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National Organic Standards Board

Board Procedures Task Force Report to the Board

June 10, 1999

The Board Procedures Task Force submits the following issues for discussion and/or Board action:

1. Conflict of Interest
2. Board Alternates and Substitutes.
3. New members of the NOSB - Suggesting candidates, review of applicants and developing criteria for members
4. Procedure for Voting on Materials
5. General Board Procedure

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Conflict of Interest

Discussion

The purpose of a provision defining Conflict of Interest is to insure that business conducted by the NOSB be above reproach in all aspects of Board activity. This provision includes but is not limited to any Board member or party who owns, manufactures or distributes a material for which the party has petitioned the NOSB for inclusion of that material on the National List.

The Board recognizes that Members have been specifically appointed to the Board to provide advice and counsel to the Secretary of Agriculture about policies related to the development of organic standards, the acceptance of materials on the National List and other related policies. The Members have been appointed because they have professional expertise which enables them to advise the Secretary and may, at times, present inherent conflict of interest which has as a matter of law, been waived. Therefore, the Board does not intend to restrict its Members from taking positions in favor of or in opposition to, petitions or proposals from which their businesses may generally benefit. Given this context, any NOSB member who may derive a direct financial gain from action taken, including, but not limited to, influencing the Board or its decision-making process, on behalf of herself or himself or another party, shall disclose his or her interest to the Board and the public, when they or their affiliated business stand to gain from a vote which they cast in the course of Board business. It is rather, the Board's intention to prevent overt advocacy for direct financial gain.

Recommendation

Be it resolved by the National Organic Standards Board:

That members of the Board shall refrain from taking any official Board action from which that Board member would derive direct financial gain. When they or their affiliated business stand to gain from a vote, a Board member shall disclose their interest to the Board and the public. Under certain circumstances, the Board may determine whether it is appropriate for the member to vote.

That members of the Board shall refrain promoting for consideration any material, process or practice for which the member is or would derive direct financial gain arising out of such Board action. The act of promoting such material, process or practice shall include private discussion with members of the Board advocating the value of the material, public discussion, and/or written advocacy.

A "direct financial gain" is defined as monetary consideration, contractual benefit or the expectation of future monetary gain to a Board member including but not limited to financial gain from a party who manufactures, distributes or holds exclusive title to a formula for a material or product, process or practice.

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Board Alternates and Substitutes

Discussion

The Task Force has researched the issue of appointments of alternate NOSB members and the question of allowing members to provide a substitute in their absence. In our investigation, we have found that some other advisory committees under USDA do in fact have alternates. Alternates are reimbursed for expenses to attend Board meetings only in the absence of a member whom they are representing. Because the appointment of NOSB members by the Secretary of Agriculture is specifically set out in the Organic Foods Production Act, the statute would have to be amended in order for the Secretary to appoint alternates. The Task Force would **not** recommend the pursuit of any legislative changes to OFPA until after its complete implementation. At some time in the future the Board may recommend legislative changes based upon the evolution of the industry and the need to update procedural language. As of this writing, we are waiting to see statutory language that allows the appointment of alternates to other Boards and will reference this information in developing a future resolution to the Board.

Other boards such as the Agriculture Research and Extension Advisory Board do not have a provision for alternates but allow a member to appoint a substitute in their absence. The substitute may take notes on behalf of the absent member at public Board meetings and on teleconferences in which the member should be present. The substitute may not vote on Board actions, participate in Board discussion unless requested to do so by the Board, sit at the Board table or in any manner participate with the Board other than as a member of the attending public.

In consideration of the existing precedents, the Task Force presents the following proposal.

Recommendation

Be it resolved by the National Organic Standards Board:

That members of the board shall be permitted to designate a substitute in their absence to take notes and collect information on their behalf at public Board meetings and to listen in on teleconferences to which the member is expected to participate. The substitute may present documents, proposals and recommendations on behalf of the absent member and may be called upon by Board members to offer explanation of the submitted material.

The substitute may not vote on Board actions, sit at the Board table, or participate in Board discussion except when requested to do so by Board members. The substitute may participate as a member of the public at open meetings and may offer public testimony on their own behalf. The substitute will not be reimbursed for expenses incurred in attendance at NOSB meetings. In all cases, the designated substitute is a representative of the Board member, not the member's affiliation or business.

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New members of the NOSB - Suggesting candidates, review of applicants and developing criteria for members

Discussion

Three scenarios are before the Board regarding new members - bringing forward names of applicants, reviewing and recommending applicants and developing criteria for members.

The Task Force agrees the highest priority at this time is to insure a good selection of qualified candidates for the board seats considering the fact that four current members of the NOSB will conclude their terms this year -- a processor, retailer, environmentalist and farmer, the Task Force strongly suggests that members bring names of potential candidates forward and contact those individuals directing them to write a letter of application to the National Organic Program Director. The appointment process will benefit from candidates that are brought forward by current industry leaders.

We have considered the proposal that the Board interview applicants but recognize that may be an impractical request given USDA administrative procedure. Therefore, we are offering an alternative recommendation. Based on the comment to the NOSB by Under Secretary, Mike Dunn in July 1998 that the Department would consider the Board's input in the selection process for new members, the Task Force proposes that the Secretary specifically refer applicants to the NOSB for references and recommendations.

