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National Organic Standards Board  
USDA – AMS  
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Washington, DC 20250  
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National Organic Standards Board members:

The Ohio Ecological Food and Farm Association (OEFFA) is a grassroots coalition of over 1,850 farmers, gardeners, retailers, educators, and others who since 1979 have worked to cultivate a future in which sustainable and organic farmers thrive, local food nourishes our communities, and agricultural practices protect and enhance our environment. Certified organic farmers make up the bulk of our membership. OEFFA's Certification program has been in operation since 1981. OEFFA certifies 1,100 organic producers and food processors in a twelve-state region, ensuring that these operations meet the standards established for organic products, and collaborates with partners such as the Accredited Certifiers Association and International Organic Inspectors Association to foster consistency and clarity both in the way we conduct ourselves, and in what we expect from producers and handlers we certify, as well as from our colleagues at the NOP and NOSB.

OEFFA employs education, advocacy, and grassroots organizing to promote local and organic foods, helping farmers and eaters connect to build a sustainable food system. We work collaboratively with groups such as the Organic Farmers Association, the National Organic Coalition, and the National Sustainable Agriculture Coalition to effect positive food systems change. We support OEFFA farmers and food businesses in their efforts to protect organic integrity and educate their communities about its benefits, its rigor, and its strong values of transparency and continuous improvement.

Welcome to new National Organic Standards Board members! We thank all of you on the Board for your service to the organic community, and we respectfully offer the following comments:

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## BIG PICTURE

### SUPPORT FOR THE NATIONAL ORGANIC PROGRAM

In this time of changes at the USDA, we want to voice our strong support for the National Organic Program (NOP). In particular, we want to thank Dr. Jennifer Tucker for her leadership during her time at the NOP. We look forward to continuing that work with Acting Deputy Administrator Christopher Purdy and AMS Head Dudley Hoskins. In recent years, NOP has expanded its staff, allowing it not only to keep up with this fast-growing sector but to fully oversee it. The Organic Trade Association's annual organic surveys report that certified organic sales increased from \$53 billion in 2020 to \$70 billion just three years later.<sup>1</sup> Every \$1 invested in NOP yields over \$3,000 in retail value for the US economy. In recent years, NOP has greatly expanded its oversight, partnering with other federal agencies including Customs & Border Protection to oversee organic imports, and codifying its procedures for approving and monitoring recognition agreements with organic trade partners. The increase in NOP staff has supported the domestic organic industry by providing increasingly timely responses to investigations, appeals, reinstatements, and other compliance-related proceedings. NOP has also hired well, resulting in accreditation managers and auditors with deep knowledge and expertise in organic certification. NOP's efforts to build capacity have strengthened organic integrity across the board. We sincerely hope that efforts to increase government efficiency will not hamper NOP's ability to continue to provide these essential supports to the organic industry.

### FIELD AND GREENHOUSE CONTAINER PRODUCTION

Soil is the foundation of organic agriculture. This principle is enshrined in the Organic Foods Production Act (OFPA 6513), throughout the USDA organic regulations [7 CFR 205.2, .200, .203, .205(a) and in the global organic movement.<sup>2</sup> After the NOP issued a noncompliance to a certifier for quoting OFPA in its explanation of why it would not certify hydroponics, certifiers banded together to issue a Position Statement: Organic Agriculture is Soil-Based.<sup>3</sup> The position statement has received over 900 endorsements from farmers, consumers, environmental groups and other organic stakeholders including 10 accredited certifiers. The strong support for this position statement, in addition to the ongoing number of public comments to NOSB regarding the topic, is a clear message that stakeholders want consistent enforcement of organic standards that clearly describe soil-based production practices and do not include hydroponics.

In its July 6, 2023 memo to the NOSB, the NOP expressed willingness to move forward with discussion of greenhouse and container standards. These standards are long overdue and urgently needed to increase consistency among certifiers and provide a fair playing field for farmers. The six certifiers who developed the Position Statement have already worked to align our policies on greenhouse and container production, but without standards we cannot achieve consistency across the industry. **Please add "Field and Greenhouse Container Production" back to the NOSB work agenda and lead our community in a discussion of this essential topic.** The future of organic integrity depends upon it.

Soil in organic agriculture is not a "wedge issue;" rather, it is foundational to all that we do. Organic agriculture was conceived as a counterpoint to chemical agriculture, and from its inception in the writings of Sir Albert Howard and others – and its roots in Indigenous agricultural systems around the world – it has always been about fostering healthy soil to support a living ecosystem of species that synergistically support food production in addition to providing a suite

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<sup>1</sup> <https://ota.com/news-center/advancing-organic-reflecting-2024-and-gearing-2025>

<sup>2</sup> <https://www.ifoam.bio/our-work/what/soil>; <https://www.ifoam.bio/sites/default/files/2021-06/organicsinaction.pdf>, p.45 – Hydroponic Production not in line with Organic Principles

<sup>3</sup> <https://action.oeffa.org/soil/>

of ecosystem services. This is not a critique of growing food in containers, but such practices are very simply not aligned with the most basic principles of *organic* agriculture.

Because aeroponic, hydroponic, and crops grown to maturity in containers do not comply with OFPA 6513(b)(1), and because there is significant inconsistency in the way these forms of production are being handled by organic certifiers presently, **we again urge the board to call for a moratorium on the certification of new aeroponic operations, hydroponic operations, and crops grown to maturity in containers** until we can utilize our existing NOSB and rulemaking process to move forward with greater consistency.

