

**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”.

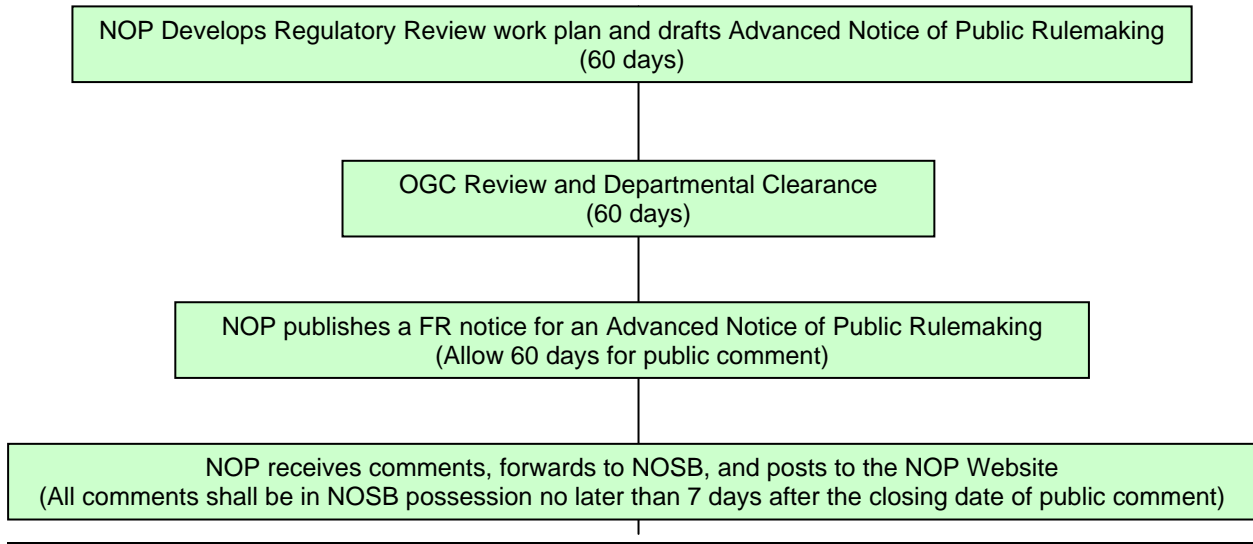
The National List that was implemented in October 21, 2002 contained over 200 substances. The first sunset review of listed materials was completed in October, 2007. Decisions made through the Sunset review must be transparent, non-arbitrary, based on the best current information and in the interest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

## **Steps followed in Sunset Process**

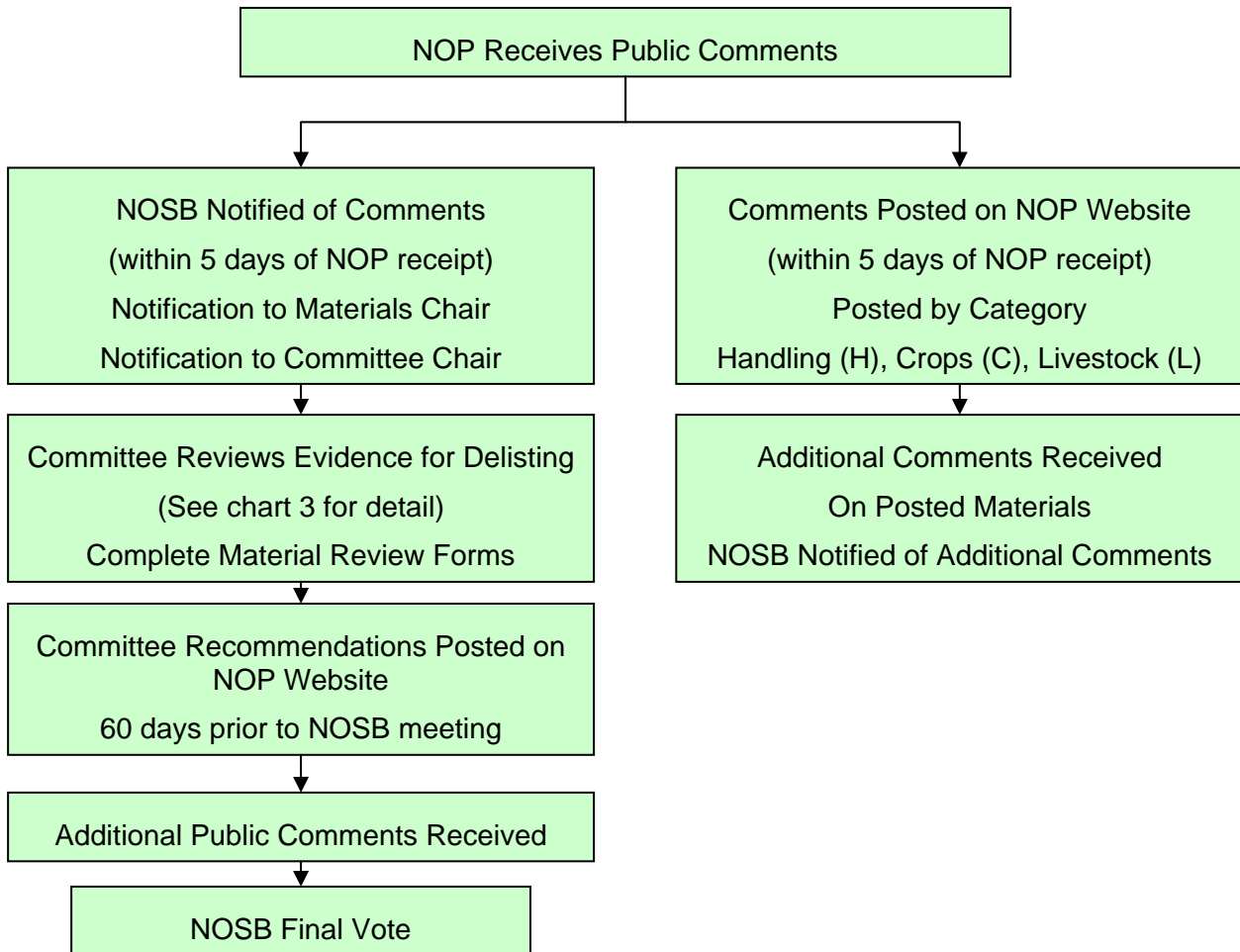
Not all listed materials reach sunset status at the same time, but the review process includes these steps:

