National Organic Standards Board (NOSB)
Certification, Accreditation, and Compliance Subcommittee (CACS)
Residue Testing for a Global Supply Chain: Regulation Review (§ 205.670 &UREC)
Proposal
Fall 2026

Executive Summary

This proposal recommends updates to various aspects of § 205.670: Inspection and testing of agricultural products to be sold or labeled as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s)). These include:

1. **Mandated testing of a minimum of 5% of operations annually by certifiers**
    a. Recommendation to update the regulatory text to require certifiers to include risk-based and random selection when determining which operations will be tested as part of the 5% of operations tested annually.

2. **Certifiers conducting all testing at their own expense**
    a. Recommendation to update the regulatory text to allow certifiers to charge operations tested only when the:
        - test is being conducted as part of a credible complaint or investigation; and
        - contamination is determined to be caused by an intentional application or failure of an operation to adhere to their OSP (i.e. results in a noncompliance or adverse action).

3. **Public access to results**
    a. Recommendation to link (§ 205.504(b)(5)(iii) and § 205.670(f)) together.

    b. Encouragement of industry partners to continue to develop a centralized database (e.g., ORG-Tracker) and incentivize certifiers to participate.

This proposal also identifies residue testing issues that do not currently require rulemaking but are already addressed in past recommendations and/or existing law:

4. **Unavoidable residual environmental contamination (UREC)**
    a. Encourage NOP to implement NOSB's 2025 Spring Final Recommendation to update NOP 2613 guidance to provide certifiers with clearer direction for evaluating residue findings when:
        - residues are detected without an established EPA tolerance or FDA action level; and
        - contamination is the result of indirect, unintentional applications of unknown origin (e.g., volatile drift events), rather than intentional application or failure of an operation's Organic System Plan.

5. **Downstream Notification to Supply Chain Partners of Non-Compliant Inputs for Fraud Prevention Purposes**
    a. Best-practices and fraud prevention plans call for communication of confirmed fraud, willful violations, or significant noncompliance to affected downstream supply chain partners. The intent is to enhance transparency, traceability, and fraud prevention.

Discussion

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

The current testing requirements in the rule related to operation selection are minimal and focus on the quantity (5%), but not necessarily the type of operation or reason to test. This was intentional in the 2012 Periodic Residue Testing final rule to allow certifiers flexibility. However, now that we are over a decade into implementing this rule, along with other factors currently impacting the organic sector (e.g., fraud), it appears that there is an opportunity to shift from the mindset of using testing as a tool for verifying an operation's compliance on their operation to more of a verification tool for fraud detection. With this shift, it seems necessary to indicate that the 5% of operations tested must include a portion selected based on risk criteria, while also maintaining the allowance for random selection as this is an important deterrent.

What does the Organic Foods Production Act (OFPA) and the regulations state?

- OFPA (7 U.S.C. 6506(a)(6))[1]: Requires certifiers to conduct periodic residue testing to determine the presence of prohibited substances and report violations (as appropriate).
- 7 CFR 205.670(d)[2]: Requires certifiers to conduct sampling and testing from a minimum of 5% of the operations it certifies, annually.

Background and Discussion

The mandated 5% of operation testing by certifiers annually was added to the regulations as a result of the 2012 Periodic Residue Testing final rule, which became effective on January 1, 2013. This was in response to an audit of the NOP, which was conducted in March 2010 by the USDA Office of Inspector General (OIG), in which OIG found "that none of the four certifying agents visited conducted periodic residue testing. The OIG indicated that these certifying agents noted that they considered residue testing to be required by the regulations only under certain circumstances."[3]

The stated purpose of the 2012 Periodic Residue Testing final rule is to "implement the requirements of the OFPA (section 6506) for periodic residue testing by certifying agents. Residue testing plays an important role in organic certification by providing a means for monitoring compliance with the NOP regulations and by discouraging the mislabeling of agricultural products." Section 6506(a)(6) of OFPA states:

"A program established under this chapter shall require periodic residue testing by certifying agents of agricultural products that have been produced on certified organic farms and handled through certified organic handling operations to determine whether such products contain any pesticide or other nonorganic residue or natural toxicants and to require certifying agents, to the extent that such agents are aware of a violation of applicable laws relating to food safety, to report such violation to the appropriate health agencies."