## EXPANDING OPPORTUNITY IN ORGANIC FARMING

We are grateful for the continued work of the Board and NOP upholding the integrity of the organic label and ensuring organic maintains the trust of American households, while expanding opportunity for America's organic farmers. Because of this trust, public demand for organic continues to grow. A recent survey found that 55 percent of consumers believe organic fruits and vegetables are better for their health than conventionally grown produce. That number is even higher among younger generations - a recent OTA study showed that more than three in four millennials and Gen Z respondents say it's important to buy and eat organic food. Initiatives such as the Transition to Organic Partnership Program (TOPP) and Organic Market Development Grants have been instrumental in helping new producers reach this thriving market while expanding opportunity for existing ones, but more still needs to be done.

As demand continues to grow, we need more American organic farmers. While organic represents 6 percent of total food sales, only 1 percent of U.S. farmland grows organic crops. The U.S. now imports nearly \$3 billion in organic food each year. While some products that cannot be grown in the U.S. will always be imported, states like Ohio have a thriving and productive organic farming industry and we want to make sure domestic farmers who are certified organic or considering transitioning can take advantage of this growing market.

Even with the growing demand, the barriers to transition are significant. Land access, capital, and support for transition are among the biggest challenges, and losing organic cost-share for 2025 in the last farm bill extension only makes things harder. These challenges can be particularly burdensome for farmers who do not come from an agricultural background. One of organic's strengths is its ability to inspire young people who did not grow up farming to consider making it their career. As the average age of American farmers continues to increase, it is in our country's vital interest to harness the energy of this new crop of farmers and support their success. In this way, broadening participation in organic will not only strengthen our movement, but American agriculture in general, and we encourage USDA and NOSB to keep identifying where the barriers are highest and invest in addressing them. We ask that the NOSB continue its efforts fostering a path into organic for producers who are committed to organic principles and practices, welcoming the perspectives of the next generation of organic farmers, and prioritizing the support and market opportunities all organic farmers need to thrive.

OEFFA supports NOC's recommendations for increasing participation in organic programs and encourages the NOSB to consider the following ideas:

- Provide orientation or onboarding training for NOSB members that explores how different communities engage with organic agriculture, and the barriers some have faced in doing so.
- Apply a lens of real-world impact when developing work agenda items, public discussion documents, and proposals—question who is most affected and whether those perspectives are being heard.
- Include specific agenda items that focus on expanding participation in organic farming and processing, across all regions and types of operations.
- Establish a standing agenda item focused on broadening participation. For example, invite local organizations to

share their work at NOSB meetings or have TOPP regions highlight strategies that are helping new producers enter organic.

- Look for ways to seek input from organizations and communities that have not traditionally been part of the NOSB conversation.

## NOSB AGENDA ITEM: SWINE MANAGEMENT

With the Organic Livestock and Poultry Standards (OLPS) now effective, OEFFA would like to see development of standards that relate to the production and processing of swine. The current standards do not address issues that other animal welfare standards cover, such as indoor living space minimums, defined outdoor access, and environmental enrichment. The upcoming pet food standards could open new markets and opportunities for organic pork, making it more important than ever to increase confidence in the organic label. **We request that the Livestock Subcommittee add the topic of swine management to its work agenda to begin addressing the gaps in the existing standards.**

## FARMER ENGAGEMENT IN NOSB PROCESS

A well-functioning process must be informed by farmers, organic businesses, scientific and environmental communities, and the general public, which is reflected in NOSB representation. Farmers are the key linchpin in the organic industry and their voices should be held as paramount. This is the reason that OEFFA has consistently advocated for a variable meeting time to ensure that we are hearing a diversity of farmer voices throughout the country and throughout the year. Spring and fall – when the NOSB meetings are held – are incredibly busy times for farmers. We understand that the NOP will not make any meeting time adjustments. This necessitates the seeking of alternatives. For years, this included gathering producers together, when we have the meeting materials in time to have a meaningful discussion, to review agenda items and get their feedback both to inform our comments and to encourage them to sign up for an oral comment slot. However, this is always a consistent challenge to be able to get diverse farmer perspectives in time for the NOSB meetings. OEFFA producers have historically been active oral commentators. Speaking in person is very valuable for the farmers and the NOSB and we must continue to make that opportunity accessible. And while OEFFA understands that at times, a virtual meeting may be necessary, we do not want to see meetings default to a virtual setting. The opportunities in-person meetings offer for conversations and networking should be prioritized.

We greatly appreciate the willingness of some board members to discuss agenda items with farmers in our network as appropriate. OEFFA would like to thank Amy Bruch for her efforts to connect with organic operations in our network outside of the NOSB meetings; this has provided an important alternative for a board member to not only hear from farmers and ranchers during less busy times, but also to ask questions and engage in meaningful dialogue to inform their discussion documents and positions. However, this essential dialogue cannot rest solely on the availability and willingness of individual board members, nor should it be exclusive to those organizations that take time and have the resources to set up roundtables. **We ask the board to institutionalize farmer listening sessions outside of the two regular semi-annual public comment periods. Listening sessions should be a standard part of the board's annual work and should be entered into the public record.** A summer listening session could inform the board's consideration of discussion documents before they become proposals. A winter listening session could be used to inform and help prioritize the board's agenda for the coming year, bringing the NOSB's work into better alignment with farmer needs.

