

333 CMR: PESTICIDE BOARD

333 CMR 3.00: RULES FOR THE CONDUCT OF BOARD AND SUBCOMMITTEE BUSINESS

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3.01: Purpose

The purpose of 333 CMR 3.00 is to establish rules for the conduct of business by the Board and the Subcommittee.

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3.02: Definitions

For the purpose of 333 CMR 3.00, the definitions set forth in 333 CMR 2.00 and in 333 CMR 3.02 apply, unless the context or subject matter requires a different interpretation.

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Deliberation, shall mean a verbal exchange between a quorum of members of the Board or Subcommittee attempting to arrive at a decision on any public business within its jurisdiction.

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Emergency, shall mean a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

Executive Session, shall mean any meeting or part of a meeting by the Board or Subcommittee which is closed to certain persons for deliberation on certain matters.

Meeting, shall mean any corporal convening and deliberation of the Board or Subcommittee for which a quorum is required in order to make a decision at which any public policy matter over which the governmental body has supervision, control, jurisdiction or advisory power is discussed or considered; but shall not include any on-site inspection of any project or program.

3.03: Presiding Officer

(1) Board. The Commissioner of ~~Food and Agriculture~~ the Department of Agricultural Resources or his designee shall be Chairman of the Board. The Board shall elect a Vice Chairman to preside in the absence of the Chairman or his designee.

(2) Subcommittee. The Director of the Division of Food and Drugs shall be Chairman of the Subcommittee. The Subcommittee shall elect a Vice Chairman to preside in the absence of the Chairman.

3.04: Appointment of Designees

~~(3)~~(1) Board. ~~The Commissioner of Food and Agriculture; the Commissioner of Environmental Quality Engineering; the Commissioner of Fisheries, Wildlife and Recreational Vehicles; the Commissioner of Environmental Management; the Commissioner of Public Health and the Director of the Division of Food and Drugs may each nominate a designee to serve in his stead as a member of the Board. The Board shall be comprised of those members identified in M.G.L. c. 132B, Section 3.~~

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The nomination of ~~a designee~~ shall be made by letter addressed to the Chairman. The nominating letter shall state whether the nomination is general or limited. A letter nominating a limited designee shall state ~~explicitly~~ explicitly those responsibilities delegated. A nomination may be revoked at any time by letter to the Chairman.

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____ Once nominated, a general designee shall assume all responsibilities pursuant to M.G.L. c. 132B and 333 CMR. A general nomination may be temporarily suspended by the nominating Commissioner or Director by personally appearing at a Board meeting or proceeding and performing the responsibilities of a Board member.

____ A limited designee shall assume only those responsibilities set forth in the nominating letter. The nominating Commissioner or Director may retain and perform or may further name another designee to perform all other responsibilities. A limited nomination may be temporarily suspended by the nominating Commissioner or Director, by personally appearing at a Board meeting or proceeding and performing the responsibilities of a Board member.

~~(4)(2) Subcommittee. The Commissioner of Food and Agriculture, the Commissioner of Environmental Management and the Commissioner of Public Health may each nominate a designee to serve in his stead as a member of the Subcommittee. The Subcommittee shall be comprised of those members identified in M.G.L. c. 132B, Section 3A.~~

____ The nomination of a designee shall be made by letter addressed to the Chairman. The nominating letter shall state whether the nomination is general or limited. A letter nominating a limited designee shall state explicitly those responsibilities delegated. A nomination may be revoked at any time by letter to the Chairman. Once nominated, a general designee shall assume all responsibilities pursuant to M.G.L. c. 132B and 333 CMR. A general nomination may be temporarily suspended by the nominating Commissioner by personally appearing at a Subcommittee meeting or proceeding and performing the responsibilities of a Subcommittee member.

