

California Code of Regulations  
Title 3. California Department of Food and Agriculture  
Division 8. Cannabis Cultivation  
Chapter 3. OCal Program

## INITIAL STATEMENT OF REASONS

### **SUMMARY OF PROPOSAL**

These proposed regulations serve to implement the California Department of Food and Agriculture's (department) responsibilities under the Medicinal and Adult Use Cannabis Regulation Safety Act.

The proposed regulations will:

1. Establish a program for certifying organically grown cannabis that will be known as the OCal Program.
2. Set minimum standards for production of cannabis intended to be sold, labeled, or represented as OCal that are comparable to the National Organic Program (NOP) and the California Organic Food and Farming Act.
3. Establish labeling and marketing standards for use of the OCal Program's seal and designation.

### **Policy Statement Overview**

**Problem Statement:** The department is required by Business and Professions Code section 26062 (a) to establish, no later than January 1, 2021, a program for cannabis that is comparable to the NOP (7 C.F.R. part 205 et seq.), which is governed by the federal Organic Foods Production Act of 1990 (7 U.S.C. § 6501 et seq.), and comparable to the California Organic Food and Farming Act (10 F.A.C. § 46000 et seq.).

**Objectives (Goals):** The objective of these proposed regulations is to implement a program that assures consumers that products sold, labeled or represented as OCal meet a consistent standard comparable to standards met by products sold, labeled, or represented as organic.

## **BACKGROUND**

Organic is a federally designated labeling term for food or other agricultural commodities that have been produced using cultural, biological, and mechanical practices that support the cycling of on-farm resources, promote ecological balance, and conserve biodiversity in accordance with federal organic regulations. Cannabis is not eligible for designation as organic under the NOP because the U.S. Food and Drug Administration currently lists cannabis as a Schedule 1 drug.

Voters, through Proposition 64, expressed the need for a state-level program for certifying organic cannabis comparable to NOP for cannabis produced in California and the program was included the Medicinal and Adult-Use Cannabis Regulation Safety Act (MAUCRSA), which was passed and signed into law in 2017.

MAUCRSA requires the department establish, no later than January 1, 2021, a program for cannabis comparable to the NOP and the California Organic Food and Farming Act. If the NOP authorizes organic designation and certification for cannabis, the department's authority would become inoperative and would be repealed on the following January 1. Existing law prohibits a person from representing, selling, or offering for sale any cannabis or cannabis products as organic or with the designation or certification established by the department, except as provided. This is codified in Business and Professions Code (BPC) sections 26062 (a) and (b) and 26062.5.

Assembly Bill 97 (Assembly Committee on Budget) amended Business and Professions Code section 26062 (a) on July 1, 2019 by moving the authority for certifying manufactured cannabis products from the department to the California Department of Public Health (CDPH), splitting the certification program into two parts. While the department must still establish a certification program for cannabis (BPC section 26062 (a) (1)), CDPH must establish a separate certification program for manufactured cannabis products that must also be comparable to the NOP and the California Organic Food and Farming Act (BPC section 26062 (a) (2)).

## **The NOP**

Between the mid-1970s and the late-1980s, the popularity and market value of organic products increased steadily throughout the United States despite acute ambiguity regarding the meaning of organic. Subsequently, organic advocates called for a government agency to assure consumers that products labeled organic are meeting a defined standard and to facilitate interstate marketing of organic products.

The Organic Foods Production Act (“The Act” or OFPA) was passed in 1990. It established the NOP to set consistent and transparent standards for the term organic when used to sell, label, or refer to products.

Organic certification under the NOP:

- The NOP accredits third party certifying agents (certifiers).
  - The accreditation process ensures the certifying agent has the requisite knowledge, staff, and operational competence to certify to NOP standards.
- Operations apply to certifying agents for organic certification.
- Certifying agents determine whether operations meet NOP regulation requirements. If an operation meets the NOP requirements, the operation is certified organic and given the authority to sell, label, and refer to their products as organic.

Comparable to the NOP, the OCal Program will perform the same activities.

## **The SOP**

The NOP authorizes the SOP to register all operations that sell, label, or represent their products as organic, whether certified or exempt from certification, and enforce its regulations through spot checks, complaint investigations, mediation, hearings, and appeals. The California State Organic program (SOP) was established by the California Organic Products Act (COPA) in 2003 and its scope was extended in 2016 through the California Organic Food and Farming Act (COFFA).