AMS stated that its primary objective was to align the NOP regulations with the requirements for testing under OFPA.

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[1] Organic Foods Production Act of 1990, Section 6506

[2] 7 CFR 205.670(d)

[3] 2012 Periodic Residue Testing Final Rule (77 FR 67239, November 9, 2012]

The final rule explains the various options considered by AMS to ensure that certifiers are conducting a minimum level of residue testing, ranging from the status quo to testing upwards of 25% of operations annually.

Additionally, the final rule explained that all types of testing would be eligible to be counted toward the 5% mandate, including testing at operations chosen at random. Furthermore, the final rule stated, "certifying agents have the discretion to select operations for residue testing based on criteria such as size of operation, quantity of products produced, previous compliance issues, or other risk factors. Certifying agents are knowledgeable about the risk factors affecting the operations they certify; therefore, it is appropriate for a certifying agent to determine what operations should be tested under this action."

Public Comment Summary

During the review of the 2026 Spring proposal, stakeholders demonstrated strong alignment in their consensus that retaining the 5% minimum residue testing requirement for operations is essential for program integrity. A significant majority of commenters advocated for certifiers to adopt a balanced, dual-pronged strategy, integrating both risk-based criteria and random selection into their annual testing programs. This combined approach is viewed as the most effective method for not only verifying ongoing compliance with the Organic System Plan (OSP) but also for proactively identifying and deterring fraudulent activity. While public comments consistently supported a minimum residue-testing mandate as a critical mechanism to ensure consistency and enhance oversight throughout the organic supply chain, many participants also emphasized the necessity of embedding this mandate within a more comprehensive risk-management framework. Stakeholders stressed that testing resources must be strategically allocated to operations, commodities, and supply chains that demonstrate the highest potential risk to organic integrity. Conversely, some commenters offered a note of caution, suggesting that relying solely on a fixed percentage could incentivize a mechanical, compliance-focused mindset that might fail to capture the highest-risk issues or deliver the most meaningful regulatory outcomes.

Conclusion

The Certification, Accreditation, and Compliance Subcommittee (CACS) recommends that NOP revise § 205.670(d) to include language that certifiers must select operations, as part of their testing program, using a combination of risk-based criteria (e.g., more likely to have residues, high risk assessment score, complaint, investigation) as well as random selection (e.g., location convenience, using a random selection generator), that aligns with their client make up. Meaning if a certifier certifies many high risk operations or is the recipient of several complaints and investigations, we'd expect that a larger portion of their 5% would have been selected due to risk vs a certifier that has lower risk operation and is not fielding many complaints or investigations. CACS does not want a certifier to only select operations due to risk nor does it want a certifier to select operations only at random. CACS also doesn't want a certifier to select only 1 operation due to risk and then the rest randomly when they have many high risk operations. The Subcommittee discussed specifying a certain percentage of the 5% needed to be selected due to risk but ultimately did not. Lastly, CACS acknowledges that the regulations state that when a certifier certifies fewer than thirty operations then they must test from at least one operation annually. CACS recommends that this one operation be selected based on risk.

2. Certifiers conducting all testing at their own expense

Since the original publication of the NOP regulations, the cost of testing has been required to be absorbed by the certifier. This was reinforced in the 2012 Periodic Residue Testing final rule. While this is technically

true, in practice, many certifiers offset the costs of testing across their client base by including this in their base certification fees. This means that operations that are not tested are subsidizing those that are being tested.

What do OFPA and the Regulations State?

- § 205.670(b) & (c)[4]: Requires that residue testing be conducted by the certifier at their own expense.

Background and Discussion

Due to the regulatory reference above, certifiers are required to absorb the costs of the testing described in §205.670(c). This requirement dates back to the original publication of NOP regulations. In the preamble of the December 21, 2000, final rule (65 FR 80548), it states in the Residue Testing section, "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."

Certifiers have expressed feeling constrained by this requirement. Costs affect the overall number of tests performed and which operations are selected for certifiers to maximize this line item in their budget.

