

## Official Minutes -- February 1999

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### NATIONAL ORGANIC STANDARDS BOARD DRAFT MINUTES OF MEETING

February 9-11, 1999

United States Department of Agriculture  
1400 Independence Avenue, SW  
Room 3501-South Building  
Washington, D.C.

#### **Attendance Record:**

##### Members Present: 13

Jean Afterman  
Betsy Lydon  
Robert Anderson  
Stephen Pavich  
Carolyn Brickey  
Eric Sideman  
Rod Crossley  
William Welsh  
Joan Gussow  
Margaret Wittenberg  
Steven Harper  
Marc Swartz, *Certifying Agent Representative*  
Marvin Hollen  
Fred Kirschenmann

##### Members Absent: 1

Kathleen Merrigan

##### Other Attendees:

Dr. Enrique Figueroa, *Administrator, Agricultural Marketing Service (AMS)*;  
Keith Jones, *Program Manager, National Organic Program (NOP), USDA*;  
Beth Hayden, *NOP, USDA*;  
Michael Johnson, *NOP, USDA*;  
Tom O'Brien, *Associate Administrator, AMS, USDA*;  
Eileen Stommes, *Deputy Administrator, Transportation and Marketing Programs (TMP), AMS, USDA*;  
Audrey Talley, *International Marketing Specialist, Foreign Agricultural Service*;  
Gary Scavongelli, *Associate Deputy Administrator, TMP*;  
Richard Mathews, *NOP, USDA*;  
Toni Stother, *NOP, USDA*;  
Grace Gershuny, *NOP, USDA*;  
Karen Thomas, *NOP, USDA*; and  
Interested persons from the public

## **CALL TO ORDER**

The meeting was called to order by Mr. Robert (Bob) Anderson, Chairperson of the Board, at 9:10 a.m. on Tuesday, February 9, 1999. Bob gave a brief welcome, thanked everyone for coming, and introduced Marc Schuartz as the certifying agent representative attending this Board meeting. Bob went over the aggressive agenda format, which was different for this meeting. The Committees would begin with updates/progress reports and hold working sessions after the public input session.

## **COMMITTEE UPDATES/PROGRESS REPORTS**

### **Livestock Committee Update: Mr. Fred Kirschenmann, Chair**

Mr. Kirschenmann reported that the Livestock Committee would discuss during its working session public comment on Issue Papers, NRCS practice Standards, NOSB Livestock Recommendations as they relate to manure handling, honey and aquaculture recommendations, and language on hay for temporarily confined ruminants.

### **Accreditation Committee Update: Betsy Lydon, Chair**

Ms. Lydon reported that the Accreditation Committee would discuss during its working session current State and private certifier enforcement policies, what penalty would be leveled for violations, and the previous NOSB recommendations on fee structure.

### **Crops/Materials Committee Update: Eric Sidman and Carolyn Brickey, Chairs**

The committee chairpersons reported that their committees would be discussing manure handling work with the Livestock Committee and National List authority.

### **Board Procedures Taskforce Update: Carolyn Brickey, Chair**

Ms. Brickey announced that the Taskforce Committee would be looking at Board authority, procedures for materials review, and other Board procedures.

### **International Committee Update: Rod Crossley, Vice-Chair**

Mr. Crossley reported that the committee would discuss quarantine practices and Codex.

### **Interdisciplinary Committee: Joan Gussow, Chair**

Ms. Gussow discussed the comments received regarding the survey on Criteria for the Acceptance of Materials Used in Processing and the comments on the Processing Principles Proposal.

### **Processing Committee Update: Margaret Wittenberg, Chair**

Ms. Wittenberg discussed the comments on the retailer questionnaire concerning Maintaining Organic Integrity in Retail Operations.

## **USDA/ NATIONAL ORGANIC PROGRAM UPDATE**

*Keith Jones, Program Manager, NOP, USDA*

Mr. Jones gave a slide presentation that updated the Board on NOP activities since the last NOSB meeting. Issues discussed were: the NOP budget, USDA 's Food Safety and Inspection Service allowing an interim organic label for meat and poultry, the European Union's (EU) action on EN 45011/ISO 65, and other issues raised by the 275,603 public comments. Mr. Jones updated the Board on the status of the proposed rule rewrite, stating that internal review would begin as soon as all the sections cleared OGC. He further stated that the plan was to have a joint review with the Department and OMB and that he did not anticipate any problems with the internal review. Additionally, he recommended that the Board's priority should be on materials, inerts, and recommendations on any new issues.