For farmers to be truly engaged in the NOSB process, more technical assistance is needed. This should be available for any farmer board members as well as those who want to provide comments and review reports. Technical assistance can be supportive for a farmer to participate on the NOSB so that their time can be more focused on providing input and expertise. This can also be helpful for tracking and organizing technical reports so that the larger organic community can

more easily integrate into the NOSB process.

Finally, we ask again for **meeting materials to be published as early as possible ahead of each NOSB meeting**. The current schedule of releasing materials just four weeks before written comments close, and this spring having the deadline for written comments only a day before the meeting begins, makes it very difficult for farmers to have meaningful input on discussions based on the newest information. As a simple matter of timing, much of OEFFA's dialogue with farmers is based on what we *anticipate* the Board will propose, rather than what the Board has *actually* most recently proposed. Given more time, we could compile more useful feedback from farmers relative to the Board's questions to stakeholders, and we could collect that feedback from a larger number of farmers. This would only serve to enhance the NOSB's understanding of issues and the quality of dialogue.

## GLOBAL ORGANIC MOVEMENT CONSISTENCY

Just as the US organic regulatory system benefits from consistency of interpretation and application, the international organic movement benefits from consistency across national organic programs. There are a few materials and processes in which there is a lack of consistent practice in the US system, which conflicts with our trade partners, organic neighbors, IFOAM interpretations, and CODEX regulations: specifically, continuing to not address the use of containers in NOP organics and the use of materials such as sodium nitrate. Bringing our program into greater concert with foreign organic programs and the global movement may enable an equivalency arrangement with Mexico, which could provide a valuable export market to US organic growers. We recognize the Board's ongoing attention to this matter when reviewing each material both at the initial petition and at Sunset. In addition to aligning our materials with our international partners, we can also look to integrating some of their processes for residue testing. One area that could use attention is types of residues tested for and ensuring we capture residue testing for pesticides popular in other countries. Another area where we may inform our regulations is residue testing on imports (also see comments on residue testing below). E.U. currently puts the responsibility of testing imports on the exporters and the test must be submitted and show no significant residues prior to being accepted into the country. Opening up markets for U.S. farmers, while maintaining or increasing integrity should be a pivotal goal of the global organic movement. We appreciate the Board's role in working with our international partners and look forward to the continued work in this area.

## ENFORCEABILITY OF REGULATIONS

A flurry of new regulations has been rolled out in recent years – Origin of Livestock, Strengthening Organic Enforcement, Organic Livestock and Poultry Standards, and Mushroom and Pet Food standards. We welcome these actions by NOP upon the recommendations of NOSB. American farmers and food handlers rely on these rules being thorough, credible, and practical. However, we (our certification staff and clients) have struggled with implementation of the rules, with varying interpretations and in some cases significant confusion among certifiers based on how the rules are worded, and what is (or isn't) addressed in the Preamble to each. In some cases, final rules have significant differences from their proposed versions; unfortunately, some of these differences have made them harder to implement and enforce. Although certifiers are agents of the Secretary, historically we have not been treated as partners by NOP; we are usually given feedback on our interpretations of the regulations only when NOP disagrees with them. Training provided by NOP does not always provide consistent information among different instances of training and answers given to different certifiers. Operations should not be able to receive significantly different answers from certifiers about how a particular statute is interpreted; these inconsistencies lead to certifier-shopping as operations seek a more favorable answer.

The public feedback process between the making of an NOSB recommendation and the publishing of a final rule is long and complex, with multiple iterations of comment periods, and we therefore hesitate to ask for any longer or more complex processes. However, when regulations are worded or framed in a way that is difficult to enforce, it defeats the whole purpose of OFPA. Therefore, **we ask NOP to consider adding a step before publishing final rules in cases where the final rule differs from the proposed rule, to share the regulatory language with certifiers and receive feedback on its enforceability as written.** As agents of USDA and the bodies ultimately responsible for enforcing USDA regulations, it is appropriate for certifiers to have an opportunity to point out areas where the regulatory language is confusing, conflicting, or does not make sense practically. This extra review should **not** be used to allow certifiers to influence the overall content of the rule, such as implementation timeline or the requirements therein; these types of comments are already made during the existing public comment process, and rightfully belong to the public. It should serve only the very specific purpose of vetting the regulatory language for completeness and practical ease of interpretation and enforceability. NOP could then make adjustments to the regulatory text if appropriate, and/or provide additional information in the Preamble to illustrate the meaning and intent of the text.

## COMPLIANCE, ACCREDITATION, AND CERTIFICATION PROPOSAL: RISK BASED CERTIFICATION

OEFFA advocates for a transparent and consistent approach to risk-based certification within the organic industry. We appreciate the efforts made by the NOSB, NOP, and other stakeholders in discussing and exploring risk-based certification, and the community engagement that has taken place so far. While the concept makes sense in principle, its practical implementation can be incredibly complicated and potentially inconsistent amongst certifiers. We believe that having written and clear public discussions is essential to keep everyone on the same page. Additionally, the involvement of certifiers through ACA working groups is valuable, but we recognize that these efforts may not result in rule changes or codified regulations. Instead, they may lead to best practice documents, which, while helpful, are not enforceable mechanisms.

