

**Agricultural Marketing Service (AMS) | National Organic Program (NOP)  
National Organic Standards Board (NOSB) New Member Training Agenda  
Wednesday, February 8, 2017**

**Location: USDA South Building - Washington DC - AMS Conference Room 3074**

<b>TRAINING AGENDA</b>		
<b>Time</b>	<b>Content</b>	<b>Notes: Slide presentation #/handout/web links</b>
Online self-paced	<b>Organic 101 and 201</b> (Can review either online with voiceover, or in pdf) <a href="http://www.ams.usda.gov/services/organic-certification/is-it-an-option">http://www.ams.usda.gov/services/organic-certification/is-it-an-option</a>	
Online self-paced	<b>Sound &amp; Sensible Organic Certification:</b> <ul style="list-style-type: none"> <li>○ <a href="#">Overview video</a></li> </ul> <b>The Road to Organic Certification</b> <ul style="list-style-type: none"> <li>• <a href="#">Interactive Video: “The Road to Organic Certification”</a></li> </ul>	
8:30 AM	<b>Arrive at USDA South building</b> - AMS Conference Room 3074. See instructions above for getting into the USDA building	
9:00 - 9:30 AM	<b>AMS Welcome and Introductions</b>	AMS Administrator AMS Deputy Administrator McEvoy
9:30 - 10:00 AM	<b>National Organic Program Overview:</b> Brief overview of NOP and its divisions, and where NOSB fits in. Delivered by: Paul Lewis	<b>PP_001 NOP Overview</b> Handouts: <a href="#">001a AMS Org Chart</a> <a href="#">001b NOP Org Chart</a> <a href="#">001c Program Handbook TOC</a>
10:00 - 10:15 AM	<b>Brief Overview of Organic Foods Production Act (OFPA)</b> Delivered by: Mark Bradley	<b>PP_002 OFPA</b> Handouts: <a href="#">002 OFPA (7 USC Ch 94 Organic)</a>
10:15 - 10:45 AM	<b>Overview of USDA Organic Regulations</b> Delivered by: Mark Bradley	<b>PP_003 USDA OrganicRegs</b> Handouts: <a href="#">003 Organic Regulations TOC only</a>
10:45 - 11:00 AM	<b>Break</b>	
11:15 - 11:30 AM	<b>Brief Overview of Federal Advisory Committee Act (FACA):</b> Delivered by: Paul Lewis	<b>PP_004 FACA</b> <a href="#">Link to FACA website</a>
11:30 - 1:00 PM	<b>National List</b> Delivered by: Lisa Brines <ul style="list-style-type: none"> <li>• Review National List petition process</li> </ul>	<b>PP_005 NL Petition Process</b> Handouts: <a href="#">005a National List Petition Guidelines - 2016</a> 005b_NOP 3005-1 OFPA Exemption Checklist 005c_NOP 3005-2 Petition Guidelines Checklist

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11:30-1:00 PM continued	<b>Sunset Process</b> Delivered by: Lisa Brines <ul style="list-style-type: none"> <li>Review Sunset Process and Templates</li> </ul>	<b>PP_006 Sunset Process</b> Handouts: <a href="#">006a_NOP_5611_SunsetDates</a> - Pg. 1 only <a href="#">006b_Sunset Process</a> - 2013
1:00 PM	<b>Lunch - (USDA Cafeteria).</b> Meet and greet with AMS/NOP staff over lunch. USDA cafeteria has a good variety of food options. Credit cards accepted.	
2:00 – 2:30 PM	<b>Rulemaking</b> Delivered by: Shannon Nally Yanessa <ul style="list-style-type: none"> <li>Key elements of rulemaking process (Getting a rule completed and through clearance (OGC and OBPA).</li> </ul>	<b>PP_007 Rulemaking Process</b>
2:30 – 4:30 PM	<b>Proposals, Technical Reports, Public Comments</b> Delivered by: Jessica Walden <ul style="list-style-type: none"> <li>Best practices for writing proposals and recommendations</li> <li>Best practices for evaluating technical reports</li> <li>Best practices for analyzing public comments</li> </ul>	<b>PP_008 BestPractices - Props Recs TRs PubComm</b> Handouts: 008a_TR Samples Handout 008b_Crops Pet Mat Prop Template 2-24-16 008c_LS HS Pet Mat Prop Template 2-24-16
4:30 – 5:30 PM	<b>NOP and NOSB Operational Guidelines</b> (Charter, Nominations, Work agendas, Subcommittees, Public Meetings, FOIA Review, <a href="#">NOSB website</a> ). Delivered by: Jessica Walden, Michelle Arsenault	<b>PP_009 NOP NOSB OperatingGuides</b> Handouts: 009a_ <a href="#">NOSB Charter 2016</a> 009b_ 2016 NOSB Member Guide 009c_Work Agenda example 009d_SC AssignCallSched Jan2017 009e_NOSB meeting agenda example_Internal
5:30 – 6:00 PM	<b>Summary and Closing Discussion</b>	

<b>Webinar Date: TBD</b>	<b>Content</b>	
30 minutes <b>(Entire NOSB)</b>	<b>USDA Organic Working Group (OWG) and Secretary's Organic Guidance</b> - TBD	TBD
(1 hour) <b>(Entire NOSB)</b>	<b>Ethics and Conflict of Interest</b> Stuart Bender	During March 10 ES call



# National Organic Standards Board Training: National Organic Program Overview

Agricultural Marketing Service | National Organic Program  
February 2017





- NOP: Overview, Cross-Cutting Activities
- Accreditation and International Activities
- Compliance and Enforcement
- Standards

# The National Organic Program (NOP)



- **Mission:**  
Ensure the integrity of USDA organic products in the United States and throughout the world
- **Vision:**  
Organic Integrity from Farm to Table,  
Consumers Trust the Organic Label
- **Core Role:**  
Implement the Organic Foods Production Act and the USDA organic regulations

# What Does the Program Do?



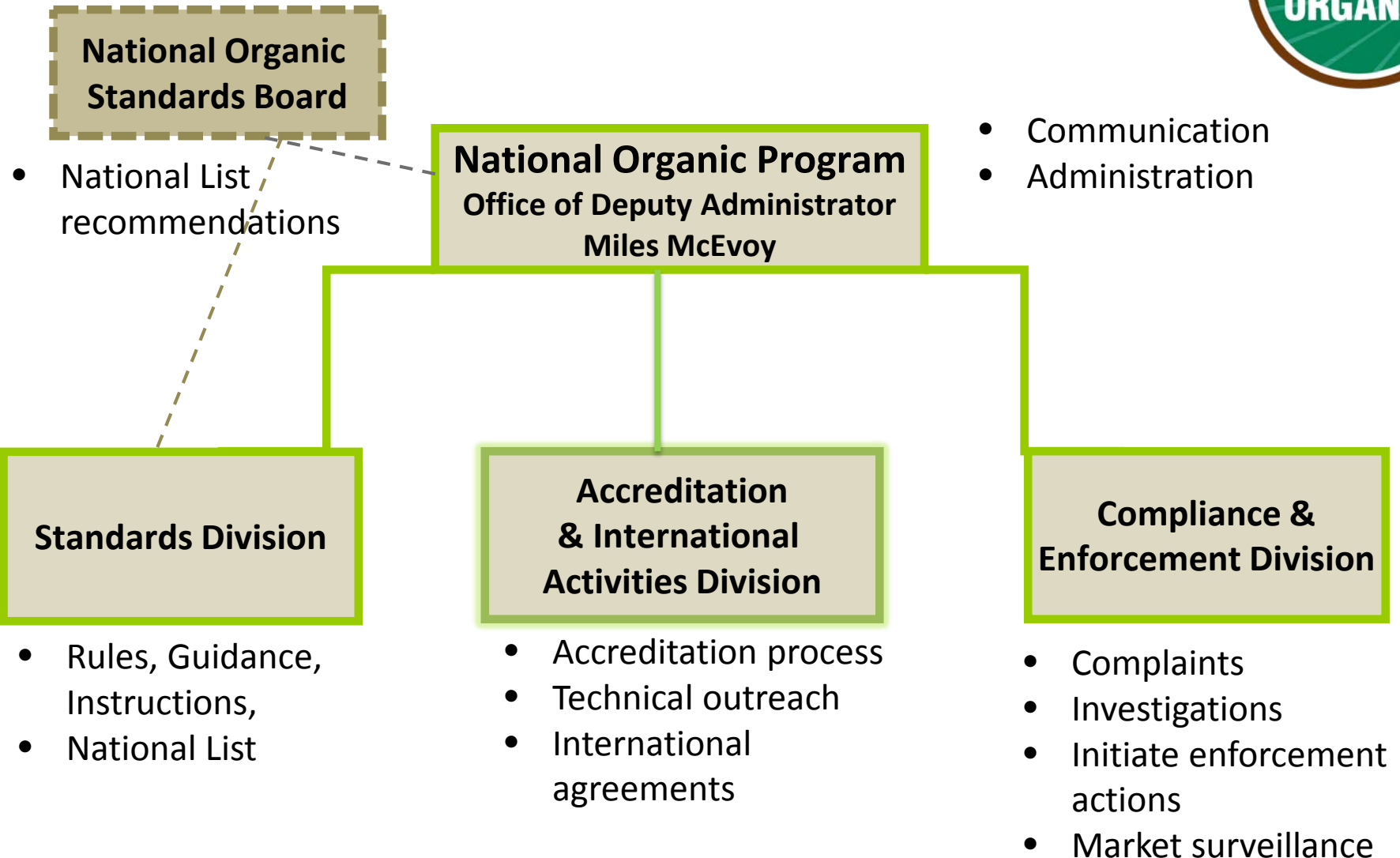
- Develop and maintain organic standards
- Accredite and oversee third party organic certifying agents, who review, inspect, and approve organic producers and handlers
- Implement international organic trade agreements
- Investigate complaints of violations (example: uncertified farmer selling food as organic, selling conventional food as organic)
- Manage the National Organic Standards Board
- **Oversight Responsibility:**
  - 81 certifying agents worldwide
  - 31,000 + certified organic operations
  - \$43 billion in U.S. organic sales (2015)

# Quick Facts About NOP



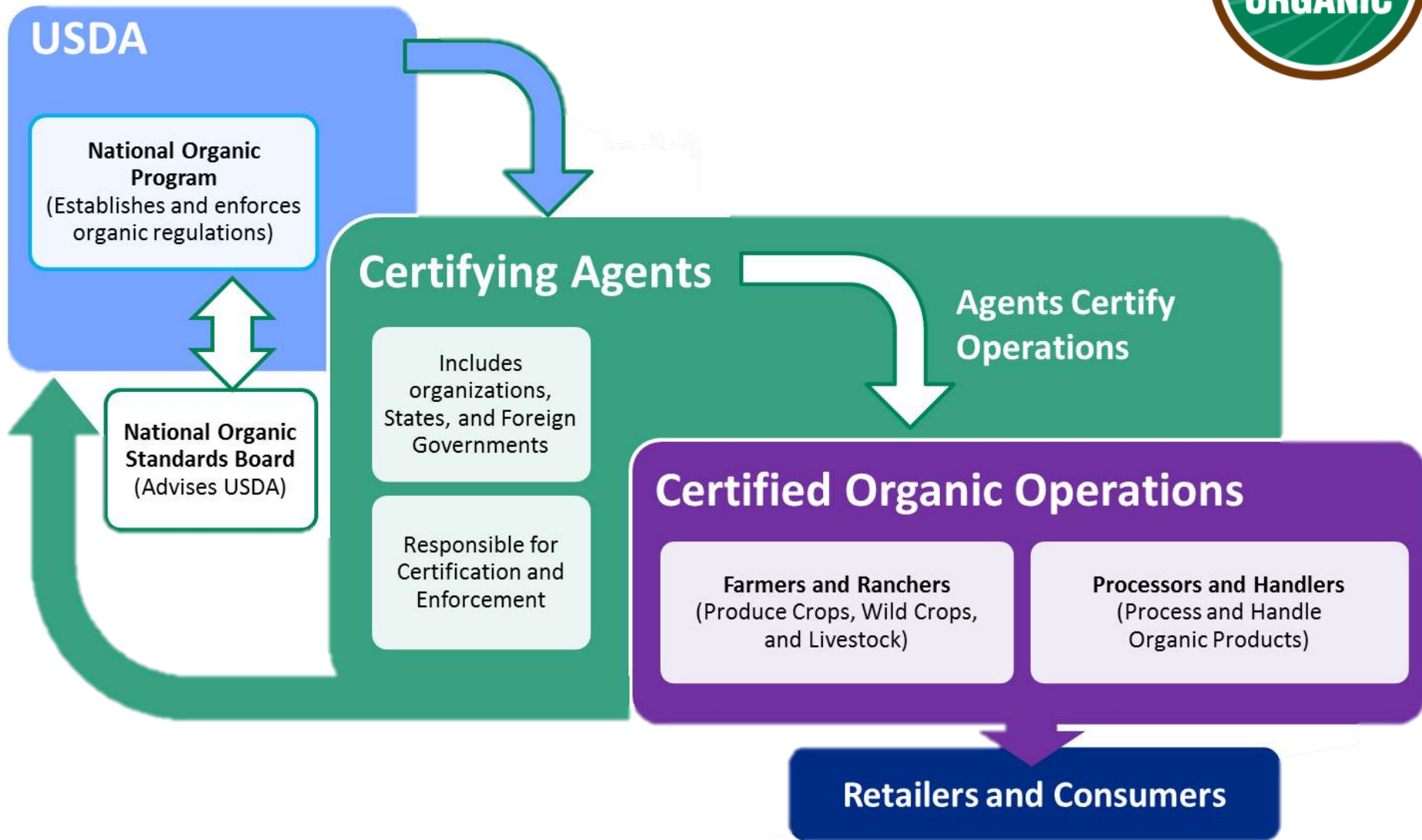
- **Staffing:** 45 employees in three Divisions and the Office of the Deputy Administrator
- **Budget:**
  - FY 2012: \$6.919 million
  - FY 2013: \$6.369 million
  - FY 2014 to 2016: \$9 million
- **NOP Leadership Team:**
  - Miles McEvoy – Deputy Administrator
  - Jennifer Tucker – Associate Deputy Administrator
  - Paul Lewis – Standards Division Director
  - Cheri Courtney – Accreditation and International Activities Div. Director
  - Betsy Rakola – Compliance and Enforcement Division Director
- **MRP Leadership** – Penny Zuck, USDA Organic Policy Advisor (Acting)

