National Organic Standards Board
Certification, Accreditation, and Compliance Subcommittee (CACS)
Residue Testing for a Global Supply Chain: Regulation Review (§205.670 &UREC)
Proposal
Spring 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. Encourage industry partners to continue to develop a centralized database (e.g., ORG-Tracker) and incentivize certifiers to participate.

4. **Downstream notification of noncompliant organic product to buyers**
    a. Recommendation to update the regulatory text to require notification of downstream buyers only when the:
        - Residues exceed action thresholds (e.g., >5% of EPA tolerances)
        - Willful violations have occurred
    b. Recommendation that the NOP utilizes the ANPR process, as recommended by commenters, if the NOP deems this to be appropriate.

5. **Unavoidable residual environmental contamination (UREC)**
    a. Encourage NOP to implement NOSB's Spring 2025 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.

Discussion

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, more than a decade later it appears that there is an opportunity to shift from the mindset of using testing as a tool for verifying an operation's compliance to more of a verification tool for fraud detection, which currently impacts the organic sector. 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 do 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). 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."

The Agricultural Marketing Service (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 of 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

In the comments received on the Fall 2025 discussion document, there was strong stakeholder alignment to retain the minimum requirement of 5% of operation for testing . Most commenters indicated that certifiers should incorporate both risk-based and random testing as part of an effective residue testing program to determine an operations compliance with the regulations, implementation of their OSP, as well as to determine fraudulent activity. Commenters did not agree with the leaning of the subcommittee in selecting operations for sampling and testing solely based on risk, noting that the potential for testing from a random selection is a good deterrent.

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 a lower-risk operation and is not fielding many complaints or investigations. CACS does not want a certifier to select operations due only to risk nor do we want a certifier to select operations only at random. We also don't want a certifier to select only one 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% that 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 30 operations then they must test at least one operation annually. CACS recommends that this one operation be selected based on risk.

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. Testing is expensive, so to manage costs, certifiers sometimes choose the least-expensive testing plans instead of selecting operations based on risk or other criteria.

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 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 (i.e., haven't received a notice of 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, CACS posed two questions pertaining to cost. The first asked stakeholders to provide feedback on whether certifiers should be allowed to charge operations for the cost of testing when the testing is being conducted due to a complaint or as part of an investigation, while still counting these as part of their minimum of 5% of operations tested.

There was mixed feedback. Some stakeholders stated that they didn't support the allowance for certifiers to pass along costs to operations in these scenarios. Those in favor of keeping the status quo noted:

- 5% minimum testing should be viewed as a standard cost of providing certification services.
- Passing along costs isn't always equitable (i.e. the operation tested due to a complaint may not be the operation responsible for the contamination).
- Challenging for operations to include this as a budgeted expense since complaints and investigations are unpredictable.

[4] 7 CFR 205.670(c)

- Lack of support for passing along the cost for complaints or investigations but should be allowed to pass along the costs for follow-up testing.

While there was opposition, more stakeholders were in favor of updates to the regulatory text to allow certifiers to directly charge operations tested but only when the test is being conducted as part of a complaint or investigation. Additionally, several commenters in favor indicated that an operation should only be charged if the complaint is valid/credible 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). For example, if an operation didn't follow their cleanout procedures on equipment used in both nonorganic and organic production, which results in a positive test result.

The second question sought feedback on the implementation of a tiered certification fee schedule where higher-risk operations pay more than lower risk operations. We received mixed feedback on this topic as well. Some commenters pointed out that the current regulations already allow certifiers the flexibility to set up their fee schedule in a tiered manner (i.e., higher risk operations pay more).

CACS asked for additional considerations on the topic of cost of testing. We received the following comments:

- Certifiers shouldn't conduct testing. Rather, testing should be conducted by NOP.
- NOP should work with state departments of agriculture to conduct testing.
- There is an inherent conflict of interest that certifiers are responsible for testing their paid clients.
- Certifiers should be credited on their accreditation fees by NOP for fees associated with testing.

Conclusion

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).

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

[5] OFPA 6506(a)(9)

- §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.

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, between 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 information to extract to continuously improve testing programs.

