

POLICY ON THE NATIONAL LIST SUNSET PROVISION

REVISION 9 – MARCH 9, 2004

THE NATIONAL ORGANIC STANDARDS BOARD INTERNAL POLICY, PROCEDURES AND RECOMMENDATION ON THE SUNSET REVIEW PROCESS

I. Background

Section 7 U.S.C 6517 (e) of the Organic Foods Production Act (OFPA) requires that the National Organic Standards Board (NOSB) review each substance on the National List within 5 years of its publication. The National Organic Program (NOP) final rule containing the National List was fully implemented by USDA on October 21, 2002. As of this date, the National List of Allowed and Prohibited Substances subsection contain listed materials as follows:

- S205.601 Synthetic Substances Allowed Materials for use in organic crop production contains 46 substances,
- S205.602 Nonsynthetic substances prohibited for use in organic crop production contains 8 substances,
- S205.603 Synthetic substances allowed for use in organic livestock production contains 28 substances,
- S205.604 Nonsynthetic substances prohibited for used in organic livestock production contains 1 substance,
- S205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as “organic” or “made with organic (specified ingredients or food group(s))” contains 66 substances, and
- S205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as “organic” or “made with organic” (specified ingredients or food groups(s)) contains 5 substances.

Therefore, 154* substances currently on the National List must be reviewed by the NOSB by October 21, 2007. Additionally, Federal Register Notices subsequent to the Final Rule contained amendments to the National List that must be reviewed within 5 years of the amendment’s publication. This document establishes the NOSB’s internal policy and procedures for complying with its statutory responsibilities as set forth in 7 U.S.C. 6517(e) and proposes a timeline for amending the National List in the Federal Register based on the outcome of sunset review of substances.

(* a number of substances appear multiple times on the list in different categories of use. These were counted for each category of use).

II. Internal Policy and Procedure for Review of Substances In Accordance With 7 U.S.C. 6517(e).

- The National Organic Standards Board and the National Organic Program shall compile and manage a materials database for exemptions and prohibitions including an official sunset date for each substance on the National List.
- All materials appearing on the National List as published in the Federal Register Final Rule dated October 21, 2002 must be reviewed by October 21, 2007. Materials added after October 21, 2002 will be reviewed within 5 years from their Final Federal Register Notice. Based on the number of materials in any given 5 year period, the NOSB will select approximately one-fifth of the National List for review under 7 U.S.C. 6517 (e).
- Upon the National Organic Standards Board approval of the Sunset Provision, the NOP will publish the entire list of materials (205.601 through 606 inclusive) which shall be reviewed by October 21, 2007 in the Federal Register and request public comments on the prioritization of materials for review.
- The Livestock, Crop and Handling Committees will choose approximately one fifth of the substances from each applicable section of the National List (205.601 through 606 inclusive) each year for review. Committees will consider public comments regarding prioritization of materials for review. In addition, the Materials Committee shall provide guidance documents to the committees on how to prioritize materials for review. The materials representative for each committee will be responsible for providing the list of substances that are proposed for review during the calendar year to the Materials Chairperson who will maintain the database. Each committee will work with their representative to the materials committee to determine which of the substances will require supplemental technical information as set forth in 7 U.S.C. 6518 (k)(3).

Substances that have adequate technical information provided by prior reviews, petitions or other documentation may be reviewed based on that information. The Materials Committee will provide guidance documents on what is adequate technical information. Requests for supplemental technical review will be provided in writing by the committee's representative to the Materials Committee to the Materials Chairperson. The Materials Chairperson is responsible for communicating the status and supplemental technical review needs (if applicable) of materials to the NOP representative to the Materials Committee. The NOP is responsible for requesting technical reviews and communicating the needs of the NOSB to their contractor. When necessary, the Materials Chairperson may interact directly with the contractor regarding the status of a substance review. The NOP representative is responsible for making contact arrangements and participating in the communication.

- Sixty days prior to the NOSB meeting, the list of substances that will be reviewed for the sunset provision will be published in the Federal Register for public comment.

- Committee recommendations for the substances to be reviewed for the sunset provision will be posted on the NOP website 30 days prior to the NOSB meeting.
- Substances that have specific expiration dates will not be included in the selection process.

III. Recommendation on Public Communication

- The NOSB recommends that the NOP post a Federal Register notice on an annual basis beginning in 2005 amending those materials that have passed through the sunset process. This is intended to result in requiring future boards to have to review fewer substances in a given year and to facilitate the work of future boards.

IV. Committee Recommendation

The Materials Committee recommends the adoption of the procedures set forth in this document to meet the requirements of Section 7 U.S.C 6517 (e) of the Organic Foods Production Act (OFPA) which requires that the National Organic Standards Board (NOSB) review each substance on the National List within 5 years of its publication. The Materials Committee shall write guidance documents to provide a framework for committees on how to effectively and efficiently manage the process. The procedures outlined above may be modified by future boards to more effectively manage the process.