

Analyzing the
National Organic Standards Board's
Policy and Procedures Manual

Wholesale re-write by the NOP 2015

Proposed revisions by NOSB policy development subcommittee 2016

Comments submitted in advance of the

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C O R N U C O P I A

I N S T I T U T E

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CONTENTS

OPENING REMARKS	1
THE POLICY AND PROCEDURES MANUAL	3
The History and Role of the Policy and Procedures Manual	3
The Current PPM Rewrite.....	3
Roberts Rules of Order.....	4
THE ROLE AND DUTIES OF THE NOSB	5
PUBLIC INFORMATION	6
CONFLICTS, PROFESSIONAL CONDUCT, AND CONFIDENTIALITY	8
Conflicts of Interest	8
Preferential Treatment.....	11
Board Member: Professional and Ethical Standards	11
Resignation of a Board Member.....	12
ELECTRONIC PRESENCE	13
NOSB OFFICERS AND STAFF	14
Staff Director	14
Role of the Executive Director	14
The Administrative Team	16
Vice Chair	16
OTHER ADMINISTRATIVE ISSUES	17
(SUB)COMMITTEES AND RECOMMENDATIONS	18
Policy Development Committee/Subcommittee (PDC/PDS).....	18
Materials Subcommittee (MS)	19
MINORITY OPINIONS	20
TIMING	21
NOSB WORK AGENDAS AND PLANS	22
MATERIALS REVIEW	23
Third Party Reviews.....	23
Voting	24
NEW PETITIONS	25
SUNSET REVIEW PROCESS	26
COMMENTS AND PUBLIC MEETINGS	26
Public Speaking and Comment.....	26
Waiting List.....	27
NOSB-NOP COLLABORATION	27
ADDITIONAL ADMINISTRATIVE ITEMS AND HANDLING TECHNICAL ERRORS	28
Public Access	28
Election of Officers – Eligibility to Vote	28
CONCLUSION	29
APPENDIX A: REVISIONS CHART	30

OPENING REMARKS

The Policy and Procedures Manual (PPM) has been the *operations manual* for the National Organic Standards Board (NOSB) since its original release in 2002. It was comprehensively reviewed and updated in 2012. The original PPM was developed by the NOSB, with public review and an opportunity for formal input from organic stakeholders, before it was accepted and approved by the USDA.

Up to this point, the PPM has been updated by the NOSB, incrementally, as needed, using procedures laid out in the PPM itself. However, in 2015 the PPM was *totally rewritten* by USDA staff, without the NOSB or public having requested a rewrite. There are many minor changes to the initial PPM. One thing is clear, even with a non-comparative reading of the PPM drafts, the USDA is whittling away the established, historical authority of the NOSB.

The initial PPM was developed and carefully debated by the NOSB, with formal input from organic stakeholders. But, the new draft did not benefit from any of those procedures. Instead, it was a heavily edited document, including wholesale formatting changes that make it difficult for the public to follow what has actually been changed in the text.

Limited public comments were received regarding the PPM revisions at the fall 2015 meeting, in part, because the edits were so extensive that they were virtually unintelligible to the public. Discussion occurred at the NOSB meeting on the proposed revisions and, based on public comments received, the policy development subcommittee (PDS) made a few modest revisions.

The newest PPM draft, finished in February 2016, included some positive changes when compared to the 2015 version. However, the revisions, when compared to the 2012 draft, are still extensive and many undermine the authority of the NOSB.

In general, this analysis will refer to the proposed PPM as the “new draft” or “proposal,” differentiating it from the 2012 PPM that has governed the NOSB since that year. When pertinent, discussion on the 2015 and 2016 versions of the new draft will be identified by their respective dates. The 2016 revision is the current draft being offered for public comment and review by the NOSB.

The NOSB produced a redline version and rudimentary guide when it released its proposals for the April 2016 NOSB meeting. They claimed that anything more in-depth was “too complicated” to follow or produce for the stakeholder public. In response, the Cornucopia Institute has created briefing and analysis documents of its own, with the hope of helping others in the organic community identify the substantive changes being proposed.

Some of the changes to the PPM fly in the face of the federal laws that both authorize and control the NOSB. For example, the Organic Foods Production Act of 1990 (OFPA) gives the leadership role to the NOSB, not the National Organic Program (NOP) or any other

governmental body. The NOP is not the correct body for that oversight, because they may have conflicts themselves or a lack of inside knowledge about the conflicts in question.

Although subordinate to OFPA, the NOSB is administrated under the Federal Advisory Committee Act (FACA). This legislation mandates federal bureaucrats not interfere with decision-making by independent advisory committees. Cornucopia believes that many of the USDA's proposed changes in the PPM undermine the USDA's independence, while opening up Board governance and decision-making to undue influence by the political appointees overseeing the program (all too often in close communications with industry lobbyists), as well as management at the NOP.

Overall, the USDA is removing an important aspect of the NOSB's ability to debate and make decisions for itself (roles given to the NOSB by Congress in OFPA) and giving that decision-making power to the NOP. Less emphasis is placed on *true collaboration*, despite the PDS argument to the contrary. It is essential that the NOSB police itself and adapt to changing circumstances. This self-regulation cannot occur if the NOSB does not have the ability to change their official policies themselves, with the appropriate public comment. Certain aspects of the new draft highlight the need for *moderate* changes in the PPM, even if a complete rewrite is unwarranted. Some of these improvements include:

- The need for a definition section in the PPM. Key terms and phrases are not clearly defined in the proposed draft, including "improper gift," the "misuse" of internal information, and several other items under the "additional standards of conduct" heading. It appears the "improper gift" phrase could be interpreted several ways. "Public trust" and similar phrases should also be defined.
- There is very little information that should not be shared with the public, according to FACA. Public transparency and the role of the NOSB should be emphasized throughout the PPM.
- Nothing in the PPM should contradict or ignore dictates of either the OFPA or FACA. For example, the NOSB hires the program's staff director, provides "public information" to the public without restrictions, and votes on Sunset materials, all as directed by OFPA.

What follows is a subject-by-subject evaluation and commentary on the changes between the 2012 PPM and the proposed PPM. Read alongside the PPM chart (Appendix A) that compares the 2012 and new draft side-by-side, this will highlight some of the more onerous changes and give suggestions for viable remedies.

THE POLICY AND PROCEDURES MANUAL

The History and Role of the Policy and Procedures Manual

The PPM was first adopted by the NOSB at its May 2002 meeting. The historical intent of the PPM was to develop standards for the NOSB, which is a quasi-independent authority created by the OFPA. From the beginning, the PPM was seen as a “living document.” The NOSB would be “continually amending it and adding to it as needed.”¹ The original draft of the PPM was developed by the Board Policy Manual Task Force chaired by Jim Riddle. By October 2003, the policy development committee (now called the policy development subcommittee) was formed and took control of keeping the PPM updated.

The historical process for amending the PPM was simple: the NOSB abided by their existing procedures and when something needed to be changed, the NOSB led the analysis and editing with input from the NOP and the public.

The Sunset Review of materials on the National List offers an illustrative example of how the PPM was formerly updated. **In the past the NOP always maintained that that Sunset policy fell under the NOSB’s purview.**

For example, the policy in 2010 was that procedures did not allow for changes to annotations to occur during the Sunset process.² After much debate and rewriting, the Sunset process (which allowed annotations to be edited) was adopted unanimously by the NOSB in Fall 2010.³ This process was done in concert with the NOP, NOSB, and the public. In fact, Arthur Neal of the NOP, at the fall 2010 meeting, acknowledged that the Board’s recommendations on Sunset materials were binding on the NOP.⁴

The Current PPM Rewrite

From the beginning, there are changes that could have substantial effects on the NOSB’s administration. In the Introduction Section, the new draft reframes the purpose of both the PPM and the NOSB at large. The changes suggest that the PPM is going to be treated as a strict guide document, to which the NOSB can be held accountable by outside governmental authorities. Given the legal significance, or lack thereof, of manuals in general, the effect of this change will be influenced by how the manual is implemented, rather than its direct language.

When compared with the 2012 PPM, the draft appears to prevent the NOSB from stepping outside prescribed boundaries set by the PPM, rather than by OFPA. **The proposal is more restrictive than the 2012 draft in several key areas, while opting for vague or ambiguous language in areas that were more well-defined in the 2012 PPM.**

¹ NOSB meeting, May 7, 2002. Transcript p. 233.

² Transcript of April 26, 2010. Pp. 73-74.

³ Transcript October 28, 2010. Pp. 348-350.

⁴ Transcript October 26, 2010. Pp.469-470.

The 2012 PPM stated that “*Board members are entrusted with a strong responsibility to treat the business of the Board **as fiduciaries for all members of the organic community and the public at large** [emphasis added].*” This phrase is an important one, because it frames the NOSB’s responsibilities in light of the public. It was deleted in the proposed PPM draft. This is an accurate representation of the NOSB’s role according to OFPA, and it should be maintained in the new draft.

The beginning of the PPM should make clear the *purpose* of the document. In addition, there should be no ambiguity in how much control the NOSB has in their own administration. While the draft PPM begins by stating that the document “*provides procedures for the functioning of the [NOSB],*” it should also be stated that the PPM functions as a set of bylaws for the NOSB.

One notable deletion from the introduction of the 2012 PPM is a reference to how the PPM will be updated. This is a significant deletion, because ambiguity in this area could lead to issues in the future. The draft PPM also deleted parts of the phrase: “*New policies and revisions to existing policies and procedures will be incorporated into the NOSB Policy and Procedures Manual from time to time, **as determined by the Board** [emphasis added].*” The Board’s authority and the intent of Congress in creating a quasi-independent board with statutory authority is being undermined by deleting the phrase “*as determined by the Board.*”

It’s disturbing that the USDA’s bureaucrats and political appointees can promulgate PPM language when presiding policy included NOSB responsibility for developing their own policy and procedures within the framework of federal law. In the 2012 draft the policy development committee, which was made up of NOSB members, was responsible for updates to the PPM, before being voted on and adopted by the full Board. A reference to updating the PPM still exists in the new draft’s reference to the PDS. However, because this reference goes into no depth, it would be preferable that the introduction to the proposed draft briefly mention how the PPM will be maintained in the future.

Roberts Rules of Order

It should be made clear early in the document what procedures will be used in the event of any gaps in the PPM. In the past, Robert’s Rules of Order has served this purpose. While those Rules are referenced by the draft PPM, a reference to Robert’s Rules in the introduction will make it clear those procedures are an authority for questions not addressed in the PPM. As it stands, the proposed draft *de-emphasizes* the use of Robert’s Rules of Order, without offering a substitute.

Robert’s Rules of Order can be a great equalizer when power is concentrated in an authority, especially when that authority is not inclined to democratic process. While the NOSB may establish procedures of its own, the running of the meeting should be governed by Robert’s Rules of order when areas of governance are not addressed by NOSB procedures.

THE ROLE AND DUTIES OF THE NOSB

Though the draft PPM does list the “*primary roles and duties*” of the NOSB, including their duty to serve as a link to the organic community and to protect and defend the integrity of organic standards, the restrictive language may ultimately limit the NOSB’s ability to perform these duties as necessary. For example, the 2012 PPM states that one of the primary roles of the NOSB is to serve “... as the primary linkage to the organic community. In that regard, the Board must advise the NOP on the implementation of OFPA.” In the draft PPM, the language is weakened. Instead of dictating that NOSB “*must*” perform this advisory duty, the draft PPM instead states that just one of the NOSB’s many duties is to “*advise USDA on the implementation of OFPA.*”

Another significant change is the removal of the phrase “*The Board must approve all materials which appear on the National List*”. While the proposed draft does discuss material review and the NOSB’s role in that review in a later section, the absence of it from the list of NOSB roles and duties is problematic. OFPA mandates that the NOSB “... assist in the development of standards for substances to be used in organic production.”⁵ **The materials review duties of the NOSB should be included in any list of their primary responsibilities.** The phrase “*Propose amendments to the National List of Allowed and Prohibited Substances*” in the new draft does not sufficiently cover this issue.

OFPA did not dictate that the NOSB should serve as a link to the organic community, or as a defender of the integrity of organic standards. Instead, the NOSB has acted as a de facto link between the community and the USDA since the beginning. This role is well-suited to the NOSB’s work as a volunteer board, designed to represent the different interests in organic agriculture. Unfortunately, this role can be seriously undermined by the NOSB’s inability to set their own agenda and work plan. It is important to retain some reference to OFPA as the overriding source of the NOSB’s duties, such as: “*Additional duties are included in OFPA.*”

It is also important to emphasize throughout the PPM that the NOSB has specific *responsibilities*. The proposed draft PPM and the 2012 PPM both speak to the NOSB exercising their *power* in the interest of the organic community and the public at large. While this is an accurate description of how the NOSB should use their statutory authority, it is equally important to state that each individual Board member has a specific responsibility, namely: a responsibility to the subcategory of the organic community whom they were appointed to represent in the interest of organic integrity, and the public at large.

⁵ OFPA §6518(a) and OFPA §6518(k): “The Board shall develop the proposed National List or proposed amendments to the National List for submission to the Secretary...”

PUBLIC INFORMATION

The Freedom of Information Act (FOIA) was passed in 1967 and is regarded as the law that keeps citizens apprised of their government's workings. FOIA is the law that gives citizens the right to access information from the federal government, making it a vital part of a transparent and trustworthy system of federal programs, including the organic label as regulated by the USDA.

Despite President Obama's professed dedication to transparency at the beginning of his term, his administration has an abysmal track record. FOIA requests made by the public for legally mandated released documents have been met with impediments, delay tactics, and incompetence. A recent investigative report by ProPublica describes this lack of transparency regarding FOIA, even when the public appears to have a right to those documents.⁶

The experiences of organizations and citizens, documented by ProPublica, are indicative of those experienced by The Cornucopia Institute when making FOIA requests for documents legally available to the public. Cornucopia has filed a growing number of pending lawsuits against the agency that are currently being adjudicated in federal court.

"Non-public information" was redefined in the new draft to include information that could be defined as *"public"* in other circumstances. This move away from FOIA's definitions may limit how much information about the NOSB's actions will be available to the public. The 2012 PPM, on the other hand, directly quotes FOIA. According to FACA, there is very little government activity that should not be shared with the public. In fact, all information utilized by the NOSB through its subcommittee, except otherwise established by law, is public information and subject to full disclosure under FACA, rather than FOIA, with a public request. FACA procedures must be carefully followed to provide transparency and necessary public input. **As such, any restriction to public access, beyond what FOIA provides for, is contrary to FACA.** Any definitions regarding *"non-public"* or *"public"* information should be drawn directly from FOIA and/or FACA, as applicable.

The 2016 revisions edit this section significantly, possibly attempting to clarify or create a work-around for document disclosure. The language in the 2016 draft is as follows: *"Refrain from sharing **working documents** [emphasis added] with the public. Working documents are defined as information that a Board member gains by reason of participation in the NOSB and that he/she knows, or reasonably should know, has not been made available to the general public: e.g. is not on the NOP or other public websites, or is a draft document under development by an NOSB Subcommittee."* This language replaces the term *"non-public information"* with *"working documents"* and little else. While this helps the issue of using a phrase defined in other federal legislation, it still permits withholding information

⁶ Trying (and Trying) to Get Records From the 'Most Transparent Administration' Ever, by Justin Elliott. *ProPublica*, March 11, 2016. Last accessed online on 3/15/2016 at: <https://www.propublica.org/article/trying-to-get-records-from-most-transparent-administration-ever>

specifically required by FACA to be disclosed. Furthermore, FACA states:

*“Subject to section 552 of title 5, United States Code, the records, reports, transcripts, minutes, appendixes, **working papers, drafts, studies, agenda, or other documents** [emphasis added] which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.”⁷*

As you can see, documents which must be made available to the public are *broadly defined*. Based on this reading, the changes to the PPM in the 2016 revisions still appear to fall within the scope of FACA. If so, **this section is illegal**. It should be noted that obtaining documents through FACA requires a certain process. If this language change by the PDS is attempting to limit members from sharing documents on their own violation, the text is fatally ambiguous.

FACA requires much more prompt responses to public requests. The PPM should cite FACA instead. We recommend including the following guidance, according to a General Services Administration memo to Committee Management Officers (who discuss the section of FACA quoted above):

“The purpose of section 10(b) is provide for the contemporaneous availability of advisory committee records that, when taken in conjunction with the ability to attend committee meetings, provide a meaningful opportunity to fully comprehend the work undertaken by the committee. Records covered by the exemptions set forth in section 552(b) of FOIA may generally be withheld. However, it should be noted that FOIA Exemption 5 cannot be used to withhold documents reflecting an advisory committee's internal deliberations.”⁸

The memo also states:

“Although advisory committee records may be withheld under FOIA's provisions if there is a reasonable expectation that the records sought fall within the exemptions contained in section 552(b), agencies may not require members of the public or other interested parties to file requests for non-exempt committee records under the request and review process established by FOIA section 552(a)(3). [Emphasis in original].”

... Accordingly, agencies may not delay making available non-exempt records to interested parties under FOIA procedures as an administrative convenience, or for other reasons.

⁷ 5 USC §10(b). Federal Advisory Committee Act (FACA), as amended, (Public Law 92-463, 5 U.S.C. App.)

⁸ Public Access to Records (FACA), Memorandum for Committee Management Officers. March 14, 2000. From: James L. Dean, Director, Committee Management Secretariat. Subject: Public Access to Advisory Committee Records. Available online at: <http://www.gsa.gov/portal/content/100785>.

*... Given the plain and unambiguous language contained in section 10(b) of FACA, coupled with controlling case law and DOJ's FOIA guidance, I am encouraging each Committee Management Officer (CMO) to **assure the maximum timely availability of covered advisory committee records** [emphasis added]. If you have not already done so, you should consider:*

- *Amending agency procedures to facilitate the timely release of requested information and materials;*
- *Segregating information and materials that must be released under FACA section 10(b) from those that must be processed under FOIA; and,*
- *Expediting requests for release of information and materials that must be legitimately processed under FOIA, including the provision of timely explanations for unanticipated delays to interested parties."*

It is outrageous that USDA would seek to make the functionality of the incredibly important NOSB, whose operations are vital to public trust in the organic food label and the growth of the organic market, less transparent. The changes in the draft PPM suggest to the organic community and public at large that organic decision-making is cloaked in secrecy and backroom collusion. This will hurt the growth of the organic market in an age when consumers are increasingly skeptical of their food. If NOP wants to constantly stress the importance of FACA in issuing directives to the NOSB, it should be using FACA when it comes to public disclosure of advisory committee records.

CONFLICTS, PROFESSIONAL CONDUCT, AND CONFIDENTIALITY

There are many notable material changes in the proposed PPM text under this subject. In addition, the draft PPM is riddled with poor or non-existent definitions of terms. For this manual to be utilized appropriately, key terms and phrases must be defined to the point that there is no ambiguity in the guidance. There are many definitional issues in the PPM at large, but in the area of conflicts, professional conduct, and confidentiality some examples of poorly defined terms include "*improper gift*," the "*misuse*" of internal information, and several other items under the "*Additional Standards of Conduct*" Heading. For example, the "*improper gift*" phrase could be interpreted in several ways. This section might benefit from some simple edits to clarify these phrases, along with an introductory definition section for key terms and phrases, as mentioned above.

Conflicts of Interest

Abuses of NOSB policy conflicts have occurred in the past, and this is one area of the 2012 PPM that could use further clarification and expansion. Up to this point, the checks and balances regarding conflicts have been poorly managed, allowing abuses to take place.

These abuses makes it paramount that the PPM is clear in delineating what a conflict of interest is, how conflicts are approached within the NOSB, and how conflict problems are resolved. A critical eye should be applied to NOSB self-regulation.

Transparency within the organic label is necessary for consumer trust and, therefore, the label's survival.

Significant alterations have been made to the PPM draft regarding the NOSB's professional codes of conduct. Unfortunately, the 2016 revisions did not make any beneficial edits to the conflict of interest policies in the new draft. Instead, the PDS commented that they believe the conflict of interest procedures for NOSB members are "*clear and aligned with other governing documents.*" This sentiment is, unfortunately, not the reality of the situation.

The proposed draft PPM uses a vague list, without any specific triggers, to indicate what counts as a true conflict. The new document states that there is a conflict when an interest: (1) directly and disproportionately benefits the NOSB member or a person associated with that member; (2) could impair the NOSB member's objectivity in representing their group; or, (3) has the potential to create an unfair competitive advantage. This list may appear helpful, but does not answer some of the ambiguity raised by the proposal allowing "*acceptable interests.*" Described as an interest that "*... is carried out on behalf of a represented group, and if a Board member receives no disproportionate benefit from expressing the interest,*" these "*acceptable interests*" raise more questions than they answer.

Returning to the example provided in the paragraph above, is it considered a disproportionate benefit if a member works for the industrial group for whose needs they directly advocate? What if those needs conflict with other interests within that represented group (for example, small organic farmers versus industrialized producers)? These terms need to be more clearly defined before the draft PPM's conflicts requirements will be effective in preventing conflict of interest within the NOSB voting process.

Another serious change is that the draft PPM requires that any potential conflict "*must be reported to the NOP*", instead of to the NOSB and the public, as required in the 2012 PPM. At the subcommittee level and the full-Board level, the new draft directs potential conflicts be reported to the NOP associate deputy administrator. When there is some uncertainty, the NOP (working with the USDA office of ethics, as needed), is tasked with making the determination about whether a conflict exists. This appears to be another instance of the NOP taking over NOSB administration. **It is important that decisions about conflicts are made by the NOSB, and that any perceived conflicts are reported to the public.**

An important part of self-policing concerns who accepts reports of potential conflicts. The 2012 PPM requires that potential conflicts of interest are reported to the Board itself. The new draft does not discuss how conflicts are to be reported with the same clarity. Right now, the role of reporting conflicts is being shifted away from the NOSB and onto the Agricultural Marketing Service (AMS) deputy administrator. This position is currently held by Miles McEvoy.

There has been a problem of NOSB members making statements from narrow viewpoints, not indicative of the voice their seat is intended to fill. For example, an NOSB member with professional ties to industrial livestock producers might make supportive comments toward a specific material from the perspective of an industrial producer, leaving the views of livestock producers in general in a subordinated position.

When considering a member's conflict of interest, representation focusing on only a narrow interest should raise red flags. OFPA dictates that the NOSB contain seats from various areas that are *representative* of an organic interest such as someone who "*own(s) or operate(s) an organic farm*" or "*represent(s) public interest or consumer interest groups*."⁹ While it may be appropriate for a member assigned to a particular seat to come with the perspectives that assignment entails, it should be a recognizable conflict when a member only supports the views of a subset of the people they are intended to represent. This is particularly true when that member has professional or personal ties to the view or interest they support over others.

The addition in the proposed PPM of the language: "*Representatives are appointed to speak in 'we' terms, serving as the voice of the group represented (e.g., 'we farmers/growers believe...')*," may be helpful when avoiding conflicts. This could clarify the conflicts problem outlined above to the Board and the public at large. This addition could be made even clearer by changing the language to: "*Representatives are appointed to speak in 'we' terms, serving as the voice of the **whole** group **they are appointed to represent** (e.g., 'we farmers/growers believe...')*." This change, or a similar edit, is necessary to prevent NOSB members from representing a narrow subset within their appointed seat due to financial or personal interests.

This problem is illustrated by the recent tendency in the Board to refuse to accept the existence of a financial conflict even when, from the public's perspective, there may be a clear problem. Examples of these situations include a Board member supporting materials or petitions brought from the Board member's employer, or a Board member holding a financial interest in an issuer material. These relationships have an apparent commercial bent and should always be closely scrutinized. Unfortunately, the new draft PPM do not list anything regarding *professional conflicts* under the section detailing NOSB Member Professional Conduct Standards. The PPM should acknowledge the existence of a conflict when an NOSB member has ties, especially those that are financial, to an issue or, predominantly, to a subset of the group they are assigned to represent. The 2012 PPM dictated that "*Board members shall disclose their interest to the Board and the public*" while the new draft does not specify that the Board must disclose interests to the public at all. **At a minimum these conflicts need to be reported to the public and closely scrutinized by the Board as a whole.**

The proposed PPM also includes language regarding the close scrutiny NOSB members actions must face because they represent broad stakeholder groups. The addition of this language seems to have the effect of turning what is a public process of Board discourse

⁹ § 2119 [7 U.S.C § 6518]

into a private discussion with USDA authorities. It is completely inappropriate for the NOP to provide *guidelines* for NOSB members working at the subcommittee level. **These guidelines overstep the NOP's authority over the process.** While it is understood that Board members may want to consult on the interpretation of the conflict of interest standard, that determination process should be a public one.

The NOP may very well have a requirement to impose under FACA rules that does not conflict with OFPA authorities. If that is the case, then NOP should create a separate document for those rules, or include them in an addendum.

The proposed draft PPM deletes some information that qualifies the conflict of interest policy, including some definitions of terms and phrases. This information should be retained in some form, as the examples of what would constitute a conflict help define the boundaries of NOSB member actions.

The updates in the 2016 revision do not delve into the issues of conflict of interest policies. The PDS stated in its comments that conflict of interest procedures for *third party contractors* should be aligned with the contracting procedures of the federal government. The PDS reaffirmed a standard for revealing conflict of interests for these type of conflicts in the 2016 revisions. While having the contractors' identities public is appropriate, it's vitally important that the individual scientists and reviewers that author Technical Reviews or Technical Advisory Panels are also named. Individual conflicts are likely to arise at this level, and naming the parties responsible for the report will make the process truly transparent.

The PDS' comments on the 2016 draft also stated that, "*...the procedures for disclosing conflicts of interest are important and need to be transparent...*" We agree with this sentiment and hope that the PPM and the NOSB, in general, will reflect a strict and transparent system of conflict, checking all areas of NOSB work, not just that of contractors. The current draft, in its present form, does not accomplish this goal.

Preferential Treatment

Policy requires the NOSB to act impartially, avoiding preferential treatment to any organization or individual. This is another area with potential for abuse. In the past Board members have been willing to meet with, and accept emails and written documents from, certain organic stakeholders, while shunning others. Whether NOSB members agree with certain public constituencies, or not, they have an obligation to accept input from all US citizens and civil society groups, as well as the trade associations representing them. This should be made clear in the document.

Board Member: Professional and Ethical Standards

There are several significant alterations that should be noted in the NOSB's Professional and Ethical Conduct Standards Section. Significant reorganizing, deletions, and additions

were made to the text between the 2012 and new draft PPM. In general, the language in the new draft was *weakened* when compared to the 2012 PPM.

Under the heading of “*Board Member Standards*,” in the 2012 PPM (and “*NOSB Member Professional Conduct Standards*” in the overriding heading of “*Professional and Ethical Standards*” in the new draft), it is required that Board members “*fully disclose any conflict of interest positions... Members having any **commercial** or immediate family interest that poses a potential or **perceived** conflict of interest must disclose that conflict to the Board and **abide by any decision** [emphasis added] of the Board in dealing with the situation.*” This language is strict in the 2012 PPM, and given the problems with conflicts already discussed, should remain so the proposed PPM.

Resignation of a Board Member

In the 2015 PPM, the section describing resignation of a Board member leaves room for interpretation. It is important that both the appointment and the eventual retirement of any Board members are clear-cut, as these processes define the basic structure of the NOSB.

Another example of ambiguity in the NOSB code of conduct in the 2015/2016 drafts is the newly added “*Failure to Participate*” Section. This section is nonspecific about the situations that trigger a recommendation for resignation. In the 2015 draft, the only instance described as a situation in which resignation is recommended is when a Board member “*fail[s] to actively participate.*”

Realistically, there may be other situations when a Board member is asked to resign, or when resignation is considered. It would be beneficial to lay out examples of triggers requiring such a situation. For example, Board member resignation should arise when:

1. A Board member fails to participate. This could be triggered by a failure to attend two or more meetings.
2. A Board member consistently acts inappropriately with respect to conflicts of interest.
3. A Board member acts inappropriately in their role as a public servant. This kind of behavior will include threats and/or insults to the public or fellow Board members.

The PDS commented that “[t]he NOSB has no authority to force the resignation of any of its members, this authority lies with the Secretary.” This opinion has merit and the above examples could be utilized as triggers for communication with the secretary, requesting him or her to take action. At a minimum, it should be acknowledged that there is some mechanism to remove Board members for egregious behavior.

ELECTRONIC PRESENCE

While NOSB members should endeavor to meet in person whenever possible (in the presence of and with the participation of the public), and especially when a vote will be held, advances in technology should be utilized to improve the experience for everyone. There should be delineated circumstances when a virtual presence is allowed, with the approval of the NOSB as a whole. OFPA only touches on meetings in the general sense.¹⁰ Under no circumstances should the NOP dictate when a virtual presence is allowed by the Board. **The key issue should always be public access, and anything that limits or restricts public meetings should be treated as suspect in the PPM.**

Since meeting electronically is a significant change for NOSB administration, it is essential that the PPM be specific as to when these tools are allowed and what mechanisms will be needed to approve the use of electronic conferencing. Though the concept of a virtual presence is not in and of itself onerous, the draft PPM lacks the specificity needed to develop a clear policy that will be free from abuse.

In addition, the draft PPM is vague on how virtual conferencing will be approved. There may be other circumstances where a virtual presence should be allowed, but this category should be well-defined and dictated by the NOSB. Taking into account the NOSB's position as volunteers, the PPM should recognize that important family events and work conflicts may, when approved, allow for a virtual presence.

One example of a lack of specificity can be found under the heading of *“Conducting Business.”* The draft PPM defines a quorum as specified in OFPA, and added the phrase: *“In cases of a medical situation preventing attendance in person, a virtual presence is permitted.”* This is a vague description that should include some sort of approval mechanism. The member should seek approval from the Board at large to appear electronically. With respect to voting, it should be made clear in the PPM that attendance in-person is mandatory. If there are exceptions to this rule, it is doubly important that they are well-defined and require some kind of approval from the Board.

Other changes regarding the use of technology to facilitate NOSB business are problematic as well. Under the heading of *“Role of Executive Director,”* the draft adds an additional right of Board assembly through electronic means. It is not clear which specific situations would allow for the Board to assemble electronically. One of the chief concerns is that public meetings will become obsolete if NOSB meetings are held electronically. These public meetings are well-attended by industry stakeholders. It is essential to keep meetings open to the public to maintain consumer and brand trust of the organic label. Strict rules for the use of electronic conferencing would allay the majority of these fears. **Overall the issue of an electronic presence is broad and requires an open public discussion.**

¹⁰ 7 U.S. Code § 6518 (e) MEETINGS. The Secretary shall convene a meeting of the Board not later than 60 days after the appointment of its members and shall convene subsequent meetings on a periodic basis.

NOSB OFFICERS AND STAFF

The revised roles and duties of the NOSB officers contain some material changes when compared to the 2012 PPM. The new draft's section detailing NOSB officer responsibilities **removes much of the power of the officers**. While the three principal officers are tasked with guiding the NOSB, collaboration with the NOP is emphasized in the proposed PPM where it had not been in the 2012 PPM.

Staff Director

The new draft states that *"The NOSB cannot direct USDA or bind the Secretary through its actions; for example, it cannot obligate funds, contract, **make NOP staffing decisions**, or initiate policies of its own accord [emphasis added]"*. The language regarding staffing decisions was not present in the 2012 PPM.

OFPA states that the NOSB must hire a staff director. OFPA states: *"The Secretary shall authorize the Board to hire a staff director and shall detail staff of the Department of Agriculture or allow for the hiring of staff and may, subject to necessary appropriations, pay necessary expenses incurred by such Board in carrying out the provisions of this chapter, as determined appropriate by the Secretary."*¹¹ Despite OFPA dictating that the Secretary must authorize the NOSB to hire a staff director, this has never been done.

OFPA's mandate cannot be ignored. That position would have created an advocate for the NOSB within the NOP. With shifting roles evident in the proposed draft, it may be time to follow OFPA's dictate to the letter and allow the NOSB to hire their own staff director. Congress gave the NOSB the authority to appoint, in practical essence, the position Deputy Administrator Miles McEvoy currently holds.

The PDS commented on this issue with the release of the 2016 revision, stating, *"Since the NOSB has never had the budget or the recognized authority to hire a staff director due to conflicting government regulations and laws - this is not included in this revision."* This argument does not make sense given the presence of the deputy administrator position, currently a position of power over the NOSB. Appointment of this position should be influenced by the NOSB as per congressional intent.

If the NOSB appointed the staff "director" of the NOP, they could then remove that person if they felt that enforcement, or any other element of the program, was being mismanaged.

Role of the Executive Director

The position description of "executive director" (ED) underwent substantial changes in the new draft. This position, now renamed the advisory committee specialist (ACS), will be defined by an NOP staff member if the new draft is approved in its present form. In

¹¹ OFPA § 6518(j). National Organic Standards Board [§ 2119(j)]

contrast, the 2012 PPM expresses that this role is filled by an employee of the USDA and works “**with the NOP on behalf of the Board** [emphasis added].” It is clear that this position was intended as a collaborative role, with Board oversight.

Key language that clarifies the purpose of the executive director/advisory committee specialist duties was deleted from the 2012 PPM. Specifically, the basic function of the role of the Executive Director was changed, deleting the language stating that “*The most important function of the ED is to facilitate the operation of the Board, while helping to maintain and strengthen its independence* [emphasis added].”

The language in the new draft only states that the same role is intended to “*facilitate communication and collaboration between the NOP and the NOSB.*” Therefore, the revised task is to facilitate communication and collaboration between the NOSB and NOP, rather than to facilitate the actual operation of the Board. There is no reason that a person who is hired as an ACS (or some other job title) could not **also** fill the NOSB-specific role of executive director. This would allow the NOSB to define the role, instead of whoever describes the role within the USDA.

As the 2012 draft noted, the position of executive director was added in 2005. The addition of the position should operate as a signal to the USDA that Congress intended to give this board a high degree of independence with which to do its job. Even if interpreted loosely (such as incorporating dual responsibilities for a USDA staffer), this independence should be emphasized.

Digging down, the role of the ED in “*managing an accurate representation of meeting minutes*” was removed from the 2012 draft. To ensure that the subcommittee process, and the richness of the discussion, is captured and shared with the public, it is vital that “[sub]committee minutes... *fully capture the discussion, reflect the diversity of opinions expressed during meetings in order that transparency exist and content remain useful for committee members, board members and our stakeholder public.*” The NOSB voted to establish a public docket to share information and engage the public in the Board’s deliberations. The response from USDA, while initially supportive, has since changed to refusal of the idea to implement an open docket and discourse with the public. Essentially, the ED role has been used to divert attention from the fact that the staff director position has never been under the control of the NOSB (discussed in the previous section).

Both the ED and staff director positions are easily distinguished from the ACS role. As already discussed, OFPA mandated that the secretary authorize the NOSB to hire a staff director. The staff director *would* have been an employee, under the direction of the NOSB, serving the Board rather than USDA leadership.

