

MINUTES OF THE
NATIONAL ORGANIC STANDARDS BOARD
FULL BOARD MEETING
ONTARIO, CA
MARCH 16-20, 1998

March 16, 1998

The National Organic Standards Board (NOSB or Board) meeting was called to order at 1:05 p.m. by Chairperson Bob Anderson. Bob began reviewing the four U.S. Department of Agriculture (USDA) Listening Sessions on the National Organic Program Proposal Rule. He noted that the sessions were very positive from the standpoint that everyone supports the USDA developing high standards for organic production.

Bob went on to acknowledge the new Board members attending their first NOSB meeting. Those members included: Carolyn Brickey, Consumer/Public Interest Representative; Marvin Hollen, Farmer/Grower; Bill Welsh, Environmentalist; and Eric Sideman, Scientist.

Next, Bob introduced Keith Jones, the new Program Manager for the National Organic Program (NOP). He also acknowledged Don Kinsman, a charter member of the NOSB. Don passed away in early March.

The public input session followed and the meeting was adjourned at 5:15 p.m. The public input received will be included as a part of the public record on the proposed rule.

March 17, 1998

The NOSB meeting was called to order at 8:08 a.m. by Chairperson Bob Anderson. NOSB Members in attendance were: Betsy Lydon, Margaret Wittenberg, Jean Afterman, Fred Kirschenmann, Steve Harper, Kathleen Merrigan, Bob Anderson, Carolyn Brickey, Eric Sideman, Steve Pavich, Joan Gussow, Rod Crossley, Marvin Hollen and Bill Welsh. Participating at this meeting as the certifying agency advisor to the NOSB was Patricia Kane of the NOFA - NY.

NOP staff members present from USDA were: Keith Jones, Michael Johnson, and Grace Gershuny. Also in attendance from USDA was Eileen Stommes, Deputy Administrator, Transportation and Marketing Program, Agricultural Marketing Service (AMS).

Kathleen Merrigan began the morning session by outlining the NOSB priorities for the upcoming days. These items included:

- * Finalize letter to Secretary.
- * Develop NOSB reaffirmation statements.
- * Determine NOSB position on material "annotations" and manuals.
- * Develop augmentation and clarification to prior NOSB positions.

- * Write specific statements on top issues of public concern on NOP proposed rule.
- * Write letter to Secretary on NOSB role during proposed rule development.
- * Discuss NOSB meeting schedule and budget.
- * Other – committee structure, role, issues.
- * Liaison with other agencies - Environmental Protection Agency, Food and Drug Administration, and the Office of Science & Technology Policy.

Kathleen followed with a discussion of the topics to be covered in the NOSB role(s) letter. The highlights of the letter should include:

- * Organic industry is considering and will likely support lawsuits in response to proposed rule. The lawsuits will likely focus on: (1) Language of the Organic Foods Production Act of 1990 (OFPA) is clear and the proposed rule is in violation; (2) Arguments for USDA position on National List is not well supported; and (3) USDA did not appropriately deal with the biotechnology issue.
- * The rule does not address or resolve: (1) Synthetics in handling and other OFPA problems (i.e., use of sulfur dioxide SO₂ in wine, small farmer exemption, etc.) and (2) Secretary's declaration of what may appear on the National List. It was further suggested that the Board legislatively fix these problems, rather than spend its time debating.

Kathleen went on to discuss the possibility of correcting the National List capitalization in the statute. Grace Gershuny briefly explained the USDA interpretation of the National List section of the OFPA, and USDA's rationale for adding synthetics to the National List. Bob replied by noting that the OFPA allots the national list process to the NOSB.

Kathleen then requested a vote to provide leeway to refine the brief; Fred Kirschenmann moved and it was seconded by Rod Crossley to allow Kathleen Merrigan to move forward on the brief (13 aye and 1 opposed). Motion carried.