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). 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

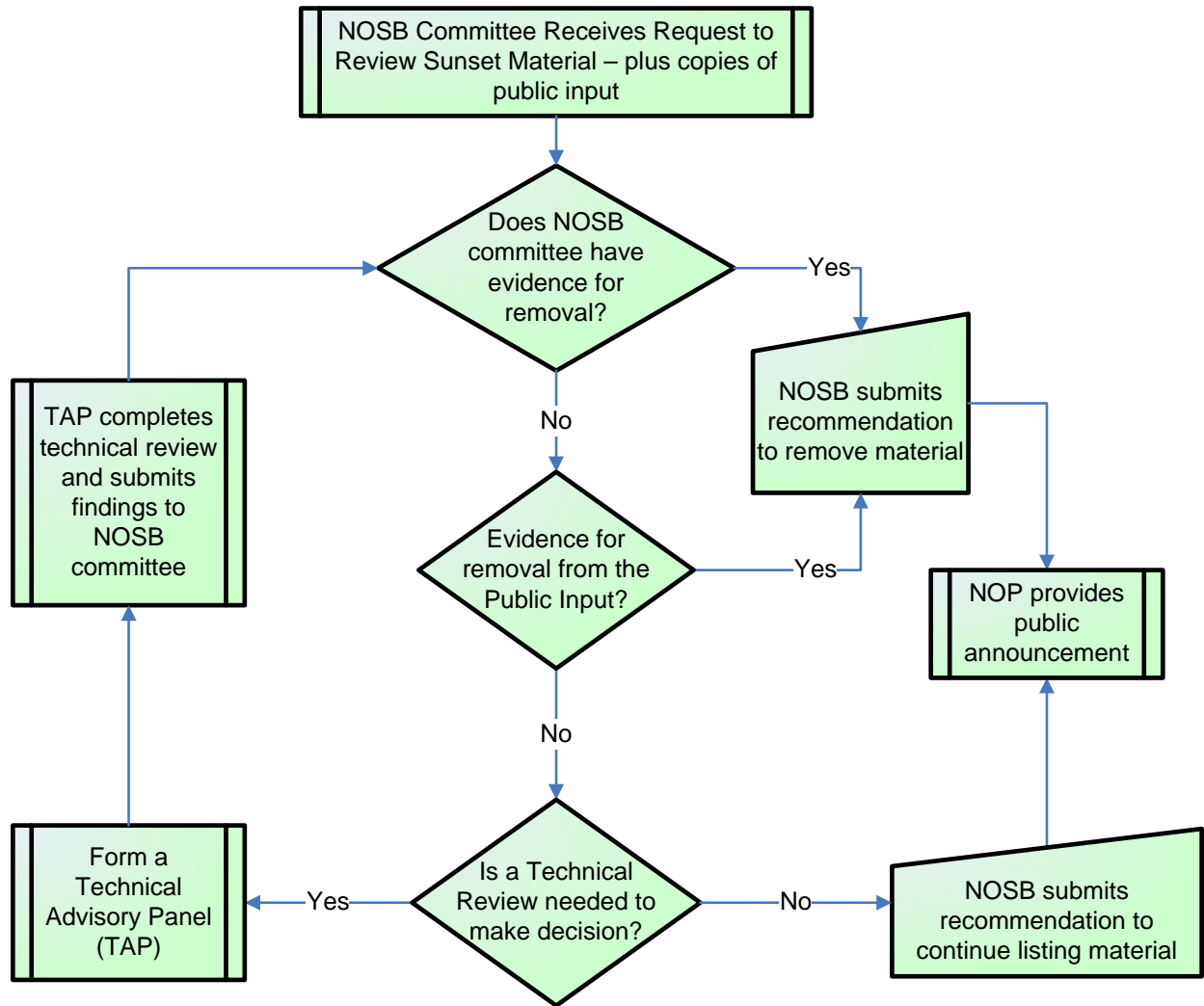
### **Chart 1: Sunset Review – NOP Posts an ANPR**