Separately, the PPM created the position of ED, a USDA employee to represent the NOSB's interests at the NOP. With the ED position, even though that person was hired by USDA, the PPM intended the staff member serve the NOSB's interests. In this way, the role of the ED to serve as the NOSB support staff was very similar to the intended role of the never-hired staff director. In contrast, the newly proposed ACS is a position answerable to NOP

management and the draft PPM makes it a "conflict of interest" for that person to represent the NOSB.

Without the position of ED, the proposed PPM pushes even further away from PPM history and OFPA dictates. If these changes are accepted – in particular the change in position from ED to ACS – there will be nothing but support staff working under the direction of the NOP. No one will be tasked to advocate on behalf of the NOSB within the USDA bureaucracy.

Overall, the above changes give the appearance that the proposed PPM strengthens the role of the NOP in NOSB administration, rather than facilitating a strong, independent Board.

The Administrative Team

The language in the new draft is unclear with respect to the administrative team and its place in NOSB administration. Specifically, it is important that the executive subcommittee is distinguished from the administrative team. The executive subcommittee is composed only of Board members should control the logistics of the NOSB. In contrast, the administrative team should perform a coordination function.

However, the new draft states that *"The Executive Subcommittee provides overall coordination for the NOSB including finalizing the NOSB meeting agenda and NOSB work agendas."* The description for the administrative team, in comparison, reads: *"This group is responsible for coordinating logistics and operations of the Board."* While these descriptions make it clear that the executive subcommittee had some specific duties, the administrative team may not. Both descriptions would benefit from more specificity. It is important that coordinated teams have defined functions, as to not conflict with one another.

Given the nature of the administrative team's coordinating role, minutes or notes from team meetings should be published, or otherwise made available to the public. This will allow for necessary transparency, while adding protection against the administrative team acting outside of their function.

Vice Chair

The vice chair's duties are expanded in the proposed PPM. One difference in the new draft is that the vice chair is tasked with serving as a **member of the PDS**, rather than working with them on specified tasks, as stated in the 2012 PPM. Essentially, the emphasis of this role has changed.

In the 2012 PPM, the focus was on working *with* the PDS members on the *upkeep* of the PPM. However, there is no specific action or role listed for the vice chair's involvement in the new draft, only that the vice chair is required to serve as a member of the PDS. In addition, the vice chair is required to serve as a member of the executive subcommittee. While none of these changes are particularly ominous, it is necessary to delineate the vice chair's role as a member of both the executive subcommittee and the PDS if there is a specified role.

OTHER ADMINISTRATIVE ISSUES

Other changes were made in the proposed PPM that should not be accepted due to their negative impact on public participation, transparency, and accurate recordkeeping.

First, key language regarding committee minutes was deleted from the 2012 PPM, under the heading “*Executive Director.*” Specifically, the details about committee minutes, reflecting the “*diversity of opinion,*” were deleted. It is important to record all of the views discussed in NOSB meetings. This record maintains transparency, allows for ease of education, and shows the diversity of opinions.

Second, the list of the executive directors/advisory committee specialist’s expanded duties was pared down significantly in the new draft. Among these changes were several that, once again, weaken NOSB independence and the ability of NOSB members to do the job that OFPA assigned to them. Those changes, and recommendations to improve them, are as follows:

- De-emphasizing and changing the basic principles of the executive director/advisory committee specialist position makes it more essential that OFPA’s statutory requirement of the staff director be adopted.
- Removing the details regarding public comment from the list. Public comment has always been, and should continue to be, one of the chief methods by which the NOSB collects the information necessary to their decision-making. The language from the 2012 PPM should be retained in this case.
- Removing the requirement that minutes, now termed “*notes,*” fully capture the discussion. This has the real risk of impacting transparency at the subcommittee level. Minutes/notes should be required to *fully capture the discussion.*
- Removing the requirement to “*provide informed, structured and timely recommendations*” weakens NOSB proposals, and allows the NOP to ignore the necessity for the NOSB work plan to address issues in a timely fashion.
- Publishing notes from administrative team meetings within short order. Again, this provides transparency both to the Board and the public. Neither draft of the PPM allows for this governmental openness.
- Clarifying the language, “*The Administrative Team consists of the Chair, Vice Chair, Secretary and DFO/ACS,*” implying that the DFO and ACS are one person, or that one or the other (but not both) is part of the administrative team. This language is ambiguous. If the PPM is to operate as a useful bylaw, it needs to cut confusing language to a minimum.

(SUB)COMMITTEES AND RECOMMENDATIONS

The PPM should be treated as bylaws for the NOSB. The PPM provides a framework within which the administration of the subcommittees will operate smoothly.

The information on committees/subcommittees was heavily edited for the proposed draft, including the name change from “committee” to “subcommittee”. Under the new draft’s Subcommittees Section, subcommittee finalization recommendations were deleted, including the public comment posting guide and the process for reviewing public comment. **The fact that these subcommittee processes have been deleted may allow the NOP to take over this function.**

Subcommittee meetings must be open to the public under FACA. As it stands, this is not stated in either version of the PPM. Language must be added that clearly states this principle.

The 2012 draft frames the role of the committee only in broad terms, stating: “Committees exist to provide greater depth and clarity in the Board’s responsibility to make informed decisions.” In contrast, the role of the subcommittee is more well-defined in the proposed draft. **This is a positive change, and one that can be accepted going forward.**

Policy Development Committee/Subcommittee (PDC/PDS)

The role of the PDS is redefined in the new draft in a way that completely changes the subcommittee’s authority, reducing its role as a source of internal policy management. The new draft states that the PDS “provides guidance, clarification or proposed standards on NOSB operations, policies, and procedures as needed, **in collaboration with the NOP** [emphasis added].” When compared to the 2012 PPM and standing policy, this language unilaterally diminishes the NOSB’s ability to establish their own procedures.

The changes also truncate the PDS’s established role in working “with other committees to develop joint recommendations where policy issues are involved” and making “draft recommendations” to the Board as a whole. Instead, an emphasis is placed on NOP collaboration that did not exist before, allowing the NOP to influence the NOSB’s internal policy. **These material changes must not be accepted by the Board or the organic community. The precedent set by the historic operation of the NOSB, and the intent of Congress to create a collaborative relationship, should be maintained.**

The Committee is no longer tasked with making draft recommendations and providing guidance to the NOSB regarding their operations, policies, and procedures. Instead, the new draft places the PDS in a *collaborative role* with the NOP.

Dr. Barry Flamm, former NOSB chairman, and past chair of the policy development committee, spoke to the specific problems highlighted by this change. “Of special importance,” stated Flamm, “is the ability to develop a work plan that reflects needs identified by the Board, which may also respond to public and NOP requests. The NOP should be free to provide perhaps unwanted advice to the secretary and NOP, but that is very different than having to operate in a collaborative role.” The language from the 2012 draft permitting the PDS to make recommendations to the Board and makes changes to the PPM, as needed, is also stripped from the new draft.

The 2016 revisions changed the NOP’s proposal and restored the PDS’ role in revising the PPM and Member Guide. This change was in response to the brunt of the public comment on the proposed draft. As this change is essential to the operation of the Board, this revision is a positive one.

The changes to the PDS also suggest that the NOSB would no longer be allowed to create a subcommittee to work on topics of its choosing, such as the GMO subcommittee or a subcommittee to study aquaponics. Advocates from Beyond Pesticides stated: “OFPA established the NOSB to advise the Secretary of Agriculture on the organic program. NOSB cannot advise the Secretary well if its authority to develop a work plan and agenda, or create committees and procedures, is diminished or denied.”¹²

Materials Subcommittee (MS)

The MS has several vital roles in the administration of NOSB duties. Chief among those duties is the management of the materials review process.

The new draft assigns vice chairs of the crops, livestock, and handling subcommittees to serve on the MS as liaisons for reviewing all petitioned substances. However, this assignment is not consistent with the description of the MS elsewhere in the new draft or with current practice. Specifically, the description of the MS does not define which members of the other subcommittees will be part of the MS and speaks more broadly, stating: *“In addition to a Chair, who will be appointed by the NOSB Chair, the MS shall include in its membership a representative from each of the Livestock, Crops, and Handling Subcommittees.”*

Keeping the liaison role open to one member of each applicable subcommittee allows more flexibility in the practice. The 2012 PPM, for example, states that the co-chairs from each of the livestock, crops, and handling subcommittees make up the group, but allows that other members can be appointed as needed. Taking into account the NOSB’s status as volunteers, it will also allow for workloads to be shared more evenly among subcommittee members. The language in the 2012 PPM, permitting the assignment of other members to the subcommittee, allows for flexibility when the need arises. This point may become more relevant if the expanded duties the proposed draft assigns to the MS are kept.

¹² *Demise of the National Organic Standards Board?* By Barry Flamm, Ph.D.. *Pesticides and You*, Vol. 34, No. 2 Summer 2014. Publication of Beyond Pesticides. Available online at: https://www.beyondpesticides.org/assets/media/documents/infoservices/pesticidesandyou/documents/DemiseNOSB_000.pdf

The new draft also added a new explicit role for the MS: the role of “drafting proposals and discussion documents regarding the prohibition on the use of genetically modified organisms (excluded methods) under the USDA organic regulations.” **The prohibition on GMOs is an important problem the organic industry faces every day, and this is a good addition to the proposed PPM.**

MINORITY OPINIONS

Keeping a record of minority opinions is essential for the NOSB’s operation at both the subcommittee and whole-board level. With the diversity of opinions on the Board, it is expected that there will be a range of opinions on materials, standards, and advice to the secretary. While a minority opinion may not be the one responsible for a final action on behalf of the NOSB, accurate documentation of minority opinions in every level of NOSB administration, including the subcommittee level, should be retained in the PPM. Accurate records that reflect the diversity of opinions expressed during meetings and during voting periods provide needed transparency and allow the content to remain useful for NOSB members, subcommittee members, and the public. These records are also needed to keep new members of the NOSB apprised of past discussions.

Essentially, there are two main reasons that minority opinions must be forwarded to the full Board, reviewed, and recorded:

1. Minority opinions inform the NOSB and the public of the full range of issues that were discussed by the subcommittee relative to the issue.
2. Minority opinions permit a full range of possible actions to be considered by the Board.

In the past the NOP has not allowed the NOSB to vote on a motion that is substantially different from the motion proposed by the subcommittee. This reduces the opportunity for opposing factions on the Board to negotiate compromises benefiting the organic community. It also undermines the intent of Congress to promote consensus rulemaking. Ensuring that minority opinions must be forwarded to the full Board, reviewed, and recorded will combat these concerns.

Under “*Presenting Subcommittee Proposals and Discussion Documents at NOSB Meetings*” Section, the proposed draft contains some fatal problems concerning the treatment of minority opinions. The new draft deletes the inclusion of the minority opinion as a separate document (when it’s applicable at all). **These changes to the text have the effect of silencing the minority opinion and must be changed.**

The initial draft rewrite (completed in 2015) lacks clarity when discussing the topic of minority options and these issues were not cured in the 2016 edits. There are new

requirements for minority view reporting in the proposed PPM. Under the heading “*Procedures for Completing Subcommittee Proposals and Discussion Documents*,” the timing for the acceptance of minority views appears nonsensical. Essentially, the new draft asks the NOSB to submit a minority report in a timely manner, but will not accept these reports *after* a subcommittee has voted. Since a minority view would be finalized *when* a vote is actually performed, this rule makes no sense. A view cannot be determined a “*minority*” view until **after** a vote is taken. **It is also contrary to the purpose of an advisory committee to set a deadline dictating when new information may be introduced, particularly when a vote crystalizes the minority view.**

The 2012 PPM language regarding minority opinions should be retained, but with the option of integrating the minority view into the main discussion. Language should be added that requires the subcommittee proposal to address the full range of issues and possible outcomes. Such a treatment of issues and outcomes could be presented as a minority opinion or could be integrated into the subcommittee’s discussion, but should not be merely appended at the end. This will keep a policy of recording minority opinions accurately while allowing flexibility in how that record is disseminated.

As stated in the summary of the 2016 revisions, the PDS disagreed with concerns from the public that the 2015 draft changed the requirements for minority reports, decreasing understanding by the NOSB and the public. The Subcommittee stated that “[*t*]he *minority view section* was revised to better integrate the minority view into the final NOSB proposal and discussion as well as to facilitate a collaborative NOSB process.” What they don’t address is the ambiguity in the PPM regarding minority reports and public accessibility by the public.

TIMING

Many of the changes to different timing mechanisms throughout the proposed PPM are problematic:

- Under “*miscellaneous procedures*,” the draft PPM requires that speakers must be invited 60 days prior to a meeting. This is overly restrictive; the requirement that speakers be invited at least 45 days before a meeting should be retained from the 2012 PPM.
- Also under the title of “*miscellaneous procedures*,” the draft added language about speakers being required to disclose their financial interests. It should be added that speakers should be required to disclose these interests **prior to any presentation**.
- The time limit on the committee’s recommendations regarding a petitioned substance was changed. The no later than 60-day timing was changed to 45 days in the new draft. This gives more time for subcommittees to work, but could also shorten the time available for public comment.
- The time available for public comment on potential changes to the National List was cut in half, from 60 days to 30 days. This time is not sufficient for well-developed public

comments by industry experts and the 2012 PPM timing of 60 days should be retained. At a minimum, the schedule should allow 45 days for public comment.

- The proposed draft changed the time allotted for public comments on petition proposals, allowing a minimum of 30 days for written public comment prior to the public NOSB meeting, rather than the 60 days for public comment, as allotted in the 2012 PPM. The proposals are published on the NOP website. This timing will seriously undermine public participation, because 30 days is *too short* a time allotment for informed public comment. For example, Amish growers represent a significant percentage of certified organic farmers, and do not generally have access to the Internet; two-way communications, via the mail, limited to within 30 days would disenfranchise many.

NOSB WORK AGENDAS AND PLANS

Even as a volunteer board, it is important that the NOSB control their own agenda. Authority over work agendas is removed from the NOSB and given to the NOP in the new draft. This is an example of the removal of language supporting true collaboration, despite its importance to the NOSB in the past. This eliminates the ability of the NOSB to truly advise the USDA secretary as Congress intended.

Beyond Pesticides' comment on the changes to work agenda management was that "... OFPA gives the leadership role to the NOSB, not the NOP... This is an example of where collaboration on issues and priorities has been important to the board carrying out its statutory duty." This is absolutely right and the PPM should reflect the reality: Congress intended that the NOSB remain an independent body. The Board cannot advise the Secretary properly if its authority to develop a work plan and agenda, or create committees and procedures, is diminished or denied. **The language giving the NOSB control over their own agendas must be restored to maintain proper balance.**

In addition, the new draft allows the NOP to block an agenda item that the NOP does not understand. **This is an outrageous change that ultimately undermines the NOSB's statutory authority and ability to act as a liaison between the organic community and the USDA.**

MATERIALS REVIEW

Third Party Reviews

Third party reviews are a vital part of the NOSB materials review. They must remain unbiased, ethical, and comprehensive. The proposed draft made many alterations to the text regarding third party reviews.

OFPA explicitly gives the authority to the NOSB to direct third party reviews of materials, stating: “*The Board shall convene technical advisory panels [TAPs] to provide scientific evaluation of the materials considered for inclusion in the National List. Such panels may include experts in agronomy, entomology, health sciences and other relevant disciplines.*”¹³ Both the 2012 and the new drafts of the PPM quote this language directly. However, up to this point, TAPs have been convened by USDA, not the NOSB, as is stipulated by OFPA. As always, the PPM should reflect the law governing the NOSB, their duties and actions.

Currently, the NOSB is relying on information within the Technical Reports provided by the NOP and public comment to make their final recommendations, instead of TAPs. One reason for this difference is stated in the new draft: that the “NOSB has not convened independent Technical Advisory Panels since 2005.”

In addition, the proposed draft does not mention the role of the materials committee/subcommittee (MS) in this section, while in the 2012 PPM the materials committee had a defined role in determining if a third party review was necessary. This information should be listed briefly in both the description of the MS’s roles *and* in the discussion of third party reviews for consistency and clarity.

As part of these policies and procedures, the authors of the Technical Reviews and/or parties to a Technical Advisory Panel should be public knowledge. This transparency is a necessary part of the political process and cannot be ignored. Luckily, the PDS responded favorably to public comment and added that contractors will now be named on Technical Reviews. However, it is imperative that the authors – the scientists and technical experts themselves – are also identified to NOSB members and the public on any Technical Reviews or Technical Advisory Panels in which they participate.

However, the 2016 revision did improve the conflict of interest policy for third-party contractors, adding a conflict of interest policy where the 2015 draft had none. **This is an important and necessary change that should be reflected in other conflict of interest policies.**

The new draft also changes the phase of evaluation by a third party expert, termed “*Third Party Technical Review*” in the 2015 version, to emphasize that a TR/TAP is being created by these same experts without alluding to much else. There is no reference to evaluation

¹³ 7 U.S. Code § 6518(k)(3)

questions, for example, that are in the 2012 PPM. Instead, the new draft places an emphasis on the “*contract*” the third party experts have in the proposal. Evaluation questions are important and valuable information that should be found in the PPM.

Voting

Changes in voting practices occurred at the spring 2015 meeting without a corresponding change PPM language. The standing procedure for recording votes was to record the individual Board member votes for changes to the National List. These were recorded by the NOSB secretary and the transcript. This “*roll call*” voting was changed without public comment or any formal procedures.

Voting was done by a show of hands at the spring 2015 meeting. The record only shows the total votes, rather than who voted. By itself, this change raises questions about how the record can remain complete and inform that the public about the workings of the NOSB. Unfortunately, when The Cornucopia Institute reviewed documents they received through a Freedom of Information Act (FOIA) request, it became clear that this change in voting procedure was specifically targeted at impeding Cornucopia’s efforts to publish NOSB member voting records. Regardless of the purpose behind this action, it ultimately hurts government transparency and the public.

The proposed draft would likely allow hand-raising as a permanent method of voting if it is enacted as-is. This should not be allowed. Instead, the ambiguities in the 2012 PPM should be cured to make it clear which NOSB member is voting for what.

With regard to the comparison between the two PPM drafts, the language from the 2012 PPM states that “*NOP staff will record the votes of the **each** [emphasis added] NOSB member and announce whether or not the motion passed.*” This language was reworded slightly in the new draft to read: “*The NOSB Secretary will record the votes of each NOSB member and the Chair will announce whether or not the motion passed.*” This specificity is only with respect to voting on materials review and the only change in this sentence is *who* is recording the votes in question.

However, another area of change is the addition of language allowing votes by hand-raising, etc. With respect to the material review process, the new draft states that: “*Voting may be by show of hands, roll call, or by use of modern voting devices.*” The 2012 PPM does not specify these voting mechanisms. As previously discussed, some of these voting methods may make voting records less transparent to the public.

As you can see, who “*records*” the votes has been changed and raising of hands would be allowed through the proposed draft. This is still ambiguous to a certain extent, but the argument can be made that specifying “*each*” NOSB member requires that each vote have a name attached to it. Again, we recommend that a definition section be added to the PPM. This definition section should define what a “*record*” is for voting and in general. It should also be specified that *names* are attached to any voting record. As it stands, NOSB administration could make the argument that a record is just a tally, and that “*each*”

member just means they need to count every vote. However, a better interpretation is that “*each*” member must have their votes recorded as set apart from others.

This interpretation is supported by how voting is treated elsewhere in the new draft and 2012 PPM. Voting for officers is by *secret vote* in the proposed PPM, but this is not changed from the old PPM language (though the language was reworded). Officer voting is termed *confidential*, but that kind of clarity is not specified in the language regarding voting for materials on the National List.

Since the root of this problem is ambiguity, adding more precise language should cure the issue. Unfortunately, the abuse of the NOSB’s role as public servants is more systemic. NOSB members are sitting as appointed representatives. They should understand that, as public servants, they will be judged by, or questioned about, any and all votes or actions they take. This can be difficult work, but it is part of maintaining transparent organic governance and label integrity. This relationship is part of public service, and trying to obfuscate or hide substantive actions makes a bad public servant.

NEW PETITIONS

With respect to petitioning of substances and the processes for reviewing new petitions, the new draft makes **multiple substantive changes** to the PPM. As a start, the draft deletes information regarding the evaluation of substances. OFPA clearly lays out what evaluation questions must be asked when a substance is being considered for the National List.¹⁴

In the draft proposal, a petitioner is only allowed to withdraw a petition to improve it, softening the language compared to the 2012 PPM. It would be helpful for the PPM to illustrate what it means by “*improving*” a petition. It would be easy to clarify this term so that it is not arbitrarily followed. For example, does this mean the petitioner can only withdraw a petition just to correct errors to the petition? Or will it allow a petitioner withdraw a petition to add entirely new information regarding the topic of the petition? The latter could allow for an administrative tangle that could be avoided if this term is clarified and defined more clearly.

This limitation on withdrawing a petition does not give any exceptions, and does not seem to allow a petition to be withdrawn because the petitioner changes their mind about allowing the review process to go forward at all. If it is the NOSB’s intention, that a petitioner cannot withdraw even if they decide they do not want their petition reviewed, then this should be made clear.

¹⁴ 7 U.S. Code § 6518(m)

SUNSET REVIEW PROCESS

The most disturbing change found in the draft proposal PPM and in NOSB policy in general is the complete reversal of the material Sunset Review process. This change was made without proper notice and public comment in 2013.¹⁵ The change in policy is backed up by the language in the new draft.

The “*process*” used to implement this change is the subject of a federal lawsuit filed by multiple organic stakeholders. At a minimum, the results of this lawsuit should be realized before the Sunset policy is revisited with proper attention to public comment and debate (as claimed by the legal challenges).

The Sunset Notice violates OFPA because it allows substances to remain on the National List without full board review, without a decisive vote to renew, and without renewal by the Secretary. Cornucopia and the 14 other plaintiffs allege that the USDA decision to develop, promulgate, and implement the Sunset Notice, which makes substantive changes to OFPA, is arbitrary and capricious, an abuse of discretion, otherwise not in accordance with law, and without observance of standards required by law.

COMMENTS AND PUBLIC MEETINGS

The NOSB should endeavor to remain transparent and accessible to the public whenever performing their duties with the Board. As both the 2012 PPM and new draft state: “*the NOSB is a FACA advisory committee, and as such, must conduct business in the open, under the requirements of P.L. 94-409, also known as “Government in the Sunshine Act” (5 U.S.C.552b).*” While the USDA cannot delegate its authority to the NOSB, as private citizens, the NOSB’s role as representatives of the organic community makes the Board representatives of the USDA for many people with interests in the organic community.

Two or more times per year, NOSB meetings provide unique opportunities for the public to make their voices heard in person. As an essential part of any government process, public comment should never be infringed upon or limited.

Public Speaking and Comment

The NOSB should hold the discretionary power for length of public comment. With respect to the time allotment for public speaking during NOSB meetings, the proposed PPM allots a comment time of four minutes, with the option of altering it to three or five minutes *at the discretion of the NOP*. Even if the NOP is working closely with the NOSB chair in advance of

¹⁵ The NOP published a Federal Register notice on Sept. 16, 2013 (78 FR 56811) describing current procedures for Sunset Review.

the meeting, the power to accept requests for longer or shorter comments should remain with the NOSB, not the NOP. This change in the new draft is another example of the increasing power of the NOP over NOSB administration. The requirements from the 2012 PPM should be retained.

The time allotted for public comment should only be limited if there is a clear and present need for a time-saving measure. Throughout the majority of it's the NOSB's history, the public was afforded five minutes *or more* to give testimony. Often, many citizens and representatives of organic stakeholder organizations traveled across the country to give their five minutes of commentary.

The proposed draft also states that "*Persons must give their names and affiliations for the record at the beginning of their public comment.*" In addition to affiliations, consultants, or anyone working on behalf of another party, should disclose the name of their clients at the beginning of public comment. Otherwise, transparency is compromised and the NOSB, who may be strapped for time and unable to do thorough background checks for each speaker, may be misled without full awareness of a speaker's conflicts.

Waiting List

All persons wishing to comment at NOSB meetings during public comment periods must, in general, sign up in advance per the instructions in the Federal Register Notice for the meeting. Persons requesting time after the closing date in the Meeting Notice, or during last-minute sign-up at the meeting, will be placed on a waiting list and will be considered at the discretion of the NOP, working closely with the NOSB Chair, depending on the availability of time. **In the past, the NOSB occasionally expanded its schedule to accommodate testimony when there was heightened public interest on specific agenda items. This decision should be made by the NOSB and not the NOP.**

NOSB-NOP COLLABORATION

Overall the section on "*NOSB-NOP collaboration*" was pared down in the new draft, opting for NOP participation in everyday activities **rather than true collaboration**. This reflects the overall trend in the proposed PPM to facilitate the NOP's increased control over the NOSB's activities. In contrast, the 2012 PPM establishes an outline for NOSB-NOP interaction based on the statutory duties of the NOSB.

Under the broad heading of "*NOSB-NOP Collaboration*," the new draft added: "*The NOSB may provide comments on guidance or policy memos included in the Program Handbook, or may also make recommendations for new guidance or policies.*" This may seem like a small change, but it speaks volumes: the USDA is removing an important aspect of the NOSB's ability to debate and make decisions for itself, roles given to the NOSB them by OFPA, and giving those powers to the NOP. At the same time, less emphasis is placed on *true*

collaboration. It is essential that the NOSB police itself and adapt to changing circumstances from the NOSB. This self-regulation cannot occur if the NOSB does not have the ability to change its own official policies, with the appropriate public comment.

There are many other small changes that place the NOP in a position of greater power over NOSB administration. For example, proposals must be submitted to the NOP under the proposed PPM (while this was not specified in 2012 draft). The new language added in the 2016 revision also requires that *advice given to the Secretary is filtered through the NOP*. This contradicts sections of OFPA, as there are times the Board is directed to speak directly with the Secretary.¹⁶ **It is important that the NOP not have control over the NOSB's essential functions.**

ADDITIONAL ADMINISTRATIVE ITEMS AND HANDLING TECHNICAL ERRORS

There are some additions to the new draft that would benefit from more clarity and reference to the 2012 PPM.

First, the entire section titled “*Handling Technical Errors after an Item Has Been Placed in the Federal Register*” was deleted from the 2012 draft. These “*technical error*” procedures, as described in the 2012 PPM, should be maintained in some form. These procedures will allow for technical errors, such as unclear terms or definitions, to be resolved more easily. It is important to have these procedures in place or develop similar procedures to follow.

Public Access

Public access to documents should not be delayed or discounted. As pointed out in the comments made by Beyond Pesticides on the PPM changes, the new draft provides for public access to documents and communications, according to the provisions of FOIA, as opposed to FACA. The NOSB is a FACA advisory committee, so the PPM should cite FACA when applicable. Because FACA requires a prompter response to public requests, the PPM should cite FACA instead of FOIA in this instance.

Election of Officers – Eligibility to Vote

The “*Eligibility to Vote*” Section was deleted from the 2012 PPM. The absence of the language requiring Board members to be present in order to cast one vote per nomination may allow Board members to vote on nominations while physically absent. This could potentially weaken the collaborative processes at NOSB meetings. It may even allow for ballots to be mailed in. This is one area of NOSB participation where physical presence should be maintained.

¹⁶ See 7 U.S. Code § 6518(k) for examples.

The deletion of the *Eligibility to Vote Section* raises issues of ambiguity that could be abused. For example, will the number of votes each Board member casts be tracked in the same way? Or, will this policy be open to interpretation on a whim? It is important that there is a set procedure for this essential operation within the Board.

CONCLUSION

Taken as a whole, the changes made to the PPM represent a dramatic shift in policy for the NOSB. Chief among the changes is that the draft proposal adopts the increased role of the NOP in NOSB administration. As discussed, this is problematic because the NOSB fills a very specific niche in the administration of organics. Another part of this shift in control is evidenced by changes in the PDS: the draft lessens the ability of the NOSB to manage its own policy and procedures. As dictated by federal law, the duties of the NOSB should remain theirs alone.

The Board is made up of the range of interests that comprise the organic community and it is the responsibility of those appointed to represent the stakeholder category, designated by Congress, to which they were appointed. The NOSB procedures must encourage a diversity of perspectives and opinions to be heard and debated so that the public knows that all viewpoints were considered.

APPENDIX A

REVISIONS CHART

NOSB Policy and Procedures Manual – Review of 2015 Revisions and Substantive Changes

Last updated – 3/30/16 by Marie Burcham, J.D., Food and Farm Policy Analyst, The Cornucopia Institute

Highlights – not every change will be highlighted, but rather points where changes have been made that are more substantive. Highlighting key:
 Substantive additions (not every in-line change): **blue**
 Substantive language change/language highlight (may be just a word-choice): **yellow**
 Substantive deletions (from 2012 draft): **grey**
 Highlight of specific language in the added/deleted sections of text (primarily highlighted by Terry Shistar from Beyond Pesticides). Highlights may relate to language pulled from other sections – see notes in the appropriate column for that tracking within the document: **Magenta**

NOTE: this is organized according to the 2012 PPM draft (2015 sections are out of order) – see movement tracking notes or redline draft to follow the changes related to re-formatting and re-organizing. There are some blocks of newly ADDED text included at the end of this chart.

PPM 2012	PPM 2015	SUBSTANTIVE CHANGES
<p>INTRODUCTION This document is intended as a guide for all members of the National Organic Standards Board (NOSB). Board members are entrusted with a strong responsibility to treat the business of the Board as fiduciaries for all members of the organic community and the public at large.</p> <p>The Board’s primary role is to advise, rather than administer and implement. As in every business, the Board’s success depends heavily upon the ability to understand each other’s respective role, and to develop the working relationship necessary within those roles.</p> <p>This manual is designed to assist the Board in its responsibilities. New Board members are encouraged to review this manual in depth as well as to become familiar with the Organic Foods Production Act (OFPA), 7 CFR Part 205, and the NOSB New Member Guide. Existing members are advised to periodically review the contents to refresh their understanding of the Board’s role and their duties.</p> <p>New policies and revisions to existing policies and procedures will be incorporated into the NOSB Policy and</p>	<p>INTRODUCTION/PURPOSE This document provides procedures for the functioning of the National Organic Standards Board (NOSB) and is designed to assist the NOSB in its responsibilities. New NOSB members are encouraged to review this manual in depth as well as to become familiar with the Organic Foods Production Act (OFPA), the USDA organic regulations at 7 CFR Part 205, and the NOSB Member Guide. Members are advised to periodically review the contents to refresh their understanding of the NOSB’s role and duties. NOSB members are entrusted with the responsibility to act in the best interests of all members of the organic community and the public at large. The NOSB’s success relies upon the ability to understand each other’s respective roles, and to develop successful working relationships.</p> <p>The primary roles and duties of the National Organic Standards Board (NOSB):</p> <ul style="list-style-type: none"> • Serve as a link to the organic community • Advise USDA on the implementation of OFPA • Propose amendments to the National List of 	<p>Movement/deletion tracking for this topic: The 2015 draft combines the “introduction” section and section I of the 2012 draft, moving the NOSB mission and related issues to the front.</p> <p>2015 draft added:</p> <ul style="list-style-type: none"> - That the PPM “provides procedures” for the NOSB. <p>2015 draft deleted:</p> <p>Substantive changes:</p> <ul style="list-style-type: none"> - “Provides procedures” is stronger language than “guide”, suggesting the 2015 draft is intended as a strict guide document which the NOSB can be more easily held to by outside administration. This appears to prevent the NOSB from stepping outside the prescribed boundaries (especially to the extent that the 2015 draft is more restrictive than the 2012 draft). However, this language is softened in the same sentence; there the PPM is said to be

<p>Procedures Manual from time to time, as determined by the Board.</p>	<p>Allowed and Prohibited Substances</p> <ul style="list-style-type: none"> • Protect and defend the integrity of organic standards 	<p>“designed to assist”. This language frames the PPM not as rules to be followed absolutely.</p> <ul style="list-style-type: none"> - Section allowing for additions to the PPM was deleted from the 2012 draft. - Deletion of the 2012 text noting the PPM can be revised, as determined by the NOSB. <i>If the NOSB does not revise & update the PPM, who else has the authority to?</i> - Changes to what the Board members are “entrusted” to do - List of “primary roles and duties” (yellow) comes from language moved from Section II in the 2012 draft as follows, but with some deletions: <p><u>BOARD MEMBER JOB DESCRIPTIONS</u></p> <p><i>The National Organic Standards Board (NOSB) fulfills three important roles:</i></p> <ul style="list-style-type: none"> • <i>The Board serves as the primary linkage to the organic community. In that regard, the Board must advise the NOP on the implementation of OFPA.</i> • <i>The Board must approve all materials that appear on the National List.</i> • <i>The Board maintains the responsibility to protect and defend the integrity of organic standards.</i> <p>Note: The 2015 language does not carry with it the mandate (“must”) of the 2012 language.</p>
<p>SECTION I This section presents the NOSB’s vision and mission statement as well as specifics on NOSB members’ duties, and professional and ethical standards.</p> <p><u>NOSB VISION STATEMENT</u></p> <p>The NOSB’s vision is an agricultural community rooted in organic principles and values that instills trust among</p>	<p>A. NOSB VISION STATEMENT (NOSB Recommendation adopted October 19, 2002, revised November 30, 2007).</p> <p>The NOSB’s vision is an agricultural community rooted in organic principles and values that instills trust among consumers, producers, processors, retailers and other stakeholders. Consistent and sustainable organic standards guard and advance the integrity of organic</p>	<p>Movement/deletion tracking for this topic: Same as above (reformatting). This is part of the 2015 draft’s Section I.</p> <p>NOT SHOWN IN CHART (minor grammar changes and things moved around): The OFPA definition of specific responsibilities for the Board starting at Sec 2119(k) was moved from Section I. to Section III. C. RESPONSIBILITIES OF THE NOSB. The changes put it</p>