# NOP Organization and Activities





# The Organic Stakeholder Community



# 10 Points of Organic Integrity



1. Clear/enforceable standards
2. Communication
3. Transparency
4. Certification
5. Complaints
6. Penalties
7. Market surveillance
8. Unannounced inspections
9. Periodic residue testing
10. Continuous improvement

# Key Cross-Cutting Activities



- Policy Development
- Training and Outreach
- Communication
- Collaboration: Across USDA and with Other Agencies

# Policy Development: NOP Document Matrix



- NOP publishes a range of different types of documents for policy and outreach purposes.
- The NOP Document Matrix is an internal tool that describes our different policy and outreach communication documents.
- **A brief overview of these document types follows. Often, NOSB recommendations will be considered against these options to determine best fit for implementation.**



## 1. Rules

Home: [USDA Organic Regulations](#)

- Amend the USDA organic regulations
- Allow enforcement actions
- If “significant” require additional clearance
- Example: pasture rule, organic livestock and poultry practices rule

## 2. Interpretive Rules

- Explain NOP’s interpretation of statutes/rules or clarifies existing rules
- Have not been used by NOP, but could be in the future

# NOP Document Matrix



## 3. Instructions

Home: Program Handbook

- Instruct certifying agents how to apply certification and accreditation requirements per 205.501(a)(21)
- Aren't announced via the Federal Register
- Example: Conservation activity plan for organic system plans

## 4. Guidance Documents

Home: Program Handbook

- Provide options to satisfy regulatory requirements
- Support enforcement by referencing section of USDA organic regulations
- Example: Classification of materials



## 5. Policy Memos

Home: Program Handbook

- Formally communicate NOP policy decisions, but less formally than instructions/rules
- Are generally directed at certifying agents
- Aren't announced via the Federal Register
- Example: nanotechnology

## 6. Formal Letters

Home: Public Correspondence page

- Communicate non-policy information or requests
- Directed to certifying agents and NOSB
- Aren't announced via the Federal Register
- Example: response to NOSB recommendations



## 7. Federal Register Notices

Home: Rules/Notices Page

- Announce activities requiring legal notification
- Example: NOSB meeting announcement, NOSB Call for Nominations

## 8. Newsletter Articles

Home: About Us Page

- Highlight NOP announcements, provide status updates
- Aren't announced via the Federal Register
- Example: organic livestock and poultry practices





## 9. NOP Organic Insider

Home: Insider archive

- Announces all NOP documents and activities
- Aren't announced via the Federal Register
- Examples: Recruiting announcements, new fact sheets, equivalency arrangement information, new policy documents and memos
- Subscribe to receive email updates:  
**<http://bit.ly/NOPOrganicInsider>**

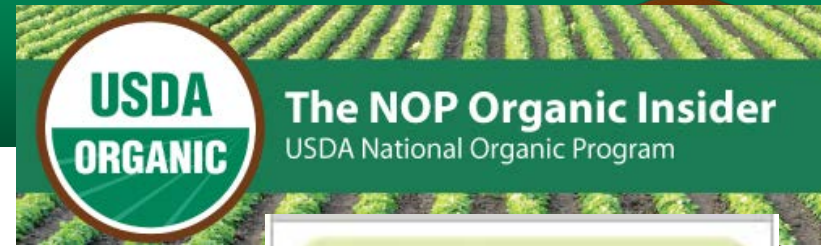
# Training and Outreach



- Annual classroom training for NOP certifiers.
- Comprehensive webinar series for NOP auditors.
- Visits with certifiers across the country to launch and discuss the “sound and sensible” initiative.
- Conference Outreach: Expo East, MOSES, Others
- Publications: New fact sheets, talking points, questions and answers, blogs, and other educational resources to support candidate and existing certified operations.

# NOP Communications

- Email notification service
- Quarterly Newsletter “Organic Integrity”
- “Hot Topics” Website Postings
- Fact Sheets, Questions and Answers
- Briefings, Talking Points
- Teleconferences and Webinars with Organic Community
- National Organic Standards Board Public Meetings
- Conference Presentations and Listening Sessions



# Collaboration Across USDA and With Other Agencies



- AMS Livestock, Poultry, and Seed Program: Economic analyses, technical reports, appeals reviews, accreditation audits
- AMS Science and Technology Program: Residue Testing Program
- AMS Fruit and Vegetable Programs and Compliance and Analysis: Collaboration on investigations and enforcement actions; audits
- Food Safety Inspection Service and Natural Resources Conservation Service: Labelling coordination; streamline/reduce redundancies
- Economic Research Service, NASS/Census of Agriculture, and National Agricultural Library: New data usage agreements
- USDA Office of Chief Economist: Early review of NOP rules
- USDA Biotechnology Coordinating Group: NOP is AMS representative
- NOP works with OIG, Department of Justice, DHS Customs and Border Protection, the Food and Drug Administration, the Environmental Protection Agency, and the TTB on both enforcement and regulatory issues.
- Federal Trade Commission: Joint project to collect data on consumer perceptions of personal care products and textiles sold as organic.



- NOP: Overview, Cross-Cutting Activities
- Accreditation and International Activities
- Compliance and Enforcement
- Standards

# Accreditation Activities



- NOP oversees the work of 81 certifiers, which certify over 31,000 certified organic operations.
  - Work includes audits, audit report reviews, notices of noncompliance, corrective action reviews, responding to questions, updating list of certified operations
  - This work is done by Accreditation Managers, and a Lead Auditor
  - Supplemented by audit team in AMS Quality Assurance Divisions, Livestock and Seed Program



- Equivalency Agreements:
  - U.S.-Canada – Launched in 2009
  - U.S.-European Union – Launched in June 2012
  - Japan – Effective in January 2014
  - Korea – Effective in July 2014
  - Switzerland – Effective in July 2015
- Each country considers the other's organic certification designation to be “equivalent” - equivalent standards, accreditation, certification and enforcement.
- The arrangement allows products produced, processed and certified to either country's organic standards to be sold as organic in both countries



- Recognition Agreements:
  - India, Israel, Japan, New Zealand
- NOP works closely with the Foreign Agricultural Service (FAS) and the U.S. Trade Representative (USTR).
- Allows a foreign government to accredit certifying agents in that country to the USDA organic standards. These foreign certifying agents are authorized to certify organic farms, processing facilities, and products to USDA organic standards so products can be imported as organic into the U.S.



# High Priority Certification Issues to Address



- Inconsistent certification process
- Recordkeeping focus and burden
- Expense of certification
- Burden of time that is involved in inspections and maintaining paperwork
- Some farms that comply with organic standards avoid certification.

**The Sound and Sensible Initiative was established to start to address these issues.**

# 'Sound + Sensible' Principles



1. **Efficient Processes:** Eliminate bureaucratic processes that do not contribute to organic integrity.
2. **Streamlined Recordkeeping:** Ensure that required records support organic integrity and are not a barrier to organic compliance.
3. **Practical Plans:** Support simple Organic System Plans that clearly capture organic practices.
4. **Fair, Focused Enforcement:** Focus enforcement on willful, egregious violators; handle minor violations in a way that leads to compliance; and publicize how enforcement protects the market.
5. **Integrity First:** Focus on factors that impact organic integrity the most, building consumer confidence.

# Goal: Make Organic Certification:



## Affordable, Accessible and Attainable for all operations

- **Affordable** – reasonable fees, reasonable compliance costs
- **Accessible** – certifiers and technical assistance available locally
- **Attainable** – Clear and understandable standards, plain language, reasonable record keeping requirements

# AIA: Key Priorities in 2017



- ACA Certifier Training: Spring 2017
- Accreditation Audits and Follow-up
- Maintain existing recognition and equivalency arrangements – peer reviews, working groups

# Topics



- NOP: Overview, Cross-Cutting Activities
- Accreditation and International Activities
- Compliance and Enforcement
- Standards



# Purposes of Enforcement



**Purpose:** To protect the integrity of the organic standards so as to facilitate commerce

- Maintain consumer confidence
- Ensure a fair market for the great majority of organic operations that operate in compliance with the law

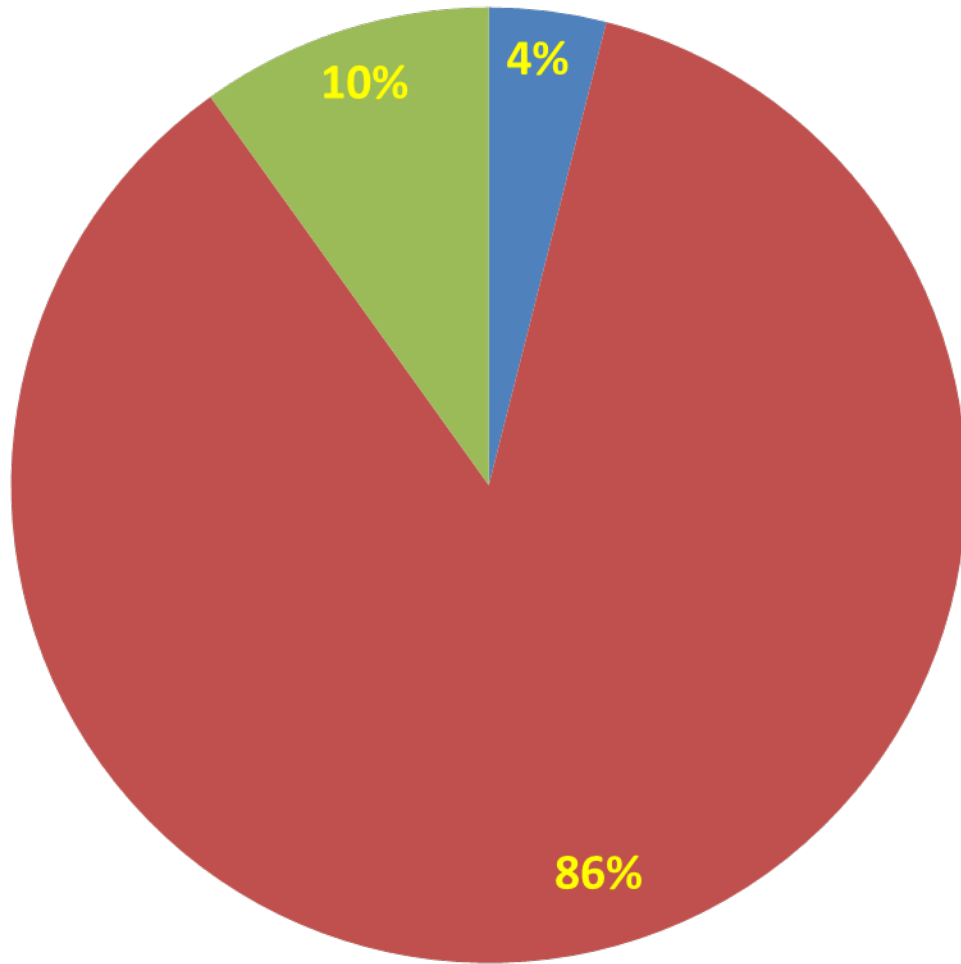


## Key Activities:

- Investigate complaints of **alleged violations**, work with operations to achieve compliance where possible and take enforcement actions as appropriate
- Quarterly reports NOP Compliance & Enforcement/Appeals Summary
- Work with ACAs, State Programs and Federal partners on enforcement of OFPA and the USDA organic regulations
- Lead enforcement-related policy development and outreach efforts



# Incoming Complaints: FY16



■ Labeling

■ Non-Certified

■ Prohibited Substances and Methods



# Compliance & Enforcement

## FY 2015 and 2016



	FY 2015	FY 2016
<b>Compliance &amp; Enforcement: Overall Summary</b>	10/1/14-9/30/15	10/1/15-9/30/16
Incoming Complaints	549	499
Completed Complaints	390	357
<b>Summary of Initial Actions Taken</b>		
Cease & Desist Orders	36	31
Notices of Warning	121	111
<b>Civil Penalties Levied</b>		
Total Number	8	9
Total Amount	\$1,872,875	\$397,750

# Maintaining Integrity and Transparency



## Enforcement Monitoring

- Closed investigations are randomly selected for follow-up to ensure continued compliance

## Enforcement Reporting

- Enforcement and Settlement Agreements
- Posting of Adverse Actions & Appeal Decisions



# Topics



- NOP: Overview, Cross-Cutting Activities
- Accreditation and International Activities
- Compliance and Enforcement
- Standards

# Standards Division: Key Activities



- **Key Activities**

- Develop new rules and coordinate clearance
- Develop and maintain Regulatory Priorities Agenda
- Draft new and updated guidance and policy memos based on OIG feedback, certifier and community questions, and priority needs
- Develop materials to support rollout of new standards, respond to letters and questions about standards
- Maintain National List, including petition intake and response, and list management activities
- Support the National Organic Standards Board



- Rulemaking
  - Organic Livestock and Poultry Practices
    - Final rule published
  - Sunset 2016 Final Rule (published August 2016)
    - Removed egg white lysozyme, cyclohexylamine, diethylaminoethanol, octadecylamine, tetrasodium pyrophosphate from National List
  - Sunset 2017 Proposed Rule
    - Proposed removal of lignin sulfonate, furosemide, magnesium carbonate, Chia, dillweed oil, frozen galangal, inulin, frozen lemongrass, chipotle chile peppers, turkish bay leaves, and whey protein concentrate from National List
    - Proposed rule is open for comment

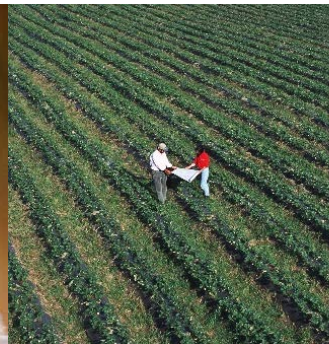


- Guidance
  - Classification of materials (published December 2016)
    - procedure used to classify materials as synthetic or nonsynthetic, and as agricultural or nonagricultural
  - Materials for Organic Crop Production (published December 2016)
    - natural and synthetic materials that are allowed for organic crop production
  - Calculation of Percent Organic Ingredients, draft
    - Calculate organic percentages of multi-ingredient ingredients used in organic processed products.
    - Determine the organic content of single-ingredient products and raw agricultural products
    - Guidance is open for comment



# Questions/Discussion

Agricultural Marketing Service | National Organic Program  
February 2017





# Organic Foods Production Act of 1990 (OFPA)

O  
F  
P  
A





**TITLE XXI—ORGANIC CERTIFICATION**

Organic Foods  
Production Act  
of 1990.  
Labeling.  
7 USC 6501 note.

