

**National Organic Standards Board  
Policy Development Committee  
Clarification and Updating Section V Direction on  
NOSB / NOP Collaboration Process**

**July 27, 2010**

## **Introduction**

The Policy Development Committee (PDC) continues its efforts to improve the Board's Policy and Procedures Manual (PPM). This recommendation presents suggested changes to the National Organic Standards Board (NOSB) / National Organic Program (NOP) collaboration guidance in Section V of the PPM.

## **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 due to the organizational changes then occurring in the NOP. The NOP has new leadership, changed reporting structure and position in AMS, and increased staffing and funding. This calls for reexamination of how the parties work together in the interest of the organic community and the public at large.

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 the Organic Foods Production Act (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 committee's decisions making process and their effectiveness, are central to the success of the NOP, organic integrity, protection of health and the environment, and sustained growth of the organic sector.

## **Relevant Areas in the Rule**

The Organic Foods Production Act of 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 focused on streamlining the directions now in PPM

Section V. Subsequently, as discussed above, it was determined that the changes at NOP required a more comprehensive revision resulting from NOP and public discourse. A discussion document was developed for the April 2010 Board meeting asking questions about the present collaboration process and proposing changes to current directives. A limited number of public comments were received. One commenter emphasized that, "We would not like to see the Board meeting without the Public or meeting with the NOP without Federal Register Notice and the opportunity for public comment." The Board has and will continue to strictly follow FACA rules, which address this issue. This commenter also said, "It seems that regardless of leadership, funding or staffing that the collaboration process overall should not change." The PDC believes these changes at NOP merit consideration of various means to improve collaboration. Another commenter "suggest(s) that NOSB focus its role on justifying standards modifications and prioritising standards development." The Committee has weighed all comments in developing the proposed revision to Section V of the PPM which follows:

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### **NOSB-NOP COLLABORATION**

The Organic Foods 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 the NOSB and the NOP and is implemented regularly through two-way feedback by the NOSB Executive Director and periodically at the Executive Committee's monthly calls. Especially at these calls, NOSB committee work plans and priorities are discussed and NOP requests and opinions are aired.

An effective collaboration process between the NOP and the NOSB should ensure that NOP receives NOSB input and feedback, and vice versa. 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 determination 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 are descriptions 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, or to add, remove, or modify annotations restricting the use of such listed materials.

**2. Recommendation for modification of existing standards or new standards.**

The NOSB will use the decision making procedures outlined in Section VIII to justify modifying existing standards or proposing new standards. The NOP may request that the NOSB develop recommendations for new or existing standards. The request should be in writing and should include a statement of the problem to be addressed, background, including the current policy or situation, statutory/ regulatory authority, legal situation, and desired timeframe for receiving the recommendation. The request will be posted on the NOP web site.

**3. Providing advice on NOP policy and interpretation of standards.**

An examples are: NOSB providing comments on specific actions by the NOP, such as the yeast and compost policies.

**4. Compliance and Enforcement.**

The NOP is responsible for compliance and enforcement. The NOP welcomes NOSB input on standards, but NOSB involvement in active investigations or enforcement actions is not appropriate. As timely and appropriate, the NOP reports to NOSB on the status of enforcement actions and also posts the status on the NOP web site.

**5. Management Review.**

NOSB may review the quality management system and internal audits to ensure that the NOP is managed effectively and efficiently. For example, the NOSB has a role to play in terms of seeing that corrective actions with OIG are completed.

In all the above situations, FACA procedures must be carefully followed to provide transparency and necessary public input.

The primary means of collaboration will be through NOP participation in Executive Committee (EC) and Standing Committee calls. The NOP Deputy Administrator or designee will participate in all EC calls. The NOSB Executive Director (ED) will participate in all NOSB calls as described in the ED duties in the PPM. Upon request and mutual agreement, the Deputy Administrator will participate in Standing Committee calls. In addition, each Standing Committee will be assigned an NOP staff person to provide additional technical, legal, and logistical support.

Work plans for action items are developed for each upcoming public board meeting. This is the

mode for developing recommendations and discussion documents. Work plan procedures are described in detail in Section VIII, page 32. The proposed work plans are presented and discussed at each public board meeting, but may be revised based on comments and Board priorities and resources.

NOP publicly made requests at board meetings are important considerations in the development of Committee work plan. These NOP requests to NOSB will be followed up in writing stating the problem to be addressed, background, statutory authority and the time frame for response. The proposed Committee Work plans will be reviewed at the next EC call following the Board meeting, with participation by the NOP Deputy Administrator. This participation in the development of work plans is vital for effective NOSB/NOP collaboration. Due to change in circumstances, these work plans may need to be revised prior to the posting of the final agenda of the upcoming Board meeting. Committee work plan changes will be done in consultation and full knowledge of the EC and NOP.

**Committee Vote:**

Motion: Barry Flamm      Second: Steve DeMuri  
Yes: 4      No: 0      Abstain: 0      Absent: 1

**Figure 1: Form Used to Submit NOSB Final Recommendations to the NOP**  
(Non Materials Recommendations)

**Formal Recommendation by the  
National Organic Standards Board (NOSB)  
to the National Organic Program (NOP)**

**Date:** \_\_\_\_\_

**Subject:** \_\_\_\_\_

**Chair:** \_\_\_\_\_

**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):**

**Committee Vote:**

**Moved:** \_\_\_\_\_ **Second:** \_\_\_\_\_

**Yes:** \_\_\_ **No:** \_\_\_ **Abstain:** \_\_\_ **Absent:** \_\_\_ **Recusal:** \_\_\_