Comparable to the SOP, the OCal program will conduct spot checks, complaint investigations, hearings, and appeals, activities the SOP performs to enforce the NOP regulations. Outside of the NOP regulations§ the SOP registers all California organic certifiers and operations and conducts mediation. Registration is necessary so the SOP is aware of and can oversee all operations that sell their products as organic. The OCal Program regulations propose a registration function that is limited to certifying agents because its functional model is the NOP, rather than the SOP. Like the NOP, OCal will not conduct mediation but will allow for a certifier or certified operation to use an outside mediator.

## **BENEFITS**

### **Public and Consumer Benefits**

The department will assure consumers that nonmanufactured OCal cannabis and cannabis products are uniformly certified to state standards by an accredited, OCal-registered certifying agent and the OCal seal protects consumers from fraud and provides a means for product differentiation.

### **Environmental Benefits**

A well-managed organic farming system:

- Creates healthy soils with the potential for increased carbon sequestration and available water capacity (Hudson, 1994) ;
- Reduces fossil fuel needs associated with external nitrogen fertilizer inputs (Davis, Chase, Johanns, & Liebman, 2012); and
- Reduces waste by recycling excess or deficient nutrients and container growing media.

### **Industry Benefits**

- Consumer confidence.
- Product differentiation.
- Consumer recognition of labor-intensive farming through added market value.

## **PURPOSE AND NECESSITY**

The California Business and Professions Code section 26062 directs the department to establish a program for certifying an organically produced nonmanufactured cannabis product that is comparable to the NOP and the California Organic Food and Farming Act.

The department proposes the adoption of division 8, chapter 3, sections 10000 to 10712 within title 3 of the California Code of Regulations (CCR), and to implement these code sections. This chapter has eight articles, each containing rules for different aspects of the certification program. The purpose and necessity of each section is explained in the section summary.

Where a provision in the NOP regulations is reproduced in these regulations with only superficial, setting-derived changes, the necessity for the provision is explained as comparability with the NOP. Certain comparable provisions contain necessity detail where the department determined more explanation would be helpful to commenters. The following are the superficial changes along with a necessity explanation for each:

- The term organic has been replaced with OCal unless used as the labeling term organic as defined in the NOP regulations (title 7 of the Code of Federal Regulations (CFR), part 205). This was a necessary change because organic is a federally designated term that may only be used to sell, label, or represent products with the express consent of the NOP. The department came up with the alternate term, OCal, and determined it was reasonable to use this labeling term to avoid conflict with the federal designation.
- The NOP certifies producers and handlers as defined in its regulations. These terms have been changed to coincide with the commercial cannabis license types, cultivation and distribution. This change is necessary because each commercial cannabis licensee already has a license type so the department determined it was reasonable for the OCal Program to reference the existing

license types rather than renaming them according to the NOP defined terms producer and handler, which may cause confusion.

- Accredited certifying agent is often replaced by registered certifying agent. The department determined it was necessary to change accredited certified agent because as explained in section 10400, the department, in addition to accrediting certifying agents, will also register certifying agents. A certifying agent may be accredited, by the department or the NOP, but it may not certify under the OCal Program unless it is also registered by the department. Therefore, while the term accredited certifying agent may apply to entities not authorized to certify under the OCal Program, registered certifying agent, for the purpose of these regulations, applies only to those entities authorized to certify under the OCal program.
- The term agricultural product was changed to non-manufactured cannabis product. This change was necessary because the proposed department program will certify only non-manufactured cannabis products.
- Administrator and Secretary are replaced by the department, meaning the California Department of Food and Agriculture or the representative to whom authority has been delegated. This is necessary because the authority to establish the OCal program was granted to the department.
- Except where the National List of Allowed and Prohibited Substances (National List ), starting at 7 CFR section 205.600, is referenced, references to the NOP regulations have been replaced by references to the OCal regulations because the department does not have the authority to enforce the NOP regulations so it was necessary for clarity to change regulation references to OCal regulations.
- Unless explained within the necessity statement, syntax changes are for clarity and do not alter the meaning or purpose of the referenced comparable NOP section or provision.

The regulations do not include regulations comparable to NOP regulations regarding livestock requirements, wild crops, dairies, manufactured products, multi-ingredient

products, percentages of organic ingredients, the SOP, or the OFPA because these are either inapplicable or outside the scope of the department's authority.