____ A limited designee shall assume only those responsibilities set forth in the nominating letter. The nominating Commissioner may retain and perform or may further name another designee to perform all other responsibilities. A limited nomination may be temporarily suspended by the nominating Commissioner by personally appearing at a Subcommittee meeting or proceeding and performing the responsibilities of a Subcommittee member.

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3.05: Meetings

(1) Time of Meetings

(a) Board. The Board shall hold an annual meeting in March and shall meet regularly at three other times annually. The Board shall also meet from time to time at the call of the Chairman or upon the written request of any two members.

(b) Subcommittee. The Subcommittee shall meet from time to time at the call of the Chairman or upon the written request of any two members.

(2) Notice of Meetings to Members. Written notice of all meetings of the Pesticide Board and the Subcommittee shall be sent by the Pesticide Program Director to all Board members at least seven days prior to the date of the meeting. The notice shall contain the date, time, place and agenda of the meeting. When necessity so dictates, members may also be called by phone, but in all instances written notices shall be sent.

(3) Waiver of Meeting Notice to Members. In the case of an emergency, or if there was a mistake in notice or a failure to send notice to every member, and yet every member is present at the meeting and no one protests a lack of notice, the members waive notice by their attendance and participation. Members may also waive notice by signing a written waiver of notice before, during, or after the meeting.

(4) Public Meetings. All meetings of the Board and Subcommittee shall be open to the public unless the Board or Subcommittee shall vote pursuant to 333 CMR 3.05(7) to go into executive session. 333 CMR 3.05(4) shall not apply to any chance meeting or social meeting at which matters relating to official business are discussed so long as no final agreement is reached. No chance or social meeting shall be used in circumvention of the spirit or requirements of this section to discuss or act upon a matter over which the Board or Subcommittee has supervision, control, jurisdiction or advisory power.

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(5) Notice of Meetings. Except in an emergency, as provided by 333 CMR 3.05(6), a notice of every meeting of the Board or Subcommittee shall be filed with the Secretary of State, and a copy thereof posted in the office of the Executive Office for Administration and Finance at least 48 hours, including Saturdays but not Sundays and legal holidays, prior to the time of such meeting. The notice shall include the date, time, and place of such meeting. Such filing and posting shall be the responsibility of the Pesticide Program Director.

(6) Emergencies. The Board or Subcommittee may conduct a public meeting or executive session without giving notice as required by 333 CMR 3.05(5), if it determines an emergency exists and that immediate, undelayed action by the Board or Subcommittee is imperative.

(7) Executive Sessions.

(a) Executive sessions may be held only for the following purposes:

1. To discuss the reputation, character, physical condition or mental health rather than the professional competence of an individual, provided that the individual to be discussed in such executive session has been notified in writing by the governmental body at least 48 hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

a. To be present at such executive session during discussions or considerations which involve that individual.

b. To have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation in said executive session.

c. To speak in his own behalf.

2. To consider the discipline or dismissal of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual, provided that the individual involved in such executive session has been notified in writing by the governmental body at least 48 hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A government body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

a. To be present at such executive session during discussions or considerations which involve that individual.

b. To have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation in said executive session.

c. To speak in his own behalf.

3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the Board or Subcommittee, and to conduct collective bargaining sessions.

4. To discuss the deployment of security personnel or devices.

5. To investigate charges of criminal misconduct or to discuss the filing of criminal complaints.

6. To consider the purchase, exchange, lease or value of real property, if such discussions may have a detrimental effect on the negotiating position of the Board or Subcommittee and a person, firm or corporation.

7. To comply with the provisions of any general or special law or federal grant-in-aid requirements.

(b) The Board or Subcommittee may hold an executive session only after:

1. It has first convened an open session.

2. A majority of the members have voted to go into executive sessions.

3. The vote of each member is recorded on a roll call vote and entered in the minutes.

4. The presiding officer has cited the purpose for an executive session.

5. The presiding officer has stated before the executive session if the Board or Subcommittee will reconvene after the executive session.