#### **LIVESTOCK COMMITTEE WORKING SESSION – Fred Kirschenmann, Chair**

The Livestock Committee Working Session began with a brief summary of the Committee's Proposed Recommendations on Wild Animals. Public comment overwhelmingly supported the NOSB's position on nonconfinement for livestock. He noted situations that would allow for temporary confinement; e.g., inclement weather, protection from predators, etc. Comments on animal medications were again supportive of the NOSB's positions on antibiotic use, which is to ban all antibiotic use for slaughter stock. There are, however, a number of producers who have expressed concern about a ban on the use of parasiticides.

Zea Sonnabend from the Organic Materials Review Institute (OMRI) presented two charts on materials that are open for Technical Advisory Panel (TAP) review. The charts identified materials that were either referred by NOP from petitioned materials, tabled by the NOSB at a previous meeting, or referred for TAP review by the NOSB but were never completed. (See attachment 1.)

#### **PUBLIC COMMENT PERIOD**

The Chair opened the meeting for public comment.

#### **Richard Mandelbaum, CATA/the Farmworker Support Committee**

Mr. Mandelbaum was before the NOSB as a spokesperson for the community that makes up its membership. The issue he discussed was "just and humane working conditions." They have historically been a fundamental component of organic agriculture, both in the management policies of growers and in the minds of consumers. (See attachment 2 for complete testimony.)

#### **Jim Riddle, Independent Organic Inspectors Association**

Mr. Riddle presented a press release, "Standardized Certification Forms Published," dated January 31, 1999. Jim informed the Board that the second edition of the IOIA Organic Inspection Manual is now available. He said he felt accreditation was not being addressed in sufficient detail, specifically asking how the repropoed rule will address international compliance, peer review, and synthetics. (See attachment 3.)

#### **Mark Retzloff, Horizon Organic Dairy**

Mr. Retzloff gave comments on the NOSB Livestock Committee's recommendation concerning livestock confinement, in particular the requirement of managed pasture for ruminant animals. Mr. Retzloff said, "We strongly suggest that the NOSB amend the requirement for managed pasture to read 'recommend' or 'encourage' or 'should' instead of 'shall' or 'require.'" (See attachment 4.)

#### **Lynn Coody, for Linda Bullard, President, International Federation of Organic Agriculture Movement (IFOAM)**

Ms. Coody read a prepared statement by Ms. Bullard. IFOAM, representing the worldwide organic community, stands with the U.S. organic community in its demand that USDA establish a true public-private partnership in its new version of the proposed rule, as called for in the OFPA itself. IFOAM urged the NOSB to take the international trade aspects of accreditation into account in its deliberations and to recommend that USDA look to this private-sector system for its accreditation needs, rather than creating a costly and redundant accreditation structure within the U.S. Government. (See attachment 5.)

**Jim Riddle, for Emily Brown-Rosen, Northeast Organic Farming Association**

Mr. Riddle read a prepared statement by Ms. Brown-Rosen. The issues addressed were certification, decision-making authority, and options for enforcement. (See attachment 6.)

**Marty Mesh, Florida Organic Grower**

Mr. Mesh thanked everyone for the opportunity to work with them. Marty talked about new Board members' qualifications, materials requests going out to the public, right of appeal, and enforcement.

**Lynn Coody, Oregon Tilth**

Ms. Coody expressed a concern with constitutional issues, certification, and enforcement. USDA should take a look at other public/private partnerships that are already in place. Certifiers shipping internationally are confused.