Where these regulations differ from the NOP regulations, explanation is provided within the section summary along with purpose and necessity for those sections.

## **Article 1. Definitions**

This article provides stakeholders a clear understanding of the intent of specific words. It ensures that words are used and understood consistently throughout the regulations and facilitates uniform implementation of the statewide program. It is comparable to NOP regulations 7 CFR subpart A except that it also includes definitions specific to commercial cannabis licensing and regulation that are necessary to understand these regulations.

### Section 10000. Definitions.

While many definitions in these regulations correspond with the definitions used by the NOP regulations, when the definition of a word or term used by the NOP conflicts with a definition of the same word or term used in commercial cannabis licensing regulation, these regulations use commercial cannabis licensing regulation definitions.

**Subdivision (a)** defines **Accreditation** as a determination made by the department that authorizes a private entity or local jurisdiction to conduct certification activities when registered as a certifying agent pursuant to this chapter. This definition is comparable to NOP section 205.2.

**Subdivision (b)** defines **Action level** as the limit at or above which the U. S. Food and Drug Administration will take legal action against a product to remove it from the market. Action levels are based on unavailability of the poisonous or deleterious substances and do not represent permissible levels of contamination where it is avoidable. This definition is comparable to NOP section 205.2.

**Subdivision (c)** defines **Agricultural inputs** as all substances or materials used in the production of OCal cannabis or nonmanufactured cannabis products. This definition is comparable to NOP section 205.2.

**Subdivision (d)** defines **Allowed synthetic** as a substance that is included on the National List of synthetic substances allowed for use in organic production. This definition is comparable to NOP section 205.2.

**Subdivision (e)** defines **Annual seedling** as a plant grown from seed that will complete its life cycle or produce a harvestable yield within the same crop year or season in which it was planted. This definition is comparable to NOP section 205.2

**Subdivision (f)** defines **Area of operation** as the types of operations, cultivation or distribution or any combination thereof, that a certifying agent may be accredited to certify pursuant to this chapter. This definition is comparable to NOP section 205.2

**Subdivision (g)** defines **Audit trail** as documentation that is sufficient to determine the source, transfer of ownership, and transportation of any cannabis or nonmanufactured cannabis product labeled "OCal." This definition is comparable to NOP section 205.2

**Subdivision (h)** defines **Biodegradable** as subject to biological decomposition into simpler biochemical or chemical components. This definition is comparable to NOP section 205.2.

**Subdivision (i)** defines **Buffer zone** as an area located between land maintained under OCal or NOP certified Organic management and an adjacent land area not maintained under OCal or organic management. This definition is comparable to NOP section 205.2 except that OCal has been added.

**Subdivision (j)** defines **Certification** or **certified** as a determination made by the registered certifying agent, and documented by a certificate, that a cultivation operation is in compliance with this chapter. This definition is comparable to NOP section 205.2.

**Subdivision (k)** defines **Certified operation** as a cannabis cultivator or distributor that has received OCal certification. This definition is comparable to NOP section 205.2.



**Subdivision (l)** defines **Certifying agent** as any entity that currently certifies operations. This definition is comparable to NOP section 205.2.

**Subdivision (m)** defines **Certifying agent's operation** as all sites, facilities, personnel, and records used by a certifying agent. This definition is comparable to NOP section 205.2.

**Subdivision (n)** defines **Claim** as oral, written, implied, or symbolic representations, statements, advertising or other forms of communication presented to the public or consumers that relate to the OCal certification process or the term OCal. This definition is comparable to NOP section 205.2.

**Subdivision (o)** defines **Clone** as an asexually produced plant grown by taking a cutting from a mother plant or a tissue culture from a source plant that is genetically identical to the mother plant or source plant. This definition was added to these regulations because cloning is a common method of cannabis propagation.

**Subdivision (p)** defines **Commercially available** as the ability to obtain a production input in an appropriate form, quality, or quantity to fulfill an essential function in a system of production as determined by the registered certifying agent in the course of reviewing the OCal system plan. This definition is comparable to NOP section 205.2.

**Subdivision (q)** defines **Commingling** as physical contact between OCal produced and non-OCal produced cannabis or nonmanufactured cannabis products. This definition is comparable to NOP section 205.2.

