 we're going to answer those kinds of
19 questions.

20 So, I get your point.

21 MR. FELDMAN: But read the next
22 sentence. I mean, the next sentence refers -

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1 they refer to an ATSDR document that indicates
2 that the effects are immeasurable because of
3 the way it's used.

4 So, again, we have to take that
5 into account. Often what we're faced with is
6 a known effect by a cancer-causing chemical
7 that has an exposure pattern that is not fully
8 quantified or even qualified. And, therefore,
9 you don't get the kind of research that you
10 need to answer that question specifically.

11 But if you read the document
12 that's cited there and linked to by the TR,
13 this Agency for Toxic Disease Registry, it
14 says that "it is impossible to predict
15 nickel's environmental behavior on a general
16 basis."

17 So, you put - it's a puzzle. And
18 I think that's our job to put the pieces of
19 that puzzle together. And where there are
20 missing pieces, we have to obviously factor
21 that in as well.

22 So, unfortunately, none of this

1 stuff is - you cannot always wrap a tight,
2 easy bow around it, but I think there's enough
3 information there, knowing what we know about
4 the harm of this chemical, knowing what we
5 know about the use pattern, that we can't deny
6 that it's going to have some detrimental
7 impacts.

8 MR. FOSTER: Thanks. Other voices?
9 I want to make sure we've gotten lots of
10 opportunity for other concerns, other tracks
11 here.

12 (No response.)

13 MR. FOSTER: All right. Enough for
14 nickel.

15 CHAIR MIEDEMA: Thanks, John.
16 We're going to take a break now and come back
17 and address the rest of the Crop Committee's
18 work and have a chance for discussion.

19 Quick note on Committee
20 deliberations. My comment this morning was
21 that in a spirit of collegiality if we could
22 keep our discussion clipping along, we

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1 wouldn't need to sort of impose the Robert's
2 Rules protocols.

3 But we're more than an hour off
4 schedule, we're in our first committee. If we
5 multiply this out, we are far from complying
6 with our federalregulations.gov notice of when
7 the meeting would end today.

8 So, we've got to pull this back
9 into shape here. That means each NOSB member
10 has two turns to speak on a topic or ask
11 questions. And you get your second turn after
12 everyone else has taken the first turn, if
13 they want it.

14 Okay. So, that's what we'll be -
15 that's how we'll be operating when we get
16 back. 15 minutes.

17 (Whereupon, the proceedings went
18 off the record at 10:15 a.m. and resumed at
19 10:39 a.m.)

20 CHAIR MIEDEMA: We have quorum, and
21 we're back in session. Chairman of the Crops
22 Committee, John Foster, please proceed.

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1 MR. FOSTER: All right. We're
2 going to move into discussion of Sunset items.
3 Thought there was a fairly good suggestion
4 about moving through, hopefully trying to
5 catch up a little bit, moving through
6 materials that tend to be less controversial.

7 There are, as you know, fewer on
8 the Crops docket that are less controversial
9 than more so. So, please bear with us.

10 And I'm going to base these kind
11 of - the shuffling based on our Committee
12 discussion. So, we'll - I would like to kick
13 it off with chlorine materials.

14 And, particularly, if we could
15 discuss, Nick, the thing you had mentioned
16 about -- is "should" the right word, and then
17 also if it's apropos to -- well, with -- start
18 with there and see where it heads.

19 Nick, go on ahead.

20 MR. MARAVELL: Yes, it's really
21 semantics here. When you put things in
22 regulation, "shall" and "will" have different

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1 meanings. And "should," and I don't know what
2 "should" has in terms of regulatory. So, I
3 would usually use "shall" or "will."

4 "Will" is more optional. "Shall"
5 is mandatory. And "should" is sort of
6 suggestive.

7 So, you know, I'm just saying,
8 what message are we trying to give here?
9 Minor point.

10 MR. FOSTER: Now, I assume, is not
11 necessarily the time for Committee
12 deliberation on changes, but we can certainly
13 take that up. And I think there would be a
14 general acceptance of - my sense is from
15 hallway conversations, that that's an
16 appropriate change to make.

17 Other questions on chlorine items?

18 (Pause.)

19 MR. FOSTER: I'm sorry for the
20 hesitation here. I'm just - I'm not the
21 right-handedness to be sitting here,
22 apparently.

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1 (Laughter.)

2 MR. FOSTER: Thanks very much. Now
3 I know why I sit at the other end of the table
4 at Thanksgiving.

5 All right. So, I am guessing that
6 copper we're going to spend a little more time
7 on. I'd like to skip down to alcohols and
8 field any discussion questions about that.

9 (No response.)

10 MR. FOSTER: All right. Well, that
11 went quick.

12 I'd like to move on to newspapers,
13 recycled paper, no colored or glossy inks.
14 Both listings for those, any questions?

15 (No response.)

16 MR. FOSTER: All right. We'll be
17 back on schedule in no time.

18 Plastic mulch covers. Barry, you
19 had mentioned a couple things you may want to
20 elaborate on.

21 MR. FLAMM: Yes, and I neglected to
22 mention a comment we received from CCOF which

1 -- although they support the continued use of
2 plastic mulches, but raises the question of
3 why it's listed at all.

4 And I'll just sort of paraphrase
5 what they said. These are not inputs to soil
6 or crops, do not decompose. They are tools
7 that are allowed whether or not listed. And
8 using as examples, drip tapes, tractor tires
9 and so forth.

10 I just want to point that out --
11 that that's a different question that was
12 raised.

13 MR. FOSTER: A good question. And
14 in our Committee deliberations, we recognized
15 it as a good question, but probably one that
16 is going to require a little more - a little
17 more digging than just using it in the context
18 of plastic mulch covers, I assume.

19 Other questions, concerns on that?

20 Mac.

21 MR. STONE: And, Barry, you
22 mentioned that it was in the Act about removal

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1 of the plastic at the end of the crop.

2 So, I'm still just curious about
3 double-cropping -- if the quality is there,
4 that it not have to be removed at the end of
5 the crop or the end of the season part of that
6 discussion.

7 MR. FLAMM: I don't know if I can
8 give you a great answer. But it would seem
9 like as long as you're still farming for that
10 season, I think that's something you have to
11 work out with the certifier, but it would seem
12 like at the end of the season when you got
13 done cropping.

14 MR. FOSTER: Other questions on
15 plastic mulch?

16 All right. Colehour.

17 MR. BONDERA: I don't know if I
18 have a question, but I just feel like that
19 issue that you bring up, Mac, is pretty
20 important, because I think that perennial
21 crops where people are using that kind of
22 protection, you know, it's hard to define that

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1 seasonal question.

2 And I think that that's why, you
3 know, "after one year" is in there, because
4 what does plastic do? It starts to get stuck
5 in and be hard to remove, no matter, you know,
6 if it's among trees or not.

7 And so, I think that that - there
8 has to be something to - I mean, I think it
9 can be interpreted and there can be
10 exceptions, but I think that you have to also
11 have some fine line.

12 MR. FOSTER: Barry.

13 MR. FLAMM: The additional language
14 is "after harvest." So, you can't -- in a
15 perennial orchard, you can't leave the plastic
16 in there, and you have to remove.

17 MR. FOSTER: All right. It looks
18 like we're good on plastic mulch covers.

19 I want to move down to Vitamin D3.
20 This is another - something getting rodents in
21 the cross-hairs, as it were.

22 Any questions on that?

1 (No response.)

2 MR. FOSTER: All right. I'm going
3 to go out on a limb and bring up sodium
4 silicate.

5 Any questions on that?

6 Yes, Katrina.

7 MS. HEINZE: Not a question specific
8 to sodium silicate, but, again, a process one.

9 As chair of the Materials
10 Committee, I am a little bit perplexed by some
11 of the Sunset recommendations. So, sodium
12 silicate is the first of these.

13 In going back and looking at our
14 procedures for Sunset, there is, you know, a
15 number of things we have to look at. But two
16 of the things are that we're supposed to look
17 at new evidence that is different from the
18 original NOSB review.

19 And for some of these materials, I
20 guess I need some help from the Committee
21 understanding what that new material is that
22 resulted in a recommendation not to re-list.

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1 And then a recommendation not to
2 re-list - or a recommendation, period, is
3 really supposed to be based on the force of
4 evidence showing that a change to the
5 exemption is needed.

6 And that includes the fact that the
7 - this Board, or a prior version of this
8 Board, did a full review of the material and,
9 in most cases, considered - well, in all cases
10 unless there's new evidence, considered all
11 the things that the Committee is debating and
12 chose to list.

13 And, you know, with all due respect
14 to the recommendations of the Crops Committee,
15 it has been our practice as a Board to really
16 try to respect the precedent of prior Boards.

17 And so, the materials were - I'm
18 just not sure that there is - or it's not
19 clear to me what the new evidence is that is
20 causing the Crops Committee to recommend a
21 change to the exemption, to kind of go against
22 what a prior Board has recommended are sodium

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1 silicate, which we're on now - and I'm doing
2 this one so I don't have to do it again -
3 copper, sulfur dioxide, magnesium sulfate and
4 ethylene.

5 So, perhaps when we get to those,
6 just I would ask everyone the Board to think
7 about that and our responsibilities for
8 Sunset.

9 MR. FOSTER: Other questions?

10 Tina.

11 MS. ELLOR: If I could address that.
12 In the case of this particular material, what
13 we found when we - what came up during our
14 discussions in the Crops Committee is that
15 this not very much used.

16 Since then, you know, we've learned
17 from public comment that it's an important
18 material probably to keep on, because of its
19 compatibility with chlorine compounds that
20 lignin sulfonate doesn't have.

21 So, it's not a - it's not as we
22 thought, a complete substitute, you know, that

1 you can substitute lignin sulfonate completely
2 for this material. So, that's something we
3 learned in comment.

4 But during the Committee
5 discussions, you know, we looked for people
6 who were using it and we didn't find any. So,
7 that's where that came from.

8 And it's unfortunate that we don't
9 absolutely capture all of our Committee
10 discussions, you know, in our recommendation.
11 But, you know, I'd like to assure you that due
12 diligence is being done on the Crops
13 Committee.

14 MS. HEINZE: Oh, I had no doubt of
15 that. It's more the, you know, it is my duty
16 as Materials chair to make sure that we follow
17 our processes.

18 So, I appreciate the clarification.
19 That helps me as I think through sodium
20 silicate.

21 MR. FOSTER: Other questions?
22 Sodium silicate?

1 (No response.)

2 MR. FOSTER: All right. I'm going
3 to take a stab at ranking these and move on to
4 lignin sulfonate.

5 Sorry, Tina.

6 MS. ELLOR: Someone mentioned to me
7 during break, and I don't know if anyone has
8 any insight onto this, that it actually is not
9 a duplicate listing of lignin sulfonate,
10 because one is under, you know, plant and soil
11 amendments, the other is post-harvest. So,
12 one's pre-harvest and one is post-harvest.

13 Now, how it would be used as a
14 flotation device pre-harvest, I have no idea.
15 But apparently, you know, it is listed in two
16 different places for two different purposes.

17 MR. FOSTER: Any other questions on
18 lignin sulfonate?

19 (No response.)

20 MR. FOSTER: All right. Moving
21 right along, I'm going to go with magnesium
22 sulfate.

1 Any questions?

2 (No response.)

3 MR. FOSTER: All right. I suspect
4 we might have some questions about the next
5 one, whichever one it is.

6 (Laughter.)

7 MR. FOSTER: Let's talk about sulfur
8 dioxide.

9 Yes, Tina.

10 MS. ELLOR: Once again during the
11 break, our audience weighed in on this. And
12 at the Board's discretion, I'd like to have
13 OMRI come up and explain how this ingredient
14 works in rodent smoke bombs. And they gave me
15 a very good explanation over break, which I
16 would like everyone to hear.

17 Is Lindsay in the room?

18 MR. FOSTER: If you could come up
19 and state your name and affiliation, please?

20 MS. FERNANDEZ-SALVADOR: My name is
21 Lindsay Fernandez-Salvador. I'm with OMRI.

22 So, oftentimes the way that the EPA

1 registers pesticides is that -- in the case of
2 smoke bombs, the three ingredients that you
3 mention; sulfur, sodium nitrate and charcoal,
4 are the ingredients in the actual thing that
5 you buy at the store. But then when you
6 employ it at your farm, there's a reaction
7 that happens.

8 The potassium or sodium nitrate
9 decomposes into sodium or potassium oxide,
10 nitrogen gas and oxidant gas.

11 And then when sulfur is burned in
12 the presence of oxidant gas, it produces
13 sulfur dioxide. And that's what the EPA calls
14 a post-reaction formula.

15 It's not considered the active
16 ingredients on the label, which is why you
17 discovered that those aren't the registered
18 ingredients.

19 However, that's the way OMRI would
20 review it -- is that it is in fact sulfur
21 dioxide that is acting on the pest and meets
22 the letter of the law in this case.

1 And just to give you an example of
2 -- something that is similar is peracetic
3 acid. That is oftentimes listed as acetic
4 acid and hydrogen peroxide on the label, but
5 clearly becomes peracetic acid as the post-
6 reaction formula. Very common.

7 MR. FOSTER: Thank you, Lindsay.

8 Any follow-up questions for
9 Lindsay?

10 Jay.

11 MR. FELDMAN: So, you don't think
12 it's necessary or required to look at the
13 compounds that are released into the
14 environment or mixed as a function of using
15 the product?

16 Because this is - when we looked at
17 this, as you know, I mean, even though they're
18 listing this active ingredient, there are
19 certainly other compounds in here that are -
20 seem to be -- should be the subject of review,
21 and we were wondering if we were doing our,
22 you know, due diligence in ignoring those

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1 other compounds.

2 And you're saying OMRI doesn't
3 evaluate the - I mean, you're looking at
4 strictly what EPA does. And I'm wondering if
5 we have an additional responsibility beyond
6 what EPA does in its registration process, to
7 look at the other compounds that we know to be
8 - because they're certainly not inert
9 ingredients. They're listed. We know what
10 they are. They're identifiable. They're
11 being put in the environment.

12 So, it was odd to us that we
13 wouldn't be asked to evaluate that.

14 MS. FERNANDEZ-SALVADOR: Well, I
15 think that's a question for the Board and not
16 for OMRI.

17 I'm just saying that clarifying the
18 inaccuracy or the misconception that sulfur
19 dioxide is not in fact the case that acts on
20 rodents in this, and that it is common
21 practice that materials will then react to
22 make the final post-reaction formula, which

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1 OMRI considers or interprets to meet the
2 letter of the law in this case.

3 MR. FOSTER: Thank you, Lindsay -
4 I'm sorry. Lindsay, hold up. Katrina has a
5 question.

6 MS. HEINZE: We received several
7 public comments suggesting an annotation that
8 might clarify some of these.

9 I don't know if you've had a chance
10 to see it, and if you have any thoughts on
11 that recommendation.

12 You don't have to answer now if I
13 just put you on the spot.

14 MS. FERNANDEZ-SALVADOR: I didn't
15 see the public comment. But annotations that
16 clarify for people that don't understand
17 chemistry on the upfront, is helpful.

18 MR. FOSTER: Thank you very much.

19 MR. MARAVELL: Well, speaking as a
20 farmer, I would like this - when a farmer
21 picks up a product and looks at the National
22 List, there's got to be some way to determine

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1 - I mean, if it says "sulfur" on there and the
2 National List says "sulfur dioxide," there has
3 to be something here to guide the farmer.
4 That's all I'm saying.

5 So, perhaps an annotation could
6 handle that. I don't know, but it would be
7 helpful.

8 MR. FOSTER: Might suggest that
9 would be more appropriate for guidance as
10 opposed to annotations, which generally speak
11 to use restrictions. But, yes, there's a
12 place for clarity, that's for sure, in some
13 way, shape or form. I agree.

14 Any other questions on sulfur
15 dioxide?

16 (No response.)

17 MR. FOSTER: All right. Moving on,
18 let's go with copper materials.

19 Are there any questions about
20 copper?

21 Jay.

22 MR. FELDMAN: Well, just to respond

1 to some of the comments, I'd be curious as to
2 whether anybody from the certifier or
3 inspector at inspection level sees this as a
4 problem.

5 I read one or heard one comment
6 that said that the language wasn't specific
7 enough guidance as to how and when this
8 monitoring would take place.

9 And I guess we were of the opinion
10 that that could be determined in guidance, but
11 that there would be some sort of monitoring
12 mechanism.

13 And we - I think part of the
14 conversation in the Committee was, we weren't
15 quite sure how one would make the
16 determination as to whether there was
17 accumulation or not, if you weren't
18 monitoring.

19 So, it was sort of odd to us that
20 there would be a guidance that there ought not
21 be accumulation without any sort of
22 monitoring.

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1 Maybe there is monitoring going on,
2 but that's why we threw it out that way,
3 hoping to get more specific responses.

4 MR. FOSTER: I think we have a
5 comment from the Program.

6 Miles.

7 MR. McEVOY: Yes. This is Miles
8 McEvoy.

9 Yes, I think in my experience, the
10 certifiers are monitoring the use of copper.
11 And it all depends on the use pattern.

12 So, if there's a lot of copper
13 that's used in a given organic system, then
14 testing, soil testing or other types of
15 testing would be part of that organic system
16 plan to monitor that the - that copper is not
17 accumulating in the soil.

18 But it's going to depend upon how
19 much copper is being used, of whether or not
20 you would want to see specific monitoring
21 through testing to monitor the copper levels.

22 So, my experience is that

1 certifiers are doing the monitoring currently,
2 because they are checking the use of materials
3 with the existing annotations that are in the
4 National List.

5 And that, I guess, in addition,
6 that if you did - the clarification for us is,
7 what do you mean by periodic? How often does
8 that mean?

9 And allowing us to do that through
10 guidance probably makes a lot more sense, so
11 that depending up on the use pattern, then the
12 guidance or the certifier could determine what
13 is the most reasonable monitoring for copper
14 levels.

15 MR. FOSTER: Jay, a follow-up?

16 MR. FELDMAN: That raises a really
17 interesting point, Miles, because we - I think
18 the other thing we noted was that there is no
19 use identified for this, you know, like with
20 the antibiotics, we're talking about apples
21 and pears, but the compound, the copper
22 compounds are just allowed.

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1 So, there's no identify-use
2 restriction. Although, I guess, you know, the
3 use restriction would be on the label,
4 presumably.

5 So, I guess my question is whether
6 we can put something in this language that
7 would enable the Program, or encourage the
8 Program, to develop that type of guidance that
9 would -- based on a specific situation --
10 require and need, require appropriate
11 monitoring.

12 I mean, you say that the inspectors
13 do that. And I guess, you know, we didn't
14 have that information, and we - I'm not sure
15 if everybody does it, if it's required that it
16 be done, or it's just normal practice.

