



November 13, 2011

National Organic Standards Board
c/o Lorraine Coke
1400 Independence Ave., SW.,
Room 2646– So., Ag Stop 0268,
Washington, DC 20250–0268

Re: AMS-NOP-11-0081

Dear members of the National Organic Standards Board,

On behalf of The Cornucopia Institute's 4,000 members, predominantly certified organic family-scale farmers, we submit the following comment on the Policy Development Committee's discussion documents and proposed recommendations.

We thank the PDC for the proposed recommendation on committee transparency, which we fully support.

We also support the proposed recommendation on conflict of interest.

And we appreciate the opportunity to comment on the questions asked regarding public comment. Public comment is an integral part of the National Organic Standards Board decision-making process, and is vital to allow for public participation. When the Board cut the allotted speaking time from five to three minutes, with one minute for Q&A, and abolished the proxy statements, as was done in Seattle, a more respectful approach should have been taken.

Not only was it disrespectful, but it was counterproductive to cut the time allotted to three minutes for everyone, giving the same amount of time to Seattle-area organic consumers who signed up at the last minute to speak on issues that were not on the agenda, professional researchers who traveled across the country at great personal or organizational expense, academic specialists with expertise in items on the agenda, and others who deserved more than a meagerly three minutes to present highly complex, detailed and relevant information to the Board members.

Moreover, it was entirely unacceptable to cut off Board members who wished to ask questions to presenters. This was the only time for Board members to ask questions of qualified individuals with a broad range of expertise and opinions.

All of these constraints were unprecedented in the annals of the NOSB that has always emphasized wide participation by the entire spectrum of the organic community.

We sincerely hope that a more thoughtful and respectful approach will be considered in the future. We thank the Policy Development Committee for moving in this direction with this discussion document, and again, appreciate the opportunity to comment.

1) Given that the public comment period cannot be unlimited, how should the requests to make public comment be prioritized?

If the Board determines that more people signed up than time allows, the Board could decrease the time allotment below five minutes (to three or four minutes), as long as the Board is flexible by prioritizing the individual's time allotment based on these criteria:

- Who the presenter is representing
 - o For example, a citizen speaking on his/her own behalf should receive the decreased time allotment, while a citizen speaking on behalf of an organization with thousands of members should be able to receive the full 5 minutes.

- The presenter's level of expertise in a topic on the agenda
 - o For example, a toxicologist with expertise in a certain material on the agenda, or a researcher with expertise in an issue that is on the agenda, should be able to receive the full 5 minutes. Also, certified organic farmers or processors who are speaking to a specific issue on the agenda, and who can lend expert testimony based on first-hand knowledge and experience, should also be granted the full five minutes.

If time is short, presenters who sign up to speak on items that are not on the agenda, or sign up at the meeting rather than in advance, could be given the decreased time allotment.

2) Should the policy be clarified to state a fixed presentation time for public comment?

Yes. As stated above, five minutes should be the minimum for presenters with broad constituencies and for presenters with expertise in agenda items.

These presenters, who often travel great distances, at great expense, to attend meetings and present testimony, should be assured that they will receive the full five minutes.

At the Seattle meeting, NOP staff and the chair of the NOSB were practically begging citizens to sign up in the last few days prior to the meeting, and at the meeting itself, while simultaneously limiting eminently qualified spokespeople in the organic community to three minutes. Never before during NOSB meetings were the proceedings so substantially ahead of schedule, with breaks taken ahead of time and lengthened. This was highly disrespectful to all those community participants who went to great expense to attend the meeting and were cut off in midsentence, as well as to the Board members who wished to ask questions of presenters but were prevented from doing so.

3) Should policy also define a maximum question and discussion time once public comment is received?

No! Questions from the Board are vital and should be unlimited (subject to peer pressure from fellow board members if this right is abused).

In light of the recent message from the NOP through the Organic Insider, stating that members of the public should not communicate with the Board members outside of the written public comment periods and public comment at the meeting, it would be a further hit to public participation if additional restrictions were put on the Q&A during the public comment period.

It bears noting that the public period comment on www.regulations.gov was a mere 26 days (October 18 – November 13), barely giving stakeholders enough time to review the recommendations thoroughly and prepare their comments before the end of the comment period.

If Board members do in fact have questions, these questions should be respected. If Board members continue to ask questions of a particular presenter, it signifies an important interest by the Board members in that particular presenter's expertise or opinions, and this needs to be respected as well.

4) Who should allow the variation or combine the time(s) into a defined total in #3 above?

Questions from the Board members should never be limited. If Board members have questions, they should be asked.

5) Is time setting best done by the Board Chair, at the time of the meeting, depending upon the circumstances at hand?

No. For various reasons, members of the public have a right to know ahead of time the amount of time they will be given for their comment. Any necessary modification in the time allotted for presentations should require a majority board vote, or a vote by the Executive Committee. This decision has grave potential ramifications and should not be left up to one individual.

