



May 3, 2012

Ms. Michelle Arsenault
National Organic Standards Board
USDA-AMS-NOP
1400 Independence Avenue, SW
Room 2648-So, Ag Stop 0268
Washington, DC 20250-0268

Docket: AMS-NOP-12-0017

RE: Policy Committee – Conflict of Interest

Dear Ms. Arsenault:

Thank you very much for this opportunity to provide comment on the NOSB Policy Committee Recommendation on Conflict of Interest.

OTA is the membership-based business association for organic agriculture and products in North America. OTA is the leading voice for the organic trade in the United States, representing organic businesses across 49 states. Its members include growers, shippers, processors, certifiers, farmers' associations, distributors, importers, exporters, consultants, retailers and others. OTA's Board of Directors is democratically elected by its members. OTA's mission is to promote and protect the growth of organic trade to benefit the environment, farmers, the public and the economy.

OTA thanks the Policy Committee for its time on this recommendation, and we appreciate the consideration that was noticeably given to our comments submitted on the fall 2011 proposal. We are supportive of Recommendation #1 and Recommendation #3. However, in order to support the full proposal, we request that the following revisions are made to Recommendation #2. Text proposed to be deleted is shown as ~~strikethrough~~, and text proposed to be added is underlined:

Recommendation #2

The definitions below are to be inserted before paragraph #4 on page 9 of the 2011 PPM.

~~The term "conflict of interest" is defined as a situation in which there is an actual or potential direct financial interest of a Board member which could impair the individual's objectivity or which has the potential to create an unfair competitive advantage for said Board member, board member's immediate family member, or Board member's organization or affiliated business.~~

The term "conflict of interest" is defined as a situation in which a Board member would derive a "direct financial gain."

~~An "immediate family member" includes a Board member's relative by blood or marriage who may be a spouse or partner, children or step children, parents or step parents, brother or sister.~~

A “direct financial gain” is defined as a monetary consideration, contractual benefit or the expectation of future monetary gain to a Board member, including but not limited to, financial gain from a party who manufactures, distributes or holds exclusive title to a formula for a material or product, process or practice.

OTA fully acknowledges that most of the elements we objected to in the fall 2012 proposal were omitted, and we thank the committee for its efforts to be responsive to stakeholder input. Consistent with our stated position on the fall 2011 recommendation, OTA continues to believe that the Board’s current COI policy adequately addresses conflicts of interest that might improperly influence a Board member’s participation in particular Board proceedings. However, we understand the committee’s desire to add guidance on the procedural steps to be followed in declaring and acting upon a conflict of interest. We support the utility the procedural steps may have.

The proposed definition of “conflict of interest,” however, continues to lend itself to problems of ambiguity and subjectivity that the current COI policy avoids by strictly limiting prohibited conflicts of interest to those situations in which a board member would derive “direct financial gain” from a board action. The reference in the proposed definition to “*potential* direct financial interest” points to a financial gain that a Board member could be uncertain as to whether or not it exists. A Board member should be required to refrain from voting only when a direct financial gain actually exists. The following definition is clear, concise and consistent with the current Board’s COI Policy:

The term “conflict of interest” is defined as a situation in which a Board member would derive a “direct financial gain.”

Under the current policy, if a pending Board action could result in a direct financial gain to a Board member or its “affiliated business,” the member must disclose the interest to the Board and to the public. The committee’s proposal extends the definition of conflict of interest to include “an immediate family member.” OTA believes that it places an unnecessary burden on Board members and their families to require investigation and disclosure of financial interests of family members that do not necessarily have any bearing on the personal financial interests of the Board member. To the extent the financial interests of family members do affect a Board member's own financial situation, they would be covered by the prohibition on actions that result in a direct financial gain to the Board member. Extending the scope of the conflict of interest policy to family members intrudes into private matters, and is likely to discourage qualified individuals from serving as members on this advisory panel.

While the definition for “conflict of interest” may not address every possible situation in which a conflict exists, it is clear. And Board members always have the option of recuing themselves if they believe a conflict exists, even if there is no likelihood of direct financial gain.

OTA believes the committee’s proposal, with our minor suggested changes, will “enhance and build upon the existing NOSB’s COI policy” while allowing Board members to participate in Board activities in a representative capacity as Congress intended.

Again, on behalf of our members across the supply chain and the country, OTA thanks the National Organic Standards Board for the opportunity to comment.

Respectfully submitted,



Gwendolyn Wyard
Associate Director of Organic Standards and Industry Outreach
Organic Trade Association (OTA)

CC: Laura Batcha
Executive Vice President
Organic Trade Association (OTA)