<p>consumers, producers, processors, retailers and other stakeholders. Consistent and sustainable organic standards guard and advance the integrity of organic products and practices.</p> <p><u>NOSB STATUTORY MISSION</u></p> <p>“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))</p> <p><u>NOSB MISSION STATEMENT</u></p> <p>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.</p> <p>In carrying out the mission, key activities of the Board include:</p> <ul style="list-style-type: none"> • 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; 	<p>products and practices</p> <p>B. NOSB STATUTORY MISSION (NOSB Recommendation adopted October 19, 2002, revised November 30, 2007).</p> <p>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))</p> <p>C. NOSB MISSION STATEMENT (NOSB Recommendation adopted October 19, 2002, revised November 30, 2007).</p> <p>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.</p> <p>Key activities of the Board include:</p> <ul style="list-style-type: none"> • Assisting in the development and maintenance of organic standards and regulations • Reviewing petitioned materials for inclusion on or removal from the National List of Approved and Prohibited Substances (National List) • Recommending changes to the National List • Communicating with the organic community, including conducting public meetings, soliciting and accepting public comments • Communicating, supporting and coordinating with the NOP staff 	<p>under the greater section of NOSB Administration.</p> <p>The “Duties of the NOSB” was moved (and edited) from Section I. of the 2012 draft to the appendices (section IX(A)(3)) in the 2015 draft.</p> <p>Substantive changes:</p> <ul style="list-style-type: none"> - “In carrying out the mission” language was deleted, which could be interpreted to mean that the activities the board are not <i>specifically targeted</i> toward fulfilling the statutory mission. <i>This could allow the NOP to limit the NOSB actions.</i> - “Deletion” changed to “removal.” This may just be a word-choice and the surrounding context suggest this interpretation.
<p><u>DUTIES OF THE BOARD AND OFFICERS</u></p> <p>The Organic Foods Production Act of 1990 (OFPA) defines the following specific responsibilities for the Board starting at Sec 2119(k):</p> <p>1) IN GENERAL.—The Board shall provide recommendations to the Secretary regarding the</p>	<p>C. Responsibilities of the NOSB (OFPA, 7 USC 6518(k)):</p> <p>1) In General. The Board shall provide recommendations to the Secretary regarding the implementation of this chapter.</p> <p>2) National List. The Board shall develop the</p>	<p>Movement/deletion tracking for this topic: Moved (and edited) FROM Section I in the 2012 draft to Section III C (RESPONSIBILITIES OF THE NOSB) in the 2015 draft. The changes put it under the greater section of “NOSB Administration” in the 2015 draft.</p>

<p>implementation of this title.</p> <p>2) NATIONAL LIST.—The Board shall develop the proposed National List or proposed amendments to the National List for submission to the Secretary in accordance with section 2118.</p> <p>3) TECHNICAL ADVISORY PANELS.—The Board shall convene technical advisory panels to provide scientific evaluation of the materials considered for inclusion in the National List. Such panels may include experts in agronomy, entomology, health sciences and other relevant disciplines.</p> <p>4) SPECIAL REVIEW OF BOTANICAL PESTICIDES.—The Board shall, prior to the establishment of the National List, review all botanical pesticides used in agricultural production and consider whether any such botanical pesticide should be included in the list of prohibited natural substances.</p> <p>5) PRODUCT RESIDUE TESTING.—The Board shall advise the Secretary concerning the testing of organically produced agricultural products for residues caused by unavoidable residual environmental contamination.</p> <p>6) EMERGENCY SPRAY PROGRAMS.—The Board shall advise the Secretary concerning rules for exemptions from specific requirements of this title (except the provisions of section 2112) with respect to agricultural products produced on certified organic farms if such farms are subject to a Federal or State emergency pest or disease treatment program.</p> <p><i>(Additional Duties included in OFPA but not limited to):</i> 6518(n) PETITIONS. The Board shall establish procedures under which persons may petition the Board for the purpose of evaluating substances for inclusion on the National List. 6509(d) (2) STANDARDS. The National Organic Standards Board shall recommend to the Secretary standards in addition to those in paragraph (1) for the care of livestock to ensure that such livestock is organically produced.</p>	<p>proposed National List or proposed amendments to the National List for submission to the Secretary in accordance with section 6517 of this title.</p> <p>3) Technical Advisory Panels. The Board shall convene technical advisory panels to provide scientific evaluation of the materials considered for inclusion in the National List. Such panels may include experts in agronomy, entomology, health sciences and other relevant disciplines.</p> <p>4) Special Review of Botanical Pesticides. The Board shall, prior to the establishment of the National List, review all botanical pesticides used in agricultural production and consider whether any such botanical pesticides should be included in the list of prohibited natural substances.</p> <p>5) Product Residue Testing. The Board shall advise the Secretary concerning the testing of organically produced agricultural products for residues caused by unavoidable residual environmental contamination.</p> <p>6) Emergency Spray Programs. The Board shall advise the Secretary concerning rules for exemptions from specific requirements of this chapter (except the provisions of section 6511 of this title) with respect to agricultural products produced on certified organic farms if such farms are subject to a Federal or State emergency pest or disease treatment program.</p> <p>Requirements. (OFPA 6518(I)) In establishing the proposed National List or proposed amendments to the National List, the Board shall</p> <ol style="list-style-type: none"> 1) review available information from the Environmental Protection Agency, the National Institute of Environmental Health Studies, and other sources as appropriate, concerning the potential for adverse human and environmental effects of substances considered for inclusion in the proposed National List; 2) work with manufacturers of substances considered for inclusion in the proposed National 	<p>The “Evaluation” section shown here is also copied in another section regarding OFPA requirements for crop and livestock evaluation. This section relating the OFPA was moved to Section III. NOSB Administration in the 2015 draft. This comparison is in Section VIII In the 2012 draft.</p> <p>Substantive changes:</p> <ul style="list-style-type: none"> - Language primarily taken from OFPA without significant changes except the deletion of “additional duties included in OFPA”. The deletion of these passages is substantive if the interpretation by the NOP is constructive and the PPM is taken as a whole document (which, given the attached documents, may not be the case). - The sunset provision addition. Under the old sunset procedures the board did not take any action to materials unless they wanted those materials to remain on the list.
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	<p>List to obtain a complete list of ingredients and determine whether such substances contain inert materials that are synthetically produced; and</p> <p>3) submit to the Secretary, along with the proposed National List or any proposed amendments to such list, the results of the Board's evaluation and the evaluation of the technical advisory panel of all substances considered for inclusion in the National List.</p> <p>Evaluation. (7 USC 6518(m)) In evaluating substances considered for inclusion on the National List the NOSB shall consider:</p> <ol style="list-style-type: none"> 1) the potential of such substances for detrimental chemical interactions with other materials used in organic farming systems; 2) the toxicity and mode of action of the substance and of its breakdown products or any contaminants, and their persistence and areas of concentration in the environment; 3) the probability of environmental contamination during manufacture, use, misuse or disposal of such substance; 4) the effect of the substance on human health; 5) the effects of the substance on biological and chemical interactions in the agroecosystem, including the physiological effects of the substance on soil organisms (including the salt index and solubility of the soil), crops and livestock; 6) the alternatives to using the substance in terms of practices or other available materials; and 7) compatibility with a system of sustainable agriculture. <p>Petitions. (7 USC 6518(n)) The board shall establish procedures for receiving petitions to evaluate substances for inclusion on the List</p> <p>Sunset Provision. (7 USC 6517 (e)) No exemptions or prohibition contained in the National List shall be valid</p>	
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	<p>unless the National Organic Standards Board has reviewed such exemption or prohibition as provided in this section within 5 years of such exemption or prohibition being adopted or reviewed and the Secretary has renewed such exemption or prohibition.</p>	
<p>To fulfill their responsibilities, Board members agree to adhere to three duties as described in this Manual:</p> <ul style="list-style-type: none"> • Duty of Care • Duty of Loyalty • Duty of Obedience <p>Duty of Care 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:</p> <ul style="list-style-type: none"> • <u>Be reasonably informed</u>—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. • <u>Participate in decisions</u>—Board members are bound by responsibility to be active participants in decision-making. Absence from a meeting is no protection from the responsibility for decisions made at the meeting. • <u>Make decisions with the care of an ordinary prudent person in a similar position</u>—The law does not expect Board members to act as super human. It simply requires Board members to exercise judgment of an ordinary prudent person who may be faced with a similar issue. <p>Duty of Loyalty The Duty of Loyalty requires Board members to exercise their power in the interest of the public and not in their own interest or the interest of another entity or person. A Board member’s <u>loyalty is to the organic community and the public at large</u>. In dispatching their Duty of Loyalty, Board members must:</p> <ul style="list-style-type: none"> • <u>Address conflicts of interest</u>—Board members bring to 	<p>3. NOSB MEMBER DUTIES To fulfill their responsibilities, Board members agree to adhere to the following Duties</p> <p>Duty of Care 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:</p> <ul style="list-style-type: none"> • 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. • Participate in decisions - Board members are bound by responsibility to be active participants in decision making. Absence from a meeting is no protection from the responsibility for decisions made at the meeting. • Make decisions with the care of an ordinary prudent person in a similar position - The law requires Board members to exercise the judgment of an ordinary prudent person who may be faced with a similar issue. <p>Duty of Loyalty The Duty of Loyalty requires Board members to exercise their power <u>in the interest of the organic community and the public at large</u>, and not in their own interest or the interest of another entity or person. In dispatching their Duty of Loyalty, Board members must:</p> <ul style="list-style-type: none"> • Address conflicts of interest - Board members bring to the NOSB particular areas of expertise 	<p>Movement/deletion tracking for this topic: “Duties of Board” moved from Section I in the 2012 draft to (with edits) APPENDICES 3 in the 2015 draft (“NOSB MEMBER DUTIES”).</p> <p>Substantive changes:</p> <ul style="list-style-type: none"> - The language change regarding “loyalty”: the 2015 draft strengthens the loyalty term by saying that they must “<u>exercise their power in the interest...</u>” However, what the “interest” is in the above phrase can be highly subjective. Adding that they cannot act in their own interest or the interest of another entity/person is helpful but sets up some conflict & confusion in the NOSB true roles given the expansion of the “conflict of interest” section. - “Make decisions with the care of an ordinary prudent person in a similar position” – this is a legalese phrase but there is a question as to whether this document is legally enforceable. - “Follow” may be a gentler command than “adhere” language choice.

<p>the NOSB particular areas of expertise based upon their personal and business interests in organic production and marketing. Board members may have interests in conflict with those of the public interests. Board members must be conscious of the potential for such conflicts and act with candor and care in dealing with such situations. Board members must abide by the NOSB conflict of interest policy.</p> <ul style="list-style-type: none"> • <u>Recognize corporate opportunity</u>—Before a Board member votes upon an issue in which they have a direct financial interest, that Board member must disclose the transaction to the Board in sufficient detail and adequate time to enable the Board to act—or decline to act— in regard to such transaction. <p>Duty of Obedience Board members are bound to obey the tenants of the laws and regulations governing organic production, processing and marketing. To this effect, Board members must:</p> <ul style="list-style-type: none"> • Act within the requirements of the law—Board members must uphold all state and federal statutes, including the Federal Advisory Committee Act (FACA – 5 U.S.C. App. 2 et seq.). • Follow the responsibilities of the Board as defined by the Organic Foods Production Act of 1990. • Follow the requirements specified in the NOSB Policy and Procedures Manual. 	<p>based upon their personal and business interests in organic production and marketing.</p> <ul style="list-style-type: none"> • Because Board members may have interests in conflict with those of the public they must be conscious of the potential for such conflicts and act with candor and care. Board members must abide by the NOSB conflict of interest policy. • Recognize corporate opportunity - Before a Board member votes upon an issue in which they have a direct financial interest, that Board member must disclose the transaction to the Board in sufficient detail and adequate time to enable the Board to act, or decline to act, in regard to such transaction. <p>Duty of Obedience Board members are bound to obey the tenants of the laws and regulations governing organic production, processing and marketing. To this effect, Board members must:</p> <ul style="list-style-type: none"> • Act within the requirements of the law - Board members must uphold all state and federal statutes, including the Federal Advisory Committee Act (FACA – 5 U.S.C. App. 2 et seq.) • Adhere to the responsibilities of the Board as defined by the Organic Foods Production Act of 1990 • Adhere to the requirements specified in the NOSB Policy and Procedures Manual. 	
<p><u>Maintaining Professional and Ethical Standards</u> As appointees of the Secretary, NOSB members must maintain high professional and ethical standards for the conduct of all activities within and outside of the NOSB. Areas of particular concern include professional conduct and conflict of interest.</p> <p><u>Professional Conduct</u></p> <ul style="list-style-type: none"> ○ Public service is a public trust, requiring ethical principles above private gain ○ NOSB members shall put forth honest effort in the performance of their NOSB duties. ○ NOSB members shall make no commitments or promises 	<p>J. PROFESSIONAL AND ETHICAL STANDARDS As appointees of the Secretary, NOSB members must maintain high professional and ethical standards both within and outside of the NOSB. Areas of particular concern include professional conduct and conflict of interest.</p> <p>1) NOSB Member Professional Conduct Standards NOSB members shall:</p> <ul style="list-style-type: none"> • Observe ethical principles above private gain in the service of public trust. • Put forth an honest effort in the performance of 	<p>Movement/deletion tracking for this topic: “Maintaining Professional and Ethical Standards” information from the 2012 draft moved from Section I. to Section III. J in the 2015 draft.</p> <p>NOTE: The “PROFESSIONAL AND ETHICAL STANDARDS” listing in the 2015 draft is also combined and taken from a topic dealt with later in this chart (Board Member Standards -- moved from Section II In the 2012 draft to Section III J in the 2015 draft. This text was filtered into the professional conduct standards.</p>

<p>of any kind purporting to bind the Government.</p> <ul style="list-style-type: none"> ○ NOSB members shall act impartially and not give preferential treatment to any organization or individual. ○ NOSB members, committee members and task force members shall not engage in a financial transaction using nonpublic information, not allow the improper use of nonpublic information to further his/her own private interest or that of another, whether through advice or recommendation, or allow the unauthorized disclosure of nonpublic information. ○ Nonpublic information is defined as information that the board member gains by reason of participation in the NOSB and that he/she knows, or reasonably should know, has not been made available to the general public. This includes information that is “routinely exempt from disclosure in 5 U.S.C. 552 (Freedom of Information Act) or otherwise protected from disclosure by statute, Executive Order or regulation; is designated as confidential by the agency or program; or has not actually been disseminated to the general public and is not authorized to be made available to the public upon request.” ○ NOSB members, committee members and task force members shall keep confidential all information identified by petitioners as confidential business information(1). ○ To the maximum extent possible, NOSB members should speak with one voice. Although there may be disagreements within NOSB committee or working group sessions, once NOSB members leave the session, they have the responsibility to support the integrity of the process, whether or not they agree with the final outcome. While NOSB members retain the right to express minority opinions, the public airing of dissension could strain interpersonal relationships and create distrust and conflict among NOSB members. Such stresses could undermine the NOSB’s ability to effectively carry out its role as a governmental advisory board. ○ NOSB members with diverse backgrounds are recruited to provide balance to the Board. While individual NOSB 	<p>their NOSB duties.</p> <ul style="list-style-type: none"> • Make no commitments or promises of any kind purporting to bind the Government. • Act impartially and not give preferential treatment to any organization or individual. • Participate in meetings – Subcommittee conference calls as well as semi-annual meetings • Serve on Subcommittees as assigned - Each member must be willing to serve on Subcommittees as assigned by the NOSB Chair, and to participate in the work of those Subcommittees. • Be informed about NOSB business - NOSB members are expected to seek and study the information needed to make reasoned decisions and/or recommendations on all business brought before the NOSB. <p>To maintain the highest levels of honesty, integrity, and ethical conduct, no NOSB member shall participate in any “specific party matters” (i.e., matters that are narrowly focused and typically involve specific transactions between identified parties) such as a lease, license, permit, contract, claim, grant, agreement, or related litigation with the Department in which the member has a direct or indirect financial interest. This includes the requirement for NOSB members to immediately disclose to the NOP’s Advisory Board Specialist any specific party matter in which the member’s immediate family, relatives, business partners, or employer would be directly seeking to financially benefit from the Board’s recommendations.</p> <p>All members receive ethics training annually to identify and avoid any actions that would cause the public to question the integrity of the NOSB’s advice and recommendations. The provisions of these paragraphs are not meant to exhaustively cover all Federal ethics laws and do not affect any other statutory or regulatory obligations to which advisory committee</p>	<p>2015 draft added:</p> <ul style="list-style-type: none"> - Failure to participate. - Expanded standards of conduct. Including the prohibition against accepting an “improper gift” without actually describing what an improper gift would be. (NOTE: “Improper use” of non-public information wasn’t defined in the 2012 draft either.) <p>2015 draft deleted:</p> <ul style="list-style-type: none"> - FOIA reference in definition of nonpublic information. - Prohibition on “specific party matters”. <p>Substantive changes:</p> <ul style="list-style-type: none"> - Non-public information redefined in the 2015 draft to include information could be defined as “public” in other circumstances – this is a broader definition than FOIA’s definition. The 2012 draft quotes FOIA. The 2015 draft, by contrast, does not differentiate between information that would need to be made available with a request and that nonpublic information that is not available through FOIA requests. At the very least this language needs to be non-ambiguous or else the PPM may be suggesting that the NOSB’s dealings could be above FOIA. - The “failure to participate” section (newly added in 2015 draft) is non-specific about the situations that trigger a recommendation for resignation. - “Public trust” – this is another legal hot-phrase regarding government policy. This phrase is included in both drafts, but the 2015 draft language is clear in acknowledgement of this. - Key terms and phrases are not clearly defined in the 2015 draft, including “improper gift”, the “misuse” of internal information, and several other things under the “additional standards of conduct” heading. It appears the “improper
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<p>members represent the segments of the population from which they were selected, they also represent the greater good of the population as a whole.</p>	<p>members are subject.</p> <p>2) Additional Standards of Conduct NOSB members should adhere to the following basic “standards of conduct” while in government service:</p> <ul style="list-style-type: none"> • Don’t accept improper gifts (from those seeking actions from the Board). Don’t use board appointments for private gain. • Don’t misuse internal non-public government information. Use government property and time properly. • Don’t accept compensation for teaching, speaking, and writing related to your board duties. • Don’t engage in partisan political activities while performing your board duties or while in a federal building. • Alert the NOSB designated federal officer (DFO) if you or your employer enters into a lawsuit against USDA or its sub-agencies. • Refrain from sharing nonpublic information with the public. Nonpublic information is defined as information that a board member gains by reason of participation in the NOSB and that he/she knows, or reasonably should know, has not been made available to the general public: e.g. is not on the NOP or other public websites, or is a draft document under development by an NOSB Subcommittee. • Use a professional, respectful tone in NOSB email correspondence; remember that all correspondence with government officials is subject to FOIA requests. • To the maximum extent possible, NOSB members should speak with one voice. Although there may be disagreements within NOSB Subcommittees or working group sessions, once NOSB members leave the session, they have the responsibility to 	<p>gift” phrase could be interpreted several ways.</p> <ul style="list-style-type: none"> - The language regarding the airing of dissention and the expression of minority opinions was only altered slightly (with no real change in meaning). The 2015 draft may, however, be de-emphasizing the value of the minority opinion. <p>NOTE: “NOSB Member Professional Conduct Standards” section lifts this language directly (with some minor edits) from the NOSB charter,¹⁷ which reads as follows:</p> <p><i>“To maintain the highest levels of honesty, integrity, and ethical conduct, no Board member shall participate in any “specific party matters” (i.e., matters that are narrowly focused and typically involve specific transactions between identified parties) such as a lease, license, permit, contract, claim, grant, agreement, or related litigation with the Department in which the member has a direct or indirect financial interest. This includes the requirement for Board members to immediately disclose to the NOP’s Advisory Board Specialist any specific party matter in which the member’s immediate family, relatives, business partners, or employer would be directly seeking to financially benefit from the Committee’s recommendations.”</i></p> <p>MOST RECENT CHANGES. From the Policy Development Subcommittee comments and changes made in February 2016 (in response to previous public comment): The PDS also commented on the trigger for a Board member’s resignation, stating that “[t]he NOSB has no authority to force the resignation of any of its members, this authority lies with the Secretary.” These issues relate to both FACA and FOIA.</p>
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	<p>support the integrity of the process, whether or not they agree with the final outcome. While NOSB members retain the right to express minority opinions, the public airing of dissension could strain interpersonal relationships and create distrust and conflict among NOSB members. Such stresses could undermine the NOSB's ability to effectively carry out its role as a governmental advisory board.</p> <p>3) Failure to participate The NOSB typically has a heavy work load and thus active participation by all 15 members is essential to carry out the mandates in OFPA. When one or more members fail to actively participate in Board work the entire NOSB and the organic community is negatively impacted. If a Board member finds that s/he cannot consistently attend Subcommittee meetings, take on work assignments, complete Subcommittee work in a timely manner, or cannot attend the twice-yearly public meetings and public comment listening sessions, the NOSB Chair shall discuss the matter with the Board member, bring the concerns to the attention of the Executive Subcommittee, and if necessary encourage the Board member to resign.</p>	<p>This change is discussed in greater depth in Section III(I) "Additional Administrative Items". This section is located near the end of this document as it is an entirely new section added in the 2015/2016 draft. Now "non-public information" is defined using both FOIA and FACA.</p> <p>The language was changed as follows in the 2016 revisions (under the above heading of "Additional Standards of Conduct"):</p> <p>The PDS changed the language about not sharing documents to: "Refrain from sharing working documents with the public. Working documents are defined as information that a board member gains by reason of participation in the NOSB and that he/she knows, or reasonably should know, has not been made available to the general public: e.g. is not on the NOP or other public websites, or is a draft document under development by an NOSB Subcommittee."</p> <p>Substantive meaning behind the above 2016 revision: "Non-public" information was changed to "working documents". The language, while less obviously inflammatory, still suggests that there will be information not disclosed to the public. "Working documents" sounds like it could be something unfinished or unofficial, but that distinction is not clear in the text of the revised PPM.</p> <p>FACA states: "Subject to section 552 of title 5, United States Code, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the</p>
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		<p>advisory committee ceases to exist.” 5 USC Sec. 10(b).</p> <p>As observable above (note, in particular the highlighted text) what documents must be made available to the public is <u>broadly defined</u>. Based on this reading the changes to the PPM in the 2016 revisions still appear to allow the denial of public access to documents legally available within the scope of FACA. That would make this section illegal. It should be noted that obtaining documents through FACA requires a certain administrative process. If this language change by the PDS is attempting to limit members from sharing documents on their own violation, the text is fatally ambiguous.</p> <p>The above section of FACA is quoted in the section “ADDITIONAL ADMINISTRATIVE ITEMS” in the new draft at Section III(I). This is found at the bottom of the chart as it was a completely new section added to the new draft PPM. There is internal inconsistency within the proposed PPM.</p>
<p><u>Conflict of Interest</u></p> <p>The NOSB recognizes that members have been specifically appointed to the Board 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. To prevent overt advocacy for direct financial gain and the appearance of self- interest or the appearance of wrongful activity, the NOSB has adopted the following conflict of interest policy.</p> <p><i>Be it resolved by the National Organic Standards Board:</i></p> <p><i>Members of the Board shall refrain from taking any official Board action from which that Board member is or would</i></p>	<p>K. DECLARATION OF INTERESTS/Conflict of Interest</p> <p>NOSB members are classified as representatives under the Federal Advisory Committee Act (FACA). Each representative is appointed to articulate the viewpoints and interests of a particular interest group. The Organic Foods Production Act (OFPA) prescribes these interest groups, which include farmers/growers, handlers, certifiers, environmentalists/conservationists, scientists, consumers and public interest groups, and retailers. Representatives are appointed to speak in “we” terms, serving as the voice of the group represented (e.g., “we farmers/growers believe...”). As such, NOSB members are not expected to provide independent expert advice, but rather advice based on the interests of the group served.</p>	<p>Movement/deletion tracking for this topic:</p> <p>Conflicts of interest moved from Section I. in 2012 draft to Section III. K. in the 2015 draft.</p> <p>2015 draft added:</p> <ul style="list-style-type: none"> - Significant details added to how conflicts should be dealt with at the Subcommittee level and up. - Procedure for disclosing conflicts (all self-directed). - “Guidelines” from the NOP were added to the 2015 draft based on the scrutiny NOSB members must face at the subcommittee level. <p>2015 draft deleted:</p> <ul style="list-style-type: none"> - The conflict of interest policy (in detail –

<p>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.</p> <p>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.</p> <p>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 manufacture distributes or holds exclusive title to a formula for a material or product, process or practice.</p>	<p>NOSB members represent the interests of a particular group. As such, many of the interests are acceptable interests. An interest is acceptable if it is carried out on behalf of a represented group, and if a Board member receives no disproportionate benefit from expressing the interest. True conflicts of interest arise when an interest:</p> <ol style="list-style-type: none"> 1. Directly and disproportionately benefits you or a person associated with that member; 2. Could impair your objectivity in representing your group; or 3. Has the potential to create an unfair competitive advantage. <p>The appearance of a personal conflict and loss of impartiality, while not a true conflict, must be considered when conducting NOSB business.</p> <p>Declarations of Interest/Conflicts of Interest Procedures</p> <p>Board members are appointed in part because of their interests. As such, each NOSB member needs to actively consider their interests with respect to topics being considered by the Board, and identify whether these interests would create appearance problems. This consideration should occur at two specific points during the Board's work on a particular topic. The first consideration should occur at the Subcommittee level, when a Subcommittee begins work on material or topic. The second is when a discussion document or proposal advances from the Subcommittee to the full Board for consideration.</p> <p>At the Subcommittee Level:</p> <p>NOSB members represent the diverse interests of a broad stakeholder community, and make recommendations that may have wide-reaching regulatory impacts across all of these interest groups. As such, NOSB member actions are carefully scrutinized.</p>	<p>italicized text) was deleted from the 2012 draft but the meat of it is retained in the other lists in this section (but with weaker language).</p> <p>Substantive changes:</p> <ul style="list-style-type: none"> - The 2012 draft dictated that "Board members shall disclose their interest to the Board and the public" while the 2015 draft does not specify that the Board must disclose interests to the public. - For the phrase: "Each representative is appointed to articulate the viewpoints and interests of a particular interest group," the tone is contradictory to the text above. This could suggest that once a decision is made, everyone should fall in behind it in the interest of the organic community. - The "Guidelines" from the NOP add a new layer to dealing with conflicts not found in the 2012 draft. It appears that instead of dealing with conflicts within the NOSB (which is in the public eye) the 2015 draft emphasizes a decision-making process between the NOSB and the NOP/USDA. - The 2015 draft further emphasizes that it's okay if the NOSB members work to represent their "position" views in the broad sense. However, the 2015 draft added the vague list for what constitutes a "true conflict of interest". <i>Carrying out a viewpoint based on a subsection of a "position" view (such as large farms compared to small or specific scientific interests should constitute a conflict when the NOSB representative has ties to the viewpoint they are supporting.</i> - Determining whether there is a conflict is determined by the board members themselves in the 2015 draft (self-policing). - The phrases "shall refrain" and "shall disclose" are omitted and replaced with weaker language
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Given this, the NOP has provided the following guidelines for NOSB members working at the Subcommittee level:

1. Avoid leading projects for which you could reasonably be viewed by others as having a particular interest that would hinder your ability to objectively and fairly represent broader group interests, and to allow other members to represent theirs. If leading a project would likely lead others to believe you are “self-dealing” to benefit yourself or someone close to you, you should refrain from leading.
2. If you feel you may have an appearance problem or conflict of interest, you should inform the NOP associate deputy administrator that a conflict may exist, and describe the nature of that conflict. You should also tell the subcommittee impacted that you may have a conflict; sharing as much or as little about the nature of the conflict with other board members as you wish. After this declaration, you may continue to contribute to the discussion on the topic. As long as it is known there is a conflict of interest, the conflict does not preclude the member from contributing his or her input to the subcommittee.
3. If you are uncertain as to whether an interest constitutes an appearance problem or a true conflict, then contact the NOP associate deputy administrator to discuss it. In this case, the NOP, working with the USDA office of ethics as needed, will make the determination about whether a problem exists

At the Full Board Level

Once discussion documents and proposals are posted for public comment, each NOSB member is to review the documents across all Subcommittees, and research any potential conflicts of interest due to organizational affiliation or relationships.

The following procedures will take place at the Board

(“guidelines” and “avoid leading projects”) in the 2015 draft PPM. *Altogether the conflict of interest policy appears weaker in the 2015 draft.*

- It is a significant change that the potential conflict is to be reported to NOP (2015 draft) instead of NOSB and the public (2012 draft). At the subcommittee level and the full Board level potential conflicts are supposed to be reported to NOP associate deputy administrator according to the 2015 PPM draft. The NOP develops lists of recusals, apparently without much if any NOSB input. These changes reflect giving the NOP a stronger role in NOSB administration.
- The “direct financial gain” language in the 2012 PPM is tangible, while the corresponding change to the “appearance problems” language is vague. This vagueness is problematic for any kind of strict guide or procedural rule.

MOST RECENT CHANGES. From the Policy Development Subcommittee comments and changes made in February 2016 (in response to previous public comment):

The PDS commented along with their 2016 revisions: “The PDS believe the COI procedures for NOSB members is clear and aligned with other governing documents.”

The changes made in the 2015 draft were maintained in the 2016 revision.

level:

1. Approximately 2-4 weeks before the meeting, the NOP's DFO will provide a matrix to all NOSB members that lists the items being considered at the meeting.
2. If you determine that you do have a conflict of interest, use the matrix to disclose that information and to declare a recusal from voting on the item(s).
3. If you are not sure whether an interest is acceptable or poses a problem, or if you are uncertain whether recusal is needed, contact the NOP associate deputy administrator to discuss. The NOP – working with the USDA office of ethics as needed - will make the determination about whether a conflict of interest exists, and will instruct the member accordingly as to whether to vote or not.
4. Return your completed matrix approximately one week before the board meeting. The NOP will then use these to compile a list of all recusals for the meeting.
5. At the meeting, at the beginning of each subcommittee session or at a time designated at the discretion of the board chair, the DFO will state: "the following board members have a conflict of interest with the following documents, and will not be voting: e.g. Bob has a conflict and will recuse himself from the proposals CleanGreenA and GreatChemB (etcetera)."
6. Once the DFO completes listing the recusals, the NOSB Subcommittee chair leading the session may invite additional information from members on a voluntary basis, with a statement such as: "if Board members wish to disclose information about their conflict, or any other information about their interests, they are welcome to do so at this time." this is to be stated as a general and voluntary invitation; no specific NOSB member is to be called on.
7. For any documents deferred to the last day of the

meeting, the DFO will repeat the declaration of statement above at the start of the voting session for each subcommittee. When it is time to vote, the NOSB member recusing her/his self should state “recuse” when it is his or her time to vote.

Section II
This section provides a description of the composition the NOSB. It also provides a list of expectations from members and presents guidelines for conducting business.

BOARD MEMBER JOB DESCRIPTIONS

The National Organic Standards Board (NOSB) fulfills three important roles:

- The Board serves as the primary linkage to the organic community. In that regard, the Board must advise the NOP on the implementation of OFPA.
- The Board must approve all materials which appear on the National List.
- The Board maintains the responsibility to protect and defend the integrity of organic standards.

Composition of the Board 6518 (b)

The Board shall be composed of 15 members, of which:

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

III. NOSB ADMINISTRATION

A. NOSB Membership

OFPA specifies the membership composition of the NOSB as follows. The NOSB shall be composed of 15 members, of which:

- Four shall be individuals who own or operate an organic farming operation;
- Two shall be individuals who own or operate an organic handling operation
- One shall be an individual who owns or operates a retail establishment with significant trade in organic products;
- Three shall be individuals with expertise in areas of environmental protection and resource conservation;
- Three shall be individuals who represent public interest or consumer interest groups;
- One shall be an individual with expertise in the fields of toxicology, ecology, or biochemistry; and
- One shall be an individual who is a certifying agent as identified under OFPA, 7 U.S.C. § 6518(b)

Movement/deletion tracking for this topic:

- The NOSB “job descriptions” is in Section II in the 2012 draft but is moved and edited into the introduction in the 2015 draft (section I). See the side-by-side comparison in section I above under the introduction section and below, where substantive changes are discussed.
- The “Composition of the Board” was moved to Section III(A) in the 2015 draft document. In new version it falls under the title of the section titled “NOSB Membership”.

2015 draft added:

2015 draft deleted:

- The purpose and background (when it was added) of the executive director.
- That the NOSB should advise the NOP (the roles moved to the introduction).

