

**FORMAL RECOMMENDATION BY THE
NATIONAL ORGANIC STANDARDS BOARD (NOSB)
TO THE NATIONAL ORGANIC PROGRAM (NOP)**

Date: November 19, 2008

Subject: Policy and Procedures Manual changes

Chair: Rigoberto I. Delgado

Recommendation

The NOSB hereby recommends to the NOP the following:

Rulemaking Action: _____

Guidance Statement: _____

Other: _____ X _____

Summary Statement of the Recommendation (including Recount of Vote):

The Policy Development Committee recommended six separate changes to the Policy and Procedures Manual as follows listed as they appear on the NOSB meeting agenda for November 18.

- 1) Technical corrections: This recommendation presents an approach to identify and correct or address discrepancies between Federal Register publication and NOSB recommendation wording. Committee vote - Moved: Barry Flamm, Second: Hue Karreman, Yes: 3 No: 0 Absent: 1
- 2) Public Comment at NOSB meetings: The intent of this update to the PPM is to obtain maximum benefit from public comment and to allow the most number of presenters the opportunity to speak. Committee vote - Moved: Barry Flamm, Second: Bea James, Yes: 4 No: 0 Absent: 0
- 3) Election of NOSB officers: The recommendation amends the section on Election of Officers in the PPM to clarify the election process. Committee vote - Moved: Barry Flamm, Second: Bea James, Yes: 4 No: 0 Absent: 0
- 4) Committee Work Plans: This recommendation provides guidance on developing committee work plans. Committee vote- Moved: H. Karreman, Second: R. Delgado, Yes: 4 No: 0 Absent: 0
- 5) Sunset Procedures: This recommended update to the PPM provides background on the Sunset of materials requirements and provides a clear description of the review process. Committee vote- Moved: Hue Karreman, Second: Rigo Delgado, Yes: 3 No: 0 Absent: 1
- 6) Content and structure of Recommendation Documents: The purpose of this recommendation is to create more process and structure for writing committee recommendations. Committee vote- Moved: Barry Flamm, Second: Bea James, Yes: 3 No: 0 Absent: 1

NOSB Vote: Motion: Barry Flamm Second: Bea James

Board vote: Yes - 14 No- 0 Abstain- 0 Absent - 1

Summary Rationale Supporting Recommendation (including consistency with OFPA and NOP):

The recommendation strengthens and clarifies guidance to NOSB members and is consistent with OFPA. There has been no adverse comment from NOP.

Response by the NOP:

**National Organic Standards Board
Policy Development Committee**

Technical Corrections

September 18, 2008

Background:

Technical Corrections are those actions needed to amend or slightly change the exact wording of an item placed into the Federal Register, as recommended by the NOSB and accepted (or rejected) by the Secretary. Changes in the wording of a recommendation (e.g., omitting a word, a place holder, or changing an annotation slightly), or finding unintended consequences of a recommendation (e.g., incomplete annotations allow inappropriate uses of a material) can obscure the intent of the NOSB, incorrectly convey a statement voted on by the NOSB, and/or create uncertainty among the public. Because other issues come forward as more urgent once the Board has taken action on an item, Technical Corrections may glaringly emerge and remain uncorrected. This recommendation presents an approach to identifying and correcting such discrepancies.

Discussion:

In order to minimize confusion in the organic community, the Board needs to have a way to deal with discrepancies between items which have been voted on and their subsequent insertion in the Federal Register. Some examples of the different types of Technical Corrections and the different levels of technical Corrections (NOSB level or NOP level) are:

Annotations different than what was originally recommended by NOSB and changed by the Program in order to fit the demands of other federal regulatory bodies (ex: livestock medications withholding times).

An unforeseen consequence of a recommendation voted by the Board could require additional annotations in order to fit the needs of the organic industry. The absence, for example, of a explicit description of what methods of extraction are allowed for specific materials could result in the unwanted use of materials extracted using prohibited extraction processes (ex: colors on 606 – hexane and ethanol extraction not reviewed, but water, oil-extracted and dried were recommended) .

Recommendation:

Insert in the Policy and Procedures Manual a new section called “Handling Technical Errors after an Item Has Been Placed in the Federal Register”, to be included at the end of Section VIII, before the section “Appendices and Resources” of the NOSB Policy and Procedures Manual.

The suggested text of the section is as follows:

HANDLING TECHNICAL ERRORS AFTER AN ITEM HAS BEEN PLACED IN THE FEDERAL REGISTER

In order to minimize confusion in the organic community, the Board needs to monitor and correct discrepancies between items which have been voted on and their subsequent insertion in the Federal Register. Some examples of the different types of technical corrections needed are:

Annotations different than what was originally recommended by NOSB and changed by the Program in order to fit the demands of other federal regulatory bodies (ex: livestock medications withholding times).

An unforeseen consequence of a recommendation voted by the Board could require additional annotations in order to fit the needs of the organic industry. The absence, for example, of an explicit description of what methods of extraction are allowed for specific materials could result in the unwanted use of materials extracted using prohibited extraction processes.

