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**February 27, 2014**

## **MEMORANDUM TO THE NATIONAL ORGANIC STANDARDS BOARD**

**FROM:** Miles V. McEvoy  
Deputy Administrator  
Agricultural Marketing Service  
National Organic Program (NOP)

**SUBJECT:** National Organic Standards Board (NOSB) Training Summary

USDA, the Agricultural Marketing Service (AMS), and the National Organic Program (NOP) thank you for coming to Washington D.C. for the National Organic Standards Board (NOSB) training on February 4-5, 2014. To follow-up on that training, and to support transparency for the public, this memo reviews key points from the training. The slides from the training have been posted, and can be accessed from the [NOSB meetings page](#) on the NOP website.

Much of the organic industry's and NOP's success is due to the expertise and personal dedication of current and past NOSB members. The NOSB plays a critical role in advising USDA about the crafting of the national organic standards and implementing the Organic Foods Production Act (OFPA). The work you do both supports organic integrity, and a thriving organic sector.

### **Regulatory Setting**

During our training, the USDA Office of General Counsel presented overviews of both OFPA and the Federal Advisory Committee Act (FACA). AMS and NOP are bound by both authorities.

The Organic Foods Production Act was passed as part of the 1990 Farm Bill. OFPA established the NOSB and authorized creation of the USDA organic regulations. Along with many other requirements, it states that the USDA Secretary shall establish an NOSB in accordance with FACA to assist in developing standards for substances to be used in organic production and to advise the Secretary on other aspects of OFPA implementation. OFPA describes the respective responsibilities of both the USDA and the Board.

FACA, and its implementing regulations, describe how Federal advisory committees, like the NOSB, are to be governed and managed. 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 committees are statutory (e.g., created by a law like OFPA). As a FACA committee, the NOSB is not an independent organization, and it does not set policy or make regulatory decisions; it exists to advise the Secretary. AMS has been delegated authority to implement OFPA and the National Organic Program. AMS and the



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NOP are responsible for managing the NOSB, and in accordance with FACA rules and associated USDA directives.

### **Agency Responsibilities for NOSB Management**

During the NOSB training, we discussed AMS and NOP responsibilities for managing the NOSB. As examples, AMS and NOP must:

- Comply with FACA
- Issue administrative guidelines and management controls for advisory committees
- Assign a Designated Federal Officer (DFO) for each advisory committee and its subcommittees
- 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, and any supplemental agency requirements.

FACA requires that AMS and NOP guidelines for managing the NOSB provide clear operating procedures for the conduct of advisory committee meetings and other activities, and describe the roles of the advisory committee members, the DFO, and staff.

NOP's success is measured in part by its success in managing the NOSB. Key questions include:

- Are recommendations within the NOSB's scope (defined by the OFPA statute and agency responsibilities)?
- Are NOSB and program resources being used effectively and efficiently?
- Is the NOP asking for advice that it can act upon?
- Are appropriate management structures and processes in place and functioning?

FACA shapes how NOP is to manage the NOSB. The following sections summarize key elements of NOP's approach to implementing FACA in the future.

### **Policy and Procedures Manual**

The NOSB Policy and Procedures Manual (PPM) is a valuable resource for the NOSB, NOP, and the public. From 2002-2013, the PPM was developed by the NOSB, with all revisions open to public comment. Moving forward, AMS will take a leadership role with the PPM. The PPM content will include:



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- Existing sections in the PPM that were developed by the NOSB and that are working well. These will be kept as is.
- NOP-developed policies and procedures that involve or impact the NOSB. Examples of these types of documents include NOP's memo to the NOSB on Conflict of Interest, and the notice outlining the revised National List Sunset review process.
- Updated parts of the PPM that the NOP will revise on its own, to update the PPM to align with current policy and/or practice.

## Work Plan

The work plan is the document that lists the NOSB's projects for the coming semester or year. The public may petition additions or deletions from the National List that will be added to the work plan. In addition, the public may submit comments to the NOSB or write to the NOP for potential additions to the work plan. For the NOSB, work plan items may emerge from discussions on current issues.

FACA requires that agencies effectively use resources, meaning that the NOP should not ask for advice we can't act on. As such, future work plan items will only be added if they meet the following criteria:

- **Within Scope:** Item must be within the scope of OFPA and within AMS authority.
- **USDA and NOP Priority:** Item must be a priority for the USDA/NOP; and something that the NOP is able to implement in a reasonable timeframe.
- **Clear Need:** Item must reflect a clear need for the NOP and/or organic community, for which new or additional information or advice is needed. As noted above, anyone can write to the NOP at any time to share their thoughts on what those needs are.
- **Clear Scope:** NOP must have a clear sense of the intent and scope of the work plan item.

The work plan is driven first by substance evaluations (e.g., petitions, sunset) and formal requests (via memos) that NOP has provided NOSB. The NOP and NOSB's Executive subcommittee review the work plan before each public meeting, and the NOP approves the final plan to drive the NOSB's work.

## Subcommittee Proposals

Once a work plan is assigned to a subcommittee, NOP must ensure that the subcommittee is not inappropriately influenced by the appointing authority (e.g., the NOP itself) or by any special interest. The NOP, however, may reject a subcommittee proposal for posting for public comment if it does not meet set criteria. Criteria for proposal acceptance include:

- **Within NOSB Scope:** All work plan items must have been within scope to be on work plan; once written, document must also be within scope of OFPA and agency authority.



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- **Implementable:** An item must have been a USDA and NOP priority to be on work plan; once written, the content of the completed product must be something that NOP can implement if the ultimate recommendation is passed by the NOSB and accepted by NOP.
- **Requests for Public Comment:** Public comment is vital in shaping NOSB advice; to request comments, a given topic or question posed for public comment must be within, and not conflict with, AMS and OFPA authority.
- **Quality and Clarity:** The document must be clearly written. If two opinions or a minority opinion are included, the motion being voted on by the NOSB must be clear.

## Public Meetings

FACA also governs the conduct of NOSB public meetings. The NOP's Designated Federal Officer (DFO) calls, attends, and adjourns committee meetings; develops and approves agendas; and ensures efficient operations during the meeting itself. In preparing NOSB agendas, NOP considers several factors: time to allow NOSB discussion of work plan items that have yielded acceptable discussion documents or proposals; reasonable time for public comments; time for presentations and expert panels; and cost.

NOSB meetings are open meetings with opportunities for public comment. Any member of the public is permitted to file a written statement with the advisory committee, and may speak to or address the advisory committee within guidelines set by AMS and NOP. AMS must allow reasonable time and space for the meeting. Meetings must be announced 15 days in advance in the Federal Register (NOP strives for 30 days); meeting minutes are publicly available.

Only two substantive changes to the public meeting are anticipated for Spring 2014. First, consistent with other FACA committees, NOP may choose to Co-Chair this and future NOSB meetings. Second, only minor adjustments to discussion documents and proposals will be allowed before the NOSB votes. If public comments lead to substantive changes, the document will be returned to the subcommittee for revision.

## Summary

Collaboration and public engagement are cornerstones of the relationship between the NOP, the NOSB, and the organic community. The guidelines outlined at the NOSB training and in this memo are designed to foster this collaboration, by clarifying roles and responsibilities; being transparent with the factors and criteria that shape the NOSB's work; and setting the stage for productive and engaging public meetings far into the future. We appreciate your service to the USDA and the organic community, and look forward to seeing you in April 2014.