Public comment summary

Most commenters indicated that §205.504(b)(5)(iii) and §205.670(f) should be linked together. However, one commenter stated that it wouldn't be enough to link these two and raised questions regarding

[6] 7 CFR 205.670(f)

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

certifiers compliance with §205.504(b)(5)(iii) and if that truly met the public access requirements at §205.670(f).

Most commenters were in favor of some sort of centralized database in order to discern patterns/trends in crops and regions, which would then inform a certifiers testing program including risk evaluation and selection of subsequent testing. Additionally it was noted that over time this data could help with UREC determinations. Most in favor thought that full public access would be required based on the current regulations. Some indicated that a database could be structured to allow different access for different users. One commenter indicated that they've received feedback that there is the perception that compliance activities are not occurring in organic certification, in large part due to the lack of publicly available data - even with the availability to request this information. Some indicated their preference for anonymized and aggregated data.

While most commenters were in favor, there were others that were concerned. Their concerns are as follows:

- Data can be misconstrued and tell lots of different stories, especially if one can only see the violation and not the indication of a corrective action
- Certification costs may go up if there is an additional administrative burden to certifiers to provide these data
- Questions regarding who is responsible for maintaining and providing data
    - If this becomes an accreditation requirement then it would seem that NOP would need to be responsible, and certifiers would be required to provide the data
- Potential for litigation

<u>Conclusion</u>

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) in 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 for NOP to be responsible for maintaining a residue test result database at this time, CACS encourages industry partners (e.g., ORG-Tracker, certifiers, Accredited Certifiers Association (ACA), etc.) to continue to develop a centralized database of residue results and incentive certifiers to participate.

Downstream Notification of Noncompliant Organic Products to Buyers

Transparency is the foundation of the organic program and a key driver of consumer trust. The Strengthening Organic Enforcement (SOE) rule increased traceability expectations across supply chains, prompting further discussion on formalizing the notification of downstream buyers when crops or products with exclusion-level contamination have entered the stream of commerce.

Stakeholders largely supported this concept when presented in previous discussion documents, and this proposal refines the idea of downstream notification, aiming to ensure that contamination events are communicated appropriately—balancing consumer protection, regulatory integrity, and fair treatment of certified operations acting in good faith.

What do OFPA and the regulations state?

The Organic Foods Production Act (OFPA) and the current USDA National Organic Program (NOP) regulations authorize residue testing, enforcement actions, and supply chain traceability requirements. However, neither explicitly mandates nor defines protocols for notifying downstream supply chain recipients (e.g., processors, retailers) when noncompliant organic products enter commerce.

- **OFPA (7 U.S.C. 6503)[8]:** Authorizes the Secretary to develop program-wide rules ensuring product integrity.
- **OFPA (7 U.S.C. 6505)[9]:** Grants power to suspend or revoke certifications.
- **OFPA (7 U.S.C. 6511)[10]:** Authorizes residue testing and prohibits the sale of products exceeding 5% of EPA tolerance.
- **7 CFR 205.501(a)(13)[11], 205.501(a)(21)[12] & 205.504(b)(7)[13]:** As revised by the SOE rule, requires information sharing among certifiers to enforce the organic regulations and determine compliance, along with the requirement that certifiers implement supply chain traceability audits.
- **7 CFR 205.662–205.668:** Define certifier enforcement responsibilities but do not cover downstream notifications.

Background and Discussion

While traceability and noncompliance procedures exist, there is currently no mechanism requiring certifiers or certified operations to notify downstream buyers or handlers when a product is determined to be noncompliant. This creates potential enforcement inconsistencies and limits transparency. Gaps include:

- Lack of authority for certifiers to alert third parties due to confidentiality requirements
- Absence of product disposition guidance post-notification
- Unclear roles for NOP, certifiers, and operators in managing post-market events
- No infrastructure to support timely or consistent alerts

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[8] Organic Foods Production Act of 1990, Section 6503

[9] Organic Foods Production Act of 1990, Section 6505

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

[11] 7 CFR 205.501(a)(13)

[12] 7 CFR 205.501(a)(21)

[13] 7 CFR 205.504(b)(7)

