Response to Comments
Responding to Results from Pesticide Residue Testing[1]

This document summarizes comments received on a Draft Guidance, "Responding to Results from Pesticide Residue Testing (NOP 5028)." which was posted on the NOP website for public comment. The public was notified in a Federal Register notice (76 FR 34180) on June 13, 2011.

- ***CHANGES MADE IN RESPONSE TO COMMENTS***

1) **Combine Sections 3.2.2 (b) and (c) of the Draft Guidance.** Commenters noted that the guidance provided regarding detections below 0.01 ppm and detections above 0.01 ppm but below 5% of the EPA tolerance were identical. They suggested that these sections be combined into a single section to describe actions to be taken for detections below 5% of the EPA tolerance. In response to this comment, NOP has delineated the different actions (e.g. such as considering issuance of a noncompliance) that a certifying agent should take when residues are found above 0.01 ppm but below 5% of the EPA tolerance. The revised document specifies what to do with detections below 0.01 ppm and what to do with detections above 0.01 ppm but below 5% of the EPA tolerance.

2) **Provide Guidance for Detections Below 0.01 ppm.** Commenters noted that the guidance provides directions on what to do for detections of pesticide residues of 0.01 ppm or greater in the absence of an EPA tolerance or FDA action level, but does not say what to do with detections below 0.01 ppm. They asked that NOP provide guidance on what certifying agencies should do with detections below 0.01 ppm when there is not an EPA tolerance or FDA action level. In the revised document, there is a section for what to do with *any* detection below 0.01 ppm. This section would apply in all situations where a residue is present below 0.01 ppm, including in instances when there is not an EPA tolerance or FDA action level for the tested commodity.

3) **Detection of Multiple Pesticide Residues**. In our proposed guidance, we stated that the detection of multiple pesticide residues on a single crop may indicate that a crop had been produced using conventional methods. While some commenters agreed, one certifying agent argued that the detection of multiple pesticide residues would not necessarily indicate that the crop was raised conventionally. They stated that it is common for commercial pesticide preparations to contain more than one active ingredient and that accidental drift could result in the appearance of multiple pesticide residues in an organically grown crop. NOP agrees and has removed this section from the final guidance.

[1] This document addresses comments received on draft guidance, NOP 5028, on Responding to Results from Pesticide Residue Testing. Upon review, the NOP determined that the information is more appropriate as an Instruction for certifying agents and has published as an Instruction: NOP 2613 (formerly NOP 5028) – Responding to Results from Pesticide Residue Testing.

4) **Adding Values for Limit of Quantitation for Substances Not Detected.** In the third paragraph, section 4 (B) of our proposed guidance NOP stated: *If the metabolite is not detected, certifying agents should add the limit of quantitation (LOQ) to the parent to determine the total residue. In rare cases, metabolites will be detected, but the parent pesticide will not. In this case, certifying agents should add the value of the LOQ of the parent compound (if known) to the metabolite amount to determine total residue level.* Comments provided through intra-agency reviews revealed that this process not correct for this particular residue reporting situation. It is not appropriate to add a value for the limit of quantitation for a parent pesticide or its metabolites that were not detected for purposes of determining a regulatory violation. Therefore, NOP has omitted this portion of the discussion from the final instruction.

- ***CHANGES REQUESTED BUT NOT MADE***

1) **Noncompliance Should Be Issued for Any Prohibited Residue Detection**. Commenters stated that certifying agents should issue a notice of noncompliance for any prohibited pesticide residue detection. The commenters suggested that the noncompliance system provides a mechanism for reporting and responding to noncompliances through an established formal procedure. In considering this comment, NOP recognizes that organic certification is a process based program and that the presence of a prohibited pesticide residue may not be a violation of the regulations, such as when the residue may be unavoidable in the environment. For example, the NOP has not specified that certifying agents must issue a notice of noncompliance for residue detections that are below 0.01 ppm. In the final document, the NOP does provide additional information on what noncompliances the certifying agent may consider when testing shows residues at or above 0.01 ppm.

2) **Action Threshold for Substances Lacking an EPA Tolerance.** Commenters suggested that the action threshold for substances lacking an EPA tolerance should be relative to the FDA action level, rather than set at the action level. In response to this comment, USDA organic regulations do not specify regulatory authorities based on a percentage of an FDA action level as they do regarding an EPA tolerance. In addition, EPA tolerances and FDA action levels are established for specific commodities, and may vary from commodity to commodity. Therefore, NOP has not changed its instruction based on this comment.

3) **Go Beyond Residues in Agricultural Products.** One commenter stated that the guidance should extend to testing of plant tissue, soil, compost, inputs, water and feed and to testing for evidence of the use of excluded methods. The NOP believes these issues are outside the scope of this document which is targeted to what to do when certifying agents detect residues of prohibited pesticides on agricultural commodities. The NOP may consider additional guidance on other types of testing in the future.