ORGANIC TRADE ASSOCIATION

October 8, 2025

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

Docket: AMS-NOP-25-0034

RE: Certification, Accreditation, and Compliance Subcommittee
Proposal: Residue Testing for a Global Supply Chain | § 205.671
Discussion Document: 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 in relation to residue testing and its impact on § 205.671, exclusion from organic sale, as well as the discussion document exploring updates to §205.670, inspection and testing of organic agricultural products. 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.

Proposal: Regulation Review | § 205.671

OTA supports the Subcommittee's proposal to revise § 205.671 to require exclusion from organic sales due to the intentional application of a prohibited substance. Certifiers have expressed lack of clarity in this section of the regulation which has resulted in inconsistent oversight and enforcement. While authority exists for exclusion of product when detected residue levels exceed EPA/FDA thresholds, this has proven too narrow a lens to exclude products for which EPA/FDA thresholds do not apply or do not exist. Certifiers require regulatory clarity to consistently, proactively, and expeditiously exclude products from the marketplace when residue results point to an intentional application of a prohibited substance or presence of an excluded method.

As the strength of the organic market poses a greater opportunity and incentive for fraud, and as testing methods are ever more sophisticated, certifiers require clear authority and oversight to ensure organic integrity and assure consumer trust in the organic label. Likewise, the organic trade requires clear expectations when residues are detected. An update that provides clear language will drive consistent response and timely action by certifiers, due process when findings are made, and a level playing field across all operations.

OTA supports broadening the language of § 205.671 to support exclusion for findings related to documented intentional application in the absence of residue results, when residues fall below existing EPA or FDA thresholds, when no thresholds exist, or when the sampling event is conducted on a non-edible portion of the crop. Indeed, public comments point to such findings resulting in inconsistent enforcement today.

Updating the language alone is not sufficient. In addition to expanding provisions to broaden certifier authority for the exclusion of sale, specificity to address the process for exclusions must also be provided in regulatory language and/or guidance and training for certifiers sufficient to ensure consistent application of the regulation. The proposal outlines a number of questions and scenarios that merit further consideration to ensure any stop sale actions are fair and consistent, but does not definitively address the answers or solutions to these questions. In considering this proposal and the complexity of the factors that must be addressed to ensure consistent outcomes with a stop sale mechanism, OTA suggests NOP make use of an Advance Notice of Proposed Rulemaking (ANPR) to solicit further input. Use of an ANPR was critical in informing how NOP might move forward in updating the regulation to replace outdated EPA references to inert ingredients used in pesticides.

In relation to determining exclusion from sale, the responsibilities of conducting residue testing, and enforcement activities deemed necessary as a result of positive findings, we acknowledge there is interest in removing this responsibility from certifiers and inspectors. While it may be desirable for NOP to assume these activities and responsibilities, the USDA organic certification is a proven public-private partnership that shares the responsibility of ensuring the integrity of the organic label. We do not see reason to displace this strong partnership, nor do we view this as a viable or feasible option.

Discussion Document: Regulation Review | §205.670 & UREC

OTA broadly supports the Subcommittee's direction and intent in the five focus areas of the discussion document. We have the following comments for each of the respective sections of the document, though we recognize their inherent connectivity.

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

   OTA supports the continued testing of a minimum of 5% of operations, but this should not simply be a threshold of acceptability. Rather than a random sampling approach, testing with a risk-based lens is a more effective and better use of resources. 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.

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, these additional costs may be warranted. 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 residue testing results

OTA is supportive of centralized public access to testing results, aggregated and anonymized similar to USDA's pesticide data program, especially where it can help drive a risk-based approach to testing and overall certification oversight or inform fraud prevention plans. By having insight into the commodities and activities where the greatest incidence of positive residues reside, certifiers and NOP might have more effective oversight of organic supply chains. 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. We address this further in our comments below.

The residue testing requirements within the NOP regulations serve distinct purposes. Section §205.504(b)(5)(iii), part of the accreditation criteria, evaluates a certifier's expertise and capacity to conduct certification. Section §205.670(f) relates to inspection and testing transparency for agricultural products marketed as organic. Neither section requires amendment to support the

[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."

creation of a centralized database. To implement such a database, however, NOP would need to be appropriated funding and be told to prioritize this initiative.

4. Downstream notification of noncompliant organic product to buyers

OTA appreciates the Subcommittee's thoughtful and detailed approach to the need for downstream notification of noncompliant product. The discussion highlights the complexity of implementing such a notification system while presenting a pathway to do so. While the NOSB provides a public forum for input and any change would require notice and comment rulemaking procedures, we believe the complexity of such an update to the regulation would benefit from further opportunity for stakeholder input. This could be via an Advance Notice of Proposed Rulemaking, or dedicating further focus to this topic in a standalone NOSB discussion document.

The NOSB should gather more first-hand information on the EU's experience with the cited "EU Transparency Model" before considering it as an approach for alignment. OTA works closely with our EU counterparts and can confirm that many of the same challenges cited in the discussion document, and more, persist within their system. These include unclear roles, inconsistent interpretations, insufficient support for timely and reliable alerts, lack of product disposition guidance, and ongoing confidentiality concerns. These shortcomings demonstrate that the EU model is far from a proven solution and should not be assumed to address the needs of the U.S. organic system. While we encourage learning from each other and sharing best practices, different approaches should not be assumed to be superior without a full evaluation of their effectiveness and applicability to the U.S. context.

5. Unavoidable residual environmental contamination (UREC)

The UREC discussion in the Subcommittee's document highlights questions and concerns that span the entirety of this discussion and which 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. 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. The Subcommittee may be interested in recent studies completed in the EU by the European Food Safety Authority (EFSA), which examines some of these same challenges we face in the U.S.

It should be noted there is increasing concern that the burden of investigation is unduly falling on

operators who have implemented and followed sound fraud prevention plans and who have demonstrated adherence to strong preventative practices in their organic system plans. When the result of an investigation verifies the integrity of these operations and that organic integrity was compromised at a point prior to an operation receiving product, measures should be in place to close the investigation and any noncompliance issued. As noted elsewhere in our comments, clear regulation and guidance will ensure consistent certifier oversight and an even playing field for all.

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
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Organic Trade Association

cc: Tom Chapman
Co-CEO
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