

**National Organic
Standards Board
San Antonio, Texas
April 29-May 2, 2014**





- NOSB assessment
- NOSB under
 - the Organic Foods Production Act and the
 - Federal Advisory Committee Act
- NOSB procedures



Public-private partnership

- Public requests for more transparency and clarification of NOSB process

Goal's

- to fully address all NOSB recommendations and to receive NOSB advice that we can implement
- to improve efficiency and effectiveness of NOSB

NOP contracted with Meridian to conduct outside assessment of the NOSB



Meridian Institute

- Nonprofit with expertise in process design, facilitation, mediation and conducting assessments of organizational dynamics

Methodology

- Conducted 33 interviews between October and early December
- Analyzed data from interviews to develop report



Key Findings – What We Heard Works

- Good access to NOP staff when needed
- Strong leadership from NOP staff
- Improvements in organization and implementation of processes in recent years
- Good documentation of public meetings, subcommittee calls



Key Findings – What We Heard Works

- High level of respect among Board members
- Public meetings are effective at moving through established agendas
- Clearer NOSB focus today than in previous years
- Stakeholders generally view NOSB processes as transparent, particularly in public meetings



Key Findings – Major Themes

- Roles and Responsibilities
- Communication and Transparency
- NOSB Workload and Scope
- NOSB Public Meetings



Roles and Responsibilities – Key Issues

Range of views on the following issues:

- NOSB authority
- Development of NOSB work plans
- Nature of NOSB/NOP partnership in developing recommendations and setting policy



Roles and Responsibilities – Potential Next Steps

- Need to clarify:
 - Extent of the advisory nature of the board
 - Responsibility for both NOP and NOSB in developing and executing work plans
 - NOP legal responsibilities regarding review of NOSB recommendations; protocols to guide collaboration with NOSB
- Provide training to new NOSB members clarifying roles and responsibilities



Communication and Transparency – Key Findings

- Differing perceptions of how effective communication is between NOP staff and NOSB (particularly regarding development of subcommittee work plans)
- Desire for more communication pathways to NOP from external stakeholders
- Stakeholders seek clearer understanding of progress of NOSB recommendations within USDA's rulemaking process



Communication and Transparency – Next Steps

- Review roles and responsibilities for the NOSB and NOP to guide input on subcommittee work plans.
- Establish a means for external stakeholders to provide comment directly to the NOP, rather than through NOSB channels.
- Provide more clarity on the process that recommendations must go through to be implemented by USDA.



NOSB's Scope – Key Issues

- Extensive NOSB workload; hard for members to manage
- Desire for more strategic conversations
- Complex technical nature of petitions reviewed by the Board
- Uneven distribution of work among subcommittees



NOSB's Scope – Potential Next Steps

- Focus strictly on National List issues (area of authority granted by OFPA)
- Clarify the process of identifying and vetting experts to participate in Technical Advisory Panels
- Focus additional efforts on technical support for NOSB subcommittees



Effective Public Meetings – Key Issues

- Meeting duration seen as limiting robust discussion
- Oral public comment viewed as having disproportionate impact on NOSB meetings
- High volume of written public comments; difficult for Board to review
- Need for more collegial meeting environment
- Desire for more robust dialogue among Board members during meetings



Effective Public Meetings – Potential Next Steps

- Consider length of public meetings, as well as conducting some portions of public meetings via teleconference, webinar, or other virtual means
- Establish mechanism to gather and consider written comments directed to the NOP rather than the NOSB
- Consider restructuring the public comment process to better facilitate direct dialogue and feedback.
 - Consider whether focus should be on oral or written comments, adjust schedules accordingly



Other Key Issues for Discussion

- Subcommittee Process and Functions
- NOSB Policies and Procedures
- Board Member Selection

National Organic Standards Board



National Organic Standards Board



- Appointed by the Secretary of Agriculture under the Federal Advisory Committee Act (FACA)
- The purpose of a FACA Committee is to obtain advice or recommendations on issues or policies within the scope of an agency official's responsibilities
- NOSB reviews substances and recommends if they should be allowed/prohibited