The Board then discussed development of the NOSB reaffirmation statements. In these statements, the Board agreed: (1) Endorses past Board recommendations; (2) Endorses the Board dialogue process; (3) Endorse the USDA-NOSB partnership; and (4) Ask that the USDA recognize the ongoing role of the Board.

A follow-up discussion ensued about additional statements that the Board hoped to develop on 'annotations' and 'program manuals'. Kathleen went on to discuss that Office of Management and Budget (OMB) is opposed to very detailed regulations. This raised the question of *how much should be in the rule and how much should be left to program manuals* – Kathleen noted the delicate balance, the concerns of flexibility and discretion, the role of the farm plan, and the role of the certifying agent.

Tom O'Brien, Associate Administrator, AMS, briefly discussed the use of program manuals and/or policy manuals in current AMS programs. He noted that National List annotations could be one use for a program manual.

67 Pat Kane followed by expressing the need for a clear and concise document regarding materials.
68 Joan concurred, and supports the use of a very definitive national list.

69 The following were identified as needing either augmentation or further clarification:

- 70 * Handling principles and materials listing procedure
- 71 * Antibiotics and paracitocides
- 72 * BSE and animal refeeding
- 73 * Manure management
- 74 * Fumigation of imports
- 75 * Equivalency procedures
- 76 * Whole dairy herd conversion
- 77 * TAP process standardization
- 78 * Genetically modified organisms

79 **MATERIALS COMMITTEE**

80 Jean Afterman then led the National List discussion. The items of concern included:

- 81 * Annotations should go into rule; materials as recommended should go into rule with change.
- 82 * Reservations about operating manuals.
- 83 * Concerns about consistency among certifiers.
- 84 * Materials as recommended should go into rule without change.
- 85 * No consensus on law prohibiting synthetics in processing.

86 Another topic of concern raised in this discussion centered around the statute's clear prohibition
87 of synthetics in processing. Joan Gussow reiterated the OFPA's strict stand that there are no
88 principles in the OFPA for processing activities.

89 Joan Gussow then led a discussion about USDA removing annotations from the National List
90 portion of the rule. The NOSB agreed unanimously that the materials reviewed and
91 recommended by the NOSB should be made part of the rule precisely as recommended by the
92 NOSB, including the classifications and annotations. Kathleen noted that there should be some
93 allowance for a universe of materials for processing and handling.

94 Discussion ensued, and Lynn Coody noted that the seven crops criteria do not apply to
95 processing; Fred Kirschenmann suggested the Board develop an interdisciplinary taskforce
96 to develop criteria for determining the appropriateness of materials for processing and livestock,
97 comparable to the criteria used to judge crop materials. Fred Kirschenmann moved and it was
98 seconded by Eric Sideman to establish this task force (**Vote: 7 aye, 6 opposed, and 1 absent**).

99 **March 18, 1998**

The meeting was called to order at 8:16 a.m. by Chairperson Bob Anderson, Board members present: Jean Afterman, Steve Pavich, Fred Kirschenmann, Rod Crossley, Steve Harper, Kathleen Merrigan, Carolyn Brickey, Eric Sideman, Joan Gussow, Marvin Hollen, Bill Welsh, Betsy Lydon, Margaret Wittenberg, and Pat Kane as the certifier representative.

He began by thanking the committees and industry representatives on the previous night's hard work. He also thanked Keith, Tom, Grace, and USDA for all of their work. He then introduced Dr. Isi Siddiqui and thanked him for his leadership in this process.

Dr. Siddiqui, Deputy Assistant Secretary, presented Certificates of Appointment to the new Board members as follows: Carolyn Brickey, Steve Harper, Marvin Hollen, Eric Sideman and Bill Welsh. Dr. Siddiqui then thanked the Board for all its hard work, and acknowledged all those who attended the public input session. He went on to say that the USDA is committed to developing a rule that consumers and the industry can support.