The Board should follow these steps to monitor and correct technical discrepancies:

(1) The Secretary of the Board, with the assistance of the NOSB Executive Director, shall review all additions to the Federal Register and report to the Board any discrepancies between Board recommendation and those published in the Federal Register.

(2) When the Program incorporates changes to a recommendation voted and presented by the Board, the Program is expected to communicate these changes prior to final action by the Program to the Board Chair, Vice Chair and Secretary. The Board Chair, Vice Chair and Secretary will report such activity to the Board and then work with the Program in order to assist the Program in stating the exact reasons for such deviations in the preamble to the Rule change posted.

(3) In the cases of unintended consequences with a published recommendation, the Chair of the Board, with the approval of the Executive Committee, will assign committee to resolve the issue.

Committee Vote:

Moved: Barry Flamm Second: Hue Karreman

Yes: 3 No:0 Absent: 1 Abstain:0

**National Organic Standards Board
Policy Development Committee**

**Recommendation for amendments and additions to the NOSB Board Policy
Manual
NOSB Policy for Public Comment at NOSB Meetings**

September 10, 2008

Recommendation

The following recommendation amends the section called NOSB Policy for Public Comment at NOSB Meetings of the NOSB Policy and Procedures Manual (page 28). The intent of these updates is to obtain maximum benefit from public comment, and to allow the most number of presenters the opportunity to speak according to the allotted time.

Proposed new language is presented in underlined text while deletions are indicated in strikethrough.

NOSB Policy for Public Comment at NOSB Meetings:

1. All persons wishing to comment at NOSB meetings during public comment periods must sign up in advance per the instructions in the Federal Register Notice for the Meeting.
2. All presenters are encouraged to submit public comment in writing according to the Federal Register Notice. Advance submissions allow NOSB members the opportunity to read comments in advance electronically, and decrease the need for paper copies to be distributed during the meeting.
3. Persons will be called upon to speak in the order they sign up. Persons called upon who are absent from the room could potentially miss their opportunity for public comment.
4. Each person will be given 5 minutes to speak, unless otherwise indicated by the Chair ~~each person will be given 5 minutes to speak.~~
5. Persons must give their names and affiliations for the record at the beginning of their public comment.
6. A person may submit a written proxy to the NOP or NOSB requesting that another person speak on his or her behalf.
7. No person will be allowed to speak during the public comment period for more than 10 minutes, unless otherwise indicated by the Chair.
8. Individuals providing public comment will refrain from any personal attacks and from remarks that otherwise impugn the character of any individual.

Other suggestions that would be appreciated by NOSB members:

- The NOSB will attempt to accommodate all persons requesting public comment time, however, 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 NOSB Chair depending on availability of time. Similarly, persons who have signed up to address the NOSB for their 5-minute slot and have also served as a proxy for another person will be placed on a waiting list if they wish to speak for a third time on the same topic, and will be considered at the discretion of the NOSB Chair depending on availability of time. This should allow more members of the public time to present.
- 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.
- Members of the public should be considerate about - speaking more than once on the same topic - to allow more members of the public the opportunity to speak

**Adopted October 19, 2002
Amended ~~March 2, 2005~~
Amended September 10, 2008**

Committee vote:

Moved: Barry Flamm

Second: Bea James

Yes- 4 No- 0 Absent- 0

**National Organic Standards Board
Policy Development Committee**

**Recommendation for amendments and additions to the NOSB Board Policy
Manual
Election of NOSB Officers**

September 18, 2008

Recommendation

The following recommendation amends the section called Election of Officers of the NOSB Policy and Procedures Manual (page 13-14). The intent of these updates is to clarify the process of the election of NOSB officers.

Proposed new language is presented in blue text while deletions are indicated in strikethrough.

OFFICER RESPONSIBILITIES

Three principal officers – Chair, Vice Chair and Secretary – guide the Board. Chair
The Chair is responsible to assure the integrity of the Board process, including effectiveness of meetings and the board's adherence to its own rules. The Chair shall:

- Schedule meetings of the Board and the Executive Committee;
- Draft meeting agendas in consultation with committee chairs and NOP staff;
- Convene and preside at meetings;
- Review committee work plans; and
- Review meeting minutes for accuracy, and
Assist with the annual election of NOSB officers.

Vice Chair

The Vice Chair shall act in the absence of the Chair. The Vice Chair shall also be responsible for maintenance and upkeep of the Policy and Procedures Manual.

Secretary

The Secretary is responsible for the integrity of all legal and governing documents of the Board. It is the Secretary's responsibility to:

- Record and maintain the official Board proceedings;
- Circulate draft minutes for approval of the Board;
- Ensure that minutes of Board actions are available to members of the public; and
- Transfer custody of the Board minutes to the Secretary's successor, and
- Assist with the annual election of NOSB officers.

