National Organic Standards Board
Certification, Accreditation, and Compliance Subcommittee
Residue Testing for a Global Supply Chain: Regulation Review (§205.670 &UREC) Discussion Document
Fall 2025

Executive Summary

The Spring 2025 discussion document on Residue Testing for a Global Supply Chain: Regulation Review highlighted several areas in the regulations that may need revision. One of these is discussed in more detail in the Fall 2025 NOSB Residue Testing for a Global Supply Chain: Regulation Review (§205.671 revision) Proposal.

This discussion document explores 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))" as well as the definition of unavoidable residual environmental contamination (UREC), which are under consideration by CACS to recommend regulatory updates. These include:

1. **Mandated testing of a minimum of 5% of operations annually by certifiers**
    a. Exploration regarding the retention of this mandated percentage and the incorporation of risk-based testing.

2. **Certifiers conducting all testing at their own expense**
    a. Exploration regarding the cost of testing and whether certifiers should continue to bear the expenses of residue sampling and testing in all scenarios, including follow-up tests.

3. **Public access to results**
    a. §205.670(f) states "results of all analyses and tests performed under this section will be available for public access, unless testing is part of an ongoing compliance investigation." The regulations don't provide any additional guidance on how these results will be provided, nor do they link to §205.504(b)(5)(iii) which addresses the requirements of certifiers in delivering to any member of the public when requested, "the results of laboratory analyses for residues of pesticides and other prohibited substances."

    b. Exploration of the value of certifiers reporting into a centralized database (e.g., ORG-Tracker).

4. **Downstream notification of noncompliant organic product to buyers**
    a. Exploration of the pros and cons of the notification of downstream buyers by the operation that is subject to a positive test result.

5. **Unavoidable residual environmental contamination (UREC)**
    a. Exploration of modernizing the application of UREC in evaluating the presence of residues that are inadvertent and indirectly applied.

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 should be selected based on risk criteria.

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), 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

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

Several commenters expressed that current testing rarely yields positive results, questioning its cost-effectiveness. Multiple comments urged moving away from the mandated 5% of operation testing toward a targeted, risk-based system, noting that sampling should focus on high-risk commodities, regions, or operators rather than uniformly applied requirements. Some commenters stated that if we moved to a risk-based system, there could be more than 5% of operations certified deemed high risk and, therefore, more than 5% of operations tested.

Others indicated support for counting additional investigative samples toward the 5% requirement to help manage costs. Currently, suppose the same operation is tested during the same calendar year. In that case, certifiers cannot include the additional sampling event at that operation in their 5% because it was already being tested that year.

Conclusion

Based on the history regarding testing (or lack thereof), which promulgated the mandated 5% of operations be tested, along with the current realities impacting the organic industry, CACS is leaning toward a proposal that the mandated 5% of operations tested are selected based on risk rather than the current allowance that includes operations being chosen at random.

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, certifiers offset the costs of testing across their client base.

What do OFPA and the Regulations State?

- §205.670(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

[4] 7 CFR 205.670(c)

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:

Several comments were received in response to CACS's questions regarding the cost of testing. Conducting residue testing on 5% of operations annually is a high-dollar line item on a certifier's P&L. There is an incredible amount of variability in this cost value, especially when business decisions may be made to manage to a budgetary number versus conducting the tests on a risk basis, which could require more travel, subsequent visits, more complex sample collection, etc. Additionally, in the Fall 2024 oral comments, a stakeholder noted that a FOIA report revealed his certifier had only tested domestic clients, not foreign ones. This could indicate budget management, as international clients would incur additional expenses (travel, etc.) to confirm.

CACS asked the following questions during the 2025 Spring Meeting on this topic:

Q1: Certifiers: If you could pass along the cost of residue sampling and testing in some circumstances (e.g., complaints, investigations, high-risk operations) and still have this count toward the required 5%, would this change how you approach your sampling program? How? i. Would this be valuable to your agency? Why? ii. Would this allow you to do more testing?

- In response to the first question, most commenters supported the option to pass along testing costs in certain circumstances—especially for high-risk operations, complaints, or investigations—with a shared concern for balancing fairness, financial sustainability, and program integrity. While some supported this as a way to expand testing, others urged caution to avoid penalizing compliant operations or undermining trust in certification.

