

Formal Recommendation
From: 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 Recommendation: (Motion # 1)

Amend Section VI, page 26, of the PPM, Miscellaneous Policies, by adding a new subcategory (in italics): NOSB Policy on Its Advisory Role and Communication with the Secretary of Agriculture Based on the communications and input it receives from the public.
Amend Section VI, page 27, Miscellaneous Policies by adding a new subcategory (in italics): NOSB Policy for Public Communication Between NOSB Meetings.
Amend Section II, page 13, Role of the Executive Director, to include additional language
See attached recommendation for detail.

Rationale Supporting Recommendation (including consistency with OFPA and NOP):

By adding this section to the PPM, the OFPA required processes to communicate with the Secretary of Agriculture and to receive communication from the public are both better ensured during the year, including time sensitive subjects and communications which do not fit within pre-assigned categories. These topics can therefore provide opportunity within the NOSB and NOP in terms of day to day operational choices including such communications, as well as between the NOSB and the public to behave more completely as expected from the public perception, communication-wise.

Committee Vote:

Moved:

Seconded:

Yes:

No:

Abstain:

Absent:

Recuse:

Public Communications Recommendations (Motion # 1)

PPM, Section VI, Miscellaneous Policies, page 26, is amended by adding a new subcategory (in italics):

NOSB Policy on Its Advisory Role and Communication with the Secretary of Agriculture Based on the communications and input it receives from the public. the National Organic Standards Board may provide effective and constructive advice, clarification, and written information, as it deems necessary, directly to the Secretary of Agriculture after each of its Board meetings. This information is intended to facilitate public communication with the Secretary on critical issues that may emerge that it believes are important to the implementation and integrity of the organic standards and practices under the Organic Foods Production Act.

PPM, Section VI, Miscellaneous Policies (page 27), is amended by adding a new subcategory (in italics).

NOSB Policy for Public Communication Between NOSB Meetings.

The NOSB seeks public communication outside of Board meetings and public comment periods to inform Board and Program work.

PPM Section II (page 13) Role of the Executive Director is amended to include the following language (in italics):

Identify, implement, administer and maintain a year-round mechanism by which public feedback can be received, posted and archived for viewing by the NOP, the NOSB, and the public itself.

**National Organic Standards Board
Policy Development Subcommittee
Proposal: Public Communications
August 14, 2012**

I. Introduction

A primary role of the National Organic Standards Board (NOSB) is to advise and counsel the Secretary, to represent the segments of the population from which they were selected, and to treat the business of the Board as fiduciaries for all members of the organic community and public at large (NOSB Policy and Procedures Manual, pp4-8).

The Federal Advisory Committee Act (FACA) Meeting Obligations to the Public (41 CFR 102-3.140) suggests that, "Any member of the public is permitted to file a written statement with the advisory committee during meetings."

In addition, the NOSB infrequently receives public communications outside of the designated public comment period. These communications include verbal and written information.

II. Background

The Organic Foods Production Act (OFPA), enacted under Title 21 of the 1990 Farm Bill, serves to establish uniform national standards for the production and handling of foods labeled as "organic." The Act authorized a new USDA National Organic Program (NOP) to set national standards for the production, handling, and processing of organically grown agricultural products. In addition, the Program oversees mandatory certification of organic production. The Act also established the National Organic Standards Board (NOSB), which advises the Secretary of Agriculture in setting the standards upon which the NOP is based. [Review at <http://www.nal.usda.gov/afsic/pubs/ofp/ofp.shtml>].

Sec.2119 [7 U.S.C. 6518] states that the NOSB consists of four individuals who own or operate an organic farming operation; two individuals who own or operate an organic handling operation, one individual who own or operates a retail establishment with significant trade in organic products; three individuals with expertise in areas of environmental protection and resource conservation; three individuals who represent public interests or consumer interest groups; one individual with expertise in the fields of toxicology, ecology or biochemistry, and one individual who is a certifying agent.

The statutory mission in OFPA states:

"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." (OFPA, Sec 2119 (a))

As stated in the NOSB Policy and Procedures Manual (PPM, p5),the NOSB Mission Statement is:

“To provide effective and constructive advice, clarification and guidance to the Secretary of Agriculture concerning the National Organic Program (NOP), and the consensus of the organic community.