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(8) Record of Meetings. A meeting of the Board or Subcommittee may be recorded by any person in attendance except when a meeting is held in executive session; provided that in such recording there is no active interference with the conduct of the meeting.

(9) Responsibilities of Pesticide Program Director. The Director shall attend meetings of the Board and Subcommittee and shall serve as secretary thereto. As secretary, the Director shall:

- (a) Prepare and send required notices of meeting and proposals.
- (b) Preserve all records, reports and official documents of the Board and Subcommittee except those specifically assigned to the custody of others.
- (c) Shall be in charge of all correspondence having to do with the Board and Subcommittee.
- (d) Shall receive and account for all monies paid into the Board and Subcommittee and shall deposit it in the receipt accounts designated by the appropriate statutes and regulations.
- (e) Take careful and authentic notes on all actions at meetings of the Board and Subcommittee. Prepare minutes from these notes and enter them in the official minutes book. Present the minutes to the Board or Subcommittee prior to the next meeting, recording any corrections and certifying them by his signature when the Board or Subcommittee has approved them.
- (f) Issue and sign on behalf of the Board such certifications, licenses and renewals, and on behalf of the Subcommittee such registrations and permits as 333 CMR 3.00 require.

(10) Motions. Motions may be required to be in writing. The proposer of a lengthy, complicated or important motion should prepare copies of it and give them to the presiding officer and to the secretary. The presiding officer may request the maker of such a motion to submit it in writing.

(11) Records of Meetings. The Board and Subcommittee shall maintain accurate records of their meetings setting forth the date, time, place, members present or absent and action taken at each meeting, including executive sessions. All meetings shall be tape recorded by the secretary. The exact wording of all written motions shall be recorded, as well as the name of the proposer, seconder, and the way each motion was disposed of.

_____ The minutes shall be a summary of all actions and proceedings, but not an exact record of discussion. A copy of the approved minutes of the Subcommittee shall be sent to the Board. A summary of all matters voted shall be made available with reasonable promptness after each meeting. The summary will be subject to correction prior to adoption by the Board or Subcommittee at their subsequent meeting.

_____ The records, recording and minutes of each meeting shall become a public record and be available to the public, subject to the provisions of 333 CMR 6.00. Provided, however, that the records of any executive session may remain secret as long as publication may defeat the lawful purposes of the executive session, but no longer. All votes taken in executive sessions shall be recorded roll call votes and shall become a part of the record of said executive sessions.

3.06: Quorum

Seven members of the Board shall constitute a quorum. Three members of the Subcommittee shall constitute a quorum.

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3.07: Voting

(1) Each member of the Board or Subcommittee shall have one vote on any matter to be decided. The adoption, amendment or suspension of rules and regulations requiring Pesticide Board consideration shall require a majority of Board members then in office. The vote required for action by the Board or Subcommittee on all other matters shall be by a majority of all members present, providing there is a quorum.

(2) All votes taken shall be recorded votes and shall become part of the record.

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(3) Upon the request of any member of the Board or Subcommittee any vote taken shall be verified by a roll call.

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3.08: Delegation of Duties

(1) Chairman. The Board or Subcommittee may delegate specific responsibilities other than the responsibility for the final decision in any proceedings or any other matter requiring a public hearing to the Chairman.

(2) Pesticide Program Director. The Board or Subcommittee may delegate specific responsibilities other than the responsibility for the final decision in any proceeding or any other matter requiring a public hearing to the Pesticide Program Director.

(3) Board Members. The Board or Subcommittee may delegate specific responsibilities other than the responsibility for the final decision in any proceeding or any other matter requiring a public hearing to a Board member.

3.09: Representing the Board or Subcommittee

No member of the Board or Subcommittee shall presume to represent the Board or Subcommittee without first receiving permission from the Chairman of the Board or Subcommittee officially.

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REGULATORY AUTHORITY

333 CMR 3.00: M.G.L. c. 30A, §§ 11A and 11½A; c. 132B, § 3.

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