Substantive changes:

The language found under the “board member job descriptions” was moved (to the introduction/Section I in the 2015 draft) and changes the meaning.
The 2015 draft states (for on-hand comparison):

The primary roles and duties of the National Organic Standards Board (NOSB):

- *Serve as a link to the organic community*
- *Advise USDA on the implementation of OFPA*
- *Propose amendments to the National List of*

<p>as identified under section 2116 of OFPA. [§2119(b)]</p> <p>Additionally, the position of Executive Director of the NOSB was added in 2005 to facilitate contact between NOP and NOSB.</p>		<p><i>Allowed and Prohibited Substances</i></p> <ul style="list-style-type: none"> • <i>Protect and defend the integrity of organic standards</i> <p>The key language changes here are the word “must” being removed in the 2015 draft and that the NOSB is the “primary linkage”.</p>
<p>BOARD MEMBER STANDARDS</p> <ul style="list-style-type: none"> • <u>Participate in meetings</u>—Members must make a commitment to attend meetings of the Board. • <u>Serve on committees, as assigned</u>—Each member must be willing to serve on committees as assigned by the Chair, and to participate in the work of those committees. • <u>Be informed about the decisions to be made</u>—Board members are expected to seek and study the information needed to make a reasoned decision and/or recommendation on all business brought before the Board. • <u>Fully disclose any conflict of interest positions</u>—Members having any commercial or immediate family interest that poses a potential or perceived conflict of interest must disclose that conflict to the Board and abide by any decision of the Board in dealing with the situation. 	<p>J. PROFESSIONAL AND ETHICAL STANDARDS</p> <p>As appointees of the Secretary, NOSB members must maintain high professional and ethical standards both within and outside of the NOSB. Areas of particular concern include professional conduct and conflict of interest.</p> <p>1) NOSB Member Professional Conduct Standards NOSB members shall:</p> <ul style="list-style-type: none"> • Observe ethical principles above private gain in the service of public trust. Put forth an honest effort in the performance of their NOSB duties. • Make no commitments or promises of any kind purporting to bind the Government. Act impartially and not give preferential treatment to any organization or individual. Participate in meetings – Subcommittee conference calls as well as semi-annual meetings • Serve on Subcommittees as assigned - Each member must be willing to serve on Subcommittees as assigned by the NOSB Chair, and to participate in the work of those Subcommittees. • Be informed about NOSB business - NOSB members are expected to seek and study the information needed to make reasoned decisions and/or recommendations on all business brought before the NOSB. 	<p>Movement/deletion tracking for this topic: Board Member Standards -- moved from Section II. In the 2012 draft to Section III J in the 2015 draft. This text was filtered into the professional conduct standards (in pieces – a lot was added in the 2015 draft). Parts of this description were also filtered into the “Conflicts of Interest” section (which is Section III K in the 2015 draft).</p> <p>NOTE: in the 2012 draft, the “Professional Conduct” description also ties in with a lot of the information under Section III J in the 2015 draft. See a complete listing of the new added text from the 2015 draft. SEE ABOVE COMPARISON AS WELL.</p> <p>2015 draft added:</p> <ul style="list-style-type: none"> - “Make no commitments” line – however this is found elsewhere in the 2012 draft. <p>2015 draft deleted:</p> <ul style="list-style-type: none"> - That members having “commercial” or “family” interests must report these potential or perceived conflicts to the board. <p>Substantive changes:</p> <ul style="list-style-type: none"> - Deleting the requirement from the 2012 draft that potential or perceived conflicts “must” be disclosed from this section. See NOTE above (as it relates). - The potential conflicts of interest must be

		<p>reported to the <u>Board itself</u> in the 2012 draft, while the 2015 draft does not discuss conflicts in this same section.</p> <ul style="list-style-type: none"> - The 2012 draft requires that the Board member abide by the decision of the <u>Board itself</u> with respect to conflicts of interest. Again, the 2015 draft does not discuss conflict in this section, but nowhere in the 2015 draft is the decision-making power for conflicts vested solely in the Board.
<p>CONDUCTING BUSINESS</p> <ul style="list-style-type: none"> • <u>Quorum</u>—As specified in OFPA, a majority of the members of the Board shall constitute a quorum for the purpose of conducting business. [§2119(h)] A majority of the members of a Committee, including the Executive Committee, shall constitute a quorum for the purpose of conducting business. • <u>Decisive votes</u>—As specified in OFPA, two-thirds of the votes cast at a meeting of the board at which a quorum is present shall be decisive of any motion [§2119(i)]. <u>Following Robert’s Rules of Order</u>, all abstentions will be recorded as such and will not be included as part of the total vote cast. Similarly, all Board members who recuse themselves due to conflicts of interest, or are absent, shall be recorded as such and their votes will not counted towards the total number of votes cast. Both abstentions and recusals will be considered in order to establish a quorum. 	<p>B. CONDUCTING BUSINESS</p> <p>NOSB public meetings in brief:</p> <ul style="list-style-type: none"> • Approximately 3 days long depending on workload • Meetings are held in various venues across the country to allow for participation by stakeholders that otherwise may not be able to attend due to travel constraints • A typical meeting agenda includes presentations by the NOP, presentations of proposals and discussion documents by the NOSB Subcommittees, discussion time and votes on each proposal, public comment, NOSB officer elections, and a review of work agendas <p>Quorum: As specified in OFPA, a majority of the members of the NOSB shall constitute a quorum for the purpose of conducting business. (7 USC 6518 (h)). <u>In cases of a medical situation preventing attendance in person, a virtual presence is permitted.</u></p> <p>Decisive votes: As specified in OFPA, two-thirds (2/3) of the votes cast at a meeting of the NOSB at which a quorum is present shall be decisive of any motion (7 USC Section 6518(i)). All abstentions will be recorded as such and will not be included as part of the total vote cast in case of decisive votes. Similarly, all NOSB members who recuse themselves due to conflicts of interest, or are absent, shall be recorded as such and their votes will not be counted towards the total number of votes cast. Both abstentions and recusals</p>	<p>Movement/deletion tracking for this topic: “Conducting Business” moved from Section II in 2012 draft to Section VIII B in the 2015 draft. This section deals with <u>voting standards</u> (and public meetings). Note that Section VIII A is regarding <u>Board Meetings</u>, which was moved from <i>another</i> area of the section III in the 2012 draft.</p> <p>2015 draft added:</p> <ul style="list-style-type: none"> - A chart titled “Calculation of Decisive Votes” was added. <p>2015 draft deleted:</p> <ul style="list-style-type: none"> - Section on Robert’s Rules of Order (after this section) to replace the Chart in Appendix D of the 2012 draft. <p>Substantive changes:</p> <ul style="list-style-type: none"> - Virtual presence is now permitted. - Board assembly by electronic means appears to be allowed now in the 2015 draft. It is not clear in the new draft which specific situations would allow for an electronic means (what does “medical” means? It should be defined). - The deletion of the reference to Robert’s Rules of Order may make it unclear what procedures are intended to be used when the PPM procedures do not cover a specific instance.

	<p>will be considered in order to establish a quorum.</p>	<p>MOST RECENT CHANGES. From the Policy Development Subcommittee comments and changes made in February 2016 (in response to previous public comment): The PDS commented on requests to change electronic access, stating: “The NOSB strives to increase access to its meetings to members of the public and to its own members, regardless of their abilities to travel to the NOSB meeting. It would not be in the interest of the public, the NOSB and people of all abilities to limit access and refuse to use current common communication technology where the medical need is present.”</p> <p>The 2016 revision did not alter the 2015 changes.</p>
<p>SECTION III</p> <p>This section focuses on the responsibilities of the NOSB officers, as well as providing the procedures for electing officers, components of the Executive Committee and conducting meetings.</p> <p>ROLE OF THE EXECUTIVE DIRECTOR</p> <p>The Executive Director (ED) of the NOSB is the operational liaison to the National Organic Program. The ED is an employee of the U.S. Department of Agriculture and works with the NOP on behalf of the Board on a standing basis.</p> <p>[CHART]</p> <p>The most important function of the ED is to facilitate the operation of the Board, while helping to maintain and strengthen its independence. Other specific functions of the ED are:</p> <ul style="list-style-type: none"> • Assist in the implementation of policies, goals, objectives, strategic plans, committee work plans, and recommendations set by the NOSB and NOP. • Draft initial NOSB meeting agendas with NOSB Chair based on committee workplans for NOSB and NOP 	<p>H. Advisory Committee Specialist</p> <p>The Advisory Committee Specialist (ACS) is an NOP staff member who is assigned to support the NOSB. The Advisory Committee Specialist prepares the Advisory Committee’s and Subcommittees’ meeting agendas and notes, and attends all meetings. The position of Advisory Committee Specialist (formerly called Executive Director) was added in 2005 to facilitate communication and collaboration between the NOP and the NOSB. Advisory Committee Specialist duties include but are not limited to:</p> <ul style="list-style-type: none"> • Ensuring that all FACA and OFPA requirements are implemented • Managing calendars and work agendas to facilitate Subcommittee and NOSB activities Arranging, facilitating, and documenting the NOSB Subcommittee conference calls • Ensuring NOSB members have all necessary materials and information to provide informed, structured and timely recommendations to the NOP • Conducting meeting planning activities for the semi-annual NOSB meetings, including preparation of Federal Register notices and press releases, and 	<p>Movement/deletion tracking for this topic: Section III is radically changed from the 2012 to the 2015 draft due to text movements and deletions. As already stated above the composition of the Board is transferred to Section III in the 2015 draft.</p> <p>Now the ED is called the “Advisory Committee” according to Section III H in the 2015 draft.</p> <p>2015 draft added:</p> <p>2015 draft deleted:</p> <ul style="list-style-type: none"> - Details regarding specific duties. - That the role of this staff member is to “maintain and strengthen [the NOSB’s] independence” (instead it appears the role now leans toward weakening its independence within more strictly administrative duties). - Deleted the language that the ACS works “on behalf of the Board.” - That “committee minutes” must capture the discussion. <p>Substantive changes:</p>

<p>discussion, then finalizes agenda.</p> <ul style="list-style-type: none"> • Coordinate Board and committee meetings, and manage information reporting and communications between Board and NOP. • Arrange, facilitate, and document in the form of written minutes the NOSB Committee conference calls necessary to achieve the most efficient workings of the Board. Minutes are distributed to committees for confirmation of accuracy and approval. Committee minutes must fully capture the discussion, reflect the diversity of opinions expressed during meetings in order that transparency exist and content remain useful for committee members, board members and our stakeholder public. • Provide training and information to NOSB and task forces on compliance with all pertinent Acts and regulations (e.g., FACA, OFPA, NOP), including their role in advising the Secretary. • Establishes and monitors Board adherence to timelines which ensure NOP has sufficient time to publish related Federal Register notices and Board/Committee recommendations that meet deadlines for public comment. • Manage Board calendar and tracking databases in a manner that facilitates clarity of activities to the Board and the NOP. • Work as liaison with NOP staff, TAP & technical review contractors and other government agencies (e.g., EPA, FDA, AAFCO). • Ensure Board members have all materials and information necessary to provide informed, structured and timely recommendations to the NOP for proposed amendments and guidance documents to NOP regulation 7 CFR 205. This includes the provision of petitions, TAP and technical reviews, and historic discussions of substances proposed for inclusion on the National List, as well historic discussions and recommendations regarding issues. • Maintain executive committee meeting minutes and committee meeting minutes, committee records, reports, transcripts, appendices, working papers, drafts, 	<p>facilitation of public comments</p> <ul style="list-style-type: none"> • Coordinating the NOSB nomination and chartering process • Facilitating training of NOSB members • Managing information reporting and communication between the NOSB and NOP. 	<p>The “most important” function of this role was changed. This role would now be an <u>NOP staff member</u> (the 2012 draft expresses that the person would be a liaison). The function of facilitating operation of the board would also be changed to facilitate communication and collaboration between the NOSB and NOP. Through these changes, it appears that the 2015 draft is strengthening the role of the NOP.</p> <p>With respect to the specific duties listed:</p> <ul style="list-style-type: none"> - The details about committee minutes reflecting the “diversity of opinion” were deleted. - The details and expanded roles of the duties are significantly pared down – especially with respect to the details concerning <u>public comment</u>. - OFPA says that the Secretary must authorize the NOSB to hire a staff director. This has never been done. That position could be an advocate for the NOSB within the NOP. Removing the role of the ED/ACS to work <u>on behalf of the Board</u> and maintaining the Board’s independence makes it more essential that this statutory requirement be adopted. - The removal of the requirement that minutes (now replaced with “notes”) fully capture the discussion may result in a lack of transparency at the subcommittee level. - Similarly, the removal of the requirement to “provide informed, structured and timely recommendations” weakens NOSB proposals and allows the NOP to ignore the necessity for the NOSB work plan to address issues in a timely fashion. <p>MOST RECENT CHANGES. From the Policy Development Subcommittee comments and changes made in February 2016 (in response to</p>
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<p>studies, agendas and other documents which were made available to or prepared for or by the NOSB or its committees, and make such documents available for public inspection and copying at the Agency, electronically via the World Wide Web; and/or, upon written request in printed form.</p> <ul style="list-style-type: none"> • Prepare and clear Federal Register Meeting Notice and News Release, ensuring publication 45 days prior to meeting. • Ensure proposed additions to the National List, or other recommendations, are posted on the NOSB website for 45 days prior to an NOSB meeting to allow for public comment. • Provide accurate, clear pre-meeting information to public regarding questions on recommendations. • Ensure NOSB members have timely access to public comments. • Schedule public comment according to issues, and accommodates commenters' travel schedules, where possible. • Ensure that Board members and NOP staff at NOSB meetings have access to relevant documents related to petitions, materials due to sunset, technical reviews, etc. The format could be electronic (CD version) or hard copy. • Track recommendations, changes, and votes during meeting to ensure accurate meeting transcripts. • Assist the NOSB Officers as needed, including scheduling and participating in Officer calls, and assisting the Secretary during Board meetings in managing public comments, summary of minutes, committee votes, election of officers, Board meeting breaks. Also stays apprised and assist as needed in committee meetings scheduled before, during and after Board meetings. 		<p>previous public comment): The PDS made these comments on their 2016 revisions: "The PDS agrees that the most important function of the ACS is to facilitate the operations of the board along with facilitating communication and collaboration with the program. These sections have remained. It is unfair and a conflict of interest to have this position take on the role of maintaining the board's independence."</p> <p>Substantive effect: The PDS did not make any further changes to the ACS in the 2016 revisions. Their comment above essentially excuses the role of helping to maintain the board's independence.</p>
<p>OFFICER RESPONSIBILITIES Three principal officers – Chair, Vice Chair and Secretary – guide the Board.</p> <p>Chair The Chair is responsible to assure the integrity of the Board process, including effectiveness of meetings and the board's adherence to its own rules. The Chair shall:</p>	<p>D. NOSB OFFICERS Three principal officers, Chair, Vice Chair and Secretary, guide the NOSB. The NOSB members hold an election each fall at the public meeting to elect these three members.</p> <p>CHAIR The Chair is responsible for ensuring the integrity of</p>	<p>Movement/deletion tracking for this topic: the brunt of this section was moved from Section III (after the Executive Director information) to Section III D (NOSB Administration) in the 2015 draft.</p> <p>Substantive changes: in general, this section appears to take away a lot of the explicit power of the officers. Collaboration with the NOP continues</p>

<ul style="list-style-type: none"> Schedule meetings of the Board and the Executive Committee; Draft meeting agendas in consultation with committee chairs and NOP staff; Convene and preside at meetings; Review committee work plans; Review meeting minutes for accuracy, and Assist with the annual election of NOSB officers <p>Vice Chair The Vice Chair shall act in the absence of the Chair. The Vice Chair shall serve as a member of the Policy Development Committee, and work collaboratively with the PDC's members on the maintenance and upkeep of the Policy and Procedures Manual.</p> <p>Secretary The Secretary will work with the NOP Executive Director (ED) to assist in maintaining the integrity of all legal and governing documents of the Board. It is the Secretary's responsibility to help the ED:</p> <ul style="list-style-type: none"> Make sure official NOSB transcripts are posted for the public; Record all committee votes at NOSB meetings and circulate to the NOSB for approval; Review all additions to the Federal Register to report any discrepancies between Board recommendations and those published in the Federal Register; Transfer custody of the Board's vote records to the Secretary's successor, and Assist with the annual election of NOSB officers. <p>The Secretary may delegate tasks to others, but retains responsibility for the official record</p> <p>Administrative Team The Administrative Team consists of the Chair, Vice Chair, Secretary and Executive Director. This group may meet on a weekly basis or as needed by teleconference or correspond by email in order to coordinate the overall logistics and operations of the board, the officer responsibilities noted</p>	<p>the NOSB process, effectiveness of meetings and adherence to NOSB policies and procedures. The primary duties of the Chair are as follows:</p> <ul style="list-style-type: none"> Schedules meetings of the Executive Subcommittee, in collaboration with the NOP Serves as a member of, convenes, and facilitates Executive Subcommittee meetings Convenes and presides over NOSB meetings Participates in the administrative team meetings Drafts NOSB meeting agendas in consultation with Subcommittee chairs and the NOP Reviews Subcommittee work agendas Reviews NOSB meeting minutes for accuracy Assists with the annual election of NOSB officers and announces the new officers <p>VICE CHAIR The Vice Chair acts in the absence of the Chair. The primary duties of the Vice Chair are as follows:</p> <ul style="list-style-type: none"> Serves as a member of the Executive Subcommittee Participates in the administrative team meetings Serves as a member of the Policy Development Subcommittee Helps maintain the Policy and Procedures Manual and ensures its accuracy <p>SECRETARY The primary duties of the Secretary are as follows:</p> <ul style="list-style-type: none"> Serves as a member of the Executive Subcommittee Participates in the administrative team meetings Records all NOSB member votes at NOSB meetings, and in collaboration with the ACS, circulates that record to NOSB members for approval Assists with the annual election of NOSB officers May delegate tasks to others, but retains responsibility for the official record <p>ADMINISTRATIVE TEAM</p>	<p>to be emphasized in the 2015 draft in comparison to the 2012 draft.</p> <ul style="list-style-type: none"> The vice chair's duties duty would include ensuring the PPM's "accuracy". It's unclear what this language means, but it suggests the PPM is considered a constantly-evolving document rather than having a strict adherence policy. The Vice Chair serves as a members of the Policy Development Subcommittee rather than collaboratively (as in the 2012 PPM), and the emphasis of this relationship has changed. In the 2012 PPM the focus was on working with the PCD members to "upkeep" the PPM, but there is no specific action for the Vice Chair's involvement with the PDC/PDS in the 2015 draft. Essentially, this changes the emphasis of the Vice Chair's role significantly. The Secretary's role of reviewing FR additions and reporting on them was deleted (who is doing this now?). The duties/primary responsibilities of each role are all framed with softer language in the 2015 draft (perhaps giving more leeway in official duties). <p>NOTE: The language, "The Administrative Team consists of the Chair, Vice Chair, Secretary, and DFO/ACS" implies that the DFO and ACS are one person, or that one or the other is part of the Admin Team. Is this the case? If not, this language is extremely unclear.</p>
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<p>above, and the overall support provided to the Board by the Executive Director.</p>	<p>The Administrative Team consists of the Chair, Vice Chair, Secretary and DFO/ACS. This group is responsible for coordinating logistics and operations of the Board. The Administrative team meets via teleconference once or twice a month on an as-needed basis, to be determined by the Administrative Team.</p>	
<p><u>ELECTION OF OFFICERS</u></p> <p>A. NOMINATION</p> <ul style="list-style-type: none"> All interested NOSB members are eligible for consideration for any officer position. Candidates may be self-nominated or nominated by another member of the Board. Should the Chair, Vice Chair, or Secretary resign or fail to serve the full term, the Executive Committee shall appoint an interim officer. The interim officer shall serve in the capacity until the next regularly scheduled meeting of the Board, during which an election will be held to fill the remainder of the term. Members interested in serving more than one consecutive term in an officer position can if the Board is in favor; however it is recommended that an officer not serve for more than two consecutive terms <p>B. VOTING SCHEDULE</p> <ul style="list-style-type: none"> Officers shall be elected for terms of one year by majority vote at the annual fall meeting of the Board. Newly appointed officers will assume their positions at the conclusion of the fall Board meeting pursuant to the election. Acting Board officers will assist the new officers to transition into their new role. <p>C. ELIGIBILITY TO VOTE</p> <ul style="list-style-type: none"> Only NOSB Board Members present are eligible to vote for nominated officers. Absent NOSB members will not be eligible to vote. Board members shall be entitled to cast one vote per nomination 	<p>F. ELECTION OF OFFICERS</p> <p>Nominations</p> <ul style="list-style-type: none"> Any NOSB member is eligible for consideration for any officer position An NOSB member may self-nominate or may be nominated by another member of the NOSB Should the Chair, Vice Chair, or Secretary resign or fail to serve the full term, the Executive Subcommittee shall appoint an interim officer. The interim officer shall serve in that capacity until the next regularly scheduled meeting of the NOSB, during which an election will be held to fill the remainder of the term <p>Members may serve more than one term in any officer position</p> <p>Voting schedule</p> <ul style="list-style-type: none"> Officers shall be elected for one-year terms by majority vote at the fall NOSB meeting. Newly elected officers will assume their positions at the conclusion of the fall NOSB meeting, and assume the responsibilities thereof at that time Outgoing NOSB officers will assist the incoming officers with the transition into their new roles, to be completed no later than January 23rd of the following year <p>Counting of Votes</p> <ul style="list-style-type: none"> Voting will be by secret ballot immediately following nominations for each office Ballots for officers will be cast in the following order: <ul style="list-style-type: none"> Chair Vice Chair 	<p>Movement/deletion tracking for this topic: This section was edited and moved from Section III in the 2012 draft to Section VIII F in the 2015 draft.</p> <p><u>Counting of Votes</u> moved from Section III in the 2012 draft to Section VIII F in the 2015 draft. (This section remains right after the “Election of Officers” section.)</p> <p>2015 draft added:</p> <ul style="list-style-type: none"> Time-line for incoming officer transition period. <p>2015 draft deleted:</p> <ul style="list-style-type: none"> Recommendation that officers not serve more than two consecutive terms. The eligibility to vote section was deleted. <p>Substantive changes:</p> <ul style="list-style-type: none"> The “eligibility to vote” section was deleted from the 2012 draft. The key issue here is that the 2015 draft may allow members to vote while absent. This could potentially weaken the collaborative process at NOSB meetings. It may even allow for ballots to be mailed in. The deletion of the eligibility to vote section raises another question: will the number of votes each Board member casts be tracked in the same way? Change from the secretary preparing and distributing the ballots to both the secretary and vice chair having that duty (there may be no practical difference to this). Voting for officers continues to be through “secret ballot” in the 2015 PPM, but the

<p style="text-align: center;">D. COUNTING OF VOTES</p> <ul style="list-style-type: none"> • Voting will be by ballot immediately following nominations for each office. • Ballots for officers will be cast in the following order: <ol style="list-style-type: none"> 1. Chair 2. Vice-Chair 3. Secretary • The ballots will be counted for one office and the acting Chair will announce the tally before the next office is opened for nominations • The acting Secretary will prepare and distribute the ballots and will gather the votes by secret ballot. • The acting Chair will tally the votes after each officer nomination and the acting Secretary will verify the vote results. • The candidate receiving the largest number of votes will be elected. • In the event of a tie there will be a revote until a nominee obtains majority. All nominees will be included in the revote or may be given the opportunity to withdraw at their discretion. • Member vote counts will remain confidential. Other NOSB members will not be allowed to determine how the members voted. • Votes will be disposed of by the Chair or Secretary. • The acting Secretary will record newly elected officers into the NOSB Meeting Summary of Minutes. 	<ul style="list-style-type: none"> ○ Secretary • Ballots will be counted for one office and the Secretary will announce the tally before the next office is opened for nominations • The Secretary and Vice chair will prepare and distribute the ballots, then collect them after each vote • The Secretary will tally the votes after each officer nomination and the Chair will verify the results • The candidate receiving the greatest number of votes will be elected • In the event of a tie there will be a revote until a nominee obtains a majority. All nominees will be included in the revote or may be given the opportunity to withdraw at their discretion • Votes will remain confidential, and ballots will be disposed of by the Chair or Secretary. 	<p>language speaking to the confidentiality of the votes was reworded.</p>
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<p style="text-align: center;"><u>EXECUTIVE COMMITTEE</u></p> <p>The Executive Committee of the NOSB shall be comprised of the Chair, Vice Chair, Secretary, and the chairs of the standing committees. The Executive Committee, with participation of the NOP, shall meet monthly, as needed, or as called by the Chair, and shall conduct business on behalf of the Board. Only the full Board may take decisive action on guidance and other policy recommendations from committees, including the status of materials proposed for addition or deletion on the National List. The Executive Committee will provide guidance and feedback to Committees on their proposed workplans.</p> <p><u>MEETINGS</u></p> <p>All Board meetings, conference calls, and bulletin board assembled for the purpose of making recommendations to the NOP are subject to FACA (see appendix B for FACA facts). In particular, these must be open to the public and must meet public notification requirements. Not all meetings are subject to FACA and do not require public notification. Examples are: assemblies for completing work, planning retreats, training and sharing information. At this time, full Board conference calls or full Board assembly via electronic bulletin board are not permitted. The date and location of periodic full in person Board Meetings (normally twice a year), will to the extent possible, be set by consensus of the Board in consultation with the NOP.</p>	<p>Executive Subcommittee (ES)</p> <p>The Executive Subcommittee of the NOSB shall be comprised of the Chair, Vice Chair, Secretary, and the Chairs of each of the standing Subcommittees. The Executive Subcommittee provides overall coordination for the NOSB including finalizing the NOSB meeting agenda and NOSB workagendas.</p> <hr/> <p>A. BOARD MEETINGS</p> <p>All Board meetings, assembled for the purpose of making recommendations to the NOP, are subject to FACA (see appendix B for FACA facts) and as such must be open to the public and must meet public notification requirements. Not all meetings are subject to FACA and do not require public notification. Examples of these exempted meetings include: Subcommittee calls, assemblies for completing work, planning retreats, training or sharing information. The date and location of in-person Board Meetings, currently held twice each year in spring and fall, will to the extent possible, be set at the mutual scheduling convenience of the NOSB and the NOP.</p>	<p>Movement/deletion tracking for this topic: For the “Executive Committee” information, this was filtered back into the description of subcommittees from the end of Section III in the 2012 draft to the beginning of Section IV in the 2015 draft. Reproduced both in this row and the row below for clarity sake.</p> <p>This information was mostly deleted, with some of the information filtered back into the descriptions of the Chair, Vice Chair, etc. heavily edited.</p> <p>“Meetings” changed to “board meetings” and moved from Section III in the 2012 draft to Section VIII. A. (NOSB Procedure – Board Meetings.)</p> <p>Substantive changes:</p> <ul style="list-style-type: none"> Board assembly by electronic means appears to be allowed now in the 2015 draft –or is at least not explicitly prohibited. It is <u>not clear</u> in the new draft which specific situations would allow for an electronic means but this is probably a radical change. Since meeting electronically is a big change for the NOSB there should be specificity concerning the situations and procedures for virtual meetings.
<p><u>BOARD COMMITTEES</u></p> <p>Committees play an important role in administering the Board’s responsibilities. Committees exist to provide greater depth and clarity in the Board’s responsibility to make informed decisions. For example, at the request of the Secretary seeking advice on a matter related to the NOP, the full Board may request that a committee conduct research and analysis or draft proposed recommendations to be considered by the full Board. Except for the Executive Committee, no committees are authorized to act in place of the Board. Committees are empowered to analyze information and bring draft recommendations to the Board for action.</p>	<p>IV. SUBCOMMITTEES</p> <p>Subcommittees play an important role in administering the NOSB’s responsibilities to make informed decisions. The Subcommittees are responsible for conducting research and analyses, and drafting proposals for consideration by the full NOSB. No Subcommittees are authorized to act in place of the NOSB. Subcommittees are either standing or ad hoc</p> <p>A. STANDING SUBCOMMITTEES</p> <p>The current standing Subcommittees are:</p> <ul style="list-style-type: none"> Executive (ES) Certification, Accreditation, and Compliance 	<p>Movement/deletion tracking for this topic: This is found in Section IV in the 2012 draft and Section IV of the 2015 draft. It is heavily edited.</p> <p>Substantive changes:</p> <ul style="list-style-type: none"> The details on how subcommittee recommendations are finalized were deleted – of specific importance is the guide for posting for public comment and the process of reviewing public comment. The fact that the appointment process has been deleted may allow the NOP to take over this function. The role of the subcommittees is less defined in

<p>Committee chairs are appointed by the Board Chair. The current standing committees are:</p> <ul style="list-style-type: none"> • Certification, Accreditation, and Compliance • Crops • Handling • Livestock • Materials • Policy Development <p>The Livestock Committee, the Crops Committee and the Handling Committee will each have co-chairs. One co-chair will guide all committee discussion and will oversee the committee’s work plan. The other co-chair will be responsible for the committee’s consideration of materials and will serve as the liaison to the Materials Committee.</p> <ol style="list-style-type: none"> 1. Committee recommendations are finalized by the NOSB according to the following process: 2. Committee drafts the recommendation. 3. Draft recommendation is posted for public comment. 4. Public comments are considered by committee when making recommendation to the Board. 5. Board takes action on the recommendation <p>Board actions may include adoption of the recommendation as presented by the committee, amending and then adopting the recommendation, rejecting the recommendation, or referring the recommendation back to committee for further development.</p>	<p>(CACS)</p> <ul style="list-style-type: none"> • Crops (CS) • Handling (HS) • Livestock (including Aquaculture) (LS) • Materials (including GMOs) (MS) • Policy Development (PDS) 	<p>the 2015 draft. In particular, the requirement that the subcommittees conduct research and analyze is in both drafts, but the 2012 PPM spends more time defining that role. However, another difference between the two drafts is that the 2012 PPM is less strict, speaking in terms of what might happen (such as the Board requesting research). In contrast the 2015 draft speaks in absolutes, stating subcommittee responsibilities</p> <ul style="list-style-type: none"> - Note that the NOSB board has the “responsibility to make informed decisions” in the 2015 draft. - The “Board committees” have been changed to “subcommittees”. This change should have no practical substantive effect but it will be important to note the change universally.
<p>COMMITTEE MEETINGS</p> <p>Committees may hold meetings via telephone conference calls. Two weeks’ notice should be provided in scheduling such calls. The date and time set for the call is a product of committee dialog regarding the most conducive schedule. This dialog may occur on a previous conference call or through E-mail. All E-mail requests for meeting times should allow 48 hours to respond.</p> <p>Emergency calls may be scheduled with less notice only after each member is contacted to reach a consensus on time and</p>	<p>C. SUBCOMMITTEE MEETINGS</p> <p>Subcommittees generally hold meetings once or twice a month via telephone conference calls. Calls are scheduled well in advance on a regular reoccurring interval. Additional meetings can be held if a Subcommittee requests additional time and the NOP agrees to provide the resources to support the additional meeting. A majority of the members of a Subcommittee shall constitute a quorum for the purpose of conducting Subcommittee business.</p>	<p>Movement/deletion tracking for this topic: This is found in Section IV in the 2012 draft and Section IV C in the 2015 draft.</p> <p>Substantive changes:</p> <ul style="list-style-type: none"> - Change to emergency call. - What constitutes a quorum for subcommittee business.

<p>date of the meeting. If the members do not respond to E-mail requests, the chair or their designee must contact the member by phone.</p>		
<p>STANDING COMMITTEES</p> <p>Certification, Accreditation, and Compliance Committee (CACC) The Certification, Accreditation, and Compliance Committee drafts recommendations for consideration by the Board to provide guidance, clarification or proposed standards of certification, accreditation and compliance sections of the organic regulations [7CFR Part 205] and OFPA. The CACC occasionally works with other committees to develop joint recommendations where certification and compliance issues are involved.</p> <p>Crops Committee (CC) The Crops Committee drafts recommendations for consideration by the Board to provide guidance, clarification or proposed standards of the crop production section of the organic regulations as contained in [7CFR Part 205] and OFPA. The CC reviews petitions, substances scheduled to sunset, technical advisory panel reports, and public comments concerning materials used for crop production which have been requested for addition to or removal from the National List. The CC occasionally works with other committees to develop joint recommendations where crop issues are involved.</p> <p>Handling Committee (HC) The Handling Committee makes draft recommendations for consideration by the Board to provide guidance, clarification or proposed standards of the handling and labeling sections of the organic regulations as contained in [7CFR Part 205] and OFPA. The HC reviews petitions, substances scheduled to sunset, technical advisory panel reports and public comments concerning materials used for processing and handling which have been requested for addition to or removal from the National List. The HC occasionally works with other committees to develop joint recommendations where handling issues are involved.</p> <p>Livestock Committee (LC) The Livestock Committee drafts recommendations for consideration by the Board to provide guidance, clarification or proposed standards of the livestock</p>	<p>Executive Subcommittee (ES) The Executive Subcommittee of the NOSB shall be comprised of the Chair, Vice Chair, Secretary, and the Chairs of each of the standing Subcommittees. The Executive Subcommittee provides overall coordination for the NOSB including finalizing the NOSB meeting agenda and NOSB workagendas.</p> <p>Certification, Accreditation, and Compliance Subcommittee (CACS) The CACS drafts proposals for consideration by the NOSB to provide guidance, clarification, or proposed standards for the certification, accreditation and compliance sections of the USDA organic regulations and OFPA.</p> <p>Crops Subcommittee (CS) The CS drafts proposals for consideration by the NOSB to provide guidance, clarification, or proposed standards for the crop production sections of the USDA organic regulations and OFPA. The CS reviews substances under sunset review and petitions for addition to, or removal from the National List of Allowed and Prohibited Substances. The CS reviews technical reports (TRs), technical advisory panel reports (TAPs), and public comments concerning materials used for organic crop production to draft their proposals.</p> <p>Handling Subcommittee (HS) The Handling Subcommittee drafts proposals for consideration by the NOSB to provide guidance, clarification, or proposed standards for the handling and labeling sections of the USDA organic regulations and OFPA. The HS reviews substances under sunset review and petitions for addition to or removal from the National List of Allowed and Prohibited Substances. The HS reviews technical reports (TRs),</p>	<p>Movement/deletion tracking for this topic: This is found in Section IV in the 2012 draft and at the end of Section IV A of the 2015 draft. NOTE: the description of the Executive Committee was located in Section III of the 2012 draft (see above for comments) but was moved to Section IV in the 2015 draft.</p> <p>2015 draft added:</p> <ul style="list-style-type: none"> - Executive subcommittee. - Addition of the MS working with GMO issues (specifically). <p>2015 draft deleted:</p> <ul style="list-style-type: none"> - PDC/PDS details, especially regarding their role and duties. - The MS team working with “TAP contractors” was deleted from the 2012 draft. <p>Substantive changes:</p> <ul style="list-style-type: none"> - Language change: “proposals” in the 2012 draft to “recommendations” in the 2015 draft. - Changing the role of the PDC/PDS – including adding more emphasis toward NOP collaboration (where the NOSB is supposed to, by statute, direct the NOSB-NOP collaboration). As written, the 2015 draft diminishes the NOSB’s ability to establish its own procedures. - The Vice Chairs of the Crops, Livestock and Handling Subcommittees will serve on the Materials Subcommittee as liaisons for reviewing all petitioned substances according to another change in the 2015 draft. This change is noted later in the 2015 PPM, under the heading “Duties of Subcommittee Chairs and Vice Chairs.” This change seems inconsistent with the description of the MS and this

