ORGANIC TRADE ASSOCIATION

April 21, 2025

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

Docket: AMS-NOP-24-0081

RE: Certification, Accreditation, and Compliance Subcommittee
Proposal: Residue Testing for a Global Supply Chain Proposal
Discussion Document: Regulation Review

Dear Ms. Arsenault:

Thank you for this opportunity to provide feedback to the Certification, Accreditation, and Compliance Subcommittee on its proposal to update National Organic Program guidance documents related to residue testing, and its discussion document on related regulation review. 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.

Residue Testing for a Global Supply Chain: Proposal

OTA supports the Subcommittee's proposal to update the foundational residue testing guidance and training documents. As noted in the proposal, the organic industry has evolved in the time since these guidance documents were created, as has the need to refine the use and focus of testing as a tool. In recommending updates through its public and participatory process the Board helps drive consistency in sampling and testing practices, key to ensuring an even playing field for organic businesses.

OTA has the following comments for each of the respective sections of the proposal document.

Sampling Procedures for Residue Sampling (NOP 2610)

OTA is highly supportive of a risk-based approach, as noted in Section 5b, when determining what to sample and where to do so in the supply chain. The risk-based decision tree suggested later in the document presents an excellent opportunity to align certifiers in this approach. While random sampling may occasionally lead to findings of positive presence of prohibited materials and may act as a disincentive to commit fraud, targeted sampling based on the risk factors included in OILC course NOP-190 presents a more effective use of resources.

We similarly offer strong support of using the question in the training module, "Can I reasonably think that I can determine the source of the contamination and the responsible parties if this sample is positive?" as a guide for when and where to sample. While the factors included in Section 6 (Time is of the Essence) are important guidelines, consideration should also be given before sampling product in long-term storage, particularly if held over from a prior season. Whereas sampling such product may have the utility of detecting prohibited storage materials or issues with commingling, investigating field-applied prohibited substances becomes increasingly difficult as time passes. Such instances can lead to a heavy investment of time and resources of multiple parties with no satisfactory resolution, nor contribution to validating organic integrity.

Laboratory Selection Criteria (NOP 2611)
OTA is supportive of updating and expanding this document to reflect testing beyond pesticide residues (prohibited production inputs, synthetic solvents used in oil extraction, and potentially other post-harvest substances).

Prohibited Pesticides for NOP Residue Testing (NOP 2611-1)
OTA supports the proposed changes, especially the emphasis in Section 1d on the importance of understanding regional and crop-specific differences in pesticide and processing aid use. This highlights the utility of a risk-based approach and a smarter use of resources. To best take advantage of this approach, emphasis also needs to be placed on training in these regional and crop-specific differences so that certifiers can plan for and direct the most appropriate and applicable sampling on a given inspection.

Responding to Results (NOP 2613)
Consistency in response to testing results is key to ensuring a fair and even business environment. OTA supports the efforts to remove uncertainty when results show presence of a substance for which there is no EPA tolerance or FDA action level. Similarly, we support resolving inconsistencies in the outcomes of self-reported drift vs. a response to positive residue samples. We also support establishing a common approach or taking advantage of existing approaches when evaluating presence of prohibited substances in dehydrated, extracted, or concentrated organic products. In each of these scenarios, we urge sound and sensible approaches that balance consumer expectations of organic integrity with the reality that organic production is often adjacent to conventional systems.

Consistency in Export Markets
While ensuring consistency in the domestic market is essential, we see an equal need in export markets. Where possible, OTA encourages the NOP to work with our trading partners to drive similar consistency in response to positive presence of prohibited substances in export markets. Be it lower levels of detection, testing for substances outside the panels used in domestic markets, or greater scrutiny placed on metabolites of prohibited substances, our members have experienced the logistical and financial setbacks of product being excluded from the organic marketplace. In the near term, we see

value in clearly communicating these challenges in a timely manner. In the longer term, there may be an opportunity to evaluate these approaches when renegotiating trade arrangements.

Residue Testing for a Global Supply Chain: Regulation Review Discussion Document

Exclusion from organic sale

OTA supports the Board's further consideration of amending §205.671 to clarify an intentional application of a prohibited substance or excluded method results in an exclusion from sale as an organic product, regardless of whether a tolerance level is established. As the Board considers this change, we see a potential challenge in balancing a prompt response and exclusion from sale with the necessity of ensuring there is due process in investigating positive residue findings or excluded method presence.

One potential for addressing this challenge is presented in the public comment summary, in which one commenter suggests the use of holding orders. A hold on product for which positive residue or excluded method use is detected would allow for an investigation to be completed, and also presents the opportunity for downstream notification of the supply chain, another potential requirement explored by the Board. Should an amendment to the regulation allowing hold of product be recommended, we suggest there be language as specific as possible as to what party—or parties—bears the responsibility and cost of a hold.

Unavoidable residual environmental contamination (UREC) Definition (§205.2)

OTA agrees there may be a need to update how UREC is defined or taken into consideration when responding to positive residue findings or excluded method presence. However, we find the suggested UREC definition revision, which strikes "naturally occurring…chemicals," may unintentionally exclude certain scenarios or findings. For instance, OTA is aware of cases in which test results showing positive presence for phosphonic acid have later been found to originate from levels of phosphorus naturally occurring on an organic production site. In these instances, the UREC finding stems not from background levels of prohibited substances, but from naturally occurring levels. In light of this, we caution the Board in removing the "naturally occurring" text from the definition.

Number and Cost of Sampling and Testing (§205.670)

OTA supports the 5% minimum number of samples as required in §205.670 and sees a benefit in finding opportunities to increase this number if efforts can be focused with a risk-based lens. We further support exploring the option of certifiers having the ability to pass this cost to certified operations. But the terms under which the cost may be passed must be clearly and consistently implemented by certifiers and understood by the trade. We understand certifiers have the latitude to pass costs for follow-up sampling under the terms of a settlement agreement as an outcome of a compliance investigation. In the absence of a change to the regulation, there appears to be opportunity for NOP to clarify the existing regulation and whether or when sampling and testing costs may be passed to an operation.

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
Organic Trade Association