Suppose certifiers could pass the costs of testing along to specific certified operations tested as part of increased oversight activities deemed necessary (e.g., complaint, investigation, high-risk operation). In that case, certifiers may increase the number of samples collected, or at least the selection of operations would be less impacted by cost implications. Also, it should be noted that in the current system, certifiers are likely still "charging" certified operations for testing conducted indirectly, meaning general certification fees paid for by all operations incorporate the amount to be spent on residue testing. This change to how testing fees are assessed could alleviate certification fees unnecessarily billed to low-risk operations.

Additionally, it is our understanding that the certifiers are implementing this requirement inconsistently. Some pass along the cost to operations for complaints and investigations, and do not count this towards their 5%, which appears compliant (haven't received noncompliance). In contrast, others have received a noncompliance for passing the costs along in the same situations.

Public Comment Summary:

In the Fall 2025 discussion document, comments on testing costs were mixed. Some stakeholders supported maintaining the current approach and viewed the minimum testing requirement as a standard cost of certification that should not be passed on to certified operations. These commenters noted concerns regarding fairness, particularly when an operation subject to testing may not be responsible for the contamination and highlighted the difficulty operations may have budgeting for unpredictable complaint- or investigation-driven testing. Others supported allowing certifiers to recover testing costs associated with complaints or investigations, particularly when an investigation results in a noncompliance or adverse action and demonstrates that contamination was caused by intentional actions or a failure to follow the operation's organic system plan. Comments on tiered fee structures were similarly mixed, with some noting that existing regulations already provide certifiers flexibility to establish higher fees for higher-risk operations. Additional comments included recommendations that testing be conducted by USDA or

[4] 7 CFR 205.670(c)

state agencies, concerns regarding potential conflicts of interest when certifiers test their own clients, and suggestions that USDA offset testing costs through accreditation fee adjustments

Comments received in response to the Spring 2026 proposal reflected continued concern regarding the financial burden associated with certifier-funded testing. While some commenters viewed residue testing as a fundamental component of certifier oversight responsibilities, many expressed concern that requiring certifiers to bear all testing costs could increase certification fees and create resource challenges, particularly as testing requirements expand. Several commenters supported mechanisms that would allow certifiers to recover testing costs in limited circumstances, especially when testing identifies fraud, willful violations, or other non-compliances. Others suggested that additional financial support, cost-sharing mechanisms, or alternative funding approaches should be considered to ensure robust testing programs can be maintained without creating undue burdens on either certifiers or certified operations. Overall, commenters generally supported strong residue-testing programs but sought greater flexibility regarding how testing costs are allocated and recovered.

Conclusion

The CACS recommends that NOP revise the regulatory text at § 205.670(b) & (c) to allow certifiers to charge operations tested only when the:

- test is being conducted as part of a credible complaint or investigation; and
- contamination is determined to be caused by an intentional application or failure of an operation to adhere to their OSP (i.e. results in a noncompliance or adverse action).

3. Public access to results

There are two mentions of public access to results in the regulations. However, they are not aligned. Additionally, as the NOSB has been discussing the topic of residue testing, the idea of a database of results has been brought up, as a project is currently under development.

What do OFPA and the regulations state?

- OFPA (7 USC 6506(a)(9))[5]: Requires public access to certification documents and laboratory analyses that pertain to certification

- § 205.670(f)[6]: Requires that the results of all residue testing be available for public access, unless part of an ongoing investigation

- § 205.504(b)(5)(iii)[7]: Requires that certifiers have procedures in place that, upon request, the results of residue testing conducted during the current and three preceding calendar years be made available.

[5] OFPA 6506(a)(9)

[6] 7 CFR 205.670(f)

[7] 7 CFR 205.504(b)(5)(iii)

Background and Discussion

Since the two regulatory citations listed above are not tied together, it is unclear what the intent of § 205.670(f) is/was. Is the intent of § 205.670(f) to make available results in accordance with § 205.504(b)(5)(iii), or was § 205.670(f) intended to make these results available in some other manner?