As an example, below is a best practice scenario for supply chain reporting following detection of prohibited pesticide residue:

> An organic almond grower conducts residue testing and receives laboratory results indicating the presence of a prohibited pesticide substance, rendering the affected almond lots not eligible for sale as organic under 7 CFR Part 205.
>
> 1. Grower Notification and Lot Identification
>   Upon confirmation of the non-compliant residue result, the grower:
>   - Identifies the specific almond lots impacted
>   - Notifies their USDA-accredited certifying agent
>   - Notifies all buyers who received the affected lots that the product is not eligible for organic sale
> 2. Downstream Buyer Notification Response
>   One of the notified buyers, Processor A, has received affected almond lots and used them in the production of almond flour. Processor A:
>   - Reviews receiving records and production logs
>   - Identifies all almond flour production runs that included the affected almond lots
>
>   Processor A determines that the almond flour produced from the affected lots is not eligible for organic status and:
>   - Notifies its USDA-accredited certifying agent
>   - Notifies all buyers who purchased the implicated almond flour
>   - Provides affected lot numbers, production dates, and scope of impact
> 3. Certifier Oversight and Documentation
>   The certifying agents for both the grower and Processor A:
>   - Review documentation and traceability records
>   - Verify that appropriate notifications and product status changes were made
>   - Ensure that the implicated products are removed from organic sale channels or relabeled as non-organic, as applicable
> 4. Reporting to the National Organic Program
>   Where required, certifying agents report the incident to the NOP, including:
>   - Description of the residue finding
>   - Affected products and supply-chain scope
>   - Corrective actions taken to protect organic integrity

Downstream communication should function as a targeted accountability tool, not a broad notification requirement. Most stakeholders support the concept of notifying downstream supply chain partners in cases of confirmed noncompliance—especially for willful violations or residue levels exceeding thresholds—as a means to enhance accountability, prevent further distribution, and uphold consumer trust. Transparency has been emphasized repeatedly as a core value of the organic program, with many noting that such notifications could drive internal testing, risk-based fraud prevention, and alignment with global standards like the EU's traceability model.

Public comments consistently emphasized that notification should be limited to situations involving material risk to organic integrity—specifically, willful violations or residues exceeding action thresholds—while avoiding unnecessary disruption to compliant operations and markets. At the same time, commenters noted that current systems place disproportionate responsibility on certifiers and producers, while downstream buyers often remain insulated from accountability once a certificate is presented.

However, stakeholders have also raised concerns about the need for a formalized process to prevent confusion and protect compliant actors. Key risks include business disruptions, unclear product handling procedures, legal liability, and a lack of legal authority to implement recall and stop-sale. Particular concern about managing cases involving non-pesticide contaminants (e.g., PFAS or GMOs) and trace-level detections have been identified. Stakeholders stress the importance of clearly defining roles and responsibilities to ensure consistency and avoid fragmented enforcement.

While broadly supported by stakeholders, several areas need careful consideration when developing a downstream notification system:

- Infrastructure Gaps - no standardized hold/recall system currently exists in organic.
- Liability and Oversight - Questions remain about who holds responsibility for issuing and enforcing stop-sale notifications.
- Supply Chain Disruption - Unintended consequences may arise if downstream users unknowingly process noncompliant ingredients.
- Scope of Contaminants: Notification protocols must address more than pesticides.
- Fairness: Retailers and processors may bear reputational or financial harm despite acting in good faith.

To mitigate these risks, a structured, data-driven, and risk-based approach to avoid overburdening compliant operations is necessary.

Downstream notification should reinforce buyer due diligence obligations rather than substitute for them. Organic integrity cannot rely solely on possession of an organic certificate or import certificate. Buyers—particularly importers, brokers, and first domestic handlers—serve as critical control points in complex supply chains and must exercise independent due diligence when anomalies, price signals, or risk indicators are present. Notification mechanisms should therefore be designed to prompt corrective action and enhanced scrutiny by buyers, not to create a false assurance that risk is fully addressed upstream.

