

NOSB REPORT

May 2009

Key Agenda Items at May 2009 Meeting

- Report from the National Organic Program
- Remarks from Kathleen Merrigan, Deputy Secretary of Agriculture
- Methionine Task Force Update
- Materials Working Group Update
- Personal Care
- Biodiversity
- Voluntary Retail Certification
- Peer Review System
- Nanotechnology
- Materials Reviews
- Committee Workplans

Purpose of this report:

As part of its service to its members, OTA attends NOSB meetings, which are held two to three times per year. This report summarizes the NOSB meeting held May 4-6, 2009 and provides an overview of the agenda topics, public commentary, and key decisions made by the NOSB. Additionally, the report alerts members to issues slated for discussion and debate at the following NOSB meeting.

The items included in this report represent recommendations that the NOSB developed and reviewed at its May 2009 meeting. If accepted by the Board, recommendations pass onto the National Organic Program, which determines the final form of the NOSB recommendations (which, at times, vary significantly from the original recommendations). OTA members are alerted to steps in rule-making through OTA's *News Flash* or other member services.

Mission of the NOSB:

The National Organic Standards Board (NOSB) was created through the Organic Foods Production Act, a subsection of the 1990 Farm Bill. The Board was initially charged with the task of assisting the Secretary of Agriculture in the development of standards for substances to be used in organic products and in the implementation of the National Organic Program. As such, NOSB has emerged as a key player in the growth and development of the organic industry.

Structure of the NOSB:

The 15-person citizen advisory board brings together volunteers from across the organic community and around the United States. It is made up of four farmers/growers, two handlers/processors, one retailer, one scientist, three consumer/public interest advocates, three environmentalists, and one USDA accredited certifying agent. Each of these individuals participates in NOSB committees, with areas of focus ranging from crops and handling to materials and livestock.

Format of NOSB Meetings:

Although the specific content of each meeting changes, the overall format of NOSB meetings is the same. Day 1 begins with a call to order, followed by the secretary's report, which includes a vote on the transcripts and voting records of the previous meeting. When that report has concluded, the Acting Director of the National Organic Program, Barbara Robinson, offers her own report. The rest of the day is dedicated to public comment, primarily from topics on the meeting agenda.

Day 2 consists of presentations by various NOSB committees. Committee members discuss the progress they have made since the last NOSB meeting, and the full Board discusses the matters at hand. They also review relevant public comments.

On Day 3, each of the committees presents a final review of their agenda items. In some instances, this results in a vote on a given recommendation, whereas in other cases, it yields a call for further investigation. In either case, committee work plans are identified.



Report from the National Organic Program

Barbara Robinson, Acting Director of the National Organic Program (NOP), began her report by acknowledging the death of Beth Hayden, who has worked with NOP for many years. Ms. Hayden died in a glider accident earlier in the week.

After making this announcement, Robinson informed the National Organic Standards Board (NOSB) that the budget for the NOP increased by \$630,000 for FY '09, and that she expects NOP to double in size by 2010. This year's increase raises the budget to over \$6 million.

She also announced that in light of budgetary increases, NOP is working to expand the size of its staff. "We will hire as many people as we can afford," she added.

Additionally, Robinson said she has sent a memo to USDA, requesting that NOP be managed as its own division within the Agricultural Marketing Service (AMS). From her perspective, NOP has evolved to the point where it can "stand on its own," and should therefore have its own office within USDA where it can receive "more recognition and be given more clout." She also noted that USDA has been receptive to these ideas and is giving "serious consideration" to her request for the development of a division dedicated to organic. (See the report on remarks by Deputy Secretary Kathleen Merrigan below).

Robinson continued her report by stating that the Inspector General's office continues its review of NOP. She also highlighted the work that has been done by NOSB Executive Director Valerie Frances and others to get USDA's new "People's Garden" up and running.

Additionally, Robinson provided an update on several regulatory issues on which NOP has been working. She indicated that NOP has received over 19,000 comments on the pasture rule from the organic industry, and that NOP expects to publish a rule later this year. She also noted that NOP is working on the origin of livestock rule.

Robinson informed NOSB that NOP is planning a retreat the first week in July. The purpose of this retreat will be to conduct strategic planning, and it will include NOSB Chair Jeff Moyer, Audit, Review, and Compliance (ARC) representatives, NOP appeals staff, and representatives from USDA's Office of General Counsel (OCG).

Robinson also acknowledged in this section of her update the frustration that the NOSB experiences around NOP's slow response to its (NOSB's) recommendations. She noted that since 2002, NOSB has made 65 non-material recommendations, and that NOP has not, to date, worked on them. She thus proposed that NOSB "call a time out" and consider organizing a meeting between NOP and NOSB to identify NOSB's top priorities. Such a meeting could take the form of a symposium, or it could be included as part of NOSB's regular meetings, she added.