We support the idea of simplifying the review and inspection process to reduce the paperwork burden on certified operations while maintaining organic integrity. However, we must be cautious of any unintended consequences, such as certifier shopping or inconsistencies in certification. Many certifiers, including OEFFA, have already adopted some level of risk-based certification and have seen positive outcomes. We urge the NOSB to consider examples of principles certifiers have already implemented and to aim for a regulatory framework that is enforceable and sensible across certifiers. We appreciate the NOP's commitment to reviewing certifier compliance and fostering broader dialogue between certifiers and the NOP. Clear guidelines for certifiers are necessary to avoid overgeneralization and excessive requirements, and we believe that NOP guidance is more enforceable than ACA best practices.

At the certifier training in January, NOP encouraged certifiers to empower their reviewers and inspectors with the agency to make decisions about how to spend their time and energy based on risk assessments. Empowering inspectors to make risk-based assessments and determine where to focus their energies at inspection is a great idea for finding efficiencies but may have unintended risks of its own. In a context where inspector training is varied – and many inspectors, as independent contractors, are not required to be trained by any particular certifier or training program, there is already inconsistent training across the organic industry. If inspectors are deciding what to pay attention to on the fly, there is significant risk of very inconsistent enforcement across different certifiers, inspectors, and operations. To minimize that risk, we need training programs that are robust and consistent and a shared decision-making matrix across all certifiers and inspectors.

## PROPOSAL: RESIDUE TESTING FOR A GLOBAL SUPPLY CHAIN

We appreciate the NOSB's efforts to increase the scope of NOP guidance "to encompass prohibited substances beyond residues of pesticides (e.g., synthetic solvents, heavy metals, and other prohibited substances) in addition to expanding guidance to address samples beyond the harvested crop/raw ag commodity (e.g., soil, water, plant tissue, livestock products, processed products, etc.)." These efforts will better align certifier practices with the intent of the 2012 pesticide rule and, more importantly, improve our toolbox for assessing risks, identifying contamination and commingling, deterring fraud, and protecting the integrity of organic products. We are broadly supportive of this thorough proposal, and have just a few specific comments about the details.

In relation to NOP 2613 (issue 1b), NOSB suggests that certifiers should petition EPA to establish tolerances for substances for which there is not yet a tolerance threshold. This appears to contradict the EPA's process for establishing tolerances,<sup>4</sup> which involves approving pesticides for labeled uses and setting thresholds for residues based on those approved uses, on a per-crop approval basis. EPA does not establish tolerances for all substances on all crops because they do not approve all substances for all crops. If a pesticide is approved only for citrus crops, EPA will not establish tolerances for that substance on berries or leafy greens. EPA also chooses not to set tolerances for some approved substances on the basis of its safety data review (the same review they use to set tolerance levels), if they determine that the substance does not pose human health risks. It is highly improbable that certifiers would be able to convince EPA to change either of these processes; EPA is especially unlikely to spend effort establishing tolerances for substances on crops for which those substances are not permitted. Beyond that, the purpose of this recommendation is for the organic community to limit pesticide residues in organic foods specifically; the EPA's tolerances help us calibrate our own tolerance but do not directly determine it. Therefore, it would be best for the organic community to focus on creating our own tolerance levels – or more accurately, action levels – for pesticide residues found on crops for which EPA does not have a tolerance, using, as NOSB suggests, action levels for similar substances on similar crops.

In relation to NOP 2613 (issue 4), NOSB proposes requiring operations to inform downstream buyers of crops or products with exclusion level contamination. While we do not oppose this in principle – and indeed support greater communication and transparency throughout the organic industry – we strongly request that this requirement be accompanied by guidance on the expected outcomes of such notifications. For example, what if the crop/product was already sold downstream before the test results came in? What are the compliance expectations for operations who bought a product in good faith, that now turns out to qualify for exclusion from sale – are they expected to divert the product to a conventional market, themselves taking a loss when they were not the source of the contamination? If they are not required to remove such products from the organic stream of commerce, what is the purpose of the notification? And what verification is expected of certifiers regarding that operation-to-operation communication? If guidance along these lines is provided, we would support requiring operations to notify buyers of contaminated products. We also welcome exploration of certifiers' or NOP's stop-sale authority in these cases.

Regarding suggestion 2 for new guidance documents, Validation and Verification Guidance for Importer Requirements 205.273(d), we would welcome guidance on validating and verifying importers' prohibited substance testing plans. However, we are even more interested in export testing protocols and the opportunity to require testing at the exporter level. Under the European Union organic program, the exporter is responsible for making sure that the container is clean, checking the certification status of the product being exported, and checking transport documentation for what is being received – all prior to export. This seems like a more crucial and reasonable control point for testing to occur than putting the onus on the importer, whose options to prevent contamination, or to prevent contaminated products from entering the stream of commerce, are more limited. Importantly, testing before export increases the likelihood of discovering a

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<sup>4</sup> <https://www.epa.gov/pesticide-tolerances/setting-tolerances-pesticide-residues-foods>



positive result due to the gradual diminishment of residues over time. The same product and shipment that tests positive before export might test negative by the time it reaches the importer. However, there may also be times when it is appropriate to test at the importer level at port of entry for certain high-risk commodities or countries of origin.