<p>and livestock feed sections of the organic regulations as contained in [7CFR Part 205] and OFPA. The LC reviews petitions, substances scheduled to sunset, technical advisory panel reports and public comments concerning materials used for livestock production which have been requested for addition to or removal from the National List. The LC occasionally works with other committees to develop joint recommendations where livestock issues are involved.</p> <p>Materials Committee (MC) The Materials Committee drafts recommendations for consideration by the Board to provide guidance, clarification or proposed standards of the National List section of the organic regulations as contained in [7CFR Part 205] and OFPA. The MC works with the NOP, NOSB Committees and TAP Contractors in managing the Materials Review Process including tracking petitions, sufficiency reports, materials scheduled to sunset and sunset review process In addition to a chair appointed by the Board Chair, the MC shall include in its membership one of the co-chairs from each of the Livestock, Crops, and Handling committees. Other members may be appointed as needed. The MC occasionally works with other committees to develop joint recommendations where materials are involved.</p> <p>Policy Development Committee (PDC) The Policy Development Committee makes draft recommendations for consideration by the Board to provide guidance, clarification or proposed standards of Board operations, policies and procedures. The PDC maintains the content and updates to the NOSB Policy and Procedures Manual (in collaboration with the NOSB Vice Chair) and New Member Guide. The PDC occasionally works with other committees to develop joint recommendations where policy issues are involved.</p>	<p>technical advisory panel reports (TAPs), and public comments concerning materials used for organic handling to draft their proposals.</p> <p>Livestock Subcommittee (including Aquaculture) (LS) The LS drafts proposals for consideration by the NOSB to provide guidance, clarification, or proposed standards for the livestock and livestock feed sections of the USDA organic regulations and OFPA. The LS reviews substances under sunset review and petitions for addition to or removal from the National List of Allowed and Prohibited Substances. The LS reviews technical reports (TRs), technical advisory panel reports (TAPs), and public comments concerning materials used for organic livestock and aquaculture production to draft their proposals.</p> <p>Materials Subcommittee (including Genetically Modified Organisms) (MS) The MS drafts proposals for consideration by the NOSB to provide guidance, clarification, or proposed standards for the pertinent National List sections of the USDA organic regulations and OFPA. The MS works with the NOP and other NOSB Subcommittees in managing the Materials Review Process, which may include determining which Subcommittee will conduct a review, as well as tracking technical reports and the status of reviews for petitions and sunset materials. The MS also drafts proposals and discussion documents regarding the prohibition on the use of Genetically Modified Organisms (excluded methods) under the USDA organic regulations. Research Priorities are also a critical component of the annual work agenda of the MS. In addition to a Chair, who will be appointed by the NOSB Chair, the MS shall include in its membership a representative from each of the Livestock, Crops, and Handling Subcommittees.</p> <p>Policy Development Subcommittee (PDS) The Policy Development Subcommittee provides</p>	<p>inconsistency should be clarified. Compared to the 2012 PPM, the “co-chairs” of the Livestock, Crops, and Handling Committees were assigned to the MS, with addition that “Other members may be appointed as needed”.</p> <p>MOST RECENT CHANGES. From the Policy Development Subcommittee comments and changes made in February 2016 (in response to previous public comment):</p> <p>The February 2016 edits to the PPM changed the PDS roles to: “The Policy Development Subcommittee provides clarification and proposed changes for NOSB internal policies, and procedures as needed, in collaboration with the NOP. The PDS, in collaboration with the NOP, also updates and revises the NOSB Policy and Procedures Manual and the Member Guide.”</p> <p>This change:</p> <ul style="list-style-type: none"> - Adds back in the PDS role of revising the PPM and Member guide (from the 2012 PPM). This change was in response to the brunt of the public comment on the 2015 draft. - The term that the PDS will provide “guidance” was removed in the 2016 edits, giving the PDS a more strictly-defined role providing clarification and proposed changes. The term “guidance” and the use of the connector “or” (instead of “and” in the 2016 version) were removed from the newest draft. This change more clearly delineates (and limits) the role of the PDS. - The PDS role of editing the PPM is still done “in collaboration with the NOP”, which is an addition compared to the 2012 draft.
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	<p>guidance, clarification or proposed standards on NOSB operations, policies, and procedures as needed, in collaboration with the NOP.</p>	
<p>TASK FORCES</p> <p>As determined by the Board or Executive Committee, task forces shall be appointed to explore specific issues and present draft recommendations to the Board or to a committee. Task forces may include non-Board members of the public. Each task force shall include at least one member of the NOSB. Minutes shall be taken of task force meetings. Each task force shall submit a final report to the Board. Each task force shall be disbanded when its work has concluded or when the Board determines the task force is no longer necessary.</p>	<p>D. TASK FORCES</p> <p>The NOSB may request the establishment of a Task Force to explore specific issues or concerns relevant to the organic community and industry, and present to the NOSB draft proposals, discussion documents, or reports. Each task force shall:</p> <ul style="list-style-type: none"> • Have a specific work plan approved by the NOP • Have a clearly articulated project deliverable • Include at least one current member of the NOSB • Record and maintain meeting or conference call minutes, made available to the NOSB and the NOP • Submit a final report to the NOSB • Disband when the NOP notifies the Task Force that its work has concluded or when the task force is no longer necessary. • Have a specific start and end date, which may be extended by the Executive Subcommittee, with concurrence by NOP 	<p>Movement/deletion tracking for this topic: “Task Forces” is located in Section IV in the 2012 draft and shifted around to Section IV D in the 2015 draft.</p> <p>2015 draft added:</p> <ul style="list-style-type: none"> - Specific start and end date required. <p>2015 draft deleted:</p> <ul style="list-style-type: none"> - What the task force includes (a member of the NOSB). <p>Substantive changes:</p> <ul style="list-style-type: none"> - 2015 draft requires specific work plan when a task force is used. - Language is commanding (“shall”). - The minutes must be made available to the NOSB and NOP – HOWEVER the availability of the minutes to the public is not mentioned. - It is not specified that an NOSB member need to be on any task forces anymore. <p>Note: working groups are not mentioned.</p>
<p>AD HOC COMMITTEES</p> <p>At the discretion of the NOSB Chairperson, with approval of the Executive Committee, an ad hoc NOSB committee may be formed to develop policy and guidance on specific issues that involve multiple standing committee jurisdictions, or for issues or tasks that are very large and require additional resources to complete. Ad hoc committees may be comprised only of current NOSB members, and could either be a combination of two or more standing committees to form a “joint” committee, or could be a totally new committee comprised of selected NOSB members from various standing committees. Ad-hoc committees can be dissolved at the recommendation of the NOSB chairperson with the approval of the executive committee. The position</p>	<p>B. AD HOC SUBCOMMITTEES</p> <p>At the discretion of the NOSB Chair, and with approval of the Executive Subcommittee and the DFO, ad hoc NOSB Subcommittees may be formed to develop policy and guidance on specific issues that involve multiple standing Subcommittee jurisdictions, or for issues or tasks that are very large and require additional resources to complete. Ad hoc Subcommittees must be comprised of current NOSB members, and may be either a combination of two or more standing Subcommittees to form a “joint” Subcommittee, or may be a completely new Subcommittee comprised of selected NOSB members from various standing Subcommittees. Ad hoc</p>	<p>Movement/deletion tracking for this topic: Moved from Section IV in the 2012 draft to Section IV B in the 2015 draft (right after the listing of the different Subcommittees.)</p> <p>Substantive changes:</p> <ul style="list-style-type: none"> - Change such that ad hoc subcommittees MUST be made up of current NOSB members in the 2015 draft versus the more permissive language of “may”. The practical effect of who comprises ad hoc committees is changed by this language.

<p>of the ad-hoc committee chairperson is a non-voting member of the executive committee.</p>	<p>Subcommittees can be dissolved at the recommendation of the NOSB chairperson with the approval of the Executive Subcommittee. Ad hoc Subcommittee Chairpersons are non-voting members of the Executive Committee.</p>	
<p>SECTION V. This section defines the responsibilities of the different committee chairs and respective vice chairs. It also provides indications on writing committee recommendations and presenting such recommendations for vote at NOSB meetings, Lastly, this section covers general and specific collaboration procedures between NOSB and NOP.</p> <p><u>DUTIES OF COMMITTEE CHAIRS</u> Committee chairs are responsible for the following duties:</p> <ul style="list-style-type: none"> • Schedule committee meetings as needed. • Draft committee meeting agendas and work plans in consultation with committee members, the Executive Committee, and NOP staff. • Convene and preside committee meetings. • Ensure committee meeting minutes are recorded. • Review committee meeting minutes for accuracy. • Report actions of the committee to the Board. • Name a committee vice-chair. • Serve as mentor/trainer for new committee chair during transition periods. <p>Committee chairs shall not act unilaterally, especially concerning issues which involve statutory responsibilities of the Board.</p> <p>DUTIES OF COMMITTEE VICE-CHAIRS Committee vice-chairs are responsible for the following duties:</p> <ul style="list-style-type: none"> • Provide support in developing and completing committee workplans. • Assist in reviewing of committee meeting minutes for accuracy. • Represent the committee chair in the absence of the chair. 	<p>E. DUTIES OF SUBCOMMITTEE CHAIRS AND VICE CHAIRS Subcommittee Chair duties:</p> <ul style="list-style-type: none"> • Appoint a Subcommittee Vice Chair in consultation with Board Chair • Consult with the Board Chair regarding Subcommittee appointments • Schedule Subcommittee meetings as needed • Draft Subcommittee meeting agendas and work plans in consultation with Subcommittee members, the Executive Committee, and NOP staff • Convene and preside over Subcommittee meetings • Ensure Subcommittee meeting notes are recorded • Ensure that Subcommittee meeting notes are reviewed for accuracy • Report actions of the Subcommittee to the Executive Subcommittee and Board • Serve as mentor/trainer for new Subcommittee Chair during transition periods • Designate a liaison to the Materials Subcommittee to collect, compile and present the research priorities proposals. <p>Subcommittee Vice Chair duties:</p> <ul style="list-style-type: none"> • Provide support in developing and completing Subcommittee work plans • Assist in reviewing Subcommittee meeting notes for accuracy • Represent the Chair in the event of the Chair's absence • The Vice Chairs of the Crops, Livestock and Handling Subcommittees will serve on the Materials Subcommittee as liaisons for reviewing all petitioned substances. 	<p>Movement/deletion tracking for this topic: Moved from the beginning of Section V in the 2012 draft to Section IV E in the 2015 draft.</p> <p>2015 draft added:</p> <ul style="list-style-type: none"> - Designating a liaison to the MS for research priorities AND that the vice chairs will serve as liaisons to the MS. <p>2015 draft deleted:</p> <ul style="list-style-type: none"> - Language stating: "Committee chairs shall not act unilaterally, especially concerning issues which involve statutory responsibilities of the Board." <p>Substantive changes:</p> <ul style="list-style-type: none"> - Some minor duty and reporting changes. - The deletion of the prohibition that [sub] committee chairs "shall not act unilaterally..." from the 2012 PPM. - Assigning the Vice Chairs of the other subcommittees as liaisons in the MS is not consistent with the above description of the MS (or with current practice). The above description of the MS does not specify which members of the other subcommittees will be part of the MS and speaks more broadly. <p>NOTE: the issue of assigning liaisons to the Materials subcommittee is confusing, encompassing two separate references in the 2015 draft. This process should not be so vague and ambiguous and the information should not be scattered throughout the PPM.</p>

<ul style="list-style-type: none"> Vice Chairs of the Crops, Livestock and Handling Committees will serve on the Materials Committee as liaison for reviewing all petitioned substances. <p>Committee vice-chairs shall not act unilaterally, especially concerning issues which involve statutory responsibilities of the Board.</p>		
<p><u>PROCEDURES FOR THE TRANSITION OF COMMITTEE CHAIRS, VICE-CHAIRS, AND MEMBERS</u></p> <p>Committee Chairs, Vice-Chairs and members shall be appointed to serve annually by the Chair of the Board. The annual committee term shall be concurrent with the one-year term established by the Secretary (beginning on January 24 and ending on the following January 23). Newly appointed Chairs, Vice-Chairs and committee members will assume their positions at the beginning of the new term, after a period of orientation and mentorship provided by the outgoing Chair, Vice-Chair, and members.</p> <p>In order to avoid disruption in the quality and volume of work produced by the NOSB, the appointment of committee chairs will follow these procedures during the following transition times:</p> <p>After Election of NOSB Officers at Fall NOSB Meeting:</p> <ul style="list-style-type: none"> Appointment of Committee Chairs The Board Chair should appoint Committee Chairs from members with at least one year of NOSB experience, ideally. It is recommended that a new Committee Chair should have experience as Committee Vice-Chair. Appointment of Committee Vice-Chairs A Committee Vice-Chair shall be appointed by the Committee Chair and should be someone who has expressed to the Chair of the Committee interest in eventually serving as Committee Chair. Time Frame for Appointments Committee Chairs shall be appointed as Incoming Chairs in not more than 30 days after the newly elected NOSB Chair takes office (or continues in office), and incoming Vice-Chairs 	<p>F. TRANSITION OF SUBCOMMITTEE CHAIRS, VICE CHAIRS, AND MEMBERS (NEW AND CONTINUING) Subcommittee Chairs shall be appointed to serve annually by the Chair of the Board. Vice Chairs and Subcommittee members shall be appointed by their respective Subcommittee Chair in conjunction with the NOSB Chair. The annual Subcommittee term shall be concurrent with the one-year term established by the Secretary (beginning on January 24 and ending the following January 23). Newly appointed Chairs, Vice Chairs and Subcommittee members will assume their positions at the beginning of the new term, after a period of orientation and mentorship provided by the outgoing Chair, Vice Chair, and members.</p> <p>To avoid disruption in the quality and volume of work produced by the NOSB, the following procedures will be observed:</p> <p>After the election of NOSB Officers at the Fall Meeting:</p> <ol style="list-style-type: none"> The new NOSB Chair takes Office Immediately after the election, on the final day of the NOSB meeting, the new Chair takes office. Appointment of Subcommittee Chairs The Board Chair appoints Subcommittee Chairs preferably chosen from members with at least one year of NOSB experience. Appointment of Subcommittee Vice Chair Vice Chairs shall be appointed by the incoming Subcommittee Chair, in conjunction with the Board Chair. Timeframe for Appointments Subcommittee Chairs shall be appointed by the NOSB 	<p>Movement/deletion tracking for this topic: Moved from the beginning of Section V in the 2012 draft to Section IV F in the 2015 draft.</p> <p>2015 draft added:</p> <p>2015 draft deleted:</p> <ul style="list-style-type: none"> The requirement that outgoing members must give over their files was deleted from the 2012 draft. <p>Substantive changes:</p> <ul style="list-style-type: none"> Added language in the 2015 draft assigns mentors to new members. This role is framed in a fairly unofficial way.

<p>shall be appointed by Committee Chairs in no more than two weeks afterthat.</p> <ul style="list-style-type: none"> • Exchange of Committee Files <p>Upon appointment, new and outgoing Committee Chairs should have a formal meeting to exchange all files related to the committee’s work and to complete the first committee work plan under the new committee leadership.</p> <ul style="list-style-type: none"> • Review of Committee Files <p>New Committee Chairs should review all work plan items and active files involving committee work.</p> <ul style="list-style-type: none"> • Mentorship Period <p>The Incoming Chair and Vice-Chair of each committee shall participate in an orientation and mentorship period with the outgoing Chair and Vice-Chair of their committee until being seated in their positions at the beginning of the new term on January24.</p> <p>After the Appointment of the New NOSB Members (prior to January24):</p> <ul style="list-style-type: none"> • New Committee Member Appointments <p>New incoming committee members shall be appointed by the Board Chair, in consultation with the outgoing and incoming committee Chairs, no more than two weeks after the appointment of the new NOSB members by the Secretary, with the Chair seeking and taking into account the expressed member interest, expertise, background, as well asnew board composition.</p> <ul style="list-style-type: none"> • Communication with Newly Appointed Members <p>Once appointed, incoming committee members shall be included in all emails pertaining to the committee assignments.</p> <ul style="list-style-type: none"> • Attendance at Committee Meetings and Fall NOSB Meeting <p>New incoming members of the committee should participate in observer status in committee meetings upon their appointment, and should be encouraged to attend the Fall Board meeting.</p> <ul style="list-style-type: none"> • New Member Mentorship <p>The Board Chair, to facilitate an effective transition for new members of the Board and ensure effective participation in</p>	<p>Chair and seated within a reasonable time after the newly elected NOSB Chair takes office (or continues in office), and Vice Chairs shall be appointed by Subcommittee Chairs as soon as possible after that.</p> <p>5. Review of Subcommittee Files</p> <p>New Subcommittee Chairs should review all work plan items and activefiles involving Subcommittee work.</p> <p>6. Mentorship Period</p> <p>The incoming Chair and Vice Chair of each Subcommittee shall participate in an orientation and mentorship period with the outgoing Chair and Vice Chair of their Subcommittee until seated in their positions at the beginning of the new term on January 24. The Board Chair, to facilitate an effective transition for new members of the Board and ensure effective participation in Committee and Board deliberations, shall ask incoming Board members to identify a mentor from existing Board members, or, if the Board member prefers, the Board Chair shall assign a mentor.</p> <p>7. Appointment of New NOSB Members:</p> <p>The Board Chair will appoint each new NOSB member to appropriate Subcommittees as soon as possible, so that on January 24 all Subcommittees are in place. The NOSB Chair will consult with outgoing and incoming Subcommittee Chairs and other Board officers, with due consideration of the members interest, expertise, and background, as well as the composition and needs of the new Board and scope of Subcommittee work agendas. Once appointed, incoming Subcommittee members shall be included in all email communication pertaining to the Subcommittees on which they serve.</p> <p>Changing Subcommittee Appointments</p> <p>Board members who would like to join or leave a Subcommittee shall submit a request to the Board Chair. If the request does not alter the preferred number of Subcommittee members, in the range of five to seven, the expectation is that the request will be approved, unless the Board Chair finds that such a change will interfere with the functioning of the Subcommittee or the Board. The Chair’s determination</p>	
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<p>committee and board deliberations, shall ask incoming Board members to identify a mentor from existing Board members as soon after their appointment as possible, but no later than two weeks, or, if the Board member prefers or the Board member takes no action, the Board Chair shall assign a mentor in same time frame.</p> <p>Between Board Appointments and Fall Board Meeting:</p> <ul style="list-style-type: none"> • Changing Committee Appointments If a Board member would like to change committees, either adding to or stepping down from his/her assignments, a request shall be made to the Board Chair. If the request does not alter the preferred number of committee members in the range of five to seven, the expectation is that the request will be approved, unless the Board Chair states in writing that such change will interfere with the functioning of the committee. The Chair's determination should be made in consultation with Committee Chairs and the Executive Committee. • Filling Vacancy of Committee Chair and/or Vice-Chair In the case of a vacancy in the positions of Committee Chair, the Committee Vice-Chair shall assume the Committee Chair position and the new Committee Chair shall appoint a new Vice-Chair in accordance with the consultation procedures cited above. 	<p>should be made in consultation with Subcommittee Chairs and the Executive Subcommittee.</p> <p>Filling a Subcommittee Chair and/or Vice Chair vacancy If a Subcommittee Chair position becomes vacant, the Subcommittee Vice Chair shall assume the position as Chair and the new Subcommittee Chair shall appoint a new Vice Chair in accordance with the consultation procedures cited above.</p>	
<p><u>PROCEDURES FOR COMPLETING COMMITTEE RECOMMENDATIONS</u></p> <p>Developing committee recommendations follows these broadsteps:</p> <ol style="list-style-type: none"> 1. The committee prepares a recommendation or discussion document as agreed to in the committee work plan (see p. 32 PPM). 2. The recommendation or discussions document is posted for public comment. 3. During the Board meeting, the committee presents its recommendation for discussion by the full Board. 4. At any point in the process prior to the Board's vote on the status of the recommendation, the presenting committee may convene and vote to withdraw its 	<p>G. PROCEDURES FOR COMPLETING SUBCOMMITTEE PROPOSALS AND DISCUSSION DOCUMENTS</p> <p>1. Development of proposals: Each of the NOSB Subcommittees will develop proposals, discussion documents or reports based on the current work agenda.</p> <ul style="list-style-type: none"> • A Subcommittee drafts a proposal or discussion document based on that Subcommittee's work agenda. • By a simple majority, the Subcommittee can vote to pass a proposal or discussion document to the full Board for consideration at a subsequent NOSB meeting. In order to be considered for a vote during an NOSB meeting, all proposals must be voted on by the Subcommittee and submitted to 	<p>Movement/deletion tracking for this topic: Moved from the beginning of Section V in the 2012 draft to Section IV G (1) in the 2015 draft.</p> <p>2015 draft added:</p> <ul style="list-style-type: none"> - Details on what to do with minority views. - Voting mechanism clarified/changes in 2015 draft regarding the vote needed for the Board to see the recommendation going forward. <p>2015 draft deleted:</p> <ul style="list-style-type: none"> - Time needed notice for public comment. - The specific board actions for committee recommendation.

<p>recommendation, based on approval of this action by the majority of the members of the committee.</p> <p>5. Once presented, the Board votes on the committee recommendation</p> <p>In order to be considered a voting item, all recommendations must be submitted to the NOP at least forty five (45) days prior to a scheduled NOSB meeting. This time is needed in order to allow the Program to publish a meeting notice and allow for public comment.</p> <p>The Board may take the following actions for each committee recommendation:</p> <ol style="list-style-type: none"> 1. Adopt the recommendation as presented by the committee; 2. Amend and adopt the amended recommendation; 3. Reject the recommendation; or 4. Refer the recommendation back to the committee for further development 	<p>the NOP at least forty five (45) days prior to a scheduled NOSB meeting.</p> <ul style="list-style-type: none"> • When it is not possible for a Subcommittee, during its regular deliberations on conference calls, to reach consensus on a proposed document/recommendation as it is being reviewed, and there are substantive irreconcilable differences, a minority of the Subcommittee may develop a written minority view for review by all members of the Subcommittee. The Subcommittee Chair has the responsibility to facilitate the process for the minority view. • A minority view should: <ul style="list-style-type: none"> ○ Be short and concise, and include reasons for opposing the Subcommittee's recommendation; ○ Should not include any data or information not introduced on a Subcommittee call; ○ Should be submitted in a timely manner, and will not be accepted after the Subcommittee has voted on its recommendation; ○ Will be included as a separate section at the end of the recommendation. • The NOP will post the proposal or discussion document for public comment. • At any point in the process prior to the Board's vote, a Subcommittee may convene and, by a simple majority, vote to withdraw its proposal from consideration by the Board. • During a subsequent Board meeting, the Subcommittee presents the proposals and discussion documents as well as a summary of public comments and other relevant information for discussion and consideration by the full Board 	<p>Substantive changes:</p> <ul style="list-style-type: none"> - With respect to the details on what to do with minority views <i>some of the details in the 2015 text do not make sense</i>. For example, it is not known what view will be a "minority" until a vote is taken. It is also contrary to the purpose of an advisory committee to set a deadline on when new information may be introduced.
<p>Writing Committee Recommendations</p> <p>This section provides an outline to be used by committees in writing a recommendation document. These guidelines not only allow consistency in the content of NOSB recommendations, but should also provide the NOSB, and the public, a fast manner to weigh the advantages and</p>	<p>2. Types of Proposals (See Member Guide for examples)</p> <p>There are several formats for writing proposals and discussion documents, based on the subject under review:</p> <ul style="list-style-type: none"> ○ Proposals related to material petitions, sunset reviews, annotation changes, or classification 	<p>Movement/deletion tracking for this topic:</p> <p>"Writing Committee Recommendations" is almost entirely re-written. It seems to have been reformulated under "Presenting Subcommittee Proposals and Discussion Documents at NOSB Meetings" in Section IV G(3) in the 2015 draft.</p>

<p>disadvantages of a proposal.</p> <p><u>Recommendations not related to material petitions or sunset reviews, should include the following sections:</u></p> <p>I. Introduction: This section consists of a brief summary of the recommendation, its main issues and its relevance to the organic community. This section should also mention the goals and intent of the proposed recommendation</p> <p>II. Background: This section should present the issues that justify the development of the recommendation as well as any relevant work done by the NOSB in the past.</p> <p>III. Relevant areas in the Rule: This section should mention any areas of the Rule or OFPA which provide the basis for the recommendation</p> <p>IV. Discussion: This section should be used to expand on the intent of the recommendation. It is also a place to emphasize the SWOT of the recommendation (strength, weaknesses, opportunities and threats). No recommendation is 100% perfect and this section can serve to clarify the tradeoffs and advantages of a recommendation. Thus, it is advisable to mention all major alternatives reviewed by the committee. If appropriate, different stakeholders groups should be identified indicating how each group's needs are met or affected</p> <p>V. Recommendation: This is the core, or deliverable, of the recommendation</p> <p>VI. Committee Vote This section should present the names of the members who moved and second the motion to approve the recommendation. As a norm, a motion should always be presented in the affirmative. In the case of recommendations for petitions to add materials to the National List, two votes should be taken and recorded, the first for a synthetic or non-synthetic material classification, and the second to list or not list the material. The record should list the number of synthetic and non-synthetic votes, yes and no votes for listing, and the number of abstentions and absences</p> <p>Minority opinion:</p>	<p>changes.</p> <ul style="list-style-type: none"> o Proposals for policy or procedure changes o Discussion documents <p>3. Presenting Subcommittee Proposals and Discussion Documents at NOSB Meetings: NOSB Subcommittees and task forces should follow the outline below when presenting proposals or discussion documents for consideration by the Board:</p> <ol style="list-style-type: none"> 1. Introduction: A brief summary of the issue or statement of the problem. 2. Background: An explanation with sufficient detail and rationale to support the proposal, including reasons why the proposal should be adopted, historical context, and the regulatory framework pertinent to the issue. 3. Proposal: A concise explanation of the recommended action. 4. Subcommittee Vote: The Subcommittee vote shall be reported. In the case of petitions to add materials to the National List, two votes will be reported; one for classification of the material as a synthetic or non-synthetic, and the other a motion to list. 5. Public Comment: A brief summary of the public comments 6. Minority View: If applicable, the minority view of a Subcommittee or task force member shall be reported. After the Subcommittee's proposal has been presented and the motion to adopt has been made, it is usual to allow the minority to present their views. The minority report is presented for information purposes only, and it cannot be acted upon unless there is a motion to substitute it for the report of the Subcommittee. 	<p>2015 draft added:</p> <ul style="list-style-type: none"> - Types of proposals. <p>2015 draft deleted:</p> <ul style="list-style-type: none"> - Goals for the proposal seems to be part of the "background" now, though not explicitly stated as such. <p>Substantive changes:</p> <ul style="list-style-type: none"> - New requirements for minority view reporting in the 2015 draft. Again, as with analysis done in the row above, the timing on how the minority views are accepted appears nonsensical (how do you know there is an official minority view until there is a vote?). More clarity is needed so this language makes sense. - Also regarding the changes in the minority opinion: the 2012 language lays out what a documentation of the minority opinion should include. The 2015 draft deletes the inclusion of the minority opinion as a separate document (when it's applicable at all). These changes to the text may have the effect of silencing the minority opinion.
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If applicable, the dissenting opinion(s) of committee or task force members shall be reported. A member of a committee can present a minority report to the committee recommendation. Such document should include reasons for opposing a proposed recommendation and cite where the opposition points are in the recommendation. In addition, the minority report could, provide alternative approaches or solutions from those given in the recommendation, or recommend an amendment to the recommendation. The minority opinion will be included as a separate document at the end of the recommendation.

Recommendations related to material petitions or sunset reviews, should include the following sections:

- I. **List:** This section identifies the placing of the material under review within the National List. Any annotations related to the material should be included.
- II. **Committee Summary:** This section should present a brief background of the material under review highlighting its uses and past NOSB decisions. It should include a short description of any current research done by the committee (e.g., review of technical reports, individual investigation, etc.) and should provide a description of the main arguments supporting the committee's final decision. This section should mention any areas of the Rule or OFPA which provide the basis for the recommendation.
- III. **Committee Recommendation:** The committee recommendation should be stated clearly here including any corresponding annotation.
- V. **Committee Vote:** This section should present the names of the members who moved and second the motion to approve the recommendation and vote count. As a norm, a motion for a petitioned material or sunset review should always be presented in the affirmative.

Minority opinion:

Presenting Committee Recommendations at NOSB Meetings
NOSB committees and task forces will follow the outline

<p>presented below in order to present draft policy and/or material recommendations for consideration by the Board:</p> <p>Introduction: A brief summary of the issue or statement of the problem.</p> <p>Background: An explanation with sufficient detail and rationale to support a proposed recommendation, including reasons why the recommendation should be adopted, historical context, and the regulatory framework pertinent to the issue.</p> <p>Recommendation: The concise text of the recommended action.</p> <p>Committee vote: The vote of the committee or task force shall be reported. In the case of recommendations for petitions to add materials to the National list, two votes will be recorded, one for synthetic or non-synthetic material classification, and the other for listing or not.</p> <p>Minority opinion: If applicable, the dissenting opinion(s) of committee or task force members shall be reported</p>		
<p><u>NOSB-NOP COLLABORATION</u></p> <p>The Organic Foods Production Act (6518 (a)) directed the Secretary of Agriculture to establish a National Organic Standards 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 the Act. In 6503 (a) of the Act, the Secretary was directed to establish an organic certification program. The National Organic Program (NOP) has become the governmental institution to accomplish this and is the means through which the NOSB provides advice and assistance to the Secretary of Agriculture.</p> <p>The mutual goals to advance the integrity of organic products, principles and products can best be accomplished through team work and cooperation between the NOSB and the NOP and is implemented regularly through two-way feedback by the NOSB Executive Director and periodically at the Executive Committee's monthly calls. Especially at these calls, NOSB committee work plans and priorities are discussed and NOP requests and opinions are aired.</p> <p>An effective collaboration process between the NOP and the</p>	<p>E. NOSB-NOP COLLABORATION</p> <p>The Organic Foods Production Act (7 U.S.C. 6518 (a)) directed the Secretary of Agriculture to establish a National Organic Standards 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 the Act. In Section 6503 (a) of the Act, the Secretary was directed to establish an organic certification program. The National Organic Program (NOP) has become the governmental institution responsible for this and is the means through which the NOSB provides advice and assistance to the Secretary of Agriculture.</p> <p>Maintaining, enhancing, and promoting integrity of organic principles and products is accomplished through team work and collaboration of the NOSB and the NOP, as well as others in the organic community. Successful collaboration is dependent on effective communication and constructive feedback. Communication is facilitated by the Advisory Committee Specialist, who participates in all NOSB calls. Additionally, the NOP Deputy Administrator or</p>	<p>Movement/deletion tracking for this topic: "NOSB-NOP COLLABORATION" Moved from Section V in the 2012 draft to Section III. E (ADMINISTRATION) in the 2015 draft.</p> <p>NOTE: the figures and tables were removed from the 2012 draft.</p> <p>2015 draft added:</p> <p>2015 draft deleted:</p> <ul style="list-style-type: none"> - The most common situations faced by the NOSB. <p>Substantive changes:</p> <ul style="list-style-type: none"> - Increasing references to NOP collaboration and NOP staffing issues. This is a suggestion of the increasing power of the NOP shown in the 2015 draft. - The language in the 2015 draft makes the NOP-NOSB relationship seem less collaborative and more based on NOP presence in meetings, etc.

<p>NOSB should ensure that NOP receives NOSB input and feedback, and vice versa. The process can be complicated due to several factors like the following:</p> <ul style="list-style-type: none"> • The NOSB is a FACA advisory committee, and as such, must conduct business in the open, under the requirements of P.L. 94-409, also known as “Government in the Sunshine Act” (5 U.S.C.552b). • The USDA cannot delegate its authority as a regulatory body to private citizens, even when those private citizens are appointed by the Secretary to provide advice. However, the NOSB has unique statutory authority related to the determination of materials as approved or prohibited substances for inclusion on the National List. • The NOSB cannot direct USDA or bind the Secretary through its actions; for example, it cannot obligate funds, contract, or initiate policies on its own accord. 	<p>designee will participate in all ES calls, and in other standing Subcommittee calls upon request and mutual agreement. In addition, each standing Subcommittee will be assigned an NOP staff person to provide technical, legal, and logistical support.</p> <p>Several factors to keep in mind with regard to the working relationship between the NOP and the NOSB:</p> <ul style="list-style-type: none"> • The NOSB is a FACA advisory committee, and as such, must conduct business in the open, under the requirements of P.L. 94-409, also known as “Government in the Sunshine Act” (5 U.S.C.552b). • The USDA cannot delegate its authority as a regulatory body to private citizens, even when those private citizens are appointed by the Secretary to provide advice. However, the NOSB has unique statutory authority related to the recommendation of materials as approved or prohibited substances for inclusion on the National List. • The NOSB cannot direct USDA or bind the Secretary through its actions; for example, it cannot obligate funds, contract, make NOP staffing decisions, or initiate policies of its own accord. 	<p>MOST RECENT CHANGES. From the Policy Development Subcommittee comments and changes made in February 2016 (in response to previous public comment): In the explanation of the 2016 revisions, the PDS commented that “The PDS revised Section III E to reflect the importance of both NOP-NOSB collaboration as well as NOP-NOSB mutuality in their respective roles in the organic community.”</p> <p>The language in the 2016 revision was changed as follows: “In 1990, the Organic Foods Production Act (OFPA: 7 U.S.C. 6518 (a)) directed the Secretary of Agriculture to “establish a National Organic Standards Board (in accordance with the Federal Advisory Committee Act (FACA)) ... 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 the Act. Section 6503 (a) of the OFPA requires that the Secretary “shall establish an organic certification program ... and shall consult with the NOSB” (6503(c)). The National Organic Program (NOP) is the governmental institution responsible for implementing the OFPA and is the means through which the NOSB provides advice and assistance to the Secretary of Agriculture. The NOSB, as a FACA advisory committee, must conduct business in the open, under the requirements of P.L. 94-409, also known as “Government in the Sunshine Act” (5 U.S.C.552b).</p> <p>The USDA cannot delegate its authority as a regulatory body to private citizens, even when those private citizens are appointed by the Secretary to provide advice. Therefore, the NOSB cannot direct USDA or bind the Secretary through its actions; for example, it cannot obligate funds, contract, make NOP staffing decisions, or initiate policies of its own accord.</p>
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		<p>direct USDA...” was added back in, having been present in the 2012 PPM. This sets the limits of the NOSB’s power.</p> <ul style="list-style-type: none"> - These revisions more clearly describe the relationship between the NOP and NOSB. - Each standing subcommittee will now be assigned an NOP staff person. - This section also re-emphasizes the Advisory Committee Specialist’s role – facilitating communication between the NOP and NOSB. - The NOP Deputy Administrator will now participate in all Executive subcommittee calls. - This new language, added in the 2016 revision, appears to require that <i>advice given to the Secretary is filtered through the NOP</i>. This contradicts sections of OFPA, as there are times the Board is directed to speak directly with the Secretary. See 7 U.S. Code § 6518(k) for examples.
<p>Several collaboration approaches may be required depending on the type of issue faced by the Board. Below are descriptions of the most common situations faced by the NOSB. In all cases, the end product should be a recommendation by the Board to the NOP and each recommendation should be accompanied by a cover sheet illustrated in figure 1.</p> <p>1. Materials proposed to be added to or removed from the National List.</p> <p>The NOSB has the statutory authority to consider and recommend materials for addition to, or deletion from, the National List of Approved and Prohibited Substances, or to add, remove, or modify annotations restricting the use of such listed materials.</p> <p>2. Recommendation for modification of existing standards or new standards.</p>	<p>Below are descriptions of common NOSB work agenda items and the corresponding NOP and NOSB responsibilities.</p> <ul style="list-style-type: none"> • Review of materials proposed to be added to or removed from the National List <p>The NOSB has the statutory authority to consider and recommend materials for addition to, or deletion from, the National List of Approved and Prohibited Substances. The NOSB may also make recommendations to add, remove, or modify annotations restricting the use of such listed materials.</p> <ul style="list-style-type: none"> • Changes to annotation or classification of materials <p>The NOSB may request to review an existing substance on the National List without a new petition when they have justification to support a revision of the</p>	<p>Movement/deletion tracking for this topic: Moved from section V. in the 2012 draft to section III. E. (only parts – heavily edited). Some of the 2012 text is mashed into the 2015 draft talk of “work agendas”.</p> <p>2015 draft added:</p> <ul style="list-style-type: none"> - Changes to annotation/classification review. NOSB may consider annotation without a petition “when they have justification to support a revision of the annotation or reclassification of the substance.” It is unclear who decides what “justification” is? <p>2015 draft deleted:</p> <ul style="list-style-type: none"> - The most common situations faced by the NOSB. - The “work plan” section was used later in the