Additionally, the idea of a database (e.g., ORG-Tracker by Heartland Health Research Alliance) to compile and analyze residue test result data has been brought up by public comments, as industry stakeholders are currently developing such a project. The idea of a database was addressed in the 2012 Periodic Residue Testing final rule. At the time, AMS stated, "It is not AMS' intent to assemble data and draw conclusions based on statistical sampling techniques, as the sampling performed by certifying agents will vary considerably due to the worldwide diversity of operations which are certified to the NOP. Certifying agents have the discretion to sample from higher-risk operations, which may yield results that are not representative of all organic operations." This does not appear to be the current reality of testing, as many certifiers conduct random sampling rather than sampling based on known risks.

Additionally, from the proposed rule to the final rule, AMS amended the reporting requirements under section § 205.670 "to reduce the reporting burden on certifying agents." AMS stated, "This rule eliminates the requirement that certifying agents must submit all residue testing results to the Administrator or the State organic program's governing State official. AMS does not intend to consolidate residue testing data from certifying agents and does not need reporting of residue testing results as the mechanism to ensure that certifying agents are meeting the requirement of periodic residue testing."

Based on the previous stance from NOP, it is unclear whether the landscape has changed to make the compilation of data more beneficial than it was in 2013, following the implementation of the Periodic Residue Testing final rule.

In this proposal, CACS is recommending that NOP update the requirement that 5% of operations be selected based on either risk or randomly selected. 5% annual minimal testing conducted by each certifier doesn't equal many operations, however, if the information can be aggregated and shared across all certifiers - there can be meaningful data and learnings to extract to continuously improve testing programs.

Public comment summary

Public comments generally supported increased transparency regarding residue-testing results and recognized the value of making testing data more accessible to strengthen confidence in organic certification, support fraud prevention efforts, and improve understanding of contamination trends across the organic supply chain. Many commenters favored broader access to testing data and encouraged the development of centralized reporting or data-sharing systems that could be used to identify recurring contaminants, emerging risks, supply-chain vulnerabilities, and areas where additional oversight may be warranted.

At the same time, commenters raised several concerns regarding implementation. These included confidentiality and business-sensitive information, the potential for consumers or buyers to misinterpret residue findings without sufficient context, and the possibility that operations could be unfairly harmed by publication of residue results that are ultimately determined to be attributable to unavoidable residual environmental contamination (UREC) or other circumstances that do not result in a noncompliance. Commenters also noted the importance of establishing clear parameters regarding what information would be made public, whether reporting should be operation-specific or aggregated, how testing data would be

maintained and governed, and how appropriate context would be provided to distinguish contamination events from intentional misuse of prohibited substances. Overall, commenters generally supported greater transparency but emphasized the need to balance public access with fairness, confidentiality, and accurate interpretation of testing results.

Conclusion

CACS recommends that the two regulatory requirements to make results available to the public (§205.504(b)(5)(iii) and § 205.670(f)) be linked together. By adding a reference to 205.504(b)(5)(iii) at § 205.670(f) it makes it more clear to members of the public the way in which results will be made public - by the procedures required of certifiers in 205.504(b)(5)(iii) and not some other manner.

For example (red text is proposed text):

> § 205.670(f): "Results of all analyses and tests performed under this section will be available for public access, unless the testing is part of an ongoing compliance investigation, pursuant to § 205.504(b)(5)(iii).

Additionally, while it doesn't seem viable that NOP be responsible for maintaining a residue test result database at this time, CACS encourages industry partners (e.g. ORG-Tracker, certifiers, ACA, etc.) to continue to develop a centralized database of residue results and incentive certifiers to participate.

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

Organic certification is built on a process-based standard, grounded in transparency and accountability. While many consumers associate organic products with the absence of synthetic residues, trace contamination—often from environmental sources outside a farmer's control—can occur despite rigorous compliance with organic practices. As detection technologies improve, even the smallest residues can be identified, prompting the need for clearer, scientifically based policy to distinguish between unavoidable residual environmental contamination (UREC).