In consideration of the timing of new Board member appointments this year, the Task Force will not attempt to recommend criteria for Board membership at this meeting but will continue to develop such criteria for the future. It is the view of the Task Force that we should spend our time and resources recruiting new candidates for the Secretary's consideration rather than work on criteria. Should we spend time developing criteria now then not have the criteria accepted, the result may be that the Board has no input in the selection process at all.

Recommendation

Be it resolved by the National Organic Standards Board:

That the Secretary of Agriculture request from the NOSB, references and recommendations regarding the qualifications of applicants to the Department for seats on the Board. Based on experience and familiarity with current Board issues and organic industry business, existing Board members can offer substantial and knowledgeable recommendations to the Department in this process.

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National Organic Standards Board

June 9, 1999

**Recommendation for Criteria for
National Organic Standards Board Membership**

1. Practical experience in the organic industry in the sector for which the person is making application.
2. Demonstrated experience in the development of public policy such as participation on public or private advisory boards, boards of directors or other comparable organizations.
3. Participation in standards development and /or involvement in educational outreach activities to farming and consumer interest groups.
4. Demonstrated ability to communicate a commitment to the integrity and growth of the organic food and fiber industry.
5. The ability to absorb and evaluate technical information and to fully participate in Board deliberation and recommendations.
6. Must be willing to commit the time and energy necessary to assume Board duties.

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Procedure for Voting on Materials

Submitted by Rod Crossley, NOSB Historian

Discussion

The following is historical procedure used by the Board when voting for inclusion of materials on the National List. Please note that the procedure that has been followed is not a required format. The only requirement is for a vote of two-thirds of members present at the meeting to include a material on the National List.

General Procedure:

The Technical Advisory Panel provided their findings on materials to be reviewed in a three-ring notebook divided into sections for each material. The material was identified by its intended use in crop production, livestock or processing. Information is noted regarding the NOSB Database Form, references, MSDS and the name of the reviewer. Board members were provided with a comment form and were requested to write their questions, proposed restrictions and anticipated vote, after reviewing the TAP information.

The Form Used to Determine Position:

For Crops and Livestock materials the form contained the following provisions:

1. In my opinion, this material is: _____ synthetic _____ non-synthetic.
2. This material should be placed on the proposed National List as ____ Prohibited Natural or _____ Allowed Synthetic.

For Processing materials the form contained the following provisions:

1. In my opinion, this material is: _____ synthetic _____ non-synthetic.
2. Should this material be allowed in an "Organic food" (95% or higher organic ingredients)?
_____ Yes _____ No (If NO, proceed to Question #3)
3. Should the substance be allowed in a "food made with organic ingredients" (50% or higher organic ingredients)? _____ Yes _____ No

Board Meeting Process:

Seating:

The members were seated in alphabetical order around the table without changing their seats during the day. (The provision for *alphabetical* seating is not mandatory, but it is necessary that members remain in the same seat for the duration of the meeting.) This will insure that USDA staff records votes taken accurately throughout the meeting.

Discussion:

Each material was presented by the TAP coordinator who explained what the material was for and what problems, if any, the TAP encountered during the review. Each member was allowed only one minute to make her/his comments (time was kept by USDA staff). A member could cede her/his minute of time to another Board member. The start of the comment period rotated around the table. The person who started the comments also started the vote. For the next material to be reviewed and voted upon, the member to that person's left would start the comment and the voting and so on until all of the materials were covered. This allowed for a "rolling vote" which placed equal emphasis on a person's opinion in a rotating manner. No one member was always the first to vote.

Voting:

Please note there were separate procedures for Crops and Livestock and for Processing materials.

Crops and Livestock Materials:

1. The first vote was "is this material synthetic"? This was a roll call vote starting with the member who stated the discussion. The position on the material (Natural or Synthetic) was decided by a majority vote.
2. The second vote concerned annotations. (Normally committee recommendations established any annotations for the material). Annotations were presented by the committee chair and approved by a majority voice vote.
3. The third vote was to place the material on the National List. This was another roll call vote started by the same person who began the discussion. If a synthetic material was allowed on the list or if a non-synthetic was prohibited, subsequent approval required a 2/3 vote of the Board members present at the meeting. If a member was out of the room the 2/3 necessary majority would not be reduced; their absence would stand as an abstention.

Processing:

The first two votes followed the same procedure as noted for Crops and Livestock. After approval of the annotations the Board was required to cast two additional roll call votes, started by the same person as in step number one. Both votes must approve (or disapprove) by a 2/3 vote of the Board members present the use of the material.

1. Can this material be used in an "Organic Food" (95% or higher organic ingredients)? If yes, then the material was placed on the National List.
2. If the vote was NO, then the Board voted to determine if the material could be used in "organic product made with organic ingredients" (50% or more organic ingredients). This vote determined whether the material could appear on the National List.

The Board discussion of the material ended. Consideration of the next material began.

The Task Force presents this material for historical reference and discussion. No recommendation is brought forward at this time.

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General Board Procedure

Discussion

The Task Force has accumulated all historical documentation of NOSB operating procedures and guidelines. This information in its current form is fragmented and from various sources including OFPA, Department Regulations, past Board meeting minutes, previous Board member "Starter Kits" and other documents.

The Task Force will compile material and organize it into a NOSB Procedure Manual to become an essential handbook for new and current members. A draft of the revised manual will be presented to the Board in October.

No recommendation or action is necessary at this time.