USDA's Role with the NOSB



- Ensure that public access to NOSB actions is maximized.
- Issue administrative guidelines for NOSB
- Control the undue influence of special interests by balancing committee membership
- Monitor and reduce costs
- USDA may not include exemptions for the use of specific synthetic substances, without them having been proposed (by the NOSB)
- In addition, USDA is also responsible for evaluating OFPA criteria associated with National List substances

USDA's role with National List



- Establish and administer a National List of Approved and Prohibited Substances
 - Based on recommendations of the NOSB
 - Secretary may not include exemptions for the use of specific synthetic substances without a recommendation from the NOSB
 - The Secretary must publish any proposed amendment to the List and seek public comment, and must note any changes the Secretary has made to the Board's recommendation.
 - After evaluation of the comments, the Secretary shall publish the final National List along with an analysis of the comments.
 - Sunset provision: Receive the Board's 5-year review on National List substances and determine whether to renew

OFPA Sunset Provision



- No exemption or prohibition contained in the National List shall be valid unless the NOSB has reviewed such exemption or prohibition as provided in this section within 5 years of such exemption or prohibition being adopted or reviewed and the Secretary has renewed such exemption or prohibition

Sunset needed a revamp!



Drawbacks to the previous process:

- Only required 2/5 Board to remove a substance
- Every sunset required three NOP rulemaking steps
- Substances used to be discussed in 1 public meeting
- Annotation changes during sunset were problematic

Sunset revision benefits



- **Thorough and transparent review process for all substances** - it provides 2 public comment opportunities before the NOSB completes its review of each substance.
- Ensures that any change to the National list (petitioned or sunset) is supported by a 2/3 majority of the NOSB.
- Streamlines the administration of the National List by simplifying rulemaking.

Legislative History on the Creation and Membership of the NOSB



1990 Farm Bill Senate Committee and Conference Report on the NOSB:

- Board membership was carefully selected to provide a balance of interests
- There was concern about appropriate representation given Board's anticipated influence in setting standards
- At the time, it was noted that the interests of **farmers/handlers** and the interests of **consumers/environmentalists** required balance - representation included 6 of each of these two interest groups (supplemented by a retailer – and then later, a certifier and scientist)
- The 2/3 majority vote to carry any motion was set to “adequately prevent any one interest from controlling the Board “

7 USC 6518:

National Organic Standards Board



OFPA, 7 U.S.C. 6518 (a) states that:

The Secretary shall establish a National Organic Standards Board:

- In accordance with Federal Advisory Committee Act (5 U.S.C. App. 2 et seq.)
- 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

National Organic Standards Board Responsibilities



- Provide recommendations to the Secretary regarding implementation of OFPA
- Develop the proposed National List or proposed amendments to the National List for submission to the Secretary
- Convene technical advisory panels to provide scientific evaluation of materials
- Review botanical pesticides
- Advise the Secretary on product residue testing and emergency spray programs

National Organic Standards Board

National List



- Requirements while establishing proposed amendments:
 - Review available information on potential adverse human and environmental effects
 - Obtain complete list of ingredients of considered substances from manufacturers to determine if it includes synthetic inert materials
 - Submit to the Secretary results of Board's evaluation and any technical advisory panel

National Organic Standards Board

National List



- Use seven specified evaluation criteria
 - Detrimental chemical interactions
 - Toxicity and mode of action, breakdown products, persistence in the environment
 - Probability of environmental contamination during manufacture, use,
 - Effect of the substance on human health;
 - The effects of the substance on biological and chemical interactions in the agroecosystem,
 - Alternatives to using the substance;
 - Compatibility with a system of sustainable agriculture
- Establish procedures for receiving petitions to evaluate substances for inclusion on the List
- Conduct Sunset review of each substance on the List within five years of it being adopted or renewed



National Organic Standards Board and the Federal Advisory Committee Act (FACA)



Federal Advisory Committees



- OFPA: Secretary has responsibility to establish the NOSB **in accordance with the Federal Advisory Committee Act (FACA)**
- FACA Committees are established for the purpose of obtaining advice or recommendations on issues or policies **within the scope of an agency official's responsibilities**
- Like the NOSB, many FACA Boards are statutory: In 2012, 141 of the 169 USDA Boards were statutory
- **Federal advisory committees exist to advise and recommend, NOT to decide.**

FACA Committees Must Have....