## DISCUSSION DOCUMENT: RESIDUE TESTING FOR A GLOBAL SUPPLY CHAIN: REGULATION REVIEW

### Responses to CACS Questions for Stakeholders:

#### 1. Exclusion from Sale:

##### **a. Outside of EPA tolerances/FDA action levels, are certifier and inspector tools sufficient to determine willful violations of prohibited substances in categories other than pesticides, i.e., solvents, excluded methods, and fertilizer?**

The example of solvents brings up several intersecting issues faced by the organic sector. Synthetic solvents would not be allowed directly on organic products but could be used as an inert in an allowed input. If a residue turned up in a test, there would be further investigation needed to determine if this was applied fraudulently or not. This could be addressed by establishing a tolerance threshold for its inclusion in an allowed input; it also illustrates the need for synthetic inert ingredients in pesticides to be evaluated in general. Perhaps rather than establishing a tolerance level, steps should be taken to eliminate synthetic solvent use as an inert ingredient. The need for investigation into the origin of the solvent also illustrates that this is a process-based standard; testing alone cannot resolve all questions. Any decision about how to address solvents would require the NOP to go beyond the EPA and FDA to ensure that the response to any prohibited material makes sense in the context of organic production.

Certifiers can use testing to determine if GMO contamination in a sampled crop or product is the result of a GMO seed being planted, as the level of contamination would be much higher than in cases of pollen drift. However, it is hard to prove a willful violation as opposed to an accidental one – even if the wrong seeds are planted, it may be by mistake, and it is hard to prove intent. (However, this would still be a serious infraction, potentially resulting in adverse action against the operation, even if it is not proven to be a willful violation).

In the case of fertilizer, we rely more heavily on input records and on-site observations than testing. Similar to the use of GMO seed, it is much easier to tell that a violation occurred than it is to prove that the violation was willful. This has more to do with the overall difficulty of proving intent than it does with any specific contamination source or testing/verification method.

##### **b. Is it necessary to expand 205.671 to include intentional applications, or are other parts of the regulations allowing certifiers to exclude products from sale that were not produced under the regulations?**

205.671, with its reliance on EPA tolerances, does not adequately cover all the situations in which certifiers should be excluding products from sale. Because EPA and FDA regulatory tolerances are based on the part of a plant consumed by humans and we strive to conduct tests in a manner that will have actionable results, we generally test the edible portion of a crop only. Testing inedible portions would not give actionable results because there are no regulatory thresholds for contamination of inedible plant parts. However, by restricting our testing to the edible portion of a crop, we are restricting our view of contamination and missing a lot of potential drift (for example testing corn kernels which are unlikely to have pesticide residue rather than testing the husk and stalk which would be directly exposed to any drift). Adding language about intentional applications would help to clarify matters, but given the aforementioned challenges

with proving intent, more guidance on excluding sale of products without an EPA threshold would be most useful.

**c. Is there value in informing downstream supply chain recipients when known non-compliant products have been discovered and released into the “chain of commerce?”**

**i. What are the unintended consequences?**

This is discussed in greater depth in the proposal section. In summary, the ability to inform downstream supply chain recipients of non-compliant products would ideally increase transparency and trust in the organic system. As a practical matter, simply informing a downstream buyer without guidance specifying what actions should be taken is likely to increase confusion.

**d. There have been cases where questionable products have been received. Still, testing is avoided to confirm compliance due to the significant financial risk of knowing the product could be non-compliant (e.g., an imported product received that is already paid for). What are the solutions here?**

Particularly in the case of imported products, a risk based approach could encompass testing at the exporter level, and perhaps at the port of entry as well. Ensuring that testing is not solely at the discretion of the purchaser, but is an expectation prior to sale, could change the incentive for a buyer to accept a questionable product into a disincentive for a seller to release a questionable product into the market.

**2. UREC:**

**a. Do you agree with the proposed revision to the definition of UREC?**

The proposed definition of UREC, “Background levels of prohibited substances and excluded methods that are not caused by actions taken by organic farmers and ranchers and are, hence, typically beyond the control of certified organic operations.”, has two issues.

There is a minor grammatical error with “background levels of ... excluded methods” that may cause confusion in implementation. Excluded *methods* themselves do not have levels; rather, excluded methods cause varying levels of contamination by GE DNA.

The other issue is the specific language of “actions taken by organic **farmers and ranchers.**” While the likelihood of UREC is greatest in the crop and livestock scopes, in the interest of keeping the definition as widely applicable as possible, we would prefer that the definition not exclude processors/handlers.

We also like the inclusion of “present in the soil or in organically produced products” in the old definition, to be clear what the context is for “background levels.”

**b. Do you have an alternative definition to propose?**

Background levels of prohibited substances and residual contamination by excluded methods that are present in the soil or in organically produced products, that are not caused by actions taken by certified organic operations and typically are beyond their ability to control.

**c. Should guidance be revised to state that noncompliances should not be issued if the residue is determined to be UREC?**

Not issuing a noncompliance for UREC is consistent with the penalty matrix, as UREC definitionally would not require a corrective plan or indicate a systemic failure. However, it would not hurt for guidance to specify this clearly.

**d. How can the testing process be streamlined and less burdensome for small producers faced with UREC or inadvertent drift challenges?**

Basing decisions of what items to test, and which substances to test for, on risk can help certifiers find the most cost-effective way to conduct sampling. We appreciate the Board's suggestions for new, shorter and more targeted lists to use on a per-crop/per-product basis. Testing for all of current 2611-1 is very expensive and, in OEFFA's experience, very rarely produces a positive result; since testing costs for the required 5% of operations are not passed to specific tested operations but rather incorporated into our overall certification fees, testing for the whole of the 2611-1 list creates an unnecessary burden on small operations.