ELECTION OF SECTION III

ELECTION OF OFFICERS

~~Officers shall be elected for terms of one year by majority vote at the annual fall meeting of the Board. Candidates may be self-nominated or nominated by another member of the~~

~~Board. Should an officer resign or fail to serve the full term, the Executive Committee shall appoint an interim officer. The interim officer shall serve in the capacity until the next regularly scheduled meeting of the Board, during which an election will be held to fill the remainder of the term.~~

A. NOMINATION

- All interested NOSB members are eligible for consideration for any officer position.
- Candidates may be self-nominated or nominated by another member of the Board.
- Should the Vice Chair or Secretary resign or fail to serve the full term, the Executive Committee shall appoint an interim officer.
- The interim officer shall serve in the capacity until the next regularly scheduled meeting of the Board, during which an election will be held to fill the remainder of the term.
- Members interested in serving more than one consecutive term in an officer position can if the Board is in favor, however it is recommended that an officer not serve for more than two consecutive terms.

B. VOTING SCHEDULE

- Officers shall be elected for terms of one year by majority vote at the annual fall meeting of the Board.
- Newly appointed officers will assume their positions at the conclusion of the fall Board meeting pursuant to the election.
- Acting Board officers will assist the new officers to transition into their new role.

C. ELIGIBILITY TO VOTE

- Only NOSB Board Members present are eligible to vote for nominated officers.
- Absent NOSB members will not be eligible to vote.
- Board members shall be entitled to cast one vote per nomination.

D. COUNTING OF VOTES

- Voting will be by ballot immediately following nominations for each office.
- Ballots for officers will be cast in the following order:
 1. Chair
 2. Vice-Chair
 3. Secretary
- The ballots will be counted for one office and the acting Chair will announce the tally before the next office is opened for nominations
- The acting Secretary will prepare and distribute the ballots and will gather the votes by secret ballot.

- The acting Chair will tally the votes after each officer nomination and the acting Secretary will verify the vote results.
- The candidate receiving the largest number of votes will be elected.
- In the event of a tie there will be a revote until a nominee obtains majority. All nominees will be included in the revote or may be given the opportunity to withdraw at their discretion. .
- Member vote counts will remain confidential. Other NOSB members will not be allowed to determine how the members voted.
- Votes will be disposed of by the Chair or Secretary.
- The acting Secretary will record newly elected officers into the NOSB Meeting Summary of Minutes.

***Committee vote: Moved: Barry Flamm Second: Bea James Yes: 4 No: 0
Absent: 0***

**National Organic Standards Board
Policy Development Committee**

**Recommendation for an addition to the NOSB Board Policy Manual:
Committee Work Plans**

September 19, 2008

INTRODUCTION:

The Policy Development Committee is recommending a guideline on developing a committee work plan. The proposed guideline is to be included in Section VIII, immediately after the introductory subsection titled "Procedures of the NOSB, and before the subsection titled "National Organic Program Materials Review Process" of the NOSB Policy and Procedures Manual. Given that section VIII covers topics which relate to "how" the Board should manage its review process, a section on committee work plans should be a useful addition.

The recommended text of the proposed section is as follows:

COMMITTEE WORK PLANS

At the end of every NOSB meeting, each committee chair is required to present the committee's work plan. Given the nature, and number, of the issues the Board handles, it is important for a committee to follow a structured procedure for assigning priorities in the work plan. The following provides a guideline on how to develop a committee work plan.

The committee chair, working with the committee, should follow three general steps in producing a work plan: 1) List all issues before the committee; 2) Prioritize each issue; 3) set a calendar; and 4) Obtain feedback from the Executive Committee and the Program.

Step 1: Identifying all issues

The committee work plan rises out of these main situations:

- Items committed, or assigned to a committee, by the Board during an official session.
- Items that are reviewed by a committee on a regular basis such as materials sunset review or petitions submitted by members of the public.
- Requests or suggestions from the National Organic Program such as clarifications on a particular issue or guidance on enforcement.
- Proposals stemming from the committee members' contact with the organic community.

In many cases not all issues should be the responsibility of the committee. Selecting what the committee should be reviewing can be done based on the following criteria:

- Relevance to the organic community (Is this an important issues? vs. Is this an interesting issue?)
- Criticality regarding mandate (is the issue within the committee's or the NOSB's realm?)
- Feasibility in terms of the Rule (can a proposal by the committee be realistically enforced by the NOP?)

Step 2: Prioritizing the issues

After listing the issues to review, the committee should prioritize its work plan items according to the following criteria:

- Preference given to petitioned materials
- Relevance to the organic community, public at large and the environment
- Size of the population affected by the issue
- Timeline since the issue/petition was submitted

The criteria are presented in order of importance and should be used to rank or prioritize each issue accordingly. For example, a petitioned material has priority over an issue that has been waiting to be reviewed for an extended period of time.

Step 3: Setting a calendar for reviews

Once the issues are prioritized, the committee chair should define a calendar for discussion of each issue. The calendar should allow committee members to understand specific deadlines and should reflect the posting/publication target dates mandated by the Program and the Federal Regulation.