**Subdivision (r)** defines **Compost** as the product of a managed process through which microorganisms break down plant and animal materials into more available forms suitable for application to the soil. This definition is comparable to NOP section 205.2.

**Subdivision (s)** defines **Control** as any method that reduces or limits damage by populations of pests, weeds, or diseases to levels that do not significantly reduce productivity. This definition is comparable to NOP section 205.2.

**Subdivision (t)** defines **Crop** as pastures, cover crops, green manure crops, catch crops, or any plant or part of a plant intended to be marketed as an agricultural product,

or used in the field to manage nutrients and soil fertility. This definition is comparable to NOP section 205.2.

**Subdivision (u)** defines **Crop residue** as the plant parts remaining in a field after the harvest of a crop, which include stalks, stems, leaves, roots, and weeds. This definition is comparable to NOP section 205.2.

**Subdivision (v)** defines **Crop rotation** as a method of reducing soil erosion and increasing soil fertility, biodiversity, and crop yield through the practice of alternating the annual crops grown on a specific field in a planned pattern or sequence in successive crop years so that crops of the same species or family are not grown repeatedly, without interruption, on the same field. This definition is comparable to NOP section 205.2.

**Subdivision (w)** defines **Cultural methods** as methods used to enhance crop health and prevent weed, pest, or disease problems without the use of substances, such as the selection of appropriate varieties and planting sites, proper timing and density of plantings, irrigation, and extending or compressing a growing season by manipulating the microclimate with green houses, cold frames, or wind breaks. This definition is comparable to NOP section 205.2.

**Subdivision (x)** defines **Detectable residue** as the amount or presence of chemical residue or sample component that can be reliably observed or found in the sample matrix by current approved analytical methodology. This definition is comparable to NOP section 205.2.

**Subdivision (y)** defines **Disease vectors** as plants or animals that harbor or transmit disease organisms or pathogens which may attack crops. This definition is comparable to NOP section 205.2.

**Subdivision (z)** defines **Drift** as the physical movement of prohibited substances from the intended target site onto an OCal operation or portion thereof. This definition is comparable to NOP section 205.2.

**Subdivision (aa)** defines **Emergency pest or disease treatment program** as a mandatory program authorized by a federal, state, or local agency for the purpose of

controlling or eradicating a pest or disease. This definition is comparable to NOP section 205.2.

**Subdivision (ab)** defines **Employee** as any person providing paid or volunteer services for the registered certifying agent. This definition is comparable to NOP section 205.2.

**Subdivision (ac)** defines **Excluded methods** as a variety of methods used to genetically modify organisms or influence their growth and development by means that are not possible under natural conditions or processes and are not considered compatible with organic or OCal production. Such methods include cell fusion (except when the donor cells/protoplasts fall within the same taxonomic plant family), microencapsulation and macroencapsulation, and recombinant DNA technology (including gene deletion, gene doubling, introducing a foreign gene, and changing the positions of genes when achieved by recombinant DNA technology). Such methods do not include the use of traditional breeding, conjugation, fermentation, hybridization, or tissue culture. This definition is comparable to NOP section 205.2 except that “except when the donor cells/protoplasts fall within the same taxonomic plant family” has been added to clarify what is meant by “cell fusion.” NOP Policy Memo 13-1 (United States Department of Agriculture), issued February 1, 2013, clarifies that cell fusion is allowed when the donor cells or protoplasts are from the same plant family. The department determined it was reasonable to add this to the definition for clarity.

**Subdivision (ad)** defines **Fertilizer** as a single or blended substance containing one or more recognized plant nutrient(s) which is used primarily for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth. This definition is comparable to NOP section 205.2

**Subdivision (ae)** defines **Field** as an area of land identified as a discrete unit within a production operation. This definition is comparable to NOP section 205.2

**Subdivision (af)** defines **Handling** as touching or manipulating of post-harvest OCal cannabis and nonmanufactured cannabis products, processing of OCal cannabis and nonmanufactured cannabis products, or accessing OCal cannabis and nonmanufactured cannabis products via an open container or an unsealed package at

any point in the supply chain. Handling is defined because any operation that handles unpackaged or uncontainerized cannabis must be certified. It differs from the NOP definition, which defines “handle” as *selling, processing, or packaging* but does not specify touching, manipulating or having access to unpackaged or uncontainerized cannabis as “handling.” The department determined this was necessary for clarity and to address how handling is defined for the cannabis industry.

