

National Organic Standards Board
Policy Development Subcommittee Discussion Document
Oral and Written Comment Submissions
August 10, 2021

Introduction and background

The National Organic Standards Board is bound by regulation to conduct open meetings in accordance with the Federal Advisory Committee Act (FACA) along with the provisions of the Policy and Procedures Manual (PPM). Stakeholder submissions of written and oral comments are the backbone of community engagement, providing invaluable perspectives on the many issues that arise in organic systems. In the interest of maintaining fair and equal access to the Board by the stakeholder community, the Policy Development Subcommittee (PDS) is reviewing procedures on written and oral comments. PDS seeks to review the framework for written and oral comment submissions through engaging the organic community in a dialogue on best practices.

Goal of this Document

The Policy Development Subcommittee seeks to hear feedback on how it might modify established procedures to maximize community engagement practices that facilitate fair and equal access to National Organic Standards Board members by all stakeholders.

Discussion

The Policy Development Subcommittee is considering the submission process of oral and written comments to the Board for in person and/or virtual meetings. Governing policies and procedures from FACA, Federal Register Notices, and the PPM are listed and linked in the Appendix of this document.

Written Comments:

In regard to written comments in advance of NOSB meetings, the PPM states, “All members of the public are encouraged to submit public comment in writing according to the Federal Register Notice. Written submissions allow NOSB members the opportunity to read comments in advance, eliminate or decrease the need for paper copies to be distributed during the meeting, and allow each NOSB member to review and analyze data and information well ahead of the public meeting and possible voting.”

The NOSB has an established 30-day comment period prior to each of its public meetings. The comment period opens approximately 45 days prior to the meeting, and closes 30 days later, giving Board members approximately 2 weeks to read, analyze, and incorporate written comments into their proposals. The Federal Register Notice states that written comments submitted after the deadline may not be considered by the Board before they deliberate and vote during the meeting. The PDS is strengthening the language to indicate that the NOSB will not consider comments submitted after the deadline.

Written comments are sometimes submitted to NOP and/or individual Board members after the comment period closes, along with the urgent request that the information be forwarded to the entire Board. Balancing the need to engage with stakeholders and ensuring all stakeholders have equal access to the Board creates pressure on Board members’ attention during meetings. PDS sees the forwarding of written comments to the Board after the closure of the comment period as an issue of fairness.

Stakeholders should not expect written comments submitted after the deadline to be posted to the Federal Register or forwarded to the Board during the public meeting. The defined comment period exists for a reason.

Oral Comments:

Announcements in the Federal Register illuminate the process and deadline for submitting oral comment requests before each meeting. Given the sea change in meeting processes as informed by the pandemic, oral comments are under consideration in two areas. In the first, the Policy Development Subcommittee is considering the importance of in-person oral comments during in-person Board meetings versus moving to an all-virtual pre-meeting oral comment process. Further, PDS is exploring access/fairness issues that can arise when organizations schedule multiple individuals for oral comments that can effectively advantage that organization over other commenters.

Oral comments are foundational to the NOSB's informed decision-making process. The NOSB receives feedback that the scheduling of NOSB meeting in the Spring and Fall conflicts with the planting and harvest schedules for some stakeholders and is a barrier to attendance at the in-person meetings. Virtual oral comments allow those without time or resources to travel, the opportunity to engage in the process and provide information to the Board. Given the shift and emergence of virtual resources, the PDS is considering making the virtual, pre-meeting format for oral comments the standard. Board members have noted that oral comments received the week before the meeting allow more consideration before deliberation and voting. Alternatively, Board members do not want to discourage in-person attendance by stakeholders, acknowledging the value of stakeholder information presented orally during the context of the in-person meeting. The PDS is trying to balance the need to provide opportunity for expansive participation by the stakeholder community within a framework that also aides the Board's digestion of information.

Oral comment registration procedures are outlined in the Federal Register Meeting Notice and the Policy and Procedures Manual. Oral commenters are generally scheduled in the order in which they register. The NOP makes an effort to accommodate scheduling requests for special circumstances if possible. Scheduling accommodations, while possibly increasing engagement, can lead to a lack of fairness in time given to a single organization or subject, and also increases the workload of the NOP. The PDS does not intend to be overly prescriptive when it comes to scheduling oral comments but does want to explore best practice for remaining open and flexible while maintaining a level playing field for all stakeholders.

Questions

1. Should the Board move to an entirely virtual format for oral comments the week before in-person meetings or maintain the pre-pandemic format of hearing oral comments, both virtually prior to the in-person meeting as well as in-person at the public NOSB meeting?
2. If NOSB meetings move to a model wherein all oral comments are heard virtually the week before the meeting, would it reduce the attendance of stakeholders at the Board meeting?
3. Restrictions due to the pandemic aside, would the availability of a live-stream meeting discourage in-person attendance?
4. Is the practice of scheduling multiple oral comments by a single organization (such as a business/company/non-profit/trade group) inherently unfair? Is there a path by which the Board can field multiple areas of expertise from a single organization, while balancing the limits of time, fairness, and the importance of receiving a wide range of stakeholder feedback?

