

**National Organic Standards Board
Policy Development Committee
Proposed Recommendation
Conflict of Interest**

August 28, 2011

Introduction

The National Organic Standards Board (NOSB) seeks to update the Board's conflict of interest (COI) policy. The major issue for the NOSB's Policy Development Committee (PDC) is to strengthen the NOSB's policy on COI. The goals for updating the existing NOSB's COI policy are (1) to update the COI policy and (2) outline general procedures for dealing with a real, apparent, and potential COI by NOSB members, if it arises. The proposed recommendations are part of a continued quest by NOSB members in being responsive to requests by stakeholders. The proposed policy additions should provide for greater transparency of NOSB members' work for the greater good of the organic community.

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 have professional expertise that enables them to advise the Secretary of Agriculture. The statutory composition of NOSB is composed of 15 members. The federal statutory composition of the NOSB provides for:

- 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.

Within this statutory framework, the 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 a COI policy (NOSB, Policy & Procedure Manual, 2010, pg. 9). At this time, the PDC of the NOSB seeks to update the Board's policy and procedures on COI. The updates are

stakeholder driven. Some of the stakeholder advocates, who have expressed a need to update the NOSB's COI policy, include (1) the National Organic Coalition, (2) Center for Food Safety, (3) Cornucopia, (4) Food and Water Watch, and (5) former NOSB Chair Jim Riddle.

The proposed COI policy will enhance and build upon the existing NOSB's COI policy. The recommendations include providing a definition for (1) COI (real), (2) apparent COI, (3) potential COI, (4) immediate family member, and (5) financial interest. A listing of procedural steps is outlined.

Relevant Areas of the Rule

The *Organic Foods Production Act* (OFPA) establishes the National Organic Standards Board at §2119 (7 U.S.C. 6518) (a). It reads, "The Secretary shall establish a National Organic Standards Board (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 2010 NOSB Revised Policy and Procedures Manual (PPM) dated October 28, 2010, 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.

Discussion

The benefits of the proposed recommendations are (1) to define terms such as COI (real), apparent COI, potential COI, immediate family members, and financial interest, and (2) suggest procedures for managing COI in the conduct of business by the Board. The fruition of an updated COI policy should help provide greater transparency and confidence in Board decisions by the organic community. The lack of an updated COI policy can give a negative connotation of the Board responsiveness to many constituent groups' request.

An alternative approach would be to keep the current COI policy. However, a revised Board COI will enhance the Board's continued responsiveness to the organic community's request, in addition to maintaining high professional and ethical standards. Previously, the June, 1999 NOSB Procedures Taskforce Report to the Board on COI was approved. Ultimately, 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, 2010, page 9.]

The current document seeks to enhance the existing COI policy. It attempts to do so by, (1) proposing definitions for COI (real), apparent COI, potential COI, immediate family member, and financial interest, (2) suggesting procedures for dealing with a given COI, and (3) developing a Declaration of Interest Form.

Recommendations

Recommendation #1

The first three paragraphs shown below are on page 9 of the 2010 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 conflict of interest (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 2010 PPM.

A “conflict of interest (real)” is defined as a financial or non-financial interest that could cause or influence a Board member decision directly or indirectly as it relates to matters that are before the Board as a whole or as part of a committee, task force, advisory group, public hearing, etc.

An “apparent conflict of interest” is defined as a financial or other interest that would not necessarily influence a Board member, but could result in one’s objectivity and independence being questioned by others.

A “potential conflict of interest” is defined as a financial or other interest that a reasonable person could be uncertain as to whether or not it should be reported.

An “immediate family member” includes a Board member’s spouse, children, parents, brother, sister, or spouse of a brother or sister.

A “financial interest” is defined as any kind of financial interest. No specific dollar amount of the financial interest needs to be disclosed. Some of the examples of financial interest include (1) employment, (2) shares, (3) contract, (4) stocks, (5) consultancy, (6) paid work, etc.

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

Conflicts can be real, perceived, and numerous. Below are two examples

Example #1

What is the situation? Board member Z’s spouse works in sales of Company A. She stands to gain a cash bonus if Company A is successful in getting the approval of a certain product by the Board.

Why could this be perceived as a conflict of interest? Board member Z has an immediate family member who stands to gain financially by Company A lobbying the Board for the approval of a certain product.

What should be done? Board member Z should abstain from voting due to an immediate family member who stands to gain financially from a Board action.

Example #2

What is the situation? Board member X frequently plays golf with representatives of Company A over the last year. Company A is lobbying the Board for the approval of a certain material.

Why could this be perceived to be a conflict of interest? The frequent golfing connection with Company A could create a perceived conflict of interest.

What should be done? Board member X should decide if he/she can be objective and if he/she has a COI. If no COI, is determined, said Board member can participate in the discussion and vote. If not sure, said Board and/or committee should determine if Board member X can participate in the discussion and vote on said matter. The final decision must be clearly recorded in the minutes.

Recommendation #3

Add the section below:

Procedural Steps for Conflict of Interest Determination and Resolution

Step 1. Annually, each Board member must complete a Declaration of Interest Form (DIF). The DIF should show all interests (businesses, investments, and agricultural endeavors) of their own, those of immediate family members, and those of the companies and/or organizations they have represented over the last 12 months. All conflicts regarding substances and practices being considered by the NOSB should be declared on the DIF. Each member is responsible for the timely revision of their annual DIF, if warranted.

Step 2. The DIF will be compiled annually and given to the Board Chair or Secretary so it can be easily referenced during the Board's and/or a particular committee discussion and voting sessions.

Step #3. Each Board member is mainly responsible for declaring his/her conflict of interest (COI) prior to any specific discussion during any committee meeting, public hearing, etc.

Step #4: Prior to each vote, the chair will ask all Board members, if anyone has a COI in that particular matter.

Step #5. Upon such declaration, the member can either voluntarily refrain from voting, or can request that the Board decide if the conflict warrants said member abstaining from voting.

Step #6. The ability to participate in a particular discussion and vote must be by a majority vote.

Step #7: The Board's or committee's final decision must be clearly recorded in the minutes.

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.

DECLARATION OF INTEREST FORM

Directions: The declaration of interest form must be completed each year. If additional space is needed, please continue on a separate sheet of paper.

Name: _____ Period(MM/DD/YYYY): _____

A. Interest (I and or an immediate family member)

1. _____ works for an organization that uses, sells, reviews, or otherwise involves a number of substances or topics related to organic production or processing. I do not think that my involvement with any of these substances or issues would constitute a conflict of interest and/or preclude my ability to vote on recommendations that may be on the National Organic Standards Board (NOSB) or committee work plans.

2. _____ works for an organization with a vested interest in a specific substances or topic related to organic production or processing. If this substance or issue were to be voted on by NOSB, I will declare a conflict of interest and ask the NOSB for an opinion, or recuse myself due to a conflict of interest.

B. Affiliations/organizations (last 12 months)

1. Provide a listing of affiliations/organizations

I hereby declare that the disclosed information is correct. I will inform the Board Chair or designee of any change in these circumstances in a timely manner.

Signature Date

Committee Vote:

Moved: C. Reuben Walker Second: Colehour J. Bondera
Yes: 7 No: 0 Abstain: 0 Absent: 0