- A **charter** with established mission and duties:
The USDA renews the NOSB Charter every two years.
- Fair and balanced **membership**: The Secretary appoints NOSB members based on OFPA categories.
- A **Designated Federal Official (DFO)** for advisory committee and its subcommittees. FACA assigns a number of activities to the DFO.
- Opportunity for reasonable participation by the public in advisory committee activities, subject to agency guidelines.

FACA Meeting Rules



- Open meetings with opportunity for public comment
 - Any member of the public is permitted to file a written statement with advisory committee.
 - Any member of the public may speak to or address advisory committee within appropriate guidelines.

Subcommittees Versus Committees



- Subcommittee's meetings must be conducted in accordance with FACA's openness requirements **IF**
 - Recommendations are made directly to the Federal agency, or
 - The parent advisory committee will adopt subcommittee recommendations without further deliberations
- NOSB subcommittee proposals do not come directly to USDA – they come through the NOSB Full Committee.
- This is why subcommittee calls are not currently open to the public. This is also why we call subcommittee products proposals rather than recommendations.

Agency (AMS) Responsibilities



- Comply with FACA
- Issue administrative guidelines and management controls that apply to advisory committees
- Designate a Committee Management Officer (CMO) and Designate a Designated Federal Officer (DFO) for each advisory committee and its subcommittees
- Provide a written determination stating the reasons for closing any advisory committee meeting to the public
- Review, at least annually, the need to continue each existing advisory committee, consistent with the public interest and the purpose of each advisory committee

Agency Responsibilities



- Determine that ...staff, experts and consultants to advisory committees are justified and levels of agency support are adequate
- Develop procedures to assure that the committee's recommendations will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the committee's independent judgment
- Assure that the interests and affiliations of advisory committee members are reviewed for conformance with applicable conflict of interest statutes, regulations issued by Office of Government Ethics including any supplemental agency requirements, and other Federal ethics rules

NOP Responsibilities



- **AMS's Designated Federal Officer (DFO) to the NOSB is the NOP Deputy Administrator:**
 - Calls, attends, and adjourns committee meetings
 - Develops and approves agendas
 - Maintains required records and budgets
 - Ensures efficient operations and adherence to FACA and other laws
 - Develops committee reports for the Committee Management Officer: We must submit an annual report on Board activities, meetings, and expenses.

FACA and OFPA together



- OFPA doesn't direct the NOSB to decide.
- OFPA asks NOSB to:
 - **Assist** in development of Standards
 - **Provide recommendations**
 - **Evaluate** substances
 - **Develop proposed** National List and **proposed amendments** to the List for submission to the Secretary
- Secretary (authority delegated to AMS) retains decision-making and rulemaking authority

Nominations Process Overview



The Board nomination process takes about 1 year:

1. Prepare Federal Register call for nominations and outreach plan; complete clearance process
2. Announce call for nominations – we target having announcement open 2 months
3. Review applications for completeness and basic qualifications, i.e., fit in OFPA categories
4. Vet qualified candidates against exclusion criteria (examples: registered lobbyist; service on other Board)

Nominations Process Overview



The Board nomination process takes about 1 year:

6. Interview qualified and vetted candidates
7. Prepare slate and information summary about qualified and vetted candidates for Secretary consideration
8. Secretary selects appointee; appointee announced
9. Term begins in January

Nomination Process Criteria



A range of factors are considered in evaluating applicants:

- OFPA categories of seats to be filled – **mandatory**
- NOSB Recommendation on Criteria for Board Membership (1999) – More on this next slide!
- Ability to work collaboratively with other Board members and USDA
- Ability to represent all racial and ethnic groups, women and men, and persons with disabilities.