Appendix:

A. Policy and Procedure Manual (PPM) rev. October 25, 2019

(<https://www.ams.usda.gov/sites/default/files/media/NOSB-PolicyManual.pdf>)

VIII. NOSB PROCEDURES

E. PUBLIC COMMENT

The NOP and NOSB encourage public comment and work collaboratively to increase opportunities for greater participation by a broad range of people, employing various modes of communication and modern technology whenever possible. Individuals may present oral comment at either a pre-meeting electronic webinar or at the in-person NOSB meeting.

Before Public Meetings:

Written comment: All members of the public are encouraged to submit public comment in writing according to the Federal Register Notice. Written submissions: allow NOSB members the opportunity to read comments in advance, eliminate or decrease the need for paper copies to be distributed during the meeting and allow each NOSB member to review and analyze data and information well ahead of the public meeting and possible voting.

Oral Comments

Oral comments: May be received via a virtual meeting/webinar. Public notice of such electronic meetings will be included in the Federal Register notice announcing the public meeting. Such electronic pre-meetings may allow individuals more time to present their data or information, reduce the need to attend the public meeting in person, reduce our carbon footprint, and give the NOSB more time to absorb the information. Such electronic meetings shall be recorded and made available to the public and to NOSB members.

Comments at In-Person Public Meetings:

- All persons wishing to comment at NOSB meetings during public comment periods must, in general, sign-up in advance per the instructions in the Federal Register Notice for the meeting. Persons requesting time after the closing date in the Meeting Notice, or during last minute sign-up at the meeting, will be placed on a waiting list and will be considered at the discretion of the NOP working closely with the NOSB Chair and will depend on availability of time.
- All presenters are encouraged to submit public comment in writing according to the Federal Register Notice. Written submissions allow NOSB members the opportunity to read comments in advance electronically, and decreases the need for paper copies to be distributed during the meeting.
- Persons will be called upon to speak according to a posted schedule. However, speakers should allow for some flexibility. Persons called upon who are absent from the room could potentially miss their opportunity for public comment.
- Time allotment for public comment per person will be four (4) minutes, with the options of reducing to a minimum of three (3) and extending to a maximum of five (5) minutes at the discretion of the NOP, working closely with the NOSB Chair in advance of the meeting.

- Persons must give their names and affiliations for the record at the beginning of their public comment.
- Proxy speakers are not permitted.
- Public comments may be scheduled according to topic.
- Individuals providing public comment shall refrain from making any personal attacks or remarks that might impugn the character of any individual.
- Members of the public are asked to define clearly and succinctly the issues they wish to present before the Board. This will give NOSB members a comprehensible understanding of the speaker's concerns.

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.

B. Federal Register Notice Example: <https://www.regulations.gov/document/AMS-NOP-20-0089-0001>

C. Requirements regarding FACA meetings: (<https://www.gsa.gov/policy-regulations/policy/federal-advisory-committee-management/advice-and-guidance/the-federal-advisory-committee-act-faca-brochure>)

Open Access to Committee Meetings and Operations

Under the provisions of the Federal Advisory Committee Act, federal agencies sponsoring advisory committees must:

- Arrange meetings that are reasonably accessible and at convenient locations and times;
- Publish adequate advance notice of meetings in the *Federal Register*;
- Open advisory committee meetings to the public (with some exceptions-see the section on "Government in the Sunshine Act" below);
- Make available for public inspection, subject to the Freedom of Information Act, papers and records, including detailed minutes of each meeting; and
- Maintain records of expenditures.

D. Sample and Example of FACA Bylaws (<https://www.gsa.gov/policy-regulations/policy/federal-advisory-committee-management/advice-and-guidance/sample-and-example-of-faca-bylaws>)

NOSB doesn't have bylaws – we instead have a combination of OFPA and the PPM.

Open Meetings. Unless otherwise determined in advance, all meetings of the Government Procurement Advisory Board (GPAB) will be open to the public. Once an open meeting has begun, it will not be closed for any reason. All materials brought before, or presented to, the Board during the conduct of an open meeting, including the minutes of the proceedings of an open meeting, will be available to the public for review or copying at the time of the scheduled meeting.

Members of the public may attend any meeting or portion of a meeting that is not closed to the public and may, at the determination of the Chairman, offer oral comment at such meeting. The Chairman may decide in advance to exclude oral public comment during a meeting, in which case the meeting announcement published in the Federal Register will note that oral comment from the public is excluded and will invite written comment as an alternative. Members of the public may submit written statements to the PAB at any time.

Subcommittee Vote:

Motion to accept the discussion document on Public Comments

Motion: Jerry D'Amore

Seconded: Nate Powell-Palm

Yes: 4 No: 0 Abstain: 0 Absent: 1 Recuse: 0

Approved by Mindee Jeffery, Policy Development Subcommittee Chair, to transmit to NOSB August 10, 2021