In her concluding remarks, she offered the following updates:

- The ARC branch received peer review for National Institute of Standards and Technology (NIST) accreditation.
- NOP is leaning toward accepting OTA's Liquid Fertilizer Task Force recommendation if certifiers can verify an auditable traceback plan.
- Canadian equivalency agreement negotiations are going well. There is a mutual intention to sign an agreement before the new Canadian standard goes into effect.

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Report from the National Organic Program

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- NOP is working with the Office of Science and Technology to develop a database of petitioned substances. NOP will also work with ASTA to develop a portion of the database for non-compliances to be used to report variances on commercial availability.
- NOP is looking for more nominations to the NOSB; there are two producer slots, one retailer slot, and one handler slot available.
- NOP is working on clarifying guidance on flavors and is looking to affidavits with strong punitive action for violations.
- NOP is also working on a protocol for renewal dates on certificates.

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Remarks from Kathleen Merrigan, Deputy Secretary of Agriculture

Longtime organic supporter and current Deputy Secretary of Agriculture Kathleen Merrigan made an unexpected appearance at the May 2009 NOSB meeting. Having been greeted by a warm round of applause, Merrigan offered several remarks on the new administration's perspective toward organic. She highlighted the role that Secretary of Agriculture Thomas Vilsack has played in raising awareness about organic and sustainable agriculture. She cited USDA's new "People's Garden" as a key example of his efforts. "We can thank many people for the existence of this great symbol of support for organic and sustainable ag, but Vilsack was the driving force behind it," Merrigan noted.

Merrigan also highlighted USDA's decision to develop and distribute a census specific to organic as evidence of the new administration's interest in and support for organic. The census, which was sent out to organic farmers and farmers transitioning to organic, is expected to generate data that Merrigan says will help inform USDA funding decisions. "It will provide us insights about organic that have never been available before and give USDA the information it needs to orient USDA programs and funds appropriately."

Merrigan continued her remarks by sharing her intentions to work with USDA to develop a division that is specific to organic. As she explained, "NOP has grown considerably since it first began, as have its demands on USDA. The time has come for it to stand on its own." Her goal is elevate NOP to the same level as Transportation and Marketing, of which NOP has traditionally been a part. As part of this initiative, Merrigan intends to have a senior executive service employee run the NOP at the division level.

Building on the enthusiasm generated by these remarks, Merrigan made her most important announcement of the day: \$50 million in new Environmental Quality Incentives Program (EQIP) funds to encourage organic production. The funds will amount to \$20,000 per year for each organic producer and will be allocated nationwide using the same formula as is used for all other EQIP programs. However, due to the fact that they are part of the FY '09 budget, these funds will only be available via a special sign-up between May 11 and May 29. "We're in a use it or lose it situation," explained Merrigan, who encouraged organic farmers and organic farmers in transition to submit their applications as soon as possible. "The window of opportunity is small, so the organic community needs to take advantage of it now," Merrigan added.

Merrigan offered additional good news to NOSB meeting attendees by announcing that she would hold office hours at her office at USDA from 4-8 p.m. "I want people to feel like they have ownership of a corner office on the Mall," she said, adding that she "wants to be the spokesperson for organic" and serve as "sustainability central." (OTA policy staffer Tom Hutcheson met with her



Remarks from Kathleen
Merrigan, Deputy Secretary
of Agriculture

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that evening, expressing thanks for a number of actions she has taken and informing her of OTA's work in food safety).

During a time for questions, she stated that "there is still a lot of standards work for NOSB to do," and that organic is "entering an era of enforcement and equivalency." She also noted that she is unlikely to ask Congress for additional funding at this time, but is open to the possibility of asking for additional budgetary allocations for organic. Additionally, she made clear that she is committed to making all budgetary decisions be fully transparent.

Merrigan also commented on the changing scale of U.S. agriculture. "There is currently an upsurge of small farms and large operations, but the middle is disappearing." Additionally, she noted that the Obama administration's positive attitude toward local food systems gives her hope for the future of sustainable agriculture. "President Obama's desire to reinvigorate these systems and the First Lady's concern with healthy eating are important steps toward the growth and support for this approach" toward agricultural management.

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Methionine Task Force Update

Dave Martinelli presented an update on the Methionine Task Force's (TF). He reported that the TF has been working with SunOpta to plant high methionine corn for trials, and that it continues to look at naturally produced methionine to determine whether it can be made on a large scale. Currently, the TF is investigating alfalfa as a methionine source. According to Martinelli, the data collected thus far show promise. No difference has been found in rates of mortality, egg weights, ammonia levels, feathering or cannibalism between birds fed with alfalfa-based methionine and other forms of this material. A new trial is underway to study the behavior of birds fed with alfalfa-based methionine.

