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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:

Thank you for the opportunity to provide comments to the National Organic Program regarding the Proposed Rule for Periodic Residue Testing. ACA members appreciate the clarification presented in the Proposed Rule regarding the specifics of periodic residues testing that ACAs are required to conduct.

The Accredited Certifiers Association (ACA) represents 40 USDA Accredited Certifying Agents, both foreign and domestic.

The membership of ACA supports the use of residue testing as a tool in monitoring compliance with the National Organic Program requirements. ACA firmly believes that the periodic testing requirement is most valuable to the organic industry and consumers when it is built to support improved compliance and greater reliance on testing during investigations. We believe the proposed rule is biased towards data collection and testing of finished goods; we believe these have only limited utility in ensuring compliance and supporting consumer confidence. The periodic residue testing requirement should require testing and give certifiers wide latitude in implementation to ensure that appropriate tests are taken of at risk commodities, plant parts, inputs and other features of the operations.

In our review of the Proposed Rule, there are several issues that we are concerned about. These are identified below.

A. Certifier Cost Estimates

We believe that the assumption by the National Organic Program that the testing costs will reflect 1% of an ACAs operating budget is greatly under estimated.

We have polled our membership and the following table represents the responses we received regarding the number of tests required at a cost of $500 and what percent of the operating budget is represented by the total cost of testing. The number of responses represents 26.5% of the total number of accredited certifying agents.

Number of Tests (5% of operations)	Cost @ $500 ea.	% of Operating Budget
13	6,500	2.70%
120	60,000	1.24 - 1.27%
10	5,000	2%
20	10,000	2%
19	9,500	2.00%
16	8,000	10.80%
6	3,000	3.15%
20	10,000	3%
70	35,000	2.30%
9	4,500	2.02%
3	1500	1 %
32	16,000	2.25%
50	26,250	1.20%
32	16,000	2.60%
5	2,500	3%
14	7,000	2%
42	21,000	2%
68	34,000	1%
33	16,500	2%
74	37,000	1%
1	500	11%
29	14,500	3.50%
11	7,227	5.5%
10	5,000	1.70%
5	2,500	2%

It is apparent from this information that, yes, the larger certifiers (4) will be impacted at near 1% of their budget, but smaller certification programs, and especially state certification programs, greatly exceed the National Organic Program percentage estimate. Some states are limited to the use of their instate laboratory and fees are higher than the stated $500; others have very small budgets for operation of their certification program (as some program costs are absorbed by the overall department) and the costs of the testing is a large percentage of the actual budget.

While it is stated in the Proposed Rule, that the cost of sample analysis is estimated at $500, there are many additional costs involved with establishing residue testing program, which are not calculated in this figure, resulting in a % of budget which will be even higher. Additional costs would include:

- training for staff and inspectors
- equipment and supplies for collection of samples
- overnight shipping costs to laboratory
- if sampling were not associated with annual inspection, additional costs would be necessary
- possibility that acas utilizing staff inspectors will have an increase in workers compensation insurance due the increased responsibility/salary status classification change of sample collection
- costs associated with follow up on sample results and reporting to National Organic Program

ACA members have stated that allocating such a large amount toward the periodic residue testing requirement will affect the amount of funds available for compliance testing. Our member agencies have also stated that certification fees will need to rise to cover the costs associated with this. Some have expressed concern that the fees will be too high for smaller producers to afford to maintain their certification.

ACA is requesting that the NOP provide a more thorough economic analysis of the complete costs of the implementation of this residue testing program.

B. Scope of Testing

i) The ACA notes that there is discussion of "random" residue testing in the Summary and Background portions of the Federal Register notice, however, the proposed rule itself does not appear to limit the sampling of operations to only "random" sampling residue testing. The ACA would like clarification that risk and compliance-based sample selection may also be included in the 5% of operations tested.

ii) The ACA also believes that focusing the testing of 5% of operations solely on residue testing of finished products to be sold as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))," will not provide a rigorous meaningful testing program. As the results of the Pesticide Data Program sampling have shown, random testing of finished goods shows very little evidence of contamination of organic produce. In addition, testing of only ready for sale products of some types (fruits, for example) will likely not show residues.