Step 4: Incorporating Input from the Executive Committee

The committee chair must present the finalized work plan at the first Executive Committee conference call following a normal NOSB meeting. This event is not only an opportunity for the EC to provide guidance to the committee chair, but it is also an opportunity to obtain input from the NOP regarding the feasibility of implementing the committee's recommendation.

Committee vote:

Moved: **H. Karreman** **Second:** **R. Delgado**

Yes-4 **No- 0** **Abstain- 0** **Absent- 0**

**National Organic Standards Board
Policy Development Committee**

**Policy and Procedures Manual Update:
Sunset Procedures Section**

September 19, 2008

Introduction:

The Policy and Procedures Manual has a section on the Sunset Review process (pages 52-56). This content, however, does not provide enough background or explains clearly the unique characteristics of the review procedures followed by the NOSB. The proposed updates to the section should address the current limitations and provide a clear description for the benefit of all Board members.

Committee vote

Motion: Hue Karreman Second: Rigo Delgado

Yes: 3 No: 0 Abstain: 0 Absent: 1

Recommendation:

The proposed text is presented in **red** font and deleted sections are marked with strikethrough

SECTION VIII

SUNSET REVIEW PROCESS

Background

Sunset is a regulatory process for determining the continued listing of a material already approved or prohibited on the National List for use in organic agriculture production and handling. It is not used to petition to add a new substance nor is it used to change an existing annotation. If the review and renewal process is not concluded by the expiration date, the use of the material will become prohibited.

Since sunset is defined as the reviewing of regulations to ensure the continued relevance and not the creation of new regulation, all substance must be renewed as listed. If there is a need to consider changing an annotation or moving a material from one list to another, this may be accomplished through the existing procedures for petition.

The Organic Foods Production Act of 1990 (OFPA) authorized a National List of Allowed and Prohibited Substances (Section 6517). Sections 6517 (e) mandates a Sunset Provision as follows:

“No exception or prohibition in the National list shall be valid unless the National Organic Standards Board has reviewed such exemption or prohibition as provided in this section within 5

years of such exemption or prohibition being adopted and the Secretary has reviewed such exemption or prohibition”.

The National List that was implemented in October 21, 2002 contained over 200 substances. The first sunset review of listed materials was completed in October, 2007. Decisions made through the Sunset review must be transparent, non-arbitrary, based on the best current information and in the interest of the organic community and public at large.

Steps followed in Sunset Process

Not all listed materials reach sunset status at the same time, but the review process includes these steps:

1. A public notice is placed in the Federal Register (Advance Notice of Proposed Rule Making or ANPR) of the pending sunset of the listed materials. The public has 60 days after the publication date to provide written comment (see Chart 1 below). The committee may request a third party technical review in anticipation of scientific evidence and claims likely to be made during public comment to the ANPR.
2. Public comments are collected and forwarded to the NOSB (see Chart 2).
3. The appropriate NOSB committee begins review of the material with the intent of providing a recommendation to the entire Board for the material’s removal or renewal. The review is conducted based on “Force of Evidence” as presented by Board members, public comments, and scientific data from other sources (see Chart 3). This **includes the original recommendation from the Board to list**. The committee may request a third party technical review, if needed, to verify scientific evidence and claims made during public comment to the ANPR.
4. The reviewing NOSB committee provides its recommendation to the full Board 60 days prior to the Board Meeting. At the same time, the committee recommendations are posted on the NOSB website and open to public comments.
5. At the public NOSB business meeting, the NOSB hears additional public comment, discusses the force of evidence, and votes on the committee’s recommendation.
6. The NOP reviews the NOSB recommendation and accompanying documentation and publishes a proposed rule to review the National List. The public has 90 days after the publication date to comment. All comments are made available on the NOP website.
7. NOP will review the comment and publish the final rule. The final rule process is illustrated in Chart 4