**SEC. 2101. SHORT TITLE.**

This title may be cited as the “Organic Foods Production Act of 1990”.

**SEC. 2102. PURPOSES.**

7 USC 6501.

It is the purpose of this title—

- (1) to establish national standards governing the marketing of certain agricultural products as organically produced products;
- (2) to assure consumers that organically produced products meet a consistent standard; and
- (3) to facilitate interstate commerce in fresh and processed food that is organically produced.

**SEC. 2103. DEFINITIONS.**

7 USC 6502.

As used in this title:

(1) **AGRICULTURAL PRODUCT.**—The term “agricultural product” means any agricultural commodity or product, whether raw or processed, including any commodity or product derived from livestock that is marketed in the United States for human or livestock consumption.

(2) **BOTANICAL PESTICIDES.**—The term “botanical pesticides” means natural pesticides derived from plants.

(3) **CERTIFYING AGENT.**—The term “certifying agent” means the chief executive officer of a State or, in the case of a State that provides for the Statewide election of an official to be responsible solely for the administration of the agricultural operations of the State, such official, and any person (including

# U.S. Code



TITLE 1 - GENERAL PROVISIONS

TITLE 2 - THE CONGRESS

TITLE 3 - THE PRESIDENT

TITLE 4 - FLAG AND SEAL, SEAT OF GOVERNMENT, AND THE STATES

TITLE 5 - GOVERNMENT ORGANIZATION AND EMPLOYEES

TITLE 6 - DOMESTIC SECURITY

TITLE 7 - AGRICULTURE

TITLE 8 - ALIENS AND NATIONALITY

TITLE 9 - ARBITRATION

TITLE 10 - ARMED FORCES

TITLE 11 - BANKRUPTCY

TITLE 12 - BANKS AND BANKING

TITLE 13 - CENSUS

TITLE 14 - COAST GUARD

TITLE 15 - COMMERCE AND TRADE

TITLE 16 - CONSERVATION

TITLE 17 - COPYRIGHTS

TITLE 18 - CRIMES AND CRIMINAL PROCEDURE

TITLE 19 - CUSTOMS DUTIES

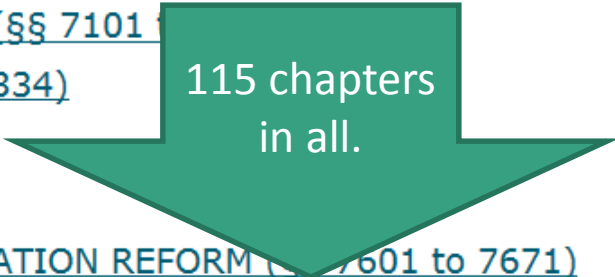
TITLE 20 - EDUCATION

54 Titles  
in all.

# U.S. Code – Title 7 - Agriculture



- [CHAPTER 91 - LIME PROMOTION, RESEARCH, AND CONSUMER INFORMATION \(§§ 6201 to 6212\)](#)
- [CHAPTER 92 - SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION \(§§ 6301 to 6311\)](#)
- [CHAPTER 93 - PROCESSOR-FUNDED MILK PROMOTION PROGRAM \(§§ 6401 to 6417\)](#)
- [CHAPTER 94 - ORGANIC CERTIFICATION \(§§ 6501 to 6523\)](#)
- [CHAPTER 95 - RURAL REVITALIZATION THROUGH FORESTRY \(§§ 6601 to 6617\)](#)
- [CHAPTER 96 - GLOBAL CLIMATE CHANGE \(§§ 6701 to 6711\)](#)
- [CHAPTER 97 - FRESH CUT FLOWERS AND FRESH CUT GREENS PROMOTION AND INFORMATION \(§§ 6801 to 6814\)](#)
- [CHAPTER 98 - DEPARTMENT OF AGRICULTURE REORGANIZATION \(§§ 6901 to 7035\)](#)
- [CHAPTER 99 - SHEEP PROMOTION, RESEARCH, AND INFORMATION \(§§ 7101 to 7117\)](#)
- [CHAPTER 100 - AGRICULTURAL MARKET TRANSITION \(§§ 7201 to 7334\)](#)
- [CHAPTER 101 - AGRICULTURAL PROMOTION \(§§ 7401 to 7491\)](#)
- [CHAPTER 102 - EMERGENCY FOOD ASSISTANCE \(§§ 7501 to 7517\)](#)
- [CHAPTER 103 - AGRICULTURAL RESEARCH, EXTENSION, AND EDUCATION REFORM \(§§ 7601 to 7671\)](#)
- [CHAPTER 104 - PLANT PROTECTION \(§§ 7701 to 7786\)](#)
- [CHAPTER 105 - HASS AVOCADO PROMOTION, RESEARCH, AND INFORMATION \(§§ 7801 to 7813\)](#)
- [CHAPTER 106 - COMMODITY PROGRAMS \(§§ 7901 to 8002\)](#)



115 chapters  
in all.

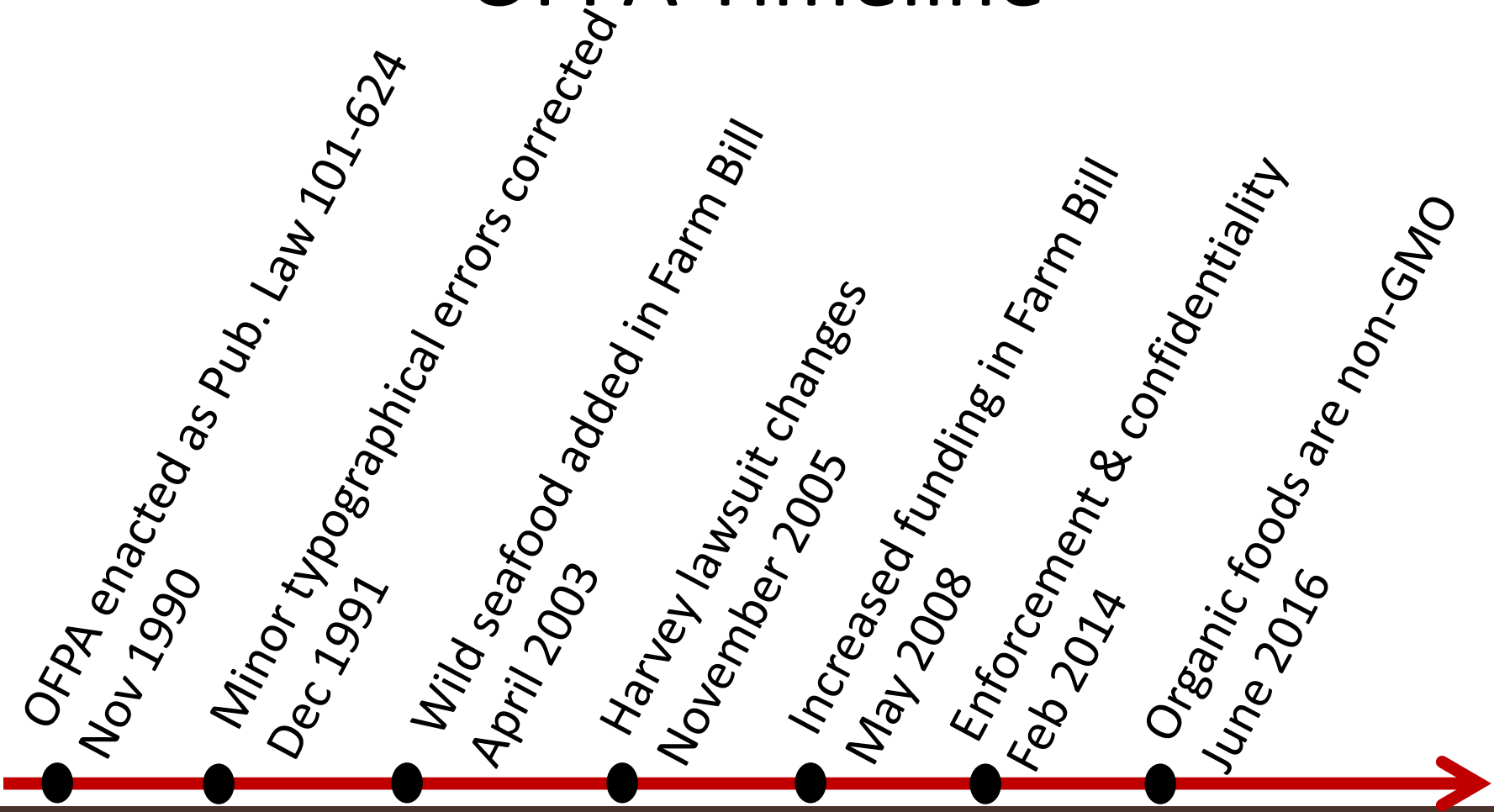
# U.S. Code – Ch. 94 – Organic Certification



- [§ 6501 - Purposes](#)
- [§ 6502 - Definitions](#)
- [§ 6503 - National organic production program](#)
- [§ 6504 - National standards for organic production](#)
- [§ 6505 - Compliance requirements](#)
- [§ 6506 - General requirements](#)
- [§ 6507 - State organic certification program](#)
- [§ 6508 - Prohibited crop production practices and materials](#)
- [§ 6509 - Animal production practices and materials](#)
- [§ 6510 - Handling](#)
- [§ 6511 - Additional guidelines](#)
- [§ 6512 - Other production and handling practices](#)
- [§ 6513 - Organic plan](#)
- [§ 6514 - Accreditation program](#)
- [§ 6515 - Requirements of certifying agents](#)
- [§ 6516 - Peer review of certifying agents](#)
- [§ 6517 - National List](#)
- [§ 6518 - National Organic Standards Board](#)
- [§ 6519 - Recordkeeping, investigations, and enforcement](#)
- [§ 6520 - Administrative appeal](#)
- [§ 6521 - Administration](#)
- [§ 6522 - Authorization of appropriations](#)
- [§ 6523 - National organic certification cost-share program](#)



# OFPA Timeline



# OFPA 6501 - Purposes



- (1) to **establish national standards** governing the marketing of certain agricultural products as organically produced products;
- (2) to assure consumers that organically produced products meet a **consistent standard**; and
- (3) to **facilitate interstate commerce** in fresh and processed food that is organically produced.

# OFPA 6502 - Definitions



- 21 terms
- Key terms –
  - Agricultural product
  - Handle/handler
  - Livestock
  - Organically produced
  - Person
  - Synthetic

# OFPA 6503 – National organic production program



- Program for organic producers and handlers.
- Provides for State programs.
- Consulting with the NOSB.
- Certification by certifying agents.



# OFPA 6504 – National standards for organic production



- Produced and handled without synthetic chemicals.
- No synthetic chemicals to crop land for three years prior to harvest of an organic crop.
- Produced according to an OSP agreed to by the producer/handler and certifying agent.

# OFPA 6505 – Compliance requirements



- (a) Domestic products
- (1) In general
- On or after October 1, 1993—
- (A) a person may sell or label an agricultural product as organically produced only if such product is produced and handled in accordance with this chapter; and
- (B) no person may affix a label to, or provide other market information concerning, an agricultural product if such label or information implies, directly or indirectly, that such product is produced and handled using organic methods, except in accordance with this chapter.

# OFPA 6505 – Compliance requirements



- (b) Imported products may be produced by equivalent program.
- (c) Exemptions for processed food. Must be at least 50% organic content. Secretary determines details.
- (d) Small farmer exemption; persons who sell less than \$5K annually in organic products.

# OFPA 6506 – General requirements



- Must be produced and handled on certified organic operations in accordance with this chapter.
- Organic plan required.
- Provides for appeal process.
- Provides for certification/ annual inspections.
- Periodic residue testing.
- Provides for enforcement by the Secretary.
- Public access to certification and lab documents.
- Authorizes reasonable fees to be collected.
- Other terms as required by the Secretary.

# OFPA 6506 – General requirements



- Discretionary requirements:
  - May certify all or part of an operation
  - Boundaries and buffer zones
  - Maintain separate records and make available to the Secretary.
  - Segregate products and prevent commingling and contamination.
  - Provide for exemptions for Federal or State emergency pest programs.

