



# **BEYOND PESTICIDES**

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September 17, 2019

Ms. Michelle Arsenault  
National Organic Standards Board  
USDA-AMS-NOP  
1400 Independence Ave. SW.,  
Room 2648-S, Mail Stop 0268  
Washington, DC 20250-0268

**Docket ID # AMS-NOP-19-0038**

## **Re. PDS: Updates to the Policy and Procedures Manual**

These comments to the National Organic Standards Board (NOSB) on its Fall 2019 agenda are submitted on behalf of Beyond Pesticides. Founded in 1981 as a national, grassroots, membership organization that represents community-based organizations and a range of people seeking to bridge the interests of consumers, farmers and farmworkers, Beyond Pesticides advances improved protections from pesticides and alternative pest management strategies that reduce or eliminate a reliance on pesticides. Our membership and network span the 50 states and the world.

## **Proposed Changes to the PPM**

Beyond Pesticides supports the proposed updates to the Policy and Procedures Manual (PPM). These are all necessary changes to keep the PPM in line with improvements in NOSB procedures.

## **Transparency, Open Docket, and Subcommittee Notes**

The organic sector is exceptional in its dedication to transparency and public involvement. The Organic Foods Production Act (OFPA) arose out of a desire among stakeholders of the food production system to build and grow the “organic” market with standards, practices, and a food label that are trusted by the public. Integral to this vision and the resulting law is a regulatory system that is transparent and facilitates public involvement at every stage of the decision making process. As a voluntary system of prescribed management practices, organic strives to address the needs of the stakeholder groups, while meeting the consumer expectations that drive the market.

As active participants in this unique public process, we have welcomed NOSB policies promoting transparency and public participation, such as the open docket and publication of NOSB subcommittee notes. However, we have been disappointed by the unfinished implementation of the open docket, especially combined with the abandonment of adequate

subcommittee minutes/notes. These limitations ultimately impede the growth of the organic sector, which relies on public trust in the decision making process.

The Open Docket policy was adopted April 11, 2013 as the **Policy for Public Communication between NOSB Meetings**. It says,

The NOSB and NOP seek public communication outside of Board biannual meetings and public comment periods to inform the NOSB and NOP of stakeholders' interests, and to comment on the NOSB's and NOP's work activities year around. [Currently in the Policy and Procedures Manual (PPM), p. 33.]

As implemented, the Open Docket has been one-way communication. It has consisted of a docket that allows the public to comment before meeting materials are available, but rarely provides substance for comment. When supplemented with timely and substantive notes on subcommittee meetings, it allowed the public to comment on issues recorded in the notes. It did not, however, allow NOSB members to directly solicit public input outside of the official public comment period, as the NOSB envisioned in passing the policy.

However, under the current administration, first the notes were no longer published (but were available on request), and then (after January 2018) were no longer taken. Subsequently, the notes were reinstated, but presently exist in a sketchy form, and are not published in a timely manner. This threatens not only the partnership with organic stakeholders, but also sound decision making by the NOSB and NOP.

The role of the Advisory Board Specialist (ABS) is described in the PPM on pages 11-12. It includes the following:

- Arranging, facilitating, and documenting the NOSB Subcommittee conference calls
- Ensuring NOSB members have all necessary materials and information to provide informed, structured and timely recommendations to the NOP.

In accordance with General Records Schedule 6.2,<sup>1</sup> records of subcommittees of Federal Advisory Committee Act (FACA) committees must be maintained "permanently" and be made available to the public. They include:

Records that document the activities of subcommittees that support their reports and recommendations to the chartered or parent committee. This documentation may include, but is not limited to:

- meeting minutes
- transcripts
- reports

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<sup>1</sup> <https://www.archives.gov/records-mgmt/grs/grs06-2.pdf>. The PPM, page 12, requires, "Records of the NOSB shall be defined and handled in accordance with General Records Schedule 6.2 or other approved agency records disposition schedule."

- briefing materials
- substantive correspondence, including electronic mail, exchanged between one or more subcommittee members, any other party that involves the work of the subcommittee, and/or agency committee staff (such as the Designated Federal Officer)
- background materials

The list of subcommittee records that must be retained is an indicator of materials that are needed to support FACA committee recommendations. It is inconceivable to us that a public body making recommendations on regulations governing a more than \$50 billion industry would not require minutes containing motions and votes on motions. This is even more appalling given that NOP's sunset policy, as published in the Federal Register, allows subcommittees to make final decisions on sunset materials. Without such a record, everything concerning subcommittee proposals—including the published materials for the NOSB meeting—is hearsay and can be disputed by any member of the subcommittee.

Therefore, we request that the duties of the Advisory Board Specialist cited above be revised, and that the first quoted point be replaced with: "Arranging, facilitating, and documenting the NOSB Subcommittee conference calls. Documentation must include topics discussed, a summary of the discussion, motions made, and votes on motions." We also request that NOP implement the open docket in a way that encourages NOSB members and subcommittees to solicit information on specific issues from the public between official comment periods.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Shistar".

Terry Shistar, Ph.D.  
Board of Directors