17 I mean, it would be nice given how
18 widespread this chemical use is, given that it
19 is a prophylactic use, it's used in a
20 preventive way, given that I often hear a lot
21 of criticism for all its use in different
22 circles, that we could have - we could have

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1 some readily available information that would
2 show we're really on top of it.

3 And if you said information already
4 exists and it's trackable and disclosable and
5 monitorable, then that's fine, but we didn't
6 have that information.

7 MR. FOSTER: Miles, would you like
8 to reply?

9 MR. McEVOY: Yes. The part about
10 being measurable, trackable and disclosable is
11 - I'm not sure we can go there on that.

12 I think you have to keep in mind
13 that there are a huge diversity of cropping
14 systems around the world. Just within
15 Washington State, there's a huge diversity of
16 cropping systems and uses of these various
17 products. There's certainly a need for
18 additional guidance on a whole range of
19 different products.

20 And we're going to continue to
21 develop draft guidance and final guidance on
22 a variety of different products, but I think

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1 we also need to be respectful and reasonable
2 in regards to the regulations and the record-
3 keeping requirements for growers, for
4 livestock operators and for processors and
5 handlers, because it can become so burdensome
6 that they're going to start to leave organic
7 production from the record-keeping and
8 requirements.

9 MR. FOSTER: Thank you, Miles.

10 Mac, you had a question?

11 MR. STONE: I guess I'd just add as
12 a certifier, it's mostly an issue on perennial
13 crops. Any annual crops, they're in the
14 rotation anyway and there tends not to be that
15 issue.

16 But if we do see it being used in
17 perennial crops, then it is noted by the
18 reviewer. They ask the inspector to look
19 tighter at the records, how much they're
20 purchasing, what they're using, etcetera.

21 So, it kind of is naturally - this
22 one has always been on the radar of certifiers

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1 and inspectors because of that.

2 And the growers are concerned that
3 they're going to get cut off, and then they
4 don't have the tool anymore.

5 MR. FOSTER: Thank you, Mac.

6 Any additional questions on copper,
7 copper materials?

8 (No response.)

9 MR. FOSTER: All right. Thank you.

10 I would like to bring up ethylene
11 gas, please. Any questions, clarifications on
12 ethylene?

13 Tracy.

14 CHAIR MIEDEMA: I just had one point
15 of discussion.

16 Colehour, you had mentioned that
17 our materials, I think the way you said it,
18 don't apply abroad and there weren't - you
19 hadn't taken a look at growing practices in
20 other countries.

21 And my understanding is that all
22 produce coming into this country and labeled

1 and sold as organic in the U.S. has to comport
2 with NOP standards; is that correct?

3 That's basic. So, I just want to
4 make sure that we don't go on record ignoring
5 important growing regions' practices for crops
6 that are imported into this country.

7 MR. FOSTER: Colehour.

8 MR. BONDERA: Thank you. Yes, I
9 think that my point was more regarding the
10 fact of looking as a committee at the use of
11 ethylene gas in other circumstances, and
12 trying to understand alternatives and
13 understand how the decision processes were
14 made or used or what was being done.

15 I think, you know, you are
16 absolutely right, that anything that does
17 have, you know, USDA approval on it has been
18 certified.

19 And I think that - I think that the
20 point was, you know, are we limiting ourselves
21 or broadening ourselves by -- are we looking
22 at the whole picture, or are we just looking

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1 at one little example?

2 And I think that I was trying to
3 make sure that people keep the whole reality
4 in mind, not the, you know, we had - we tried
5 to look at some examples that were not
6 necessarily, you know, certified for export to
7 the United States, but how did they address
8 this, so that we were looking at various
9 options to some degree.

10 I don't know if that totally
11 addresses what you're raising. But I think
12 what you're raising is very relevant, because
13 I think that, you know, it goes back to that
14 question of reaction versus action. And I
15 think that that was, I think, part of my
16 point.

17 MR. FOSTER: Thank you. Nick.

18 MR. MARAVELL: Yes, something in the
19 back of my mind, and perhaps people here could
20 correct me.

21 About 20 years ago when this was
22 all sort of rolling around, the producers from

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1 Costa Rica, because I knew one, were saying
2 that there wouldn't be no ability to produce
3 pineapple for import into the United States
4 without ethylene gas.

5 I'm not at all an expert on this.
6 I just raise that as, I think, as part of the
7 rationale, perhaps, as to why the Board took
8 action.

9 So, I don't know if any new
10 information has come to light. That's all.

11 MR. FOSTER: Tracy.

12 CHAIR MIEDEMA: Just a point of
13 clarification.

14 Nick, your friend might have been
15 referring to ethylene gas being used as a
16 ripening agent -- as a handling material --
17 rather than as a crop material.

18 MR. MARAVELL: No, I think this was
19 to set flower. No, this was very definitely -
20 it was a production issue.

21 I haven't seen him in years, but I
22 remember that. And I've been to Costa Rica

1 and didn't see him. So, I don't know where he
2 is.

3 (Laughter.)

4 MR. FOSTER: Too late now, Nick.

5 Any other questions, comments on
6 ethylene?

7 (No response.)

8 MR. FOSTER: Okay. If not, I have
9 one.

10 This is one of the votes for which
11 I was absent. I would have voted a different
12 way than the majority on this.

13 I'm very reluctant to take tools
14 away from farmers. Just as a matter of
15 practice having been one, I think farming is -
16 certainly organic farming is hard enough.

17 And I really - I understand that a
18 lot of the NOSB job is about materials and -
19 I'm just generally very reluctant to do so.

20 What I saw in the way of public
21 comment and what I saw in past Board
22 decisions, seem, to me, to be still valid.

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1 And my sense, and this came up in Committee
2 discussion, was that there's an undercurrent
3 of scale issues around this material.

4 And that's fine and appropriate.
5 And, Jay, I think it was you that mentioned
6 scale being certainly a point to consider.

7 I want to make sure that whatever
8 dialog happens, that I think the scale
9 question is a good one, but that's probably a
10 question beyond the realm of just ethylene.

11 It's been an undercurrent since
12 I've been attending NOSB meetings. In my work
13 in certification, inspection, farming, it's
14 always an issue, and I think it's a worthy
15 one.

16 And if we want to take it up as an
17 independent issue, I think that's fine. But
18 I want to make sure that votes on materials
19 are based on the merits of materials and not
20 a vote about scale.

21 And everyone's got their own, you
22 know, way to make that determination and I

1 trust that. But I do want to call it out
2 because ethylene, the discussion, this is one
3 of the first places that when pushed on
4 rationales to defend a particular vote, the
5 comment about scale came up more and more
6 readily.

7 And to me, that means an
8 undercurrent that's a little stronger than
9 other undercurrents that may have been present
10 in discussions around other materials.

11 A very important discussion to
12 have, and it's one of actually the most
13 invigorating discussions in the public
14 discourse as far as I can tell.

15 I just want to make sure that while
16 that has a bearing on ethylene, I get that.
17 I don't want to - I want to make sure that
18 it's couched in the right way and given the
19 appropriate weight in everyone's decision.
20 That's all.

21 Jay, yes.

22 MR. FELDMAN: Yes, and it comes up

1 in some instances more than others. It's just
2 in this case it wasn't a question of whether -
3 and this goes to the question of essentiality,
4 right?

5 Because when we looked at it, it
6 wasn't a question of whether it could be done
7 with ethylene gas. The answer was, yes, it
8 can be done without ethylene gas.

9 And then the question - next
10 question was, can it only be done on a small
11 scale with ethylene gas?

12 So, we were faced with having to
13 answer that question. It wasn't - we didn't
14 go searching for that question. It came to
15 us.

16 And so, I don't know how - I mean,
17 that's why I raised it earlier because it, you
18 know, in Hawaii it seemed like it was only
19 affecting one grower and it wasn't going to be
20 a substantial impact.

21 I'm not sure - I mean, you may
22 remember that better than I do, Colehour. But

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1 in the case of Costa Rica, it seems like it
2 would have, you know, a major impact on large-
3 scale production.

4 Whereas around the world it looks
5 like the answer is, no, it wouldn't, at least
6 as far as we can tell.

7 MR. FOSTER: Thanks, Jay.

8 Any other questions?

9 Mac.

10 MR. STONE: Is the issue about
11 uniformity of ripening time so they can
12 harvest like once through the field? They
13 don't have to harvest more than once through
14 the field?

15 MR. FOSTER: All right. Any other
16 questions, comments on ethylene?

17 (No response.)

18 MR. FOSTER: All right. Moving on,
19 I'm going to again rank. Let's try
20 pheromones.

21 Any questions on that issue?

22 Tracy.

1 CHAIR MIEDEMA: I had one.

2 Jay, you had mentioned that the
3 inerts would need to be approved inerts and a
4 proposed annotation for these mating
5 disrupters, and you and I are both sitting on
6 this Inerts Working Group.

7 We know the pace of that work is
8 going to be pretty slow. It's not going to be
9 aligned with what we're voting on here today.

10 So, I didn't understand what you
11 were referring to when you said "approved
12 inerts."

13 MR. FOSTER: Jay.

14 MR. FELDMAN: The intent there is to
15 try to be respectful of whatever pace that
16 moves at, but to recognize that whatever is
17 legal, can be used.

18 So, if we - if we as a Board
19 respect List 3 until we get the working group
20 resolution on this, it would remain allowable.

21 I mean, the intent is to not take
22 away any tools here. The intent is to hold

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1 harmless everything that's in use currently.

2 But just as in other areas, we're
3 not - we've asked petitioners on a number of
4 products, EDDS and some others, to withdraw
5 their petitions pending our discussion on
6 inerts.

7 As things stand now if I come up
8 with a new inert, it could possibly be added
9 to a pheromone formulation the way it's
10 written.

11 So, this would keep us in line with
12 that, the resolution that we come up with in
13 the working group and allow current uses to
14 remain in use.

15 And then when the new determination
16 is made on what we do with inerts, it would
17 incorporate those inerts into the pheromones.

18 MR. FOSTER: Katrina.

19 MS. HEINZE: I am not the expert on
20 inerts, but my understanding was that if
21 someone comes up with a new inert, they can't
22 use it because we're kind of frozen right now,

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1 right?

2 So, I guess I don't understand what
3 you just said.

4 MR. FELDMAN: Well, we've asked them
5 to withdraw - the petitions that are before us
6 have been withdrawn.

7 It's not clear that they can't use
8 it, you know. It's not clear that they even
9 have to petition, because they don't have to
10 disclose inerts. There's no requirement for
11 disclosure of inerts.

12 CHAIR MIEDEMA: I recognize the
13 Program.

14 MR. McEVOY: Yes, that's not
15 correct. They have to disclose all the
16 ingredients that are in these substances that
17 are used in organic farming systems.

18 That's part of the process. That's
19 what certifiers, that's what OMRI and WSDA do.

20 When they review substances for
21 allowance by organic producers and handlers,
22 they look at a full disclosure of all the

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1 ingredients, including the inerts.

2 So, the only things that can be
3 used are the things that are on the National
4 List if they're synthetic, which would be Lis
5 4 inerts and List 3 inerts for passive
6 pheromone dispensers.

7 And the other question the Program
8 has is what does the Committee mean by without
9 added toxicants? It's undefined in your
10 proposal.

11 MR. FELDMAN: The intent there -
12 well -

13 MR. FOSTER: Yes, go ahead, Jay.

14 MR. FELDMAN: So, we, when we're
15 looking at individual - when we're looking at
16 a pheromone product, a formulation, we don't
17 know what's in that formulation.

18 We know it has a pheromone and an
19 inert. It could be on List 3. It could be on
20 List 4.

21 Are you saying that if a
22 manufacturer comes up with a new inert, the

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1 Program is not going to recognize it if EPA
2 accepts it, until this working group can
3 finish its work?

4 Is that what you're saying?

5 MR. McEVOY: Yes, the List 3 and
6 List 4 inert lists are frozen. They're not
7 being changed. EPA is not modifying those
8 lists.

9 So, there's no way that EPA is
10 going to be adding other substances to those
11 lists at this time.

12 MR. FELDMAN: Okay. Well, we should
13 talk about this at Committee then. I mean, if
14 it's a finite list and we're not adding any
15 toxicants, then it's redundant - what you're
16 saying is it's redundant of what is currently
17 the status quo, correct?

18 MR. McEVOY: Well, I'm not sure if
19 it's redundant. We don't understand what you
20 mean without added toxicants. You haven't
21 defined that.

22 And the current list, the current

1 way that pheromones have to be formulated to
2 be approved is that they can use List 3
3 inerts. And that has to be disclosed as part
4 of the process that a certifier would use to
5 allow a certain substance to be used in
6 organic production.

7 MR. FELDMAN: Yes. The problem in
8 this area is that we're told something is a
9 pheromone. It can have any number of
10 ingredients in there.

11 All we're told is it's a pheromone.
12 And when we look at pheromones that are
13 available in the market - I apologize that my
14 back is to you. It's just hard to - we are -
15 the Board - OMRI may have this information on
16 a Confidentiality Agreement, but we don't know
17 what's in that formulation. All we know is
18 it's a pheromone. So, the process - explain
19 the process to me.

20 OMRI then would evaluate it and
21 determine whether it's a pheromone and a List
22 3 or List 4 inert. And we're saying that

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1 there should be no other poisons mixed, no
2 other active ingredients or biologically
3 chemically-active ingredients, which would be
4 toxicants, mixed in with that formulation.

5 In other words, we've authorized
6 this huge category of all kinds of
7 formulations. And I guess what you're saying
8 is that OMRI is monitoring that the - and
9 maybe we could get OMRI up here, which would
10 be helpful to me - that they are evaluating
11 all the constituent compounds in that thing
12 that we call as a class, pheromones

13 MR. McEVOY: Yes, it's true for all
14 things that are used, not just pheromones.
15 So, any kind of pest control input that an
16 organic producer is using, all the ingredients
17 in that product are evaluated and have to
18 comply with the list.

19 So, the active ingredient has to be
20 on the National List or a non-synthetic. And
21 the other ingredients have to be List 3 or
22 List 4 ingredients. That's part of the

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1 process.

2 It seems like possibly the Board
3 could use a more in-depth review of both the
4 material evaluation process in pheromones in
5 particular, and what are the compounds that
6 are in these substances.

7 MR. FELDMAN: Yes, it just covers
8 hundreds and hundreds of different compounds,
9 as I put up on that slide. I put up -

10 CHAIR MIEDEMA: Jay, just we're
11 going to stick to protocols here. We're at
12 the two limit for you.

13 Does anyone else have a comment?

14 MR. FOSTER: Question, Steve?

15 CHAIR MIEDEMA: Steve.

16 MR. DeMURI: Would it be possible to
17 get somebody from OMRI up here to explain
18 their process for pheromones specifically?

19 CHAIR MIEDEMA: Lindsay, would you
20 be willing to come back up?

21 MR. FOSTER: Just for the record,
22 name and affiliation. Thank you.

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1 MS. FERNANDEZ-SALVADOR: Lindsay
2 Fernandez-Salvador, OMRI. And just for the
3 record, Mac stole my standards manual. So,
4 I'm without my bible right now.

5 Okay. So, when OMRI would get a
6 pheromone dispenser application at our feet,
7 what we are interested in knowing is the
8 manufacturing process of any ingredient that
9 they're claiming to be non-synthetic. And
10 otherwise, we would be reviewing all the other
11 ingredients like the inert ingredients, which
12 the EPA has established for us.

13 We don't establish that they are
14 inert or pheromones. The EPA has established
15 that for us.

16 And what we would do is then ensure
17 that those ingredients, those inert
18 ingredients are in fact on List 3 and that we
19 can consider the dispenser as a passive
20 dispenser, and that the pheromone in it is
21 indeed classified as a pheromone by the EPA.

22 So, we rely heavily on the EPA

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1 mainly because the regulations in terms of
2 pesticides and what are pesticides and what
3 are pheromones are referenced in the rule and
4 in terms defined. That's how we do it.

5 MR. FOSTER: Steve, did that get at
6 what you were looking for?

7 MR. DeMURI: Yes. Thank you.

8 MR. FOSTER: Okay. Thank you,
9 Lindsay.

10 Steve.

11 MR. DeMURI: I get two. So, let me
12 direct another question - separate question
13 maybe to Mac who's our certifier
14 representative here.

15 When you certify a farming
16 operation that's using pheromones, do you
17 require a certificate or something that shows
18 that they were OMRI-approved?

19 MR. STONE: OMRI or the other list
20 that's - the variable lists that are around,
21 but each certifier has their own list of
22 approved materials, if you will.

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1 There's kind of a sharing of lists
2 and agreement sort of thing, but, yes, the
3 inspector does look to see that they are
4 legit, if you will.

5 MR. FOSTER: Thank you, Mac.

6 All right. Other questions on
7 pheromones?

8 (No response.)

9 MR. FOSTER: All right. Moving to
10 by my reckoning, the last of the Sunset items
11 for Crops Committee. Streptomycin.

12 Any questions there?

13 (No response.)

14 MR. FOSTER: Wow. Perhaps I had
15 ranked them inappropriately.

16 MR. MARAVELL: Well, just a piece of
17 information. I did talk to Dr. Johnson about
18 effectively when you spray with streptomycin,
19 are you just treating a tree or two that has
20 broken out with a strike?

21 And he says in reality when you're
22 at that point and you see the need to spray,

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1 you spray the whole orchard. I mean, that's
2 what he advised, anyway.

3 So, I just thought I was confused
4 about that, and he has sort of said that you
5 pretty much - if you see the - and he said
6 this does not happen every year. He said you
7 could go five years and not have - at least in
8 his area, not have a fire blight problem.

9 But when you need it, you need it,
10 is what he said.

11 MR. FOSTER: Thank you, Nick.

12 Are there questions on
13 streptomycin?

14 Mac.

15 MR. STONE: We heard some testimony
16 yesterday about that possibly it could be used
17 post-strike, if that's the right term.

18 And in conversation, in some
19 climates you can plan on that, not use it
20 unless, first, if the modeling tells you or
21 then if you see an incident, then you could
22 react.

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1 But in certain climates because of
2 weather patterns, you may not be able to react
3 in time if we just required it post-incident,
4 if you will.

5 MR. FOSTER: Other questions?

6 (No response.)

7 MR. FOSTER: All right. Moving on
8 then, we'll look at Sunset 205-602 for sodium
9 nitrate.

10 Any questions there on the
11 recommendation?

12 I believe Katrina has one. Okay.
13 Katrina.

14 MS. HEINZE: Someone else can go
15 first. I'm still trying to find -

16 CHAIR MIEDEMA: I have a question,
17 John.

18 MR. FOSTER: Tracy.

19 CHAIR MIEDEMA: Which new
20 information came to light in the
21 reconsideration other than the Program's
22 specific request that we reconsider the

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1 annotation?