Q2: Are there other revisions to the cost and the number of samples taken that the Board should consider to strengthen and enhance the effectiveness of sampling in identifying fraud?

In response to the second question:

- Some commenters noted that it is common practice to spread the cost of testing across all operations, so in actuality, the cost isn't being absorbed by the certifier, and that this practice (of spreading the cost) may not be equitable to operations not subject to testing.

- Some commenters also expressed concerns that passing costs could push legitimate operations out of organic certification. Commenters also expressed clear guidance from NOP on when and how costs could be passed along, ensuring certifiers implement consistently to avoid unfair application.

Conclusion

To eliminate confusion regarding when certifiers can pass residue testing costs to operations, and to clarify if moving forward with the proposal to shift to more risk-based testing will increase the cost of testing. Allowing certifiers the ability to pass along the costs of testing directly to the operation being tested, which is conducted due to a complaint or investigation, would help certifiers balance these costs and be fairer than the practice of increasing fees to all operations to absorb the increased cost of testing.

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?

- §205.670(f)[5]: Requires that the results of all residue testing be available for public access, unless part of an ongoing investigation

- §205.504(b)(5)(iii)[6]: 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

[5] 7 CFR 205.670(f)
[6] 7 CFR 205.504(b)(5)(iii)

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 discussion document, CACS is also exploring the requirement that 5% of operations be selected based on risk. This would reinforce the comments made by the NOP from the 2012 Periodic Residue Testing final rule that results from these types of higher-risk operations would not be representative of all certified operations.

Public comment summary

It was brought to the attention of CACS through public comments that the intention and implementation of the requirement at §205.670(f) to make "results of all analyses and tests performed under this section… unless the testing is part of an ongoing compliance investigation" available to the public is unclear.

Also, CACS learned of this idea of a database through public comments. However, beyond comments from the stakeholder developing the database, we've not heard comments from other stakeholder groups regarding this topic.

Conclusion

CACS is leaning toward proposing that the two regulatory requirements to make results available to the public be linked together. Additionally, CACS is exploring the idea of a database and would like feedback regarding audience, purpose, etc.

4. 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 the supply chain, 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, and this discussion document 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 §6503[7]: Authorizes the Secretary to develop program-wide rules ensuring product integrity.
- OFPA §6505[8]: Grants power to suspend or revoke certifications.
- OFPA §6511[9]: Authorizes residue testing and prohibits the sale of products exceeding 5% of EPA tolerance.
- 7 CFR §205.501(a)(13)[10], 205.501(a)(21)[11] & 205.504(b)(7)[12]: 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 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

Most stakeholders supported 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 was repeatedly emphasized 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.

[7] Organic Foods Production Act of 1990, Section 6503
[8] Organic Foods Production Act of 1990, Section 6505
[9] Organic Foods Production Act of 1990, Section 6511
[10] 7 CFR 205.501(a)(13)
[11] 7 CFR 205.501(a)(21)
[12] 7 CFR 205.504(b)(7)

However, stakeholders also raised concerns about the need for a formalized process to prevent confusion and protect compliant actors. Key risks included business disruptions, unclear product handling procedures, legal liability, and a lack of infrastructure for recalls or stop-sale actions. There was particular concern about managing cases involving non-pesticide contaminants (e.g., PFAS or GMOs) and trace-level detections. Stakeholders stressed 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.

Public Comment Summary

Q1: Is there value in informing downstream supply chain recipients when known non-compliant products have been discovered and released into the "chain of commerce?"

Stakeholders overwhelmingly agree that this communication is necessary when:

- Residues exceed action thresholds (e.g., >5% of EPA tolerances)
- Willful violations have occurred

This transparency was viewed as essential to uphold market integrity, prevent recurrence, better inform fraud prevention plans, and protect consumer confidence. However, trace or borderline cases, including potential UREC, garnered less support for automatic notification. Stakeholders cautioned that without clear instructions or accountability mechanisms, notification could confuse rather than assist.

Transparency: As one commenter noted, the lack of perceived activity in the compliance space (no visibility into compliance activity) highlights the importance of transparency as a powerful fraud deterrent.

One additional comment noted that "10 of 22 livestock producers are aware of fraudulent organic feeds since the health of their animals is reliant on valid organic crops."