2025 Fall Public Comment Summary:

Stakeholders overwhelmingly supported downstream notification when confirmed noncompliant organic products have entered commerce, particularly when residue levels exceed action thresholds or willful violations occur. This transparency was viewed as essential to protecting organic integrity, strengthening fraud prevention, and maintaining consumer trust. Commenters expressed less support for automatic notification in trace, borderline, or potential UREC cases, cautioning that notification without clear context could create confusion or unnecessary disruption.

Stakeholders emphasized that downstream notification must be supported by clear procedures and infrastructure, including defined roles and accountability, guidance on product disposition, and a risk-based framework to avoid overreach. Overall, downstream communication was widely viewed as a critical fraud deterrent that improves visibility into enforcement actions, helps buyers refine fraud prevention plans, supports SOE traceability goals, and promotes greater vigilance in sourcing organic inputs.

Q1: Should other types of positives trigger downstream notification beyond results above 5% of thresholds?

Most commenters supported requiring downstream notification when residue test results exceed established action thresholds (e.g., greater than 5% of an EPA tolerance) or result in a noncompliance or adverse action. These situations were viewed as presenting a clear risk to organic integrity and warranting notification to prevent further distribution or use of noncompliant product.

Commenters expressed less support for automatic notification in cases involving trace detections, potential UREC, or results below action thresholds, noting that notification without sufficient context could create confusion or unnecessary market disruption. Overall, stakeholders emphasized that downstream notification should be risk-based, tied to confirmed noncompliance, and applied consistently.

Beyond product control, commenters repeatedly emphasized that a central purpose of downstream communication is to inform organic operations so fraud prevention plans can continuously improve. Stakeholders noted that without visibility into actual residue events, buyers and operators cannot refine sourcing decisions, risk assessments, or testing strategies—"you don't know what you don't know." One certifier reported that approximately 26% of residue tests conducted as part of their annual 5% sampling identified residues above acceptable levels, illustrating the value of information-sharing in strengthening fraud detection across the supply chain.

Q2: What should downstream buyers be required to do upon receiving notification?

Commenters generally supported clear, limited, and scenario-specific expectations for downstream buyers that align with the purpose of notification.

- **When contaminated product remains in the buyer's possession:**
  Stakeholders supported holding, segregating, and refraining from further use or sale of the product, consistent with existing traceability, recordkeeping, and cooperation requirements.

- **When contaminated product is no longer in the buyer's possession:**
  Commenters generally did not support retroactive enforcement or penalties for buyers acting in good faith. Instead, notification in these cases was viewed as informational—supporting internal risk assessments, supplier oversight, and updates to fraud prevention plans—rather than triggering corrective actions.

Across both scenarios, commenters stressed that the effectiveness of downstream notification depends on clear roles, defined responsibilities, and consistent procedures. Commenters emphasized that its primary value lies not only in stopping noncompliant product, but in enabling the organic sector to identify patterns, close gaps, and strengthen prevention efforts over time.

A small number of commenters cautioned that downstream notification could create unintended business disruption or liability if applied too broadly, particularly where the source of contamination is unclear or outside the control of the selling operation. These commenters emphasized the need for clear thresholds, defined roles, and standardized procedures to avoid confusion, reputational harm, or inconsistent enforcement. Importantly, these comments did not oppose downstream notification in principle, but stressed that it should be risk-based and narrowly applied.

Public comments consistently supported clearer expectations at this stage of the supply chain, noting that enforcement outcomes are more effective when accountability is applied to decision-makers controlling market access.

Conclusion:

Downstream notification is a vital step toward safeguarding the organic label. CACS recommends that NOP establish regulatory authority for downstream notification of noncompliant organic products so that they exclude a product from sale as organic once identified. With broad stakeholder support for the need of transparency, this targeted regulatory addition—grounded in OFPA (7 U.S.C. 6503, 6505, and 6511)—would close existing policy gaps, strengthen accountability, and protect organic integrity by ensuring that downstream notification of noncompliant organic products is included in the organic regulations. A new regulatory section would define the scope, responsibilities, and processes for downstream notification, benefiting both organic certificate holders, the organic community, and consumers.