2 MR. FOSTER: Well, I'll start the
3 response. It's not intended to be the end all
4 and be all, but the - some of the discussion
5 has been that there have been the entry of
6 additional agricultural materials that are
7 more prevalent.

8 There has been a tremendous growth
9 in liquid fertilizer, fish based, soy based,
10 et cetera, other materials that were not in
11 place 15 years ago.

12 As, actually, a function of number
13 of things, the development of liquid
14 fertilizers, and that's what we're looking at
15 here primarily, fertilizers that deliver
16 what's been described as a shot of nitrogen
17 fairly rapidly.

18 There weren't as many other
19 alternatives, agricultural alternatives as
20 there is now. That was part of the
21 discussion.

22 I think there was also sensitivity

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1 to - and other Crops Committee, feel free to
2 jump in here - sensitivity to having a
3 material that came into the NOP program as a -
4 basically, what you -- like I said, used to be
5 called a restricted material. And it's been
6 in place a long time. And, however, you know,
7 everyone recognizes it's on 602 for a reason,
8 that there's at least a not insignificant
9 dissatisfaction with the material. Hence,
10 it's listing on 602.

11 And in effort to further encourage
12 that also in light of additional alternatives,
13 that kind of started to move the needle a
14 little bit, if you will.

15 And if other Crops Committee
16 members have more to add, you're certainly
17 welcome.

18 Katrina.

19 MS. HEINZE: Thank you. Sorry for
20 the delay there.

21 My understanding is that this is a
22 Sunset review. And so, this is - if that is

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1 true, this is one where the Committee took two
2 votes. One to re-list without the annotation,
3 and one to re-list with what, I think, is the
4 current annotation.

5 Could you give a little bit of
6 background on the thought process there?

7 MR. FOSTER: I'm going to have to
8 ask a clarifying question.

9 The thought process beyond wanting
10 to have a backup recommendation?

11 MS. HEINZE: Yes, since you didn't
12 do that on any of the other Sunset
13 recommendations.

14 MR. FOSTER: My recollection --
15 again, Crops Committee members, correct me if
16 I'm wrong - was that recognizing ahead of time
17 this was going to be a particularly
18 contentious issue, we were attempting to
19 respect that.

20 And, well, as you know, this
21 actually constituted a fair amount of
22 discussion among Crops Committee.

1 And I'm not certain of this, but I
2 am remembering that there was discussion, we
3 can check the minutes if you want, that that
4 was part of the rationale.

5 MS. HEINZE: Okay. So, two
6 thoughts. One, I appreciate that you on this
7 one, that you were transparent on following
8 last fall's recommendation on annotation
9 changes in Sunset. And I would encourage you
10 to do that on other annotation changes.

11 And then would I be correctly
12 interpreting these two votes then to say that
13 while the Crops Committee is recommending re-
14 listing - so, if you re-list without the
15 annotation, that means it becomes prohibited.

16 These two votes seem in conflict.
17 So, that's fine. I'll think about it some
18 more before Friday.

19 MR. FOSTER: Tina, and then Nick.

20 MS. ELLOR: I think in this case,
21 this is a prohibited material that's a
22 prohibited natural.

1 So, if it didn't get re-listed, it
2 would be open for all use everywhere.

3 MR. FOSTER: Hold on a second.
4 Nick.

5 MR. MARAVELL: Well, I'm going to go
6 way out on a limb here because I was on the
7 call, but not a member of the Board. That was
8 the day before.

9 And I can't remember, but it made
10 more sense to use when we did it. And we
11 really had a hard time - we knew we had to do
12 it right and we really had a hard time with
13 it, and we may have voted - the way they
14 appear here, sequentially, we may have voted
15 on them in the reverse order. I don't even
16 recall.

17 So, they're re-listed as is, but
18 then do it again with - but we were trying.

19 (Laughter.)

20 MR. FOSTER: Thank you, Nick.

21 Katrina, and then Barry.

22 MS. HEINZE: Okay. That was all

1 super helpful. So, I think I got it now.

2 I don't think we've done a
3 prohibited since I've been on the Board. So,
4 these two are not in conflict.

5 What they mean is you want to keep
6 it on the prohibited list. Your
7 recommendation is to prohibit completely. But
8 if that can't pass, you want to keep it with
9 the current.

10 So, this all makes sense to me now.
11 So, you guys did a great job.

12 MR. FOSTER: Thank you for the
13 record.

14 (Laughter.)

15 MR. FOSTER: Barry.

16 MR. FLAMM: Been all said.

17 MR. FOSTER: Excellent. Any other
18 questions on sodium nitrate?

19 (No response.)

20 MR. FOSTER: All right. Well, look
21 at the time. Last item on the agenda is corn
22 steep liquor.

1 Might we have some questions about
2 that?

3 (No response.)

4 MR. FOSTER: Wow. I seem to have
5 ranked these inappropriately then. I'll give
6 a moment for everyone to pull them up. Load
7 up, as they say.

8 (Pause.)

9 MR. FOSTER: Is anyone afraid to go
10 first? Is that the deal? I can't say I blame
11 you.

12 I can just start calling on people.
13 If there's no discussion, that's fine with me
14 too.

15 Katrina.

16 MS. HEINZE: I just figured everyone
17 was sick of my voice.

18 I wanted to thank Jay for giving a
19 brief overview of the November 2009
20 classification document. That will save us
21 some time this afternoon during the Materials
22 presentation.

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1 That being said, you did due to
2 lack of time, not intentionally, skip the
3 definition of chemical change. So, as people
4 go through this, I just want to bring that to
5 the Board's attention.

6 So, I'm summarizing, but today
7 during my Materials Committee recommendation,
8 you'll get to see the full thing, that the
9 definition of "chemical change" says that
10 chemical change is where the identity of a
11 substance is modified.

12 And then there's a subsequent
13 definition for "substance," which is a
14 compound which possesses a distinct identity.

15 And that's really critical to these
16 - okay. So, that was Materials chair, and now
17 we're moving to Katrina's thoughts. That is
18 really an important point as we think about
19 any classification.

20 So, my specific thought on CSL, and
21 I've always been confused by this, is we have
22 a process that takes corn, kind of digests it

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1 through some biological processes, and then
2 results in a material that has, as long as I
3 can tell in organic, been classified as an
4 agricultural. And that's cornstarch.

5 And then the very same process,
6 like the other half of the stuff, is
7 synthetic. And I just struggle with that.

8 So, that's a comment. It doesn't
9 need an answer, but I do want folks to
10 remember those definitions of chemical change
11 and substance as they consider this really,
12 really complicated topic.

13 MR. FOSTER: Thank you, Katrina.
14 Good reminder.

15 Other thoughts?

16 Yes, Tina.

17 MS. ELLOR: Yes, this is such a
18 scary thing because it's so contentious.

19 From the beginning, we've had sort
20 of dueling experts. And from my point of
21 view, and I'm probably going to take some fire
22 for this, I think both have horses in the

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1 race. And we have comments from Dr. Johnson
2 that are posted, and we were handed comments
3 from the other side yesterday.

4 So, I would urge everyone to look
5 at both sides very carefully. And it really
6 comes down to is there a chemical change, and
7 what causes that chemical change? Is it
8 biological, or is it chemical? And that's the
9 issue.

10 So, you know, it's a tough and
11 complicated thing. And Jay has done an
12 amazing amount of work on this, as has John.
13 And we looked at it for a very long time now.

14 And, you know, with fear of being
15 accused of not doing my job, I'd really like
16 to see the back of this one.

17 MR. FOSTER: Thank you, Tina.

18 Other comments or questions?

19 Tracy.

20 CHAIR MIEDEMA: The only thing I
21 have to add is that after the Crops Committee
22 concludes their deliberations, we are going to

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1 break for lunch.

2 And I just want to make sure that
3 Board members, new members, existing members
4 or current members, I should say, old members,
5 that we really air out our differences, our
6 philosophical opinions if we have them, now,
7 and there are some judgments to make that are
8 just on the other side of science. We take
9 science as far as we can, and then we have
10 philosophies and judgments.

11 Let's make sure we get those aired
12 out today. Because when we get to voting
13 tomorrow, we will have more time for
14 discussion - or, sorry, on Friday.

15 Let's not start philosophical
16 discussion out of the blue on Friday.

17 MR. FOSTER: Thank you, Tracy.

18 Additional philosophical thoughts
19 on corn steep liquor?

20 (Laughter.)

21 MR. FOSTER: Well, new Board
22 members, you're in for a treat because you're

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1 going to see some interesting - I mean, this
2 has really been a pivotal - I would say a
3 pivotal conversation in a number of ways, and
4 I'm just going to leave it there.

5 Pretty much everyone knows my
6 opinions about it. So, I don't need to
7 reiterate them. Although, I could, but no
8 need to.

9 But I really - it sounds like if
10 there's no more discussion on corn steep
11 liquor, I'll wrap up.

12 Okay. This corn steep liquor has
13 kind of been - it's been such a touchstone and
14 a fire brand and a burning hot stove and a
15 number of other things.

16 But through two iterations of Crops
17 Committee, I never - although I have opinions
18 about it, as does everyone, I really, and I
19 mean this sincerely, it was a real privilege
20 to see everyone working so hard in so many
21 ways and bring their A game all the time day
22 after day after day, call after call after

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1 call.

2 And this includes past - the
3 previous iteration of Crops Committee members,
4 which we're buffeted by this just as much as
5 the current iteration.

6 Jeff Moyer here, I'll just call you
7 out and embarrass you, carried a lot of water
8 on this for a long time, as did Kevin
9 Engelbert in the prior iteration. And the
10 whole group deserves a whole lot of credit.
11 And it was a real privilege. So, thank you
12 for that.

13 Having said that, I'll wrap up on
14 Crops Committee and close that out, and thank
15 the Board and the Program and the general
16 public for the indulgence of extra time.

17 CHAIR MIEDEMA: Thank you, Crops
18 Chairman, John Foster.

19 For those of you in the audience
20 who planned on hearing Livestock Committee
21 before lunch, you'll have to hold tight until
22 after lunch.

1 And one note to Board members with
2 our two-thirds majority for decisive votes
3 that we are making sure we adhere to from the
4 OFFPA, we're going to have some challenges.

5 So, let's make sure we don't get to
6 Friday and have a lot of conundrum-type votes
7 where we can't get to ten and have to grapple
8 and debate endlessly.

9 In other words, when you're a lead
10 on a material, round up your votes and figure
11 out where people are at now. And let's sort
12 some of that stuff out over the next couple of
13 days so we know what we're heading into on
14 Friday.

15 Last announcement is we've been
16 provided by - with a list of farm-friendly
17 food by the Tilth Producers of Washington.

18 There's a nice map and menu options
19 on the back table. I just want to note that.

20 And I want to extend an invitation
21 that they made to all of you and all of us on
22 the Board and the Program, that they're

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1 hosting an event tonight starting at 5:30 at
2 the Palace Ballroom. And there's more
3 information on the back table from Tilth
4 Producers of Washington. So, 5:30. Palace
5 Ballroom. Everyone invited.

6 Let's be back in an hour at 12:45.

7 (Whereupon, the proceedings went
8 off the record at 11:44 a.m. and resumed at
9 1:03 p.m.)

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1 farmers that will also assure consumers that
2 animals are well cared for and are allowed to
3 exhibit their natural behaviors.

4 We have reviewed several animal
5 welfare guidelines, and we have worked with
6 Temple Grandin.

7 The Livestock Committee has spent
8 countless hours discussing and revising these
9 documents. We have made revisions per public
10 comment at this time, and we will review those
11 with you today.

12 We plan to present outcome-based
13 standards and species-specific guidance
14 documents at the full meeting.

15 A proposed sheep guidance document
16 was provided to all of you yesterday during
17 the public comment.

18 And so, now Lisa has a PowerPoint
19 that I want to go through quick, and then we
20 will go through the edits on the documents.

21 One of the public comments was
22 about tie stalls and free stalls, and we have

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1 made edits. That was an unintentional
2 omission in the edits when we were revising
3 documents.

4 So, tie stalls, we put the language
5 all back in the way it was intended to be
6 there. And for those of you that are not
7 familiar with tie stalls and free stalls, I
8 have a few pictures here.

9 And so, this is a traditional dairy
10 tie stall barn that is very common in the
11 industry. Especially on small, family farms.

12 And this would be the rear of the
13 cows in the tie-stall facility. And as you
14 can see, they are well bedded and clean and
15 comfortable and it's fine. And it's more
16 about management than it is about facility.

17 The free stall, this is a typical
18 well-designed, well-bedded free stall barn
19 with a mattress over the concrete. And this
20 is what we were talking about in the chart.

21 This is a loose-housing facility
22 here. And we want to make sure that everyone

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1 understands that there is no housing system
2 better than any other when they're properly
3 managed.

4 And the next photo is also the
5 inside of this loose-housing facility. And I
6 just happened to be here on a day when a calf
7 had just been born.

8 So, the next one, this is some of
9 the numbers we looked at for dairy. The
10 Humane farm program requires 20 to 50 square
11 feet per cow in a loose-housing facility. And
12 our proposed document for organic would be up
13 to a 220-pound animal would require 15 square
14 feet in the bedded space.

15 And then we have all the other
16 numbers listed there. You can see up to 50
17 square feet for a dairy cow.

18 American Humane, they require 20 to
19 40 square feet per cow. And the Federation of
20 Animal Science Societies, they require 40
21 square feet in a bedded facility for a dairy
22 cow.

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1 This is a swine document. This has
2 our original proposal. And I was very pleased
3 to see all the care and concern that there is
4 out there for organic hogs.

5 So, we did increase the numbers for
6 indoor space, as you can see here in the
7 document.

8 And for outdoor space, we changed
9 it to be in line with other welfare
10 organizations that require sufficient size to
11 allow all pigs to lie down at the same time
12 and to lie apart from one another in the
13 outdoors.

14 And this one shows the Certified
15 Humane and American Humane numbers. And our
16 numbers are greater than both of these, but
17 our outdoor requirement is the same.

18 The Soil Association and the
19 Canadian documents are here, and we are very
20 similar to these. But for the largest
21 finishing hogs, we're at 16 square feet for
22 indoors, and they are at 14.

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1 And Global Animal Partnership, we
2 wanted to recognize their standards as well.
3 They don't use numbers, but they require
4 sufficient size to allow all pigs to lie down
5 at the same time and apart from one another on
6 the indoors.

7 And of course their program is very
8 different because they're all about
9 improvement. Gap 1, Gap 2, Gap 3. And on
10 each time you'd make an improvement, you
11 require greater enrichments or space.

12 And this is Broilers. It's a
13 little hard to see, but Humane farm requires
14 six pounds per square foot in a building. Gap
15 3 requires that chickens must be able to
16 express natural behavior; standing, spreading
17 their wings, turning around, flapping their
18 wings and preening, without touching another
19 bird.

20 Birds must have access to the
21 outdoor area, and 25 percent of the total
22 floor space of the house is the outdoor area,

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1 from four weeks of age. And that is the third
2 level in the Gap program.

3 Our proposal is that there is one
4 square foot per bird indoors, and one square
5 foot per bird outdoors.

6 American Humane requires 6.2 pounds
7 per square foot indoors, 7.4. Six pounds, 1.2
8 square feet. And 8.7-pound birds would have
9 1.4 square feet.

10 The Federation of Animal Science
11 Societies would see a six to seven-pound bird
12 have 1.1 square feet. And of course with
13 those, there is no outdoor access required
14 with any of those.

15 Laying hens, Humane Farm requires
16 1.5 square feet in a single-level house, and
17 six inches of perch space for 20 percent of
18 the birds. If they're outdoors, then 2.5
19 acres per thousand birds.

20 Our proposal is 1.5 square feet,
21 and perch space for 20 percent of the birds.
22 And that would be a six-inch perch per bird.

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1 If you have six inches of perch
2 space for every bird in the building, then it
3 would be at 1.2 square feet per bird. And we
4 would require two square feet per bird outdoor
5 access.

6 American Humane requires one to 1.2
7 square feet per bird, and two square feet
8 outdoors for five percent of the birds in an
9 outdoor facility.

10 The Federation of Animal Science
11 Societies requires 1.75 square feet per bird
12 if you have white leghorns, and two square
13 feet per bird if you have medium-laying hen.

14 This document is what was proposed
15 in 2009 by the Livestock Committee, and I just
16 included it here so that you would be aware
17 that this has been put forth previously.

18 So, with that, if we would go to
19 the animal welfare document, and I believe the
20 first change that we made is in the Discussion
21 section.

22 We deleted "contact with the soil."

1 And down in the next paragraph in indoor
2 stocking density, we added tie-stall and free
3 stall operations that have individual stalls
4 are not included in the stocking density table
5 to clarify that issue.

6 Then in the Outdoor Stocking
7 Density paragraph, we deleted "frostbite"
8 here, and I will read the entire sentence.
9 "Calves, lambs, kids and other young animals
10 require protection from extreme weather
11 conditions and threat from predators."

12 The next change is in the Poultry
13 paragraph. We deleted "paddock rotation." It
14 created a lot of confusion. So, we just
15 deleted it.

16 And we changed the next sentence
17 down there, "Porches or other areas with
18 floors and solid roofs will count toward
19 indoor space, if birds have unlimited access
20 to the space."

21 In Definitions, we added on poultry
22 to clarify toe clipping and dubbing. And we

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1 added a definition for "beak removal." That
2 would be the removal of more than the beak
3 tip.

4 And in Outdoor Access, we deleted
5 "bedding" in the one sentence, and made
6 another add in the previous. I will go
7 through those.

8 "Animals have contact with soil
9 when seasonally appropriate and the sky
10 overhead and without a solid roof or walls.
11 Fencing that does not block sunlight may be
12 used as necessary."

13 We deleted the Access to the
14 outdoors part of the definition and just made
15 the one Outdoor access definition.

16 We added a definition for perches
17 that would be a rod or branch-type structure
18 that would serve as a roost.

19 We deleted "an abundance of animal
20 life" in the Soil definition, and we also
21 added that that would be a medium in which
22 plants may grow roots.

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1 Then in the Livestock Health Care
2 Practice Standard, we made a few edits. We
3 eliminated the "competent" word and replaced
4 it with "trained" for folks that are doing
5 physical alterations to young animals.

6 And we also added beak tipping is
7 allowed and must be done no later than ten
8 days old.

9 In the following practices that are
10 prohibited, we changed the first sentence to
11 beak removal, desnooting, caponization,
12 dubbing and toe clipping of birds. And these
13 would be prohibited.