# OFPA 6506 – General requirements



- Wild seafood may be certified as organic.
- State organic programs may contain additional requirements.
- Availability of fees for accreditation – fees credited to account of the program providing services under this chapter. Use shall not require appropriation.

# OFPA 6507 – State organic certification program



- States may apply to become a State organic program.
- May impose additional requirement if approved by the Secretary.
- NOP will review State programs at least every 5 years.

# OFPA 6508 – Prohibited crop production practices and materials



- Seeds and planting materials must comply.
- Soil amendments must not contain prohibited substances.
- May not use persistent, natural poisons.
- No plastic mulches unless removed at the end of the growing season.
- Must not use transplants treated with any synthetic or prohibited material.



# OFPA 6509 – Animal production practices and materials



- Slaughter stock must be organically managed.
- Non-organic breeder stock may be sourced before last third of gestation.
- Feeding prohibitions (plastic, manure, urea)
- No growth promoters and hormones on livestock, including antibiotics and synthetic trace elements to stimulate growth or production.

# OFPA 6509 – Animal production practices and materials



- No subtherapeutic antibiotics.
- No routine use of parasiticides.
- No medications in the absence of illness (except vaccines).
- One year dairy transition.
- Livestock identification required for traceback to the farm.
- Records – medications and feeds (sources and use).

# OFPA 6510 – Handling



- No synthetic ingredients, except from NL.
- No materials containing nitrates, heavy metals, or toxic residues.
- No sulfites (except for wine), nitrates, nitrites.
- No non-organic ag products except as specified.
- No packaging materials containing preservatives, fungicides or fumigants.
- Water in contact with product must meet SDWA.
- No contact or commingling

# OFPA 6511 – Additional guidelines



- Residue testing of organic products.
- Pre-harvest tissue testing.
- Inspection and removal of organic label.
  - Intentional application of prohibited substances.
  - Presence of prohibited substances above UREC.

# OFPA 6512 – Other production and handling practices



- Other practices are allowed unless prohibited or otherwise restricted, unless it is determined that such practice would be inconsistent with applicable organic certification program.

# OFPA 6513 – Organic plan



- Producers and handlers must have an organic plan.
- Crop plan must foster soil fertility by managing organic material through tillage, crop rotation, and manuring.
- Livestock operations may be combined with crops.
- Handling operations must have an OSP & be certified.
- Wild crops may be certified with approved OSP.
- OSP's may not include any prohibited substance or practice.

# OFPA 6514 – Accreditation program



- States or private persons may be accredited under OFPA to be certifiers.
- Must apply to the Secretary and have sufficient expertise.
- Period of accreditation is set at 5 years.

# OFPA 6515 – Requirements of certifying agents



- Certifiers must be able to implement the program.
- Must have a sufficient number of inspectors.
- Certifiers must enter agreement with the Secretary.
- Confidentiality
- Avoid conflicts of interest.
- Provides for suspension of certifying agents.
- If suspended, Secretary or State Official will determine whether farming or handling operations may retain organic certification.



# OFPA 6516 – Peer review of certifying agents



- Secretary shall consider a report concerning applicants for accreditation prepared by a peer review panel.
- Secretary may establish a panel of NLT 3 persons with expertise in farming and handling to evaluate state organic programs or certifying agents. At least 2 will not be USDA employees.

# OFPA 6517 – National List



- National List of approved and prohibited substances.
- Itemized by specific use or application.
- Allowed synthetics and prohibited naturals.
- NOP cannot add substances to list without a Board recommendation.
- Specific criteria for adding materials to the NL.

# OFPA 6518 – NOSB



- 15-member advisory board appointed by the Secretary
- Review and recommend materials to be added to or deleted from the National List of Allowed and Prohibited Substances
- Advise on other standards or policies for implementation of OFPA.

# OFPA 6518 – NOSB



- 4 own or operate an organic farm.
- 2 own or operate an organic handling operation.
- 1 owns or operates a retail establishment with significant trade in organic products.
- 3 experts in environmental protection and resource conservation.
- 3 represent public or consumer interest groups.
- 1 expert in toxicology, ecology, or biochemistry.
- 1 certifying agent.

# OFPA 6518 – National List criteria



- (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) its compatibility with a system of sustainable agriculture.

# OFPA 6519 – Recordkeeping, investigations, and enforcement



- Section revised by 2014 Farm Bill
- Describes document retention and access by USDA.
- Provides specificity for confidentiality requirements.
  - NOTE: with exception as provided by 6506(a)(9).
- Special investigative powers
  - Administer oaths.
  - Issue subpoenas.
  - Compel attendance of witnesses.

# OFPA 6520 – Administrative appeal



- Provides for a regulatory appeals process.
  - Action adversely affects a person, or
  - Action is inconsistent with the certification program.
- Provides for appeals beyond the Secretary to go to U.S. District court for which the person is located.

# OFPA 6521 – Administration



- Directs Secretary to issue proposed rules 18 months after November 28, 1990.
- Provides for technical and financial assistance to States that implement an organic certification program.



# OFPA 6522 – Authorization of appropriations



- This section of the law provides for “discretionary” funding for the NOP; up to \$15M for 2014 to 2018.
- Also provided for additional monies beyond 2009.
- This was part of the 2008 farm bill that gave NOP the big boost it needed to spin off its own program from under Transportation and Marketing Programs.
- Provided \$5M in “no year” money from CCC for technical upgrades, specifically to the database.

# OFPA 6523 – National organic certification cost-share program



- Assists producers and handlers with cost of certification.
- Up to 75% of cost of certification.
- Not to exceed \$750.
  
- Note: This is separate from the Agricultural Management Assistance cost share program offered to 16 states through NRCS.

# OFPA 6524 – Labeling of organically produced food



- Added July 29, 2016
- Certified organic food does not have to be labeled as not being genetically engineered.
- Organic certification is sufficient to support claims of absence of bioengineering in the food or claims of “not bioengineered” or “non-GMO”, or similar claim.

**USDA  
ORGANIC**





# USDA Organic Regulations: Overview



## NOP Definition of “organic”:

A production system, managed in accordance with the Act and USDA Regulations, to respond to site-specific conditions by integrating cultural, biological, and mechanical practices that foster cycling of resources, promote ecological balance, and conserve biodiversity.



- Definitions
  - Commercially available
  - Excipients
  - Excluded methods
  - Handler
  - Labeling
  - Livestock – (excludes aquatic animals)
  - Prohibited substance
  - Unavoidable residual environmental contamination



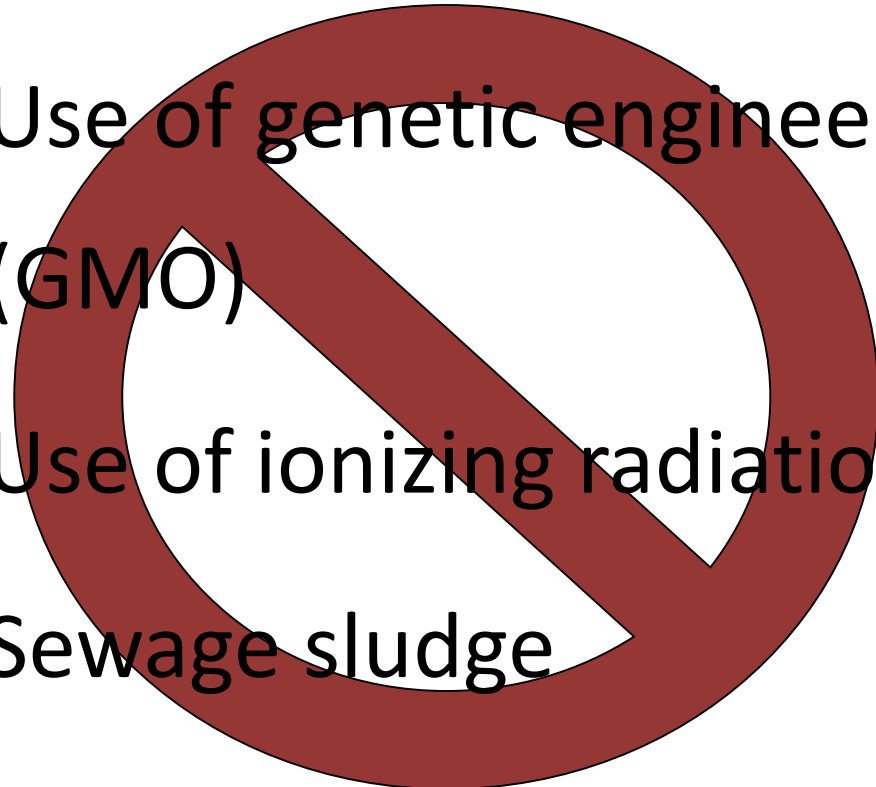
- Applicability
  - What has to be certified
  - Exemptions and Exclusions
  - Recordkeeping
  - Allowed and prohibited substances, methods, and ingredients





# Banned in Organic Production and Handling

- Use of genetic engineering (GMO)
- Use of ionizing radiation
- Sewage sludge





- Organic production and handling
  - Maintain or improve natural resources (soil and water quality)
  - Organic System Plan
  - Soil fertility
  - Seeds and planting stock
  - Crop rotation
  - Pest management practice standard



## *Natural Resources*

*NOP 205.200*

Practices must *improve* or *maintain* the natural resources of the farming operation, including soil and water quality.





# Organic Systems Plan

- Practices and procedures
- Substances to be used
- Monitoring practices to ensure plan works
- Recordkeeping system
- Preventing contact with prohibited substances
- Other info deemed necessary by certifier.





# NOP Regulations: Crop Production

- No prohibited substances on land/fields for 3 years
- Establish buffer zones
- Maintain or improve soil condition
- Minimize soil erosion
- Rotations, cover crops, and application of plant and animal material
- No raw manure applications within 120/90 days before harvest.





## *Organic Seeds*

### *NOP 205.204*

- Organic seeds/planting stock required unless organic seeds/planting stock is not commercially available.
- If organic seeds not commercially available then untreated seeds may be used.
- Treated seeds are prohibited.



## *Pest Management*

### *NOP 205.206*

Bio-intensive pest management plans.

- Prevention first:
  - Crop rotations;
  - Resistant varieties;
  - Maintaining beneficial species habitat;
  - Sanitary cultural practices;
- Approved materials used only when crop rotation, biological control, and cultural practices are insufficient to control pests.





# Wild Crop Harvest

- Sustainable harvest of defined area
- No prohibited substance exposure
- Protect the environment during harvest







# NOP Organic Livestock



- Managed Organically from last 3<sup>rd</sup> of gestation
  - Poultry from second day of life.
  - Dairy animals may be converted in 1 year



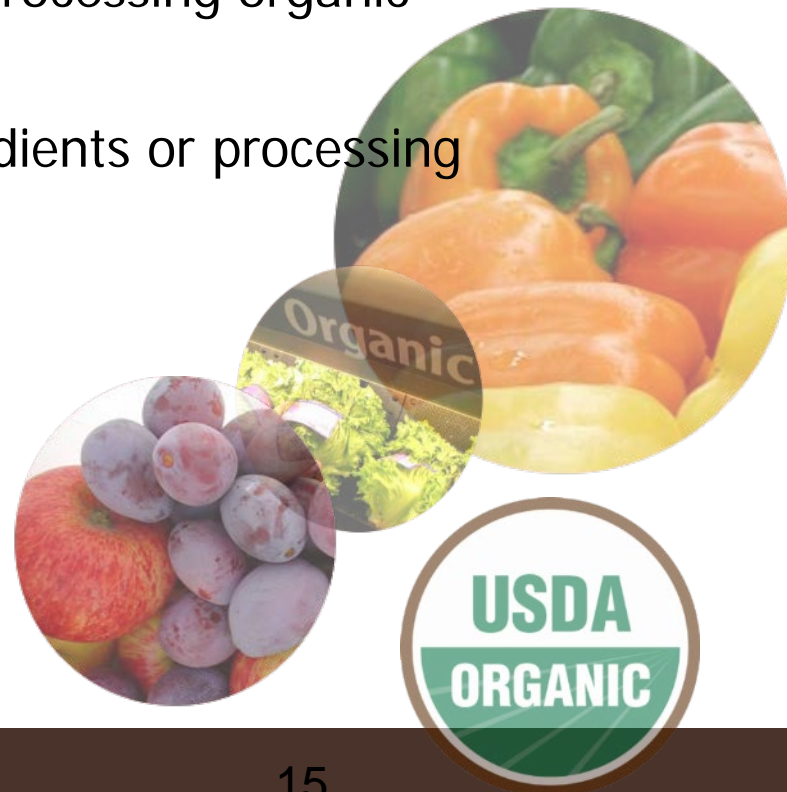
- 100% Organic Feed
  - Synthetic vitamins and trace minerals are Allowed
- Prohibited Substances
  - No Synthetic Hormones or Growth Promoters
  - No Antibiotics
- Animal Welfare – living conditions
  - Pasture requirement for ruminants
  - Outdoor access





## HANDLING:

- Processing must be by certified operations
- Mechanical or biological methods for processing organic agricultural products
- “Organic” products: non-organic ingredients or processing aids must be on the National List
- Maintain organic integrity
- Preventive facility pest management





## NOP Organic Handling-continued

- Avoid contact with prohibited substances
- Segregate from conventional product
- Label according to NOP regulations.

NOP Regulations: Handling

**Croutons: Lightly Salted, Italian Herbs, and Onion Garlic.**



606622

**Ingredients: Organic Wheat Flour, Organic Non-Hydrogenated Palm Oil, Yeast, Salt, Organic Onion Powder, Organic Garlic Powder.**

Dist. by Edward & Sons Trading Co., Inc.  
P.O. Box 1326, Carpinteria, CA 93014 USA  
[www.edwardandsons.com](http://www.edwardandsons.com)

Certified organic by QAI, USA  
Product of Israel

# Understanding Organic Labeling



- 100% Organic  
All ingredients & processing aids must be 100% certified organic.
- Organic  
95% - 100% certified organic ingredients.
- Made with Organic ... (list up to three ingredients or food groups)  
At least 70% organic ingredients.
- Less Than 70% Organic Ingredients  
Claims are limited to ingredient statement.