**Subdivision (ag)** defines **Immediate family** as the spouse, minor children, or blood relatives who reside in the immediate household of the registered certifying agent or an employee, inspector, contractor, or other personnel of the registered certifying agent. This definition is comparable to NOP section 205.2.

**Subdivision (ah)** defines **Inert ingredient** as any substance (or group of substances with similar chemical structures if designated by the United States Environmental Protection Agency) other than an active ingredient which is intentionally included in any pesticide product. This definition is comparable to NOP section 205.2.

**Subdivision (ai)** defines **Information panel** as any part of the cannabis or nonmanufactured cannabis product label that is not the primary panel and that contains required labeling information, pursuant to commercial cannabis manufacturing licensing regulations. This is necessary because these regulations specify where the OCal designation or seal may appear on a package.

**Subdivision (aj)** defines **Ingredient** as any substance that is used in the manufacture of a cannabis product and that is intended to be present in the product’s final form. This definition is comparable to NOP section 205.2.

**Subdivision (ak)** defines **Inspection** as the act of examining and evaluating an operation to determine compliance with this chapter. This definition is comparable to NOP section 205.2.

**Subdivision (al)** defines **Inspector** as any person retained or used by the registered certifying agent to conduct inspections of certification applicants or certified operations. This definition is comparable to NOP section 205.2.

**Subdivision (am)** defines **Label** as a display of written, printed, or graphic matter upon a cannabis product, upon its container or wrapper, or that accompanies any cannabis product. This definition is comparable to NOP section 205.2.

**Subdivision (an)** defines **Labeling** as any label or other written, printed, or graphic matter upon a cannabis product, upon its container or wrapper, or that accompanies any cannabis product. This definition is comparable to NOP section 205.2.

**Subdivision (ao)** defines **Laboratory** or **Testing laboratory** as a laboratory, facility, or entity in the state that offers or performs tests of cannabis or cannabis products, and and is licensed by the Bureau of Cannabis Control or accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state and approved by the department. This definition is comparable to “testing laboratory” as defined in commercial cannabis laboratory licensing regulations and is duplicated here for ease of reference and to provide clarity and understanding to the regulated public.

**Subdivision (ap)** Defines **Limited-access area** as an area that is only accessible to the operator and authorized personnel of an operation. This definition is comparable to “Limited-access area” as defined in commercial cannabis manufacturing licensing regulations and is duplicated here for ease of reference and to provide clarity and understanding to the regulated public.

**Subdivision (ar)** defines **Local jurisdiction** as a city, county, or city and county. Local jurisdiction is defined in the same manner as in the California Business and Professions Code section 26001(ac) and is duplicated here for ease of reference and to provide clarity and understanding to the regulated public.

**Subdivision (as)** defines **Manure** as feces, urine, other excrement, and bedding produced by livestock that has not been composted. This definition is comparable to NOP section 205.2.

**Subdivision (at)** defines **Mother plant** as a plant in a vegetative stage of growth and development that has the sole purpose of getting cuttings for clonal propagation. This

definition was added to these regulations because it is associated with cloning, which is a common method of cannabis propagation.

**Subdivision (au)** defines **Mulch** as any nonsynthetic material, such as wood chips, leaves, or straw, or any synthetic material included on the National List for such use, such as newspaper or plastic that serves to suppress weed growth, moderate soil temperature, or conserve soil moisture. This definition is comparable to NOP section 205.2.

**Subdivision (av)** defines **National list** as the list of allowed and prohibited substances included in NOP regulations, 7 CFR sections 205.600 through 205.607. This definition is comparable to NOP section 205.2.

**Subdivision (aw)** defines **National Organic Program** or NOP as the federal regulatory program that develops and enforces uniform national standards for organically-produced agricultural products sold in the United States. This term is extensively used in the regulations and therefore, it is defined here for clarity and consistency.

**Subdivision (ax)** defines **Natural resources of the operation** as the physical, hydrological, and biological features of a production operation, including but not limited to soil, water, wetlands, woodlands, and wildlife. This definition is comparable to NOP section 205.2.

**Subdivision (ay)** defines **Nonsynthetic** (natural) as a substance that is derived from mineral, plant, or animal matter and does not undergo a synthetic process. This definition is comparable to NOP section 205.2; it is used as a synonym for “natural” as used in the Organic Foods Production Act of 1990.