Dan Giacomini, chair of NOSB's Materials Committee, commended the TF on the aforementioned work, but made clear that the "free use" of synthetic methionine is not likely.

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Materials Working Group Update

NOSB enlisted the help of the Materials Working Group (MWG), chaired by Kim Dietz of Smuckers Natural Foods and Gwendolyn Wyard of Oregon Tilth and made up of representatives from all sectors of the organic industry, in its latest effort to analyze and refine the definition of synthetic. MWG presented this work at the May 2009 NOSB meeting. In its presentation, MWG offered new definitions of the following terms: natural source, extract, manufacture, formulate, generic, substance, chemical change, and naturally occurring biological process. The group also presented a decision tree for NOSB's use in evaluating substances and summarized its work in the following three points:

- Clarification is crucial for consistency in material review
- Definitions should encourage the development of organic food, ingredients, and feed, and
- Changes to regulation should be minimized and resolution must be consistent with the Organic Foods Production Act (OFPA).



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Issue:

Personal Care

Next steps:

NOSB's Compliance, Accreditation, and Certification Committee has committed to developing a recommendation based on its May 2009 discussion document and will present it at the Fall 2009 NOSB meeting.

Background

On August 23, 2005, USDA extended its regulations to cover the organic claims made by cosmetic/personal care products that meet the composition requirements for organic food. Since then, the number of cosmetic/personal care products has significantly increased, and new, private standards have been developed. As a result, consumers have lacked clarity and confidence around the application of organic claims to cosmetic and personal care products. NOSB has thus chosen to bring the topic of organic cosmetic/personal care products to public attention by developing a discussion document, with the hope of initiating a process that brings "this product class into coordinated existence with organic food products under the NOP"

Discussion

A wide range of opinions were voiced in response to the discussion document on personal care that was presented. Some members of the organic community, such as David Bronner of Dr. Bronner's Soaps, expressed appreciation for NOSB's efforts to tackle the issue of personal care and encouraged the Board to develop a recommendation that could be used by NOP to formulate an official organic standard for personal care products. Others, like Tim Kapsner of Aveda, opposed NOSB's efforts to become involved in regulating this sector. From his perspective, this job would better be left to those in the cosmetics industry, whom he feels are better equipped to make decisions about what organic cosmetics standards should be. Still others, like Joe Smillie of QAI, proposed that NOSB recommend modifying and/or adopting existing personal care standards, such as those developed by NSF, rather than developing entirely new ones. OTA called for the formation of a Task Force to sort through these and a number of other issues.

In addition, Barbara Robinson called for the development of a "made with organic ingredients" seal to help close the door further to non-compliant products.

Decision

Having reflected on the public's oral and written comments, NOSB's Compliance, Accreditation, and Certification Committee has committed to developing a recommendation based on its May 2009 discussion document and will present it at the Fall 2009 NOSB meeting.



NOSB REPORT

Issue:

Biodiversity

Decision:

The NOSB unanimously approved recommending the revised guidance document.

Next Steps:

NOSB's recommendation will be sent to NOP for consideration and review.

Background

Maintaining and improving biodiversity has long been a priority of the organic agricultural system. What has historically been unclear is how biodiversity should be integrated into and implemented using organic systems plans. Working closely with such organizations as Wild Farm Alliance (WFA) and the National Center for Appropriate Technology (NCAT), NOSB has taken up these issues and attempted to provide guidance on biodiversity conservation.

At NOSB's May 2008 meeting, its Joint Crops and Compliance, Accreditation, and Certification Committee reviewed sections of the NOP rule directly pertaining to biodiversity conservation and determined that the requirements outlined in those sections were neither fully nor consistently being implemented. On the heels of that meeting, the joint committee issued a discussion paper entitled "Implementation of Biodiversity Conservation in Organic Agriculture Systems." NOSB received more than 60 comments on this paper at its November 2008 meeting, which the committee has since used to develop a guidance document recommendation outlining actions producers, inspectors, certifiers, NOP and NOSB can take to ensure that biodiversity conservation standards are properly applied and met.

Discussion

Comments were generally favorable toward the Joint Crops and Compliance, Accreditation, and Certification Committee's recommendation for guidance on the implementation of biodiversity conservation in organic agriculture systems. Those commenting on the subject, such as Parry Lovera of Food and Water Watch, expressed their appreciation for the Board's efforts to identify biodiversity as a priority. Concerns were raised, however, about how biodiversity conservation would effectively be evaluated as part of a regular inspection. NOSB member Katrina Heinze, for example, observed that measuring biodiversity is inherently difficult, given that biodiversity varies from place to place. Joe Smillie agreed, adding that he felt it would be difficult to "draw hard and fast rules." NOSB member Dan Giacomini also expressed reservations about the role of biodiversity in the accreditation process. As he put it, "I am concerned about biodiversity becoming a primary factor in this type of review."

