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

CHAIRPERSON KING: Thank you very much, Lynn.

Joe, you're up and Emily Brown-Rosen is on deck.

MR. MENDELSON: Thanks. My name is

Joe Mendelson. I'm the Legal Director of the Center for
Food Safety. I do want to note that I have a proxy from
Liana Hoodes of the National Campaign for Sustainable
Agriculture. First, I'd like to thank both the Board
and the Program for all their hard work. We know it's a
lot that you have on your plate and we do appreciate it
and appreciate the spirit of this meeting.

First, I'd like to do my Tom Hutchison
imitation. We support the NOSB's paper on organic
livestock; we support the paper on fishmeal; we support
the paper on Inerts. I'd like to lend my support for
comments in a proposal made the Wild Farm Alliance
considering amending the model organic farm plan to
consider bio-diversity and I also would like to note my
appreciation to Rose for the paper on revamping the
materials list. I think that would be helpful and it
certainly would be helpful to those of us in the
consumer and I guess, nontechnical material field in, I
think, understanding the list in classifying it that
way.
More specifically, consumers expect and need clarity, I think, on when the term "organic" is used in a principle display panel and unfortunately, I think in the discussion of the Scope paper, we really didn't get that clarity today and unfortunately, we didn't really have time to hear from the Program about what they -- how they view that issue. It was certainly a part of the directives and I think needs clarity and I hope at least we can revisit that later in the meeting. I think it's important to consider, though, in the Scope issue that there's a split in the authority or the scope of authority to set standards and the scope of authority to enforce. And by that I mean the scope to set standards in the Act clearly goes to agricultural products. And so, you know, follow that there's also -- I think I have six minutes, so Kim, so I have a --

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

MR. MENDELSON: Proxy. There is authority to enforce the term "organic", I'd say not the seal on agricultural products. The misuse of label goes to the term "organic", not the use of the seal. But if you play that out, you have specific standards that we might need on agricultural product that are not yet in place. It's been identified. Fish, for example; it's certainly our feeling that at that situation those standards
haven't been set, that a label "organic" or the term "organic" should not be used on that product. That's a misuse of the term "organic" and there's clearly authority to enforce the misuse of that term "organic."
Pulling the seal off isn't enough. The 65-19A goes to the term "organic." Consumers look to the term "organic" more than the seal, unfortunately. I think that needs to be clarified.

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

So the question becomes then, what is the scope or what -- how far does the USDA want to take its enforcement discretion in enforcing the use of the term "organic" on a label? I think that's a question that clearly needs to be addressed. I think one thing, it goes to resources on how far the Department wants to...
extend that enforcement discretion. I think there also might be some proxies on other ways to enforce that enforcement -- you could look to the FTC, which enforces all sorts of label claims. They've done it on "ozone-friendly" and things like that. They could certainly do it on organic, on nonagricultural products that are organic.

I should add quickly that you'll hear from my colleague at Consumers Union, that both Consumers Union and Center for Food Safety have a joint position; a recommendation or thought we'd like to put forward on some of the cosmetic and personal body care products.

Real quickly, I would like to get to the Sunset document. The law 65-17E requires full review consistent with the provisions of that statute. That includes looking at health and environmental issues incompatibility issues. Unfortunately, the document that's presented says we need to look at this general concept of sunsets. Well, the real question is what is the sunset within a concept of the Organic Food Production Act? It's not generally how we look at sunsets and it's not -- that doesn't give us some type of justification on how other sunsets kind of truncate the review of the statute specific.

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

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

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

MS. KOENIG: On that -- back to the Sunset, because that is a document that's up there being
considered for a policy or vote. Can you elaborate a little bit more in terms of your -- you are a lawyer, correct?

MR. MENDELSON: I try not to admit that.

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

MR. MENDELSON: Well, I --

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

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

York Stenographic Services, Inc.
34 North George St., York, PA 17401 - (717) 854-0077
and other sunset provisions to give some type of gloss
on how we can interpret Sunset provisions, generally. I
mean, the sunset provision in the OFPA has to
specifically be interpreted to be consistent with 6517.

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

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

York Stenographic Services, Inc.
34 North George St., York, PA 17401 - (717) 854-0077
impression, I guess, that if we didn't finish the job
then the whole list would be nullified, that we were
kind of creating a train wreck for the industry and you
know, is that your understanding of how the Federal
Register process works?

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

MS. KOENIG: Thanks. Thank you.

UNIDENTIFIED SPEAKER: You got what you paid
for.

CHAIRPERSON KING: Yeah. Thank you, Joe.

Emily's up and Brian Baker is on deck.

MS. BROWN-ROSE: Good afternoon. I'm
York Stenographic Services, Inc.
34 North George St., York, PA 17401 - (717) 854-0077