CACS recommends NOP revise the regulatory text to require notification of downstream buyers when either of the following occur:

- Residues exceed action thresholds (e.g., >5% of EPA tolerances)
- Willful violations have occurred as determined by a certifier or NOP

CACS further recommends that NOP develop the notification mechanics, infrastructure, and safeguards, as noted in the table below, through an Advance Notice of Proposed Rulemaking (ANPR).

Component	**Regulatory Action Needed**	**OFPA/NOP Basis**
Notification Req. & Roles	Define Who and What	OFPA (7 U.S.C. 6505), SOE
Certified Operation Support	Require cooperation and records. ID downstream buyers to support notification	OFPA (7 U.S.C. 6503, 6505, 6511); 7 CFR 205.103 and § 205.504(b)(7))
Confidentiality & Liability	Clarify protections for downstream actors	OFPA (7 U.S.C. 6501, 6503, 6505, 6511) (program purpose, administration, enforcement) + stakeholder input+ stakeholder fairness
Infrastructure & Oversight	Direct NOP to manage and monitor the notification infrastructure	OFPA (7 U.S.C. 6503), NOP compliance
Regulatory Coordination	Align terminology for consistency and clarity	7 CFR 205.662 (noncompliance); §205.501(a)(21) & §205.504(b)(7) (traceability audits)

This approach reflects strong stakeholder support for downstream notification triggers, while appropriately reserving system design and implementation details for NOP.

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 which residues are 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.[14] 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, Organic regulations, and other references state?

- OFPA (7 U.S.C. 6511(c)(2)(B))[15]: Recognizes the inevitability of minimal residues not resulting from an operation's practices.
- Senate Report (1990)[16]: Clarifies intent to allow minor contamination not stemming from organic practices, suggesting tolerance levels between 1-10% of EPA levels.
- NOP Final Rule Preamble[17]: 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[18]: 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."

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

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

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

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

[18] 7 CFR 205.2

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 situations 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 operators have 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.

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. Thresholds are based on the type of residue along with the crop it's found on, but the FDA and EPA tables do not contain these data Therefore, the default for pesticides is 0.01 ppm. With this in mind, CACS aims to elevate some of the recommendations from the Spring 2025 Proposal: Residue Testing for a Global Supply Chain: Guidance. 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 NOP 2613).

2025 Spring Public Comment Summary – UREC

Public commenters emphasized the need for clearer guidance to address unavoidable, low-level residues outside an operator's control, while expressing mixed views on revising the regulatory definition of UREC. Stakeholders broadly agreed that operations should not receive noncompliances solely due to trace UREC-related residues when appropriate prevention measures are in place, and supported risk-based testing and clearer guidance to consistently address inadvertent drift in modern agricultural systems.

2025 Fall Public Comment Summary:

Q: Are there other solutions that CACS should consider, beyond the Board's previous recommendations, to revise NOP 2613, to help organic operations and certifiers navigate the presence of low-level residues due to circumstances outside of the operations' control (e.g., atmospheric drift)?

Many commenters supported the Board's previous recommendations and emphasized that **updating NOP 2613 is the most appropriate and effective mechanism** to improve consistency and fairness in these cases, rather than revising the regulatory definition of UREC. Stakeholders noted that when no EPA tolerance or FDA action level exists for a crop, default compliance responses can produce inconsistent outcomes and unnecessary burden for operations acting in good faith.

A minority of commenters cautioned that updates to NOP 2613 must be carefully framed to avoid **perceptions of weakened residue enforcement** or inconsistent application across certifiers. These commenters emphasized maintaining strong prevention expectations, clear documentation requirements, and consumer confidence, noting that flexibility should be paired with **clear decision criteria and oversight**.

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 reemphasizes 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.

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.

Downstream Notification to Buyers

- Challenge: The regulations do not require notification to downstream buyers when a product yields a positive residue result upstream, thereby preventing a noncompliant product from entering the stream of commerce.

- Proposal: Revise the regulatory text to include a framework for downstream buyer notification, enabling the removal of noncompliant products from the stream of commerce in a timelier manner. Subsequently update the guidance regarding expectations for buyer response, clarification of importer and first handler obligations, buyer accountability when a trigger event occurs.

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.

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: 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.