Chart 1: Sunset Review – NOP Posts an ANPR

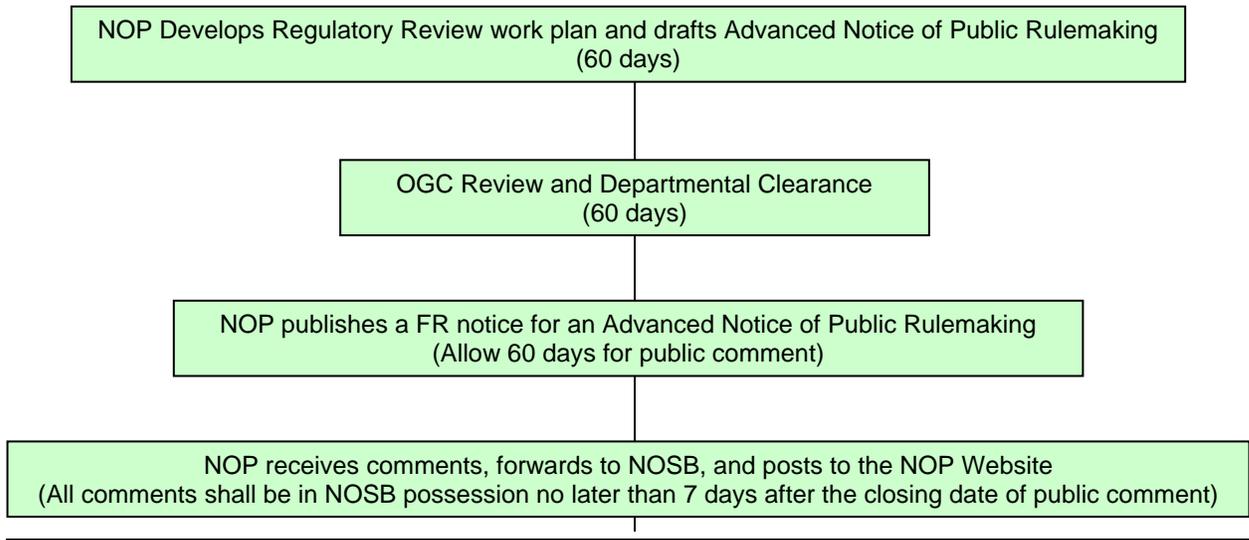


Chart 2: Sunset Review – NOP Collects and Forwards Public Comment to the NOSB

