



BEYOND PESTICIDES

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Ms. Michelle Arsenault
National Organic Standards Board
USDA-AMS-NOP
1400 Independence Ave. SW
Room 2648-S, Mail Stop 0268
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Docket ID # AMS-NOP-23-0075

Re. PDS: PPM Updates

These comments to the National Organic Standards Board (NOSB) on its Spring 2024 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.

Beyond Pesticides supports most of the Policy Development Subcommittee's (PDS) proposed changes to the Policy and Procedures Manual (PPM). These comments will address only those sections with which we disagree and those we would like to highlight. Otherwise, we are supportive.

Areas of Disagreement

Changing "Executive Subcommittee" to "Executive Committee"

As we understand the history, all committees of the NOSB were originally called "committees"—e.g., Crops Committee, Livestock Committee, Executive Committee. The names were demoted to "subcommittees" based on the reasoning that the NOSB is an "advisory committee," and therefore committees of the NOSB are "subcommittees." All the committees of the NOSB should receive the same status. Therefore, if the Executive Subcommittee is to be renamed the "Executive Committee," then the Crops Subcommittee should be renamed the "Crops Committee" and so forth. In essence, these are all "committees" of a statutorily mandated "National Organic Standards **Board**." The board is only implemented under the Federal Advisory Committee Act (FACA) for practical purposes, but that does not change the NOSB's status as a board under the Organic Foods Production Act (OFPA).

Identify Representative and SGEs

Section K was changed to reflect the USDA's determination that eleven seats are "representatives" and four are "special government employees." The eleven and four should be identified by position.

In addition, we would like to know whether the General Services Administration, which oversees Federal Advisory Committees, was consulted in USDA's determination.

The minority report language does not make sense.

The current and proposed language require that a minority report be submitted before the subcommittee votes on the recommendation/proposal. How does the "minority" know it is a minority before the vote occurs? It would be more appropriate to require the minority report to be submitted by the deadline for submitting subcommittee materials to the program.

The Sunset procedure should be updated to reflect the meaning of "sunset."

The meaning of "sunset" is well-established in law. It was incorporated and is foundational to OFPA to incentivize continuous improvement. *West's Encyclopedia of American Law* states that a sunset provision is a "statutory provision providing that a particular agency, benefit, or law will expire on a particular date, unless it is reauthorized by the legislature."¹ The concept of sunset was not a new concept and has been incorporated into many state laws. Ballotpedia defines sunset as follows: "A **sunset provision**, **sunset clause**, or **sunset law** is a statute or provision of a statute establishing a date on which an agency, law, or benefit will expire without specific legislative action, usually in the form of formal reauthorization by Congress or a state legislature. Sunset provisions may be included within specific laws, while a number of states have implemented general sunset laws requiring regular review and reauthorization of government programs."²

The September 16, 2013, Federal Register notice cited in the PPM reversed the way the NOSB votes on sunset. Consistent with the established meaning of sunset, the NOSB had, up to the point that the National Organic Program (NOP) unilaterally and without opportunity for public comment publish a new procedure, voted on motions to **retain** materials on the National List (NL). Because OFPA states that a decisive vote is a 2/3 majority, two thirds of the NOSB were required to keep a material on the NL. The 2013 notice reversed the burden of proof, now requiring a vote on a motion to **delist**, which means that a 2/3 majority is required to take a material off the list.

We believe that it is time to return the meaning of "sunset" in the organic program to meaning established in law everywhere else. While USDA and NOP may choose to violate the spirit and intent of the sunset provision in OFPA, the NOSB should not be complicit in this action. The NOSB succeeded in building consumer trust in the USDA organic label for nearly two decades with the intended and legal meaning of sunset. It was the integrity of the sunset

¹ *West's Encyclopedia of American Law, edition 2*. S.v. "Sunset clause." Retrieved October 18 2021 from <https://legal-dictionary.thefreedictionary.com/Sunset+clause>.

² https://ballotpedia.org/Sunset_provision.

process that ensured consumers that substances (particularly synthetic substances) allowed in organic production and processing were subject to the most rigorous five-year sunset process that required super majority support from the stakeholder board to retain a substance on the National List or adjust its annotation. As recognized by other documents that inform this Spring 2024 meeting of the NOSB, particularly the suggested changes to the Technical Review questions, this sunset process is intended to update the scientific and practice information in the evaluation of the National List to keep organic standards responsive to the latest information and make way for market investments in continual improvement. Investors in new methods and materials want to know that review process is biased toward improvement, as the super majority vote for substance retention establishes, rather than biased to a stagnant process that keeps things as is because that is the way its been. Organic has always been better than that and should remain in the forefront of the change necessary to confront the existential crises of our time—health threats, biodiversity collapse, and the climate emergency. The NOSB should advocated that we return to sunset to the plain and legal meaning of the term.

Some positive highlights

Ensure that minority opinions are allowed to be presented and discussed.

Since NOSB members are not on every subcommittee and subcommittee notes do not thoroughly report discussions, it is important that the diversity of viewpoints be presented to the full board—and the organic community. Therefore, we believe this is an important addition to the PPM.

Replace “impugn” with “malign.”

“Impugn” means “to assail by words or arguments: oppose or attack as false or lacking integrity.” “Malign” means “to utter injuriously misleading or false reports about.” Commenters should not be prohibited from impugning an individual, but should be prohibited from maligning individuals.

Thank you for your consideration of these comments.

Sincerely,



Terry Shistar, Ph.D.
Board of Directors