<p>The NOSB will use the decision making procedures outlined in Section VIII to justify modifying existing standards or proposing new standards. The NOP may request that the NOSB develop recommendations for new or existing standards. The request should be in writing and should include a statement of the problem to be addressed, background, including the current policy or situation, statutory/ regulatory authority, legal situation, and desired timeframe for receiving the recommendation. The request will be posted on the NOP web site.</p> <p>3. Providing advice on NOP policy and interpretation of standards. An examples are: NOSB providing comments on specific actions by the NOP, such as the yeast and compost policies.</p> <p>4. Compliance and Enforcement. The NOP is responsible for compliance and enforcement. The NOP welcomes NOSB input on standards, but NOSB involvement in active investigations or enforcement actions is not appropriate. As timely and appropriate, the NOP reports to NOSB on the status of enforcement actions and also posts the status on the NOP website.</p> <p>5. Management Review. NOSB may review the quality management system and internal audits to ensure that the NOP is managed effectively and efficiently. For example, the NOSB has a role to play in terms of seeing that corrective actions with OIG are completed.</p> <p>In all the above situations, FACA procedures must be carefully followed to provide transparency and necessary public input.</p> <p>The primary means of collaboration will be through NOP participation in Executive Committee (EC) and Standing Committee calls. The NOP Deputy Administrator or designee will participate in all EC calls. The NOSB Executive Director (ED) will participate in all NOSB calls as described in the ED duties in the PPM. Upon request and mutual agreement, the Deputy Administrator will participate in Standing Committee</p>	<p>annotation or reclassification of the substance. This may happen as a result of the sunset review process, or as new information is provided in a Technical Review, or from public comment.</p> <ul style="list-style-type: none"> <p>Recommendation for modification of existing standards or new standards The NOP may request that the NOSB develop recommendations for new or existing standards. The request should be in writing and include a statement of the problem to be addressed, background, including the current policy or situation, statutory/regulatory authority, legal context, and desired timeframe for receiving the recommendation. The request will be posted on the NOP web site.</p> <p>Advice on NOP policy and interpretation of standards The NOSB may provide comments on guidance or policy memos included in the Program Handbook, or may also make recommendations for new guidance or policies.</p> <p>Compliance and Enforcement The NOP is responsible for compliance and enforcement. The NOP welcomes NOSB input on standards, but NOSB involvement in active investigations or enforcement actions is not appropriate. When timely and appropriate, the NOP reports to the NOSB the status of enforcement actions and also posts the status on the NOP website.</p> <p>Management Review The NOSB may review the quality management system and internal audits to ensure that the NOP is managed effectively and efficiently. For example, the NOSB may be asked for informal feedback or to work on specific work agenda items that relate to the development or implementation of audit corrective actions.</p> 	<p>2012 draft AND the 2015 draft. It is unclear whether any <u>vital</u> information was lost in this block of text or whether it was all transferred over in other ways (some of what is deleted is also repetitive of other parts of the 2012 draft).</p> <p>Substantive changes:</p> <ul style="list-style-type: none"> - The 2015 draft explicitly allows the NOSB to request a review of a substance already on the national list. - NOSB can give advice on NOP policy and the interpretation (of their own) standards. - NOSB role in management review is reduced in the 2015 draft - Initiative is switched from NOSB to NOP. - Removing the language regarding collaboration in favor of language that that appears to give NOP authority to direct the NOSB.
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<p>calls. In addition, each Standing Committee will be assigned an NOP staff person to provide additional technical, legal, and logistical support.</p> <p>Work plans for action items are developed for each upcoming public board meeting. This is the mode for developing recommendations and discussion documents. Work plan procedures are described in detail in Section VIII, page 32. The proposed work plans are presented and discussed at each public board meeting, but may be revised based on comments and Board priorities and resources.</p> <p>NOP publicly made requests at board meetings are important considerations in the development of Committee work plan. These NOP requests to NOSB will be followed up in writing stating the problem to be addressed, background, statutory authority and the time frame for response. The proposed Committee Work plans will be reviewed at the next EC call following the Board meeting, with participation by the NOP Deputy Administrator. This participation in the development of work plans is vital for effective NOSB/NOP collaboration. Due to change in circumstances, these work plans may need to be revised prior to the posting of the final agenda of the upcoming Board meeting. Committee work plan changes will be done in consultation and full knowledge of the EC and NOP.</p>		
<p><u>MISCELLANEOUS POLICIES</u></p> <p>NOSB Policy for Presenters Invited by Committees: Need for presentation established within the appropriate committee by the committee chairperson.</p> <ol style="list-style-type: none"> 1. The committee chairperson should notify the NOSB Chair with a request to issue an invitation at least 45 days prior to meeting. Exceptions are at the discretion of the NOSB Chair. 2. Presenter(s) must be invited by committee chair and/or NOSB Chair and approved by the NOSB Chair. 3. Reason(s) for presentation, subject area and bio/resume of presenter(s) to be circulated via email to entire board at least 2 weeks prior to meeting. 4. Invited presenter(s) must provide objective information. 5. Presenter(s) cannot be a petitioner on the topic under 	<p>G. MISCELLANEOUS PROCEDURES</p> <p>1. Invited Speakers</p> <ul style="list-style-type: none"> • Subcommittees, the NOSB or the NOP may identify the need for presentations and speakers regarding subjects of interest or concern to be addressed at NOSB meetings. • Requests must be made by the NOSB chair to the NOP no less than 60 days prior to the target NOSB meeting. • Speakers must be approved and invited by the NOP. <p>If approved by the NOP, the purpose for the</p>	<p>Movement/deletion tracking for this topic: Moved from the beginning of Section VI in the 2012 draft to Section VIII G in the 2015 draft.</p> <p>2015 draft added:</p> <ul style="list-style-type: none"> - Speakers must disclose financial influences. <p>2015 draft deleted:</p> <p>Substantive changes:</p> <ul style="list-style-type: none"> - Speakers must be invited within no less than 60 days prior to a meeting versus an allowance of 45 days prior to a meeting in the 2012 draft PPM.

<p>discussion.</p> <p>6. Presenter(s) must disclose any actual or perceived conflict of interest including information concerning who provided funding for the presentation.</p> <p>NOSB Policy for Surveys Conducted on Behalf of NOSB Committees</p> <ol style="list-style-type: none"> 1. All surveys, including electronic surveys, conducted in the name of any NOSB Committee, must be approved by the NOSB Executive Committee before they are submitted for approval to USDA, which must submit for approval to the Office of Management and Budget (OMB); and 2. A written report summarizing the results of the survey must be submitted to the full Board and the NOP as soon as possible after completion. 	<p>presentation, the subject area and the bio/resume of speaker(s) should be circulated via email to the entire Board at least 2 weeks prior to the Board meeting.</p> <p>Current petitioners cannot be invited to be speakers about the topic under discussion.</p> <p>Speakers are expected to disclose any financial interests that he or she has that can be reasonably assumed to influence his or her presentation content.</p> <p>2. Surveys Conducted on Behalf of NOSB Subcommittees</p> <ul style="list-style-type: none"> • All surveys, including electronic surveys, conducted on behalf of the NOSB, must be approved by the NOSB Executive Subcommittee before they are submitted for approval to USDA, and • A written report summarizing the results of the survey must be submitted to the full Board and the NOP as soon as possible after completion. 	<ul style="list-style-type: none"> - The 2015 draft added language about speakers being required to disclose their financial interests.
<p>Public Comment at NOSB Meetings:</p> <ul style="list-style-type: none"> • All persons wishing to comment at NOSB meetings during public comment periods must, in general, sign-up in advance per the instructions in the Federal Register Notice for the meeting. However, the NOSB will attempt to accommodate all persons requesting public comment time. Persons requesting time after the closing date in the Meeting Notice, or during last minute sign-up at the meeting, will be placed on a waiting list and will be considered at the discretion of the NOP working closely with the NOSB Chair and will depend on availability of time. • All presenters are encouraged to submit public comment in writing according to the Federal Register Notice. Advance submissions allow NOSB members the opportunity to read comments in advance electronically, and decreases the need for paper copies to be distributed during the meeting. • Persons will be called upon to speak according to a posted schedule. However speakers should allow for 	<p>Comments at In-Person Public Meetings:</p> <ul style="list-style-type: none"> • All persons wishing to comment at NOSB meetings during public comment periods must, in general, sign-up in advance per the instructions in the Federal Register Notice for the meeting. Persons requesting time after the closing date in the Meeting Notice, or during last minute sign-up at the meeting, will be placed on a waiting list and will be considered at the discretion of the NOP working closely with the NOSB Chair and will depend on availability of time. • All presenters are encouraged to submit public comment in writing according to the Federal Register Notice. Written submissions allow NOSB members the opportunity to read comments in advance electronically, and decreases the need for paper copies to be distributed during the meeting. • Persons will be called upon to speak according to a posted schedule. However speakers should allow for some flexibility. Persons called upon who are 	<p>Movement/deletion tracking for this topic: Section moved from Section VI in the 2012 draft to Section VIII E in the 2015 draft.</p> <p>NOTE: the 2015 draft added more information regarding public comment.</p> <p>Substantive changes:</p> <ul style="list-style-type: none"> - Nothing significant.

<p>some flexibility. Persons called upon who are absent from the room could potentially miss their opportunity for public comment.</p> <ul style="list-style-type: none"> • Time allotment for public comment per person will be four (4) minutes, with the options of reducing to a minimum of three (3) and extending to a maximum of five (5) minutes at the discretion of the NOP working closely with the NOSB Chair in advance of the meeting. • Persons must give their names and affiliations for the record at the beginning of their public comment. • Proxy speakers are not permitted. • Public comment requests may be scheduled according to topic. • Individuals providing public comment will refrain from any personal attacks and from remarks that otherwise impugn the character of any individual. • Members of the public are asked to define clearly and succinctly the issues they wish to present before the Board. This will give NOSB members a comprehensible understanding of the speaker's concerns. <p>Adopted October 17 2012; 15 yes, 0 no, 0 absent, 0 abstain, 0 recuse.</p> <p>Policy for Public Communication between NOSB Meetings. The NOSB and NOP seek public communication outside of Board biannual meetings and public comment periods to inform the NOSB and NOP of stakeholders' interests, and to comment on the NOSB's and NOP's work activities year around.</p> <p>Adopted April 11 2013; 15 yes, 0 no, 0 absent, 0 abstain, 0 recuse</p>	<p>absent from the room could potentially miss their opportunity for public comment.</p> <ul style="list-style-type: none"> • Time allotment for public comment per person will be four (4) minutes, with the options of reducing to a minimum of three (3) and extending to a maximum of five (5) minutes at the discretion of the NOP, working closely with the NOSB Chair in advance of the meeting. • Persons must give their names and affiliations for the record at the beginning of their public comment. • Proxy speakers are not permitted. • Public comments may be scheduled according to topic. • Individuals providing public comment shall refrain from making any personal attacks or remarks that might impugn the character of any individual. • Members of the public are asked to define clearly and succinctly the issues they wish to present before the Board. This will give NOSB members a comprehensible understanding of the speaker's concerns. <p>Policy for Public Communication between NOSB Meetings (Adopted April 11, 2013)</p> <p>The NOSB and NOP seek public communication outside of Board biannual meetings and public comment periods to inform the NOSB and NOP of stakeholders' interests, and to comment on the NOSB's and NOP's work activities year around.</p>	
<p><u>NOSB PRINCIPLES OF ORGANIC PRODUCTION AND HANDLING</u></p> <p>...</p>	<p>A. Appendix 1: FOUNDATIONS</p> <p>1. NOSB PRINCIPLES OF ORGANIC PRODUCTION AND HANDLING (NOSB Recommendation Adopted October 17, 2001)</p> <p>...</p>	<p>Movement/deletion tracking for this topic: Moved from section VII in the 2012 draft to Section IX, Appendix 1 in the 2015 draft.</p> <p>No changes.</p>

NOSB GUIDANCE ON COMPATIBILITY WITH A SYSTEM OF SUSTAINABLE AGRICULTURE AND CONSISTENCY WITH ORGANIC FARMING AND HANDLING

A significant **task** of the NOSB is to determine the suitability of materials for use in organic production and handling. Among the criteria the Board must consider, OFPA requires the NOSB to determine the compatibility of a material with organic practices. The following questions were developed by the NOSB to assist in determining the compatibility of materials with organic practices.

In order to determine if a substance, its use, and manufacture are compatible with a system of sustainable agriculture and consistent with organic farming and handling, and in consideration of the NOSB Principles of Organic Production and Handling, the following factors are to be considered:

1. Does the substance promote plant and animal health by enhancing the soil's physical chemical, or biological properties?
2. Does use of the substance encourage and enhance preventative techniques including cultural and biological methods for management of crop, livestock, and/or handling operations?
3. Is the substance made from renewable resources? If the source of the product is non-renewable, are the materials used to produce the substance recyclable? Is the substance produced from recycled materials? Does use of the substance increase the efficiency of resources used by organic farms, complement the use of natural biological controls, or reduce the total amount of materials released into the environment?
4. Does use of the substance have a positive influence on the health, natural behavior, and welfare of livestock?
5. Does the substance satisfy expectations of organic consumers regarding the authenticity and integrity of organic products?

NOSB GUIDANCE ON COMPATIBILITY WITH A SYSTEM OF SUSTAINABLE AGRICULTURE AND CONSISTENCY WITH ORGANIC FARMING AND HANDLING (NOSB Recommendation Adopted April 29, 2004)

A significant **responsibility** of the NOSB is to determine the suitability of materials for use in organic production and handling. Among the criteria the Board must consider, OFPA requires the NOSB to determine the compatibility of a material with organic practices. The following questions were developed by the NOSB to assist in determining the compatibility of materials with organic practices.

In order to determine if a substance, its use, and manufacture are compatible with a system of sustainable agriculture and consistent with organic farming and handling, and in consideration of the NOSB Principles of Organic Production and Handling, the following factors are to be considered:

- Does the substance promote plant and animal health by enhancing the soil's physical chemical, or biological properties?
- Does use of the substance encourage and enhance preventative techniques including cultural and biological methods for management of crop, livestock, and/or handling operations?
- Is the substance made from renewable resources? If the source of the product is non-renewable, are the materials used to produce the substance recyclable? Is the substance produced from recycled materials? Does use of the substance increase the efficiency of resources used by organic farms, complement the use of natural biological controls, or reduce the total amount of materials released into the environment?
- Does use of the substance have a positive influence on the health, natural behavior, and welfare of livestock?

Movement/deletion tracking for this topic: Moved from Section VII in the 2012 draft to section IX. Appendix 1

Substantive changes:

- "Task" versus "responsibility" of the NOSB.

<p>6. Does the substance allow for an increase in the long-term viability of organic farmoperations?</p> <p>7. Is there evidence that the substance is mined, manufactured, or produced through reliance on child labor or violations of applicable national labor regulations?</p> <p>8. If the substance is already on the National List, is the proposed use of the substance consistent with other listed uses of the substance?</p> <p>9. Is the use of the substance consistent with other substances historically allowed or disallowed in organic production and handling?</p> <p>10. Would approval of the substance be consistent with international organic regulations and guidelines, including Codex?</p> <p>11. Is there adequate information about the substance to make a reasonable determination on the substance's compliance with each of the other applicable criteria? If adequate information has not been provided, does an abundance of caution warrant rejection of the substance?</p> <p>12. Does use of the substance have a positive impact on biodiversity?</p> <p>Adopted April 29, 2004 - 13 yes, 0 no, 1 absent</p>	<ul style="list-style-type: none"> • Does the substance satisfy expectations of organic consumers regarding the authenticity and integrity of organic products? • Does the substance allow for an increase in the long-term viability of organic farmoperations? • Is there evidence that the substance is mined, manufactured, or produced through reliance on child labor or violations of applicable national labor regulations? • If the substance is already on the National List, is the proposed use of the substance consistent with other listed uses of the substance? • Is the use of the substance consistent with other substances historically allowed or disallowed in organic production and handling? • Would approval of the substance be consistent with international organic regulations and guidelines, including Codex? • Is there adequate information about the substance to make a reasonable determination on the substance's compliance with each of the other applicable criteria? If adequate information has not been provided, does an abundance of caution warrant rejection of the substance? • Does use of the substance have a positive impact on biodiversity? 	
<p>SECTION VIII PROCEDURES OF THE NOSB</p> <p><u>COMMITTEE WORK PLANS</u> At the end of every NOSB meeting, each committee chair is required to present the committee's work plan. Given the nature, and number, of the issues the Board handles, it is important for a committee to follow a structured procedure for assigning priorities in the work plan.</p> <p>The following provides a guideline on how to develop a</p>	<p>F. NOSB WORK AGENDAS</p> <p>The NOSB Work agenda is a list of projects for the upcoming semester or year for each of the Subcommittees. Agendas are developed via collaboration between the NOSB and the NOP and are revised based on AMS-NOP requests, NOSB priorities, and public comment. Work agendas are developed based on the following criteria:</p> <ul style="list-style-type: none"> • Within Scope: Item must be within the scope of 	<p>Movement/deletion tracking for this topic: Section VIII in the 2012 draft - guideline on how to develop a committee work plan. Parts moves/used in Section III F – NOSB WORK AGENDAS in the 2015 draft. The part stating “Below are descriptions of common NOSB work agenda items and the corresponding NOP and NOSB responsibilities.” The end of this block was cannibalized by some of the 2012 draft and analyzed earlier in this table.</p> <p>The NOSB “work agendas” in the 2015 draft are</p>

<p>committee work plan. The committee chair, working with the committee, should follow three general steps in producing a work plan: 1) List all issues before the committee; 2) Prioritize each issue; 3) set a calendar; and 4) Obtain feedback from the Executive Committee and the Program.</p> <p><u>Step 1: Identifying all issues</u></p> <p>The committee work plan rises out of these main situations:</p> <ul style="list-style-type: none"> - Items committed, or assigned to a committee, by the Board during an official session. - Items that are reviewed by a committee on a regular basis such as materials sunset review or petitions submitted by members of the public. - Requests or suggestions from the National Organic Program such as clarifications on a particular issue or guidance on enforcement. - Proposals stemming from the committee members' contact with the organic community. <p>In many cases not all issues should be the responsibility of the committee. Selecting what the committee should be reviewing can be done based on the following criteria:</p> <ul style="list-style-type: none"> - Relevance to the organic community (Is this an important issue? vs. Is this an interesting issue?) - Criticality regarding mandate (is the issue within the committee's or the NOSB's realm?) - Feasibility in terms of the Rule (can a proposal by the committee be realistically enforced by the NOP?) <p><u>Step 2: Prioritizing the issues</u></p> <p>After listing the issues to review, the committee should prioritize its work plan items according to the following criteria:</p> <ul style="list-style-type: none"> - Preference given to petitioned materials - Relevance to the organic community, public at large and 	<p>OFPA. NOP must have a clear sense of the intent and scope of the work agenda item. The public may petition additions or deletions from the National List that will be added to the work agenda. In addition, the public may submit comments to the NOSB or write to the NOP for potential additions to the work agenda. For the NOSB, work agenda items may emerge from discussions on current issues.</p> <ul style="list-style-type: none"> • USDA and NOP Priority: Item must be a priority for the USDA/NOP; 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 <p>The NOSB work agenda establishes Subcommittee work for the upcoming semester or year, and is developed through the following process:</p> <ol style="list-style-type: none"> 1. NOSB Subcommittees submit to the Executive Subcommittee draft work agenda items based on AMS-NOP requests, NOSB priorities, and requests from public comment. 2. The NOP and Executive Subcommittee review the draft NOSB work agenda. The content and schedule will be reviewed on an ongoing, as needed basis. 3. NOP approves NOSB work agenda. <p>Work agenda items should be prioritized accordingly:</p> <ul style="list-style-type: none"> • Substance evaluations (e.g., petitions, 5-year sunset review) • NOP requests to the NOSB • NOSB requests to NOP • Other projects 	<p>framed very differently – not as a guideline on committee work plans but on much more broad and general terms throughout the whole NOSB. The 2015 draft does include the guideline for the process in developing Subcommittee work. <u>To some degree this section is entirely re-written.</u></p> <p>Substantive changes:</p> <ul style="list-style-type: none"> - Authority over work agendas appears to have been changed from the NOSB (2012) to the NOP (2015). This could have the effect of taking control of the NOSB's agenda and work plan away from the NOSB. - The NOP can block an agenda item that the NOP does not understand. - The requirement that an "[i]tem must be a priority for the USDA/NOP; something that the NOP is able to implement in a reasonable timeframe" prevents the NOSB from initiating actions (for example, annotations) or embarking on long-term projects (for example, contaminated inputs). - Work agenda items must be USDA/NOP priorities. <i>Another example of the 2015 PPM draft giving the leadership role to the NOP.</i> <p>NOTE: BP's comment specific to this section is: "... OFPA gives the leadership role to the NOSB, not the NOP. Authority over work Agendas must be restored to the NOSB. This is an example of where collaboration on issues and priorities has been important to the board carrying out its statutory duty."</p>
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<p>theenvironment</p> <ul style="list-style-type: none"> - Size of the population affected by the issue - Timeline since the issue/petition was submitted <p>The criteria are presented in order of importance and should be used to rank or prioritize each issue accordingly. For example, a petitioned material has priority over an issue that has been waiting to be reviewed for an extended period of time.</p> <p><i>Step 3: Setting a calendar for reviews</i></p> <p>Once the issues are prioritized, the committee chair should define a calendar for discussion of each issue. The calendar should allow committee members to understand specific deadlines and should reflect the posting/publication target dates mandated by the Program and the Federal Regulation.</p> <p><i>Step 4: Incorporating Input from the Executive Committee</i></p> <p>The committee chair must present the finalized work plan at the first Executive Committee conference call following a normal NOSB meeting. This event is not only an opportunity for the EC to provide guidance to the committee chair, but it is also an opportunity to obtain input from the NOP regarding the feasibility of implementing the committee’s recommendation.</p>		
<p>MATERIALS REVIEW PROCESS</p> <p>This section presents the procedures followed by the NOSB to evaluate petitions. First, the NOP material review process is presented. Second, a review of the NOSB process for selecting and reviewing the work of technical advisory panels is provided followed by a description needed in a formal petition. Third, the process for NOSB material review is provided. This section concludes by providing a graphical description of the sunset review process.</p> <p>Evaluation Procedures for Substances Petitioned for Addition or Removal from the National List. A petition to change the annotation to a listed material is in effect the</p>	<p>H. SUBSTANCE/MATERIALS REVIEW PROCESS</p> <p>A primary function of the NOSB is “to assist in the development of standards for substances to be used in organic production” (OFPA 6518 (a)). “The Board shall develop the proposed National List or proposed amendments to the National List for submission to the Secretary...” (OFPA 6518(k)). The OFPA also establishes a petition process by which the public can request additions or deletions to the National List and also provides for a 5–year “sunset” review by NOSB of all substances on the National List. The Materials Review Process is a collaborative effort between the NOP and NOSB. Some phases of the review process are handled exclusively by NOP and some by the NOSB.</p>	<p>Movement/deletion tracking for this topic:</p> <p>Materials review information is located in Section VIII in the 2012 PPM draft and was moved to Section VI H in the 2015 draft PPM.</p> <p>The definitions were moved to the end of Section IV (4. Definitions) in the 2015 draft. That section is as follows:</p> <p><i>Definitions</i> <i>Technical Review - A report prepared by a third party expert under contract addressing the environmental, human, and industrial impact of a petitioned material per the OFPA and regulatory</i></p>

<p>addition or removal of one or more materials.</p> <p>Definitions:</p> <p><u>Technical Advisory Panel (TAP)</u> - Group of third party experts convened by the Board to provide a technical review related to a material petition under review by the NOSB.</p> <p><u>Technical Review</u> – A report prepared by a third party expert under contract addressing the environmental, human, and industrial impact of a petitioned material per the OFPA and regulatory evaluation criteria to aid in the thorough evaluation of that material by the NOSB.</p>	<p>The petition process is open to all. Petitions must be filed in accordance with the most recent Federal Register notice instructions (currently January 18, 2007 [72 FR 2167]).</p> <p>Steps in the material review process for a new petition:</p> <ol style="list-style-type: none"> 1. NOP receives a petition, reviews it for completeness and eligibility according to OFPA and the petition guidelines. NOP forwards the petition to the appropriate Subcommittee with a courtesy copy to the Materials Subcommittee. 2. Subcommittee (SC) determines if a Technical Review (TR) is needed. 3. Technical Report is completed and sent to the Subcommittee for review. 4. TR sufficiency is determined by SC, and the TR is posted on the NOSB website by the NOP. 5. SC reviews substance, develops proposal, discusses proposal and votes, and submits for posting 45 days prior to public meeting. 6. The NOSB members analyze comments and votes on the proposal at the public meeting. 7. The NOSB Chair delivers the final recommendations to NOP. 	<p><i>evaluation criteria to aid in the thorough evaluation of that material by the NOSB.</i></p> <p><i>Technical Advisory Panel (TAP) - Group of third party experts convened by the Board to provide a technical review related to a material petition under review by the NOSB.</i></p> <p>2015 draft added:</p> <ul style="list-style-type: none"> - The “primary function of the NOSB...” - The steps in the procedure for new petitions. - OFPA commands for NOSB’s duties/role. - How petitions must be filed. <p>2015 draft deleted:</p> <ul style="list-style-type: none"> - The introduction paragraph. - Definitions of TAP and TR. <p>Substantive changes:</p> <p>“Third party” is NOT defined (it should be) and in “step 2” of the materials review process, the term “third party” is still used in the 2015 draft. Under the heading of “PROCEDURES FOR HANDLING TECHNICAL REVIEWS” in the 2012 draft there are guidelines for third parties but no clear definition. Most of this information was <u>not retained</u> in the 2015 draft.</p>
<p><u>Phase 1: Receipt of Petition and Examination of Petition for Completeness and Eligibility</u></p> <p>During this phase the NOP will:</p> <ul style="list-style-type: none"> • Notify the petitioner via letter and/or electronic mail of receipt of the petition. Determine whether the petition is complete • Determine if the petitioned substance is eligible for petition under the Organic Foods Production Act and its implementing regulations; document this review using the NOP- OFPA checklist. 	<p>Step 1: Receipt of Petition</p> <p>During this phase the NOP will:</p> <ul style="list-style-type: none"> • Notify the petitioner via letter and/or electronic mail of receipt of the petition. • Determine whether the petition is complete and whether the petitioned substance is eligible for petition under the Organic Foods Production Act and its implementing regulations, and whether subject to other agency authority (e.g. EPA, FDA); • NOP documents this review using two checklists. <ul style="list-style-type: none"> ○ OFPA Checklist, NOP 3005-1 	<p>Movement/deletion tracking for this topic:</p> <p>Materials review information is located in Section VIII in the 2012 PPM draft and was moved to Section VI H in the 2015 draft PPM.</p> <p>2015 draft added:</p> <ul style="list-style-type: none"> - List of ineligible petitions. <p>2015 draft deleted:</p> <ul style="list-style-type: none"> - Mention of CBI - The <u>procedure</u> for contact is deleted from the

<ul style="list-style-type: none"> Determine whether the petitioned use is approved under the statutory and regulatory authority of the Environmental Protection Agency (EPA); the Food and Drug Administration (FDA); or other appropriate federal agency if applicable; Identify and secure any confidential business information (CBI) designated by the petitioner; Notify, as applicable, the petitioner via letter and/or electronic mail of determination of completeness and eligibility, and acknowledge the designation of certain information as CBI. Upon determination of completeness and eligibility, the following actions will be taken: Publish the petition on NOP website; and Notify the National Organic Standards Board (NOSB) materials committee chairperson and the chairperson of the committee that the substance is being petitioned for addition or prohibition from the National List (Crops, Livestock, Handling or other pertinent committees). This notification will be sent via letter and/or electronic mail and inform the chairs that the petition is complete, provide OFPA review and EPA/FDA determination checklist, and request identification of any questions the appropriate committee wishes to be specifically addressed in the contractor's report. 	<ul style="list-style-type: none"> Petition Checklist, NOP 3005-2 <p>Ineligible petitions include:</p> <ul style="list-style-type: none"> Formulated (brand name) products Food additive without FDA approval Pesticide without EPA tolerance or tolerance exemption Requests to add substances already allowed Synthetic macronutrient (e.g., NPK) fertilizers Materials otherwise prohibited by the USDA organic regulations (e.g., sewage sludge, GMOs, etc.) Previously petitioned/rejected materials (if no new information is provided) <p>Upon determination of completeness and eligibility, NOP will:</p> <ul style="list-style-type: none"> Notify the petitioner, via letter and/or electronic mail, that the petition is complete and eligible; Publish the petition on NOP website; and Notify the NOSB Subcommittee that the substance is being petitioned for addition or prohibition from the National List and provide the OFPA and petition checklists. NOP is the primary point of contact for any correspondence between NOSB and petitioner. 	<p>2015 draft, which could be substantive – are you supposed to mail or e-mail, etc.?</p> <p>Substantive changes:</p> <ul style="list-style-type: none"> The text is altered but in general the same information is contained here with some possibly-substantive tweaks and generally simplifying the information given in the 2012 draft. Another change in language: the NOP is the primary point of contact <i>instead of</i> the NOSB. This is a change that could be interpreted different ways and much of the specific context that helped a reader interpret this phrase was deleted from the 2012 draft. An explicit requirement to determine if the petitioned use is approved by EPA, FDA, and other federal agencies.
<p><u>Phase 2: Determine if a Third Party Technical Review is Required</u></p> <p>During this phase:</p> <ul style="list-style-type: none"> The NOSB materials committee, working with other applicable NOSB committees, has 60 days to submit any questions to the NOP. The questions requested by the committee should include items that need specific background information, recommended technical expertise, and be based on the OFPA criteria. Per the NOP materials review process, the NOSB should review the petition and using the NOP checklists 	<p>Step 2: Determine whether a Third Party Technical Review is Required</p> <p>During this phase, the applicable NOSB Subcommittee has 60 days to review the petition and determine whether a third party technical review is required. This decision is based on the following:</p> <ul style="list-style-type: none"> Is there sufficient information in the petition? Can the Subcommittee reasonably research any needed technical information? Can sufficient information be obtained from public comment? Does the Subcommittee have the expertise needed to address the questions related to the 	<p>Movement/deletion tracking for this topic:</p> <p>Materials review information is located in Section VIII in the 2012 PPM draft and was moved to Section VI H in the 2015 draft PPM.</p> <p>2015 draft added/deleted: “Phase 2” is almost entirely re-written but generally relates the process of deciding whether a TR or TAP is needed and the Subcommittee process to determine that.</p> <ul style="list-style-type: none"> The 2012 PPM offers a type of “decision tree” that was deleted. <p>Substantive changes:</p>

<p>for the material determine the following:</p> <ul style="list-style-type: none"> • If the material is deemed appropriate for consideration on the National List (pending criteria). If the answer is no to this question, an explanation is required. • If the answer to question #1 is yes, the NOSB committee assigned for the review (as identified by the Materials Committee Chair) must decide if <ul style="list-style-type: none"> • there is sufficient information in the petition, • the committee can reasonably research any pending technical information, or • there is the need to secure a technical review from a third party expert (see section titled Procedures for Handling Technical Reviews) • If the answer to question #1 is no, the Materials Committee Chair will inform the NOP that the petition is incomplete and will include an explanation. If the reviewing committee concludes there is a need for a third party technical review, the Materials Committee Chair will proceed to make the request to the Program. Notify the petitioner, via letter and/or electronic mail, that the petition is incomplete or ineligible; or 	<p>petition? This includes impact on the environment, impact on human health, and sustainability and compatibility with organic principles.</p> <p>If the Subcommittee decides a Technical Review is needed, the Subcommittee Chair will make the request to the National List Manager. The SC may also submit questions for specific information based on the OFPA evaluation criteria (7 USC 6817(m)), or suggest recommended technical expertise. The NOSB may request more information from the petitioner if needed.</p> <p>If the Subcommittee decides the Technical Review is not needed, the Subcommittee Chair will inform the National List Manager.</p> <p>In some cases, the Subcommittee may decide the substance is ineligible for the National List without need for a Technical Review. In this case, they will develop a proposal to reject the substance at the next NOSB meeting, subject to a full board vote.</p> <p>A limited scope or supplemental TR may be appropriate when the petition is to amend an existing listing, remove a listing, or for purposes of sunset review.</p> <p>Option for a Technical Advisory Panel (TAP) OFPA states: "The NOSB shall convene technical advisory panels to provide scientific evaluation of materials considered for the National List." (7 USC 6518 (k)(3)) The NOSB has not convened independent Technical Advisory Panels since 2005. Currently the NOSB is relying on information within the Technical Reports provided by the NOP and public comment to make their final recommendations In some cases, NOSB may wish to convene a TAP instead of requesting a TR, for review of complex or</p>	<ul style="list-style-type: none"> - Subcommittees now have responsibility for determining if a TR is required. - The 2015 draft does not mention the role of the materials committee/subcommittee in this section, while in the 2012 PPM the materials subcommittee had a defined role in determining if a 3rd party review is necessary. - The 2015 draft adds questions that help the Subcommittee decide if a third party review of a petition is needed. - The timing is muddled between the two drafts: in the 2012 draft the PPM gives 60 days during which the materials & other applicable committees have 60 days to ask any relevant questions to the NOP based in part on OFPA criteria. The 2015 draft only states that the applicable subcommittee has 60 days to review the petition.
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<p>Phase 3: Evaluation by a Third Party Expert</p> <p>During this phase the NOP will:</p> <ul style="list-style-type: none"> Notify the third party expert of the petition’s determination of completeness and eligibility. This third party will have technical expertise relevant to the petition and the notification will constitute official notice of the need for a technical review. <p>During this phase the Third Party Expert will:</p> <ul style="list-style-type: none"> Conduct activities necessary to provide responses to evaluation questions contained in the Statement of Work (SOW) and any additional questions identified by the NOSB as described above; Use the TR template to prepare and distribute to the NOP a draft technical report (TR) in electronic format. 	<p>controversial substances.</p> <p>Step 3: Third Party Technical Review</p> <p>During this phase the NOP will:</p> <ul style="list-style-type: none"> Assign a contractor to develop a Technical Review (TR) or Technical Advisory Panel (TAP). The third party contractor must have technical expertise relevant to the petition, and will use the TR template provided by NOP. Review all TRs or TAP reports before they are distributed to the Subcommittee to ensure they meet the requirements of the contract. Ensure that TRs/TAP reports are sufficient and complete when they are distributed to the Subcommittee 	<p>Movement/deletion tracking for this topic: Materials review information is located in Section VIII in the 2012 PPM draft and was moved to Section VI H in the 2015 draft PPM.</p> <p>2015 draft deleted: First reference to the Statement Of Work (SOW). The SOW does not appear to be defined.</p> <p>Substantive changes:</p> <ul style="list-style-type: none"> The 2015 draft changes this phase to emphasize that a TR/TAP is being created and not much else (no mention of evaluation questions, for example). Emphasis on the “contract” the 3rd party experts have in the 2015 draft. There are no conflict of interest policies specific to 3rd party technical reviews (or TAPs). The current policy (as of February, 2016) is to keep members of these advisory 3rd-party panels secret. The Technical Review template in the 2015 draft is explicitly provided by the NOP.
<p>Phase 4: Sufficiency Determination</p> <p>During this phase the NOP will:</p> <ul style="list-style-type: none"> Submit a copy of the draft TR for review to the NOSB materials committee and the committee that the substance is being petitioned for addition or prohibition from the National List (Crops, Livestock or Handling); Review the draft TR against the following performance criteria. The report will be acceptable when it: Is consistent in format, level of detail and tone; 	<p>Step 4: Technical Review Sufficiency Determination</p> <p>During this phase the Subcommittee (Crops, Livestock or Handling) will:</p> <p>Review the draft TR to ensure that it:</p> <ul style="list-style-type: none"> Is consistent in format, level of detail and tone Is technically objective and free from opinions or conjecture Is written in a style appropriate for non-technical readers (e.g. free of technical jargon) Is prepared using a well-defined and consistent procedure consisting of information gathering, information synthesis and document preparation, 	<p>Movement/deletion tracking for this topic: Materials review information is located in Section VIII in the 2012 PPM draft and was moved to Section VI H in the 2015 draft PPM.</p> <p>2015 draft deleted:</p> <ul style="list-style-type: none"> Details in how communication is to take place (letter, mail, etc.). The NOP’s action during this phase is pared down. <p>Substantive changes:</p>