**Brian Baker, OMR!**

Mr. Baker expressed his approval of the progress being made by the new management. The NOSB should rely heavily on the expertise that is available. He stated that he looks forward to working with the NOSB on TAP review, particularly moving inerts from the Environmental Protection Agency's(EPA) list 3 to list 4 and prohibiting inerts from appearing on EPA's list 1 and 2. Mr. Baker cautioned that the NOSB needs to set aside time for groups to come up with alternatives before completely banning list 1 and 2 inerts. He further recommended that the NOSB use the TAP to determine, based on the seven criteria, materials that are compatible with OFPA. He distributed a list of registered formulations for inert ingredients review which was first presented at the Austin, TX, NOSB meeting. (See attachment 7)

**Michael Sligh**

Mr. Sligh stated that the organic community intends to maintain strong leadership of the future course of organic. The overall proposed regulations must embrace, support, and strengthen the current organic farmers. Mr. Sligh cited 13 issues that need to be considered by the Board or USDA. (See attachment 8)

**Cissy Bowman, Organic Farmers Marketing Association (OFMA)**

Ms. Bowman distributed copies of the OFMA comments on the NOSB Livestock Committee Draft Recommendations for Wild Livestock, the NOSB International Committee Draft Recommendations for Fumigation, the NOSB Livestock Committee Draft Recommendations for Aquatic Livestock Standards, the NOSB Processing Committee survey on Maintaining Organic Integrity in Retail Operations, and the NOSB Interdisciplinary Task Force on Processing and Materials Criteria request for comment on Criteria for the Acceptance of Materials Used in Processing. (See attachment 9.)

**Mark King, Certified Retailer**

Mr. King has a small 100-percent organic retail produce stand. He would like to keep the product pure and healthful for the consumer. Consumers do not want synthetics in their produce (i.e., genetically modified organisms (GMO), pesticides, etc.).

**Phillip LaRaccoa, CCOF LaRaccoa Vineyard**

Mr. LaRaccoa spoke to the Board regarding decertification and synthetics. Farmers/wineries don't want sulfites in their product, whereas the State of California supports this.

**Beth Fiteni, National Coalition Against the Misuse of Pesticides**

Ms. Fiteni spoke to the Board regarding its position that no synthetics be allowed for use in organic production. She urged the Board to keep in mind people suffering from multiple chemical sensitivity, who rely heavily on the organic industry to provide pure food and clothing that is safe and will not aggravate their symptoms. (See attachment 10.)

**Pauline and William Crawford, Los Gatos, CA**

Mr. and Mrs. Crawford sent a written statement that addressed: 1) Proposed Rules for Implementing the Organic Foods Production Act, 2) The Organic Foods Production Act of 1990, and 3) The National Organic Standards Board. (See attachment 11.)

**Zea Sonnabend, OMRI**

Ms. Sonnabend talked about materials and showed a video.

**---END OF PUBLIC COMMENT PERIOD---**

**LIVESTOCK COMMITTEE WORKING SESSION (CONTINUED) - Fred Kirschenmann, Chair**

At the conclusion of the public comment session, the Livestock Committee continued its working session with a presentation by Keith Jones, Program Manager, NOP, on draft production language based on the Natural Resource Conservation Service's (NRCS) practice standards for crop rotation. The NRCS practice standard concept was further discussed with the Board by Beth Hayden of the NOP staff. (For further information on practice standards see [www.ncg.nrcs.usda.gov/index.html](http://www.ncg.nrcs.usda.gov/index.html).) Fred then discussed Organic Watch's breakdown of comments on the National Organic Program Issue Papers. (See attachment 12.)

**WEDNESDAY, FEBRUARY 10, 1999**

**LIVESTOCK COMMITTEE WORKING SESSION (CONTINUED) - Fred Kirschenmann, Chair**

Bob Anderson reconvened the meeting at 9:15 a.m. in USDA's Room 3501-So. Bldg. Bob thanked everyone for staying late last night. The Livestock Committee Chair continued the working session with a discussion on confinement of animals. The issue was raised that OTA's confinement comments left out: 1) stage of production and 2) stage of transition to organic. Mark Retzloff stated that pasture is not/should not be required.

Fred Kirschenmann discussed two papers sent to the committee by Beth on manure management. (See attachment 13.) The Board showed support for OPTION #2. Brian Baker

noted the need for a composting definition. Eric Sideman expressed concern regarding the 120 days between application of raw manure and harvest of crops proposed by NOP and will get more input to guide NOP on the proper interval. Beth Hayden of the NOP Staff led a presentation on nutrient management. (See attachment 14.)