For specific operations with UREC or inadvertent drift, it is important to avoid over-testing; once initial testing and investigation has established that the contamination is UREC in nature, the operation should not be required to test further (but the certifier may keep them flagged as a potential unannounced sampling target for future, to avoid the implication that the operation will no longer have oversight).

**3. Number and Cost of Sampling and Testing:**

**a. 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?**

Yes. The costs of testing, as it includes not just the test itself, but an inspector's time and expenses, adds up to be an economic burden. There is, however, the risk of pushing more costs onto operations at a time when certification has become more expensive.

**ii. Would this allow you to do more testing?**

While there is value in testing, OEFFA is not in favor of increasing the amount of operations tested. Even with a focus on high-risk operations and commodities, OEFFA's sampling has not turned up many positive results. We would like to see more information on the effectiveness of testing programs in identifying contamination and the outcome of these investigations before increasing testing. Operations have been increasingly burdened with paperwork and scrutiny around fraud prevention; increasing unannounced inspections with their implied suspicion might push increasing numbers of legitimate operations out of the organic industry.

## CROPS

### PROPOSAL: PEAR ESTER

OEFFA supports the addition of pear esters as a crop pest control agent, but we echo NOC's views on this material. We do not support the use of microencapsulated forms for any use. Approved pear ester products should be limited to traps and lures. These compounds should not be allowed for use with direct contact of crops or soil.

## PROPOSAL: COMPOST, FEEDSTOCKS, AND THE NATIONAL LIST

§205.2, §205.203

We support this proposal and applaud the Board’s reaffirmation of the correct process for choosing when to allow synthetic substances in organic production.

## DISCUSSION DOCUMENT: SYNTHETIC COMPOST FEEDSTOCKS

### Responses to CACS Questions for Stakeholders

The Crops Subcommittee states, “At this stage, the CS views contamination as that which can be removed from compost feedstocks, and UREC as that which cannot be avoided.” We find this phrasing problematic, as it seems to imply that anything left over in the feedstock is UREC when it may instead be a failure of process. For example, antibiotic residue in conventional manure is a truly UREC substance in that the manure production method (animals defecating) does not involve the addition of antibiotics, whereas a plastic film applied to a compostable plate is a contaminant, as it is an intentional ingredient in producing that plate. The important thing for organic consideration, as a process-based standard, is whether the contamination results from deliberate inclusion in the production method (i.e. not UREC). Compost feedstocks should not be allowed to include prohibited ingredients, even if those ingredients are removed from the feedstocks during compost production.

OEFFA opposes the addition of any synthetic polymer product to the National List as a compost feedstock, regardless of its designation as compostable or biodegradable. We believe that the breakdown to microplastic particles and chemical constituents of the polymers pose a threat to the health of the soil microbiome as well as to broader environmental and human health that are not consistent with organic production. Furthermore, the benefit is only to the producers of these products and not to the organic industry as the additional compost feedstock sources are not essential and as mentioned would likely have a negative impact on soils. We also do not see paper as an essential compost feedstock and would support its removal from the National List due to similar concerns of contamination.

## 2027 SUNSETS

### Potassium hypochlorite

*§ 205.601(a) As algicide, disinfectants, and sanitizer, including irrigation system cleaning systems. (2) Chlorine materials— For pre-harvest use, residual chlorine levels in the water in direct crop contact or as water from cleaning irrigation systems applied to soil must not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act, except that chlorine products may be used in edible sprout production according to EPA label directions. (iv) for use in water for irrigation purposes.*

### Soap-based algicide/demossers

*§ 205.601(a)(7) As algicide, disinfectants, and sanitizer, including irrigation system cleaning systems.*

OEFFA supports the continued listing of potassium hypochlorite (along with other chlorine products) and soap-based algicides/demossers as irrigation system cleaners. We request that the National List annotations at 205.601(a) should include specific details as to whether ponds used for irrigation water sources are allowed to be treated with these materials.

## Soaps, insecticidal

*§ 205.601(e)(8) As insecticides (including acaricides or mite control).*

OEFFA supports the continued listing of insecticidal soaps, as they are commonly used and an effective tool for organic producers.

## Vitamin D3

*§ 205.601(g) -as rodenticides.*

OEFFA supports the continued listing of Vitamin D3 for use as a rodenticide.

## Aquatic plant extracts

*§ 205.601(j) As a plant or soil amendment. (1) Aquatic plant extracts (other than hydrolyzed)—Extraction process is limited to the use of potassium hydroxide or sodium hydroxide; solvent amount used is limited to that amount necessary for extraction.*

OEFFA supports the continued listing of Aquatic plant extracts as long as the consideration of the environmental impacts of aquatic plant harvesting remains a central point of this discussion. Production of organic inputs should not result in degradation of aquatic environments. We also support the effort to limit extractant materials so they are not used for their nutrient content, but acknowledge that this would be difficult to write into an annotation other than limiting the use of potassium hydroxide to a specific amount or prohibiting its use completely.

## Lignin sulfonate

*§ 205.601(j) As a plant or soil amendment. (4) Lignin sulfonate - chelating agent, dust suppressant.*

*§ 205.601(l)(1) As floating agents in postharvest handling.*

OEFFA supports the relisting of lignin sulfonate.

