

National Organic Standards Board
Policy Development Committee
Proposal
Conflict of Interest

March 29, 2012

I. Introduction

The National Organic Standards Board (NOSB) is seeking to enhance the NOSB's conflict of interest (COI) policy by providing two definitions and outlining general procedures for declaring, evaluating, and acting upon a COI. The recommendations are responsive to a number of requests by stakeholders to improve the NOSB COI policy. The proposed additions should provide greater transparency of and expectations around NOSB members' work on behalf of the organic community.

NOSB's Policy Development Committee (PDC) initially presented a version of this recommendation at the November, 2011 NOSB meeting. Based on feedback from the National Organic Program, the NOSB and the public, the PDC chose to retract the recommendation and make substantial revisions.

II. Background

The NOSB recognizes that members have been specifically appointed to the NOSB to provide advice and counsel to the Secretary of Agriculture concerning policies related to the development of organic standards and the creation of amendments to the National Organic Program's National List. NOSB members have been appointed because they represent various interests involved in the organic community, enabling them to advise the Secretary of Agriculture on the implementation of the Organic Foods Production Act (OFPA). The statutory composition of NOSB is composed of 15 members. OFPA describes the composition of the NOSB as follows:

- four (4) members who own or operate an organic farming operation;
- three (3) members with expertise in areas of environmental protection and resource conservation;
- three (3) members who represent the public interest or consumer interest groups;
- two (2) members who own or operate an organic handling operation;
- one (1) member who owns or operates a retail establishment with significant trade in organic products;
- one (1) member with expertise in the fields of toxicology, ecology, or biochemistry; and
- one (1) member who is a certifying agent.

NOSB members – like most federal advisory board members - are chosen specifically because of their professional expertise within a given area. Especially since NOSB members represent sectors of the industry directly impacted by the board's decisions, it

is necessary to maintain a clear and detailed NOSB COI policy. To prevent overt advocacy for direct financial gain and the appearance of self-interest or the appearance of wrongful activity, the NOSB has adopted a COI policy (NOSB, Policy & Procedures Manual (2011, pg. 9). At this time, the PDC of the NOSB seeks to update the Board's policy and procedures on COI.

The proposed COI policy will enhance and build upon the existing NOSB's COI policy. The recommendations include definitions of key terms and guidance on the procedural steps to be followed in declaring and acting upon a COI.

III. Relevant Areas of the Rule

The OFPA establishes the NOSB at §2119 (7 U.S.C. 6518) (a). It reads, "The Secretary shall establish a NOSB (in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2 et seq.) (hereafter referred to in this section as the "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 this title." The 2011 NOSB Revised Policy and Procedures Manual (PPM) dated April 29, 2011 on page 9 sets forth the current NOSB's COI policy. The professional conduct of NOSB members are alluded to in the PPM on page 8. Therefore, action and activities of the NOSB members on matters pertaining to organic should be in the best interest of the organic community as a whole.

IV. Discussion

The benefits of the proposed recommendations include providing clear definitions of key terms and providing procedural steps for managing a COI in the course of the NOSB's business. The updated COI policy will provide greater transparency and confidence in Board decisions by the organic community.

An alternative approach would be to keep the current COI policy. However, an enhanced COI policy should help the Board's in its continued responsiveness to the organic community's feedback and address a number of opportunities for enhanced clarity, particularly with regard to the specific procedures to be followed in declaring, evaluating, and acting upon a COI.

Previously, the June, 1999 NOSB Procedures Taskforce Report to the Board on COI was approved. The Board's COI policy was updated to read:

Members of the Board shall refrain from taking any official Board action from which that Board member is or would derive direct financial gain. Board members shall disclose their 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. Under certain circumstances, the Board may determine whether it is appropriate for the member to vote.

That members of the Board shall refrain from 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. [NOSB’s PPM, 2011, page 9.]

The current document seeks to enhance the existing COI policy. It attempts to do so by, (1) proposing clear definitions for “conflict of interest,” and “immediate family member,” and (2) suggesting procedural steps for dealing with a declared COI.

V. Recommendations

Recommendation #1

The first three paragraphs shown below are on page 9 of the 2011 PPM and will remain the same.

The NOSB recognizes that members have been specifically appointed to the NOSB to provide advice and counsel to the Secretary concerning policies related to the development of organic standards and the creation and amendment of the National List. NOSB members have been appointed because they have professional expertise which enables them to advise the Secretary. This professional expertise may, at times, present an inherent COI. To prevent overt advocacy for direct financial gain and the appearance of self-interest or the appearance of wrongful activity, the NOSB has adopted an updated COI policy.

Members of the Board shall refrain from taking any official Board action from which that Board member is or would derive direct financial gain. Board members shall disclose their 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. Under certain circumstances, the Board may determine whether it is appropriate for the member to vote.

That members of the Board shall refrain from 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.

Recommendation #2

The definitions below are to be inserted before paragraph #4 on page 9 of the 2011 PPM.

The term “conflict of interest” is defined as a situation in which there is an actual or potential direct financial interest of a Board member which could impair the individual's objectivity or which has the potential to create an unfair competitive advantage for said Board member, board member's immediate family member, or Board member's organization or affiliated business.

An “immediate family member” includes a Board member's relative by blood or marriage who may be a spouse or partner, children or step children, parents or step-parents, brother or sister.

A “direct financial gain” is defined as a 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 manufacture distributes or holds exclusive title to a formula for a material or product, process or practice.

Recommendation #3

We recommend the added section below.

Procedural Steps for a COI Determination and Resolution

- 1. Each Board member is responsible for declaring his/her COI when an issue is first being discussed, to include one's participation on a committee, task force, or full NOSB meeting.*
- 2. In opening the discussion of each issue and prior to each vote, the chair will ask all Board or committee members to raise any COI or potential COI in that particular matter.*
- 3. Upon such declaration, the member may voluntarily refrain from participating, or may request that the Board or committee decide whether the conflict warrants said Board member abstaining from participating in the discussion in said matter and from voting on said matter.*
- 4. The chair will ask the Board or committee for any objections to the Board member participating in said discussion or voting on said matter. If no member(s) object, then said Board member may participate in said discussion and vote on said matter. If any member(s) do object, then said matter will be subject to a full Board or committee vote. The motion requires a simple majority to pass.*
- 5. The Board's or committee's final decision on all COI must be clearly recorded in the minutes.*

VI. Summary

NOSB members with diverse backgrounds are recruited to provide balance to the NOSB. While individual NOSB members represent the segments of the population from which they were selected, they also represent the greater good of the population as a whole. The revised COI policy and procedures are an attempt to address several stakeholders' request for updating the Board's COI policy and provide for a greater level of transparency in the deliberation, discussion, and voting on matters pertaining to the Board authority for the benefit of the organic community.

VII. Committee Vote:

Moved: Barry Flamm Second: Jean Richardson
Yes: 8 No: 0 Abstain: 0 Absent: 0 Recusals: 0