**100% Organic**  
Use of the USDA Organic Seal is optional.



**Organic**  
(95% or more Organic Ingredients)  
Use of the USDA Organic Seal is optional.



**Made with Organic Ingredients**  
(At least 70% Organic Ingredients)



**Less than 70% Organic Ingredients**  
(Organic Ingredients denoted in ingredient list only)



## Subpart E - Certification

1. General requirements
2. Application
3. Review of application
4. Inspection
5. Certification
6. Denial of certification
7. Continuation of certification



# Accreditation of Certifying Agents

## 7 CFR Subpart F 205.500-510

- The USDA Administrator of the Agricultural Marketing Service shall accredit a qualified applicant in the areas of crops, livestock, wild crops or handling or combination thereof to certify production or handling as a certified operation



# General Requirements for Accreditation

- Have sufficient expertise to fully comply with and implement the terms and conditions of the organic certification program established under the Act and regulations
- Education
- Experience
- Training
- Administration
- Regulations
- Inspection/auditing
- Crops/livestock/processing/handling/wild crops





# General Requirements

## – Internal Audits

Have an annual program review of its certification activities conducted by the certifying agent's staff, an outside auditor, or a consultant who has expertise to conduct such reviews and **implement measures to correct any noncompliances identified in the evaluation**

- Internal Audits
  - Conducting by internal personnel or outside auditor
  - Evaluation of certification system and procedures
  - **Continuous Improvement**
  - Identify areas of strength and areas needing improvement
  - Better to find issues during an internal audit than during an external audit.



# General Requirements – conflicts of interest

- Prevent conflicts of interest by:  
Not certifying a production or handling operation if the certifying agent or a responsible connected party of such certifying agent has or has held a commercial interest in production or handling operation, including an immediate family interest or consulting within the 12 month period prior to the application of certification



# General Requirements – accepting all certification decisions

- One rule to rule them all
- All certifiers must comply with the NOP regulations
- Certifiers cannot require any additional requirements beyond the NOP regulations

NOP accredited certifiers must accept certification decisions made by other NOP accredited certifiers.

Especially important for processed products utilizing ingredients certified by other certifiers.



## Evidence of expertise – 205.504

- Policies and procedures for training, evaluating and supervising personnel
- Qualifications of staff
- Procedures used to evaluate applicants for certification
- Investigative procedures
- Residue testing procedures
- Procedures for handling violations
- Recordkeeping procedures
- Fees charged for certification
- Sample collection procedures



# Public information

- Procedures for providing to the public the following information:
  - Organic certificates issued during the current and previous 3 years
  - List of all certified operations and products produced
  - Results of laboratory analyses for residues of pesticides and other prohibited substances.



# Peer Review Panel

- Procedures for providing to the public the following information:
  - Organic certificates issued during the current and previous 3 years
  - List of all certified operations and products produced
  - Results of laboratory analyses for residues of pesticides and other prohibited substances.



# Annual Reporting & Recordkeeping

- Submit updates of information
- Lists of certified operations
- Document retention timeframes
- Renewal of accreditation every 5 years



## Subpart G – Administrative

- 205.600 evaluation criteria
- 205.601 – Crops – allowed synthetics
- 205.602 – Crops – prohibited naturals
- 205.603 – Livestock – allowed synthetics
- 205.604 – Livestock – prohibited naturals
- 205.605 – Handling – allowed non-agricultural substances (natural and synthetic)
- 205.606 – Handling – allowed agricultural (commercially unavailable in organic form)





- 205.620-622 State organic programs
- 205.640-642 Fees
- 205.660-668 Compliance
- 205.670-672 Inspection and testing
- 205.680-681 Appeals



# National Organic Standards Board Training: Federal Advisory Committee Act (FACA)

February 2017



# Goal: Review Key Elements of FACA



- FACA Overview
- Agency Responsibilities
- Board Responsibilities
- NOP Authority in Setting Board Policy
- Shared Success Factors

# Federal Advisory Committees



- OFPA: Secretary has responsibility to establish the NOSB **in accordance with the Federal Advisory Committee Act (FACA)**
- FACA Committees are established for the purpose of obtaining advice or recommendations on issues or policies **within the scope of an agency official's responsibilities**
- Like the NOSB, many FACA Boards are statutory.
- **Federal advisory committees exist to advise and recommend, NOT to decide.**



# FACA Committees Must Have....



- A **charter** with established mission and duties:  
The USDA renews the NOSB Charter every two years.
- Fair and balanced **membership**: The Secretary appoints NOSB members based on OFPA categories.
- A **Designated Federal Official (DFO)** for advisory committee and its subcommittees. FACA assigns a number of activities to the DFO.
- Opportunity for reasonable participation by the public in advisory committee activities, subject to agency guidelines.



# FACA Meeting Rules



- Open meetings with opportunity for public comment
  - Any member of the public is permitted to file a written statement with advisory committee.
  - Any member of the public may speak to or address advisory committee within appropriate guidelines.
- Feedback from previous CMO: “Only a few Boards have high comment rates, and of those, NOSB is 2nd highest.”
- Examples of public comment periods offered by others:
  - 2015 Dietary Guidelines Advisory Committee - 2 day meeting; 4 hours of oral comment.
  - USFS Committee: Forest Planning Rule Implementation. 1 day meeting; 1 hour of comment.

# FACA Meeting Rules



- Reasonable time and accessible to the public; with sufficient space to accommodate committee, agency staff, and a reasonable number of the interested members of the public.
- Meetings must be announced 15 days in advance in Federal Register; Meeting minutes are required and are publicly available.

# FACA Representatives



- FACA members may be regular government employees, special government employees, and/or representatives: NOSB members are **Representatives**
- NOSB members are classified as **representatives**.
  - Appointed based on ability to articulate and represent group's interests
  - In representing others, speak in “We” not “I” statements
  - Are not expected to provide independent expert advice.



# Subcommittees Versus Committees



- Subcommittees are considered part of the FACA, BUT, FACA's openness requirements do not apply.
- **This is because:**
  - NOSB subcommittee proposals do not come directly to USDA – they come through the NOSB Committee.
  - The full committee deliberates on Subcommittee work.
- This is why subcommittee calls are not currently open to the public. This is also why we call subcommittee products proposals rather than recommendations.

# Agency Responsibilities



- Comply with FACA
- Issue administrative guidelines and management controls that apply to advisory committees
- Designate a Committee Management Officer (CMO) and Designate a Designated Federal Officer (DFO) for each advisory committee and its subcommittees
- Provide a written determination stating the reasons for closing any advisory committee meeting to the public
- Review, at least annually, the need to continue each existing advisory committee, consistent with the public interest and the purpose of each advisory committee

# Agency Responsibilities



- Determine that ...staff, experts and consultants to advisory committees are justified and levels of agency support are adequate
- Develop procedures to assure that the committee's recommendations will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the committee's independent judgment
- Assure that the interests and affiliations of advisory committee members are reviewed for conformance with applicable conflict of interest statutes, regulations issued by Office of Government Ethics including any supplemental agency requirements, and other Federal ethics rules

# NOP Responsibilities



- **NOP's Designated Federal Officer (DFO):**
  - Calls, attends, and adjourns committee meetings
  - Develops and approves agendas
  - Maintains required records and budgets
  - Ensures efficient operations and adherence to FACA and other laws
  - Develops committee reports for the Committee Management Officer: We must submit an annual report on Board activities, meetings, and expenses.



# FACA: Board Responsibilities



- **How should agencies consider the roles of advisory committee members and staff?**
- FACA does not assign any specific responsibilities to members of advisory committees and staff (other than DFO), although both perform critical roles
- **Agency heads, Committee Management Officers (CMOs), and Designated Federal Officers (DFOs)** should consider the distinctions between these roles and how they relate to each other in developing agency guidelines implementing FACA

# NOP Authority in Setting Board Policy



- **Agency Guidelines for implementing FACA should reflect:**
  - Clear operating procedures should provide for the conduct of advisory committee meetings and other activities, and specify the relationship among the advisory committee members, the DFO, and staff;
  - In addition to complying with the Act, advisory committee members ...may be required to adhere to additional agency operating policies; and
  - Other agency-specific statutes and regulations may affect the agency's advisory committees directly or indirectly.

# FACA and OFPA together



- OFPA doesn't direct the NOSB to decide.
- OFPA asks NOSB to:
  - **Assist** in development of Standards
  - **Provide recommendations**
  - **Evaluate** substances
  - **Develop proposed** National List and **proposed amendments** to the List for submission to the Secretary
- Secretary (authority delegated to AMS) retains decision-making and rulemaking authority

# Criteria for Success Under FACA....



- Enhance accountability to public
- Control the undue influence of special interests by balancing committee membership
- Ensure that public access to committee deliberations is maximized.
- Monitor and reduce costs
- Eliminate unproductive and/or unnecessary committees
- Provide for an annual report of committee activities and accomplishments to Congress



# NOP and NOSB Success Factors



- NOP's success is measured in part by its success in managing the NOSB:
  - Are recommendations within the Committee's scope? (OFPA statute and agency responsibilities)
  - Are Board and program resources being used effectively and efficiently?
  - Is the NOP asking for advice that it can then act upon? (It wastes time and resources for the Board to work on items that the NOP cannot implement.)
  - Are appropriate management structures and processes in place and functioning?



# Questions/Discussion

Agricultural Marketing Service | National Organic Program  
February 2017





## National List Petition Process

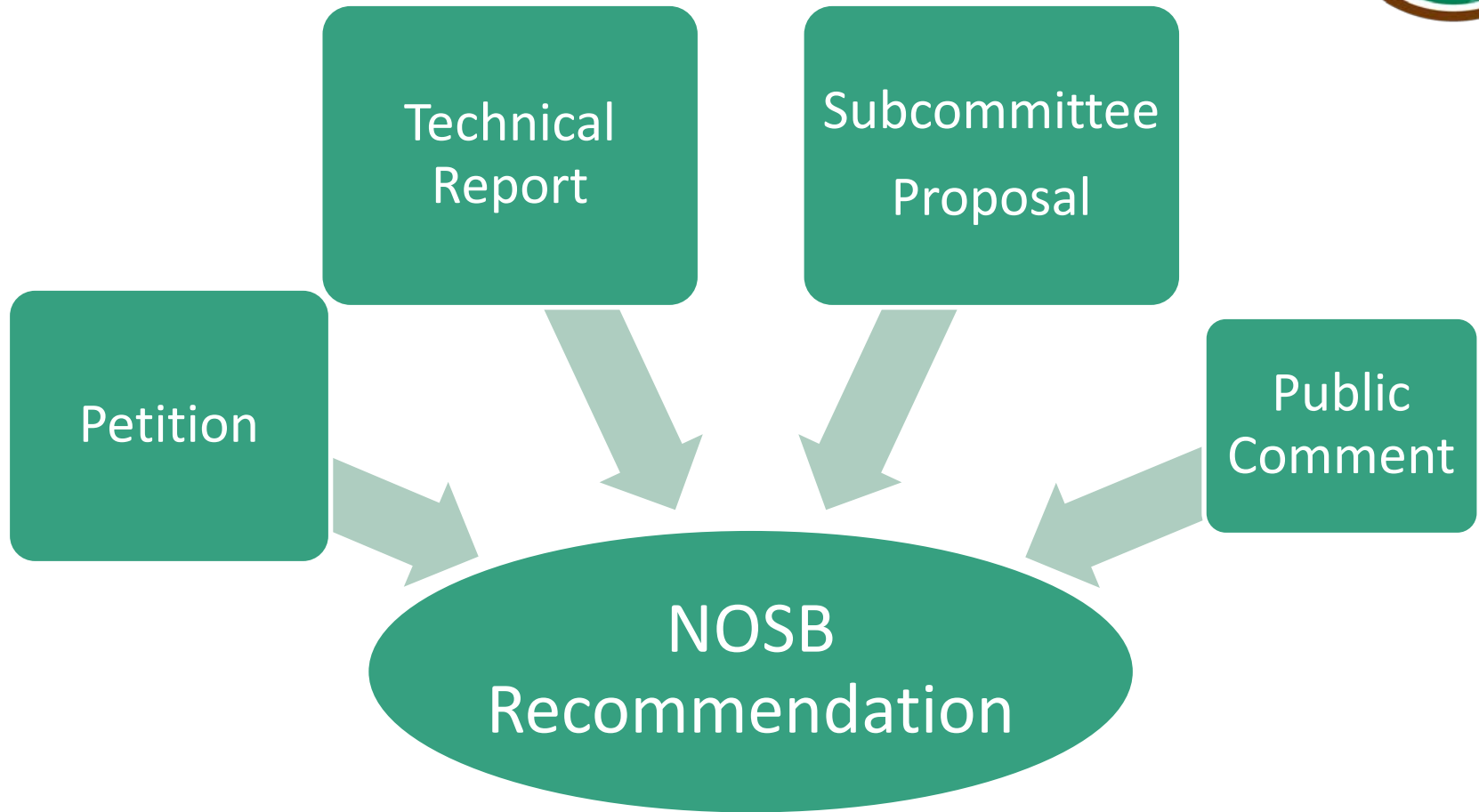
Lisa M. Brines, Ph.D.

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February 2017



# Multiple inputs for NOSB Recommendations





## NOSB has a Well-Developed Evaluation Process and Structure for Materials Review

- Evaluation Forms with Criteria linked to Organic Foods Production Act and USDA organic regulations.
- Boundaries for communicating with petitioners.
- Projected Timeline for review steps.