Certifiers use EPA/FDA thresholds to assess pesticide residue levels. Still, in cases where no tolerance exists, a default of 0.01 ppm is applied to the pesticide, as instructed in NOP 2613: Responding to Results from Pesticide Residue Testing[8]. This has placed an undue burden on producers who operate in good faith yet face contamination from environmental factors. CACS explored updating regulatory text to ensure compliance evaluations align with modern agricultural realities—balancing certification integrity with environmental unpredictability.

What do OFPA, regulations, and other references state?

- OFPA § 6511(c)(2)(B)[9]: Recognizes the inevitability of minimal residues not resulting from an operation's practices.

[8] NOP 2613: Responding to Results from Pesticide Residue Testing, Section 5.3.3

[9] Organic Foods Production Act of 1990, Section 6511

- Senate Report (1990)[10]: Clarifies intent to allow minor contamination not stemming from organic practices, suggesting tolerance levels between 1-10% of EPA levels.

- NOP Final Rule Preamble[11]: Commits to developing science-based UREC thresholds. Until such standards are formalized, FDA action levels apply for defining permissible contamination thresholds.

- 7 CFR 205.2[12]: Defines unavoidable residual environmental contamination (UREC) and drift

These references underscore the importance of protecting organic integrity without penalizing producers for truly unavoidable contamination.

Background and Discussion

The current § 205.2 definition of unavoidable residual environmental contamination (UREC) is:

"Background levels of naturally occurring or synthetic chemicals present in the soil or in organically produced agricultural products below established tolerances."

During the Spring 2025 NOSB meeting, CACS proposed a revised UREC definition to reflect the modern agricultural environment. While stakeholders acknowledged the intent, many felt the draft required refinement.

To reiterate, a major driver for CACS is to explore options to provide better guidance to certifiers on how to evaluate residues that are seemingly low-level and are present despite the operation carrying out reasonable and required prevention measures as reflected in their Organic System Plan. These often occur where no EPA tolerance exists, triggering default actions that may unfairly penalize compliant producers.

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?

Examples of Contamination Events

Inadvertent – indirect – unavoidable - contamination refers to the unintended introduction of a prohibited substance onto a certified organic operation due to environmental movement—such as wind, water, or volatilization—from a source not under the control of the certified operator.

- This may include cases where the origin cannot be traced or proven, such as dicamba or 2,4-D drift, and where all mitigation strategies were followed.

[10] Senate Report July 1990, S. 2830, pp 299-301

[11] Preamble to the Final Rule, pg. 155

[12] 7 CFR 205.2

CACS also explored revising and modernizing the definition of drift. Still, the definition appears to be adequate to capture drift events, which are also unavoidable and indirect, such as atmospheric drift due to dicamba.

Drift. The physical movement of prohibited substances from the intended target site onto an organic operation or portion thereof. (§ 205.2)

CACS determined that even if the definitions for UREC or Drift were revised, the challenge remains in the pathway to evaluation since many of these instances involve substances that the FDA and EPA tables do not contain thresholds for the crops that they are found on; therefore, the default is .01ppm for pesticides. With this in mind, CACS aims to elevate some of the recommendations from the 2025 Spring Proposal: Residue Testing for a Global Supply Chain: Guidance Documents on solutions to update the gaps that exist. Gaps in the EPA and FDA tables will continue to exist; therefore, CACS wants to elevate the need for the change to occur in how certifiers are evaluating and responding to results per the instructions in NOP 2613 (see appendix at end of this document for an excerpt in the spring 2025 proposal on guidance updates for 2613).

Public Comment Summary

Comments regarding UREC from the Spring 2026 proposal were largely focused on the need to distinguish environmental contamination from intentional use of prohibited substances. Many commenters requested clearer guidance and more consistent evaluation of residue findings that may result from unavoidable environmental sources. Commenters generally supported ensuring that residue-testing results are interpreted within the broader context of an investigation and that UREC considerations are incorporated into compliance determinations and enforcement decisions.

Conclusion

Stakeholder feedback highlighted the need for clarity around contamination scenarios that fall outside the certified operation's control—especially those involving atmospheric drift.