Down Stream Impact: A commenter mentioned that "further manufacture with noncompliant product, which may be subject to additional compliance testing, and would result in product exclusion if positive were traced to a supply source that exceeds compliance thresholds for organic use or sale. This is an avoidable and costly problem for the supply chain, which may be partially mitigated by a comprehensive policy addressing how noncompliant products must be notified in the supply chain, and the impact to downstream product requirements."

- Alternatively, this type of requirement could damage business relationships unnecessarily if, for example, the operation selling the contaminated product is not the source of contamination.

Our Consumers: A commenter mentioned that "Consumers expect organic products to result in reduced exposure to synthetic products- failure to implement a notification process to reduce supply chain use of products determined to violate the standard may impact consumer trust.

Q2: What are the unintended consequences?

Stakeholders identified the need for a formalized process to be developed if downstream communication of a non-compliant product was determined. Also discussed were how to handle other contaminants outside of pesticide residues. Liability, Costs, Responsibility, and Oversight were also mentioned.

Key concerns included

- There is a need for clear responsibility for follow-up (e.g., certifier vs. buyer vs. seller).
- Business relationship harm in cases where the contamination source is unclear.
- Lack of a centralized stop-sale or product disposition protocol.
- Risk of overreach when applied to trace-level or de minimis contaminants.
- Certifiers emphasized the need for process clarity, especially regarding PFAS, GMOs, and non-pesticide residues, which could otherwise lead to inconsistent enforcement or over-testing burdens.

Q3: Additional Insight from Stakeholders' Comments on Infrastructure Needs & Fraud Prevention Rationale

<u>Infrastructure Needs</u>

Public comments emphasized that a formal downstream communication system must be supported by well-defined infrastructure. Key elements include:

- A centralized, NOP-managed platform to issue alerts.
- Clear guidance on product disposition following contamination.
- Defined roles and accountability for follow-through (certifier vs. operator vs. NOP).
- SOPs for handling different types of contamination (e.g., PFAS, GMOs, residues).

- A framework for risk-based application to avoid excessive burden, especially on small operators.
- Stakeholders stressed the importance of minimizing business disruption, liability confusion, and certifier inconsistency by establishing a uniform and enforceable protocol.

Rationale for Enhancing Fraud Prevention

Downstream communication was widely viewed as a critical fraud deterrent. Stakeholders argued that:

- It creates visibility into enforcement actions, deterring repeat violations.
- It helps buyers adjust fraud prevention plans based on real incidents.
- It supports SOE's goal of stronger traceability and supply chain accountability.
- It ensures operators remain vigilant when sourcing organic inputs.

Proposed Regulation to Enable Downstream Notification

In alignment with the Organic Foods Production Act (OFPA §§ 6503, 6505, 6511), CACS is exploring the inclusion of regulatory text that would include a formal downstream notification process. A new section could be added to the organic regulation. This would fill current policy and authority gaps by defining key components, responsibilities, and processes for downstream notifications.

Summary Table of Key Components Proposed to include in the New Regulation

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

Conclusion

Downstream notification is a vital step toward safeguarding the organic label. With broad stakeholder support, a structured and fair approach—anchored in OFPA authority—can enhance accountability, reinforce integrity by preventing fraudulent distribution, and ultimately serve both organic producers and

consumers. CACS encourages NOP to close this regulatory gap by ensuring that downstream notification of noncompliant organic products is included in the organic regulations.

5. 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[13]. This has placed an undue burden on producers who operate in good faith yet face contamination from environmental factors. CACS is exploring updated 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)[14]: Recognizes the inevitability of minimal residues not resulting from an operation's practices.
- Senate Report (1990)[15]: Clarifies intent to allow minor contamination not stemming from organic practices, suggesting tolerance levels between 1-10% of EPA levels.
- NOP Final Rule Preamble[16]: 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[17]: 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."

[13] NOP 2613: Responding to Results from Pesticide Residue Testing, Section 5.3.3
[14] Organic Foods Production Act of 1990, Section 6511
[15] Senate Report July 1990, S. 2830, pp 299-301
[16] Preamble to the Final Rule, pg. 155
[17] 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 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.

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. 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

The NOSB received comments about UREC during the Fall 2024 and Spring 2025 meetings. The responses are summarized below and assisted in the formation of the discussion above.

Q1: Should the UREC definition be revised?