The Organic Foods Production Act:

**Sec. 2119. [7 U.S.C. 6518] National Organic Standards Board.**

(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.



USDA Organic Regulations, 7 CFR Part 205

## **§205.607 Amending the National List.**

- (a) Any person may petition the National Organic Standards Board for the purpose of having a substance evaluated by the Board for recommendation to the Secretary for inclusion on or deletion from the National List in accordance with the Act.
- (b) A person petitioning for amendment of the National List should request a copy of the petition procedures from the USDA at the address in §205.607(c).

# Updated National List Petition Process



- Changes to the National List may be requested using petitions
- Any person may submit a petition
- Process updated on March 11, 2016
- New Program Handbook document, NOP 3011
- Implemented two NOSB recommendations



# Updated National List Petition Process



- Eliminates provision for submission of Confidential Business Information (CBI)
- Clarified procedures for certain types of petitions, such as annotation (restrictions)
- Answers common questions about the petition process to clarify the role of the NOP, the role of the NOSB, and the criteria used to evaluate petitions

# Petition Process: Petition Guidelines



- Guidelines explain what information must be included in a petition
- No specific template or form is required
- No fee or cost to petition
- Petitions may not contain confidential business information (CBI). CBI is not available to NOSB or public.

# Petition Example



- Petitioned Material: **Sulfur**
- Petitioner: Georgia Gulf Sulfur Corporation
- Petitioned Use: **Livestock use** as a pesticide (repellent for mites, fleas, and ticks)
- Status: Under review by National Organic Standards Board (NOSB); Technical Report in Development

# NOP's Internal Process



- NOP confirms receipt of petition
- NOP reviews incoming petition for eligibility and sufficiency (generally within 30 days of submission)
- NOP is the primary point of contact for any correspondence between NOSB and petitioner

# NOP's Internal Process



NOP's goal is to make sure that petitions are eligible and complete when they are distributed to the Subcommittee, so that revisions and supplementary petition information are infrequent

Two NOP checklists:

- OFPA Checklist, NOP 3005-1
- Petition Checklist, NOP 3005-2

Checklists are completed by NOP staff and provided to the NOSB Subcommittee, but are not posted for the public



- OFPA Checklist, NOP 3005-1
  - Used to verify eligibility of the substance for addition to the National List
  - Substances that are not eligible are not forwarded to the NOSB for review

# Ineligible Petitions



- Formulated (brand name) products
- Food additive without FDA approval
- Pesticide without EPA tolerance or tolerance exemption
- Requests to add substances already allowed
- Synthetic 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)



## Eligibility review of previously petitioned/rejected materials

- NOP reviews previous petition and technical report(s) for the substance
- NOP identifies why the substance was prohibited
- NOP reviews new petition for any information that was not submitted in an earlier petition or provided in the technical report
- No new information
  - Petitioner is notified that substance was previously reviewed and rejected and that no new information was provided
- New information
  - Petition proceeds to NOSB review. NOP does not determine whether the new information would be likely to warrant a change in decision

**\*\*Important that NOSB proposals to reject petitions also contain sufficient justification\*\***



# NOP's Internal Process



- Petition Checklist, NOP 3005-2
  - Used to verify that the petition meets the submission guidelines
  - NOP does not fact check all of the data provided
  - NOP may identify areas where more information or references are needed for completeness
  - NOP's "sufficiency" determination does not mean NOP believes the substance should be added to the National List; only that it meets the eligibility requirements for NOSB review



- Examples of incomplete petitions:
  - No description of alternatives
  - Labels not submitted
  - No reference list provided
  - Inadequate description of previous reviews (e.g., NOSB reviews)
  - Inadequate description of physical properties and chemical mode of action
  - Contains confidential business information (CBI)



- “...acceptance of the petition for NOSB review is an administrative matter and does not reflect a decision by NOP on the substantive merits of the petition.”
- “...the NOSB, during its evaluation of the petitioned substance, may have additional requests for information. A notice will be sent to you should the NOSB request additional information.”



- Updated Petition Information
  - Petitioner may submit updated (unsolicited) information after petition has been sent to NOSB
  - Petitioner may respond to additional information requested by NOSB
- Updates are posted alongside petition on NOP website

# NOSB Subcommittee Process



Petition – NOSB subcommittee review

- Should be completed within 60 days of receipt of petition

The NOSB subcommittee may request:

- a) Additional information from petitioner
- b) Technical report

Adapted from NOSB Policy & Procedures Manual

# Technical Reports



- Completed by third-party contractors
- Technical report templates include evaluation questions derived from OFPA criteria
- Minimum of 4 months for development
- Reports are posted on NOP website after acceptance by NOSB Subcommittee

# NOSB Process: TR Requests



- Requests for technical reports (TRs) should be submitted within 60 days of receipt of petition
- TRs are always optional, but may be requested at the discretion of the Subcommittee
- Any additional information requested (beyond the scope of a standard technical report), must be aligned with the OFPA criteria
- If particular areas of focus are needed, please provide the details in the request.

# NOSB Process: TR Requests



- For petitions to add new substances to the National List, we do not recommend limiting the scope of the technical report
- Limited scope / supplemental TRs may be appropriate in the following scenarios:
  - Crop or livestock petitions where classification is unclear
  - Petitions to amend an existing annotation
  - Petitions to remove an existing substance
  - Sunset substances



# Technical Report Content



- Technical reports do not currently include:
  - Proprietary information
  - Economic impact information
- NOP accepts quality, accuracy and completeness of technical reports

# Technical Reviews, cont.



- NOP reviews all TRs before they are distributed to the Subcommittee to ensure they meet the requirements of the contract
- NOP will ensure that TRs are sufficient and complete when they are distributed to the Subcommittee
- Occasionally, NOP will request that a subject matter expert from the Agricultural Research Service review a draft copy of the report. When this occurs, it will be noted when NOP distributes the report to the Subcommittee

# Petition Process: Substance Evaluation Criteria



1. The potential of such substance 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 of 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;

OFPA, Sec. 2119(m)



5. The effect 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. Its compatibility with a system of sustainable agriculture.

# Technical Advisory Panels (TAPs)



- **OFPA:** The NOSB shall convene technical advisory panels to provide scientific evaluation of materials considered for the National List.
- 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.
- TAPs previously included recommendations. Technical reports do not recommend actions to the NOSB.

# Petition Process: 205.606 Evaluation Criteria



The NOSB shall determine whether agricultural substances petitioned for Section 205.606 are potentially commercially unavailable.

The NOSB will consider:

- Why the non-organic form of the substance is necessary for use in organic handling;
- The current and historical industry information/research/evidence that explains how or why the substance cannot be obtained organically in the appropriate form, quality, or quantity to fulfill an essential function in a system of organic handling.

Petition guidelines, NOP 3011



Industry information includes, but is not limited to the following:

1. Regions of production, including factors such as climate and number of regions;
2. Number of suppliers and amount produced;
3. Current and historical supplies related to weather events such as hurricanes, floods, and droughts that may temporarily halt production or destroy crops or supplies;

Petition guidelines, NOP 3011



Industry information includes, but is not limited to the following:

4. Trade related issues such as evidence of hoarding, war, trade barriers or civil unrest that may temporarily restrict supplies; and
5. Other issues which may present a challenge to a consistent supply.



# NOSB Process – Petition Templates



- The NOSB templates are a tool to facilitate and document evaluation of the petitioned substance against the OFPA criteria
- Previous format used checklists; checklists are not used in current procedures

# NOSB Review - Documentation



- In general, suggest limiting your answers to address the uses that are within the scope of the petition (although there may be exceptions, such as effects from misuse)
- Does recommendation demonstrate that NOSB met its obligation under OFPA to *consider* the criteria (e.g., effect of the substance on human health?)
- Comments should be used to document the review and to provide clarity for stakeholders



- For substances that have a broad spectrum of utility, the NOP recommends that, to the extent possible, the NOSB review materials with a lens limited to the manner and amount that the substance would be used in organic production and handling



- Questions?



## Sunset Process

Lisa M. Brines, Ph.D.

Agricultural Marketing Service | National Organic Program

February 2017



# Sunset Provision of OFPA



- No exemption or prohibition contained in the National List shall be valid unless the **NOSB 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

OFPA, Section 2118(e)

# Sunset Dates



- Apply to National List substances
- Sunset dates are published in Program Handbook, NOP 5611
- 5 years is calculated from effective date of final rule or renewal
- For efficiency, sunset reviews are grouped by calendar year

# Sunset Process



- **Thorough and transparent review process for all substances** - provides two public comment opportunities before the NOSB completes its review of each substance.
- Ensures that any change to the National List (petitioned or sunset) is supported by a 2/3 majority of the NOSB.
- Streamlines the administration of the National List by simplifying rulemaking.





# What is the process?



- The Sunset Process is comprised of two components:
  - (1) The NOSB review (Steps 1-6) and
  - (2) USDA action (Steps 7-8) on substances within 5 years of their addition to or renewal on the National List.
- Key documents used for the review:
  - (1) Sunset List**
  - (2) Preliminary Review**
  - (3) NOSB Sunset Review**



- **Step 1** – Meeting announcement in Federal Register inviting comment on **Sunset List** (background may include requests for specific info from Subcommittees)
- **Step 2** – Written public comments submitted and analyzed by Subcommittees
- **Step 3 (Mtg #1)** – Subcommittees summarize background and public comment & receive oral comment

# Process Mechanics Cont'd



- **Step 4** – Subcommittees analyze written and oral comments from Mtg #1 and prepare **Preliminary Review**.
  - Meeting announcement inviting comment on **Preliminary Review** published in Federal Register
- **Step 5** – Written public comments submitted and analyzed by Subcommittees

# Process Mechanics Cont'd



- **Step 6 (Mtg #2)** – Subcommittees present **Preliminary Review**, receive oral comment, and discuss with the full Board.
  - Motions for removal from the **Preliminary Review** are voted on by the full Board.
  - After Mtg #2, NOSB completes **Sunset Review**.

# Process Mechanics Cont'd



- **Step 7** – AMS reviews NOSB Sunset Review and considers rulemaking action for any recommended removals
- **Step 8** – AMS issues Federal Register Notice announcing renewal of applicable substances



## **July 2016**

- Subcommittees submitted Technical Reports requests

## **Spring 2017 Meeting**

- Sunset 2019 Summaries
- Public comment

## **Fall 2017 Meeting**

- Sunset 2019 Reviews
- Public comment
- Decisions to remove made here

## **Before Sunset Dates in 2019 (October 30)**

- AMS renewal and removals, as applicable.

# Review New Documents



- Sunset list template
- Preliminary review template
- NOSB review template

# New Sunset Recommendation



- In Fall 2016, NOSB passed recommendation on Sunset Review - Efficient Workload Organization
- Objective to impartially and efficiently redistribute material reviews across several years
- Previously, most National List materials would sunset in the same year (every 5 years from 2002)





- Questions?

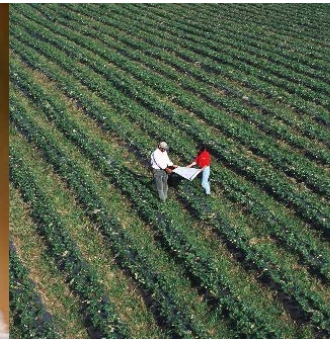
# NOSB Training



## Rulemaking

Shannon Nally Yanessa

Agricultural Marketing Service | National Organic Program  
February 2017





# Objectives



- What happens when NOP receives an NOSB recommendation for rulemaking?
- How do we get from recommendation to a proposed or final rule?



## Administrative Procedures Act

- Fosters transparency and public participation in the rulemaking process.

### *Basic requirements:*

- Publish a proposed rule in the Federal Register.
- Invite and consider public comments.
- Issue final rule at least 30 days before effective date.

# Rulemaking oversight



- Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB)
  - Operates as an “information aggregator” across government
  - Facilitates interagency coordination & communication
  - Considers costs and benefits of regulations
  - Ensures public engagement in process
  - Ensures compliance with relevant statutes
- [Reginfo.gov dashboard](https://www.reginfo.gov)

# How does NOP initiate a rulemaking?



- Submit a regulatory workplan
  - Summarizes objectives, possible alternatives, and effects of action to policy officials (non-technical)
  - Provides information needed for “designation” of significance
- Priority rulemaking actions appear on the Unified Agenda
  - Communicates to OMB and public about agencies regulatory plan

# Significance designation



- **OMB reviews rules that may:**
  - **Have an annual effect on the economy of over \$100 million or more, or adversely affect the economy, a sector of the economy, jobs, or competition;**
  - **Create serious inconsistency or interferes with an action of another agency;**
  - **Materially alter the budgetary impact of existing programs; or**
  - **Raise novel legal or policy issues.**

# Significant vs Non-significant



What does this distinction mean in practice?

- Significant rules require additional analyses:
  - Regulatory Impact Analysis (cost-benefit) – E.O. 12866 & 13563
  - Regulatory Flexibility Act
  - Paperwork Reduction Act
  - Consultation & Coordination with Indian Tribal Governments
  - Civil Rights Impact Analysis



# How does NOP draft a rule?



- Review all NOSB recommendations; technical information (e.g., TRs, petitions), overlapping regulations.
- Review and analyze public comments (final rule).
- Draft overview of the amendment(s), including justification for action and info on implementation;
- Draft amendatory instructions for Federal Register;
- Conduct necessary supplementary analyses.
- Facilitate NOP approval; engage other Divisions as needed.

