

**National Organic Standards Board
Policy Development Committee
Proposed Discussion Document
Public Comment Procedures**

October 4, 2011

Introduction

With the goal of involvement from all parts of the organic community, the National Organic Standards Board (NOSB) has historically sought to ensure that public input is central to its decision making process. The Policy Development Committee (PDC) seeks to collect public input on its miscellaneous policy on this subject, in an effort to assess the effectiveness of its public hearing process and its perceived utility in assisting the Board to make decisions that build public support for and trust in the standard. In order to do this, the PDC seeks public input regarding the establishment of a policy that clearly defines an effective public comment process in NOSB deliberations.

Background

Activities of the NOSB include, “conducting public meetings, soliciting and taking public comments” (NOSB Policy Procedure Manual [PPM] p5), in order to carry out the NOSB mission.

As discussed in the PPM (p27 - Miscellaneous Policies), several items stand out as vital for public comment at NOSB meetings. Specifically, it is stated that people who wish to comment at NOSB meetings during public comment periods can do so by following the rules in place, as well as using suggestions to better ensure that they are well-received.

Further, current policy states, “Each person will be given 5 minutes to speak, unless otherwise indicated by the Chair,” (p27) and continues, “No person will be allowed to speak during the public comment period for more than 10 minutes, unless otherwise indicated by the Chair.” (p27)

Finally, it is put forth that written proxies can be submitted to allow another person to speak on behalf of a member of the public, and that, “Individuals providing public comment will refrain from any personal attacks and from remarks that otherwise impugn the character of any individual.” (p27)

The policy gives the NOSB Chair discretionary authority in determining time allotments for public commenters within the established parameters. The PDC is seeking public input on issues that may require additional clarity, including, but not limited to, the following:

- How the NOSB informs the public of time allotments for public commenters during NOSB meetings;

- How the NOSB publicly acknowledges public comment;
- How the NOSB responds to popular or pressing issues raised in numerous public statements, but not included in the meeting agenda;
- Whether the time designated refers to presentation time, or to question and discussion time by NOSB members, or a combination of both; and,
- Whether comments from those who cannot be present can only take either the form of submitted written comment, or of proxy-delivered live comment, or whether, in addition, other options with modern media tools might allow live- or pseudo-live input from public members who are not present. (Along these lines, although Skype may not be an appropriate method, should the public input process make available by electronic or real-time technology a means for fostering broader public access to the public comment process?)

This document presents a set of questions and seeks public input. In addition, there may be additional questions and issues raised by the public that merit responses and the PDC encourages those being brought to this process.

Relevant Areas of the Rule

The *Organic Foods Production Act* (OFPA) establishes the National Organic Standards Board at §2119 (7 U.S.C. 6518), “(a) The Secretary shall establish a National Organic Standards Board (in accordance with the Federal Advisory Committee Act (5 U.S.C. app. 2 et seq.) [hereafter referred to in this section as the “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 this title.” The PPM [<http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELDEV3013893>] (Section VI, Miscellaneous Policies) includes (p27), “Policy for Public Comment at NOSB Meetings.” This lays out the process and the time designations of public comments, including that, “Each person will be given 5 minutes to speak,” and, “No person will be allowed to speak during the public comment period for more than 10 minutes.” Both of these statements are followed by the caveat, “unless otherwise indicated by the Chair.” Furthermore, process and time designation points are made in a subsequent section entitled, “Other suggestions that would be appreciated by NOSB members,” which provides additional direction to the public comment process

Discussion

In both policy and practice, the NOSB has traditionally put great value in comments delivered in person. The NOSB moves meetings around the country to allow easier access by a broad group of people and organizations, that otherwise would not have access, during each meeting. The Board sets aside a large proportion of the meeting time for public comment. And, the Board has adopted policy that guarantees those who have pre-registered and attend meetings at least a minimum amount of time in which to deliver their message.

A modification to the basic structure that the Policy provides for public comment is being

considered. The Committee seeks input and discussion from all interested parties that will assist in clarifying and addressing public needs, and ensuring the effectiveness and efficiency of the process. Public comment is sought to address questions included within the discussion points that follow.

Time limits and adequate representation

In the Federal Register notice announcing an NOSB meeting, the public is informed about the public comment period and the time restrictions. As increased numbers of people seek to participate in this process, time limitations become a factor in scheduling time allotments for individual participants.

There may be several ways to handle a large number of requests for public comments.

1. A special announcement could be posted in the Federal Register subsequent to the initial announcement indicating that a time reduction is being put in place for public comments. This was done for the Spring 2011 NOSB meeting, reducing the time allotment from 5 to 3 minutes.
2. A need to condense public statements could be announced at the beginning of the NOSB meeting, indicating that there are many who wish to make comments and requesting that comments be kept as brief as possible. In addition, NOSB members could be asked to keep their questions limited. This voluntary time reduction approach may achieve the time savings needed.
3. An assessment of those signed up and those actually present at the meeting could be made at the beginning of the meeting (or at the beginning of each day of the meeting), and a determination made as to whether time reductions are necessary.
4. The Board could decide to extend public comment into the evening hours to accommodate more people.