14 To further define tail docking in
15 sheep, we added that they should not be docked
16 short than the distal end of the caudal fold.

17 In year-round access, we deleted
18 "simultaneously" from the feeding sentence so
19 that it now reads "the area shall be large
20 enough to allow all ruminant livestock
21 occupying these spaces to feed without
22 crowding and without competition. They do not

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1 need to feed simultaneously."

2 Then we added shelter would be
3 designed to allow for -- and down here below
4 that are the additions - at least one feeding
5 space per animal in loose housing.

6 Then five here, at least one stall
7 per animal in the group or pen at any given
8 time, that was already here, but we just made
9 a clarification.

10 We also added in Six, that calves
11 over two months of age shall not be tied. And
12 we eliminated the "until weaning" part of that
13 paragraph.

14 Then we added the language here for
15 the tie-stalls and free stalls that was lost
16 in the 2009 edit. So, that's not new
17 language. It was just unintentionally
18 omitted, and it's been replaced.

19 Then in the Avian section, we
20 deleted some language that's already in the
21 rule. And we did add "Broilers will be
22 provided outside access by four weeks of age."

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1 So, just a language change.

2 And the last sentence was changed
3 to "Direct outdoor access to outdoor areas
4 will be provided during daylight hours when
5 temperatures are above 50 degrees."

6 In Suitable Flooring we added that
7 pellets could be used in drinking areas. And
8 this is primarily for smaller farmers. And
9 then they wouldn't need to do a major overhaul
10 of their facility.

11 And in the doors on the poultry
12 buildings, we deleted "appropriately
13 distributed around the building." And we
14 moved the door language from below, up into
15 this section.

16 Then in Five, we changed the
17 wording a little bit. "Complete clean out of
18 a poultry house is required if there have been
19 adverse health issues with the previous flock;
20 otherwise a clean layer of litter should be
21 provided between flocks to maintain a sanitary
22 environment."

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1 In Space Allowance, the only change
2 we made here is "stretch their wings." And
3 the only difference this would make is that
4 all the birds would not have to be able to
5 stretch their wings at the same time.

6 Then before the space charts, we
7 added a bit of language here. It says the
8 values presented in the following charts are
9 minimum amounts only. Producers will be
10 required to comply with outcome-based
11 standards to be developed and ordered to
12 comply with the regulation. Tie and free
13 stall barns are exempt from the space
14 requirements in the chart, and they must
15 provide one stall for every animal.

16 We changed the stocking rate to
17 minimum space requirements, in the chart. And
18 we changed some of the numbers for sheep. And
19 this is primarily because sheep are only
20 confined when they are lambing. And so, it's
21 just a very temporary situation.

22 And then in the growing pigs, we

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1 increased all of the numbers. And we took all
2 of the numbers out for outdoor space and
3 changed it to sufficient space for animals to
4 all lie down and apart from one another. And
5 that would be at the same time.

6 And in the mobile poultry units, we
7 deleted all of the numbers in maximum number
8 of birds per acre.

9 So, those would be all of the edits
10 in this document. So, if anyone has any
11 questions or discussion about the changes in
12 this document?

13 CHAIR MIEDEMA: I have one. You
14 mentioned outcome-based measures and said that
15 operators would be required to comply. Yet,
16 we don't have those developed yet.

17 So, I was just confused by what you
18 meant there.

19 MS. FULWIDER: We plan on presenting
20 those in the fall.

21 CHAIR MIEDEMA: I wonder if instead
22 of saying that people are required to comply

1 with something that we don't have developed
2 yet, it might make sense to just kind of let
3 people know that those are in development.

4 MR. DeMURI: Not being close - not
5 being close to it, it appears to me like you
6 have addressed most of the public comment we
7 received yesterday that were opposed to your
8 original document.

9 Is there anything you're aware of
10 that has not been addressed at this point or
11 anything you do not agree with the public
12 commenters on?

13 MS. FULWIDER: The Committee feels
14 that we have addressed the comments that we
15 have received.

16 So, any other questions on this
17 document or -

18 CHAIR MIEDEMA: John.

19 MR. FOSTER: Sorry. Because of the
20 size of the file, it just took me a while to
21 get it. I know I'm going to have questions
22 about basically taking into comment public

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1 comment, but a couple of specifics I have
2 concerns about. It's just going to take me a
3 minute to round them up.

4 I actually, I hate to admit it in
5 public, but I have a hard time seeing clearly
6 that far away.

7 (Laughter.)

8 MR. FOSTER: So, there it is on the
9 public record. I'm going to need a couple
10 minutes. If we can round - circle back at
11 some point, that would be nice. Thanks.

12 (Off-record discussion.)

13 MS. FULWIDER: So, Lisa, if you
14 would like to go to the handling and transit,
15 and then we'll circle back with any questions?

16 CHAIR MIEDEMA: Mac, go ahead.

17 MR. STONE: Wendy, we raise - we
18 have birds on pasture year round and I drain
19 the numbers. And on the Broilers, we're like,
20 whew, right at 1.2 square feet per bird by a
21 system that works for us.

22 But if we don't move those birds

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1 twice a day, then we can get into coccidia
2 problems and such as that.

3 Is there - is it assumed here that
4 these birds are moving, or they can have that
5 one square foot per bird and not move?

6 MS. FULWIDER: Well, this is the
7 floor that we put in, you know. And if people
8 have more than that, I mean, that's better.
9 That's great, you know, but this is to be the
10 base in the floor.

11 And so if they have more space,
12 that's wonderful.

13 MR. STONE: I guess I'm not sure how
14 they could do it organically with these
15 numbers if they're not moving or intense
16 bedding management, I guess, is part of my
17 question on the poultry specifically.

18 MS. FULWIDER: Well, I believe a lot
19 of organic producers, these are the numbers
20 that they are using.

21 Okay. So, Lisa. So, in this
22 document, the first edit we made here is in

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1 the discussion and we moved the terms defined
2 that applied to handling, transport and
3 slaughter, from the other document. There's
4 no change to the definitions. We simply moved
5 them here.

6 Fitness for Transport, we added
7 some clarifying language here. And this is in
8 the discussion.

9 Livestock that are likely to be
10 condemned or become downers, should not be
11 shipped. And that's what the language in this
12 statement is about. Because it talks about
13 blind animals and people are saying, you know,
14 they still need to be transported. And that's
15 true, and we don't have any problem with that.

16 But if it's likely that they're
17 going to be shipped to slaughter and they
18 would become downed or condemned, then they
19 should not be shipped to slaughter, because it
20 becomes a problem from the slaughter plant.

21 In Transport Condition, we deleted
22 "consumable" in the bedding, and changed it to

1 "ruffages used as bedding must be certified
2 organic."

3 And we deleted the certification of
4 transporters. We'll let the Program handle
5 that.

6 And we added a sentence down in
7 Slaughter. Plants generally allow at least 20
8 minutes to two hours of rest time for animals
9 between electric prod attempts to get them up
10 if they're down due to exhausting.

11 And then in the recommendation,
12 here's where we added the terms defined. We
13 just brought them from the other document.
14 There are no changes to the definitions.

15 And then there was a lot of
16 clarification in the handling and transport.
17 And so, I will go through the adds that we
18 made.

19 Organic livestock will be
20 transported in pens with the livestock clearly
21 labeled for organic use and be contained in
22 those pens for the duration of the trip.

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1 In Number 1, it is the
2 responsibility of the organic producer to
3 ensure that calves have a dry navel cord and
4 are able to stand and walk without human
5 assistance if they are being transported to a
6 slaughter or auction facility. The livestock
7 trailer or shipping container and slaughter
8 plant must provide season-appropriate
9 ventilation to protect against cold and heat
10 stresses.

11 Number 3, bedding must be provided
12 on trailer floors and in holding pens to keep
13 livestock clean, dry and comfortable during
14 transportation and prior to slaughter. When
15 ruffages are used for bedding, they must be
16 organically produced and handled by a
17 certified organic operation.

18 In Number 5, slaughter plant
19 management shall coordinate with transporters
20 to ensure that waiting time once the livestock
21 trailer or shipping container arrives at the
22 slaughter facility, is no more than one hour.

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1 In Number 7, slaughter plants and
2 livestock trailers, shipping containers, must
3 have nonslip flooring.

4 Number 12, humane treatment
5 procedures for handling immobile and fatigued
6 animals upon arrival at the slaughter plant
7 are in place. Handlers may use sleds and
8 place livestock in the bucket, but may not
9 push them up against a wall, gate or any
10 object.

11 Number 15, euthanasia equipment
12 must be properly stored at slaughter plants
13 and maintenance records must be available.
14 Slaughter plants must meet all FSIS
15 requirements, including the Humane Slaughter
16 Act.

17 And that was the last edit. And in
18 this document, facilities are already being
19 audited to these guidelines by the American
20 Meat Institute guidelines.

21 So, any questions on the edits to
22 this document?

1 MR. FOSTER: I have one.

2 MS. FULWIDER: John.

3 CHAIR MIEDEMA: Go ahead, John.

4 MR. FOSTER: Thank you. A number of
5 those things you just described sound more
6 like guidance to me. And I have just enough
7 certifier left in me to be nervous about how
8 to verify some of those things and, I guess,
9 enough of an inspector in me to be very
10 worried about that.

11 So, did you address that in
12 discussion?

13 MS. FULWIDER: Well, the auditors do
14 certify to this. The meat plant inspectors.

15 So, our intention is that the
16 organic certifiers can just, you know,
17 document that these have been met by the other
18 auditors that have been in the plant.

19 MR. FOSTER: Okay. So, all of these
20 things are - all of the things you just listed
21 are already required by other agencies; is
22 that correct?

1 MS. FULWIDER: Yes, these are all
2 current industry standard.

3 MR. FOSTER: Okay. So, I guess then
4 my next question is do we need to redo that?

5 MS. FULWIDER: No. No, we are not
6 requesting that it be redone. We just accept
7 the documents that are already in place, the
8 audits that have already been done, because
9 these are done on an annual basis for these
10 plants.

11 MR. FOSTER: I'm sorry. Maybe I
12 missed something. I was trying to go over the
13 last stuff, too, but it sounded to me like
14 there was a list of things that were going to
15 be required of these operators, the
16 transportation, the handling, et cetera.

17 It sounded to me like these were a
18 number of changes that were made to
19 expectations on operators in their
20 transportation and handling of livestock.

21 And if those things are already -
22 if those activities are already required by

1 other agencies, then why are we codifying them
2 here again, or is that not - maybe that's not
3 happening.

4 MS. FULWIDER: Just want to make
5 sure that when our organic certifier goes in,
6 they check the audit to make sure that it has
7 already happened.

8 MR. FOSTER: Thanks.

9 MR. DICKSON: Just a quick
10 clarifying comment.

11 Many of these measures aren't
12 technically, completely regulatorily required
13 by other federal agencies, but they are
14 required by industry standards to which most
15 producers are currently verified.

16 CHAIR MIEDEMA: Mic, please.

17 MR. DICKSON: A lot of these
18 measures are not technically regulatorily
19 required by other agencies. But in practice,
20 they are parts of standards to which many
21 producers are verified.

22 So, these could be covered by a

1 certifier review of other audit documentation,
2 but they're not necessarily redundant with
3 other federal regulations in every case.

4 MR. STONE: So procedurally, where
5 do adjustments or changes or amendments -
6 because, frankly, I see a lot of things that
7 aren't normal practices, bedding and chickens
8 in coops and some of that, that wouldn't
9 follow with what I see in what we certify now.

10 So procedurally, what happens to
11 this document or changes from here?

12 MS. FULWIDER: Well, we were
13 planning on doing the guidance to go with
14 that. And I know chickens in chicken cages,
15 I mean, that's a normal thing. They don't use
16 bedding. That's understood, and we don't have
17 any language in here that requires that for
18 chickens.

19 Any more questions on these
20 documents, or discussion?

21 MR. FOSTER: Yes, I - to what extent
22 did you kind of assess the affect on the two

1 square foot per bird requirement, and what's
2 that going to do to folks in general?

3 MS. FULWIDER: That's been through
4 public comment several times. And there are
5 many in favor. And it is what consumers
6 expect that we have outdoor access. And most
7 of the organic producers are already providing
8 at least that much.

9 Other discussion?

10 MS. ELLOR: I just wanted to say
11 that I looked it up this morning, and Kathleen
12 Merrigan addressed this Board in November of
13 2007 asking us to do this work. And it's been
14 a long road and through a lot of series of
15 public comments.

16 And we spent countless hours on the
17 phone. And I know, you know, Jeff is sitting
18 here and he did a lot of the foundational work
19 on this issue as well.

20 So, I really think it's a good
21 baseline and we're not saying that - and we're
22 calling it a minimum because we had many

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1 comments that thought we didn't go far enough,
2 and many comments that thought we had gone way
3 too far.

4 MS. FULWIDER: Joe.

5 MR. DICKSON: Yes, to play off of
6 what Tina said, you know, every single value
7 on that chart was the subject of, you know,
8 hours of discussion and conversation within
9 this Committee. And a really important thing
10 to note on the record about those numbers is
11 that they were developed with the expectation
12 that they would be part of an overall system
13 that also included outcome-based measures of
14 animal welfare.

15 And that, you know, for many of us
16 who are comfortable agreeing to those specific
17 densities knowing that, again, they were part
18 of a much more holistic system that would take
19 into account other measures, and we do plan to
20 include those in our fall recommendation.

21 MS. FULWIDER: And that is correct.
22 And a space requirement does not in itself

1 equal good welfare.

2 Any other discussion?

3 (No response.)

4 CHAIR MIEDEMA: Okay. That
5 concludes the deliberations of the Livestock
6 Committee. Next up is the Handling Committee
7 and Chairman Steve DeMuri.

8 MR. DeMURI: Thank you, Tracy.

9 First of all, I just have to
10 comment I think this is my ninth NOSB meeting
11 on the Board, and a few before that. This is
12 the first one I haven't seen Grace at. So,
13 she must be out celebrating still.

14 (Laughter.)

15 MR. DeMURI: We have a number of
16 petitioned materials and Sunset materials to
17 review this week. We have three petitions for
18 attapulgitic, calcium acid pyrophosphate and
19 sodium acid pyrophosphate.

20 We did have a petition to remove
21 silicon dioxide. That is still in our hands.
22 We had it on the agenda originally. And

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1 because of the public comment we received that
2 indicated there were some other uses of
3 silicon dioxide that we needed to be careful
4 of when we made a decision, that we have
5 decided to table that one until the fall.

6 So, we will continue to look at
7 those public comments, listen to the ones that
8 we might get tomorrow, and would ask the
9 industry for additional public comments over
10 the next six months or so, and we'll be ready
11 to make our recommendation on that petition to
12 remove in the fall.

13 Then we go into four Sunset items
14 for this - five, actually, for this meeting.
15 We have enzymes and potassium iodide on
16 205.605(a), and nutrient vitamins and
17 minerals, potassium iodide and tocopherols for
18 205.605(b), followed up by a chlorine
19 materials annotation recommendation.

20 The nutrient vitamins and minerals
21 recommendation that's on the agenda, we are
22 going to pull that for the time being as well.

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1 So, the way we hand materials on
2 the Handling Committee is that we assign a
3 lead person to each material whether it be
4 Sunset or a petition. The first one is
5 attapulgate, and John Foster had that one.

6 So, John, do you want to take us
7 through that petition, please?

8 MR. FOSTER: Sure. Thank you,
9 Steve.

10 The petition was to add attapulgate
11 as a processing aid in the handling of plant
12 and animal oils.

13 I understand it also was petitioned
14 to the Livestock Committee for another use,
15 which we did not consider.

16 We ran through the checklist as
17 described. And, Steve, I maybe should have
18 asked a little, first, how much detail do you
19 want from checklist information as we go
20 through these?

21 MR. DeMURI: I would just hit the
22 highlights and maybe explain why we decided to

1 list it, or recommend to list it or not to
2 list it, and then ask for discussion at the
3 end.

4 MR. FOSTER: Great. Thank you.

5 Attapulгите is a clay material.
6 It's mined in large part, in the southeastern
7 US. It has similar properties - similar
8 properties as bentonite on the National List.

9 It would be used as a processing
10 aid in decoloring, deodorizing or otherwise
11 filtering animal oils or fats.

12 It's a mined material. It is
13 refined using a - what the petitioner put
14 forward and the TR, I believe, confirmed was
15 a non-acid activation.

16 We determined that the impact on
17 human health and environment was - the
18 criteria was satisfied, as was the
19 essentiality availability, and the
20 compatibility and consistency.

21 We did have - so, we determined it
22 to be a non-synthetic material. And it has

1 some overlap with bentonite, which is already
2 on the National List, but not precise overlap.
3 It has some utility because of its molecular
4 structure. It's somewhat more functional in
5 some applications. Also, as I mentioned, the
6 lack of an acid activation requirement was a
7 positive.

8 At the end of the day, the
9 Committee voted. The recommendation was to
10 add attapulgate to the National List,
11 205.605(a), with the annotation allowed as a
12 processing aid in the handling of plant and
13 animal oils, which is consistent with the
14 petition request.

15 The vote was five yes, one no, and
16 one absent. That's all I have to say about
17 that.

18 Any discussion?

19 MS. HEINZE: So, I was the No vote.
20 So, I just thought I'd highlight for folks I
21 voted no, because one of our criteria is
22 essentiality, and it was not clear to me from

1 the petition that we had met that criteria.

2 I've looked at the public comment.
3 I may have missed some. So, correct me. I
4 think we only had one comment on this. So,
5 I'm not sure my position has changed, but
6 certainly we have all day tomorrow for public
7 comment.

8 So, really, that would be useful
9 information, you know. We have a practice on
10 handling, or have in the past when we don't
11 have enough information, to make sure we get
12 that.

13 So, if someone has essentiality
14 information, that would be really useful in
15 making our determination on Friday.

16 MR. DeMURI: Thank you, John.

17 And I'll add by saying that we did
18 take a vote on this material prior to whether
19 we should list it or not, as to whether it was
20 synthetic or nonsynthetic.

21 And it was voted five for
22 synthetic, no - five yes - for synthetic, five

1 yes, zero no's, two absent.

2 So, we deemed it a synthetic
3 material - well, I take that back. Let me
4 backtrack. I'm looking at the wrong paper
5 here. Hang on a second. I apologize.

6 Nobody said anything. Okay. That
7 was a test. It's just the opposite, actually.
8 We voted at six for nonsynthetic, zero no, one
9 absent. So, my apologies. I was looking at
10 the next one.

11 Okay. The next petition material
12 is calcium acid pyrophosphate. And that was
13 one that I reviewed.

14 It was petitioned to the Board to
15 be added to the list 206.506(b), for use as a
16 leavening agent in baked goods.

17 So, it's calcium acid
18 pyrophosphate. It is manufactured via a
19 reaction of phosphoric acid produced from
20 phosphate rock with calcium oxide.