# How can public comments affect the final rule?



- The notice-and-comment process enables anyone to submit a comment on any part of a proposed rule.
- An agency is not permitted to base its final rule on the number of comments in support of the rule over those in opposition to it.
- The agency must base its reasoning and conclusions on the rulemaking record, consisting of the comments, scientific data, expert opinions, and facts accumulated during the pre-rule and proposed rule stages.
- If the rulemaking record contains persuasive new data or sound policy arguments, the agency may decide to terminate the rulemaking.
- Or, the agency may decide to continue the rulemaking but change aspects of the rule to reflect these new issues.

# Clearance - review pathway



- Office of General Counsel & USDA General Counsel
- NOP Deputy Administrator
- AMS Administrator
- Office of Budget and Program Analysis
- Office of Risk Assessment and Cost Benefit Analysis
- Assistant Secretary, Civil Rights
- Office of Chief Economist
- Office of Chief of Information
- Office of Tribal Relations
- Undersecretary
- Secretary
- OMB – includes interagency review.
  - 90-day review; can be extended.
- (Congressional Review Act)

Red = needed  
for significant  
rules

# Why does rulemaking take so long?



- Review of NOSB recommendation
- Draft Regulatory Workplan for OMB Designation
- Draft Proposed Rule
- Clearance & Federal Register Publication
- Comment Period
- Comment Analysis
- Workplan Addendum for OMB Designation
- Revise Required Analyses
- Draft Final Rule
- Clearance & Federal Register Publication
- Effective Date of Final Rule

Proposed  
Rule  
Stage

Final Rule  
Stage



- [A Guide to the Rulemaking Process](#)
  - Office of Federal Register
- [The Office of Information and Regulatory Affairs: Myths and Realities](#)
  - Commentary By Cass R. Sunstein
- [The Regulatory Plan and Unified Agenda](#)
  - Office of Management & Budget



# Best Practices: Proposals & Recommendations

Jessica Walden

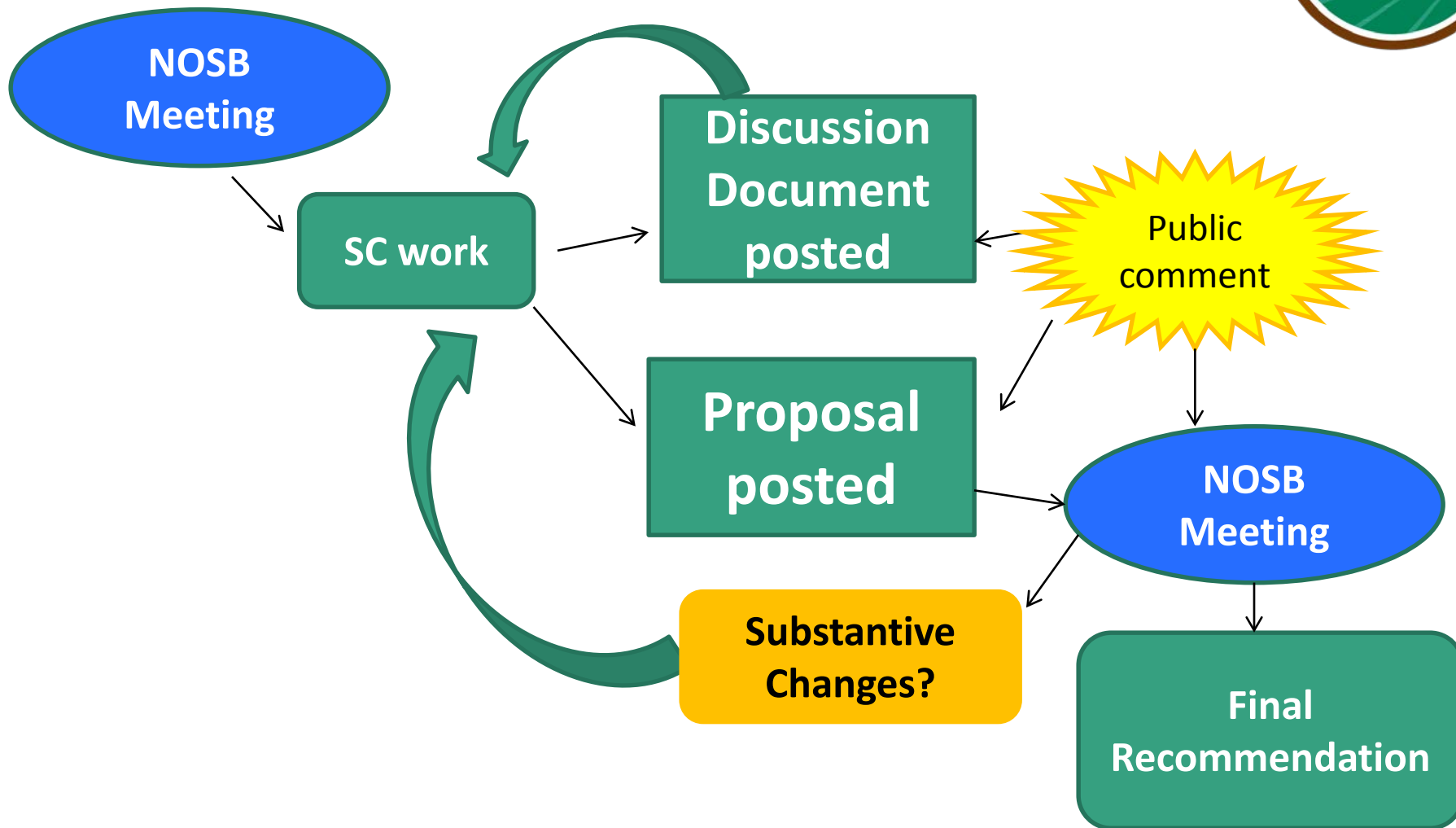
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- Review overall process and templates
- Example of a non-materials proposal
- Critical pieces of proposals & recommendations

# NOSB Process







- Proposals
  - Come from Subcommittees
  - Propose an action, include a SC vote
  - Examples:
    - Motion to List, Remove, or Change a substance
    - Motion that calls for policy clarification or guidance
    - Motion to change the regulation elsewhere

# Discussion document



- Provided by Subcommittee
  - Used to collect information
  - Posted for comment
- No vote taken at first meeting
  - Verbal update, discuss comments
- Returns to subcommittee for further development
- May be turned into a Proposal at next meeting

# Recommendation



- Product of full board
- SC proposal is voted on at meeting
  - Final product is considered the recommendation to NOP
    - Cover sheet is added to the SC proposal to summarize final action
  - If substantive changes are considered during a meeting, must get sent back to SC for revision and re-posting

# Other types of documents



- Reports or Updates
  - Subcommittee does not expect public comment, but wants to provide update to public
  - No votes or action expected by NOP in response

# Forms used



- Materials Review Template for new petitions
  - Crops and livestock version
  - Handling version
- Other proposals - narrative
- Sunset templates
  - Initial Meeting 1 Summary
  - Meeting 2 Subcommittee Prelim Review
  - NOSB Final Sunset Review

# Example of narrative format recommendation



Calculation of Organic Percentage in multi-Ingredient products, April 2013

Biodegradable Biobased Mulch, October 2012

From: National Organic Standards Board (NOSB)  
To: the National Organic Program (NOP)

Date: April 11, 2013

Subject: Calculating Percentage Organic in Multi-Ingredient Products

Chair: Mac Stone

**The NOSB hereby recommends to the NOP the following:**

Rulemaking Action:

Guidance Statement:

Other:

Statement of Recommendation: (Motion # 1)

Motion to accept the Calculating Percentage Organic in Multi-Ingredient Products, as amended April 11, 2013.

**Rationale Supporting Recommendation (including consistency with OFPA and NOP):**

1. Proposed Regulatory Change at 205.302(a) brings language into line with actual practice to make calculations based on "all ingredients", not "finished product", which is consistent with OFPA and NOP.
2. Recommendations for development of self-calculating forms, exclusion of salt, processed single ingredients with specification sheets, multi-ingredient ingredients calculations, and organic labeling versus organic content, provide guidance language for clarification of the Rule consistent with OFPA and NOP.
3. The organic community requires easily accessible, web based, detailed Guidance, with examples from the NOP, on the items listed above, and especially in calculation of excluded water.

**Committee Vote:**

Moved:

Seconded:

Yes:

No:

Abstain:

Absent:

Recused:



Formal Recommendation  
From: National Organic Standards Board (NOSB)  
To: the National Organic Program (NOP)



Date:

Subject:

Chair:

The NOSB hereby recommends to the NOP the following:

Rulemaking Action:

Guidance Statement:

Other:

Statement of Recommendation: (Motion # 1)

Motion to classify Biodegradable biobased mulch film as synthetic

Rationale Supporting Recommendation (including consistency with OFPA and NOP):

While the building blocks of the polymers that make the mulch films are often starches and other non-synthetic components, there are some synthetic additives to help the films hold together and add pigment.

Committee Vote:

Moved:

Seconded:

Yes:

No:

Abstain:

Absent:

Recuse:

Page 1 revised 10/12 ma





# What are the critical pieces?



- **Assessment of Existing Rule**

- Did you check if other parts of the regulations may be impacted by your proposed action?
  - E.g., sulfites in fortified wines, colors
- If other parts are impacted, what is your advice?

- **Accuracy**

- Did you use the correct citations to OFPA and the USDA organic regulations?
  - E.g., Tetracycline

# What are the critical pieces?



- **Clear Use of Technical Information**
  - Did you ensure that accurate citations for any technical information is included?
  - Did you clearly articulate why the technical information is relevant and supports any justification?
    - E.g., Carrageenan

# What are the critical pieces?



- **Clear Explanation of “Limits”**
  - If there is some quantitative limit proposed, did you articulate the basis for the limit?
    - E.g., Methionine
    - E.g., Stocking Density

# What are the critical pieces?



- **Use of Criteria**

- Did you clearly explain your evaluation of the OFPA criteria and how it connects to your proposal?
  - E.g., Why a natural material is not effective
- For 606 materials, did you discuss evidence of commercial availability?
  - E.g., hops

# What are the critical pieces?



- **Responsive**
  - Did you address the petitioner's request?
  - Did you explain why you chose an alternative to or rejected the petitioned use?
    - E.g., pet food amino acids

# What are the critical pieces?



- **Impacts on Organic Market**
  - To the extent that data or public comment is available, did you summarize information on expected impacts on...?
    - Organic producers and handlers
    - Organic consumers
    - Certifying agents



## Best Practices: Evaluating Technical Reports and Petitions, Developing Materials Proposals

Jessica Walden

Agricultural Marketing Service | National Organic Program

February 2017





- Identifying key information
  - In petition
  - In Technical Review
- Filling out the Materials Review Template
- Providing a summary narrative



# Finding the Key Information



- You have just received an email with a large TR linked, and request for review



Where to start?

- Identity
- Classification
- What is it used for



# Finding the Key Information



## 1. Identity of the Substance

- Is it obvious?
- Are there various forms?
- What was the petitioned form?

Example: formic acid



# Finding the Key Information



- Identity
  - Is there one CAS number?
  - Are there variations in form?
  - Are there discrepancies between petitioned name and TR name?

# Example of Identity Problem



- Petition was for “cellulose fibers”
  - For use in hot dog casings, also anticaking and filtering
- TR says: Chemical name = Cellulose,  $\beta$ -1-4-D-glucan
  - Other names include:
    - powdered cellulose; alpha-cellulose, flour cellulose; cellulose fibers.
    - Microcrystalline cellulose, MCC, (derived from cellulose) is also called cellulose gel.
    - Cellulose casing, regenerated cellulose

# Example of Identity problem



From TAP

- Cellulose
  - CAS Number: 9004-34-6- alpha cellulose

- **Other Codes:**

INS numbers:

- 460 cellulose
- 460(i) microcrystalline cellulose
- 460(ii) powdered cellulose

# Example of Identity problem



- Best to identify the exact identity in final recommendation:
  - CAS number, INS number or other
  - Will help in future reviews

# Finding the Key Information



2. How should the substance be classified?
  - Synthetic
  - Nonsynthetic
  - Agricultural
- Find this in the TR
- Does the petition also support this finding?
  - If not, explain reasoning for a different determination
  - Cite support for decision on Petition Review Template
  - Use Decision Tree
    - Classification of Materials Guidance

# Finding the Key Information



3. What is the petitioned use?
  - Is it clear from petition?
  - Are there other uses mentioned in TR?
  - Review Example: formic acid



# Read the Documents !



- Once oriented – read carefully the entire TR
- Revisit petition for comparison
  - Petition Justification statement- does it seem valid?
- Then go through Review Template and answer questions.
- Discuss: does anyone have a different way to approach this?

# Materials Review Template



- Provide reasoning
  - Overall use is to balance overall evaluation, one factor might offset another
  - No one criterion is determining
- Sometimes there is no answer, can indicate that information is lacking



# Review Exercise - break into 2 groups



- Category 1 – Classification and Category 3 – Alternatives / Compatibility
- Category 2 – Adverse Impacts



- Once template is complete, fill out Summaries on page 1
- Summary of Proposed Action
  - Plainly describe what the proposed action is
  - Give brief justification for action, cite criteria met or not met



Questions?

## Best Practices: Comment Evaluation

Jessica Walden

Agricultural Marketing Service | National Organic Program  
February 2017



# Role of Public Comment



- Enables stakeholder feedback and participation
- Provides input on current needs and uses
- Provides input on public concerns
- Improves the final NOSB recommendation
  
- Helps support the final NOP action



- Large number of comments on some topics
- Limited time to review
- Not always specific or helpful
  
- Useful to have a system for review
  - Start with a table
    - Count numbers
    - Summarize significant ideas



# Weighing the comments



- NOSB should treat comments similarly as USDA does in rulemaking
  - It is not a ballot initiative or an up-or-down vote
  - Total numbers for or against are not determinative alone
  - NOSB recommendations should have justification based on comments, scientific data, expert opinions, and facts accumulated during the NOSB process.
  - If the comments contains persuasive new data or sound policy arguments, the SC could defer a final recommendation, or re-propose with changes.