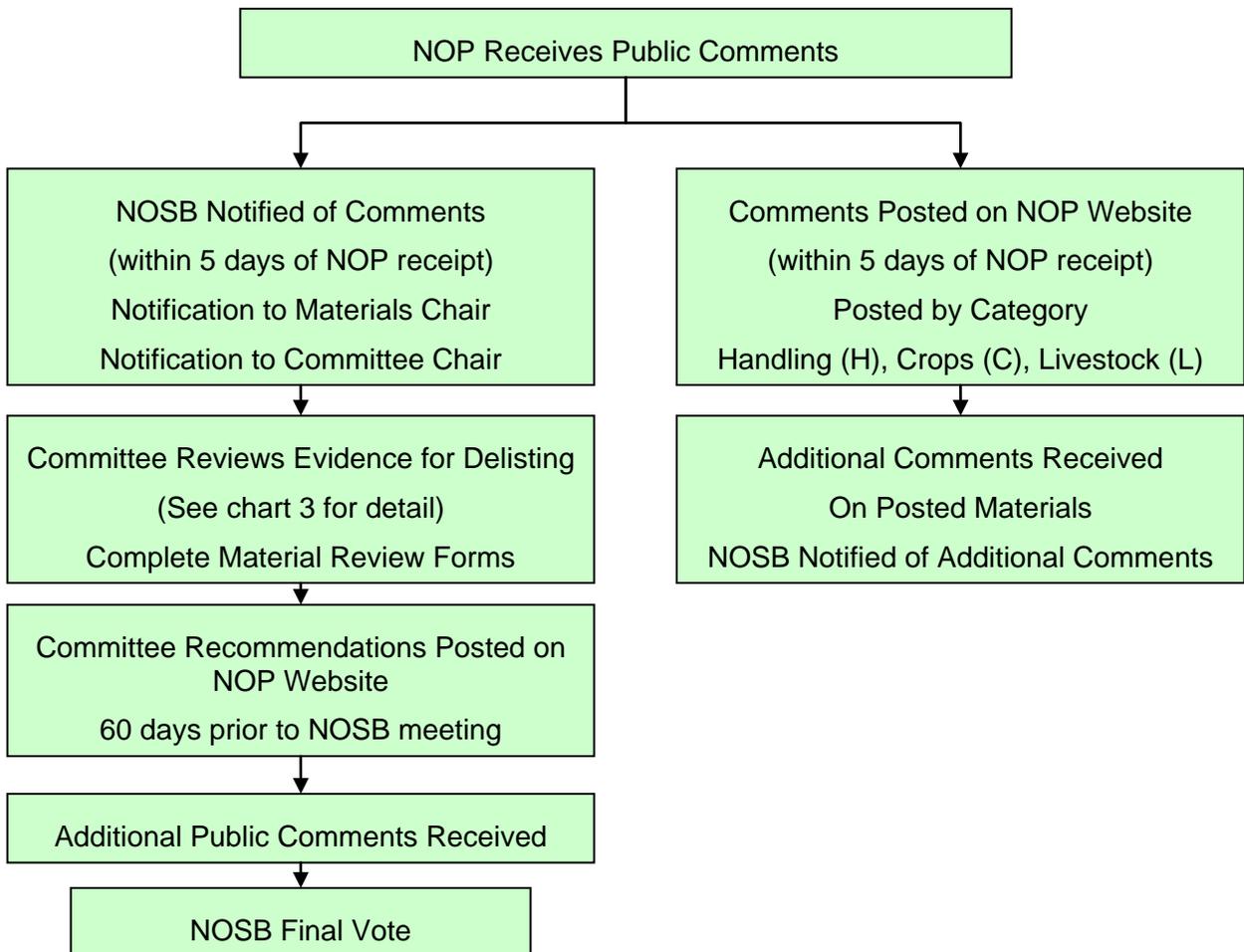


Chart 3: Sunset Review – NOSB Committee Reviews Evidence for Delisting

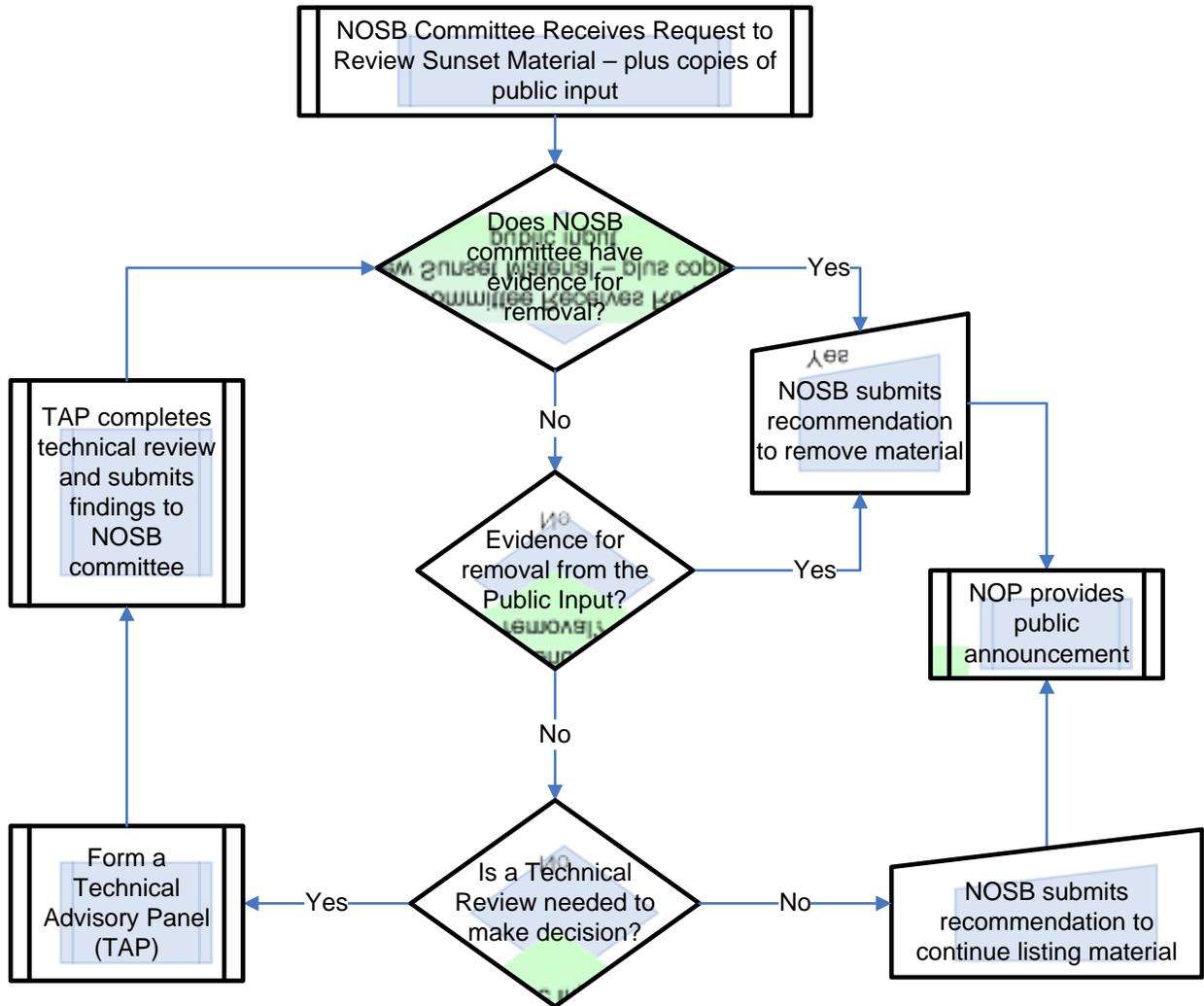
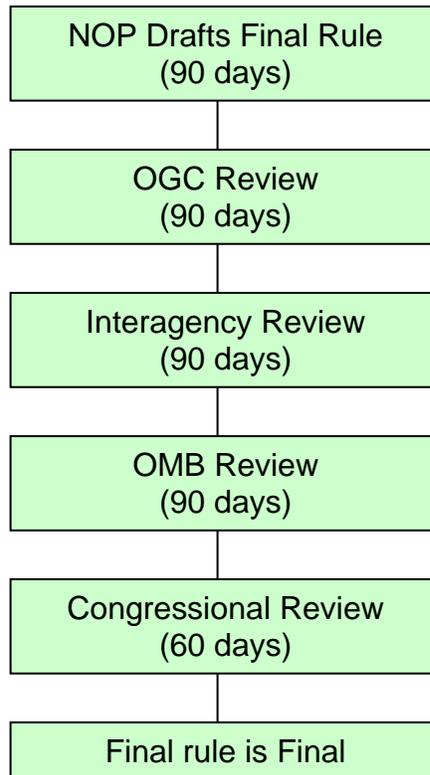