## EPA List 4 Inerts

*§ 205.601(m) As synthetic inert ingredients as classified by the Environmental Protection Agency (EPA), for use with nonsynthetic substances or synthetic substances listed in this section and used as an active pesticide ingredient in accordance with any limitations on the use of such substances. (1) EPA List 4 –*

OEFFA supports the continued listing of EPA List 4 Inerts as they are currently included in the National List until they are replaced with a new listing.

## Paper

*§ 205.601(p) Production Aids: (2) Paper-based crop planting aids as defined in § 205.2. Virgin or recycled paper without glossy paper or colored inks.*

OEFFA supports the continued listing of Paper for paper-based planting aids.

## Arsenic

*§ 205.602(b)*

## Strychnine

*§ 205.602(i)*

OEFFA supports the continued listing of Arsenic and Strychnine as prohibited nonsynthetic materials.

## HANDLING

### PROPOSAL: ETHYLENE – PETITIONED

OEFFA agrees that Ethylene may be more desirable than clove oil for use in inhibiting sprouting of potatoes and onions in storage. We await the pending Technical Report to learn more about the specific use of the substance (timing and location). We do not have additional concerns for the use of inhibiting growth beyond promoting ripening in citrus.

### PROPOSAL: FISH OIL CAS TECHNICAL CORRECTION

OEFFA supports the removal of the fatty acid CAS numbers from this listing as they imply that those fatty acids could be used in place of fish oil. We also support NOC's proposal to refer this back to subcommittee to include a definition of fish oil, which could be the example CAS number mentioned in NOC's comments (CAS 8016-13-5).

### DISCUSSION DOCUMENT: L-MALIC ACID RECLASSIFICATION

OEFFA supports the listing of L-Malic Acid as an allowed synthetic at 205.605(b). We agree that the process in question should be classified as synthetic, and that it should continue to be allowed for use in organic products since this was the material that was originally reviewed. Nonsynthetic forms should also be allowed, so we agree that maintaining the current listing at 205.605(a) is appropriate as well. There is a further question regarding the use of genetically modified microorganisms and substrate used to produce the fumaric acid precursor for the material that is currently classified as nonsynthetic. While we do not have any clients using L-malic acid in organic production, this discussion would apply to other materials, the most significant being citric acid. We would greatly welcome discussion and direction regarding how far back in the material production process to look for excluded methods.

## 2027 SUNSETS

### Kaolin

*§205.605(a)(15)*

OEFFA supports the relisting of Kaolin.

### Sodium bicarbonate

*§ 205.605(a)(26)*

OEFFA supports the relisting of sodium bicarbonate as an essential ingredient used as a leavening agent and we do not

know of any health concerns regarding this substance.

### **Ammonium bicarbonate**

*§ 205.605(b)(4) - for use only as a leavening agent*

### **Ammonium carbonate**

*§ 205.605(b)(5) – for use only as a leavening agent*

OEFFA supports relisting both ammonium bicarbonate and ammonium carbonate as essential leavening agents.

### **Calcium phosphates (monobasic, dibasic, and tribasic)**

*§ 205.605(b)(9)*

OEFFA supports relisting calcium phosphates as important components of baking powder, and we do not support limiting these to “made with organic” products.

### **Ozone**

*§ 205.605(b)(21)*

OEFFA supports the relisting of Ozone.

### **Sodium hydroxide**

*§ 205.605(b)(32) -prohibited for use in lye peeling of fruits and vegetables*

OEFFA supports the relisting of sodium hydroxide and we also agree with NOC’s comments around specifying allowed uses along with the prohibited uses currently mentioned in the annotation. Since it is often used for personal care products, we would welcome additional rulemaking that addresses those products.

### **Carnauba Wax**

*§ 205.606(a) Carnauba wax*

OEFFA supports the continued listing of carnauba wax only if a sufficient supply of organic carnauba wax is not currently available. Since there appear to be a number of organic sources listed in the OID, this listing could possibly be removed.

### **Colors**

*§ 205.606(d) Colors derived from agricultural products - Must not be produced using synthetic solvents and carrier systems or any artificial preservative*

OEFFA supports the removal of at least the non-organic colors that are available in organic form, but we would also support the removal of all non-organic colors to support production of organic colors. We do not know all the barriers for specific colors, but all the colors currently still listed at 205.606 should be able to be produced organically and their removal from this listing should encourage more organic production and markets for current producers.

### **Cornstarch (native)**

*§ 205.606(e) Starches. (1) Cornstarch (native).*

OEFFA supports the delisting of cornstarch as it appears there is sufficient supply of organic cornstarch at this time. We have not seen requests for non-organic cornstarch for a while. The GMO status of conventional cornstarch is also difficult to ascertain, as at least some companies rely on GMO testing of the cornstarch itself and identification of the nature of the source crop can be difficult to verify.

## Glycerin

*§ 205.606(i) Glycerin (CAS # 56-81-5)—produced from agricultural source materials and processed using biological or mechanical/physical methods as described under §205.270(a).*

OEFFA supports the allowance of certified organic glycerin in organic products. Whether or not the allowance for non-organic glycerin is going to remain on 205.606, we welcome clarification on synthetic or nonsynthetic status of the various methods of glycerin production. Specifically, can a synthetic substance still be considered agricultural? Hydrolysis of fats would typically be considered a synthetic process under the materials decision tree in NOP 5033-1, even if the starting substance is an organic agricultural product. Some certifiers do certify glycerin as organic, under the principle that a combination of organic-allowed ingredients can produce a certified organic product, even though a chemical reaction occurs when those ingredients are combined that produces a synthetic product per the decision tree.