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, other agricultural 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.

ACAs are extremely concerned that even after spending large amounts of dollars on residue testing, no meaningful results will be observed. Further, the compliance benefit will be significantly decreased and the deterrent effect muted. ACA is concerned that a broad testing program should support greater compliance by operators. We strongly believe the only way to achieve this is to include the ability to test more than just finished goods as the rule reads currently, as these tests are the ones most likely to uncover noncompliant activities and fraud. ACA members, particularly foreign certifiers, who perform approximately 300 tests per year, have informed the ACA and NOP that they have found finished goods testing is of little value compared to testing of leaves and other plant tissue during the production cycle. ACA believes strongly that the periodic testing program must provide ACAs the leeway to perform these tests.

The ACA recommends eliminating the requirement to test only finished goods. We believe that a reasonable compromise would be for a minimum of 3% of the 5% requirement be of finished goods while allowing the remaining 2% to be of other types of items such as leaves, soil, water and compliance testing issues.

C. Laboratory availability, costs, and testing parameters

While the requirement for use of an ISO 17025 accredited laboratory is not included in the proposed rule, and only found in the Certification Instruction Documents of the Program Handbook, this requirement is problematic in that there are very few laboratories that have this accreditation, and fewer still that have a testing profile in place to address the National Organic Program Target Pesticide List.

To date, 7 laboratories have been identified, that either are ISO 17025 accredited for chemical analysis or are in the process of obtaining ISO 17025 accreditation. Only one of these laboratories is able to test for the complete range of pesticides on the National Organic Program Target List.

Testing costs from these labs ranged from $332 to $585 for profiles that did not address the complete range of pesticides. Additional fees would be required to meet the Target List as some tests cannot be run as multiple screen test. One laboratory indicated that they were developing a profile to test the complete range of the National Organic Program Targeted List, but the cost would likely be in the range of $1,000.

ACA notes that testing costs could be controlled more effectively by testing for specific pesticides. Many states regulate the pesticides used in the state. If a material is not permitted for use in the state it is highly unlikely that the material will be found upon testing.

D. Funding of Residue Testing

The Proposed Rule states that ACAs must pay for the costs associated with residue testing, however, the Organic Foods Production Act does not specify this requirement. The National Organic Program included this requirement in writing the rules for the implementation of the Organic Foods Production Act.

The ACA believes that the overall results of pesticide residue sampling will verify that organic products are not being produced with prohibited materials. The fact that organic products are being produced in compliance with the National Organic Program will become an excellent marketing tool for the National Organic Program.

ACA members do not believe that the costs for development and maintenance of this marketing tool should be borne by ACAs and certified operations alone. Additional funding streams for the pesticide residue testing program should be developed. This could include a "check off" style program supported by producers of packaged organic products and / or the retail sector.

In addition, ACA is requesting that the testing by the USDA Pesticide Data Program be expanded to include a full range of organic commodities and to reflect the percentage of organic product sales in the marketplace. Expansion of this testing program will provide the random-based testing data regarding whether organic products were produced in compliance with the National Organic Program and periodic residue testing by ACAs could be reduced or directed to more substantive compliance-based or investigatory testing.

At a minimum the final rule should clarify that ACAs may implement a testing surcharge applicable to all clients or high risk client locations/commodities while ensuring that ACAs do not charge individual operators directly for specific testing events.

Summary of Requests and Suggested Revisions

The Accredited Certifiers Association has the following recommendations for revision to the Proposed Rule for Periodic Residue Testing:

1. ACA is requesting that the National Organic Program provide a more thorough economic analysis of the complete costs of the implementation of this residue testing program.