Chart 4: Sunset Review - Final Rule Process



OVERVIEW OF THE SUNSET PROCESS- STEPS COMPLETED

- ~~FEDERAL REGISTER NOTICE~~
- ~~RECEIPT OF PUBLIC COMMENTS~~
- ~~COMMITTEES FORWARDED RECOMMENDED SUBSTANCES FOR FURTHER TECHNICAL REVIEW TO NOP~~

SUNSET PROCESS- IN PROGRESS

- ~~COMMITTEES REVIEWING SUBSTANCES UNDER SUNSET REVIEW~~
- ~~COMMITTEES REVIEWING PUBLIC COMMENTS~~
- ~~COMMITTEES DRAFTING RECOMMENDATIONS ON SUBSTANCES~~
- ~~COMMITTEES FORWARDING SUBSTANCES FOR ADDITIONAL TECHNICAL REVIEW BASED ON PUBLIC COMMENTS~~

Committee substance Forms

- ~~Sunset Review Committee Forms~~
- ~~Name of Substance~~
- ~~National List Section, use and annotation if applicable~~
- ~~Comment (s) code number (s)~~
- ~~Status (record number of comments)~~
 - ~~Renewal (—)~~
 - ~~Removal (—)~~
- ~~Summary of comment (s)~~
- ~~Committee recommendation~~

Committee Recommendations

~~Committees will recommend to the full Board a determination on each substance for renewal, removal or deferral to seek specific technical information from the TAP contractors. TAP contractors shall be used to verify information provided by the commenters, research or seek additional information requested by the committee~~

~~Since sunset is defined as the reviewing of regulations to ensure the continued relevance and not the creation of new regulation, all substance must be renewed as listed. If there is a need to consider changing an annotation or moving a material from one list to another, this may be accomplished through the existing procedures for petition.~~

Public Comment and Final NOSB Vote on Recommendations

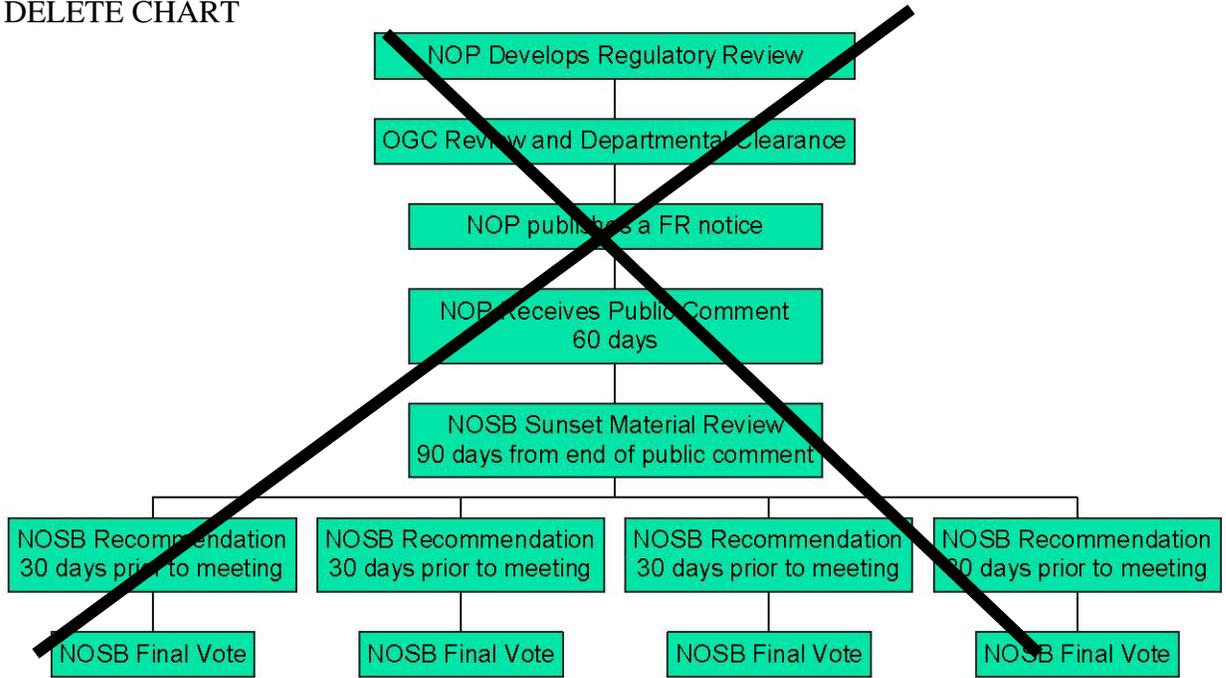
- ~~Each committee will provide their recommendation to the board on each substance 60 days prior to the full Board meeting. The recommendation will be posted on the website and open to public comment.~~
- ~~NOSB Final Vote~~

