

1 have a lot to say about ISO Guide 61, so if you want to  
2 know more, you can ask me. Thanks a lot.

3 CHAIRPERSON KING: Thank you very much, Lynn.  
4 Joe, you're up and Emily Brown-Rosen is on deck.

5 MR. MENDELSON: Thanks. My name is  
6 Joe Mendelson. I'm the Legal Director of the Center for  
7 Food Safety. I do want to note that I have a proxy from  
8 Liana Hoodes of the National Campaign for Sustainable  
9 Agriculture. First, I'd like to thank both the Board  
10 and the Program for all their hard work. We know it's a  
11 lot that you have on your plate and we do appreciate it  
12 and appreciate the spirit of this meeting.

13 First, I'd like to do my Tom Hutchison  
14 imitation. We support the NOSB's paper on organic  
15 livestock; we support the paper on fishmeal; we support  
16 the paper on Inerts. I'd like to lend my support for  
17 comments in a proposal made the Wild Farm Alliance  
18 concerning amending the model organic farm plan to  
19 consider bio-diversity and I also would like to note my  
20 appreciation to Rose for the paper on revamping the  
21 materials list. I think that would be helpful and it  
22 certainly would be helpful to those of us in the  
23 consumer and I guess, nontechnical material field in, I  
24 think, understanding the list in classifying it that  
25 way.

1           More specifically, consumers expect and need  
2           clarity, I think, on when the term "organic" is used in  
3           a principle display panel and unfortunately, I think in  
4           the discussion of the Scope paper, we really didn't get  
5           that clarity today and unfortunately, we didn't really  
6           have time to hear from the Program about what they --  
7           how they view that issue. It was certainly a part of  
8           the directives and I think needs clarity and I hope at  
9           least we can revisit that later in the meeting. I think  
10          it's important to consider, though, in the Scope issue  
11          that there's a split in the authority or the scope of  
12          authority to set standards and the scope of authority to  
13          enforce. And by that I mean the scope to set standards  
14          in the Act clearly goes to agricultural products. And  
15          so, you know, follow that there's also -- I think I have  
16          six minutes, so Kim, so I have a --

17                   MS. DIETZ: I didn't hear you say proxy.

18                   MR. MENDELSON: Proxy. There is authority to  
19          enforce the term "organic", I'd say not the seal on  
20          agricultural products. The misuse of label goes to the  
21          term "organic", not the use of the seal. But if you  
22          play that out, you have specific standards that we might  
23          need on agricultural product that are not yet in place.  
24          It's been identified. Fish, for example; it's certainly  
25          our feeling that at that situation those standards

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1 haven't been set, that a label "organic" or the term  
2 "organic" should not be used on that product. That's a  
3 misuse of the term "organic" and there's clearly  
4 authority to enforce the misuse of that term "organic."  
5 Pulling the seal off isn't enough. The 65-19A goes to  
6 the term "organic." Consumers look to the term  
7 "organic" more than the seal, unfortunately. I think  
8 that needs to be clarified.

9           If you then go to nonagricultural products, I  
10 think it's clear that the Act does not provide the  
11 Department authority to set standards. So there may be  
12 some nonagricultural products like cosmetics standards  
13 are not -- the authority's not under the Act. They may  
14 have to go to other places like FDA. But if you look at  
15 enforcement as far as the term, use of the term  
16 "organic", the Act says you get -- the Department can  
17 enforce use of the term "organic" on a product, not an  
18 agricultural product, a product. It's a much broader  
19 term.

20           So the question becomes then, what is the  
21 scope or what -- how far does the USDA want to take its  
22 enforcement discretion in enforcing the use of the term  
23 "organic" on a label? I think that's a question that  
24 clearly needs to be addressed. I think one thing, it  
25 goes to resources on how far the Department wants to

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1 extend that enforcement discretion. I think there also  
2 might be some proxies on other ways to enforce that  
3 enforcement -- you could look to the FTC, which enforces  
4 all sorts of label claims. They've done it on "ozone-  
5 friendly" and things like that. They could certainly do  
6 it on organic, on nonagricultural products that are  
7 organic.

8 I should add quickly that you'll hear from my  
9 colleague at Consumers Union, that both Consumers Union  
10 and Center for Food Safety have a joint position; a  
11 recommendation or thought we'd like to put forward on  
12 some of the cosmetic and personal body care products.  
13 Real quickly, I would like to get to the Sunset  
14 document. The law 65-17E requires full review  
15 consistent with the provisions of that statute. That  
16 includes looking at health and environmental issues  
17 incompatibility issues. Unfortunately, the document  
18 that's presented says we need to look at this general  
19 concept of sunsets. Well, the real question is what is  
20 the sunset within a concept of the Organic Food  
21 Production Act? It's not generally how we look at  
22 sunsets and it's not -- that doesn't give us some type  
23 of justification on how other sunsets kind of truncate  
24 the review of the statute specific.