**Subdivision (az)** defines **Nonretail container** as any container used for shipping or storage of cannabis or cannabis products that are not used in the retail display or sale of the product. This definition is comparable to NOP section 205.2.

**Subdivision (ba)** defines **OCal** as a labeling term that refers to cannabis and nonmanufactured cannabis products produced pursuant to this chapter or a certification

program for manufactured cannabis products authorized under Business and Professions Code 26062. This definition is comparable to NOP section 205.2.

**Subdivision (bb)** defines **OCal production** as a production system that is managed pursuant to this chapter to respond to site-specific conditions by integrating cultural, biological, and mechanical practices that foster cycling of resources, promote ecological balance, and conserve biodiversity. This definition is comparable to NOP section 205.2.

**Subdivision (bc)** defines **OCal program** as the programs authorized by Business and Professions Code 26062 (a) and (b) to assure consumers that cannabis and nonmanufactured cannabis products certified under the OCal designation are produced pursuant to this chapter or a certification program for manufactured cannabis products and comparable to the National Organic Program, 7 CFR 205. This definition is comparable to NOP section 205.2.

**Subdivision (bd)** defines **OCal system plan** as a plan of management of an OCal operation that has been agreed to by an operator and the registered certifying agent and that includes written plans concerning all aspects of cannabis production described in this chapter. This definition is comparable to NOP section 205.2.

**Subdivision (be)** defines **Operation** as a person that holds a valid and active commercial cannabis license. This is necessary to clarify that “operation” is used within these regulations in reference to a person with a valid state license issued by a licensing authority.

**Subdivision (bf)** defines **Organic** as a labeling term that refers to an agricultural product produced in accordance with the Organic Foods Production Act and the National Organic Program regulations, 7 CFR 205. This definition is comparable to NOP section 205.2.

**Subdivision (bg)** defines **Organic matter** as the remains, residues, or waste products of any organism. This definition is comparable to NOP section 205.2.

**Subdivision (bh)** defines **Pesticide** as 1. Any spray adjuvant. 2. Any substance, or mixture of substances which is intended to be used for defoliating plants, regulating



plant growth, or for preventing, destroying, repelling, or mitigating any pest, as defined in section 12754.5 of the Food and Agricultural Code, which may infest or be detrimental to vegetation, man, animals, or households, or be present in any agricultural or nonagricultural environment whatsoever. This definition of pesticide was not taken from the NOP, but instead references the definition under state law for consistency.

**Subdivision (bi)** defines **Planting stock** as any plant or plant tissue, including shoots and stem cuttings, used in plant cultivation or propagation. This definition is comparable to NOP section 205.2, except that words covered under the phrase “plant tissue” have been removed.

**Subdivision (bj)** defines **Practice standard** as the guidelines and requirements through which a production operation implements a required component of its OCal system plan. This definition is comparable to NOP section 205.2.

**Subdivision (bk)** defines **Principal display panel** as that part of a label that is most likely to be displayed, presented, shown, or examined under customary conditions of display for sale. This definition is comparable to NOP section 205.2.

**Subdivision (bl)** defines **Private entity** as any domestic nongovernmental for-profit or not-for-profit organization providing certification services. This definition is comparable to NOP section 205.2.

**Subdivision (bm)** defines **Production** as the cultivation or distribution of cannabis or cannabis products. The term production is extensively used in the regulations and is therefore defined here for clarity and consistency.

**Subdivision (bn)** defines **Prohibited substance** as a substance that shall not be used in any aspect of USDA Organic or OCal production and is prohibited by the NOP. This definition is comparable to NOP section 205.2.

**Subdivision (bo)** defines **Records** as any information in written, visual, or electronic form that documents the activities undertaken by an operation or registered certifying agent to comply with this chapter. This definition is comparable to NOP section 205.2.



**Subdivision (bp)** defines **Registered certifying agent** as any entity accredited by the department or the NOP and registered by the department to certify for the OCal Program pursuant to sections 10500 through 10506 of this chapter. This definition was added to clarify that a certifying agent must be registered by the department, not just accredited, as the NOP requires, in order to certify under the OCal Program. The registration process was added to the OCal Program as a way of incorporating certifying agents accredited by the NOP into the OCal Program and providing the OCal Program with oversight authority for these certifying agents. Further clarification regarding this requirement is provided in the necessity and purpose for sections 10500 through 10506 of this chapter.

