ORGANIC TRADE ASSOCIATION

May 4, 2026

Ms. Michelle Arsenault
National Organic Standards Board
USDA-AMS-NOP

Docket: AMS-NOP-25-0914

RE: Certification, Accreditation, and Compliance Subcommittee
Proposal: Residue Testing for a Global Supply Chain: Regulation Review | §205.670 & UREC

Dear Ms. Arsenault:

Thank you for this opportunity to provide feedback to the Certification, Accreditation, and Compliance Subcommittee on its proposal to update the USDA organic regulations § 205.670, inspection and residue testing of agricultural products, as well as an update to the definition of UREC. The Organic Trade Association (OTA) is the membership-based business association for organic agriculture and products in North America. OTA is the leading voice for the organic trade in the United States. Our members include growers, shippers, processors, certifiers, farmers' associations, distributors, importers, exporters, brands, retailers, material input providers, and others. OTA's mission is to grow and protect organic with a unifying voice that serves and engages its diverse members from farm to marketplace.

Updates to § 205.670

1. **Mandated testing of a minimum of 5% of operations annually by certifiers**
   OTA supports the proposal to revise the regulatory language to require that the 5% of testing of operations be selected based on risk as well as randomly. With the requirement that certified operations maintain fraud prevention plans and certifier oversight and visibility of these plans, in tandem with certifier-conducted supply chain traceability exercises, certifiers have more insight than ever into risk factors across a diversity of supply chains. This, along with the regulatory requirement that certifiers exchange information that is credibly needed for enforcement purposes, provides a robust baseline for applying a risk-based approach to residue testing. While random sampling may act as a deterrent to operators willing to commit fraud, there is likely higher value in directing resources to sampling those operations with known higher risk factors. Additionally, with the NOP's increased capacity from the Strengthening Organic Enforcement rule for oversight of import and overall trade, along with insights it gleans from accreditation audits of certifiers, the program is in a position to communicate known and emerging risk factors to certifiers and further the efficiency of testing with a risk-based lens.

2. **Certifiers conducting all testing at their own expense**
   OTA acknowledges that testing—whether as part of the minimum 5% requirement or as part of investigative activities—can contribute to higher overhead costs for certification operations. In certain cases, such as when preventive measures fail and follow-up monitoring is required, passing

these additional costs on may be warranted. However, the 5% minimum testing should be viewed as a standard cost of providing certification services in compliance with accreditation, similar to accreditation fees or personnel expenses.[1]

There are currently no restrictions on certifiers adopting a tiered certification fee model in which higher-risk operations pay a greater share of certification costs. Certifiers are free to implement such models if they are viable for their businesses, provided the fee structures are properly disclosed in accordance with §205.503(c).

Testing and its implementation is only a minor portion of the overall costs of certification and risk management. We wonder if a more holistic overview of risk might lower the cost of certification at large. If we were to broadly view an operation with a risk-based approach, we may find certain factors of an operation—a strong fraud prevention plan, a long history of compliance, lower exposure to the market—warrant less intensive oversight and hence lower cost to the certifier. This would free up resources to focus on those higher-risk actors and activities. OTA is working on a concept of "right-sizing" regulatory burden to focus certification on a risk-based approach so the organic industry puts its efforts where it is most warranted, eases the regulatory burden on those who have a history of organic integrity, and upholds consumer confidence in the USDA organic seal.

3. Public access to results

OTA supports the recommendation to link the two parts of the regulation relevant to the availability of and access to residue testing results [§205.504(b)(5)(iii) and §205.670(f)]. While OTA respects the limited authority of the NOP to maintain a database of residue test results, we support ongoing efforts to establish a centralized resource of aggregated and anonymized data similar to USDA's pesticide data program. Transparency is a cornerstone of the organic regulations and making these results accessible can help to further refine a risk-based approach to sampling. Care must be taken, however, that access to this data does not result in unduly highlighting or penalizing operations at which sampling takes place but for which the responsibility of positive samples lies further up the supply chain.

Availability of results also presents an opportunity to elucidate incidences of unavoidable residual environmental contamination (UREC), low levels of substances known to naturally occur on an organic operation (phosphonic acid), or residues created as a result of compliant processing practices such as the smoking of tea and spices (biphenyl, polphenyl). If findings of such substances were aggregated, a body of evidence could be built to demonstrate the common and unavoidable presence of these substances on an operation that has adhered to its organic system plan.
See our related comments on this topic under the UREC section.