Based on stakeholder comments, the majority of stakeholders favored preserving the UREC definition while creating a new, well-defined framework for evaluating inadvertent indirect drift. This approach offers clarity and fairness without altering the foundational regulatory language of UREC. It allows the organic community to acknowledge the reality of unavoidable environmental contamination while still enforcing rigorous standards for prevention and compliance.

CACS urges the NOP to implement the Board's previous recommendation to improve NOP 2613 instruction for responding to results when no tolerance exists for a particular crop to assist certifiers in further working with organic producers who experienced inadvertent indirect contamination due to modernized drift (e.g., atmospheric drift).

Additionally, stakeholders overwhelmingly supported updating NOP 2613 with the NOSB 2025 Spring Recommendation. Updates should emphasize:

- When noncompliances should not be issued for confirmed UREC or drift events involving trace residues below 0.01 ppm and without EPA tolerances

- How certifiers should distinguish between trace UREC or drift contamination and noncompliance due to operational negligence

- The continued requirement for operators to implement robust contamination prevention strategies

- Consideration of regionally specific environmental factors when determining what constitutes "unavoidable" contamination

By modernizing the guidance, NOP can provide certifiers with clear, science-based tools to handle UREC and drift events consistently while supporting both integrity and fairness within the organic program.

CACS re-emphasises their recommendation to update NOP 2613 guidance, consistent with the NOSB Spring 2025 recommendation, to provide certifiers with clearer direction for evaluating residue findings when:

1. residues are detected without an established EPA tolerance or FDA action level; and
2. contamination is the result of indirect, unintentional applications of unknown origin (e.g., volatile drift events), rather than intentional application or failure of an operation's Organic System Plan.

5. Downstream Notification to Supply Chain Partners of Non-Compliant Inputs for Fraud Prevention Purposes

Transparency and traceability are foundational principles of the organic program and have become increasingly important following implementation of the Strengthening Organic Enforcement (SOE) rule. As organic supply chains become more complex, stakeholders have raised questions regarding whether certifiers and certified operations should have access to voluntary mechanisms for communicating confirmed organic integrity concerns to affected supply chain partners. This discussion focuses on best-practices and complete and effective fraud prevention plans, rather than the establishment of a regulatory notification program.

What Do OFPA and the Regulations State?

The Organic Foods Production Act (OFPA) and the USDA organic regulations provide authorities related to residue testing, certification, enforcement, compliance actions, and supply chain traceability.

Relevant authorities include:

- **OFPA § 6503**, which authorizes the Secretary to establish rules necessary to ensure organic integrity.
- **OFPA § 6505**, which provides authority related to certification actions, including suspension and revocation.
- **OFPA § 6511**, which authorizes residue testing and addresses products containing residues above regulatory thresholds.
- **7 CFR 205.501(a)(13), 205.501(a)(21), and 205.504(b)(7)**, which require certain information-sharing activities among certifiers and implementation of supply chain traceability audits under SOE.
- **7 CFR 205.662-205.668**, which establish enforcement and compliance procedures.

Background and Discussion

Current organic regulations contain robust requirements for traceability, recordkeeping, residue testing, and enforcement. However, there is no established framework for communicating confirmed organic integrity concerns to downstream operations that may have received affected products. This can create situations where downstream operations are expected to maintain effective fraud prevention systems but may not have access to information regarding significant compliance issues identified earlier in the supply chain.

Stakeholders have increasingly discussed whether voluntary communication may serve as a useful best practice in limited circumstances involving confirmed fraud, willful violations, or residue findings that materially impact organic status. Under such an approach, a certifier or certified operation could choose to communicate relevant information to affected supply chain partners to support traceability reviews, supplier evaluations, risk assessments, testing programs, and updates to fraud prevention plans. The purpose would be to increase awareness of confirmed organic integrity concerns rather than direct any specific action by the recipient.

Importantly, this concept is distinct from a recall, stop-sale order, mandatory reporting requirement, or product disposition program. Receipt of a voluntary communication would not create new regulatory obligations and would not require a downstream operation to hold product, remove product from commerce, relabel product, or take any particular corrective action. Rather, the communication would provide information that a recipient could consider as part of its own risk-based decision-making and due diligence activities.