21 There was some discussion in the TR
22 about the possibility of some heavy metal

1 contamination from the mining operations that
2 were used to produce the substance.

3 We didn't believe that the petition
4 provided compelling evidence that the material
5 was essential for organic production.

6 Sodium acid pyrophosphate is
7 already listed for use as a leavening agent in
8 baked goods. The premise of the petition was
9 that this could be an alternative for low-
10 sodium products, possibly.

11 And the petitioner did make some
12 comments back to us after seeing our
13 recommendation trying to explain that a little
14 more.

15 So, I would implore the Board to
16 take a look at those comments. Those are
17 really the only comments that we received from
18 anybody in reaction to - in a negative
19 reaction to our recommendation. Everybody
20 else that commented, agreed with it, and that
21 would be to not list.

22 There are also some other listed

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1 items that can be used as a leavening agent.
2 Those would be calcium phosphates. Those are
3 already listed on the National List. So, we
4 just didn't feel like this material was
5 essential for organic production.

6 So, we took a vote. And, first,
7 for synthetic versus nonsynthetic. And the
8 vote for that was five yes for synthetic, zero
9 no and two absent. And as far as listing, the
10 vote was zero yes, five no's and two absent.

11 So, the Committee recommendation is
12 to not list calcium acid pyrophosphate to the
13 National List for use as a leavening agent.

14 Any questions at this point?

15 (No response.)

16 MR. DeMURI: Okay. As I mentioned,
17 the original agenda showed silicon dioxide was
18 going to be considered today.

19 We're not going to consider that
20 today. So, that will be postponed until the
21 fall.

22 The next item would be sodium acid

1 pyrophosphate or S-A-P-P. And sodium acid
2 pyrophosphate is already listed on the
3 National List, but it's only listed to be used
4 as a leavening agent. The expanded petitioned
5 use was as a sequestrant on cooked and
6 uncooked produce.

7 The TR mentioned that no data was
8 found on the material itself that indicated
9 that it posed any potential negative impact on
10 human health and the environment, which
11 coincided with what the previous Board had
12 found when it was listed years ago.

13 The petitioner did not really
14 provide any compelling evidence that it was
15 necessary or essential for organic handling.

16 The petitioner for this item, was
17 the same as the petitioner for the calcium
18 acid pyrophosphate that was presented a few
19 minutes ago.

20 As a matter of fact, I was a
21 reviewer for this material. I contacted some
22 of the potential users of this, and I could

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1 find no one in the industry that would use it
2 if it was listed.

3 So, based on that information, we
4 took a vote. We voted that it was synthetic.
5 Six yes, zero no, one absent. And as far as
6 a vote for listing, it was zero yes, six no
7 and one absent.

8 So, the Committee recommends that
9 an expanded use for sodium acid pyrophosphate
10 not be made on this petition.

11 Any questions on that one?

12 (No response.)

13 MR. DeMURI: All right. That
14 concludes the petitioned materials, those
15 three. Now, we move into some Sunset 2012
16 items. The first two are for 205.605(a)
17 listings. The first one is for enzymes.

18 Enzymes were originally listed back
19 in 1995. They've been through a couple of
20 Sunset reviews already.

21 There was really no evidence that
22 was brought forward or that we found that

1 anything had really changed with enzymes since
2 they were listed and re-listed a couple of
3 times.

4 There is an annotation for enzymes
5 that was inadvertently left off of the
6 recommendation that we posted on the website
7 and that all of you saw. And that annotation
8 is that they must be derived from edible,
9 nontoxic plants, nonpathogenic fungi, or
10 nonpathogenic bacteria. So, that's an
11 important annotation for enzymes.

12 Enzymes are widely used throughout
13 the food processing industry. There are some
14 nonsynthetic - there are some synthetic
15 chemicals that could be used in place of
16 enzymes, but enzymes are an important tool for
17 organic processors because it gives them some
18 tools to use other than chemicals to enhance
19 some reactions in their plants.

20 For instance, when an apple juice
21 manufacturer is making clarified apple juice,
22 enzymes is an important input as a processing

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1 aid to that process to clarify apple juice, as
2 an example.

3 Many sources of enzymes, hundreds
4 of different kinds of enzymes from a variety
5 of plants and microbes.

6 And in most cases, they are
7 physically extracted. So, it's a fairly
8 simply extraction process.

9 So, the Committee took a vote on
10 re-listing enzymes on the National List on
11 205.605(a). And for those of us that were
12 there, it was a unanimous vote. Five yes,
13 zero no and two absent.

14 Any question on enzymes?

15 Let me mention also there is
16 another listing for enzymes, but it's for
17 animal enzymes. It's a separate listing.

18 This one is only for the listing on
19 205.605(a) that just says enzymes with the
20 annotation behind it. This does not include
21 the animal enzymes.

22 Okay. The next item for Sunset is

1 another 205.605(a) item. That's potassium
2 iodide. And Joe Dickson was the lead on that
3 substance.

4 MR. DICKSON: Just as an overall
5 clarifying comment, there are actually two
6 listings for potassium iodide. One on 605(a)
7 and one on 605(b). So, we have two separate
8 recommendations here.

9 On the first listing on 605(a) --
10 and the reason for this listing is that there
11 are natural sources of potassium iodide that
12 can be derived from seaweeds and from brines.
13 Although our research show that that isn't a
14 very common practice, it's theoretically
15 possible.

16 Potassium iodide is used as a
17 source of iodine and table salt and in other
18 fortification contexts where iodine is called
19 for.

20 It was originally added to the
21 National List in 1995. Our review of that
22 original Technical Review and discussion as a

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1 Committee found no substantive changes to the
2 way that it is used or the information in that
3 original report.

4 We did request a Technical Report
5 last year to help us understand the nature of
6 the two separate listings. That, again, with
7 regard to the 605(a) listing, didn't reveal
8 any new information that would be material to
9 its listing here.

10 The Committee voted unanimously
11 with six in favor of re-listing potassium
12 iodide to 605(a), no votes against, and one
13 member absent.

14 MR. DeMURI: Thank you, Joe.

15 Any questions for Joe on the 605(a)
16 listing of potassium iodide?

17 (No response.)

18 MR. DeMURI: Okay. Very good.
19 We'll move into 205.605(b) Sunset materials.
20 The first one is nutrient vitamins and
21 nutrient minerals.

22 You've all heard the iterations

1 that this has gone through the last month or
2 so. We had it on the list - on the agenda.
3 We took it off because of public comment
4 received.

5 We got word from the Program that
6 that was going to be an issue from a timing
7 perspective with the Sunset process. So, we
8 put it back on for this meeting.

9 So, I apologize to everybody who
10 had to make flight arrangements and comments,
11 and there was a lot of confusion around that.

12 So, we on the Committee apologize
13 for that, but we feel like it's the right
14 thing to do right now to consider this for re-
15 listing. And then come back in the fall with
16 probably a different take on it.

17 So, Tracy, you handled this one for
18 us as the lead person. So, Tracy, I'll hand
19 over the discussion to you.

20 CHAIR MIEDEMA: Thank you, Steve.
21 And Vice-Chair Joe Dickson, I'll hand the
22 gavel over to you.

1 Thanks for the synopsis, Steve, of
2 this winding path that nutrient vitamins and
3 minerals has been on.

4 To go back just a little bit
5 further on the recap, at the April 2010
6 meeting we first presented the 605(b) item for
7 re-listing. And we recommended the re-listing
8 of the material as is.

9 And at that meeting, the Program
10 requested that we reconsider/reevaluate our
11 recommendation essentially to pull it, and we
12 did.

13 We were also advised that day from
14 Miles - from - sorry - Miles McEvoy, our
15 deputy administrator, he said this is a big
16 deal. This is going to take a lot of your
17 time to take a look at this. It may even
18 require additional meetings to take a look at
19 this. There's a lot of products that include
20 substances beyond what is on 104.20.

21 So, we really did go into this
22 journey, if you will, with the expectation

1 that we had several meetings to work on it.

2 We have been proceeding along
3 gathering public comment, and we have - this
4 Board has never received more public comment
5 on a single material or issue than it did in
6 advance of this meeting on this one issue.

7 So many that we, as a Board, just
8 received the summary of the comments yesterday
9 morning.

10 So needless to say, we have not
11 digested your comments, and we absolutely must
12 as part of this process of doing the right
13 thing by you all and by the material.

14 However, we were implored yesterday
15 in an extraordinary comment for, I think, four
16 minutes by our Deputy Secretary of
17 Agriculture, that we must vote at this
18 meeting.

19 So, vote we must. Vote we will.
20 And now, the question becomes vote on what?

21 We were asked by the Program, not
22 to vote on the material with the current

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1 annotation. We proposed an annotation that
2 has had a very mixed bag of responses, like I
3 said, that we have not even began to
4 incorporate into our thinking.

5 And we have been assured by the
6 Program, that business as usual will proceed
7 so long as we vote at this meeting.

8 I think it sounds very important
9 that there's a lot of hesitancy and
10 nervousness out there in the industry that we
11 could really flub up essential vitamins and
12 minerals if we don't vote at this meeting.

13 So, in playing through the scenario
14 that the NOP proposed, this material would get
15 bundled on the Sunset docket for 2012 with, I
16 believe it was - was it over 200 materials?
17 212? And it would start writing off into the
18 land or rulemaking.

19 And comments would begin to - I
20 guess rulemaking would be promulgated.
21 Comments would be coming in.

22 As a compromise, what I have spoken

1 with, at this point, five of my fellow
2 committee members about -- is a compromise.

3 You all are seeing this happen in
4 very much realtime. You saw the information
5 from the Deputy Secretary yesterday at the
6 same, exact time we did.

7 So, we are - we're working this out
8 in realtime. And what we do not want to get
9 in a -- find ourselves in a situation is that
10 next fall we come back with the annotation
11 that makes sense based on the feedback we
12 receive from you all, and we have dueling
13 annotations out there. One that we have
14 recommended at this meeting, and one that we
15 recommend at the next meeting, that are both
16 out there soliciting public comment.

17 So, as a compromise, I am
18 suggesting, and five of us of seven of us have
19 agreed that a sound course would be to re-list
20 the material with no annotation at this
21 meeting.

22 It's a placeholder, it's clean, it

1 doesn't change anything because the CFR stands
2 as it is until October 21st. And the Program
3 has assured us that we have plenty of time to
4 create the annotation that makes the most
5 sense.

6 So in this way, we protect business
7 as usual the Deputy Secretary Merrigan has
8 said we needed to do, we keep our placeholder
9 - Katrina, I know you've referenced a need for
10 that placeholder - we honor the intent and the
11 spirit of what the NOP first sent us on this
12 journey, which is we've got a flawed
13 annotation and we don't, as a committee, plant
14 a flag by recommending a flawed annotation,
15 and we're able to take a measured, prudent
16 approach, read all 3,000 or so pages, digest
17 that and come back with an annotation in the
18 fall that makes the most sense.

19 MR. DeMURI: Thank you, Tracy.

20 So, to follow up on that as a
21 Committee, we have to meet again to put that
22 recommendation on paper. We'll have that for

1 you on Friday with a vote, but Tracy did a
2 good job of explaining to you what we're
3 thinking right now.

4 So, if anybody has any questions,
5 we'll entertain those at this point.

6 Nick.

7 MR. MARAVELL: Yes, I was just
8 wondering did we get a reaction out of the
9 Program on this, Tracy?

10 CHAIR MIEDEMA: It has not been
11 solicited. We have heard from the Program
12 quite a bit over the last few weeks. So, at
13 some point we will have to, on our own as a
14 Committee, pick a lane.

15 MR. MARAVELL: I'm just - I just
16 would like to know can I solicit that as a -
17 I just want to know what the Program's
18 reaction is just so that, you know, I get an
19 idea how this is going to play out because
20 supposedly we're doing this to meet the
21 requirements of the Program, correct?

22 CHAIR MIEDEMA: We're voting at this

1 meeting to meet the requirements of the
2 Program.

3 MR. MARAVELL: The timing
4 requirements is what I'm talking about, yes.
5 I wasn't talking about substance. I was just
6 talking about the timing requirements, yes.

7 So, I would like to get a reaction
8 from the Program if that's okay.

9 MR. McEVOY: Yes, this is a
10 complicated issue. We did bring this - you
11 did have a recommendation in April of 2010 to
12 re-list nutrient vitamins and minerals. We
13 provided some new information and asked you to
14 withdraw that, and to re-look at that to see
15 if there was some other way to go.

16 We were expecting to get
17 information, clarification information from
18 FDA in a more timely fashion. That has only
19 been provided very recently. So, the timing
20 has been very problematical throughout this
21 process and we need to move forward with a
22 Sunset 2012 proposed rule.

1 In order to not disrupt the trade,
2 we need you to make a determination on
3 nutrient vitamins and minerals at this
4 meeting. And that in terms of the proposal to
5 re-list without the adaptation, I think that
6 sounds like a reasonable way to proceed
7 recognizing - it kind of recognizes that there
8 is a problem with the current annotation.

9 You have a lot of public comment to
10 get through. Gives you the time to then
11 review that during the summer and come back to
12 this issue in the fall that - but also gives
13 the Program the information that we need to
14 continue to move forward with what needs to be
15 done so that this can move forward in a more
16 orderly fashion.

17 So, sounds good to us.

18 MR. DeMURI: Thank you, Miles.

19 Any other questions?

20 Jay.

21 MR. FELDMAN: To clarify, is this no
22 annotation, or no annotation change?

1 MR. DeMURI: We would drop the
2 current annotation that is on the listing as
3 it presently stands.

4 Joe.

5 MR. DICKSON: Just for the clarity
6 of the record, would you or Tracy just read
7 what that listing would say without the
8 annotation?

9 CHAIR MIEDEMA: It would be
10 annotation change in that the striking of the
11 annotation would be in and of itself a change.

12 So, it would simply read "nutrient
13 vitamins and minerals."

14 MR. DICKSON: Katrina.

15 MS. HEINZE: Certainly this is
16 something we should handle in handling, but I
17 thought we were re-listing as is. So, that's
18 okay. I'm just confused, but maybe we could
19 talk about it when we finalize our
20 recommendation.

21 MR. DeMURI: We'll talk about it
22 some more, but it was kind of an ad hoc

1 committee meeting that we did - not a
2 committee meeting, but a poll, we should say.

3 So, we will talk about it in
4 committee. That's just one of the options.

5 Jay.

6 MR. FELDMAN: I think that would
7 constitute an expansion of use which we can't
8 do under Sunset, I believe.

9 MS. HEINZE: Give the Committee a
10 chance to talk about it.

11 MR. DeMURI: Good point, and we'll
12 take that into consideration. Thank you.

13 CHAIR MIEDEMA: Yes, the thinking
14 was that this is a clarification based on the
15 Program asking us for clarification.

16 So, the big picture here is, I
17 guess, laddering us to the fall and an
18 annotation that makes sense, and not setting
19 us up for dueling annotations that are out
20 there both soliciting public comment.

21 MR. DeMURI: I wouldn't mind getting
22 the Program's input on that on Jay's comment,

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1 if you guys would care to comment at this
2 point.

3 MR. McEVOY: Yes, that's something
4 that we need to look at of whether or not it
5 would be an expansion of the list or not.

6 Give us a little bit of time to
7 think that through and get back to you on
8 that.

9 MR. DeMURI: Okay. We'll give you
10 24 hours.

11 (Laughter.)

12 MR. DeMURI: Any other questions on
13 Sunset of nutrient vitamins and nutrient
14 minerals?

15 Okay. Thank you, Tracy.

16 The next Sunset is another
17 205.605(b) item and it's again, potassium
18 iodide. Joe Dickson.

19 MR. DICKSON: Thank you. So, this
20 is the other listing for potassium iodide.
21 This is the listing on 605(b) that sort of
22 raised a red flag and caused us to ask the

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1 question last year why are there two listings
2 and, you know, let's dig a little deeper.

3 The listing on 605(b) is
4 essentially redundant because potassium iodide
5 being the primary form of iodide used for
6 supplementation as iodine, is already covered
7 under the listing for nutrient vitamins and
8 minerals with or without the annotation.

9 So, this listing which lists it
10 separately and restricts its use to made with
11 organic products for the synthetic form of
12 potassium iodide, seemed to the Committee to
13 be completely redundant as it's already
14 allowed under another listing.

15 So, in the interest of the tidiness
16 of the list and this sort of discrepancy, we
17 voted to remove it or allow it to Sunset off
18 of 205.605(b) -- I'm sorry. We voted to re-
19 list it under our procedures, and the vote was
20 zero in favor of re-listing, six not in favor
21 of re-listing, with one person absent.

22 Any questions on that?

1 Katrina.

2 MS. HEINZE: As I was looking
3 through public comment, we received one public
4 comment expressing concern that iodide is an
5 important sanitizer. And I don't know which
6 listing that has to be under.

7 And I was wondering - I don't - I
8 just don't remember talking about that in
9 Committee. So, I don't know which listing we
10 need to keep that.

11 MR. DICKSON: I'd like us to review
12 that comment and add that to our Handling
13 discussion.

14 CHAIR MIEDEMA: Any more questions?

15 (No response.)

16 MR. DeMURI: Okay. Hearing none,
17 we'll go to the next item. Another Sunset for
18 205.605(b) is tocopherols.

19 These were originally listed back
20 in '95. They've been through a couple of
21 Sunset reviews now. This is the third one.

22 And we have identified on

1 additional or new information that wasn't
2 brought forth in those previous reviews.

3 Tocopherols has an annotation which
4 is derived from vegetable oil when rosemary
5 extracts are not a suitable alternative.

6 Tocopherols are used as an
7 antioxidant, as is rosemary extracts. And
8 sometimes rosemary extracts just aren't
9 suitable for certain uses. And also, rosemary
10 extracts are not all that easy to find at
11 times either.

12 So, tocopherols were put on the
13 list as an alternative when the rosemary
14 extracts were not a suitable, viable option.

15 They're made through a vacuum
16 distillation of edible vegetable oil products
17 used as a source of Vitamin E at times, and
18 also as an antioxidant and a pretty wide range
19 of processed organic products.

20 So, the Committee took a vote on
21 re-listing this material and it did pass, five
22 yes, zero no, and two absent, to re-list on

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1 205.605(b) .

2 Any questions?

3 (No response.)

4 MR. DeMURI: Okay. Thank you.

5 The next agenda item is a
6 recommendation on nutrient vitamins and
7 minerals. We obviously have pulled that one
8 for the time being. We'll come back in the
9 fall with something on that probably tied up
10 with the Sunset process.