NOSB Recommendations on Nominations Evaluation Criteria



- In 1999, NOSB recommended criteria for Board membership – these criteria are on NOP’s nominations webpage, are in Federal Register announcements, and are used during candidate evaluation.
- **Criteria include:**
 - Understanding of organic principles and practical experience in the organic community;
 - Experience in public policy;
 - Commitment to organic integrity;
 - Ability to evaluate technical information;
 - Willingness to commit time and energy needed;
 - Demonstrated experience and interest in organic production and certification

NOSB CALL FOR NOMINATIONS



- USDA is accepting nominations for new NOSB members! Members are appointed by USDA Secretary.
- Five year term: January 2015 to January 2020.
- USDA seeks nominations for the following seats:
 - Individual with expertise in areas of environmental protection and resource conservation
 - Organic Producer who owns or operates an organic operation
 - Organic Handler who owns or operates an organic handling operation
 - Retailer with significant trade in organic products

NOSB CALL FOR NOMINATIONS



- Written nominations must include: cover letter, resume, and a required form (available on USDA website)
- Applications must be postmarked on or before **May 15, 2014.**
- For more information
<http://www.ams.usda.gov/AMSV1.0/NOSBNominationProcess>

Policy and Procedures Manual



- The PPM is a valuable resource for the Board, NOP, and the public.
- From 2002-2013, the PPM was developed by the Board with revisions open to public comment.
- Moving forward, AMS will take a leadership role with the PPM. Content will include:
 - NOP policies and procedures related to the NOSB (e.g. conflict of interest)
 - Existing PPM parts that are working well (keep)
 - Updated PPM parts that need revision
- NOP will consult with the Board through the NOSB Policy Development Subcommittee



1. AMS drives the priorities for what the board considers.
2. The public has a voice in this process:
 - Public may petition additions or deletions from the National List.
 - Public may also submit comments to the Board and write to the NOP.
3. FACA requires that agencies effectively use resources: we shouldn't ask for advice we can't act on.

Work plans: Criteria for Adding Work Plan Item



- 1. Within Scope:** Item must be within the scope of OFPA and within agency authority.
- 2. USDA/NOP Priority:** Item must be a priority for the USDA/NOP; and something that the NOP is able to implement in a reasonable timeframe.
- 3. Clear Need:** Item must reflect a clear need for the NOP and/or organic community, for which information or advice is needed. (If it is a need, but NOP has enough information, it doesn't need to be on the work plan.)
- 4. Clear Scope:** NOP must have a clear sense of the intent and scope of the work plan item.



Recent NOP memos to the NOSB on work plan items

1. Ancillary substances
2. Improved Guidance on Preventing GMO presence in Organic Products
3. Assessing soil conservation practices

Importance

- Memos are transparent to the public
- Indicate need for recommendation on topic
- Clarify parameters of the scope and authority of the work plan item

Public Meeting Agenda



- Public meeting agenda prepared by NOP, driven by several factors:
 - Inclusion of work plan items that have yielded acceptable discussion documents or proposals
 - Reasonable time for public comments
 - Time for presentations and expert panels
 - Cost
- In the future, we may want to add a public prep meeting (webinar or face-to-face) so Board can review content of discussion documents and proposals

Public Meeting Management



- Only two substantive changes to the public meeting are being implemented for Spring 2014:
 - Consistent with other FACA Boards, NOP is co-chairing the Spring meeting.
 - Only minor adjustments to discussion documents and proposals will be allowed before voting. If public comments lead to substantive changes, the document is to go back to committee before voting.

Substantive Change



- Is a NOSB recommendation **substantially different** from the Subcommittee proposal on which it is based? Consider:
 - The extent to which a reasonable person affected by the recommendation would have understood that the published proposal would affect his or her interests;
 - The extent to which the subject of the recommendation or the issues determined in it are substantially different from the subject or issues involved in the proposal; and
 - The extent to which the effects of the recommendation differ from the effects of the proposal.
- The NOP Deputy Administrator or designee will determine whether a proposed amendment to a proposal would be a substantive change. Substantive change amendments will be referred back to the subcommittee for further consideration.

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