Given that the public comment period cannot be unlimited, should the requests to make public comment be prioritized? Should the total number of public comment slots be limited by category/topic or by some other means? Should more time be allocated for public comments (including going into the evening/night as necessary)? Should the published announcement indicating time periods for public comment be eliminated and full authority be given to the NOSB Chair or designated Board committee to determine how the issue can best be decided?

Another component regarding public comment at NOSB meetings pertains to whether the allocated time refers to 'presentation' time, 'question and discussion' time from NOSB members, or a combination. Should the policy be clarified to state a fixed presentation time, as well as a maximum question and discussion time? Should NOSB member questions be limited? Who should allow the variation or combine the time into some clear total? Or, is this best done by the Board Chair during the meeting, subject to the circumstances at hand? Also, should the time allocated be flexible or related to the number of requests? Or should it remain as it is now in the PPM? Is some other designation of time(s) more appropriate?

Hearing from those who cannot attend

Comments from those who cannot be present be present during public comment could be submitted in written form, through a live proxy, or by electronic means with modern media tools that allow for live- or pseudo-live input. (Along these lines, while Skype may not be the appropriate method, it may be necessary to identify and maintain an electronic or real-time means of fostering public comment access.) Should public comment through live/"remote" means be allowed and/or encouraged? Furthermore, given the limits of time, should the recent revisions to the PPM to clarify proxy procedures (p27) continue, or should the proxy practice be abolished¹?

Responding to public comment and serving the advisory role

It can further be posited that the NOSB should respond to overarching issues, which are repeatedly raised by the public at the meeting, *even if those issues were not on the agenda*. Some stakeholder groups have suggested that at the end of each Board meeting a communication from the NOSB be sent to the Secretary of Agriculture to convey issues that have come up during public comment and to fulfill the Board's statutory responsibility in its advisory capacity. According to some stakeholders, both those within and outside the NOSB, it is a responsibility of the Board that public comment is publicly acknowledged in this and possibly other ways. How should this be handled: prior to, during, or after public comment has occurred? Furthermore, what type of response or action should the public expect from the NOSB when issues not on the agenda are raised repeatedly in public comment? Should communications to the Secretary on issues raised in public comment be formalized? Does this communication and advisory function serve as an important public-private partnership that is responsive to the concerns raised by the broader organic community?

Conclusion

In order to best meet the goals of the NOSB and incorporate public comment into its decision making, the PDC is seeking public input on the Board's decision making process and efforts that may better ensure that the public feels welcome and is heard through its participation. Time for clarification and discussion has been viewed as helpful to both NOSB members and the public. How can this be balanced with the number of interested public commenters vis-à-vis the time available on the schedule?

The PDC is seeking the public's perspective on the questions below. (Please indicate the question number in responses provided on this topic.)

¹ The PPM (p27) on this point reads, "The NOSB will attempt to accommodate all persons requesting public comment time, however, persons requesting time after the closing date in the Meeting Notice, or during last minute sign-up at the meeting, will be placed on a waiting list and will be considered at the discretion of the NOSB Chair depending on availability of time. Similarly, persons who have signed up to address the NOSB for their 5-minute slot and have also served as a proxy for another person will be placed on a waiting list if they wish to speak for a third time on the same topic, and will be considered at the discretion of the NOSB Chair depending on availability of time. This should allow more members of the public time to present."

- 1) Given that the public comment period cannot be unlimited, how should the requests to make public comment be prioritized?
- 2) Should the policy be clarified to state a fixed presentation time for public comment?
- 3) Should policy also define a maximum question and discussion time once public comment is received?
- 4) Who should allow the variation or combine the time(s) into a defined total in #3 above?
- 5) Is time setting best done by the Board Chair, at the time of the meeting, depending upon the circumstances at hand?
- 6) Should the time allocated be flexible or related to the number of requests?
- 7) Should the public comment time allowed remain as it is now in the PPM?
- 8) Is some other designation of time(s) more appropriate?
- 9) Should public comment through live/"remote" means be allowed and/or encouraged?
- 10) Given the limits of time, should the recent revisions to the PPM to clarify proxy procedures (p27) continue? Or, should the proxy practice be abolished?
- 11) How can this function (NOSB serving as an advisory role) best serve as a public-private partnership that is responsive to the concerns raised by the broader organic community?

The public is encouraged to provide any additional questions and thoughts regarding the most effective and efficient approach for the NOSB to manage the public comment process associated with its Board meetings.

Committee Vote

Moved: Colehour Bondera

Second: Barry Flamm

Yes 6

No 0

Abstain 0

Absent 0