### **JOINT CROPS/MATERIALS COMMITTEE WORKING SESSION - Eric Sidman, Crops Chair, and Carolyn Brickey, Materials Chair**

Eric Sidman started the joint session with a discussion on inerts. Inerts have been the single most important topic for both the crops and materials committee. Working with EPA has lent support to a Committee recommendation for the immediate banning of list 1 and 2 inerts, with list 3 to be banned at a future date. Eric further recommended that List 3 be reviewed on a case-by-case basis as some a phase-out will be necessary so as not to disrupt current production. He further stated he expected most of list 4 to be permitted unless specifically prohibited.

It was recommended that the NOSB work directly with the manufacturers to get the information on registered formulations. Carolyn spoke with OGC and EPA in getting this information to develop TAP information. NOP should draft a memo to the manufacturer based on Brian Baker's old list of registered formulations to gather information for a new list. Carolyn indicated that NOP could have a designated officer for signing confidentiality agreements if necessary. The NOSB indicated its timeline for the letter should be about 1 month.

### **Crops Committee, Eric Sideman, Chair**

Eric conducted a discussion on practice standards language. The language should specify that manure applications should control the nitrate accumulations in a product. It was noted that California tests and does not have a set limit. Fred indicated the need to address the whole nutrient system. Questions regarding Secretary Glickman's decision to ban genetically modified organisms (GMO) were raised. Consensus emerged that the materials committee would draft discussion questions on GMO's for a future meeting. Carolyn stated that she perceives the issue to be how a farmer will know that what he or she is using is GMO free. Rod asked a similar question.

### **Material Committee, Carolyn Brickey, Chair**

Carolyn led a discussion on the priority of the National List of material criteria, that the Board should go back and maybe add additional uses. She will review the original Federal Register Notice (See attachment 15) on the criteria for the petition process so new language can be developed for new requests. Annotations should be put back on materials that go through the TAP process at the staff level even though they may not stay in as they go through the OGC/OMB review process.

### **ACCREDITATION COMMITTEE WORKING SESSION - Betsy Lydon, Chair**

Betsy chaired the working session discussions on the role of State and private certifiers, enforcement policies, and violation triggers/penalty levels. Discussion centered on a conceptual proposal drafted by Jean Afterman that would allow private certifiers to prevent the use of their service mark (seal) upon: 1) written notification that certification by the private certifier has been terminated; 2) written notification of 30 days to appeal to the Secretary of Agriculture; and 3) written notification of denial to use the private certifier's seal. Carolyn reminded the Board that OGC has stated that the USDA seal couldn't be removed until full due process (appeal) has occurred. Lynn Coody of Oregon Tilth presented Oregon Tilth's Appeal Process. Oregon Tilth has a lengthy process; however, to date there has not been a challenge to their decisions in court.

Jim Riddle of IOIA gave an overview on the IOIA standardized Organic Certification Form Templates. He advocated their use to standardize certification and inspection forms. (See attachment 3.)

Audrey Talley of USDA's Foreign Agriculture Service (FAS) gave a slide presentation entitled "*International Organic Food Markets - Opportunities and Regulatory Challenges*"

(See the FAS Web Site at: [www.fas.usda.gov](http://www.fas.usda.gov)).

#### **INTERNATIONAL COMMITTEE WORKING SESSION - Rod Crossley, Vice-Chair**

Rod introduced H. Michael Wehr, Ph.D., Office of Constituent Operations, U.S. Food and Drug Administration. Dr. Wehr presented "*Summary Information on the Codex Committee on Food Hygiene (CCFH)*," which provided information on the three terms of reference for CCFH. (See attachment 16.)

During this session, Dr. Enrique E. Figueroa, Administrator of USDA's Agricultural Marketing Service, addressed the NOSB. He thanked them for their efforts and expressed the hope that they will continue to move the process forward. Dr. Figueroa discussed the fact that the organic industry was showing tremendous growth by noting that he had given a radio interview with 2,000,000 listeners and that he would be going to Nuremberg and the EU next week. Dr. Figueroa talked about the presentation given during a visit by the farm manager of Prince Charles of the U.K.

Mark Keating presented a paper on alternative quarantine treatment for organic certification. Alternative treatments might be combined temperature treatment, lower oxygen levels, etc. ARS and APHIS have the responsibility for development and enforcement of quarantine treatments. (See attachment 17.)