2. The ACA is requesting that all types of testing, [including, but not limited to compliance testing, random sampling, and risk based sampling, testing for genetic contamination and testing of plant tissue, soil, compost, other agricultural inputs, water, & feed] be clearly permitted to count towards the 5% testing requirement. Upon submission of test results certifying agents would identify those that were complaint or investigative tests in order that these could be excluded from use for statistical purposes.

   The following edits (red) of the Proposed Rule reflect the change requested above.

   (b) The Administrator, applicable State organic program's governing State official, or the certifying agent may require preharvest or postharvest testing of any agricultural input used or agricultural product to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" *or (including, but not limited to) plant tissue, soil, water or feed* when there is reason to believe that the agricultural input or product has come into contact with a prohibited substance or has been produced using excluded methods…

(c) A certifying agent must conduct periodic residue testing of agricultural products to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" or *(including, but not limited to) plant tissue, soil, water, agricultural inputs, or feed.* Such tests must be conducted by the certifying agent at the certifying agent's own expense….

(i)Tests conducted under Part (b) of this section will apply to the minimum percentage identified in (c) above. However, a minimum of three percent of samples must be from periodic residue testing of products to be sold, labeled, or represented as "100 percent organic," "organic" or "made with organic (specified ingredients or food group(s))".

(e) Results of all analyses and tests performed under this section:

(1) Must be promptly provided to the Administrator; Except, That, where a State organic program exists, all test results and analyses shall be provided to the State organic program's governing State official by the applicable certifying party that requested testing;

(i)Certifying agents must identify whether the test is performed under section (b) or (c) above and indicate whether the items tested were from products to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" or other parts of the subject operation; and…

3. If the Proposed Rule is not changed to reflect the inclusion of all types of testing within the 5%, ACA is requesting that the % of certified operations sampled for residue testing of finished goods be decreased from 5% to 3%.

   We believe that accredited certifying agents (and ultimately certified operations) will be more easily able to afford this testing. The reduction in the % of operations sampled for testing of finished goods would also allow additional funding to be used in compliance testing and in responding to the results of the random residue testing.

4. ACA is requesting clarification that ACAs may implement a testing surcharge applicable to all clients or high risk client locations/commodities while ensuring that ACAs do not charge individual operators directly for specific testing events.

5. ACA is requesting a phase in of the requirement for testing at a portion of the % of operations tested in 2012, and the full % of operations tested in 2013. A phase-in will enable certification agencies to plan budgets, develop office procedures and train staff and inspectors. A phase-in will enable the National Organic Program to assess the effectiveness of the testing of finished goods program.

6. ACA is requesting a review of the residue testing requirement percentage in five years to determine if the results obtained to date prove of value, or if based upon results, the percentage of operations tested could be reduced.

Comments are specifically invited on:

(1) The accuracy of the Agency's burden estimate of the proposed collection of information;

At this time, it is not known if the estimated time is accurate. This is an example of why this rule should be phased in rather than implemented fully the first year. See comments above.

(2) ways to minimize the burden of the collection of information on those affected;

ACA members prefer to submit test results on a quarterly basis. In addition, some laboratories supply a summary of multiple tests. Laboratory supplied summaries should be permitted to be submitted rather than copies of individual tests.

(3) whether the proposed collection of information is sufficient or necessary to demonstrate compliance with the requirement that certifying agents report all analyses and tests performed to the Administrator, applicable State organic program's governing State official, and to health agencies in accordance with the proposed amendments to § 205.670; and

Submission of report copies, or laboratory summaries of test results, is sufficient to demonstrate compliance with the requirement.

(4) ways to enhance the quality, utility, and clarity of the information to be collected.

The Proposed Rule did not identify what will be done with the information collected. We ask that the National Organic Program provide information regarding how the results of this testing are to be utilized.

Sincerely,

Patricia Kane

Patricia Kane
ACA Coordinator