11 The next item on the agenda that we
12 will discuss is chlorine materials annotation
13 recommendation. And John Foster will handle
14 that one for us.

15 MR. FOSTER: Thank you, Steve.
16 After all the chlorine discussions, I'm
17 feeling quite sanitized, actually.

18 (Laughter.)

19 MR. FOSTER: So, in a nutshell, this
20 is just a standard review, again, and similar
21 to crops.

22 The general direction was to try

1 and align the annotation more closely with the
2 NOP's draft guidance that came out fall or
3 winter, I believe, to read - this is actually
4 a fairly long annotation.

5 I don't believe it's any more
6 restrictive. It is - it will have the same
7 net effect, or at least that as the intent.
8 It will be more of a codification of what's
9 already present in the industry.

10 And a lot of operators have been
11 looking for some regulatory support wherein
12 it's been - that support has been somewhat
13 fluid since the start of the NOP.

14 So, the annotation recommends the
15 following: Chlorine materials, open
16 parentheses, calcium hypochlorite, chlorine
17 dioxide and sodium hypochlorite, end
18 parentheses, may be used up to maximum labeled
19 rates for disinfecting and sanitizing food
20 contact surfaces. Chlorine materials in water
21 used in direct crop or food contact is
22 permitted at levels approved by FDA or EPA for

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1 such purpose provided the use is followed by
2 rinse with potable water that does not exceed
3 the maximum residual disinfectant limit for
4 the chlorine material under the Safe Drinking
5 Water Act. Chlorine in water used as an
6 ingredient in organic food handling should not
7 exceed the maximum residual disinfectant limit
8 for the chlorine material under the Safe
9 Drinking Water Act.

10 The vote on this was six yes, and
11 zero no, and one absent. I would also say
12 that we got some very good public comment that
13 spoke to perhaps a revision to the second
14 paragraph in there that instead of requiring
15 the language of a rinse to speak to an
16 intervening act to accommodate other means of
17 clearing out processing equipment other than
18 water rinse, which is appropriate.

19 And I suspect in our Handling
20 Committee meeting, we will bring that up, as
21 well as, Nick, the use of the word "should"
22 again is replicated there. I suspect we will

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1 handle it the same way as the Crops Committee
2 would.

3 That's it in a nutshell.

4 MR. DeMURI: Thank you, John.

5 Anybody have any questions for John
6 or the Committee?

7 Jay.

8 MR. FELDMAN: John, you said this
9 policy brings us into conformance with the NOP
10 guidance, right?

11 And so can we hear from the Program
12 that it does that?

13 MR. FOSTER: I believe it's draft
14 guidance at this point and I - it's fine with
15 me to hear from the Program.

16 MR. McEVOY: Yes, we published draft
17 guidance last October on the use of chlorine
18 in organic production and handling. And the
19 final guidance will be out relatively shortly
20 that will reflect the draft guidance and
21 incorporate the comments that we received on
22 the draft guidance.

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1 (Laughter.)

2 MR. McEVOY: What was the question?

3 MR. FOSTER: I think we just wanted
4 to hear from the Program. So, I - you done
5 good, I think.

6 MR. FELDMAN: So, Miles, does this
7 language, does it conform with -

8 MR. McEVOY: Yes, it does.

9 MR. FELDMAN: Thank you.

10 MR. DeMURI: Any other questions?
11 Katrina.

12 MS. HEINZE: Okay. I have to
13 apologize before I say this. I had public
14 comments mixed up in my head. So, this was a
15 more appropriate comment during Crops.

16 But in some of our written public
17 comment, we got some comments that supported
18 these changes to annotations for pouring, but
19 wanted corps being changed to match handling.
20 I thought it was handling being changed to
21 match crops.

22 So, totally my mistake, but could

1 you give us a background on why they're
2 different and what needs to match what or why
3 they don't have to match?

4 MR. FOSTER: Yes, but I need to ask
5 you what you mean by "they." Why they are
6 different between crops and handling or
7 between the old versions of crops versus new
8 of crops, old of handling, new of handling?

9 Sorry. I -

10 (Laughter.)

11 MS. HEINZE: The two proposed new
12 annotations matching, are not matching.

13 MR. FOSTER: Yes, I can do that.
14 The context in which chlorine might be used as
15 a sanitizer is a little bit different. And
16 that the context in which chlorine in water
17 would be used on 601, it is very different.
18 So, there's that reason.

19 The other underlying assumption
20 here, the reason they're not closer is that
21 the, as I mentioned in the Crops section this
22 morning, the operating assumption -- and this

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1 could very well have been just my operating
2 assumption. So, if it's wrong, I'll shoulder
3 that - is that post-harvest water use on a
4 farm would be using the chlorine annotation
5 from 605 because of its post-harvest utility.

6 So, it wouldn't need to be the same
7 if that caveat is in play. Does that make
8 sense?

9 MR. DeMURI: Any other questions on
10 the chlorine materials annotation
11 recommendation the Committee is making?

12 (No response.)

13 MR. DeMURI: Okay. That concludes
14 our presentations. We're back on schedule.

15 CHAIR MIEDEMA: Well done, Chairman
16 Steve DeMuri of the Handling Committee.

17 I think we have time to forge ahead
18 and let's move on next to Materials Committee
19 and Chairwoman Katrina Heinze. Thank you.

20 MS. HEINZE: I'd be happy to forge
21 ahead, but we're probably going to take all 45
22 minutes. So, do you want to forge ahead, or

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1 do you want to give people a break since the
2 break is scheduled in the middle of that 45
3 minutes?

4 CHAIR MIEDEMA: I hear the whispered
5 word "break."

6 (Laughter.)

7 CHAIR MIEDEMA: So, we'll break.
8 Let's really try to be back and seated in 15
9 minutes. That gets us at 32 minutes after the
10 hour.

11 (Whereupon, the proceedings went
12 off the record at 2:18 p.m. and resumed at
13 2:36 p.m.)

14 CHAIR MIEDEMA: We're back in
15 session. We have quorum. Next up is the
16 presentation and deliberations of the
17 Materials Committee. Chairwoman Katrina
18 Heinze, please proceed.

19 MS. HEINZE: Thank you very much,
20 Tracy.

21 Lisa is going to bring up a
22 presentation I have, and I would be happy to

1 provide this to Board members. I should have
2 thought of that ahead of time and e-mailed it
3 to you guys, but I wasn't that smart.

4 We have 45 minutes for this topic.
5 I am very grateful to livestock and handling
6 for getting caught up, because I think we're
7 going to use it.

8 So, my plan is I'm going to do an
9 overview of kind of the history on the topic,
10 our grounding recommendation, and then I'll
11 discuss the specific document up for review at
12 this meeting.

13 And the reason for that is this is
14 a really, really complicated topic that has a
15 ton of history. And I know when I was new on
16 the Board and I was asked to work on this, my
17 head spun for about two years.

18 So, I want to make sure that I help
19 those of you who are new, to get a little bit
20 grounded.

21 So, before I get to the
22 presentation, at our fall meeting, we said -

1 or I said that I had hoped that the Materials
2 Committee would have worksheets on
3 classification ready for this meeting.

4 Despite a lot of effort by the
5 Materials Committee and a lot of discussion,
6 we were not able to do so. So, I apologize.

7 I know that the public has been
8 very anxious for those worksheets, and I am
9 committed to continuing our work and really do
10 hope that we will have something by the fall.
11 And I know the Committee is very committed to
12 that.

13 There were several topics that were
14 sticking points, but really the big sticking
15 point was how to approach determining if a
16 significant level of a synthetic input
17 remained in the material being reviewed for
18 classification.

19 And that sticking point took all of
20 our discussion time. So, really we ran out of
21 time.

22 But the good news is, is after all

1 that discussion, we were able to reach
2 proposed guidance on that topic. And that's
3 what we're presenting today.

4 So, classification has been a
5 perennial topic for the organic movement and
6 this Board and has varying perspectives.

7 You're going to hear me say this a
8 number of times, but all perspectives are very
9 valid.

10 You can go - I'm still on Page 1.
11 So, I am very grateful for the folks on the
12 Materials Committee for your continued
13 engagement and being willing to bring those
14 different perspectives to the table while we
15 have this discussion. We have had vigorous,
16 but very gracious debates, and I appreciate
17 that.

18 Okay. So, classification of
19 materials. There is a lot of detail on all
20 the specific history in the November 2009
21 recommendation. But the crux of it is that as
22 an organic group, we agree on classification

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1 for the bulk of all materials.

2 There's a small number, our current
3 poster child is corn steep liquor, but there
4 have been others over even my brief time on
5 the Board, where we could not get to
6 agreement. And so, the public has asked the
7 NOSB to provide greater clarity.

8 There have been years of efforts
9 kind of starting in 2005, moving through 2006,
10 going on and on and on and culminating in the
11 November 2009 recommendation.

12 Okay. So, next slide. So, I think
13 that captures it, but - so, this presentation
14 is really highlights. It's not every slide,
15 but it's highlights from the presentation I
16 did in November 2009.

17 So, the reason we're doing
18 classification is because it really matters,
19 right?

20 It tells us whether things are
21 allowed or prohibited in our various
22 production and handling and because of these

1 inconsistencies.

2 Next slide. So, some thought
3 starters. You've heard me say this before.
4 All perspectives are valid and there's no
5 decision on classification that's going to
6 keep it - have everyone's agreement. And
7 there hasn't been since time immemorial.

8 Our job on the Board is to make the
9 really tough decision and move forward,
10 because our public has asked us to do that.

11 That was true in November 2009
12 after two years of industry and stakeholder
13 debate, and it is true today.

14 Okay. Next slide. So, this is the
15 slide I showed that November. This is really
16 to highlight the work of the Material Working
17 Group.

18 So, I think in 2007, the Materials
19 Committee had proposed a recommendation on
20 classification. It was wrong. The public
21 told us it was wrong and we needed help.

22 And so Kim Dietz and Gwendolyn Ward

1 came together. They pulled together a broad
2 group of stakeholders. And for a year and a
3 half, those folks met every week and they
4 debated, and they debated, and they debated
5 and they brought examples and they went
6 through examples, and they came up with
7 recommendations that we could base our work
8 on.

9 So, all our work has been done
10 based on that group and they will deserve
11 thanks for many years for their commitment to
12 that.

13 Okay. Next slide. Okay. So, what
14 we recommended. The meat of the matter.

15 Okay. Next slide. So, we had
16 three guiding principles, and thank you, Jay,
17 for going through those. I will just
18 highlight them again. Source and process both
19 count. Because of that, the same material can
20 be classified as apicultural non-synthetic or
21 synthetic, depending on source and process.

22 So, there are examples in the

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1 November 2009 document that show a certain
2 material, call it Material A, that is both
3 synthetic and non-synthetic. Our example
4 today was potassium iodide, right, where it
5 can be both.

6 And then finally if a material is
7 processed such that it is classified as a
8 synthetic, then the material is synthetic
9 regardless of source. And this really had to
10 do with agriculturally-sourced materials that
11 had been processed to the point where they
12 were synthetic.

13 And there had been quite a bit of
14 discussion about, well, should we have
15 apicultural synthetics or what did that mean?
16 So, this was the Board saying, no, they're
17 synthetic.

18 Okay. Next slide. So, and this is
19 a really important slide. So, I'm going to
20 spend some time on it.

21 We considered two perspectives in
22 November 2009. You'll see that mirrored by

1 the recommendation that we have today.

2 So, partly for consistency and
3 partly because this is a topic that you could
4 spend a lot of time on, I am just going to
5 read exactly what I said in the transcript
6 from November 2009.

7 So, in preparing for this, I just
8 went and copied and pasted what I said, on
9 this slide. And I'm doing that because I
10 don't want folks to think that we haven't had
11 these conversations and that both of these
12 perspectives have not been perennial
13 perspectives.

14 So, here we are a year and a half
15 later. We still have these, you know, these
16 just different ways of looking at what we do.

17 I'm also reading from it because
18 this is a complicated topic and - anyway, I'm
19 going to read.

20 "Okay. So, let me explain our
21 rationales." I'm explaining the majority
22 recommendation, which is the information on

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1 the left side - before I do that, let me
2 explain what it is.

3 So, the recommendation was if used
4 as synthetic in a process, but there is no
5 chemical change and the synthetic is not
6 present in the final material at a significant
7 level - so, remember that. That's why we're
8 here having this conversation - then the
9 resulting material is not synthetic.

10 That recommendation maintains what
11 has been the current practice in the industry,
12 the majority felt it was least disruptive, and
13 it was consistent with the Material Working
14 Group recommendation.

15 The other perspective is that use
16 of a synthetic not on the National List of
17 approved synthetics automatically results in
18 the material being classified as synthetic.

19 So, now let me read. "So, let me
20 explain the Committee's rationale a little
21 bit.

22 We went with this recommendation

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1 for several reasons. One, it's the
2 recommendation most closely aligned with
3 what's been happening in the industry today,
4 and has been pretty much since the beginning.

5 If you look back at early Boards,
6 this is how they made decisions about
7 synthetic or non-synthetic starting around
8 1995, and is very consistent with how
9 decisions had been made in the industry.

10 It maintains a status quo. So,
11 it's the least destructive to the list, both
12 to the list and to the practices. Because if
13 you'll remember, most classification decisions
14 are not made by the NOSB and they don't show
15 up on the list. They happen every day in
16 crops and livestock.

17 When someone is looking at whether
18 a material is nonsynthetic and can be used in
19 crops or livestock, this recommendation
20 matches what's been happening in those
21 decisions.

22 But we - okay. But we do have a

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1 minority opinion, and I want to highlight it
2 because it reflects a lot of discussion that
3 happened at the Material Working Group, and a
4 lot of discussion that happened in the
5 Committee. And I want to make sure the Board
6 has time to discuss it as well.

7 The minority opinion is that if a
8 synthetic is used, then the material should be
9 classified as synthetic, period. And, really,
10 the argument for this is transparency.

11 The minority opinion approach to
12 classification is black and white. It's very
13 clear to consumers.

14 We are not going to have a lot of
15 disagreement if you go with that minority
16 opinion, but it has a really significant
17 impact.

18 There would be a lot of materials
19 that would be reclassified that are in use
20 today in crops and livestock, and it would be
21 reclassified from nonsynthetic to synthetic.

22 So, at the end of the day while

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1 something this clear is very attractive, the
2 majority of the Committee at the time, and
3 subsequently the Board, did not feel that the
4 minority opinion was practical and it would
5 reverse years of practice in our industry.

6 Okay. So, that's what I said in
7 November 2009. So, we had a lot of discussion
8 on the Board at that time.

9 I would strongly encourage folks,
10 especially folks who weren't there during
11 those discussions, go back and read the
12 transcripts. Each of you will individually
13 have a connection to either the recommendation
14 or the minority opinion. And you need to
15 understand that, and you need to understand
16 the debate to inform your opinion.

17 So, after all that, the vote for
18 the final recommendation in the - at the time,
19 it was a joint Handling/Material Committee
20 committee - was five yes, one no, one
21 abstained, one absent. And then this
22 recommendation passed the full Board with 12

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1 yes, one no, and two absent.

2 So, I gave you a friendly nudge to
3 read the transcripts. And I would - next
4 slide. Okay. So, that recommendation came
5 with a number of definitions. Can't see it
6 real good on this slide, but the ones in bold
7 italicized are recommended additions to the
8 definitions in the final rule. So, take a
9 look at those.

10 Next slide. And then we had some
11 discussion about what this means in the real
12 world. So, what it means is that extraction
13 with a synthetic not on the National List --
14 doesn't mean a material's classified as
15 synthetic unless there's chemical change or
16 the synthetic remains in the final material at
17 a significant level. We'll be back to talk
18 about that. Extraction was broadly defined to
19 include mechanical physical separation in
20 addition to solvent extraction, chemical
21 change - so, if chemical change happens, it
22 would not necessarily include - oh, sorry.

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1 Chemical change would not necessarily include
2 processes like ion exchange or pH adjustment
3 if the final material is not a different
4 substance from the initial substance, and
5 significant levels should be determined with
6 reference to the applicable regulatory limits
7 in addition to technical and functional
8 affects. So, that's what we were looking at,
9 at the time, for significant.

10 Next slide. And then we talked
11 about formulated products. So, for example,
12 a vitamin for livestock - I'm making this up.
13 Remember, I'm not a crops or livestock person.
14 A vitamin for livestock that had some flow
15 agent in it, if that flow agent is a
16 synthetic, it's obviously there at a
17 significant level -- that makes the resulting
18 combo synthetic, is kind of what this slide
19 means.

20 Okay. Next. So, some other things
21 just for the new folks who weren't there, that
22 you should know that were in the

1 recommendation. They're not material for
2 today. The recommendation also includes
3 discussion of agricultural and
4 nonagricultural. So, in the fall when we're
5 back to talk about our worksheets, this is
6 going to be important.

7 Next slide. There was also quite
8 a bit of discussion of products of naturally-
9 occurring biological processes. At the time,
10 the material of interest was yeast and where
11 did it belong and could we make it
12 commercially - require commercial
13 availability. The recommendation really kind
14 of defers discussion of these because they're
15 so complicated.

16 Okay. Next slide. And then we had
17 some NOSB practices that we recommended.
18 Specifically, two votes on materials. So,
19 that's where the voting for classification and
20 then voting for allowance came up.

21 And then reminding the Board to say
22 we might need to use better annotations for

1 some of these to really focus on source and
2 process.

3 And then reminding the Board that
4 we really had to get technical and really dig
5 into these materials, because sometimes this
6 is really complicated.

7 Okay. Next slide. And then I
8 reviewed -- we had received quite a bit of
9 public comment at that meeting. So, I had a
10 slide that went through all the public
11 comment. There was general support. There
12 was a concern about scope. I highlight that
13 because this question of what about a material
14 that is 95 percent organic agricultural inputs
15 and has five percent things on 605? Is it
16 synthetic or is it nonsynthetic? How does
17 that happen? This question led to our April
18 2010 addendum, which I'm also - is up for vote
19 today.

20 Okay. Next slide. And then we had
21 some next steps. The key one here was the
22 guidance document, which is these worksheets,

1 which we're still trying to get to a year and
2 a half later.

3 Okay. Next slide. Okay. So,
4 thank you for indulging me in that history.
5 Please, please, please go read that
6 recommendation. I know it's 18 pages. I know
7 it's a long read. For those of you who this
8 is your first meeting, you're going to need it
9 for the next five years. So, it's a
10 worthwhile investment.

11 So, turning to this meeting's
12 proposals, because I know that - I've been
13 working on this for a long time. I'm sure
14 it's much more interesting for me than it is
15 for you. We have two voting items for our
16 meeting. Lisa, if you can go down to the
17 proposed - the proposed action?

