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National Organic Standards Board
USDA-AMS-NOP
1400 Independence Ave. SW.,
Room 2648-S, Mail Stop 0268
Washington, DC 20250-0268

Docket ID # AMS-NOP-25-0034

Re. CACS: Residue testing DD

These comments to the National Organic Standards Board (NOSB) on its Fall 2025 agenda are submitted on behalf of Beyond Pesticides. Founded in 1981 as a national, grassroots, membership organization that represents community-based organizations and a range of people seeking to bridge the interests of consumers, farmers, and farmworkers, Beyond Pesticides advances improved protections from pesticides and alternative pest management strategies that eliminate a reliance on pesticides. Our membership and network span the 50 states and the world.

Thank you for this opportunity to address the role of residue testing in organic enforcement. Beyond Pesticides supports residue testing that yields meaningful and transparent results within the context of OFPA.

1. Mandated testing of a minimum of 5% of operations annually by certifiers

The mandated testing of a minimum of 5% of operations annually only serves the purpose of ensuring that certifiers are doing **some** testing. Without further guidance, it is unclear whether the testing is achieving an enforcement purpose. Testing on average once every 20 years does not appear to be helpful in verifying compliance. We agree with the CACS that using risk criteria to target testing would be more helpful for fraud detection. However, we also believe that a certain amount of random testing is helpful in assessing risk criteria. Given the costs of testing, guidance on testing and fraud prevention should address the issue of where testing will have the greatest impact and ensure organic integrity, and public trust in the organic label.

2. Certifiers conducting all testing at their own expense

With increased sampling and the complexity of sampling in the processing/handling environment, there also needs to be a discussion of who bears the cost of this sampling. Currently, certifiers calculate the cost of crop residue sampling into their cost of doing business

and incorporate those costs into certification fees, resulting in a tension between cost of ensuring organic integrity and the ability of certified entities to pay those fees—and hence, remain certified. Testing can be quite expensive, and we should be aware of who will pay those costs. This is an issue that deserves specific attention. On the other hand, we agree that the scope of testing should be expanded to a broader list of prohibited substances.

We would like to know more about the actual cost to certifiers of performing testing. We would like to know whether the number of tests and/or cost of testing have increased over time. In general, we do not support charging operations based on "risk," but would support certifiers receiving reimbursement for testing that results in enforcement actions. There must be clarity concerning how to assign responsibility if a sample tests positive for a prohibited material. The CACS must clarify the role of a facility's fraud prevention plan in enforcement and provide guidance ensuring that certifiers are consistent in their requirements for a fraud prevention plan.

NOP should make use of data collected by USDA's Pesticide Data Program (PDP), "the most comprehensive pesticide residue database in the U.S."[1] whenever possible.

3. Public access to results

We support public access as stated in §205.670(f): Requires that the results of all residue testing be available for public access, unless part of an ongoing investigation. We believe that the procedure described in §205.504(b)(5)(iii) is made unnecessary by digital advances, particularly in light of the reported development of a database of results. If some samples are taken randomly and some for enforcement purposes, they should be so identified in the database.

4. Downstream notification of noncompliant organic product to buyers

Many organic consumers are chemically sensitive and **need** to avoid exposure to toxic residues that might appear in products erroneously labeled "organic." Therefore, noncompliance because of the presence of prohibited substances should be regarded as seriously as other consumer safety issues. We agree with the CACS: "To mitigate these risks, a structured, data-driven, and risk-based approach to avoid overburdening compliant operations is necessary." We recommend assessing procedures used by FDA and the Consumer Product Safety Commission in similar situations. We support the proposal to encourage NOP to close this regulatory gap by ensuring that downstream notification of noncompliant organic products is included in the organic regulations.

5. Unavoidable residual environmental contamination (UREC)

NOP 2613 requires comparison of residues with tolerances only if they exceed 0.01 ppm (10 ppb). There are, however, many pesticide active and "inert" ingredients with tolerances

[1] https://www.ams.usda.gov/datasets/pdp.

below 0.01 ppm.[2] Therefore, comparison of the residues with tolerances should take place **before** application of a general *de minimus* standard.

With reference to contamination that does not fit the current definition of unavoidable residual environmental contamination (UREC) but is outside the organic operator's control, the CACS asks, **"Is it reasonable to consider contamination due to atmospheric drift (i.e., contaminated rainwater) or other types of contamination that are outside of the operation's control, even when they've implemented contamination prevention strategies, such as UREC? Should this be defined as something else, and then a process be established to address these types of contamination events?"** We believe that UREC should remain as currently defined. While these other contamination events may be outside the control of the organic operator, they are not "unavoidable" in a larger sense, and efforts need to be made to eliminate them. For example, we have advocated that the NOSB and NOP should pursue a strategy to eliminate contaminated inputs. The NOSB and NOP should also recommend that USDA and EPA adopt policies that eliminate uses of pesticides and other prohibited substances that lead to contamination of organic operations.

The organic community and the standards governing the growing organic agricultural sector must not normalize chemical trespass in its many forms and force contamination costs on to the organic farmer or consumer. The cost of pesticide contamination resulting from the conventional, chemical-intensive agricultural industry must be treated as a catastrophic event covered like other destructive events, such as explosions, by the Federal Emergency Management Agency (FEMA) or a similar insurance program. The NOSB and NOP must not compromise the integrity of organic standards or undermine the economic viability of the organic sector because of the failure of EPA, through its pesticide registration program, to adequately restrict pesticide use in a manner that prevents nontarget exposure. To the extent that these contamination events occur, the cost must ultimately be borne by the polluters, the chemical companies and users of their pesticides that are causing economic harm to organic farmers and consumers. We urge the NOSB to ensure a rigorous residue testing regimen and, in the process, recognize the social value that organic land management brings to the mitigation of existential threats associated with pesticide-induced diseases, biodiversity collapse, and the climate crisis.

Thank you for your consideration of these comments.

Sincerely,

Terry Shistar, Ph.D.

[2] https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-180. Search on "0.00."

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