6) Should the time allocated be flexible or related to the number of requests?

Yes, it should be flexible. See our answer to question #1.

7) Should the public comment time allowed remain as it is now in the PPM?

Yes. Only if public comment sign-ups reveal that the comment period would be too long, should the time be decreased from five minutes per person, with flexibility and prioritization as explained in our answer to question #1.

However, it should be emphasized that past board members have demonstrated their commitment to the organic community, and the NOSB heritage of inclusiveness, by extending the amount of time allotted on the agenda for public comments to assure that all voices could be heard. This tradition of flexibility should be included in the options.

8) Is some other designation of time(s) more appropriate?

See our answer to question #1.

9) Should public comment through live/"remote" means be allowed and/or encouraged?

No. If the goal is to make the public comment period more manageable, the practice of live remote comments should not be adopted. Presenters who cannot attend in person should be allowed to present a proxy statement.

"Remote" means will create a difficult environment for those present, including the Board members, to hear and interact with presenters. From a technological standpoint, it might eat up thousands of dollars worth of NOP budget money a year that needs to be invested in the NOP's core mission.

10) Given the limits of time, should the recent revisions to the PPM to clarify proxy procedures (p27) continue? Or, should the proxy practice be abolished?

The opportunity to present by proxy should not be abolished. If a decrease from five minutes to three or four minutes is deemed necessary, the proxies should receive the decreased time allotment instead of the full five minutes.

Also, while Q&A should never be limited for individuals presenting on their own behalf, it would not be unreasonable to abolish Q&A for proxies, since the individual is not present to answer the question.

11) How can this function (NOSB serving as an advisory role) best serve as a public-private partnership that is responsive to the concerns raised by the broader organic community?

It is vital that public participation be respected at all times. A repeat of the Seattle meeting, where the Board chair announced just days before the meeting that five minutes were cut to three minutes, unlimited Q&A was cut to one minute, and five minute proxies were eliminated, should never occur again. The public participation of stakeholders, especially those representing broad constituencies or relevant expertise, should be valued by ensuring that these individuals are given the full five minutes and unlimited Q&A.

While the Board should welcome the voice of organic consumers, wholesale appearances by organic consumers do not add to the knowledge base of board members. For this reason, it would not be unreasonable to recommend to groups organizing the appearance of organic consumers that they present testimony as a group, rather than encouraging each consumer to sign up for a five-minute slot. This could probably be accomplished through education and an informal request to organizations active in organic policy work.

Additional Issue: Communicating with Board Members

On October 26, 2011, the organic community received a message from the NOP and NOSB, through the Organic Insider, that they should refrain from communicating with NOSB members outside the official public comment period. We believe there needs to be a way for organic stakeholders to communicate with committee members during the committee deliberation process. Otherwise, the committee recommendations will likely be based solely on the petition by corporate interests (and in some cases, a deficient Technical Review with missing or incorrect information, as with the DHA Algal Oil petition), without an opportunity for other interested stakeholders to share important and relevant information.

We strongly disagree with the NOP and NOSB's message discouraging direct communications with board members.

There is abundant opportunity for financially powerful lobbyists and commercial representatives to have unfettered access to board members through mutual participation in industry associations (including the OTA), participation at trade shows, Washington hill visits, and other venues.

Preventing public interest groups, or individuals, from directly communicating with board members, while allowing lobbyists and industry representatives to fraternize

with board members (there would be no legal basis to limit it), would further enhance the disproportionate influence corporate interests now have on organic policy.

Additional issue: Adequate time for public comment

Stakeholders had 26 days between the public posting of the committee recommendations and the deadline for written comment.

To use Cornucopia as an example, that meant we had 26 days to analyze the committee proposals, collaborate with our members and other experts, draft briefing papers to empower our membership to respond to the Board, and mail the action alerts (many of our members, for a variety of reasons, have unlimited or no access to the Internet). Because of the costs involved for a public-interest charity, we mailed out our thousands of action alerts via bulk mail. By the time many of our members receive our briefing, it is too late to officially communicate through the formal USDA process prior to the November 13 deadline. Thus, we have encouraged them to mail us their proxies (letters) which we will present in Savannah.

We have also heard many complaints from citizens regarding the www.regulations.gov website and system for submitting comments. Citizens have given up on submitting their comments due to a variety of reasons (unexplained error messages after hitting “submit,” error messages for exceeding the 20-minute time limit, error messages for exceeding the attachment file size, and being unable to access the website due to the entire site being down, which happened just days before the November 13 deadline). We would encourage the National Organic Program to provide an email address for submitting comments, in addition to the www.regulations.gov website, to ensure maximum public participation.

Thank you again to the Policy Development Committee for your work and for considering our comments.

Sincerely,



Charlotte Vallaey
Director, Farm and Food Policy
The Cornucopia Institute