<ul style="list-style-type: none"> • Is technically objective and free from opinions or conjecture; • Is written in a style appropriate for non-technical readers (e.g. free of technical jargon); • Is prepared using a well-defined and consistent procedure consisting of information gathering, information synthesis and document preparation, and quality assurance; • Is based on the best available information that can be obtained within the designated time frame; • Is thoroughly supported using literature citations; and, • Addresses all evaluation questions as set out in the SOW. <p>During this phase the NOSB materials committee and the committee that the substance is being petitioned for addition or prohibition from the National List (Crops, Livestock or Handling) will:</p> <ul style="list-style-type: none"> • Review the draft TR against the following performance criteria. The report will be acceptable when it: <ul style="list-style-type: none"> ○ Is consistent in format, level of detail and tone; ○ Is technically objective and free from opinions or conjecture; ○ Is written in a style appropriate for non-technical readers (e.g. free of technical jargon); ○ Is prepared using a well-defined and consistent procedure consisting of information gathering, information synthesis and document preparation, and quality assurance; ○ Is based on the best available information that can be obtained within the designated time frame; ○ Is thoroughly supported using literature citations; and, ○ Addresses all evaluation questions as set out in the SOW • Notify the NOP in letter and/or electronic mail the acceptance of the TR within 60 days of receiving the TR. If the TR is not accepted by the NOSB materials and the committee that the substance is being petitioned for 	<p>and quality assurance</p> <ul style="list-style-type: none"> • Is based on the best available information that can be obtained within the designated time frame • Is thoroughly supported using literature citations Addresses all evaluation questions in the TR template <p>The Subcommittee chair will notify the NOP, within 60 days of receiving the TR, that the TR is sufficient. If the TR is not found sufficient, the Subcommittee must provide the NOP with an explanation of why, including a request for additional information or improvements.</p> <p>If necessary, the NOP will seek improvements or supplemental information from the contractor.</p> <p>Once the Technical Reports are deemed sufficient, the NOP will post on the NOP website.</p>	<ul style="list-style-type: none"> - Change in responsibility from the NOP to the Subcommittee – or at least changes how the review passes hands. The 2015 draft seems to take the NOP review off the table entirely. - Uses evaluation questions in TR template instead of the SOW (how are these different? Clarity in this area is needed), which may or may not be a functional change. - The NOP’s role in review is decreased to a more administrative one in the 2015 draft.
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<p>addition or prohibition from the National List (Crops, Livestock or Handling), the committees must provide to the NOP in letter and/or electronic mail the specific areas of the TR that were concluded to be insufficient, the rationale for drawing such a conclusion and the improvements to be made so that the document can be determined sufficient.</p> <ul style="list-style-type: none"> • Upon concurrence by the NOP that the TR is insufficient, the NOP will notify the contractor by letter and/or electronic mail of the areas of the TR that are insufficient, the rationale for drawing such a conclusion and the improvements to be made so that the document can be determined sufficient. The time frame required for the completion of the changes will be determined through mutual agreement between the contractor and the NOP. 		
<p><u>Phase 5: Action by NOSB Materials Chair and the Committee that the Substance Is Being Petitioned for Addition or Prohibition from the National List (Crops, Livestock or Handling)</u></p> <p>During this phase the NOSB materials Chair and the committee that the substance is being petitioned for addition or prohibition from the National List (Crops, Livestock or Handling) will:</p> <ul style="list-style-type: none"> • Convene at a mutually convenient time to review, discuss and recommend an action on the petitioned substance. The committee may convene as the TAP by electronic mail or conference call to provide complete evaluation of the petitioned substance, as provided by OFPA 6518(k)(3). The NOSB materials committee or delegated committee must convene and recommend an action on the petitioned substance no later than 60 days before a scheduled meeting of the full NOSB. 	<p>Step 5: Review by the Subcommittee (Crops, Livestock or Handling)</p> <p>During this phase the Subcommittee conducting the review will:</p> <ul style="list-style-type: none"> • Read the review, along with the submitted petition, and any additional information available, such as literature referenced in the Technical Review, personal knowledge, and recommendations of a contracted panel of experts when utilized. Subcommittee members will prepare a written review the substance according to the OFPA criteria. • After discussion, the Subcommittee will vote on classification (e.g., synthetic, nonsynthetic, agricultural) for substances not previously classified, and vote on a proposed action (e.g., add to National List, remove, or amend) • The review, including record of votes, will be finalized as a proposal for the next meeting. • All proposals must be submitted to NOP for posting 45 days before the public meeting date. 	<p>Movement/deletion tracking for this topic: Materials review information is located in Section VIII in the 2012 PPM draft and was moved to Section VI H in the 2015 draft PPM.</p> <p>2015 draft deleted:</p> <ul style="list-style-type: none"> - The materials chair. <p>2015 draft added:</p> <ul style="list-style-type: none"> - Mention of Subcommittee voting on the substance after review. <p>Substantive changes:</p> <ul style="list-style-type: none"> - The timing on when the committee must recommend an action on the petitioned substance was changed. The “no later than 60-day timing” was changed to 45 days in the 2015 draft. This gives more time for subcommittees to work but could also shorten the time available for public comment. - Proposals must be submitted to the NOP in the 2015 draft (not specified in 2012 draft).
<p>Phase 6: Action by Full NOSB</p>	<p>Step 6: Action by Full NOSB</p>	<p>Movement/deletion tracking for this topic:</p>

<p>During this phase the NOP will:</p> <ul style="list-style-type: none"> • Publish the recommendation of the NOSB materials committee and the committee that the substance is being petitioned for addition or prohibition from the National List (Crops, Livestock or Handling) on the NOP website and request a minimum of 60 days of written public comment on the recommendation prior to the public NOSB business meeting. • Set as an agenda item for the next meeting of the NOSB time sufficient to discuss and make a recommendation by the full NOSB on the petitioned substance. 	<p>During this phase the NOP will:</p> <ul style="list-style-type: none"> • Publish the proposals on the NOP website and provide a minimum of 30 days of written public comment on the proposal prior to the public NOSB business meeting. • Include sufficient time on the agenda at the NOSB meeting for the Board to discuss the proposal, listen to public comments, and make a recommendation. <p>At the NOSB meeting:</p> <ul style="list-style-type: none"> - The Subcommittee Chair or delegated lead reviewer for each Subcommittee will present the proposals at the NOSB meeting. The proposals are to be presented in the form of a seconded motion coming from the subcommittee, and the Chair will open the motion for discussion. After discussion board members will vote on the motion. - Voting may be by show of hands, roll call, or by use of modern voting devices. - The NOSB Secretary will record the votes of each NOSB member and the Chair will announce whether or not the motion passed. 	<p>Materials review information is located in Section VIII in the 2012 PPM draft and was moved to Section VI H in the 2015 draft PPM.</p> <p>2015 draft deleted:</p> <p>2015 draft added:</p> <ul style="list-style-type: none"> - Details on what is to happen “at the NOSB meeting.” <p>Substantive changes:</p> <ul style="list-style-type: none"> - Public comment period changed from 60 days to 30 days for petitions. - Changes specified in the 2015 draft with respect to how votes can be done. The 2015 draft adds the specificity that: “Voting may be by show of hands, roll call, or by use of modern voting devices.” Voting isn’t discussed at all in the 2012 PPM’s corresponding section. - The language regarding the NOSB secretary recording the votes was moved from the 2012 section titled “<u>PROCEDURES FOR THE MATERIALS REVIEW PROCESS FOR NOSB MEMBERS.</u>”
<p><u>PROCEDURES FOR HANDLING TECHNICAL REVIEWS</u></p> <p>The NOSB’s role involves reviewing specific materials; however, a petition could involve a wide range of topics. Although members of the Board represent several areas of the organic community and hold advanced degrees in different scientific areas, they might lack the expertise, or time, required to address the data needs of a petition. In such cases the Board has the option of requesting the assistance of third party experts and expecting from these experts a written technical review or report.</p> <p>Third party experts can consist of the following:</p> <ol style="list-style-type: none"> 1. Employees of the USDA such as AMS Science & 		<p>Movement/deletion tracking for this topic: “Procedures for handling technical reviews” generally moved from Section VIII in the 2012 draft to Section IV H in the 2015 draft. Pieces of this section are moved to various other places and heavily edited – the text is not the same but some of the same themes exist (see review of Section IV H above).</p> <p>Note that there is some language moved over more directly: the piece “basic principles that should be considered when dealing with a third party expert” in Section VIII of the 2012 draft is duplicated, in part, in Section IV H(3) in the 2015 draft (see below).</p>

<p>Technology, Agriculture Research Service, or other federal agencies with appropriate expertise, as needed</p> <p>2. Consultants or contractors.</p> <p>A committee should follow these steps in deciding the need for third party expert:</p> <ol style="list-style-type: none"> 1. Define if the committee has the expertise needed to address the questions related to the petition, mainly: (a) Impact on the environment, (b) Impact to human health, and (c) Sustainability and compatibility with organic principles. 2. If the committee does not have the expertise or resources (e.g., time), the Committee chair should make a request to the Chair of the Materials Committee for a third party expert specifying: 3. The third party expert's required background and level of expertise 4. Existence of potential sources of conflict that could result in biased reviews. <p>When requesting the assistance of a third party expert to evaluate a material, a committee must identify the main technical issues needed to be addressed including, but no limited to:</p> <ul style="list-style-type: none"> - All uses of the petitioned material beyond what the petitioner has requested - All uses of the petitioned material in combination with other material(s) that have been already approved on the same section of the National List - Interactions of the petitioned material, not addressed by the petitioner, and that may involve materials currently on the same section of the National List - All possible manufacturing methods for a petitioned material - Potential effects on public health and biodiversity - Environmental risks and hazards including, but not 	<p>3. Additional considerations concerning Technical Reviews</p> <p>Basic principles that should be considered when consulting with a third part expert:</p> <ul style="list-style-type: none"> • A Subcommittee cannot proceed with a recommendation to list a material if it is determined that there is insufficient valid scientific information on that material's impact on the environment, human health and its compatibility with organic principles. • The decision to request a third party expert needs to be made independently of the availability of funds. If there is a lack of funding to secure third party expert advice, the Subcommittee has the option to place the review of new petitions on hold. • The Subcommittee makes a determination on the 	<p>Substantive changes:</p> <ul style="list-style-type: none"> - Regarding the section on basic principles that should be considered when dealing with/consulting with a third party expert: the language giving oversight of using experts to the NOSB was cut; and whether a material <i>should</i> be put on hold when there is no funding was altered to softer language ("may"). - Addition of "The NOP will seek Technical Reviews from a range of experts" in the 2015 draft suggests increasing NOP oversight. <p>Policy Development Subcommittee comments and changed made in early 2016 in response to previous public comment:</p> <p>The PDS stated in its explanation that: "The PDS agrees that the procedures for disclosing conflicts of interest are important and need to be transparent as well as aligned with the contracting procedures of the federal government. It is clarified in section VI H 3 in the sixth bullet point that the contracting party will be named on the TR/TAPs and the conflict of interest protocols to be followed for the contracting of TR/TAPs."</p> <p>The changed language in the 2016 version is as follows (found in the 6th bullet point):</p> <p>"The NOP will seek Technical Reviews from a range of experts. The name of the contracted party will appear on the Technical Review. All Federal contracts, including those issued by USDA/NOP to Technical Report contractors, are governed by the Federal Acquisition Regulations (FAR). The FAR includes a "Subpart 3.11—Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions," which requires contractors to identify and prevent personal conflicts of interest for their covered employees. "Personal conflict of interest" means a situation in which a covered employee has a financial interest,</p>
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<p>limited to potential for developing pesticide resistance, or long-term effects on sustainability</p> <p>If required, the committee should conduct a final review of the technical report and complete an assessment on the quality of work performed by the third party expert.</p> <p>These are basic principles that should be considered when dealing with a third party expert:</p> <ul style="list-style-type: none"> - A committee cannot proceed with a recommendation on a material if it is determined that there is limited valid scientific information on that material's impact on the environment, human health and its compatibility with organic principles. - The decision to request third party expert needs to be made independent of the availability of funds. If there is a lack of funding to secure third party expert advice, the review of the material should be placed on hold. - Although the Board has the final word on the approval or rejection of a petition, the decision to request a third party expert is the responsibility of the committee reviewing the material. In some cases the Materials Committee can take the initiative to request a third party expert. The logic is that a material review is an issue assigned to a committee and it is up to the committee to decide on the need for a third party expert - The decision to define the expertise needed in the third party expert is the responsibility of the committee reviewing the material or issue. - To incorporate a diversity of opinions and to minimize the risk of bias, a committee should aim to work with a range of technical experts (individuals, or institutions). 	<p>completeness of the petition and whether a Technical Review is needed.</p> <ul style="list-style-type: none"> • The decision to define the expertise of the third party expert is the responsibility of the Subcommittee reviewing the material or issue. • To incorporate a diversity of opinions and to minimize the risk of bias, a Subcommittee may seek information from a range of technical experts (individuals or institutions). The Subcommittee may also ask questions in their posted proposals, in order to gain needed information from the public. • The NOP will seek Technical Reviews from a range of experts 	<p>personal activity, or relationship that could impair the employee's ability to act impartially and in the best interest of the Government when performing under the contract. Link: https://www.acquisition.gov/far/current/pdf/FAR.pdf"</p> <p>This change in the 2016 draft:</p> <ul style="list-style-type: none"> - Conflict checks of limited scope are now explicitly required for third-party experts. The language explicitly states that contractors must be named entities on Technical Reviews. It is not stated that they need to be named on TAPs, but those are rarely used anymore.
<p><u>HANDLING WITHDRAWALS OF PETITIONS BY THE PETITIONER</u></p> <p>When a petition involving a material is withdrawn by the petitioner, the Board should suspend its review and recommendation procedure. In the case of a petition not involving a material, Board members have the option of completing its review and providing a recommendation or</p>	<p>VI. Withdrawal of a petition by a petitioner</p> <p>A petition may be withdrawn at any point in the process, prior to the vote by Subcommittee. Once a Subcommittee develops a proposal, the outcome will be posted for public comment and the NOSB will vote at the next public meeting. When a petition is withdrawn by the petitioner prior to Subcommittee</p>	<p>Movement/deletion tracking for this topic: Moved from the beginning of Section VIII in the 2012 draft to Section VI. In the 2015 draft.</p> <p>2015 draft added:</p> <ul style="list-style-type: none"> - Timing for submitting for public comment (regardless of withdrawal of a petition).

<p>guidance.</p> <p>In the case a petition previously withdrawn is resubmitted, the Board should review it in the order it is received. This means that a withdrawn petition should be considered a completely new request and falls to the end of the queue of materials pending review.</p> <p>The petitioner can withdraw a petition at any moment during the process of review by the Board, public comment, or prior to the Board's voting on the petition.</p> <p>A petitioner should have the opportunity to withdraw a petition with the intent of improving it (e.g., conducting additional research) only. It is the hope of the Board that petitioners will not abuse this privilege with the intent of finding agreeable members in subsequent submissions.</p>	<p>proposal, the Subcommittee will suspend its review and recommendation procedure. Withdrawals will not be accepted after the subcommittee votes on a proposal.</p> <p>If a petition is re-submitted, the NOSB will review it in the order in which it was received. Thus, a re-submitted petition should be considered a new request and will be placed at the end of the queue of materials pending review.</p> <p>A petitioner has the opportunity to withdraw a petition with the intent of improving it (e.g., conducting additional research), and may also voluntarily submit supplemental information.</p>	<ul style="list-style-type: none"> - When withdrawals will not be accepted. <p>Substantive changes:</p> <ul style="list-style-type: none"> - That the petitioner is <u>only</u> allowed to withdraw a petition to <u>improve</u> it – the language in the 2015 draft is softened somewhat.
<p><u>TECHNICAL ADVISORY PANEL (TAP) CONTRACT PROCEDURES</u></p> <p>Statement of Work Request for Proposals to Perform Technical Advisory Panel Evaluation of Substances Petitioned for Inclusion on or Removal from the National Organic Program's National List of Allowed and Prohibited Substances.</p> <p>Agency Need See Statement of Work, 1.0 Background.</p> <p>1. Background The Organic Foods Production Act of 1990 (OFPA), as amended, requires the Secretary of Agriculture (Secretary) to establish a National List of Allowed and Prohibited Substances (National List). This list identifies the synthetic substances that may be used, and the nonsynthetic substances that cannot be used, by organic production and handling operations. The OFPA authorizes the National Organic Standards Board (NOSB) to develop and forward to the Secretary a recommended Proposed National List, and subsequent proposed amendments to it. The OFPA provides that persons may petition the NOSB to evaluate a substance for inclusion on or removal from the National List</p>		<p>Movement/deletion tracking for this topic: This procedure has not been used since 2005. There is a small notation for the ability to use a TAP in the 2015 version. Discussion is in to Section IV H in the 2015 draft. This is deleted/from Section VIII in the 2012 version.</p>

<p>The NOSB submitted a Proposed National List to the Secretary that was subsequently published on December 21, 2000, as part of the National Organic Program (NOP) final rule, 65 Fed. Reg. 80548-80684, (2000). Based on information supplied to the NOSB by trade associations, certification organizations and other organic industry sources, there are many substances currently used in organic production and handling that have not been evaluated by the NOSB for inclusion on the National List. Evaluations of these substances must be expedited to prevent the possible disruption of well-established and accepted production, handling, and processing systems.</p> <p>Section 2119 of the OFPA (7 U.S.C. 6518 (k)(3)) provides that the NOSB shall convene Technical Advisory Panels (TAP) to provide scientific evaluation of substances for inclusion on the National List. TAP evaluations assist the NOSB in evaluating substances being considered for addition to or removal from the National List. The NOP, on behalf of the NOSB, establishes contracts to conduct the TAP evaluations.</p>		
<p>2. Mission of USDA/AMS/NOP The mission of NOP is to establish national standards governing the marketing of certain agricultural products as organically produced. The NOP is assisted by the NOSB, which provides policy advice in carrying out the program, including advising the Secretary on substances for inclusion on or removal from the National List.</p> <p>The NOSB reviews information from various sources in evaluating substances for inclusion on or removal from the National List. Sources include TAP evaluations, the Environmental Protection Agency, the Food and Drug Administration, the National Institute of Environmental Health Studies, and public comment. The NOSB submits its recommendations, along with the results of the required evaluation and technical advisory panel evaluation for each substance, to the Secretary for consideration in accordance with the requirements of section 2118(d) of the OFPA (7 U.S.C. 6517(d)).</p> <p>3. Specific Task The contractor(s) shall furnish technical advisory panel</p>	<p>Evaluation. (7 USC 6518(m)) In evaluating substances considered for inclusion on the National List the NOSB shall consider:</p> <ol style="list-style-type: none"> 1) the potential of such substances for detrimental chemical interactions with other materials used in organic farming systems; 2) the toxicity and mode of action of the substance and of its breakdown products or any contaminants, and their persistence and areas of concentration in the environment; 3) the probability of environmental contamination during manufacture, use, misuse or disposal of such substance; 4) the effect of the substance on human health; 5) the effects of the substance on biological and chemical interactions in the agroecosystem, including the physiological effects of the substance on soil organisms (including the salt index and solubility of the soil), crops and livestock; 6) the alternatives to using the substance in terms of practices or other available materials; and 7) compatibility with a system of sustainable 	<p>Movement/deletion tracking for this topic The “Mission of the NOP” is not included in 2015 version – completely rewritten.</p> <p>Discussion of TR process in section IV H (and section IV in general).</p> <p>NOT INCLUDED in 2015 draft (as far as I can find). Statement: “The third party contractor must have technical expertise relevant to the petition, and will use the TR template provided by NOP.” In section IV H (“Step 3”).</p> <p>This section relating the OFPA was moved to Section III NOSB Administration in the 2015 draft. It is in Section VIII In the 2012 draft. The language is used the same but in the 2012 draft it only for crop and livestock production.</p> <p>Most of the contractor-specific text has been DELETED and is not reproduced elsewhere.</p>

<p>evaluations for crop production, livestock production, and processing substances submitted to the NOSB in response to petition notices, such as was published in the Federal Register on July 13, 2000, as well as other substances requiring evaluation as determined by the NOP.</p> <p>For crop and livestock production substances, the contractor(s) shall use the criteria in Section 2119 of the OFPA (7 U.S.C. 6518 (m)(I-7)). The criteria are:</p> <ul style="list-style-type: none"> • The potential of the substance for detrimental chemical interactions with other materials used in organic farming systems; • The toxicity and mode of action of the substance and of its breakdown products or any contaminants, and their persistence in the environment; • The probability of environmental contamination during manufacture, use, misuse or disposal of the substance; • Its effects on human health; • The effects of the substance on biological and chemical interactions in the agroecosystem; • The alternatives to using the substance; and, • The compatibility of the substance with a system of sustainable agriculture. <p>For processing substances, the contractor(s) shall use the criteria approved at the February 10, 1999, NOSB meeting. The criteria are:</p> <ul style="list-style-type: none"> • Processing aid or adjuvant cannot be produced from a natural source and has no organic ingredients as substitutes; • Manufacture, use, and disposal do not have adverse effects on the environment and are done in a manner compatible with organic handling as described in section 6513 of the OFPA; • The nutritional quality of the food is maintained and the material itself or its breakdown products do not have adverse effects on human health as defined by applicable Federal regulations; • The primary purpose is not as a preservative or used only to recreate/improve flavors, colors, textures, or nutritive value lost during processing, except in the latter case as required by law; • It is Generally Recognized as Safe (GRAS) by FDA when 	<p>agriculture.</p>	
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<p>used in accordance with Good Manufacturing Practices (GMP) and contains no residues of heavy metals or other contaminants in excess of FDA tolerances;</p> <ul style="list-style-type: none"> • Its use is compatible with the principles of organic handling; and, • There is no other way to produce a similar product without its use and it is used in the minimum quantity required to achieve the process. <p>4. Minimum Skills and Experience Requirements Contractor(s) shall utilize qualified individuals or organizations who have specialized knowledge of the petitioned substances. Contractor(s) must have demonstrable expertise in organic production and handling or scientific disciplines such as veterinary medicine, chemistry, food technology, microbiology or toxicology. Contractor(s) must be familiar with the requirement for technical advisory panels described in the Organic Foods Production Act of 1990.</p> <p>5. Place of Performance Contractor(s) shall perform all task related activity within the United States of America at specific locations determined by contractor(s). During the contract period, the contractor(s) shall travel at contractor(s)'s expense to NOSB meetings for the purpose of disseminating substance review findings to the NOSB and general public.</p> <p>6. Government Furnished Equipment and Facility None, except that the NOP shall provide Contractor(s), on a non-routine basis, with substance review petitions, ancillary documents or other applicable information in possession of NOP.</p> <p>7. Compensation The NOP may award multiple contracts for tasks outlined in this statement of work. Contractor(s) shall be compensated at a firm-fixed price rate not to exceed \$4,000.00 per substance reviewed. Total compensation shall not exceed \$100,000.00</p> <p>8. Period of Performance September 30, 2001 – September 30, 2002 (262 working days)(Holiday time off is at contractor(s)' discretion.)</p>		
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9. Scope of Performance

Phase 1: Data Gathering and Compilation (120 days)

Phase I is not to exceed 120 days for any one substance. During this phase the contractor(s) provider shall perform the following activities:

- Characterize [the] substance(s) and identify uses and applications;
- Determine whether [the] substance(s) are synthetic or non-synthetic (See 7.S.C. 6502 (21) for definition of synthetic);
- Determine [the] substance(s) chemical or biological composition and possible impact on human/animal health and the environment;
- Identify [the] substance(s) relevant toxicological studies, including ensuring substance does not contain residues of heavy metals or other environmental contaminants in excess of Food and Drug Administration Action Level or Environmental Protection Agency tolerances;
- Determine [the] substance(s) persistence in the environment;
- Determine [the] substance(s) effect on soil structure and ecology;
- Identify alternatives to the use of the substance(s);
- Determine [the] substance(s) historical use in organic production, processing and handling; and
- Determine [the] substance(s) status under OFPA and with other government agencies.

Additionally, within 45 days of commencement of Phase I, the contractor(s) must notify the NOP in writing of any substance(s) not appropriate for National List evaluation. Other substances for evaluation may be substituted upon agreement between the NOP, the NOSB, and the contractor(s).

Phase 2: Evaluation against Criteria (100 days)

Phase II is not to exceed 100 days for any one substance. The contractor(s) shall engage no less than three evaluators for each substance. No current member of the NOSB may serve as an evaluator. Evaluators may use data from all relevant sources. Evaluators shall make recommendations to the contractor(s) as to the substance’s status as synthetic or non-synthetic and whether, in either case, the substance should

<p>be added to or removed from the National List.</p> <p>Phase 3: Recommendation (42 days)</p> <p>Phase III is not to exceed 42 days for any one substance. Contractor(s) shall provide the NOP with a recommendation regarding each substance's suitability for inclusion on or removal from the National List. All data and analyses collected in Phase I and II will be forwarded to the NOP upon the completion of Phase III in accordance with the reporting requirements stated below.</p>		
<p>Evaluation Factors for Award</p> <p>The NOP may award multiple contracts for tasks outlined in this statement of work. Contractor(s) selection will be based on evaluation of proposals in accordance with the responses received to the criteria outlined in Section 4.0, Minimum Skills and Experience Requirements and Section 9.0, Scope of Tasks. Award will be made to that offeror whose combination of technical experience and cost represents the best value to the Government and is most advantageous (cost, and other factors considered), and which is within the available NOP resources.</p> <p>The NOP also reserves the right to reject any or all proposals received and/or request clarification or modification of proposals. The NOP reserves the right to determine a competitive range for negotiation based upon the technical and cost acceptability of proposals. In addition, the NOP reserves the right to award a contract without discussions. Cost evaluation will include an analysis of the total cost and cost elements (if applicable) to perform the required work. The total costs supplied by the offeror shall constitute the total firm- fixed unit price for that service or deliverable. Proposals that are unrealistic in terms of technical commitment, or unreasonably low or high in costs, will be deemed reflective of an inherent lack of technical competence or as indicative of a failure to comprehend the complexity involved in the contract requirements. Such may be grounds for rejection of the proposal.</p> <p>Other Evaluation Factors</p> <p>Technical proposals will be initially evaluated with respect to six (6) major factors for determination of the competitive range. Technical factors are listed in descending order of importance. The technical proposal is of greater importance</p>		<p>Movement/deletion tracking for this topic: Also deleted. See comment in row above this one. Supposedly these sections will appear in another document -- This needs to be confirmed to see if it is actually going to happen.</p>

<p>than the cost proposal; when technical proposals are relatively equal in technical merit, cost will increase in importance.</p> <p>Technical Factors: Factor 1 Overall Technical Approach; Proposed Methodology; Demonstrated Understanding of the Scope of Work and the Requirements Factor 2 Previous Demonstrated Experience and Past Performance Factor 3 Quality Control Factor 4 Capability and Experience of Key Personnel Factor 5 Project Management and Support Capability Factor 6 Reasonableness of Cost.</p> <p>Reporting Requirements Progress reports are due to the NOP each 60 days after the contract award date. A final report is due within 60 days of the end of the contract period. The contractor(s) shall forward five copies of the bi-monthly progress reports and the final report and all deliverables to the NOP in Washington DC. Documents should be addressed to: Richard H. Mathews, Program Manager, National Organic Program, USDA-AMS-TM-NOP, 1400 Independence Avenue, S.W., Room 4008-So., Ag Stop 0268, Washington, D.C. 20250-0200, Attention: Substance Evaluations.</p> <p>The narrative in the progress reports should refer back to the stated objectives and timeline of the original contract proposal. Beneath each objective, the objective's current status should be reported. Any substantive diversion from a stated objective, or any deviation from the proposed timeline should be explained. Only the activities required under the contract should be reported. At a minimum, the progress reports should also include the following:</p> <ol style="list-style-type: none"> 1. A short summary of the accomplishments for the reporting period; 2. Progress on completing individual project tasks; 3. The planned and actual schedules for task completion; 4. Projected accomplishments for the next reporting period; and, 5. Data on financial expenditures by task category. <p>Any deliverables required under the contract should be</p>		
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<p>submitted upon completion and addressed to: NOP Program Director, National Organic Program, USDA-AMS-TM-NOP, 1400 Independence Avenue, S.W., Room 4004-So., Ag Stop 0268, Washington, D.C. 20250-0268, Attention: Substance Evaluations.</p>		
<p><u>INFORMATION TO BE INCLUDED IN A PETITION</u></p> <p>Any person may petition to add a substance to or remove a substance from the National List of Allowed and prohibited Substances by submitting the information and following the procedures identified below.</p> <p><u>ITEM A</u> The petitioner should identify which of the following categories the substance is being petitioned for inclusion on or removal from the National List:</p> <ol style="list-style-type: none"> 1. Synthetic substance's allowed for use in organic crop production; 2. Nonsynthetic substances prohibited for use in organic cropproduction; 3. Synthetic substances allowed for use in organic livestock production; 4. Nonsynthetic substances prohibited for use in organic livestockproduction; 5. Nonagricultural (nonorganic) substances allowed in or on processed products labeled as "organic" or "made with organic (specified ingredients)"; or 6. Nonorganic agricultural substances not commercially available in organic form. <p><u>ITEM B</u> The petitioner must submit the following information:</p> <ol style="list-style-type: none"> 7. The substance's common name. 8. The manufacturer's name, address, and telephone number. 9. The intended or current use of the substance such as use as a pesticide, animal feed additive, processing aid, nonagricultural ingredient, sanitizer, or disinfectant. 10. A list of the crop, livestock, or handling activities for which the substance will be used. If used for crops or livestock, the substance's rate and method of application 		<p>Movement/deletion tracking for this topic: This section is not included in the 2015 draft. Discussion of "Prioritization of Petitions" is in section V in the 2015 draft. This section may be included in another document (again, this needs to be confirmed).</p>

<p>must be described. If used for handling (including processing), the substance's mode of action must be described.</p> <ol style="list-style-type: none"> 11. The source of the substance and a detailed description of its manufacturing or processing procedures from the basic component(s) to the final product. Petitioners with concerns for confidential business information can follow the guidelines in the Instructions for Submitting Confidential Business Information (CBI) listed in #13. 12. A summary of any available previous reviews by State or private certification programs or other organizations of the petitioned substance. 13. Information regarding EPA, FDA, and State regulatory authority registrations, including registration numbers. 14. The Chemical Abstract Service (CAS) number or other product numbers of the substance and labels of products that contains the petitioned substance. 15. The substance's physical properties and chemical mode of action including (a) chemical interactions with other substances, especially substances used in organic production; (b) toxicity and environmental persistence; (c) environmental impacts from its use or manufacture; (d) effects on human health; and, (e) effects on soil organisms, crops, or livestock. 16. Safety information about the substance including a Material Safety Data Sheet (MSDS) and a substance report from the National Institute of Environmental Health Studies. 17. Research information about the substance which includes comprehensive substance research reviews and research bibliographies, including reviews and bibliographies which present contrasting positions to those presented by the petitioner in supporting the substance's inclusion on or removal from the National List. 18. A "Petition Justification Statement" which provides justification for one of the following actions requested in the petition: <ol style="list-style-type: none"> A. <i>Inclusion of a Synthetic on the National List, §§ 205.601, 205.603, 205.605(b)</i> <ul style="list-style-type: none"> • Explain why the synthetic substance is necessary for 		
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<p>the production or handling of an organic product.</p> <ul style="list-style-type: none"> • Describe any non-synthetic substances, synthetic substances on the National List or alternative cultural methods that could be used in place of the petitioned synthetic substance. • Describe the beneficial effects to the environment, human health, or farm ecosystem from use of the synthetic substance that support its use instead of the use of a non-synthetic substance or alternative cultural methods <p><i>B. Removal of a Synthetic From the National List, §§ 205.601, 205.603, 205.605(b)</i></p> <ul style="list-style-type: none"> • Explain why the synthetic substance is no longer necessary or appropriate for the production or handling of an organic product. • Describe any non-synthetic substances, synthetic substances on the National List or alternative cultural methods that could be used in place of the petitioned synthetic substance. <p><i>C. Inclusion of a Prohibition of a Non-Synthetic, §§ 205.602 and 205.604</i></p> <ul style="list-style-type: none"> • Explain why the non-synthetic substance should not be permitted in the production of an organic product. • Describe other non-synthetic substances or synthetic substances on the National List or alternative cultural methods that could be used in place of the petitioned substance. <p><i>D. Removal of a Prohibited Non-Synthetic From the National List, §§ 205.602 and 205.604</i></p> <ul style="list-style-type: none"> • Explain why the non-synthetic substance should be permitted in the production of an organic product. • Describe the beneficial effects to the environment, human health, or farm ecosystem from use of the non-synthetic substance that supports its use instead of the use of other non-synthetic or synthetic substances on the National List or alternative cultural methods. <p><i>E. Inclusion of a Non-Synthetic, Non-Agricultural</i></p>		
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<p><i>Substance Onto the National List, § 205.605(a)</i></p> <ul style="list-style-type: none"> • Explain why the substance is necessary for use in organichandling. • Describe non-synthetic or synthetic substances on the National List or alternative cultural methods that could be used in place of the petitioned syntheticsubstance. • Describe any beneficial effects on the environment, or human health from the use the substance that support its use instead of the use of non-synthetic orsynthetic substances on the National List or alternative cultural methods. <p>F. Removal of a Non-Synthetic, Non-Agricultural Substance From the National List, § 205.605(a)</p> <ul style="list-style-type: none"> • Explain why the substance is no longer necessary for use in organichandling. • Describe any non-synthetic or synthetic substances on the National List oralternative cultural methods that could be used in place of the petitioned substance. <p>G. Inclusion of a Non-Organically Produced Agricultural Substance Onto the NationalList, § 205.606</p> <p>[Continues...]</p>		
<p><u>PRIORITY OF PETITIONS GUIDELINE</u></p> <p>Prioritization</p> <p>National List materials petitions received and deemed sufficient by the NOP / NOSB will be prioritized by the Materials Committee Chair for consideration as follows:</p> <p>1. Petitions to Remove a Material From the National List:</p> <p>a. A petition to remove a material presently on the National list that raises serious health, environmental, or regulatory concerns, including petitions to reconsider previous decisions, will be given the highest priority - Priority 1, above all other petitions in the queue of the reviewing committee (Crops, Handling, or Livestock).</p> <p>b. A petition to remove a material presently on the National list not based on serious health, environmental, or regulatory concerns, but based on other new information, such as commercial availability status, would be assigned a Priority 2, behind Priority 1</p>	<p>V. Prioritization of Petitions</p> <p>Petitions received and deemed eligible and sufficient by the NOP/NOSB will be prioritized as follows:</p> <p>Priority 1: A petition to remove a material presently on the National list that raises serious health, environmental, or regulatory concerns, including petitions to reconsider previous decisions, will be given the highest priority - Priority 1, above all other petitions in the queue of the reviewing Subcommittee (Crops, Handling, or Livestock).</p> <p>Priority 2: A petition to remove a material presently on the National list not based on serious health, environmental, or regulatory concerns, but based on other new information, such as commercial availability status, would be assigned a Priority 2, behind Priority 1 petitions, but above any petitions to list materials that are in the queue of the reviewing Subcommittee</p>	<p>Movement/deletion tracking for this topic: This whole section moved from the 2012 draft (Section VII – near the end) to Section V in the 2015 draft.</p> <p>NOTE: the forms titled “NOSB COMMITTEE RECOMMENDATION” and “EVALUATION CRITERIA FOR SUBSTANCES ADDED TO THE NATIONALLIST”, and “NOSB RECOMMENDED DECISION FORM” are not included in the 2015 draft.</p> <p>Substantive changes:</p> <p>Priorities appear unchanged, the formatting is just changed (there is a 1 “a” and “b” instead of a 1 and 1). The 2012 draft was confusing in this sense and the 2015 draft appears to be clarifying that through the formatting change.</p>