25 Sunset review in -- under the OFPA means you  
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1 have to look at materials consistent with 65-17 and that  
2 means you don't just look at whether it's continued use,  
3 you look at it's health and environmental and organic  
4 compatibility. The list was designed to be -- in our --  
5 consumer's mind, I think, diminishing, not entitlement  
6 to stay status quo by just looking at continued use. I  
7 also think you can't put a paper out there saying we're  
8 only going to look at continued use and not  
9 compatibility when the Board just put forward  
10 recommendations on what organic compatibility means out  
11 there.

12 Certainly, materials that have been reviewed  
13 in the past haven't necessarily been looked at that  
14 compatibility standard, so you know, I think it's  
15 unfortunate. I realize there's a serious burden of  
16 work, but the law says what it does. I think you'd be  
17 short-changing consumers' expectations about diminishing  
18 materials, about creating a list that diminishes  
19 materials, not create entitlements and I would ask that  
20 that document be revisited. Thanks.

21 CHAIRPERSON KING: Questions? Thank you, Joe.  
22 Wait, Rose has a question. Joe, Rose has a question.  
23 Sorry.

24 MS. KOENIG: On that -- back to the Sunset,  
25 because that is a document that's up there being

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1 considered for a policy or vote. Can you elaborate a  
2 little bit more in terms of your -- you are a lawyer,  
3 correct?

4 MR. MENDELSON: I try not to admit that.

5 MS. KOENIG: But -- because you didn't state  
6 that. But your legal interpretation of that -- because  
7 we -- our original document, our original proposal had a  
8 much more thorough review process. It was quite  
9 different, although the final document was a kind of  
10 bringing together of some aspects, but some of the  
11 points that you raised were in fact raised by the  
12 committee as we were trying to bring these two documents  
13 together. So if you could elaborate on that concept,  
14 especially the first part, that review of Sunset was  
15 something that the NOP had constructed or argued --

16 MR. MENDELSON: Well, I --

17 MS. KOENIG: -- you know, from a legal point  
18 of view and unfortunately, we're not lawyers, so --

19 MR. MENDELSON: Yeah, I just -- in reading  
20 over the document, there's this general discussion about  
21 what a sunset is and it sort of mishes-mashes statutes  
22 that may sunset, in general, the whole statute or the  
23 authority under the statute versus what the OFPA says  
24 specifically. The sunset only goes to the materials, so  
25 it's really, I think, disingenuous to look at other laws

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1 and other sunset provisions to give some type of gloss  
2 on how we can interpret Sunset provisions, generally. I  
3 mean, the sunset provision in the OFPA has to  
4 specifically be interpreted to be consistent with 6517.

5 I mean, that's what it says. And if you'll  
6 look at 6517 -- I'm sorry, I don't have the subsection,  
7 I mean, it's -- you know, the three characteristics. So  
8 you know, I don't think you can look at statutes that  
9 have sunset provisions that don't related to organic and  
10 somehow say well, that allows us to eliminate two of the  
11 three criteria that we needed -- that, you know, that  
12 the OFPA says we've got to look at. I mean, that just  
13 -- that's just not -- is that clear?

14 MS. KOENIG: Yes, it is. And I had one more  
15 question. Taking advantage of some legal opinion. The  
16 one other question I had is that we -- and again, this  
17 may be more of a program area, so I'm just posing it to  
18 you and it's not to disrespect the NOP position on it,  
19 so I want to be clear on that. But we, as a committee,  
20 had questioned whether if we started the process, if we  
21 put through the Federal Register a notice that these  
22 materials were going to be up for sunset and if we went  
23 through kind of due diligence to complete the work,  
24 however, we didn't finish the work. We were -- and I  
25 don't want to quote because I'm not sure, but it was my

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1 impression, I guess, that if we didn't finish the job  
2 then the whole list would be nullified, that we were  
3 kind of creating a train wreck for the industry and you  
4 know, is that your understanding of how the Federal  
5 Register process works?

6 MR. MENDELSON: Well, I think that the  
7 question really is whether it's a five-year time frame,  
8 the question is when that five years hits, does it  
9 affect everything on the list and all the materials?  
10 That's a tough question. I think, as I remember the  
11 statute, it goes to materials, so if you have completed  
12 them for specific materials, I think those materials  
13 would have been met and then there would be other  
14 materials that if you didn't get the job done in five  
15 years, then those would fall off. I think there's  
16 separability [ph] there in that sense. I would say  
17 that's my interpretation and if you really want to rely  
18 on that, you might want to have your own lawyer to be  
19 under retainer to --

20 MS. KOENIG: Thanks. Thank you.

21 UNIDENTIFIED SPEAKER: You got what you paid  
22 for.

23 CHAIRPERSON KING: Yeah. Thank you, Joe.  
24 Emily's up and Brian Baker is on deck.

25 MS. BROWN-ROSEN: Good afternoon. I'm

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