LIVESTOCK COMMITTEE

Fred led the discussion of the livestock portion of the rule. As the discussion ensued, Fred moved and it was seconded by Joan to officially endorse the Organic Trade Association (OTA) position relative to the Food Safety Inspection Service prohibition on labeling meat products. **Motion carried unanimously.** (See final Livestock documents as posted to the web for NOSB livestock positions).

PROCESSING COMMITTEE

Margaret Wittenberg led the discussion of the procession, handling, and labeling portion of the rule. The following votes were made during the discussion: Rod moved and it was seconded by Bob for USDA to return to the use of "made with organic ingredients," instead of "made with certain organic ingredients," as proposed by USDA. **(Vote: 7 aye, 4 opposed, and 3 absent.) Motion carried.** Fred moved and it was seconded by Joan to allow the use of private seals on the principal display panel of 95 percent and above organic products, as well as the USDA and State seals. **(Vote: Unanimous - 1 absent.)**

The following resolution was also submitted:

The National Organic Standards Board (NOSB) endorses and supports the Organic Materials Review Institute's (OMRI) effort in providing technical information to the NOSB and its committees. Additionally, the NOSB requests that OMRI continue to provide this support during the rulemaking period and also (a) Assist in further identifying materials that need to be reviewed and (b) provide technical support for these reviews. The NOSB further recommends that the USDA and other Non-Governmental Organizations provide subscriptions and other funding vehicles to support OMRI's ongoing work.

Rod moved and it was seconded by Steve Harper to adopt the OMRI resolution. **Motion**

135 **carried unanimously.** The meeting reconvened at 2:05 p.m.

136 OMRI letter proposal resolution, Rod moved and Steve second, Fred's friendly amendment.

137 **Motion carried unanimously (3 absent).** (See final processing, handling, and labeling

138 documents as posted to the web for NOSB processing, handling, and labeling positions.)

139 The Board then discussed the legal brief to the Secretary. Resultantly, Fred moved and it was

140 seconded by Rod to continue forward and accept the brief as amended. **(Vote: 11 aye,**

141 **1 opposed, and 2 abstentions.) Motion carried.**

142 **CERTIFICATION**

143 The private seal usage discussion was revisited as well as the use of higher standards. Bob

144 suggested the Board go back to its original position. Rod moved and it was seconded by

145 Carolyn to reaffirm the NOSB's original recommendations. **(Vote: 6 aye, 5 opposed, and 1**

146 **absent.) Motion carried.** (See final certification documents as posted to the web for NOSB

147 certification positions).

148 The session was adjourned at 6:12 p.m.

149 **March 19, 1998**

150 The meeting was called to order at 8:20 a.m. by Bob Anderson, chairperson. NOSB members in

151 attendance were: Kathleen Merrigan, Bob Anderson, Carolyn Brickey, Eric Sideman, Betsy

152 Lydon, Joan Gussow, Marvin Hollen, Bill Welsh, Margaret Wittenberg, Fred Kirschenmann,

153 Steve Pavich, Jean Afterman, Steve Harper, and Pat Kane as the certifier representative.

154 There were additional discussions about certification issues. The following motion was

155 proposed on section 205.219 by Kathleen:

156 The Secretary shall vest the accredited certification agent with the authority to initially terminate

157 certification (based on known abuse), provided the terminated party retains the ability to appeal

158 that decision to the Secretary. Fred seconded. **Motion carried unanimously.**

159 **INTERNATIONAL COMMITTEE**

160 Kathleen moved and it was seconded by Betsy to accept the NOSB International Committee

161 comments. **Motion carried unanimously.** (See final International documents as posted to the

162 web.) Michael Johnson went on to discuss the USDA position on fumigation. Kathleen noted

163 that the proposed rule remained silent on the issue.

164 Reports from the Livestock and Processing Committees were also discussed and the material can

165 be viewed on Internet at www.ams.usda.gov/nop.

166 The meeting was adjourned at 5:15 p.m.