18 So, remember the 95 percent
19 agricultural - organic agricultural inputs and
20 the five percent - it's Page 1, Lisa. That
21 was a topic of great discomfort, I would say,
22 in the public comment in November 2009.

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1 So, the Committee went back and
2 proposed an addendum to the definition of
3 chemical change. So, you can see it in the
4 recommendation. November 2009, chemical
5 change was one sentence: an occurrence whereby
6 the identity of a substance is modified such
7 that the resulting substance possesses a
8 different distinct identity. And then says,
9 see related definition of "substance."

10 To try to address this 95 percent
11 product, the Committee recommended a second
12 sentence which I'm not going to read. There
13 was a lot of discussion at that meeting. At
14 the time, our counsel from NOP, it was right
15 when Miles was coming, our counsel had been
16 that everything we did on classification had
17 to go into the final rule. So, this idea of
18 having guidance and working on it hadn't
19 really come into being.

20 So, after - oh. So, after April
21 2010 where this second sentence passed, 12
22 yes, two no, one absent, the Program came back

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1 and said, we don't like that. So, did a bunch
2 of the public.

3 So, the Committee has gone back and
4 what we're proposing for this meeting, is that
5 we rescind the second sentence.

6 We think we overstepped. We think
7 we can handle it in guidance. We are much
8 happier with that approach. I think that's
9 the feedback we've gotten from the Program.
10 So, we want to pull it back. We need to do
11 that, because it was a proposed
12 recommendation.

13 So, we want to send a clear signal
14 to the Program that we overstepped, we think
15 we can handle this 95 percent through
16 guidance. Okay. So, that's the first thing
17 we're going to vote on.

18 Then if - I don't think you have to
19 pull it up. Okay. Then the second thing
20 we're voting on is proposed guidance really to
21 address this idea of what is a significant
22 amount or level of synthetic input remaining

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1 in a material to be classified. So, you saw
2 when I went through it, that word
3 "significant" comes up a lot.

4 We have - we looked at two
5 approaches. We talked about them for a long
6 time. And these perspectives really mirror
7 the minority and majority perspectives that
8 were the subject of so much discussion at the
9 November 2009 meeting.

10 One approach that we considered --
11 this is a minority approach -- but one
12 approach we considered would evaluate any
13 known level of a synthetic substance in the
14 final material or in the environment as a
15 result of the substance's manufacture, use and
16 disposal as significant or as a significant
17 level.

18 Proponents of this approach suggest
19 that consumer trust is paramount. So, it gets
20 back to the transparency. And we need
21 assurance that organically labeled products
22 meet a consistent standard in compliance with

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1 the statutory standard on synthetic agents and
2 their allowance.

3 They go on to say that standard of
4 review really requires that we look at harm of
5 every synthetic substance, regardless of
6 level.

7 So, under this approach, all
8 synthetic inputs or residues have to be
9 examined. So, that is very consistent with
10 the original minority opinion.

11 The second approach we considered,
12 and which ultimately is the recommendation
13 that you'll be voting on, is that a
14 significant level of a synthetic substance in
15 the final material means a level exceeding any
16 applicable regulatory limits, where in effect
17 for the material being classified, and a level
18 without any technical and functional effects
19 in the final material.

20 So, this is an evolution of the
21 Material Working Group recommendation.
22 Proponents of this approach believe that it's

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1 more consistent with past NOSB practice and
2 precedent, is consistent with the Material
3 Working Group recommendation and really
4 reflects the bulk of public comment we've
5 gotten over the years on this topic.

6 Additionally, the majority of the
7 Materials Committee was really concerned with
8 using an approach of any known level, knowing
9 that technology allows any known level to
10 change smaller and smaller over time.

11 We did have discussion that any
12 applicable regulatory limits, that a certain
13 material may or may not have them. And so in
14 that case, our guidance would be that
15 technical and functional effects of any
16 remaining synthetic would need to be
17 evaluated.

18 Okay. So, as a final thought, this
19 guidance is intended to apply only in cases
20 where a synthetic input is removed from the
21 final material with the intention of fully
22 removing the synthetic input, but where

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1 complete removal is not possible.

2 So, this doesn't mean we added a
3 synthetic and it's going to stick around and
4 so then you look at regulatory limit. It's
5 really a case where it's intended not to be
6 there, but, you know, the reality is you can
7 always measure something at some level.

8 So, this is, for example,
9 extraction of a natural with a synthetic
10 solvent.

11 The Committee voted for the second
12 approach as proposed guidance with a vote of
13 four yes, two no.

14 We have received public comment on
15 both of these voting items on the -- pulling
16 back the second sentence of chemical change,
17 that passed the Committee, six yes, zero no.
18 All public comment supported it.

19 For this proposed guidance on the
20 significant level approach, we had a number of
21 public comment with the minority opinion
22 supported by a number of comments from

1 consumer groups and consumer comments. And
2 the majority supported by several certifiers
3 and folks who were really concerned with the
4 disruption that would come from going with the
5 minority opinion.

6 So, finally, one last thought, and
7 then you can ask questions and debate and
8 whatever. We wanted to provide an update. In
9 the midst of all this, we had a lot of
10 discussion about classification versus
11 allowed.

12 So, just a reminder that
13 classification is a separate process from
14 allowed or prohibited. All right. So, just
15 -- this is really a critical distinction. So,
16 a material manufactured with a synthetic may
17 be classified as nonsynthetic. However, we
18 have a further obligation to determine whether
19 that material is consistent with organic
20 practices.

21 So, in the review for
22 classification that a committee should

1 determine -- oh, they may determine that a
2 material is nonsynthetic, but it should be
3 prohibited, and we have an obligation to act
4 on that.

5 So, that is the Committee's
6 recommendations. So, one is just a reminder,
7 and then we have the two voting items; one to
8 rescind chemical change, and the proposed
9 guidance on an approach to significant level.

10 What I would suggest is that we
11 handle chemical change first, and then move to
12 the approach to significant level.

13 So, any questions on chemical
14 change?

15 (No response.)

16 MS. HEINZE: Okay. It doesn't look
17 like we have any. So, moving on to the
18 approach for - approach to significant level,
19 any questions or discussion on that?

20 Yes, Nick.

21 MR. MARAVELL: Yes, this is just to
22 show my ignorance, because this is going to be

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1 with me for quite a while, my ignorance.

2 In a level without any technical
3 and functional effects in the final material.
4 I know what functional effects are. I don't
5 know what technical effects are, and are you
6 suggesting that those two need to be met, both
7 technical and functional effects?

8 So, just explain it to me. I
9 really don't know.

10 MS. HEINZE: Okay. I'm going to
11 try.

12 So, a functional effect might be
13 where it has an effect in -- right. So, like
14 a pesticide.

15 A technical effect might be where
16 it's there to -- as a flow agent or a sticking
17 agent or something like that.

18 And, yes, both need to be met. And
19 I'm really glad you asked the question. So,
20 thank you.

21 MR. MARAVELL: Okay. In my mind,
22 they both -- those both sound like functional

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1 effects. So, what I'm wondering is what does
2 technical add to it?

3 You had something else in mind, and
4 I'm just trying to find out what it is.

5 MS. HEINZE: No, I'm really glad.
6 Ask that -- you're right. You're going to
7 live with this for a long time.

8 We included both. And really when
9 I say "we," the Material Working Group
10 included both because they wanted to cover
11 both of those in case someone chose not to
12 interpret functional as including technical.

13 So, it was to make sure that both
14 were included, right. Because as you all
15 know, we can all choose what a word means, and
16 so they wanted to cover both bases.

17 Other points?

18 Yes, Colehour.

19 MR. BONDERA: I'm going to have a
20 hard time with this question partly because I
21 don't have your presentation to verbalize it
22 correctly.

1 So, I'm wondering if you can go
2 back to about the third one. I'm not sure.
3 I'll call you when you go, because I want to
4 read something from there as my question.

5 If that's the third one, it's not
6 it, it's the one with two side-by-side - is it
7 that one? I think - that is the one I have a
8 question on.

9 And where it says "our
10 recommendation," so I'll just read it from
11 here to ask my question.

12 It says, if the use of a synthetic
13 in a process did not lead to chemical change
14 -- and I am a teeny bit concerned about the
15 word "chemical" there, but that's not my
16 question -- and -- and that word is - and the
17 synthetic was not present in the final
18 material at significant levels, then the
19 resulting material was not synthetic.

20 My question is -- and maybe you
21 just need to help me with a little bit of
22 English grammatical details and then it will

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1 be clear.

2 Both of those things have to be
3 true for the conclusion, is that correct?

4 So, it's not that it did not lead
5 to chemical change, and it's not that it did
6 not do it, it's the "and" word, both of those
7 things have to be in place, is that accurate?

8 MS. HEINZE: You did a remarkably
9 good job asking that question. After your
10 info that you said you weren't going to word
11 it right, that was very good. Yes.

12 So, two things on this. You are
13 interpreting that exactly correctly. Both of
14 those conditions have to be met. And a
15 reminder, this is not what you're voting on
16 today. This is passed the NOSB.

17 What you are voting on today is how
18 we, as a Board, are choosing to move forward
19 on how we approach what is a significant
20 level.

21 Yes, Tracy.

22 CHAIR MIEDEMA: I understand your

1 committee did some work trying to understand
2 the use of the term "significant" in other
3 context of governmental agencies, and
4 particularly at USDA.

5 What all did you find out there?

6 MS. HEINZE: To be honest, not much.
7 This is a word that a lot of people struggle
8 with. We tried to get other approaches. The
9 reason it took so long was we were really not
10 enamored with the Material Working Group
11 because it's a hard definition, but there
12 wasn't -- we couldn't find anything much
13 better.

14 So, after circling and circling, we
15 do think this is the right approach.

16 Nick, I think you had a question.

17 MR. MARAVELL: Yes, on the technical
18 and functional effects in the final material,
19 sometimes you have intended, you know,
20 functional effects, and sometimes you have
21 unintended.

22 So, let's say a petitioner sees no

1 functional effects from any detectable level
2 of a synthetic, but it may have unintentional
3 effects, but the petitioner's not aware of
4 that, let's just say.

5 This would cover both? In other
6 words, if something came to the Committee or
7 to the Board through Technical Review or other
8 that this has an unintentional functional
9 effect, then it would still be considered the
10 residual -- the significant amount does have
11 a functional effect.

12 Am I making any sense?

13 MS. HEINZE: Absolutely. Yes. So,
14 it is -- a couple comments on that.

15 This is technical and functional
16 effects in the use of the material, not in the
17 process of the material. Because clearly this
18 synthetic input had a technical and functional
19 effect in the process, right.

20 So, for example, the example we
21 always come back to is botanical pesticides,
22 which has been my poster child for this.

1 They're hexane-extracted. The hexane is
2 clearly there in the process for a reason, but
3 the Board, in '95, determined those to be
4 nonsynthetic because the hexane was not -- you
5 know, it was removed and then is not present
6 at a significant level in the resulting
7 material, and doesn't have a technical or
8 functional effect in the use of that material.

9 Yes, John.

10 MR. FOSTER: I think this falls
11 under the not for nothing category, but that
12 phrase is common to also the definition of
13 "processing aid" under 205.2 right now. And
14 I don't know to what extent the Materials
15 Working Group used that.

16 But in my mind, that's been helpful
17 in that I'm way more familiar with
18 characterizing processing aids than I am
19 considering the nature of all materials.

20 So, it had -- that has some
21 resonance for me, but only because I have had
22 to apply that in -- for the last 15 years in

1 certification. So, I think part of the hazard
2 with "significant" is that it's, I believe, by
3 definition, a relative term. And that anyone
4 from any different position will not have the
5 same, you know, perception of it, so that
6 we're -- it's always going to be that way.

7 And to draw a line in the sand is
8 -- I think might be a well-intentioned
9 naivete, but -- so as for "significant." But
10 that technical and functional effect in a --
11 I'm grounded in that because -- only because
12 I see it in processing aids.

13 And a de-foaming agent in a vat of
14 fruit juice is used to keep foam from
15 happening while it's being processed. In the
16 bottle after the juice is done, that -- there
17 may be some remnant of that left, but there is
18 neither functional nor technical effect in the
19 bottle.

20 So, I think perhaps it might be
21 useful to also frame that question in terms of
22 when in the chain of events are you trying to

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1 determine the effect.

2 MS. HEINZE: Thank you, John. I had
3 a thought as you were talking, and it is gone
4 now.

5 But, Nick, I did forget as I was --
6 as you were asking your question about the
7 technical and functional effect, and that is
8 why in November 2009 we had that NOSB
9 Practices. And Point Number 3 was we really
10 needed a reminder to the Board that on these
11 really hard classifications, you need good
12 technical expertise, you need good TRs. And,
13 frankly, you need differences of opinion in
14 your technical experts, because these are very
15 difficult issues to flesh out.

16 And now I've remembered what I was
17 going to say in response to John. The other
18 thing is if you look historically in the
19 record at materials that have been difficult
20 to classify, they, no differently than this
21 recommendation, have differences of opinion
22 and that's okay, right?

1 This is as much about philosophical
2 differences as it is science. And so if you
3 look at botanical pesticides, if you look at
4 all of the materials the Material Working
5 Group evaluated, it's not like they get
6 classified unanimously, because of the -- how
7 people think about "significant."

8 Any other questions?

9 (No response.)

10 MS. HEINZE: Well, thank you very
11 much. I really appreciate Tracy's point.
12 This is a topic that has philosophical
13 discussion and debate, and I'm very glad that
14 we had some of that today. And I appreciate
15 the really good questions.

16 And with that, the Materials
17 Committee is done.

18 CHAIR MIEDEMA: Thank you, Materials
19 Chair Katrina Heinze. And we're going to
20 forge ahead again.

21 All right. Next up is Compliance,
22 Accreditation and Certification Committee

1 deliberations. Joe Dickson is the chair.

2 Lisa, you had a question?

3 MS. AHRAMJIAN: Sorry. This will
4 just take a sec. I had several people who
5 were interested in seeing the Livestock
6 Committee's documents. So, those are now
7 posted at regulations.gov.

8 So, if you want to write down the
9 number so that you can search for it later,
10 I'll give you a second to grab a pen, it's
11 ams-nop-11-0014-3469.

12 So, 3469 is the comment number.
13 Thank you.

14 MR. DICKSON: Thank you, Lisa.

15 The Compliance, Accreditation and
16 Certification Committee only has one item on
17 its agenda, and that is a discussion document
18 that will not be voted on at this meeting.

19 That discussion document is
20 entitled The Evaluations of Materials Review
21 Organizations. And because it's such an
22 expansive topic with so many stakeholders and

1 so much potential impact on the industry, we
2 decided as a committee it would be best to
3 sort of divide it into a two-part process
4 involving a discussion document designed to
5 elicit various substantial public comment, and
6 then a recommendation in the fall.

7 Some background on this. Back in
8 January, the Board received a memo from the
9 Program which requested our assistance in the
10 development of a clearer policy on the
11 oversight of materials review organizations.

12 A materials review organization,
13 just for the purposes of this discussion, is
14 any entity that assesses specific materials,
15 both generic and brand name, for organic
16 production and their consistency with the
17 regulation.

18 The Organic Materials Review
19 Institute of course is the most well-known of
20 these organizations, but we also have a number
21 of other organizations performing materials
22 review activities, including the Washington

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1 State Department of Agriculture, the
2 California Department of Food and Agriculture,
3 and nearly all certifiers provide some sort of
4 materials review function as a service to
5 their clients in the course of their business.

6 The Committee worked with the
7 Program to identify a list of specific
8 challenges that this recommendation or the
9 future recommendation is designed to address,
10 and I'm just going to read through those very
11 quickly so they're on the record.

12 The first challenge is that all
13 certifying agents review input materials for
14 compliance with the regulations. Most
15 certifying agents do not publish their list of
16 approved materials and inputs, and that can
17 lead to a lack of transparency of what
18 materials have been approved for use in
19 organic production, and also inconsistencies
20 between certifiers as to which materials have
21 been approved.

22 There are numerous organizations

1 that may or may not be certifiers who are
2 evaluating materials for consistency with the
3 regulation.

4 On numerous occasions, a material
5 that is allowed by one certifying agent is
6 prohibited by another. This lack of
7 consistency in what materials are approved
8 creates an uneven regulatory landscape, is
9 unfair to organic producers and handlers and
10 leads to certifier shopping to find the
11 certifying agent that allows more materials.

12 There have been situations where
13 the NOP has disallowed the continued use of
14 materials, and material review organizations
15 continue to list these materials as approved
16 for some time after the Program has identified
17 them as noncompliant.

18 There is no current single
19 universal list of approved substances that is
20 available to producers and handlers. And it
21 is difficult for many producers and handlers
22 to understand what materials are allowed and

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1 which are prohibited in a given context.

2 This regulatory uncertainty causes
3 reluctance by many potential producers and
4 handlers to enter the organic trade because of
5 the lack of stability of the materials list
6 and what they may be able to use at a given
7 time.

8 OMRI and WSDA maintain publically
9 available lists of approved materials. The
10 process for removing substances from these
11 approved materials list is not consistent.
12 There is not a consistent process for material
13 input manufacturers to appeal decisions that
14 are made by these organizations or by
15 certifying agents.

16 Currently, the NOP does not have
17 any direct regulatory authority over materials
18 manufacturers. If materials manufacturers
19 violate the standards or fraudulently
20 represent their product as approved for
21 organic use, the NOP does not have the
22 authority to issue civil penalties or propose

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1 adverse actions.

2 Currently, organic producers and
3 handlers bear the risk of using substances
4 that may not comply with NOP regulations based
5 on claims that are made fraudulently or
6 mistakenly by the manufacturers of those
7 materials.

8 This is a regulatory topic with
9 dozens, if not hundreds, of stakeholders.
10 Virtually all manufacturers, certifiers,
11 materials review organizations and other
12 parties have a horse in this race, and we
13 wanted to make sure everyone had a chance to
14 weigh in.

15 So, the discussion document laid
16 out the challenges that I just read through,
17 along with 14 specific pointed questions that
18 were intended to solicit very concrete input
19 from the public.

20 We received a pretty good number of
21 comments. We heard from OMRI and WSDA, a
22 number of certifiers, materials consultants,

1 several former members of this Board. The
2 Accredited Certifiers Association on behalf of
3 the certifier community, and the Organic Trade
4 Association all weighed in.

5 We literally have hundreds of pages
6 of comments to sift through as a committee as
7 we hunker down on this topic over the summer.

8 We still would like to hear from a
9 few more stakeholders. There were only two
10 individual certifiers that responded, and I
11 think we could reach out to a few more and get
12 a more robust representation from that
13 community.