In carrying out the mission, key activities of the Board include:

- “Assist in the development and maintenance of organic standards and regulations;
- Review petitioned materials for inclusion on or deletion from the National List of Approved and Prohibited Substances (National List); Recommend changes to the National List;
- Communicate with the organic community, including conducting public meetings, soliciting and taking public comments, provide timely information and education on the NOP, making reasonable use of a variety of communication channels.
- Communicate, support and coordinate with the NOP staff. “
The PPM (p8) states that NOSB members shall act impartially and not give preferential treatment to any organization or individual.

The PPM indicates (p6) that,

“To fulfill their responsibilities, Board members agree to adhere to three duties: Duty of Care, Duty of Loyalty, and Duty of Obedience (p6).

The PPM continues,

“The Duty of Care calls upon a member to participate in the decisions of the Board and to be informed as to the data relevant to such decisions. In essence, the Duty of Care requires that a member:

Be reasonably informed—It is the duty of all Board members to seek and study the information needed to make a reasoned decision and/or recommendation on all business brought before the Board. The NOP will provide some of that information, but other information must be developed from independent sources.”

The National Organic Standards Board members study and evaluate all public communications, written and verbal communications, as a function of the NOSB role and duties, in order to benefit the organic community. In so doing, National Organic Standards Board members are able to provide effective and constructive advice, clarification and guidance to the Secretary of Agriculture and the NOP.

NOP said in the *National Organic Program Newsletter*, December 11, 2011:

The members of the National Organic Standards Board (NOSB) and the National Organic Program (NOP) often receive letters and requests from people interested in our upcoming regulatory activities and meetings. In this note, we summarize the best way to direct your letters and requests.

As a Federal Advisory Committee, the NOSB has a well-defined scope of activity. If you have opinions and requests to share with the Board, please use the public comment period that is open before each NOSB meeting to submit your thoughts. Or, submit a formal National List petition for consideration using the guidelines provided in the link below.

The NOP is the best place to send your letters outside the NOSB public comment and petition process. In addition to formal public comment periods on specific regulatory actions, we are always open to comments on a variety of topics related to organic agriculture. While we cannot guarantee that every letter will receive a direct response, your letters do get an audience and help us identify and prioritize needs. We look forward to hearing from you!

This explanation by NOP describes the current official means of communication outlined in the PPM, which does not prohibit other forms of communication between the public and NOSB members. The NOP statement, however, suggests a need to clarify the ability of the public to provide public comments outside of Board meetings and the public comment periods to inform the Board's and Program's work.

III. Summary

The National Organic Standards Board through its Policy and Procedures Manual establishes procedures for its activities. The Manual "is designed to assist the Board in its responsibilities" (PPM, p4) and establish procedures for carrying out its responsibilities in accordance with its advisory mission.

Because of the opportunities that the Board has to hear from the organic community in the course of fulfilling its mission, it has both an opportunity and responsibility to bring to the Secretary of Agriculture information that it believes may impact on the implementation of OFPA. This communication may, by necessity, extend to organic standards and practices as well as related issues that may affect those standards and practices. Therefore, based on the communications and input it receives from the public, the National Organic Standards Board may provide effective and constructive advice, clarification, and written information, as it deems necessary, directly to the Secretary of Agriculture after each of its Board meetings.

Additionally, and as a part of its responsibility to communicate with the organic community pertaining to the implementation of OFPA, the Board must receive and review information from the NOP and other sources during its deliberations. As a stakeholder Board, the input from the organic community is valuable in the deliberations of the Board and the community decision making process. The procedures of the Board should facilitate public communication to inform these deliberations.

IV. Recommendations

PPM, Section VI, Miscellaneous Policies, page 26 is amended by adding a new subcategory (in italics):

NOSB Policy on Its Advisory Role and Communication with the Secretary of Agriculture

Based on the communications and input it receives from the public, the National Organic Standards Board may provide effective and constructive advice, clarification, and written information, as it deems necessary, directly to the Secretary of Agriculture after each of its Board meetings. This information is intended to facilitate public communication with the Secretary on critical issues that may emerge that it believes are important to the implementation and integrity of the organic standards and practices under the Organic Foods Production Act.

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NOSB Policy for Public Communication Between NOSB Meetings.

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PPM Section II (page 13) Role of the Executive Director is amended to include the following language (in italics):

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V. Subcommittee Vote

Moved: Jennifer Taylor

Second: Colehour Bondera

Yes 8

No 0

Abstain 0

Absent 0

Recuse 0