



BEYOND PESTICIDES

701 E Street, SE ■ Washington DC 20003
202-543-5450 phone ■ 202-543-4791 fax
info@beyondpesticides.org ■ www.beyondpesticides.org

September 27, 2022

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-22-0042

Re. CACS: NOSB Support

These comments to the National Organic Standards Board (NOSB) on its Fall 2022 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 eliminate a reliance on pesticides. Our membership and network span the 50 states and the world.

The CACS is seeking to alleviate the burden of serving on the NOSB. We heartily support these efforts to preserve high level engagement by the stakeholder representatives on the Board. As our Executive Director Jay Feldman, former NOSB member, has often commented, "Looking back, in addition to my full-time responsibilities, serving on the Board was almost equivalent to a second full-time job." The CACS estimates that an NOSB member spends 10-15 hours per week on NOSB work. This is a gross underestimate, particularly for a subcommittee chair or someone serving on multiple subcommittees, in addition to reviewing all the materials on which Board members must vote. For the NOSB to attract the wide range of people dictated by the *Organic Foods Production Act* (OFPA), representing the diversity of each group, assistance must be provided.

While we support the aim of supporting NOSB members, we oppose the CACS proposal for how to do so.

The CACS Document Is Incomplete and Misleading.

We find the CACS summary of public comments on the Spring discussion document to be incomplete and misleading. It should not be considered an adequate basis for discussing and deciding this issue.

Question #1 was “What are the advantages or disadvantages of having support come from within the government? From a nonprofit or university?” The CACS summarized responses as follows: “Much like the CACS Subcommittee discussions, our stakeholders were passionate about this question with a slight preference towards ‘inside.’ Some suggested specific agencies such as USDA (but not AMS/NOP), EPA and FDA.” This summary does not even address the question, which asks for advantages and disadvantages of support coming from within government. Beyond Pesticides responded to this question:

Support should come from those who understand organic principles and practices. Those who come from government, especially USDA, are likely to hold a viewpoint that is inconsistent with organic principles. Those from a nonprofit or university may also have a particular viewpoint, but perhaps more compatible with organic.

The NOSB member should be able to choose who s/he would like for assistance. NOP or others might make suggestions, but it needs to be someone compatible with the NOSB member’s perspective and mode of working.

The NOSB should also regard the public at-large as part of its “support team” through use of the open docket. We have heard the objection that the open docket is unwieldy to use. We believe that judgment may come from a failure to think creatively. Other agencies maintain open dockets so that programs can receive information on an ongoing basis. For example, “The Environmental Protection Agency (EPA) is announcing the availability of an IRIS Program General Comments Docket (Docket ID #EPA-HQ-ORD-2014-0211) open for public comments that have broad applicability to the IRIS [Integrated Risk Information System] Program. This docket was opened in 2014 and will remain open continuously. Stakeholders interested in submitting general comments to the IRIS Program are encouraged to use this docket. See [81 FR 18625](#).” Those who raise objections seem to believe that a subcommittee cannot post anything other than a subcommittee-approved proposal or discussion document. We believe that it is possible to just post a question, such as, “Do any organic growers produce rice without the use of copper sulfate?” under a subject line like “Question from Crops Subcommittee.”

Question #3 was “Should the support team be privy to all Subcommittee meetings and discussions?” The CACS summary, “There was universal agreement that ‘yes’ they should be allowed to attend all meetings relating to the topics they are working on,” is incomplete and ignores responses like those of Beyond Pesticides and the National Organic Coalition (NOC), which stated that all organic stakeholders should have access to all that is discussed in the meetings.

Question #4 was “What should be the scope of the NOP’s relationship with the support group, i.e., should they be able to task the group directly?” The CACS summary was again incomplete and misleading—“A unanimous ‘No’ to the NOP being able to task the support group directly, but a very strong statement that NOP must administer the program.” Beyond Pesticides said, “NOP’s relationship with the support group should be limited to responding to requests for information. NOP should not be able to “task” the support team directly.” NOC

said, “No, the NOP should not be able to task the support folks for the NOSB directly. The NOP should take on the administrative role of providing the funding through a nonprofit or other fiscal sponsor which the NOSB members can spend down on the NOSB support of their choosing. We had hoped this support would come from graduate students as a way to engage students in NOSB work and benefit from their academic expertise, but we are open to other solutions. The power must remain with the NOSB members to seek the sort of support they need and make it simple for them to compensate those tasked with doing the supporting.” Both organizations gave a more complete response to the question not captured by the CACS.

Identify the Needs of NOSB Members.

It is important to fit the assistance to the needs of individual NOSB members and to ensure the autonomy of the member’s voice. That autonomy is threatened if assistants are hired by USDA. NOSB members should be asked what kind of support they need and given help in acquiring it. Payment for support services should be regarded as a reimbursable expense. The NOSB may want to set limits on the amount of reimbursement. Since the hiring of support people is an interaction between the NOSB member and the assistants, government hiring policies—particularly conflict of interest policies—should not apply. In other words, the NOSB member should be free to hire a spouse or a coworker, for example.

Regardless of Other Options, the Open Docket Should Be Provided.

The Policy and Procedures Manual (PPM)¹ states:

Policy for Public Communication between NOSB Meetings (Adopted April 11, 2013)

- 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.
- The NOSB may post draft discussion documents and proposals between public meetings for review and public comment. Timely submission of comments will assist the NOSB and its Subcommittees in revising such documents for subsequent NOSB review.

The NOSB provided this discussion of the above policy:

As a part of its responsibility to communicate with the organic community pertaining to the implementation of OFPA, the Board must receive and review information from the NOP and other sources during its deliberations. As a stakeholder Board, the input from the organic community is valuable in the deliberations of the Board, the NOP, and the community decision-making process. The procedures of the Board and NOP should facilitate public communication to inform these deliberations.

¹ Section VII E. p. 34.

Providing an online mechanism that allows the public to share information between official comment periods will help to facilitate public communication that informs the Board's and NOP's deliberations in several ways. The online system is intended to:

1. Inform discussions early in the materials or policy review process through the collection of complete background and perspectives;
2. Reduce the amount of new information coming to the Board and NOP late in its deliberations on an issue without adequate time to verify or fully assess it;
3. Increase transparency for the NOSB, NOP, and the public itself to ensure that everyone has access to the same information in a timely fashion;
4. Help the Board and NOP to become aware of issues that may not be on the work plan or may not have been generated internal to the NOP and NOSB process, but are important based on the experience and expertise of those in the organic community.

Thus, an online public communication mechanism can help board members to discharge their "Duty of Care," which "calls upon a member to participate in the decisions of the Board and to be informed as to the data relevant to such decisions." (PPM, p. 6)

The Biggest Obstacle To Assisting NOSB Members Is a Culture of Secrecy.

The public communication policy quoted above would ensure transparency as NOSB subcommittees deliberate. However, the current practice is one that prohibits NOSB members from sharing drafts and deliberations except through the mechanism of highly cleansed subcommittee notes. This practice stands in the way of adopting any of the mechanisms that give independence to NOSB members.

Since petitions no longer contain confidential business information, there is no justification for secrecy in subcommittee deliberations.

Thank you for your consideration of these comments.

Sincerely,



Terry Shistar, Ph.D.
Board of Directors