## LIVESTOCK

### PROPOSAL: Annotation Change – IODINE

OEFFA supports the proposed annotation to limit the use of iodine products to those made without alkylphenol ethoxylates. These substances should be removed from organic production. There are adequate NPE/APE-free products on the market so this should cause minimal, if any, disruption to our producers.

### 2027 LIVESTOCK SUNSET REVIEWS

#### Flunixin

*§ 205.603(a) As disinfectants, sanitizer, and medical treatments as applicable. (12) Flunixin (CAS #-38677-85-9)—in accordance with approved labeling; except that for use under 7 CFR part 205, the NOP requires a withdrawal period of at least two-times that required by the FDA.*

OEFFA supports the relisting of flunixin as an essential material for managing pain and maintaining animal welfare for organic producers.

#### Magnesium hydroxide

*§ 205.603(a) As disinfectants, sanitizer, and medical treatments as applicable. (18) Magnesium hydroxide (CAS #-1309-42-8)—federal law restricts this drug to use by or on the lawful written or oral order of a licensed veterinarian, in full compliance with the AMDUCA and 21 CFR part 530 of the Food and Drug Administration regulations. Also, for use under 7 CFR part 205, the NOP requires use by or on the lawful written order of a licensed veterinarian.*

OEFFA supports the relisting of Magnesium hydroxide as an essential medical treatment. We would welcome a new technical report on this substance that addresses the need for use by the order of a licensed veterinarian, as we are not aware of the necessity of this restriction.



## Oxytocin

*§ 205.603(a) As disinfectants, sanitizer, and medical treatments as applicable. (17) Oxytocin—use in post parturition therapeutic applications*

OEFFA supports the continued listing of oxytocin as an essential and potentially life-saving drug. We welcome a clearer annotation outlining the allowed uses of oxytocin as detailed in NOC's comments.

## Poloxalene

*§ 205.603(a) As disinfectants, sanitizer, and medical treatments as applicable. (26) Poloxalene (CAS #-9003-11-6)—for use under 7 CFR part 205, the NOP requires that poloxalene only be used for the emergency treatment of bloat*

OEFFA supports the relisting of poloxalene as long as the emergency requirement remains in the annotation.

## EPA List 4 Inerts

*§ 205.603(e) As synthetic inert ingredients as classified by the Environmental Protection Agency (EPA), for use with non-synthetic substances or synthetic substances listed in this section and used as an active pesticide ingredient in accordance with any limitations on the use of such substances. (1) EPA List 4 -Inerts of Minimal Concern*

OEFFA supports the continued listing of EPA List 4 Inerts as they are currently included in the National List until they are replaced with a new listing.

## Excipients

*§ 205.603(f) Excipients—only for use in the manufacture of drugs and biologics used to treat organic livestock when the excipient is: (1) Identified by the FDA as Generally Recognized As Safe; (2) Approved by the FDA as a food additive; (3) Included in the FDA review and approval of a New Animal Drug Application or New Drug Application; or (4) Approved by APHIS for use in veterinary biologics.*

- 1. Is the current annotation sufficient for effective use by certifiers?**
- 2. Is the current review process sufficient to ensure that excipients meet OFPA criteria? If not, are there alternative methods, lists, or classifications that could comply?**

OEFFA supports relisting excipients. We find the annotation sufficient for identifying currently allowed excipients. We have some concern that not all substances approved by FDA as food additives, or Generally Recognized As Safe, are truly safe for humans, livestock, and the environment. OFPA has different criteria than FDA for evaluating the safety and necessity of materials. However, we believe that many products containing excipients are essential to the welfare of organic livestock and we would not want to prevent use of these often life-saving treatments from being used due to concerns with excipients. Additionally, with the exception of teat dips which are used daily to preserve both animal and human health, most products containing excipients are used seldom and in small amounts for organic livestock, which means that concerning excipients will have relatively minimal impact on animal or human health, or on the environment.

## Strychnine

*§ 205.604 Nonsynthetic substances prohibited for use in organic livestock production. (a) Strychnine*

OEFFA supports relisting strychnine as a prohibited nonsynthetic substance.

# MATERIALS

## DISCUSSION DOCUMENT: RESEARCH PRIORITIES

OEFFA supports the NOSB research priorities and appreciates the Board's ongoing work on this topic. This wide-ranging set of priorities reflects the many facets of the organic industry that would benefit from more data and exploration of alternative methods and substances. We ask that the Board re-invite representatives from NIFA to share information about the current status of these research priorities, as they last did in 2022, to ensure the organic community and research institutions have current information about organic-relevant research. We thank the NOSB for continuing to articulate and update these priorities.

## POLICY DEVELOPMENT

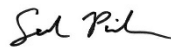
### DISCUSSION DOCUMENT: SUNSET REVIEW EFFICIENCY

OEFFA supports the board's desire to improve the efficiency of sunset reviews for materials that have consistently been considered to be in agreement with OFPA and essential to organic production. As long as this allows for further discussion of the materials if there is new information received or from stakeholder comments, then the process outlined in the discussion document appears sound and we will be curious to see how the trial of the process works this year.

On behalf of the Ohio Ecological Food and Farm Association and OEFFA Certification,



Milo Petruziello, Policy Director



Sal Pinkham, Certification Program Director