At the same time, stakeholders have identified potential challenges that would need to be considered, including confidentiality concerns, potential liability, business disruption, lack of standardized communication procedures, and the need to distinguish confirmed noncompliance from instances involving unresolved investigations or unavoidable residual environmental contamination (UREC). These concerns underscore the importance of any future framework being voluntary, narrowly tailored, and focused on confirmed threats to organic integrity.

Public Comment Summary

Comments received on the Spring 2026 proposal generally supported increased transparency and information-sharing when significant organic integrity concerns have been confirmed. Many commenters viewed communication with downstream supply chain partners as a useful tool for improving traceability, strengthening fraud prevention efforts, and helping operations make informed sourcing and supplier management decisions.

At the same time, commenters consistently recommended that any communication mechanism be limited to significant situations, such as confirmed fraud, willful violations, or residue findings that exceed established action thresholds. Commenters generally did not support broad communication requirements for trace-level detections, unresolved investigations, technical noncompliances, or potential UREC cases because of concerns regarding fairness, confusion, and unnecessary market disruption.

Many commenters also emphasized the importance of maintaining flexibility and avoiding the creation of a new regulatory notification program. Stakeholders frequently noted that communication should support risk-based decision-making and fraud prevention rather than function as an enforcement tool. Several commenters requested clear guidance regarding when communication would be appropriate, who may

receive information, and how confidentiality concerns should be addressed. Overall, public comments reflected support for targeted information-sharing while cautioning against approaches that could create new regulatory obligations or unintended consequences for compliant operations.

Conclusion

The organic regulations currently provide significant authorities related to traceability, residue testing, compliance, and enforcement. Public comments generally support greater transparency in situations involving confirmed threats to organic integrity while also emphasizing the need to avoid creating a mandatory notification system, recall authority, or additional enforcement mechanism.

Best practices and complete and effective fraud prevention plans support supply chain awareness, strengthen fraud prevention efforts, and enhance traceability objectives under SOE, and are consistent with existing regulatory authorities. Certified operations and certifiers should focus on providing relevant information to affected supply chain partners in limited circumstances involving confirmed noncompliance, allowing operations to make informed, risk-based decisions without creating new regulatory obligations or imposing mandatory actions on recipients.

Overall Document Conclusion

Mandatory testing of 5% of operations

- **Challenge:** Some certifiers report that their current testing programs are not finding many positives. However, this is likely due to the types of operations being selected by certifiers to test, which can currently include anyone (i.e., does not need to be based on risk), as well as the types of tests being performed.

- **Proposal:** Revise the regulatory language to require that the mandated 5% of testing of operations be selected based on risk as well as randomly.

Cost of testing

- **Challenge:** Certifiers must bear the cost of all residue testing. If the selection requirements change to require that a portion of operations be selected based on risk, this is likely to increase costs. Without the ability to directly pass costs of testing on to operations, certifiers are likely to increase the certification costs for all of their certified operations, which is not equitable.

- **Proposal:** Revise the regulatory language to allow certifiers to pass along the cost of residue testing in certain circumstances (e.g., credible complaints or investigations) and when the contamination is determined to be caused by an intentional application or failure of an operation to adhere to their OSP (i.e. results in a noncompliance or adverse action)

Public access to results

- **Challenge:** Two regulatory sections address public access to results, but they are not aligned.

- **Proposal:** Revise the regulatory language to link the two sections of the regulations together.

UREC

- **Challenge:** The current framework that certifiers and organic farmers must use to respond to the presence of pesticide residues in some situations negatively impacts organic farmers who have implemented and followed the contamination prevention strategies in their OSP, and residues are still present. This is often due to atmospheric drift and the fact that certifiers must default to 0.01ppm when assessing the residue, as there is no EPA tolerance for that crop.

- **Proposal:** Revise NOP 2613 as previously recommended to include a different framework for certifiers to evaluate and respond to the presence of residues when there isn't an EPA tolerance for the crop that yielded positive results, as 0.01ppm doesn't seem to work or be fair in some circumstances.