Decision

The NOSB unanimously approved recommending the revised guidance document.



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Issue:

Voluntary Retail Certification

Next Steps:

The Compliance, Accreditation, and Certification Committee hopes to have a recommendation on retail certification to present at the November 2009 NOSB meeting.

Background

Historically, retailers have been exempt from organic certification. As such, there has been no guidance regarding requirements retailers must meet to become certified. In an effort to overcome this problem, some retailers voluntarily sought certification as processors and handlers, for whom certification requirements are defined.

Since 2002, voluntary retail certification has sometimes been applied using a multi-site construct for retailers with multiple sites. This construct allowed such retailers to develop and implement an Internal Control System (ICS) that was centrally managed and executed at 100% of the sites. At the same time, it called for NOP-accredited certifiers to perform inspections and issue organic certification to compliant retailers.

In the fall of 2008, voluntarily certified organic retailers were notified by their certifiers that they were out of compliance and that inspection of all retail sites must be implemented immediately. Retailers reacted strongly to this information, given the time and costs associated with achieving 100% inspection. NOP responded to retailers' concerns by issuing an extension and granting them additional time to become compliant. Nonetheless, many retailers have chosen not to pursue organic certification to avoid both the time and money needed to achieve it and the threats posed by noncompliance.

As a means to support and promote retailers' pursuit of voluntary certification, NOSB's Compliance, Accreditation, and Certification Committee has identified the need to create consistent guidelines and regulations specific to this sector. From its perspective, such consistency and structure "will help to sustain more participation in the voluntary retailer certification program, and will support marketing the end message of USDA organic to the consumer."

Discussion

As with other items on the May 2009 agenda, the topic of multi-site retail certification drew a wide range of responses from meeting attendees. The bulk of oral comments opposed such certification on the grounds that it grants certification on the basis of sampling rather than an evaluation of each retail outlet in question. Will Fantle, co-director of the Cornucopia Institute, articulated this perspective in his comment, stating that all stores receiving organic certification should be subject to annual inspection. He also expressed concern about the development of a "two-tier system," whereby small and large retail operations would bear the cost of certification disproportionately, if multi-site certification were permitted. Sam Welsch of OneCert also argued against multi-site certification. From his standpoint, retailers engage in many activities for which they can be certified (i.e.: handling), and therefore do not need a special class of certification.

More favorable responses touting the benefits of multi-site certification (i.e.: cost reduction) were received in the form of written comments.

Decision

The Compliance, Accreditation, and Certification Committee hopes to have a recommendation on retail certification to present at the November 2009 NOSB meeting.



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Issue:

Peer review

Decision:

NOSB voted unanimously to accept the Compliance, Accreditation, and Certification Committee's recommendation on peer review systems, which calls for NOP to receive regular reviews by such outside organizations as the American National Standards Institute (ANSI).

Background

The Organic Foods Production Act (OFPA) of 1990 called for a peer review panel, whose role would be to aid in the accreditation of certification agents. In 2001, NOSB's Accreditation Committee issued a recommendation that gave greater definition to this role, stating that the focus of the peer review panel would be to evaluate the NOP accreditation program rather than the applicants to it. In 2003, NOP contracted with the American National Standards Institute (ANSI) to conduct a peer review audit of NOP certifier accreditation operations as a means to provide NOP managers with the information necessary to improve the quality of NOP service, support compliance with international accreditation protocols, and meet the requirement for peer review in OFPA. In 2005, NOSB issued another recommendation in which it commended NOP for its work with ANSI and identified areas in which NOP could improve its accreditation programs. Since then, neither NOSB nor ANSI has had involvement in these programs.

Questions continue to arise around NOP's compliance with the section of OFPA that addresses peer review panels. As such, NOSB has decided to re-examine its role in the NOP accreditation system with the hope of bringing clarity to the peer review process and aiding NOP in its accreditation work.

Discussion

Several comments were made on the guidance on a peer review system laid out by NOSB's Compliance, Accreditation, and Certification Committee. Jim Pierce of Oregon Tilth highlighted the importance of peer review, but stated that such a function "should not be left in NOSB's hands."

Other concerns focused on the need for oversight in the peer review process that extends beyond NOSB itself. Mike Sligh of the National Organic Coalition argued in favor of such oversight, urging NOSB to continue to work with the National Institute of Standards and Technology (NIST) to achieve third-party verification of its materials reviews. Peggy Miars of CCOF offered a similar opinion, suggesting that NOSB contract with NIST for peer reviews.