14 And, you know, we'll continue
15 talking to of course OMRI, WSDA, the key
16 stakeholders in this conversation and the
17 National Organic Program as we lay out a very
18 detailed recommendation hopefully for the fall
19 NOSB meeting in Savannah.

20 That is my update on that
21 discussion document. Are there any questions?

22 (No response.)

1 MR. DICKSON: Thank you very much.

2 Tracy?

3 CHAIR MIEDEMA: Thank you, Joe.

4 Okay. We have quieted down up
5 here. Do people have any questions about
6 anything that they really wish they had asked
7 earlier and are disappointed that they didn't
8 think of it at the time?

9 I just want to give it to the table
10 to make sure that we really cast a wide enough
11 net to give opportunity.

12 Anything we missed from earlier?

13 (No response.)

14 CHAIR MIEDEMA: Okay. Seeing none,
15 hearing none -

16 MR. McEVOY: I think we're ready to
17 provide a more thorough response to your
18 question about the Handling Committee with the
19 change to the annotation.

20 CHAIR MIEDEMA: Okay.

21 MR. McEVOY: That should liven
22 things up a bit.

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1 (Laughter.)

2 MR. McEVOY: Okay.

3 CHAIR MIEDEMA: Please, go ahead.

4 MR. McEVOY: So, what we did is we -
5 I guess what we would consider if you removed
6 the annotation, that nutrient vitamins and
7 minerals that didn't have an annotation, then
8 what is the list of vitamins and minerals that
9 would be allowed?

10 And the way that we would look at
11 it, it would be limited to this particular
12 list that we pulled from various regulatory
13 references, including -- well, it compares 21
14 CFR 104.20(d)(3), has a list of the references
15 for 101.9, 107.100 and 107.10, and also have
16 a column on the 1995 TAP reviews for vitamins
17 and minerals.

18 So, it would include or be limited
19 to Vitamin A, Vitamin C, calcium, iron,
20 Vitamin D, Vitamin E, Vitamin K, thiamine,
21 riboflavin, niacin, Vitamin B6, folate,
22 Vitamin B12, biotin, pantothenic acid, choline

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1 and inositol.

2 Note that we have received a
3 petition for choline. Phosphorus, magnesium,
4 zinc, iodine, copper, potassium, selenium,
5 manganese, chromium, molybdenum and chloride.

6 So, this would be what we would
7 consider if you remove the annotation, that
8 this would be the list that we could reference
9 based on removing the reference and have a
10 specific -- this provides a specific list of
11 the regulatory reference as well.

12 CHAIR MIEDEMA: Thank you.

13 Jay?

14 MR. FELDMAN: Thank you for that.

15 My understanding is that those
16 lists are developed by FDA to be essential
17 vitamins, essential nutrients, and essential
18 minerals.

19 And there's nothing in the language
20 here if we remove the annotation to 21 CFR
21 104.20, that describes these nutrient - or
22 these nutrient vitamins and minerals as

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1 essential.

2 So, why couldn't I, as a producer,
3 introduce any vitamin or any nutrient that I
4 wanted to without that sort of limitation?

5 MR. McEVOY: Yes, I think that's the
6 question. Is this - if we remove the
7 annotation, would that then create an open-
8 ended list of vitamins and minerals?

9 And that's why we would say and put
10 on the record here, that our understanding of
11 that, how we would interpret that, is that it
12 would be limited to these particular vitamins
13 and minerals.

14 CHAIR MIEDEMA: Sounds like a very
15 reasonable compromise. So long as we don't
16 have these dueling annotations both out there
17 soliciting public comment, you know, we're
18 going to live with however you decide to guide
19 the public.

20 And we know every time we submit a
21 material to the Program, that you can give
22 contour to how you interpret and enforce that

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1 material's use.

2 MR. McEVOY: Yes, we cannot add
3 things to the list that the Board does not
4 approve, but we don't have to add things to
5 the list that the Board does approve.

6 And so if you in your
7 recommendation have - we can understand the
8 intent of that, then we can implement that
9 based on the intent of the Board.

10 And so, what we're saying is that
11 our understanding of what that would include
12 at this point in time would be limited to this
13 particular list of vitamins and minerals.

14 CHAIR MIEDEMA: So long as you all
15 would - okay, and then I'll call on you,
16 Katrina -- would be okay with the fact that we
17 haven't floated this -- those CFR listings out
18 to the public. And we would prefer to not
19 tack them on as an annotation.

20 We're going to leave that to you to
21 do as guidance after we were to propose a non-
22 annotated material.

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1 And by the way, Jay, this might
2 speak to some of your questions and concerns,
3 it still would be a two-vote process. The
4 first vote would be for the existing material
5 as is with the current annotation, because
6 that's our new process for changing an
7 annotation during sunset. And the second vote
8 would be a strike of -- a striking of the
9 annotation.

10 Katrina, then Jay.

11 MS. HEINZE: Am I allowed to ask
12 Miles a question? I know he doesn't have to
13 answer.

14 You said as long as you could
15 understand our intent in your response, can
16 that intent be the discussion that we had as
17 a Board, or do we need to write a document to
18 make that clear?

19 MR. McEVOY: This is what we are
20 understanding of it -- the intent of the Board
21 at this point, is this list of substances.

22 So, what we need from the Program,

1 what the certifiers need, what handlers and
2 processors need, is a clear list of what's
3 allowed and what's not allowed.

4 And so we're saying that based on
5 removing the annotation, it would be limited
6 to these particular substances.

7 So, you can concur with that, or
8 you can say, oh, that's not really what we
9 mean.

10 So, it's up to you to respond to
11 this of either saying, okay, this looks
12 reasonable as a reasonable way to proceed, or
13 asking, you know, additional clarifying
14 questions.

15 CHAIR MIEDEMA: Jay.

16 MR. FELDMAN: Which is what I have,
17 an additional clarifying question.

18 Are those materials that you list,
19 substances you listed, are they lists
20 incorporated into CFR sections? Can you tell
21 us which sections those are?

22 MS. BROWN ROSEN: Yes, it's at the

1 top of the column there, Jay.

2 So, Column 2 is the current 104.20
3 that's referenced in the rule. And then
4 Column 3 is the 101.9, which is where the
5 referenced daily intakes are indicated in 21
6 CFR.

7 And then Column 4 is the section
8 that refers to infant formula.

9 CHAIR MIEDEMA: Let's see if anyone
10 else has anything. You and I have both used
11 up our two.

12 Joe Dickson, and then Nick.

13 MR. DICKSON: I'm having a little
14 trouble seeing, from a Board policy
15 perspective, how this is not changing an
16 annotation to make it less restrictive during
17 sunset. And I'm not sure if anyone on the
18 Board has any light to shed on that, because
19 I see that, you know, removing an annotation
20 is making the listing less restrictive.

21 CHAIR MIEDEMA: Steve, would you be
22 willing to address that?

1 MR. DeMURI: I'd have to agree with
2 you. I think we're moving -- it does restrict
3 it because there's a lot of the things being
4 used besides these right now.

5 MR. FOSTER: I have a question.

6 CHAIR MIEDEMA: John.

7 MR. FOSTER: It's clarifying, Steve,
8 what you just said.

9 Did you just say that would the --
10 I guess my question is, would the net effect
11 of what Miles just described end up in a
12 shorter or longer list than is currently in
13 effect as a function of regulatory language?

14 MR. DeMURI: I believe it would
15 result in a shorter list.

16 MR. FOSTER: Then I don't -- if
17 we're going to -- if the net effect is a
18 shorter list, then I don't see that as being
19 less restrictive.

20 CHAIR MIEDEMA: Miles McEvoy.

21 MR. McEVOY: Yes, it's a matter of
22 perspective of whether it's a shorter or a

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1 longer list.

2 Based on the prior interpretation
3 by the Program, this is a shorter list. Based
4 on the new understanding of the meaning of
5 104.20, it's a longer list. Based on the
6 intent of the '95 recommendation to allow
7 infant formula to include essential nutrients
8 and vitamins, it's consistent.

9 So, it's a little bit -- depends on
10 your perspective of whether it's a shorter or
11 longer list.

12 We're in an interesting conundrum
13 right now.

14 (Laughter.)

15 CHAIR MIEDEMA: Katrina.

16 MS. HEINZE: So, this is my second
17 comment. So, I'm not talking after this.

18 Might I suggest that this is all
19 good information and that Handling Committee
20 meeting that we know we're going to have, that
21 we do that and try to figure out what we're
22 going to come forward with.

1 CHAIR MIEDEMA: Before we start
2 deviating from protocol and extending this
3 discussion too much further, does anyone who
4 has not been able to voice an opinion on this,
5 have one that they would like to voice now?

6 Jay.

7 MR. FELDMAN: I'm not expressing a
8 position on this, but we did -- the policy we
9 passed enabled us to adopt annotations that
10 are equivalent to or more restrictive or
11 clarifying, and one -- again, I don't know
12 what my position is on this, but one might
13 argue going back to the history here, that
14 this is clarification or updating of the
15 previous intent.

16 At the time this was originally
17 adopted, I don't believe there was an infant
18 formula. Am I correct, on that CFR?

19 CHAIR MIEDEMA: FDA has said that
20 this annotation that is currently on 605(b)
21 does not cover infant formula.

22 MR. FELDMAN: That's just another

1 option we have to -- if this is somehow
2 clarification, then it would fit within the
3 guidance of our policy.

4 CHAIR MIEDEMA: Yes. All right.
5 Thank you very much for the feedback, National
6 Organic Program.

7 Next up is the Policy Development
8 Committee. Chairman Barry Flamm, please
9 proceed.

10 MR. FLAMM: I'm afraid, like the
11 animals that we talked about their welfare
12 this morning, I also need fresh air and
13 exercise for my good health and I'm losing it
14 right now. Headache and sore throat. So,
15 I'll proceed along.

16 We have two items on the policy
17 agenda. The first is a review of the position
18 descriptions and role of the Vice Chair and
19 the Policy Committee as relates to what
20 instructions we have in the Policy and
21 Procedures Manual.

22 And Joe was the lead person on

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1 that. And, Joe, if you would please present
2 our recommendation?

3 MR. DICKSON: Sure thing. This is
4 a pretty straightforward recommendation that
5 deals with the linguistic inconsistency within
6 the Policy and Procedure Manual.

7 That inconsistency surrounds the
8 Policy and Procedures Manual itself and who is
9 responsible for its upkeep.

10 Section 2 of the Policy and
11 Procedures Manual currently describes the
12 roles of the Vice Chair and reads, the Vice
13 Chair shall act in the absence of the chair.
14 The Vice Chair shall also be responsible for
15 the maintenance and upkeep of the Policy and
16 Procedures Manual.

17 Section 4 describes the
18 responsibilities of the Policy Development
19 Committee, and also gives the Policy
20 Development Committee the responsibility for
21 managing the PPM.

22 So, the PPM gives responsibility

1 for managing itself in two different spots to
2 two different entities. So, this
3 recommendation addresses that.

4 The way that it addresses that is
5 by inserting language in the job description
6 of the Vice Chair, or actually changing
7 language, so that it reads the Vice Chair
8 shall serve as a member of the Policy
9 Development Committee and work collaboratively
10 with the PDC members on the maintenance and
11 upkeep of the Policy and Procedures Manual.

12 The section on the job description
13 of the PDC is updated so it says, the PDC
14 maintains the content and updates to the NOSB
15 Policy and Procedures Manual in collaboration
16 with the NOSB Vice Chair and new member guide.

17 And so that just synchronizes those
18 two job descriptions and make it clear that
19 it's the joint responsibility of the Vice
20 Chair working as a member of the Policy
21 Development committee to manage and maintain
22 the upkeep of the Policy and Procedures

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1 Manual.

2 The Committee passed that
3 recommendation unanimously with five members
4 voting in favor, and none against, and no one
5 absent. And that is my presentation of that
6 recommendation.

7 MR. FLAMM: Do you want to take any
8 discussion now, or later?

9 MR. DICKSON: Sure. Is there any
10 discussion or questions on this one?

11 John.

12 MR. FOSTER: What was the origins of
13 this? Where did this come from? What was the
14 need?

15 MR. FLAMM: The inconsistency was
16 identified by a member of the Board. I don't
17 remember who or when. Was it Tracy?

18 Yes, Tracy in her meticulous
19 reading of the Policy and Procedures Manual,
20 perhaps in gearing up to be Chair, discovered
21 this inconsistent language.

22 MR. FLAMM: As a little additional

1 background, I did talk to Rigo who was Chair
2 at the time this was inserted. And he said it
3 was intentional to get the Vice Chair
4 involved. He thought that was important, and
5 important link into the other operations of
6 the Board.

7 But I think certainly the wording
8 was -- that is in the Policy and Procedures
9 Manual was not very clear and led to a little
10 confusion, but nobody paid any attention to it
11 for a couple of years until Tracy brought it
12 to our attention.

13 MR. DICKSON: All right. Without
14 further discussion or questions, I'll turn it
15 back to you.

16 MR. FLAMM: If there's no more
17 questions or discussion, I'll move to the next
18 item which is, again, a clarification and
19 update in the Policy and Procedure Manual.

20 And for particularly the new
21 members, you know, the Policy and Procedure
22 Manual is a guide to assist the Board in the

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1 conduct of our business. And you've already
2 seen in this meeting that it's frequently
3 referred to. So, it's kind of like our Bible.

4 So, it's quite important and we
5 constantly are finding that there are things
6 that aren't as clear as they once were. And
7 it usually shows up with a real life situation
8 when we find our procedures aren't dealing
9 with it completely.

10 And that's what triggered this
11 particular recommendation and review was
12 difficulties at the last Board meeting in
13 handling procedures and handling the Committee
14 recommendation.

15 And as you all know, we do an awful
16 lot of our work in the committees preparing
17 recommendations or discussion documents, and
18 that's where a lot of the grunt work gets
19 done. And then we have, as you all know, some
20 -- we expose these ideas to the public and get
21 often a vast amount of additional information.
22 And then we present it in the Board meeting

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1 and we get more ideas.

2 So, often in this process, the
3 Committee may either change its mind or want
4 to withdraw its recommendations for further
5 consideration.

6 So, this recommendation is -- adds
7 language, although it does doctor up some
8 other words and language in this section. And
9 the changes are outlined in the
10 recommendation, but the key part is that we
11 were recommending that the -- that after the
12 Committee presents the discussion for the
13 public -- the recommendation for public
14 discussion and for public comments, after
15 that's done and it's at the meeting when it's
16 presented, that up until there's a motion and
17 a vote, the Committee -- a Board motion and
18 vote, that the Committee could withdraw the
19 recommendation for further work.

20 This recommendation on either --
21 both of our recommendations, we didn't get
22 very many public comments, but we did get a

1 couple of suggestions for language change on
2 this particular one. And I will get the
3 Committee together to see if they think this
4 improves our recommendation.

5 But, essentially, all the public
6 comments we have received on this
7 recommendation supported the notion that we
8 needed to clarify this part of the manual.

9 Any questions, please? Discussion?

10 CHAIR MIEDEMA: John.

11 MR. FOSTER: Sometimes the
12 committees, as a function of receiving public
13 comment here, changes the recommendation at --
14 during the course of a public meeting.

15 How -- I don't know what all the
16 language following Number 4 on Page 20 says.
17 So, I'm assuming the intent was not to change
18 that, not to mandate a public comment after
19 changes to a recommendation at a public
20 meeting.

21 So, this wouldn't affect that, but
22 does the language in here leave that alone,

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1 leave that allowance alone?

2 MR. FLAMM: I'm not sure I
3 understand your question, John. But I do--
4 after reading a couple of public comments-- I
5 do think we need some clarification on this.
6 And I think there is some good language
7 proposed by a couple of commenters that I want
8 to go over with the Board and -- but it --
9 maybe if you repeated your question -- I may
10 be missing the point you're making.

11 MR. FOSTER: I may not have phrased
12 it particularly well either.

13 So, Number 1 in the recommendation,
14 it says the Committee prepares the
15 recommendation or discussion document as
16 agreed to in the committee work plan. And
17 then the recommendation or discussion document
18 is posted for public comment.

19 And I - my assumption is that you
20 don't mean to exclude the opportunity for a
21 committee to make a recommendation, let's say,
22 tomorrow night. But according to this, then

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1 all recommendations have to be posted for
2 public comment, which won't be allowed. For
3 example, some of the recommendations that are
4 going to be changed, say, tonight or tomorrow
5 night, those won't go out for public comment.

6 And I'm not saying they should.
7 I'm saying that I want to make sure that these
8 broad steps don't exclude that from continuing
9 to happen.

10 And if that language appears
11 elsewhere, that's fine. I just don't see it
12 here.

13 MR. FLAMM: I think that's a good
14 point. And I think one of the public
15 commenters made a point and suggested
16 language. Understanding what our intent was
17 gave us some language to deal with that.

18 This was sort of - Number 3 is
19 really the new one. The others are already in
20 the Policy and Procedure Manual. So, this may
21 not quite tie together as well as it should
22 have.

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1 MR. FOSTER: I think I understand
2 the intent, and it's consistent with what I
3 would hope.

4 MR. FLAMM: Any other questions or
5 discussion on that?

6 (No response.)

7 CHAIR MIEDEMA: Thank you, Chairman
8 Barry Flamm, of the Policy and Procedures
9 Committee.

10 Tomorrow our agenda begins at 8:00
11 a.m. and is a day completely designated for
12 public comments.

13 I'm going to make an announcement
14 again that I made earlier today, which is that
15 the Tilth Producers of Washington are hosting
16 a welcome event for the entire organic
17 community. And I'll give you the location in
18 case you want to jot this down.

19 It's at the Palace Ballroom, 2100
20 Fifth Avenue. It's Number 3, Location Number
21 3 on the friendly - the farm friendly food map
22 that they published. They wanted me to know

1 that there will be organic food, organic wine,
2 beer, non-alcoholic beverages, a no-host bar,
3 live music and a \$10 suggested donation.

4 Any other announcements before we
5 close for the day?

6 Lisa.

7 MS. AHRAMJIAN: Just to remind folks
8 if anyone wants to give public comment
9 tomorrow and isn't already signed up, to
10 please sign your name in the sign-up sheet in
11 the lobby. Or if you have any questions about
12 your public comment, please see me right after
13 we recess. Thanks.

14 CHAIR MIEDEMA: Thank you, Lisa. We
15 are adjourned until 8:00 a.m. tomorrow
16 morning.

17 (Whereupon, the above-entitled
18 meeting was adjourned at 3:48 p.m.)

19

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This is to certify that the foregoing transcript

In the matter of: National Organic Standards Board

Before: US Department of Agriculture

Date: 04-27-11

Place: Seattle, Washington

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Court Reporter

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