<p>petitions, but above any petitions to <u>list</u> materials that are in the queue of the reviewing committee (Crops, Handling, or Livestock). This priority assignment would include any removal petitions requesting reconsideration of previous board decisions, if the resubmitted petition contains substantive new information to warrant reconsideration.</p> <p>2. Petitions to Add a Material to the National List: a. A petition to add a material to the National List will be considered by the reviewing committee (Crops, Handling, or Livestock) in the chronological order it is received, and will be designated as Priority 3</p> <p>3. Petitions to Reconsider a Material for Addition to the National List: a. A petition to reconsider adding a material that had previously been rejected by a board vote would be given the lowest priority - Priority 4, and would go to the bottom of the committee (Crops, Handling, or Livestock) queue of petitioned materials. Petitions for listing a substance that had been previously rejected by the board must contain substantive new information to warrant reconsideration.</p> <p>This prioritization guideline is only that, a guideline. When situations occur beyond the control of the reviewing committee, such as, but not limited to, a delay in the delivery of a Technical Review for a petitioned substance, the committee chair must exercise his or her judgment in the possible reassignment of priorities and workload to make best use of resources to advance petition recommendations.</p>	<p>(Crops, Handling, or Livestock). This priority assignment would include any removal petitions requesting reconsideration of previous board decisions, if the resubmitted petition contains substantive new information to warrant reconsideration.</p> <p>Priority 3: A petition to add a material to the National List will be considered by the reviewing Subcommittee (Crops, Handling, or Livestock) in the chronological order in which it was received, and will be designated as Priority 3.</p> <p>Priority 4: A petition to reconsider adding a material that had previously been rejected by a Board vote would be given the lowest priority - Priority 4, and would go to the bottom of the Subcommittee (Crops, Handling, or Livestock) queue of petitioned materials. Petitions submitted for reconsideration must contain substantive new information to warrant reconsideration.</p> <p>This prioritization guideline is only that, a guideline. When situations occur beyond the control of the reviewing Subcommittee, such as, but not limited to, technical report budgetary constraints, or a delay in the delivery of a technical review for a petitioned substance, the work agenda may require adjustment by the NOSB and NOP.</p>	
<p><u>PROCEDURES FOR THE MATERIALS REVIEW PROCESS FOR NOSB MEMBERS</u></p> <ol style="list-style-type: none"> 1. Upon receipt of the TAP reviews each member should read the report prepared by the contractor, along with the submitted petition, additional information and recommendations of the contracted panel of experts. 2. Questions or clarification of the review may be answered by further review of the literature provided by the TAP contractor or by the Chair of the committee contacting the contractor directly. Questions regarding 		<p>Movement/deletion tracking for this topic: Some of the meaning here was moved (and heavily edited and in pieces) to section IV H in the 2015 draft from Section VIII in the 2012 draft (after the forms). <u>Much of the details of this section were deleted and a lot of it was moved and re-incorporated.</u></p>

<p>the process can be directed to the Chair of the Materials Committee.</p> <p>3. The materials are either directed to the processing, crops or livestock committee(s) depending on the specified use(s) of the material as stated in the petition. NOSB members assigned to those committees shall conduct a thorough review of the material and vote on whether it is synthetic or nonsynthetic, and then if it should be allowed or prohibited for specific use as either a crop, livestock or processing material. Materials may be followed by an annotation which restricts their use. Recommended annotations applicable to the material must be voted on by committee.</p> <p>4. Committee draft recommendations will be submitted to the NOP at least thirty (30) days prior to the next NOSB meeting where the material will be considered.</p> <p>5. The Chair of each committee will present the Board with the committee’s written votes and recommendations during the Materials Review process at the NOSB meeting. The recommendation should come in the form of a motion which must be seconded by an NOSB member to move forward. The process will follow Robert’s Rules of Order in which the Chair would open the motion for discussion. The Chair shall ask if any Board members have conflicts of interest. After discussion board members will vote on the motion.</p> <p>6. NOP staff will record the votes of the each NOSB member and announce whether or not the motion passed.</p> <p>7. If the motion fails the Board Chair asks for a new motion and the procedure is repeated until a final motion is passed by a 2/3 majority.</p>		
<p><u>SUNSET REVIEW PROCESS</u></p> <p>Sunset is a regulatory process for determining the continued listing of a material already approved or prohibited on the National List for use in organic agriculture production and handling. It is not used to petition to add a new substance (nor is it used to change an existing annotation) <i>or new uses of a listed substance</i>. If the review and renewal process is not</p>	<p>VII. Sunset Review Process</p> <p>The Organic Foods Production Act of 1990 (OFPA) authorizes a National List of Allowed and Prohibited Substances (7 U.S. C. Section 6517). Sections 6517 (e) mandates a Sunset Provision as follows:</p> <p>“No exception or prohibition in the National list shall</p>	<p>Movement/deletion tracking for this topic: Moved from Section VIII in the 2012 draft to Section VII in the 2015 draft. This section is <u>significantly changed</u>.</p> <p>NOTE: “<u>Chart 1: Sunset Review – NOP Posts an ANPR</u>” and the other sunset charts are not included in the 2015 draft. The forms are located in a different document in the 2015 version. In the 2012</p>

concluded by the expiration date, the use of the material will become prohibited. (Since sunset is defined as the reviewing of regulations to ensure the continued relevance and not the creation of new regulation, all substance must be renewed as listed. If there is a need to consider changing an annotation or moving a material from one list to another, this may be accomplished through the existing procedures for petition.)

Since the sunset review process is an assessment of National List substances to ensure their continued compliance with regulatory standards, the NOSB may determine that new restrictions in the form of annotations are necessary given changes in use patterns and scientific understanding. An annotation to expand the use of a substance does not fall within the purview of the sunset process and must only be considered through the petition process.

The Organic Foods Production Act of 1990 (OFPA) authorized a National List of Allowed and Prohibited Substances (Section 6517). Sections 6517 (e) mandates a Sunset Provision as follows:

“No exception or prohibition in the National list shall be valid unless the National Organic Standards Board has reviewed such exemption or prohibition as provided in this section within 5 years of such exemption or prohibition being adopted and the Secretary has reviewed such exemption or prohibition.”

The National List that was implemented in October 21, 2002 contained over 200 substances. The first sunset review of listed materials was completed in October, 2007. Decisions made through the Sunset review must be transparent, non-arbitrary, based on the best current information and in the interest of the organic community and public at large.

Steps followed in Sunset Process

Not all listed materials reach sunset status at the same time, but the review process includes these steps:

1. A public notice is placed in the Federal register (Advance Notice of Proposed Rule Making or ANPR of the pending

be valid unless the National Organic Standards Board has reviewed such exemption or prohibition as provided in this section within 5 years of such exemption or prohibition being adopted and the Secretary has renewed such exemption or prohibition.”

The NOP published a Federal Register notice on Sept. 16, 2013 (78 FR 56811) describing current procedures for sunset review. Through the sunset review process, the NOSB can recommend to USDA the removal of substances based on adverse impact on human health, the environment, or other criteria under the Organic Foods Production Act (OFPA). If upon review the NOSB believes the substance no longer fits the criteria for an exemption or prohibition, the NOSB can recommend (by a decisive two thirds vote, 7 USC Section 6158 (i)) to remove the substance from the National List. After the NOSB has completed this "sunset" review, the USDA must renew or remove the substances on the National List to complete the process. All substances under sunset review will be considered over two NOSB meetings, to provide ample opportunity for public notice and comment.

A. Steps in the Sunset Review Process (See Member Guide for forms used in these steps.)

Step 1: The NOSB Subcommittees submit the initial **Sunset List Summary** for posting which may include requests for specific information. The NOP posts the list as well as the NOSB Meeting Announcement in the Federal Register which invites comments, at least **30 days prior** to the first public meeting on these sunset substances.

Step 2: The public submits written comments, which are analyzed by Subcommittees.

Step 3 (Public Meeting #1): Subcommittees summarize background and public comment & receive oral comment.

Step 4: Subcommittees analyze written and oral comments from Meeting #1 and prepare a **Preliminary**

version they are included in the PPM.

Substantive changes:

- 60 days versus 30 days for public comment (as noted elsewhere). This likely will affect the time available for public comment.
- Subcommittees now have the responsibility of the sunset review process (the 2012 PPM had the appropriate committee review the material at sunset and give their recommendation to the Board).
- Subcommittees are not tasked with having to “verify scientific evidence and claims made during public comment...” in the 2015 draft (due to deletions).
- The NOSB will vote on sunset motions only if a motion opposing relisting is proposed by the subcommittee. If the subcommittee does not want to oppose relisting, then no motion will come from the subcommittee, and the NOSB will not vote. Because a subcommittee will be allowed to decide to relist a material in sunset – if the subcommittee does not produce a proposal opposing relisting, it is deciding to relist that material by default. Subcommittee meetings must be open to the public under FACA.
- A motion opposing relisting will require a 2/3 majority to pass.
- The NOSB may not add annotations to a listing during sunset in the new 2015 draft.
- The NOP will act to relist a substance in the absence of any board action.

In the 2016 revision the new Sunset policy was not altered. Instead, the PDS only commented that “The PPM should reflect the current operating procedures of the NOSB.”

<p>sunset of the listed materials. The public has 60 days after the publication date to provide written comment (see Chart 1 below). The committee may request a third party technical review in anticipation of scientific evidence and claims likely to be made during public comment to the ANPR.</p> <ol style="list-style-type: none"> 2. Public comments are collected and forward to the NOSB (see Chart2). 3. The appropriate NOSB committee begins review of the material with the intent of providing a recommendation to the entire Board for the material’s removal, renewal, <i>or renewal with the addition of an annotation.</i> The review is conducted based on “Force of Evidence” as presented by Board members, public comments, and scientific data from other sources (see Chart 3). This includes the original recommendation from the Board to list. The committee may request a third party technical review, if needed, to verify scientific evidence and claims made during public comment to the ANPR. 4. The reviewing NOSB committee provides its recommendation to the full Board and the public no less than 60 days prior to the Board Meeting which would include the following: 5. Simple motion to remove, add, or amend an annotation, resulting in the restriction or clarification of the use of a material (if applicable). 6. Simple motion to renew the existing listing. 7. At the public NOSB business meeting, the NOSB hears additional public comment, discusses the force of evidence, and votes on the committee’s recommendation. 8. The NOP reviews the NOSB recommendation and accompanying documentation and publishes a proposed rule to review the National List. The public has 90 days after the publication date to comment. All comments are made available on the NOP website. <p><i>The NOP will review public comment and draft the final rule. The final rule will proceed through interagency (i.e. OGC , OMB, and departmental) and congressional review, and upon receiving clearance from the appropriate parties, the NOP</i></p>	<p>Review that may include a motion to remove the substance from the National List. The NOP publishes the next meeting announcement in the Federal Register, inviting comment on the Preliminary Reviews.</p> <p>Step 5: Written public comments submitted and analyzed by Subcommittees</p> <p>Step 6 (Public Meeting #2): Subcommittees present Preliminary Review, receive oral comment, and discuss the proposal with the full Board. When presented to the full NOSB, reviews will contain a motion and second taken in Subcommittee. Motions for removal based on the Preliminary Review are voted on by the full Board, and require a decisive two-thirds (2/3) majority to pass.</p> <ul style="list-style-type: none"> ○ At Meeting #2, the NOSB completes the Sunset Review and submits the final documents to the NOP. <p>Step 7: AMS reviews the NOSB Sunset Review and considers rulemaking action for any recommended removals. This will include a proposed rule open for public comment before a final rule amendment is published.</p> <p>Step 8: AMS issues Federal Register Notice announcing renewal of applicable substances.</p> <p>Note: this is a regulatory process for determining whether materials already approved or prohibited on the National List should be removed. Due to regulatory process constraints, it is not possible to modify existing listings, add new uses of a listed substance during sunset review, or change annotations. If there is a need to consider changing an annotation or re-classifying a material, a subcommittee may request to develop a separate proposal that will be reviewed separately from the sunset review process. Decisions made through the Sunset review should be transparent, non- arbitrary, based on the best current information and in the interest of the organic community and public at large.</p>	<p>However, some minor changes were made in the 2016 version that do affect how it is read and possibly how the PPM changes.</p> <p>A. Steps in the Sunset Review Process (See Member Guide for forms used in these steps.)</p> <p>Step 1: The NOSB Subcommittees submit the initial Sunset List Summary for posting which may include requests for specific information. The NOP posts the list as well as the NOSB Meeting Announcement in the Federal Register which invites comments, at least 30 days prior to the first public meeting on these sunset substances.</p> <p>Step 2: The public submits written comments, which are analyzed by Subcommittees.</p> <p>Step 3 (Public Meeting #1): Subcommittees summarize background and public comment & receive oral comment.</p> <p>Step 4: Subcommittees analyze written and oral comments from Meeting #1 and prepare a Preliminary Review that includes a motion to remove the substance from the National List. The NOP publishes the next meeting announcement in the Federal Register, inviting comment on the Preliminary Reviews, which are posted on the NOP website.</p> <p>Step 5: Written public comments submitted and analyzed by Subcommittees.</p> <p>Step 6 (Public Meeting #2): Subcommittees present Preliminary Review, receive oral comment, and discuss the proposal with the full Board. When presented to the full NOSB, reviews will contain a motion and second taken in Subcommittee. Motions for removal based on the Preliminary Review are voted on by the full Board, and require a decisive two-thirds (2/3) majority to pass.</p> <ul style="list-style-type: none"> ○ At Meeting #2, the NOSB completes the Sunset Review and submits the final documents to the NOP. <p>Step 7: AMS reviews the NOSB Sunset Review and considers rulemaking action for any recommended</p>
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<p>will publish the final rule in the Federal Register. The final rule process is illustrated in Chart 4.</p>		<p>removals. This will include a proposed rule open for public comment before a final rule amendment is published.</p> <p>Step 8: AMS issues Federal Register Notice announcing renewal of applicable substances.</p> <p>The pertinent changes include:</p> <ul style="list-style-type: none"> A stricter requirement regarding the subcommittee's duties for Sunset. The subcommittee <u>makes</u> a motion to remove the substance from the National List.
<p><u>HANDLING TECHNICAL ERRORS AFTER AN ITEM HAS BEEN PLACED IN THE FEDERAL REGISTER</u> [Entire section deleted.]</p> <p>...</p>		<p>Substantive changes:</p> <p>It's not immediately clear how this deletion will affect the NOSB going forward, but this section in the 2012 version could be used to correct uncertain terms and meanings for products before they become problematic.</p>
<p>Appendix C - DUTIES OF THE DESIGNATED FEDERAL OFFICER</p> <p>The Designated Federal Officer assigned to the National Organic Standards Board and its committees, under the Federal Advisory Committee Act (U.S.C. App.2) and its implementing regulations (41 CFR Part 101-6.10), is the National Organic Program's Program Director. The Program Director:</p> <ol style="list-style-type: none"> Must approve or call the meeting of the NOSB; Must approve the agenda; Must attend the meetings; Shall adjourn the meetings when such adjournment is in the public interest; and Chairs the meeting when directed by the Secretary of Agriculture or the Secretary's designee. 	<p>G. Designated Federal Officer</p> <p>FACA and its implementing regulations (5 U.S.C. App. 2) govern the roles and responsibilities of NOSB management including meeting coordination and facilitation. The Designated Federal Officer (DFO) is the individual designated to implement advisory committee procedures. The AMS/NOP Deputy Administrator is the DFO for the NOSB.</p> <p>The NOP Deputy Administrator or designee acts as the Designated Federal Officer (DFO) during public meetings of the NOSB and meetings of the Executive Subcommittee. The Advisory Committee Specialist (ACS) or designee acts as the DFO for all other NOSB Subcommittee meetings. The DFO holds the authority to chair meetings when directed to do so by the official to whom the advisory committee reports.</p> <p>The DFO's duties include but are not limited to:</p> <ul style="list-style-type: none"> Approving and calling the meeting of the NOSB Approving the semi-annual meeting agenda Attending the semi-annual meeting 	<p>Movement/deletion tracking for this topic:</p> <p>"Designated Federal Officer" moved from appendix C in the 2012 Draft to Section III G in the 2015 draft.</p>

	<ul style="list-style-type: none"> • Adjourning the meetings when such adjournment is in the public interest 	
Appendix D - PARLIAMENTARY PROCEDURE AT A GLANCE		Movement/deletion tracking for this topic: Moved from Apdx. D in the 2012 draft to a short section in VIII. C. of the 2015 draft. This chart is not included in the new draft – less guidance, more rule. This chart is supposedly included in the “MEMBER GUIDE” document.
Appendix E - BASIC CHEMISTRY		Movement/deletion tracking for this topic: This section will supposedly be included in a different document.
[Chart in Appendix D – regarding Robert’s Rules of Order.]	<p>C. PARLIAMENTARY PROCEDURES The NOSB adopted the use of Robert’s Rules of Order in March 1992, but modified its use as only a non-mandatory guide in May 1993. Roberts Rules may be adapted to meet the special requirements of a group. Because the NOSB is also subject to the OFPA, FACA and USDA, a designated NOP staff member may act as an informal Parliamentarian to advise the Chair.</p> <p>D. NOSB DELIBERATIONS AND RECOMMENDATIONS Board actions include but are not limited to: adoption of a proposal as presented by the Subcommittee, non-substantive amendments* and then adoption of a proposal, rejection of a proposal, or referral of the proposal back to Subcommittee for further development.</p> <p>* Substantive vs. non-substantive amendments. The following criteria shall be considered when determining if a proposal will be amended at the NOSB meeting, or must be referred back to Subcommittee and resubmitted for the next Board meeting. The DFO or designee will determine whether a proposed amendment to a proposal is substantive.</p> <ul style="list-style-type: none"> • The extent to which a reasonable person affected by the recommendation would have understood that the published proposal would affect his or her interests • The extent to which the subject of the 	<p>Movement/deletion tracking for this topic: The 2012 draft includes a chart based on Robert’s Rules for parliamentary procedures in appendix D. This chart is not utilized at all in the 2015 draft, though some charts may be included in a different document. The policy for using Robert’s Rules is changed in the 2015 draft.</p> <p>This section feels poorly organized and edited in the 2015 draft – the formatting is confusing.</p> <p>Substantive changes:</p>

	<p>recommendation or the issues determined in it are substantially different from the subject or issues involved in the proposal</p> <ul style="list-style-type: none"> • The extent to which the effects of the recommendation differ from the effects of the proposal <p>Procedure for submitting final recommendations to NOP: Within 30 days after the completion of the NOSB meeting all final recommendations must be submitted to the NOP using the following procedure:</p> <p>Each proposal lead prepares the following documents:</p> <ul style="list-style-type: none"> ○ A recommendation cover sheet (See Member Guide). The cover sheet should contain all appropriate information, including the vote recorded at the meeting. (The NOP can provide the voting record) ○ The proposal that was voted on at the meeting <p>The proposal leads will forward the documents to the appropriate Subcommittee Chair who will review them for accuracy and completeness, sign and date them, and then forward them to the Board Chair and the DFO/ACS.</p>	
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2015 PPM – additions.

This table briefly illustrates the larger chunks of text added in the 2015 draft that do not have a clear connection to text in the 2012 draft.

Also note that the 2015 draft states the following will be included in another document (they were removed from the 2012 draft, as shown in the table above):

The following sections have been removed from the PPM, and will be added to the NOSB Member Guide:

- A. *NOP COI MEMO*
- B. *PARLIAMENTARY PROCEDURES AT A GLANCE*
- C. *BASIC CHEMISTRY*
- D. *FORMS AND TEMPLATES*

<p>2015 PPM</p>	
<p>II. AUTHORIZATION</p> <p>The National Organic Standards Board (NOSB) is authorized under Section 2119 of the Organic Foods Production Act of 1990 (OFPA) (7 U.S.C. 6519), part of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACT Act). The OFPA specified that the NOSB be established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2.</p> <p>A. ORGANIC FOODS PRODUCTION ACT OF 1990</p> <p>The Organic Foods Production Act of 1990 (OFPA) authorizes the Secretary of Agriculture to establish a National Organic Standards Board (NOSB) in accordance with the Federal Advisory Committee Act 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 OFPA (OFPA, 7 U.S.C. Section 6518(a)).</p> <p>B. FEDERAL ADVISORY COMMITTEE ACT</p> <p>The Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and its implementing regulations (41 CFR Part 101-6.10) govern the creation, operation, and termination of advisory committees in the Executive Branch of the Federal Government. The National Organic Standards Board (NOSB) is a Department of Agriculture (USDA) non-discretionary advisory committee required by the Organic Foods Production Act of 1990, as amended.</p> <p>C. NATIONAL ORGANIC STANDARDS BOARD CHARTER</p> <p>The Federal Advisory Committee Act requires advisory committees to have an official charter prior to meeting or taking any action. An advisory committee charter is intended to provide a description of an advisory committee’s mission, goals, and objectives. The NOSB charter is renewed every two years as a requirement of FACA. The NOSB charter describes the purpose of the NOSB 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 OFPA.”</p>	<p>Section tracking: Section II in the 2015 draft – additions of the authorizations for the NOSB.</p>
<p>B. Nomination and appointment process (NOSB recommendation adopted June 10, 1999)</p> <p>NOSB members are appointed by the Secretary of Agriculture to a five year term. The terms are staggered and the USDA periodically requests nominations to fill upcoming vacancies. Selection criteria include the following:</p> <ul style="list-style-type: none"> • A general understanding of organic principles, and practical experience in the organic community, particularly in the sector for which the person is applying • Demonstrated experience in the development of public policy such as participation on public 	<p>Section tracking: Section III B in the 2015 draft.</p>

<p>or private advisory boards, boards of directors or other comparable organizations</p> <ul style="list-style-type: none"> • Participation in standards development and/or involvement in educational outreach activities • A commitment to the integrity and growth of the organic food and fiber industry • The ability to evaluate technical information and to fully participate in Board deliberation and recommendations • The willingness to commit the time and energy necessary to assume Board duties • Not currently serving (or have been elected to serve) on another USDA advisory committee or research and promotions council/board during your term • Not registered as a lobbyist with the federal or state government <p>NOSB members serve without compensation. NOSB members are reimbursed by the USDA for approved travel and associated lodging expenses as determined by official federal government guidelines and regulations. In accordance with USDA policies, equal opportunity practices are followed in all appointments to the NOSB. Membership shall include to the extent possible the diverse groups served by USDA, including minorities, women, and persons with disabilities. The USDA prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program.</p>	
<p>F. NOSB WORK AGENDAS</p> <p>The NOSB Work agenda is a list of projects for the upcoming semester or year for each of the Subcommittees. Agendas are developed via collaboration between the NOSB and the NOP and are revised based on AMS-NOP requests, NOSB priorities, and public comment. Work agendas are developed based on the following criteria:</p> <ul style="list-style-type: none"> • Within Scope: Item must be within the scope of OFPA. NOP must have a clear sense of the intent and scope of the work agenda item. The public may petition additions or deletions from the National List that will be added to the work agenda. In addition, the public may submit comments to the NOSB or write to the NOP for potential additions to the work agenda. For the NOSB, work agenda items may emerge from discussions on current issues. • USDA and NOP Priority: Item must be a priority for the USDA/NOP; 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 <p>The NOSB work agenda establishes Subcommittee work for the upcoming semester or year, and is developed through the following process:</p> <ol style="list-style-type: none"> 1. NOSB Subcommittees submit to the Executive Subcommittee draft work agenda items based 	<p>Section tracking: Section III F – NOSB WORK AGENDAS was compared to 2012 SECTION VIII PROCEDURES OF THE NOSB, COMMITTEE WORK PLANS (in the chart above). The part stating “Below are descriptions of common NOSB work agenda items and the corresponding NOP and NOSB responsibilities.” At the end of this block was cannibalized some from the 2012 draft. However a large portion of this text is newly added.</p> <ul style="list-style-type: none"> - The NOP can block an agenda item that the NOP does not understand. - The requirement that an “[i]tem must be a priority for the USDA/NOP; something that the NOP is able to implement in a reasonable timeframe” prevents the NOSB from initiating actions (for example, annotations) or embarking on long-term projects (for example, contaminated inputs).

<p>on AMS-NOP requests, NOSB priorities, and requests from public comment.</p> <ol style="list-style-type: none"> 2. The NOP and Executive Subcommittee review the draft NOSB work agenda. The content and schedule will be reviewed on an ongoing, as needed basis. 3. NOP approves NOSB workagenda. <p>Work agenda items should be prioritized accordingly:</p> <ul style="list-style-type: none"> • Substance evaluations (e.g., petitions, 5-year sunset review) • NOP requests to the NOSB • NOSB requests to NOP • Other projects 	
<p>I. ADDITIONAL ADMINISTRATIVE ITEMS</p> <ul style="list-style-type: none"> • Official to whom the Committee Reports The NOSB shall provide recommendations to the USDA Secretary through the Designated Federal Officer, the Agricultural Marketing Service’s NOP Deputy Administrator. • Staff Support The NOP shall provide administrative support to the NOSB through the work of an Advisory Committee Specialist, who is a permanent NOP staff member. The NOP may also provide technical support to the NOSB based on need and available resources. • Estimated Number and Frequency of Meetings The NOSB meets approximately twice per year for public meetings. Most NOSB Subcommittees meet approximately twice a month by conference call. • Recordkeeping Records of the NOSB shall be handled in accordance with General Records Schedule 26, Item 2 or other approved agency records disposition schedule. These records shall be available for public inspection and copying, subject to the Freedom of Information Act, 5 U.S.C. 552. Information about the NOSB is available online at: http://www.ams.usda.gov/rules-regulations/organic/nosb <p>While meeting transcripts are not required under FACA, the NOP invests in transcripts to support the transparency of NOSB meetings and to support subsequent rulemaking activities. The NOP also issues a short meeting summary, which is required by FACA, after each biannual meeting that summarizes the key issues discussed, and the outcome of voting.</p> <p>Advisory committee documents must be available for public inspection and copying until the committee ceases to exist.</p> <ul style="list-style-type: none"> • Freedom of Information Act (FOIA; 5 U.S.C. 552). Under this Act, the public may request 	<p>Section tracking: Found in the 2015 draft at Section III I.</p> <p>Substantive effects:</p> <ul style="list-style-type: none"> - According to the BP’s comments, this 2015 text “provides for public access to documents and communications according to the provisions of FOIA instead of FACA... However, FACA requires much prompter response to public requests, and the PPM should cite FACA instead.” - Only the <i>outcome</i> of voting is shared, rather than who cast each vote. <p>MOST RECENT CHANGES. From the Policy Development Subcommittee comments and changes made in February 2016 (in response to previous public comment): “<i>The PDS agrees that the PPM should align and comply with other governing documents the PDS has revised Section III I Additional Administrative Items bullet fourth and fifth bullet points to include FACA disclosure requirements along with FOIA.</i>”</p> <p>The new text in the 2016 revision is as follows (under the bullet titled “recordkeeping”): “Recordkeeping Records of the NOSB shall be handled in accordance with General Records Schedule 26, Item 2 or other approved agency records disposition schedule. These records shall be available for public inspection and copying, subject to the Freedom of Information Act, 5 U.S.C. 552. Information about the NOSB is available online at: http://www.ams.usda.gov/rules-regulations/organic/nosb While meeting transcripts are not required under FACA, the NOP provides transcripts or meeting notes to support the transparency of NOSB meetings and to support subsequent rulemaking activities. Minutes of each NOSB meeting, as approved by the DFO and the NOSB Chair and Secretary, shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions, and the</p>

<p>documents and other information pertaining to USDA actions. NOSB communications with USDA are subject to these requests, with some exemptions. Some information is routinely exempt from disclosure in or otherwise protected from disclosure by statute, Executive Order or regulation; is designated as confidential by the agency or program; or has not actually been disseminated to the general public and is not authorized to be made available to the public upon request. When there is a FOIA request for information, the USDA will review all relevant information and determine what qualifies for release, then provide it to the requestor.</p>	<p>outcome of voting. FACA requires (5 U.S.C. App. Section 10 (b)): “Subject to section 552 of title 5, United States Code, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.” Any request for FACA records must be made to the NOP. While requests for FACA Board records do not have to go through the formal FOIA request process, those records must be reviewed by AMS/NOP before release, to determine whether any FOIA exemptions apply (e.g., personal information, business proprietary information). In addition, OFPA itself requires that no confidential business information be released, so emails and documents need to be reviewed before release to ensure that this requirement is met.</p> <p>Substantive changes in the 2016 revisions:</p> <ul style="list-style-type: none"> - Addition of “or meeting notes” could provide for summaries of meetings to be utilized instead of transcripts. - The addition of what minutes contain delineates a more complete picture (including persons present, description of what was discussed & concluded, and the outcome of voting). - The addition of what FACA requires (in addition to the previously included FOIA information) provides a more complete representation of the laws concerning the NOSB’s actions and recordkeeping.
<p>E. PUBLIC COMMENT The NOP and NOSB encourage public comment and work collaboratively to increase opportunities for greater participation by a broad range of people, employing various modes of communication and modern technology whenever possible. Individuals may present oral comment at either a pre-meeting electronic webinar or at the in-person NOSB meeting. Before Public Meetings: Written comment: All members of the public are encouraged to submit public comment in writing according to the Federal Register Notice. Written submissions: allow NOSB members the opportunity to read comments in advance, eliminate or decrease the need for paper copies to be distributed during the meeting and allow each NOSB member to review and analyze data and information well ahead of the public meeting and possible voting.</p>	<p>Movement/deletion tracking for this topic: Section regarding the public comment to NOSB meetings (in-person) moved from Section VI in the 2012 draft to Section VIII E in the 2015 draft. Some of this information is filtered piecemeal throughout the 2012 draft. The 2015 draft combines it in Section VIII E.</p> <p>NOTE: the section on “in-person” comments at NOSB meetings is compared to the text in the 2012 draft above.</p>

Oral Comments

Oral comments: May be received via a virtual meeting/webinar. Public notice of such electronic meetings will be included in the Federal Register notice announcing the public meeting. Such electronic pre-meetings may allow individuals more time to present their data or information, reduce the need to attend the public meeting in person, reduce our carbon footprint, and give the NOSB more time to absorb the information. Such electronic meetings shall be recorded and made available to the public and to NOSBmembers.

Comments at In-Person Public Meetings:

- All persons wishing to comment at NOSB meetings during public comment periods must, in general, sign-up in advance per the instructions in the Federal Register Notice for the meeting. Persons requesting time after the closing date in the Meeting Notice, or during last minute sign-up at the meeting, will be placed on a waiting list and will be considered at the discretion of the NOP working closely with the NOSB Chair and will depend on availability of time.
- All presenters are encouraged to submit public comment in writing according to the Federal Register Notice. Written submissions allow NOSB members the opportunity to read comments in advance electronically, and decreases the need for paper copies to be distributed during the meeting.
- Persons will be called upon to speak according to a posted schedule. However speakers should allow for some flexibility. Persons called upon who are absent from the room could potentially miss their opportunity for public comment.
- Time allotment for public comment per person will be four (4) minutes, with the options of reducing to a minimum of three (3) and extending to a maximum of five (5) minutes at the discretion of the NOP, working closely with the NOSB Chair in advance of the meeting.
- Persons must give their names and affiliations for the record at the beginning of their public comment.
- Proxy speakers are not permitted.
- Public comments may be scheduled according to topic.
- Individuals providing public comment shall refrain from making any personal attacks or remarks that might impugn the character of any individual.
- Members of the public are asked to define clearly and succinctly the issues they wish to present before the Board. This will give NOSB members a comprehensible understanding of the speaker's concerns.

Policy for Public Communication between NOSB Meetings (Adopted April 11, 2013)

The NOSB and NOP seek public communication outside of Board biannual meetings and public comment periods to inform the NOSB and NOP of stakeholders' interests, and to comment on the NOSB's and NOP's work activities yeararound.

IX. REVISIONS TO THE POLICY AND PROCEDURES MANUAL

THIS SECTION WAS NEWLY ADDED IN THE FEBRUARY 2016 REVISIONS.

<ul style="list-style-type: none">• The PDS will review the PPM each year and, working in collaboration with the NOP, determine if any updates are necessary.• Proposed changes will be subject to review and approval by the NOP and the full NOSB.	<p>This was the PDS' response to a comment stating that "changes to the PPM need to be approved by the full board."</p>
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