



National Organic Coalition

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NOC MEMBERS

Beyond Pesticides

Center for Food Safety

Equal Exchange

Food & Water Watch

Maine Organic Farmers and Gardeners Association

Midwest Organic and Sustainable Education Services

National Cooperative Grocers Association

Northeast Organic Dairy Producers Alliance

Northeast Organic Farming Association - Interstate Council

Organic Seed Alliance

Organically Grown Company

Rural Advancement Foundation International -USA

Union of Concerned Scientists

Lisa M. Brines
Agricultural Marketing Specialist
National Organic Program
USDA-AMS-NOP
Room 2646-So., Ag Stop 0268
1400 Independence Ave., SW.
Washington, DC 20250-0268

RE: Periodic Residue Testing Proposed Rule AMS-NOP-10-0102; NOP-10-10

Dear Ms. Brines:

The National Organic Coalition appreciates that opportunity to comment on the Proposed Rule for Periodic Residue Testing.

The National Organic Coalition, (NOC) is a national alliance of organizations representing farmers, environmentalists, other organic industry members, and consumers concerned about the integrity of national organic standards. The goal of the coalition is to assure that organic integrity is maintained, that consumers' confidence is preserved and that policies are fair, equitable and encourage diversity of participation and access.

NOC supports the National Organic Program's (NOP) progress towards defining residue testing, but notes that the National Organic Program is a process-based standard, rather than a product-based claim:

“The organically-produced label authorized under this bill therefore pertains to the production methods used to produce the food rather than the content of the food.” [Senate Report Accompanying S. 2830, the Food, Agriculture, Conservation and Trade Act, S. Report 101-357, p. 292].

A mandatory product residue testing program as outlined in this rule comes perilously close to re-defining organic as a product claim. While further clarifications of residue testing are welcome, this proposed rule skirts the issue in several areas, further muddying the waters.

First, the Department has not been clear as to the actual purpose of testing. Is it simply to avoid fraud or to also evaluate the possibility of contamination, either

purposeful (through use of a prohibited substance or excluded method) or in advertent (such as through drift, soil contamination, hygiene, or adventitious presence)?

While a list of pesticides to test is available in a guidance document, it is unclear what other environmental contaminants might be tested for, and what would therefore be the nature of the random-ness of testing.

There are a myriad of fundamental questions that must be addressed in the development of a residue testing program under a process-based claim, including the role of the farmer in being held responsible for contamination beyond their control. These issues are better reviewed in an open public process through the NOSB prior to the promulgation of a rule.

ROLE OF THE NOSB

NOC strongly advises that this proposal should come from the National Organic Standards Board (NOSB) which goes beyond this public comment format and encourages open comment and debate. A stronger and well thought out protocol would result from this community wide discussion .

The Organic Foods Production Act (OFPA) states at 6518(k)(5) the following:

Product Residue Testing. The Board shall advise the Secretary concerning the testing of organically produced agricultural products for residues caused by unavoidable residual environmental contamination.¹

This is further clarified in the Senate Report Language (Senate Report 101-357 regarding S. 2830, p. 297-298):

Finally, as a result of the Committee's debate as to the merits of various levels of acceptable residues of prohibited materials for organic food, the Committee decided that the Board would be the most knowledgeable on this subject and thus the Committee intends that the Board shall advise the Secretary concerning appropriate residue levels and testing methods for organic products.

With a proposal such as this where the consequences which are so far-reaching, the NOSB is also the best opportunity to receive broad-based stakeholder input in the development of the plan. While NOP did some outreach with Accredited Certifiers Association (ACA), they have not heard from producers from different sized operations whose production practices, record-keeping, and bottom line will be directly affected, as well as consumers and the environmental community.

¹ We note that while OFPA specifies “unavoidable residual environmental contamination,” in developing a testing protocol, there can really be no separation between this and other types of contamination (such as purposeful, or avoidable use of prohibited materials), until such testing is done to verify the existence and nature of the contamination.

In addition, questions as to the actual scope of testing, including whether or not GMOs should be a part of this testing regime must be addressed, and the entire organic community is deeply divided on such scope or the implementation of such comprehensive testing.

Therefore, we believe that this Proposed Rule be tabled until the NOSB has had the opportunity to develop a proposal.

COSTS

By requiring that 5% of all operations be tested, the costs related to this rule are not scale neutral. Data from the ACAs show that the NOP estimate of this testing regime reflecting 1% of an ACA's operating budget is only accurate for the larger certifiers, but can range as high as 11% for the smallest of certifiers. In addition, given economies of scale, it will be the smaller certifiers who will pay more for tests, and will also be the ones who will need to increase their certification fees to implement this.

The result of increasing fees will be putting the smaller operations and smaller certifiers at a competitive disadvantage.

Also of note is that since more product of small operations will be tested under this sampling regime, this program as proposed is not scale neutral and will have a disproportionately adverse affect on small to mid-sized operations. As proposed, this will mean that contamination of large operations will be less likely to be uncovered; the supposed "random" nature of this protocol may be a dis-incentive to detecting contamination.

We urge the Department to find some alternative funding mechanisms. OFPA did not mandate that certifiers shoulder all of the cost of testing, and even 1% of any organization's budget is not insignificant. The entire cost of this increased oversight should not come on the backs of certifiers – so many of whom are small businesses. The inevitable consequence of the increased expense will be reflected in the increased costs of certification fees which will have a disproportionately adverse effect on small to mid-sized operations.

We encourage the NOP do much more complete economic analyses to address this serious cost issue as well as the proposal's scale bias. Other sources of funding and providing residue testing must be found, in order for this proposal to not add more to the already significant financial and personnel burden that farmers and certifiers have in complying with National Organic Program regulations. This proposed residue testing program could very easily increase exponentially over time, as the cost of testing and as the number of residues being tracked increases.

UNINTENDED CONSEQUENCES

Related to the costs issue is that of the consequence of such a mandated program on the other testing done by ACAs. The Federal Register notice is confusing in that the preamble refers several times to the 5% requirement being entirely the random sample, yet the word random is not used at all in the proposed Rule language.

If the Rule does indeed require that the entire 5% be the random sampling, then it is possible that, given the extraordinary costs associated with testing, certifiers may not be able to do as much (or any) of their “investigative” testing – testing that is based on risk assessment, but is not compliance testing (that required specifically by a complaint or other directed reason). It is fair to also assume the compliance testing will be reduced as well.

This could result in less actual detection of contamination, since risk-based assessments have more of a chance of finding contamination than random testing.

We endorse the scope analysis by the ACA as referenced in their comments and also agree with the specific inclusion of testing of “plant tissue, soil, water, inputs, or feed of the operator”:

“We believe that a more effective picture of the possible residues in organic production can be obtained through random and risk based testing, compliance testing, testing for genetic contamination and testing of plant tissue, soil, compost, inputs, water and feed. A requirement to test only finished goods will limit the ACAs ability (both financially and operationally) to continue risk based testing. “

The use of residue testing as a way to deter fraud can be accomplished from risk based testing as well as random testing. A testing program will put producers on notice that their crops or products could at any point be tested for potential prohibited material residues. In addition, while we see the need to bolster consumer confidence in the organic label through residue testing, a testing program must not water down the current organic regulation’s focus on a process based standard over a product based standard

Altogether, the lack of clarity of intent/purpose, as well as the ambiguity of process speak to the recall of this Rule. In addition, we repeat that the statutory authority for development of a Residue Testing Program lies initially with the NOSB, which would also present more broad-based input from throughout the organic and environmental community.

Sincerely,



Liana Hoodes,
Director