[1] NOP Preamble, Page 150 "The cost of such testing will be borne by the applicable certifying agent and is considered a cost of doing business. Accordingly, certifying agents should make provisions for the cost of preharvest or postharvest residue testing when structuring certification fees."

4. **Downstream notification of noncompliant organic product to buyers**
   OTA supports the recommendation to add downstream notification to the USDA organic regulations when residue testing reveals levels that exceed established action levels, or an investigation results in the discovery of a willful violation. We strongly echo the Subcommittee's and public commenters' concerns that notification is not a substitute for the due diligence of downstream buyers, but implemented with clear and consistent processes and processes would strengthen organic integrity, accountability across the supply chain, and bolster consumer confidence in the organic label. Because of the complexity of developing and implementing such a significant addition to the regulation, OTA supports the use of the Advanced Notice of Proposed Rulemaking (ANPR) process to gather and access information from across the supply chain to ensure the change results in actionable and clear language.

5. **Unavoidable residual environmental contamination (UREC)**
   OTA supports the efforts to address the response to positive residue results as a result of UREC and importantly, how to address the presence of a particular substance when the UREC definition is insufficient or EPA tolerance levels are absent. These issues are increasingly brought up by handlers and processors. In addition to UREC, residue concerns arise when defaulting to an unqualified 0.01 ppm in the absence of an established MRL tolerance, particularly for crops produced outside the United States (such as tropical products, spices, and supplements) where EPA or FDA thresholds may not exist. Further processing, such as drying or extraction, must also be considered, as it may cause a product that was compliant at the crop stage to become non-compliant at the processed stage due to concentration effects. Defaulting to raw commodity tolerances in the absence of processed product tolerances risks unfairly elevating a UREC to a noncompliance.

   There are two additional issues also increasingly brought to our attention. One is the finding of positive results for residues that are a by-product of compliant processing practices. When smoke is used to cure or flavor certain teas and spices, there is an increasing body of evidence that this process produces residues that do not fall into the existing definitions of UREC, incidental drift, contamination, or inadvertent or atmospheric presence. Residues of substances such as biphenyls, polyphenyls, and phenylphenols have been repeatedly found in organic smoked products. There are no EPA tolerance or FDA action levels for these substances. When presence of these substances is found, this leads to the issuance of a noncompliance to the handler of the product, and often triggers an investigation back to the farm level. But because these substances are a result of a processing step, an investigation to the farm level rarely points to drift, contamination, or commingling. This represents an extremely inefficient use of time and resources for the handler, the producer, and the certifier with no commensurate gain to organic integrity.

Positive residue findings of phosphonic acid and fosetyl-Al present another example of a scenario that falls outside of the current framework used to assess and respond to residues. These substances have been detected in products that, as with the residues of smoked products, there are no EPA tolerance or FDA action levels established. But unlike the residues which are a result of a processing step, these substances are most often a result of a natural presence in the soil and taken up by the crop. This also leads to investigations that seldom reveal a drift or contamination event.

As we note above, aggregation and access to residue results presents an opportunity to build a body of evidence to demonstrate common and unavoidable presence of these substances on an operation that has adhered to its organic system plan. With greater understanding of the presence of these substances, we can prevent the burden of investigation unduly falling on operators—producers and handlers—who have implemented and followed sound fraud prevention plans and who have demonstrated adherence to strong preventive practices in their organic system plans. When the result of an investigation verifies the integrity of these operations and producers of the raw product have a strong record of organic integrity, measures should be in place to either streamline or close the investigation and any noncompliance issued. Clear regulation and guidance will ensure consistent certifier oversight and an even playing field for all.

These concerns must be accounted for when addressing any update to UREC, public access to testing results, downstream notification, and investigations initiated by positive findings. Sampling can happen anywhere in the supply chain, which may result in positive residues anywhere later in the supply chain. We support the Board's previous recommendation to update NOP Instruction 2613 *Responding to Results from Pesticide Residue Testing*, while also providing guidance that addresses the instances above that fall outside of the existing residue response framework.

On behalf of our members across the supply chain and the country, OTA thanks the National Organic Standards Board for the opportunity to comment, and for your commitment to furthering organic agriculture.

Respectfully submitted,

Scott Rice
Sr. Director, Regulatory Affairs
Organic Trade Association

cc: Tom Chapman
Co-CEO
Organic Trade Association