- Stakeholders expressed mixed views. While many supported clarifying UREC to distinguish unavoidable contamination from operator error, others felt the proposed definition significantly altered its original intent. Some appreciated the emphasis on contamination outside operator

control, but concerns were raised about removing terms like “naturally occurring.” A portion of commenters preferred creating a new definition (e.g., inadvertent residues) rather than redefining UREC.

Q2: Should guidance state that noncompliances should not be issued if the residue is determined to be UREC?

- Nearly all stakeholders agreed that updated guidance is warranted. They emphasized that operations following proper contamination prevention procedures should not face noncompliance solely due to trace UREC-related contamination. However, stakeholders also stressed that guidance must reinforce producer responsibility and require region-specific, science-based evaluations. Support was voiced for developing regional UREC benchmarks and continuing mitigation requirements.

Q3: How can testing processes be streamlined for small producers facing UREC or drift?

- A risk-based approach was widely supported. Commenters proposed targeted testing based on specific crops and known risks, instead of blanket panels like in the NOP 2611-1 instruction. Several advocated reducing testing repetition after UREC confirmation and using flag-based oversight mechanisms. Stakeholders emphasized that initial testing should suffice in most UREC cases to avoid overburdening small operations.

Q4: How should inadvertent drift be addressed?

- Certifiers and stakeholders called for better guidance to clarify the difference between UREC and drift. Drift is currently treated inconsistently by certifiers - some treat it as a direct application of a prohibited substance, while others do not. Stakeholders argued that unavoidable, untraceable drift—such as from dicamba—should be considered differently. Concerns were raised regarding the potential loss of certification, confusion over buffer zones, and the possibility of land re-transition. Clarification from NOP is urgently needed to ensure fair enforcement and organic integrity.

<u>Conclusion</u>

Stakeholder feedback highlighted the need for regulatory 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. This is the current leaning of CACS.

CACS further requests the need 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 our 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.

Overall Document Conclusion

Mandatory testing of 5% of operations

- Challenge: 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).

- Direction: Revise the regulatory language to require that the mandated 5% of testing of operations be selected based on risk.

Cost of testing

- Challenge: Certifiers must bear the cost of all residue testing. If the selection requirements change to require that 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.

- Direction: Revise the regulatory language to allow certifiers to pass along the cost of residue testing in certain circumstances (e.g., complaints or investigations).

Public access to results

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

- Direction: 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.

- Direction: 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 more timely manner.

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.

- Direction: 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.

Questions to our Stakeholders

Mandatory testing of 5% of operations

1. Is the role of testing the same now as when the 2012 Periodic Residue Testing final rule was implemented? If not, what is the goal of testing now?

2. Do you agree with the direction CACS is heading, proposing that the mandated 5% of operations tested be selected based on risk?

    a. If not, what other options should CACS consider to make testing more meaningful and effective at identifying the presence of prohibited substances (i.e., meet the goal) while ensuring there is not a backslide towards little to no testing (pre-Periodic Residue Testing final rule)?

Cost of testing

1. Do you agree with the direction CACS is heading, proposing that certifiers may directly pass along the cost of testing to certified operations in the case of a complaint or investigation, and that the test would be allowed to count toward the 5% of operations tested?

    a. If not, why, and what other options should CACS consider?

2. Would you support a tiered certification fee model (e.g., high-risk operations pay more toward certification fees as a more equitable approach)?

Public access to results

3. §205.670(f): Should §205.670(f) be updated to refer to §205.504(b)(5)(iii) to guide the availability of results? If not, why and what should be done instead?

4. Database of Results:

a. Should residue test result data be collected in a centralized database?

b. What is the objective in collecting this data in a centralized database (i.e., how will this collected data be used)?

c. Who should have access to this result information? Certifiers? Public?

Downstream Notification to Buyers:

5. Based on previous comments, CACS is leaning toward requiring the notification of downstream buyers when residue test results are above 5% of thresholds. Should other types of positives trigger this type of notification?

6. What should the recipient of this information (the downstream buyer) be required to do in the following situations:

    a. They still have a contaminated product in their possession

    b. They have no contaminated product in their possession

UREC

7. 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)?

Subcommittee Vote
Motion to accept the discussion document on Residue Testing for a Global Supply Chain: Regulation Review (§205.670 &UREC)
Motion by: Amy Bruch
Seconded by: Kyla Smith
Yes: 4 No: 0 Abstain: 0 Recuse: 0 Absent: 2

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.