



September 28, 2023

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

Docket: AMS-NOP-23-0026

**RE: Compliance, Certification, and Accreditation Subcommittee Discussion –
Oversight to Deter Fraud: Residue Testing in a Global Supply Chain**

Dear Ms. Arsenault:

Thank you for this opportunity to provide comment on the National Organic Standards Board (NOSB) Certification, Accreditation, and Compliance (CACS) Subcommittee's discussion document, Oversight to Deter Fraud: Residue Testing in a Global Supply Chain.

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, representing organic businesses across 50 states. Its members include growers, shippers, processors, certifiers, farmers' associations, distributors, importers, exporters, consultants, retailers and others. OTA's Board of Directors is democratically elected by its members. OTA's mission is to promote and protect organic with a unifying voice that serves and engages its diverse members from farm to marketplace.

The CACS is considering whether updates to periodic residue testing programs will augment ACA's ability to verify compliance, deter fraud, and prevent contaminated products from entering the organic marketplace. OTA applauds the Subcommittee's work on this issue and supports its intent of building on the foundations of the Strengthening Organic Enforcement (SOE) rule. Expanding existing prohibited substance testing protocols to include targeted, risk-based testing for substances known to be used on a particular commodity is a logical and sensible step forward in further protecting organic integrity. With USDA's explicit reference in the SOE preamble to fraud in the organic oilseed supply chain, the selection of imported oilseeds aligns with this risk-based approach and presents a good starting point.

We offer answers to three of the proposed questions to stakeholders at large and look forward to seeing answers to the questions directed to certifiers, inspectors, and testing labs.

NOSB Questions to Stakeholders

5. Substances for NOSB focus: NOSB intends to evaluate testing options for organic solvents and fumigants. Are there additional substances NOSB should evaluate that are not currently encompassed by periodic residue sampling guidance and practices?

As we note below, NOP 2611-1: Prohibited Pesticides for NOP Residue Testing needs updating. We encourage NOSB to work with testing labs, accredited certifiers, and other stakeholders to update the list contained in NOP 2611-1. Doing so will help provide insight on where focused evaluation can be expanded.

6. Comments on proposed evaluation framework: Do stakeholders have recommendations for refining the proposed framework within which we will evaluate prohibited substance residue testing?

For the proposed framework to be successful, we strongly agree that clarity and consistency will be essential. We consider ACAs to have the authority, via the regulatory and NOP Handbook references noted in the document, to test and respond to positive results found. For the initial proposed framework looking at oilseeds, the discussion document notes there are only published residue limits for hexane in spice resins and hop extracts.

NOP Instruction 2613: Responding to Results from Pesticide Residue Testing, includes procedures for responding to results indicating residues for which EPA has not established a tolerance and the FDA has not established an action level. While this instruction is widely used and is an important reference for exploring this framework, it is not codified in the USDA organic regulations. To ensure a consistent response to positive residues for which action levels exist and for those which there is none, the subcommittee should consider recommending updates to Instruction 2613 prior to initiation of testing. Ultimately, an update to the regulation should be made to incorporate Instruction 2613 related to residue testing and response. Codifying instruction into regulation will ensure a consistent approach and response.

7. What else should the NOSB consider to strengthen periodic residue sampling as an organic compliance verification tool?

NOP 2611-1: Prohibited Pesticides for NOP Residue Testing offers a small, outdated snapshot of substances for which to test. To strengthen and expand the use of periodic residue testing as a tool for detecting fraud or inadequate handling to prevent contamination and commingling, the list of substances must be greatly expanded to reflect substances and methods currently in use. Where possible, an efficient process by which to update the list should be explored so that the list can keep up with new and emerging technologies, substances, and their uses. Any expansion of this list must be referenced and used consistently across certifiers and the labs with which they work.

Further, if responses to positive presence are to be truly consistent, there must also be consistent testing methodologies across the labs used by certifiers. Consistent practices across the sampling, testing, and response steps of a residue program will produce consistent data. This data can then be used to inform targeted risk assessment and aid greater efficacy in fraud detection.

The OTA Organic Fraud Prevention Solutions (OFPS) resources are designed to assist businesses in developing robust fraud prevention plans. As with all risk assessments, organic fraud prevention plans should, over time, incorporate data to support and inform current risk states. OTA supports and encourages the future use of testing as a means of surveillance and on-going development of the industry's fraud prevention plans. We encourage the NOP to create guidance to provide consistency on expectations and clear action plans in the event of residue detections.

We note volatile fumigants are mentioned but not included in the framework. As NOP has strengthened its relationship with U.S. Customs and Border Protection (CBP), we encourage consultation with NOP AMS Trade Systems Division staff, CBP, and Animal & Plant Health Inspection Service (APHIS) to best understand the handling and treatment of imported organic product at ports of entry. Additional guidance or training may be helpful for accredited certifiers to ensure the consistent monitoring of and responses to fumigation events of organic product.

In closing, and 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 protecting organic integrity across the supply chain.

Respectfully submitted,



Scott Rice
Regulatory Director
Organic Trade Association

cc: Tom Chapman, CEO
Organic Trade Association