



United States  
Department of  
Agriculture

Agricultural  
Marketing  
Service

1400 Independence Avenue, S.W.  
Room 2646-S, Mail Stop 0268  
Washington, D.C. 20250-0268

September 13, 2013

**MEMORANDUM TO THE NATIONAL ORGANIC STANDARDS BOARD (NOSB)**

**FROM:** Miles McEvoy  
Deputy Administrator  
National Organic Program (NOP)

**SUBJECT:** “Sunset” Review of the National List of Allowed and Prohibited Substances (National List)

On September 13, 2013, the Agricultural Marketing Service (AMS) placed a Federal Register notice on display for public inspection. This notice describes the process that NOSB and AMS will use to meet the “sunset” provision of the Organic Foods Production Act and is summarized below.

This memorandum to the National Organic Standards Board (NOSB) and the Federal Register notice replaces the March 4, 2010 memorandum from the National Organic Program (NOP) to NOSB regarding the Sunset Process.

**The National List**

The USDA organic standards allow most natural substances in organic farming while prohibiting most synthetic substances. The National List—a component of the organic standards—lists the exceptions to this basic rule. The NOSB is designated to advise AMS on which substances should be allowed or prohibited. Allowances are called “exemptions” under OFPA.

The NOSB reviews substances for the National List through one of two mechanisms – the National List Petition Process and the Sunset Process. Under the National List petition process, anyone can submit a petition to amend the National List using the petition guidelines published in the Federal Register ([72 FR 2167](#)). The petition guidelines explain who may submit petitions, what substances may be petitioned, and what information needs to be included within a petition. Individuals may submit petitions to add, remove, or amend substances on the National List. AMS’ NOP reviews petitions for eligibility, NOSB reviews and makes recommendations on eligible petitions using its policies and procedures, and AMS may take action on any NOSB recommendations through rulemaking.

**Sunset Process**

Under the Sunset Process, NOSB must review all National List substances every 5 years based on criteria specified in the Organic Foods Production Act (OFPA). These requirements are described in the sunset provision of OFPA (7 U.S.C. Section 6517):

- (e) SUNSET PROVISION. No exemption or prohibition contained in the National List shall be valid unless the National Organic Standards Board has reviewed such exemption or prohibition as



United States  
Department of  
Agriculture

Agricultural  
Marketing  
Service

1400 Independence Avenue, S.W.  
Room 2646-S, Mail Stop 0268  
Washington, D.C. 20250-0268

provided in this section within 5 years of such exemption or prohibition being adopted or reviewed and the Secretary has renewed such exemption or prohibition.

Based on this review, AMS then may renew the exemption or prohibition.

The Sunset Process published in September 2013 continues to meet the Organic Foods Production Act's sunset provision while also achieving the following two goals:

1. *Transparent review and renewal process, with increased opportunities for public comments*  
Removing a substance from the National List could impact organic producers, who would need time to find an alternative, and organic processors who would need time to reformulate and/or relabel their products. The process published by AMS provides 2 public comment opportunities before the NOSB's decision on each substance, encouraging more public engagement to inform NOSB decision-making. Additionally, the Sunset Process will only be used to renew or remove listings. Any recommendations to change existing listings must be handled via the National List Petition Process.
2. *Consistent and streamlined administration of the National List*  
Under the process described in the Federal Register notice, the NOSB voting approach is clarified and requires that, regardless of whether the substance is reviewed under the Sunset Process or the National List Petition Process, NOSB will need a two-thirds majority vote to recommend removal of a substance from the National List.

Previously, AMS addressed all substance listings, both removals and renewals, through rulemaking. Through the process described in the Federal Register notice, AMS may initiate rulemaking if the NOSB recommends removing a substance from the National List, and if AMS accepts this recommendation. For the other substances that are reviewed by the NOSB and for which NOSB does not recommend removal, AMS intends to announce that the substances are renewed through a Federal Register notice.

## **Next Steps**

AMS requests that the NOSB take the following actions in response to the published Federal Register notice:

1. Review the Federal Register notice describing the Sunset Process.
2. In collaboration with NOP staff, update the NOSB Policy and Procedures Manual so that the manual reflects the Sunset Process published in the Federal Register.
3. Continue the NOSB Materials Subcommittee's work to streamline the National List petition guidelines and process to facilitate petitions to remove or change substance listings.

AMS thanks the NOSB for its critical work on the National List.