Downstream Notification to Supply Chain Partners of Non-Compliant Inputs for Fraud Prevention Purposes

- **Challenge**: Supply chain partners may have limited visibility into significant fraud, willful violations, or confirmed noncompliance occurring earlier in the supply chain, which can reduce opportunities to strengthen supplier oversight, fraud prevention plans, and risk-based due diligence activities.

- **Proposal:** Certified operations and certifiers should follow best practices and fraud prevention plans to share information regarding confirmed organic integrity concerns with affected downstream supply chain partners. These practices support transparency, traceability, and risk-based decision-making by providing downstream operations with information that may assist in supplier oversight, traceability reviews, and updates to fraud prevention systems.

Subcommittee Vote
Motion to accept the proposal on Residue Testing for a Global Supply Chain: Regulation Review (§ 205.670 & UREC)
Motion by: Kathryn Deschenes
Seconded by: Amanda Felder
Yes: 4 No: 0 Abstain: 0 Recuse: 0 Absent: 0

Appendix A: Excerpt from Spring 2025 proposal: Residue Testing for a Global Supply Chain – Guidance Documents 2613

We expand on the issues identified above and propose solutions below.

Issue: Detection without Tolerance Level – When detected pesticides are not registered for the crop on which they are found at any level above 0.01 ppm, the current guidance indicates that certifiers should exclude the crop from the organic marketplace and alert the appropriate authorities, including the EPA and FDA. This approach assumes that any detection of a prohibited pesticide when there is no established tolerance indicates that the product no longer qualifies for organic status and that there is a human health and safety concern. This approach is problematic in the following circumstances:

Drift or Inadvertent contamination: The current guidance does not allow certifiers to factor drift or inadvertent contamination events versus fraudulent activities into their assessment if there is a positive detection but no EPA tolerance or FDA action level. The current guidance also does not provide clarification to certifiers for evaluating whether the presence of a residue is due to unavoidable residual environmental contamination (UREC). Certifiers are assumed to equate this to less than 5% of EPA tolerances. This approach is problematic when there is no EPA tolerance.

For example, §180.129 o-Phenylphenol lists the tolerance for cucumbers at 10 ppm. This means that tests could show residues of up to 0.5 ppm (5% *10 ppm = 0.5 ppm) for cucumbers, and they'd still be allowed to be sold as organic. However, broccoli is not listed in this table, so if a test came back positive for broccoli for o-Phenylphenol, it could not exceed .01 ppm. This is seemingly unfair to an organic operation in an inadvertent drift scenario, in that produce that might be in very close proximity (no difference in the operation's buffers, etc.) could have very different outcomes by having to rely solely on the inclusion of crops in the EPA tables.

NOSB further explores UREC in our "Residue Testing for a Global Supply Chain: Regulation Review Discussion Document," which includes revising the current definition.

Solutions: NOSB proposes that NOP explore the following policy solution options:

A. Utilize 40 CFR Subpart 180 paragraph (d) "Indirect or inadvertent residues":

    a. Recognize the values in 40 CFR Subpart 180 paragraph (d) "Indirect or inadvertent residues" as equivalent to 5% of EPA Tolerance for the purpose of responding to residue tests to determine organic compliance (i.e., 5% of the tolerance listed in (d) should not be taken given that these are already at inadvertent levels; evaluate compliance directly against values as they appear in (d)); and,

    b. Provide guidance to stakeholders for the process of requesting EPA to establish tolerances in paragraph (d) in cases where there isn't a current tolerance listed in paragraph (d) for that substance.

B. Utilize crop group structure: NOSB requests that NOP provide guidance to certifiers on how to utilize the crop group structure for the purpose of determining organic compliance including but not limited to:

    a. Adding additional crops (that are missing) to crop groups with like characteristics.

b. State that if a crop is listed for a particular substance, all the crops in the corresponding crop group would have the same tolerance (e.g., for o-phenylphenol, cucumbers have a tolerance of 10 ppm). Since cucumbers are part of crop group 9 - cucurbit vegetables, all crops listed in crop group 9 would have the same tolerance as cucumbers).

C. Explore if other reliable data sets could be used to set action and inaction thresholds as an alternative to .01 ppm. These may include, but are not limited to, the USDA Pesticide Data Program or the Dietary Risk Index.