#### **BOARD PROCEDURES TASK FORCE WORKING SESSION - Carolyn Brickey, Chair**

Carolyn began the working session with a discussion on the National List petition process. She stated that the Task Force asked for changes but felt the document used earlier was acceptable except for some outdated language. (See attachment 15.) Carolyn urged the Board to adopt a similar document for processing and livestock materials. The Board encouraged the development of these documents by the next meeting. Additionally, the Task Force will develop criteria for qualifications for new NOSB members by the next meeting. Carolyn posed questions to the Board, such as whether the Board should recommend alternates be named by the Secretary when a member will be away for several months. The consensus was for the task force to make recommendations regarding substitute Board members and the level of their participation in Board activities by the next meeting.

**THURSDAY, FEBRUARY 11, 1999**

#### **BOARD PROCEDURES TASK FORCE WORKING SESSION (CONTINUED) - Carolyn Brickey, Chair**

Bob Anderson reconvened the meeting at 9:15 a.m. in USDA's Room 3501-So. Bldg. A review of the items from Wednesday evening's session was given. Topics covered included: 1) new petition process language; 2) appointment/qualifications of new Board members; 3) Board alternates; and 4) Board substitutes. The Task Force agreed to present its recommendations on these issues at the June meeting.

Re: General Board Procedures. 1) For general actions, the NOSB must take a quorum as a majority. 2) The NOSB will use statutory procedures. 3) Decisive votes of the Board require a two-thirds majority. 4) A material vote requires two-thirds of the Board present at the meeting. Reaction to the conflict of interest language was that the Board needs to get a better understanding. The paper (**See attachment 18**) will be reviewed internally by USDA and something will be prepared by the Committee for the next meeting.

#### **INTERDISCIPLINARY COMMITTEE ON PROCESSING PRINCIPLES WORKING SESSION - Joan Gussow, Chair**

Joan began the working session with a discussion of the changes suggested by commenters to the language in "Criteria for Acceptance of Materials Used in Processing." Joan recognized that many commenters were against the NOSB's position of allowing synthetic ingredients in processed foods. These commenters assert that the NOSB broke the law by allowing synthetics. Fred expressed concern over the Board's need to encourage quality products with marketplace integrity. It is the Board's responsibility to determine what can be in organic. The Committee agreed to redraft language in the form of a motion and present it later in the day. (**See Board Vote, p. 11.**)

#### **PROCESSING COMMITTEE WORKING SESSION - Margaret Wittenberg, Chair**

Margaret presented the committee's work on the retailer questionnaire on protection of organic integrity. The committee received about eight or nine comments on allowing voluntary guidelines, confusion over commingling, and the need for education. Margaret indicated this was a work in progress and said that she would report any new information at the next meeting.

### **NOSB COMMITTEE REPORTS AND ACTION VOTES**

**DATE: February 11, 1999**

#### **Board Vote**

Motion: Livestock Committee. Motion by Fred Kirschenmann. Add to the Board recommendation on Confinement of Livestock in an Organic System "stage of production" and "stage of transition of the farm to organic" on the list of exceptions to the requirement that livestock have access to the outdoors. The management practices must make clear that these additional exemptions in no way change the intent that ruminant organic livestock systems be pasture based.

Second: Bill Welsh

Discussion:

Call for the vote

Vote:

Those In Favor: Unanimous

Those Opposed:

Those Abstaining:

**DATE: February 10, 1999**

**Board Vote**

Motion: Joint Crops and Materials Committee. Motion by Eric Sideman. Inert ingredients on EPA Lists 1 and 2 shall be prohibited for use in organic production and handling effective on the date of implementation of the final rule of NOP. Synthetic inerts on EPA List 3 shall be prohibited if not specifically approved by the NOSB. This approval process will be completed and published by January 1, 2002. Any inert currently in use in organic production that is not approved by the NOSB will be banned within 18 months after the review is completed and published. To that goal, inerts on EPA List 3 used in products that have active ingredients approved for organic production shall be reviewed by the NOSB on a case-by-case basis for possible inclusion on the National List. The NOSB recommends that inerts on List 4 generally be allowed unless explicitly recommended for prohibition.