Rulemaking on NOSB Recommendations

- ~~NOP Rulemaking~~
- ~~Dockets of materials for renewal based on the assumption that deferred materials may take some additional time for review and a full board vote. After each NOSB meeting, the NOP would begin rulemaking on those substances that were voted for renewal. The materials committee anticipates at least two.~~

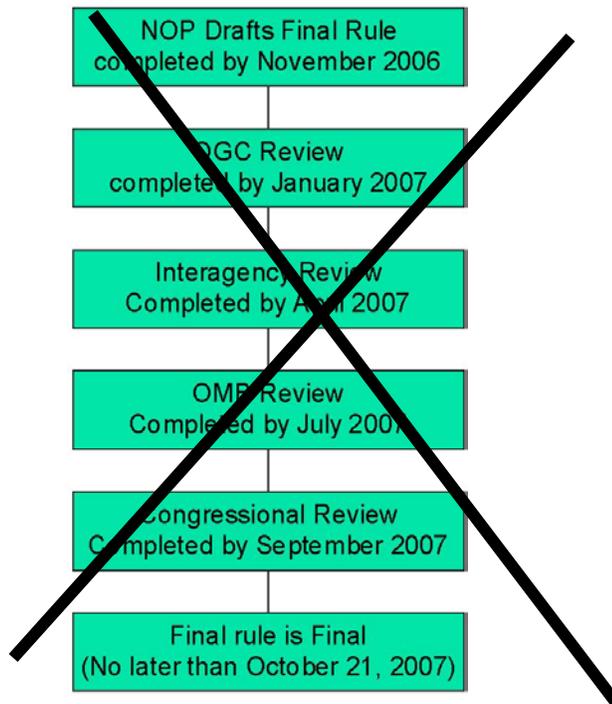
Sunset Timeline

DELETE CHART



Sunset Timeline

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National Organic Standards Board Policy Development Committee

Recommendation for an addition to the NOSB Board Policy Manual: Content and Structure of Recommendation Documents

September 18, 2008

INTRODUCTION:

The Policy Development Committee is recommending an improved outline for clarifying the process for writing committee recommendations. The following outline provides the suggested improvements and would be included in the Board Policy and Procedures Manual. The purpose of this recommendation is to create more process and structure for writing committee recommendations.

The following addition to the PPM includes eliminations of current text in the Policy Manual for Section V (page 21) in strike through, and additions in red font:

OUTLINE FOR WRITING COMMITTEE RECOMMENDATIONS

This section provides an outline to be used by committees in writing a recommendation document. These guidelines not only allow consistency in the content of NOSB recommendations, but should also provide the NOSB, and the public, a fast manner to weigh the advantages and disadvantages of a proposal.

Recommendations not related to material petitions or sunset reviews, should include the following sections:

- I. Introduction:
This section consists of a brief summary of the recommendation, its main issues and its relevance to the organic community. This section should also mention the goals and intent of the proposed recommendation.
- II. Background:
This section should present the issues that justify the development of the recommendation as well as any relevant work done by the NOSB in the past.
- III. Relevant areas in the Rule:
This section should mention any areas of the Rule or OFPA which provide the basis for the recommendation.
- IV. Discussion:
This section should be used to expand on the intent of the recommendation. It is also a place to emphasize the SWOT of the recommendation (strength, weaknesses, opportunities and threats). No recommendation is 100% perfect and this section can serve to clarify the tradeoffs and advantages of a recommendation. Thus, it is advisable to mention all major alternatives reviewed by the committee. If

appropriate, different stakeholders groups should be identified indicating how each group's needs are met or affected.

V. Recommendation:

This is the core, or deliverable, of the recommendation.

VI. Committee Vote:

This section should present the names of the members who moved and second the motion to approve the recommendation. It should also list the votes including number of abstentions and absences. As a norm, a motion should always be presented in the affirmative.

Minority opinion:

If applicable, the dissenting opinion(s) of committee or task force members shall be reported. A member of a committee can present a minority report to the committee recommendation. Such document should include reasons for opposing a proposed recommendation and cite where the opposition points are in the recommendation. In addition, the minority report could, provide alternative approaches or solutions from those given in the recommendation, or recommend an amendment to the recommendation. The minority opinion will be included as a separate document at the end of the recommendation.

PROCEDURES TO FOR PRESENTING COMMITTEE RECOMMENDATIONS

NOSB committees and task forces will follow the outline presented below in order to present draft policy and/or material recommendations ~~for consideration by the Board~~ at meetings of the Board:

Introduction—A brief summary of the issue or statement of the problem.

Background—An explanation with sufficient detail and rationale to support a proposed recommendation, including reasons why the recommendation should be adopted, historical context, and the regulatory framework pertinent to the issue.

Recommendation—The concise text of the recommended action.

Committee vote—The vote of the committee or task force shall be reported.

Minority opinion – If applicable, the dissenting opinion(s) of committee or task force members shall be reported.

Committee vote:

Moved: Barry Flamm

Second: Bea James

Yes- 3 No- 0 Absent- 1