# Examples



## Total comments: 25 - Bulk Handling Draft Guidance (Internal NOP review)

	Suggested changes	Likes	other
<b>Certifiers Assoc. – 43 signers</b>	<ul style="list-style-type: none"><li>- Transporters optionally may be certified, thinks “handle” does not include transport</li><li>- provide definition of broker: does not physically handle?</li><li>- Sealed containers – should mean tamper proof,&amp; impermeable</li></ul>	Supports in general	Supported by (mkt coop)
<b>XYZ certifier</b>	<p>handlers, not always reqd to be certified.</p> <ul style="list-style-type: none"><li>-Certifiers may not be able to inspect railroad cars and trucks</li><li>-have not been requiring hay brokers to be certified</li></ul>		
<b>organic farmer, MN</b>	<ul style="list-style-type: none"><li>-Undue burden on smaller growers using custom haulers</li><li>-will be a lack of transporters if all have to be certified</li></ul>		Also filed as assoc, 144 members



## *Crops Subcommittee Presentation*

### **Total in favor of adding Biodegradable Mulch Film: 163**

- Farmers: 38
- Consumers: 114
- Organizations: 11

(Including, among others: BPI; Beyond Pesticides; CCOF; Driscoll's; NOFA; NatureWorks; Novamont; OTA; Oregon Tilth; Proteima; USDA BioPreferred Program)

### **Total opposed to listing Biodegradable Mulch Film: 4**

- Farmers: 0
- Consumers: 1
- Organizations: 3

(CFS; Organically Grown Company; PCO)

### **Total requesting clarification, annotation changes or further research: 3**

- Organizations: 3

(CROPP Cooperative; OMRI; QAI)

# Examples – NOSB meeting Oct 2012



## *Crops Subcommittee Presentation*

### **205.601(b)(2)**

(A)(2) showing at least 90% biodegradation absolute or relative to microcrystalline cellulose in less than two years, in soil, tested according to ISO 17556 or ASTM 5988

- **BPI**: Although sometimes used as synonyms, the terms “biodegradation” and “mineralization” are different. The 90% threshold value required by the petition and ASTM test methods refer to mineralization. A complete biodegradation is inferred when a mineralization level of 90% is reached.
- **CFS**: Concerned whether the tests have been adequately field verified; the TR did not address these questions. 10% of the mulch is allowed to remain in the microbial biomass or as an undegraded or partially degraded residue in soil; concerns for persistence in farm environment.
- **OMRI**: This language can serve as an appropriate and adequate review without A(1). 5988 is a testing method, rather than a standard to which certification can be obtained; concerned about certifier expertise to determine if materials meet the annotation. A(2) & (E) conflict over the 2 year &/or end of each growing season biodegradation timeframe.
- **PCO**: there are too many standards referenced in the annotation.

# Examples - NOSB meeting Oct 2012

## *Crops Subcommittee Presentation*



<b>Concern</b>	<b>Response</b>
<p>Short and long-term impact of pigments on ecosystem</p>	<p><i>Only titanium dioxide and carbon black are being petitioned. Titanium dioxide is non-synthetic and would be allowed anyway, and carbon black is pure carbon and in effect already allowed as the main component of the ink in newspaper mulch</i></p>
<p>Can metal catalysts build up in the soil and with what impacts?</p>	<p><i>An important part of meeting the ASTM 6400 standard above is to verify that any substances such as catalysts break down completely along with the other ingredients. All additives will be tested for by the MRO or the manufacturer.</i></p>
<p>Are there other additives or processing aids that have potential negative impacts?</p>	<p><i>Same comment as above. Additionally, one of the makers of PLA bioplastic stated that the TR was inaccurate about the solvents used to produce PLA. No solvents are used for PLA.</i></p>



## Nov. 2009 Handling Committee *Sunset Review of Octadecylamine*

Since the original recommendation dated September 1, 2009 was posted, the NOSB has received 9 comments related to the Handling Committee's original recommendation. Comments were received from organic manufacturers, certifiers, trade associations, and consultants to the organic industry. All comments disagree with the September 1, 2009 recommendation, stating that this substance is still a necessary additive to boiler feed water of some organic operations to minimize corrosion of boilers and steam lines, especially for manufacturers who run predominantly organic products, and whose facilities are located in areas where water quality is exceptionally poor. There were no comments posted that agreed with the Handling Committee's original decision.



- Importance of Acknowledging Comments
  - There will always be disagreements
  - Public can accept they will not always get their desired outcome
    - If they are not ignored
    - If the reasons are explained
  - Results in more consensus, and stronger program in the long run

# Evaluation of Comments



- Questions?
- Other ideas or tips?
- What works for you?





## Sunset 2017 Review Summary Meeting 1 - Request for Public Comment Crops Substances April 2015

### Introduction

As part of the [Sunset Process](#), the National Organic Program (NOP) announces substances on the National List of Allowed and Prohibited Substances (National List) that are coming up for sunset review by the National Organic Standard Board (NOSB). The following list announces substances that are on the National List for use in organic crop production that must be reviewed by the NOSB and renewed by the USDA before their sunset dates in 2017. This list provides the substance's current status on the National List, use description, references to past technical reports, past NOSB actions, and regulatory history, as applicable. If a new technical report has been requested for a substance, this is noted in this list. To see if any new technical report is available, please check for updates under the substance name in the [Petitioned Substances Database](#).

### Request for Comments





## Sunset 2017 Review Meeting 2 - Review Crops Substances October 2015

As part of the National List Sunset Review process, the NOSB Crops Subcommittee has evaluated the need for the continued allowance for or prohibition of the following substances for use in organic crop production.

**Reference: 7 CFR §205.601 Synthetic substances allowed for use in organic crop production.**

[Alcohol: Ethanol](#)

[Alcohol: Isopropanol](#)

[Chlorine Materials: Calcium hypochlorite,](#)

[Chlorine dioxide, Sodium hypochlorite](#)

[Hydrogen peroxide](#)

[Soap-based algaecide/dessicant](#)

[Humic acids](#)

[Lignin sulfonate\(i\)4](#)

[Lignin sulfonate\(l\)1](#)

[Magnesium sulfate](#)





## Sunset 2017 NOSB Final Review Crops Substances October 2015

As part of the National List Sunset Review process, the NOSB has evaluated the need for the continued allowance for or prohibition of the following substances for use in organic crop production.

**Reference: 7 CFR §205.601 Synthetic substances allowed for use in organic crop production.**

[Alcohol: Ethanol](#)

[Alcohol: Isopropanol](#)

[Chlorine Materials: Calcium hypochlorite,](#)

[Chlorine dioxide, Sodium hypochlorite](#)

[Humic acids](#)

[Lignin sulfonate\(s\)](#)





# National Organic Standards Board Training: Operating Guidelines

Agricultural Marketing Service | National Organic Program  
February 2017





- Nominations Process Overview
- Charter Renewal Overview
- Work Agenda Development
- Subcommittee Management
- Public Meeting Agenda
- Public Meeting Management
- FOIA Review

# Nominations Process Overview



**The Board nomination process takes about 1 year:**

1. Prepare Federal Register call for nominations and outreach plan; complete clearance process
2. Announce call for nominations – we target a 2 month long recruitment period
3. Review applications for completeness and basic qualifications, i.e., fit with OFPA categories
4. Vet qualified candidates against exclusion criteria (examples: registered lobbyist; service on other Board)

# Nominations Process Overview



6. Interview qualified and vetted candidates
7. Prepare slate and information summary about qualified and vetted candidates for Secretary's consideration
8. Secretary selects appointee(s); appointee(s) announced
9. Term begins in January



# Nomination Process Criteria



A range of factors are considered in evaluating applicants:

- OFPA categories of seats to be filled – **mandatory**
- NOSB Recommendation on Criteria for Board Membership (1999) – More on this next slide!
- Ability to work collaboratively with other Board members and USDA
- Ability to represent all racial and ethnic groups, women and men, and persons with disabilities.



# NOSB Recommendations on Nominations Evaluation Criteria



- In 1999, NOSB recommended criteria for Board membership – these criteria are on NOP’s nominations webpage, are in Federal Register announcements, and are used during candidate evaluation.
- **Criteria include:**
  - Understanding of organic principles and practical experience in the organic community;
  - Experience in public policy;
  - Commitment to organic integrity;
  - Ability to evaluate technical information;
  - Willingness to commit time and energy needed;
  - Demonstrated experience and interest in organic production and certification

# Charter Renewal Overview



- FACA requires that the NOSB charter be considered for renewal every two years.
- This involves review by USDA and the General Services Administration (GSA) (oversees FACA across agencies) in order to revalidate the need for the Board and its overarching governance.
- USDA releases Federal Register Notice announcing its intent to renew the Board's charter.
- This is a process that occurs between USDA and the GSA – the Board and public are not involved.



1. AMS establishes the work agenda with input from the NOSB.
2. Board may propose ideas, but should not start work on new topics without NOP approval
3. The public has a voice in this process:
  - Public may petition additions or deletions from the National List.
  - Public may also submit comments to the Board and write to the NOP.
4. FACA requires that agencies effectively use resources: we shouldn't ask for advice we can't act on.

# Work Agendas: Criteria for Adding Items



- 1. Within Scope:** Item must be within the scope of OFPA and within agency authority.
- 2. USDA/NOP Priority:** Item must be a priority for the USDA/NOP; and something that the NOP is able to implement in a reasonable timeframe.
- 3. Clear Need:** Item must reflect a clear need for the NOP and/or organic community, for which information or advice is needed. (If it is a need, but NOP has enough information, it doesn't need to be on the work agenda.)
- 4. Clear Scope:** NOP must have a clear sense of the intent and scope of the work agenda item.



**The Work Agenda establishes subcommittee scope for the upcoming semester or year. Process:**

1. NOP develops list based on substance evaluations (e.g., petitions, sunset) and formal requests (via memos) that NOP has provided NOSB.
2. NOP and Executive subcommittee review work agenda.
3. NOP approves final work agenda.

# Subcommittee Management



- Subcommittees hold conference calls between public meetings to work on work plan items.
- Effective facilitation by the subcommittee chair elicits different questions and perspectives, while keeping the group focused and on task.
- Helping keep each other on point may help reduce time needed – regularly ask “what is our goal, and how does this discussion support the outcome we are trying to achieve?”
- Subcommittee notes maintained by NOP and posted on-line.

# Discussion Documents/Proposals: Criteria for NOP Acceptance



- 1. Within NOSB Scope:** Item must have been within scope to be on work agenda; content of product must also be within scope of OFPA and agency authority.
- 2. Implementable:** Item must have been an NOP priority to be on work agenda; content of completed product must be something that NOP can actually implement if a recommendation is accepted.
- 3. Requests for Public Comment:** Public comment is vital in shaping advice; requests must be within NOP/OFPA authority and not conflict with current statute and rules.
- 4. Quality and Clarity:** Document must be clearly written. If two opinions or a minority opinion are included, the motion being voted on must be very clear.

# Public Meeting Agenda



- Public meeting agenda prepared by NOP, driven by several factors:
  - Inclusion of work agenda items that have yielded discussion documents or proposals
  - Reasonable time for public comments
  - Time for presentations and expert panels
  - Cost





# Substantive Changes at Public Meetings



- Only minor adjustments to discussion documents and proposals will be allowed before voting.
- **Consider the extent to which:**
  - A reasonable person affected by the recommendation would have understood that the published proposal affects his or her interests;
  - The recommendation's content is substantially different from the proposal's content; and
  - The effects of the recommendation differ from the effects of the proposal.
- The NOP Deputy Administrator or designee will determine if a proposed amendment is a substantive change. If public comments lead to substantive changes, the document goes back to subcommittee.

# NOSB Meeting Ground Rules



## **Board members request of the audience:**

- We ask commenters to focus on issues, not people.
- No questions or comments from the audience unless invited by the Board Chair.
- Commenters may not interrupt each other or step in for each other without the Chair's permission.
- Any sidebar conversations or commenter preparation activities must happen out in the hallway, to prevent disruption and the ability of others to hear what's going on.



# **FOIA/FACA Overview: Rules of the Road on Records Release**

February 2017

# FOIA/Government in the Sunshine



- The Freedom of Information Act (**FOIA**) gives people the right to access information from the federal government.
- **FACA** notes: “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.”

# Most of What You Write is OPEN



- NOSB records (your emails and your work) are subject to public inspection, following agency review.
- AMS will redact confidential business information, private email accounts, private phone numbers, and cell phone numbers. Work phone numbers, fax numbers and email addresses, are releasable.
- **Board member's opinions, exclamations, jokes, or other personal statements are likely to be released.**

# AMS Review Essential:

## Do Not Share NOSB Documents/Email



- NOSB communications (e.g., emails) and draft documents (e.g., draft proposals) must be available to the public: **through the agency that oversees the FACA Board.**
- NOP is the custodian of all Board records, so only AMS/NOP can make records available to requesting parties. AMS/NOP reviews all records before release, to determine whether any exemptions apply (e.g., personal information, confidential business information).
- Board members may speak with community members about the work being done by the Board, and ask for input.
- **No Board communications or documents are to be forwarded or shared with any individuals or constituencies outside the Board members and AMS/NOP.**

# Best Practices



- Avoid sending full mail strings when responding or forwarding emails, unless relevant to discussion.
- Send only the information that is necessary to convey your message.
- Informality is natural, AND, watch what you state in your emails. Personal jokes and remarks usually cannot be redacted.
- Mark all drafts with watermarks or “DRAFT” in the header within the document.
- Do not circulate “drafts” outside of the NOSB.



# Questions/Discussion

Agricultural Marketing Service | National Organic Program  
February 2017

