

National Organic Standards Board

Policy Development Committee Discussion Document To Clarify and Update Section V Direction on NOSB/ NOP Collaboration Process

February 27, 2010

Introduction:

The PDC is soliciting comments from the NOP and Public on means to improve NOSB/NOP collaboration and team work to best serve the organic community. The input will be used to revise the Directions in the NOSB Policy and Procedures Manual. This revision is intended to be presented as a recommendation for the fall Board meeting.

Background:

The PDC has been systematically reviewing the NOSB Policy and Procedures Manual to improve and update directions for the Board. Section V was reviewed and revisions approved at the November 2009 Board Meeting. However, the part in Section V addressing NOSB/NOP collaboration was deferred for further consideration. This was primarily due to the changes then occurring in the NOP. The NOP has new leadership, changed organizational structure and position in AMS, and increased staffing and funding. This called for reexamination of how the parties work together in the interest the organic community and the public at large.

Relevant Areas in the Rule:

National Organic Production Act, 1990, 6518 (a) directed the Secretary of Agriculture to establish the National Organic Standards Board and prescribed its duties. The Act, 6503 (a), also directed the Secretary to establish an organic certification program. The NOP became the executive agency administering the program.

Discussion:

The initial work of the PDC last year was to streamline the directions now in PPM Section V. Subsequently, as discussed above, it was determined that the changes at NOP perhaps required a more comprehensive revision resulting from NOP and public discourse.

The following is the suggested revisions in Section V developed by the committee last year, plus new introductory material. Some detail presently in the PPM as been eliminated as redundant.

The question is: Do the changes at the NOP require a more comprehensive revision in the PPM directions. If so what?

The committee needs your comments.

NOSB-NOP TEAMWORK

The National Organic Food Production Act (6518 (a)) directed the Secretary of Agriculture to establish a National Organic Standards Board to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of the Act. In 6503 (a) of the Act, the Secretary was directed to establish an organic certification program. The National Organic Program (NOP) has become the governmental institution to accomplish this and is the means through which the NOSB provides advice and assistance to the Secretary of Agriculture.

The mutual goals to advance the integrity of organic products, principles and products can best be accomplished through team work and cooperation between NOSB and the NOP. This has also been called collaboration and is implemented regularly through two way feedback by the NOSB Executive Director and on the monthly calls of Executive Committee. Especially at these calls, NOSB committee work plans and priorities are discussed and NOP need and opinions are aired.

An effective collaboration process between the NOP and the NOSB should ensure that NOP receives NOSB input and feedback. The process can be complicated due to several factors like the following:

- The NOSB is a FACA advisory committee, and as such, must conduct business in the open, under the requirements of P.L. 94-409, also known as “Government in the Sunshine Act” (5 U.S.C.552b).
- The USDA cannot delegate its authority as a regulatory body to private citizens, even when those private citizens are appointed by the Secretary to provide advice. However, the NOSB has unique statutory authority related to the recommendation of materials as approved or prohibited substances for inclusion on the National List.
- The NOSB cannot direct USDA or bind the Secretary through its actions; for example, it cannot obligate funds, contract, or initiate policies on its own accord.

Several collaboration approaches may be required depending on the type of issue faced by the Board. Below is a description of the most common situations faced by the NOSB. In all cases, the end product should be a recommendation by the Board to the NOP and each recommendation should be accompanied by a cover sheet illustrated in figure 1.

1. Materials proposed to be added to or removed from the National List
The NOSB has the statutory authority to consider and recommend materials for addition to, or deletion from, the National List of Approved and Prohibited Substances.
2. Modification of existing standards or development of new standards.
The NOSB will use the decision making procedures outlined in Section VIII to justify modifying existing standards or proposing new standards. NOP will work with the NOSB to develop proposed regulatory language that expresses the NOSB’s objectives.
3. Interpretation of standards and handling questions submitted to the NOP.

In many cases, questions arise from accredited certifying agents (ACA's) and others directed to the NOP about interpreting the existing standards.

4. Compliance and Enforcement

The NOP is responsible for compliance and enforcement. However, there are situations when the Program requires the NOSB to provide interpretation and discussion on particular actions or issues.

5. Staff to the NOSB committees

Background: The effective operation of the NOSB requires close coordination with the staff of the NOP in accordance with the transparency requirements of the FACA guidelines and OFPA statute and regulations. In this spirit, the mission of the NOSB and the intent of OFPA are best fulfilled if both the board and the NOP staff work together closely. To ensure NOSB effectiveness, NOP resources are committed to ensuring that the board effectively carries out its responsibility to determine acceptable practices and materials in accordance with OFPA standards. The functions of the NOSB, including its committees' decision making process and their effectiveness, are central to the success of the NOP program, organic integrity, protection of health and the environment, and sustained growth of the organic sector.

Objective: To designate NOP staff to serve as NOSB committee staff in assist the board in effectively carrying out its statutory and regulatory responsibilities.

NOSB committee staffing: Each committee of the NOSB is assigned one NOP staff person who provides the technical and logistical support to the committee work. The staff person works closely with the chair of the committee as the chair develops the meeting schedules, agenda, background material, and provides the NOSB committee members with support in developing the underlying material that inform NOSB committee decisions relating to the sunset process, petitions before the board, and other allowable and restricted practices under OFPA, in accordance with the adopted guidelines or regulations. The committee staff ensures that there is a complete record of the committee decision making process, which is available to the public. The committee staff person works in coordination with and under the supervision of the Executive Director to ensure that the NOSB section of the NOP website is current and accurate in reflecting the full work of the committee, including the range of positions discussed during committee meetings. This will enable future NOSB members and NOP staff to benefit fully from the discussion and technical documents regarding committee and board decisions.

Committee Vote:

Motion: Barry Flamm, Second: Kevin Engelbert

Vote: Yes: 4 No: 0 absent: 1

Figure 1: Form Used to Submit NOSB Final Recommendations to the NOP

Formal Recommendation by the National Organic Standards Board (NOSB) to the National Organic Program	
Date	_____
Subject	_____
Chair	_____
(Sign)	
<u>Recommendation</u>	
The NOSB hereby recommends to the NOP the following:	
Rulemaking Action	_____
Guidance Statement	_____
Other	_____
Statement of the Recommendation (Including Recount of Vote):	
Rationale Supporting Recommendation (including consistency with OFPA and NOP):	
Response by the NOP:	