Second: Joan Gussow

Discussion:

Call for the vote

Vote:

Those In Favor: Unanimous

Those Opposed:

Those Abstaining:

**DATE: February 11, 1999**

**Board Vote**

Motion: Joint Crops and Materials Committees– Eric Sideman moves that the NOSB/NOP send a letter to be modified as needed by NOP to manufacturers of pesticides formulations used in organic production requesting lists of ingredients, including inert ingredients.

Second: Rod Cossley

Discussion: USDA will create/finesse a new draft, and clear it through the NOSB.

Call for the vote

Vote:

Those In Favor: Unanimous

Those Opposed:

Those Abstaining:

**DATE: February 10, 1999**

### **Board Vote**

Motion: Materials Committee. Motion by Joan Gussow. The NOSB wants to express thanks to the Secretary for acknowledging the Board's authority over the National List. It is the Board's expectation that this will continue to be the policy of the Department in the future.

Second: Betsy Lydon

Discussion:

Call for the vote

Vote:

Those In Favor: Unanimous

Those Opposed:

Those Abstaining:

**DATE: February 11, 1999**

### **Board Vote**

Motion: The Processing Committee. Motion by Joan Gussow. After reconsideration of its former position, the Board wishes to prohibit synthetics in the processing of foods labeled certified organic.

Second: Fred Kirschenmann

Discussion: A yes vote means you want to prohibit synthetics in processing, and a no vote means you want to allow them.

Call for the vote

Vote:

Those In Favor: 5 yes

Those Opposed: 6 no

Those Abstaining: 1

**Motion does not pass**

**DATE: February 10, 1999**

### **Board Vote**

Motion: Interdisciplinary Committee on Processing Principles. Motion by Joan Gussow. A synthetic may be used if:

1. That processing aid or adjuvant cannot be produced from a natural source and has no organic ingredients as substitutes;
2. Its manufacture, use, and disposal do not have adverse effects on the environment and are done in a manner compatible with organic handling as described in section 6513 of the OFPA;
3. The nutritional quality of the food is maintained, and the material itself or its breakdown products do not have adverse effects on human health as defined by applicable Federal regulations;
4. Its primary purpose is not as a preservative or used only to recreate/improve flavors, colors, textures, or nutritive value lost during processing, except in the latter case as required by law;
5. It is Generally Recognized as Safe (GRAS) by FDA when used in accordance with Good Manufacturing Practices (GMP) and contains no residues of heavy metals or other contaminants in excess of FDA tolerances;
6. Its use is compatible with the principles of organic handling; and
7. There is no other way to produce a similar product without its use, and it is used in the minimum quantity required to achieve the process.

**Second:** Carolyn Brickey

**Discussion:**

Call for the vote

Vote:

Those In Favor: Unanimous

Those Opposed:

Those Abstaining:

**DATE: February 10, 1999**

**BOARD VOTE**

Motion: Motion by Rod Crossley. Be it resolved that the National Organic Standards Board recommends that:

A certifying agent retains the authority to terminate its certification of a certified operation where the certifying agent has made a determination that a certified operation has violated the provisions of the Act and the certifying agent shall advise the certified operation of its action by written notice of the termination of certification.

This Termination Notice shall, in addition to terminating certification of all or any part of the certified operation, advise the certified operation of the following:

1. That a copy of this Notice has been forwarded to the Secretary [Administrator];
2. That the certified operation has 15/20/30 days [length of expedited appeals process] from the effective date of the Notice to appeal the action of the certifying agent to the Secretary [Administrator];

3. That if the certified operation fails to file an appeal within the prescribed time, the Secretary shall without further process and in addition to reaffirming the termination of the certification, terminate the Federal license of the certified operation, effective immediately, and shall enforce and prosecute to the fullest extent of the law;

Failure by the certifying agent to advise the certified operation of the consequences of the Notice of termination shall act as a bar to enforcement by the Secretary until such time as the certified operation has been so advised.

Second: Joan Gussow

Call for the vote

Vote:

Those in Favor: Unanimous

Those Opposed:

Those Abstaining:

#### **PLANS FOR NEXT MEETING**

The next meeting is expected to be held June 8-10, 1999.

Suggested agenda items for the next NOSB meeting:

- Aquaculture and honey standards
- Standards for wild animals
- Livestock materials review
- Inerts list to TAP
- Language on Board policy
- Fumigation
- EU/ISO 65
- Processing materials review

The NOSB meeting was adjourned at 4:00 p.m.