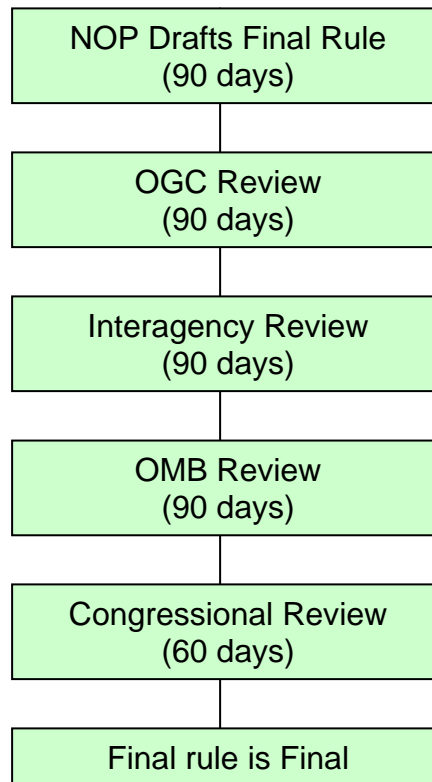
### **Chart 2: Sunset Review – NOP Collects and Forwards Public Comment to the NOSB**



**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**

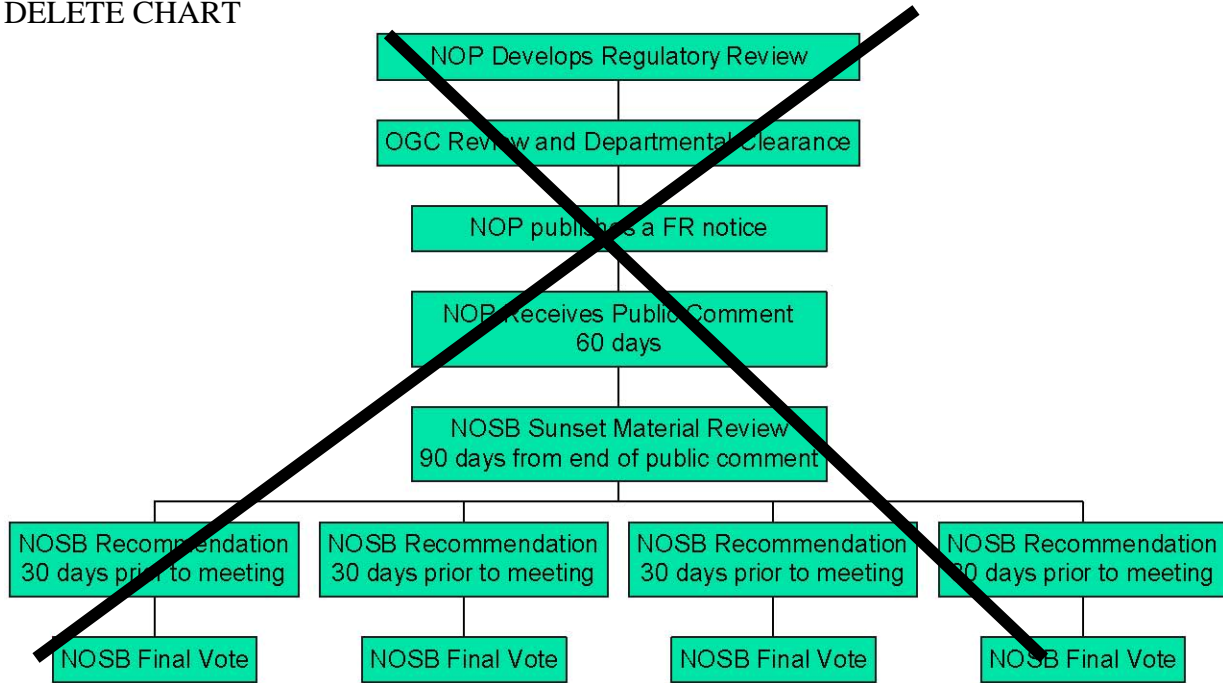
- ~~Each committee will provide their recommendation to the board on each substance 60 days prior to the full Board meeting. The recommendation will be posted on the website and open to public comment.~~
- ~~NOSB Final Vote~~

### **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

DELETE CHART