**Subdivision (bq)** defines **Registered certifying agent's operation** as all sites, facilities, personnel, and records used by the certifying agent registered by the department to certify under the OCal Program to conduct certification activities pursuant to this chapter. This definition is comparable to NOP section 205.2 except that it includes the word “registered.” “Registered” is added here because the department will be registering certifying agents as further explained in provided in the necessity and purpose for sections 10500 through 10506 of this chapter and is necessary to clarify when the department is referring to operations or certifying agents the department registered that only a *registered* certifying agent’s operation is subject to department inspection.

**Subdivision (br)** defines **Residue testing** as an official or validated analytical procedure that detects, identifies, and measures the presence of chemical substances, their metabolites, or degradation products in or on raw or processed agricultural products. This definition is comparable to NOP section 205.2.

**Subdivision (bs)** defines **Sewage sludge** as a solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes but is not limited to: domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the

firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works. This definition is comparable to NOP section 205.2.

**Subdivision (bt)** defines **Soil and water quality** as observable indicators of the physical, chemical, or biological condition of soil and water, including the presence of environmental contaminants. This definition is comparable to NOP section 205.2.

**Subdivision (bu)** defines **Split operation** as an operation that produces both certified and noncertified products. The department does not consider an operation certified to produce both organic and OCal products a “split operation.” This definition is comparable to NOP section 205.2 except that the second sentence has been added to clarify that a split operation does not include operations producing OCal certified cannabis and organic crops; activities associated with cultivating organic crops do not pose a risk of contamination to cannabis intended to be sold, labeled, or represented as OCal.

**Subdivision (bv)** defines **Synthetic** as a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes. This definition is comparable to NOP section 205.2.

**Subdivision (bw)** defines **Temporary** and **temporarily** as occurring for a limited time only (e.g., overnight, throughout a storm, the period of time specified by the department when granting a temporary variance), not permanent or lasting. This definition is comparable to NOP section 205.2.

**Subdivision (bx)** defines **Tolerance** as the maximum legal level of a pesticide chemical residue in or on a raw or processed agricultural commodity or processed food. This definition is comparable to NOP section 205.2.

**Subdivision (by)** defines **Transplant** as a seedling which has been removed from its original place of production, transported, and replanted. This definition is comparable to NOP section 205.2.

**Subdivision (bz)** defines **Type of operation** as the type of operation, cultivation, distribution, or both, that may be certified under this chapter. This is necessary to clarify that only licensed commercial cannabis operations that cultivate or distribute cannabis may be certified under the OCal program.

**Subdivision (ca)** defines **Unavoidable Residual Environmental Contamination (UREC)** as background levels of naturally occurring or synthetic chemicals that are present in the soil or present in organically produced agricultural products that are below established tolerances This definition is comparable to NOP section 205.2.

**Subdivision (cb)** defines **Willful** as intentional or deliberate. This is necessary because department-initiated adverse action will differentiate between non-compliant activities perceived to be unintentional and non-compliant activities proven to be intentional or deliberate.

Section 10001. Incorporation by reference.

This section incorporates by reference the OCal guidance documents. This is necessary because the NOP regulations, which the department is charged by statute to be comparable with, were not written as a stand-alone document but with the intent of being interpreted and further refined by guidance documents that would assist regulated entities in complying with the NOP regulations. This intention is mentioned within the preamble to the NOP regulations. The NOP's regulated entities depend heavily on this guidance and the NOP would be unsuccessful in establishing or maintaining certification consistency without it.

OCal determined which NOP guidance documents are necessary for certification consistency and comparability with the NOP and has created comparable OCal guidance documents to assist regulated entities with consistent implementation and compliance with the OCal regulations and to achieve comparability with the NOP.

**Subdivision (a)** incorporates OCal 1000 Methods and Materials in OCal Production, April 6, 2020. This is necessary to clarify whether certain methods and materials are prohibited or permitted under the OCal regulations. The specified methods and materials were questioned by NOP stakeholders and researched, examined and addressed by the NOP—in NOP Policy Memorandums 11-12, 13-1, 13-2, 13-3, 14-1, and 15-2—in the same manner as they are addressed in this document. Incorporation of this document is intended to support the OCal Program in maintaining comparability with the NOP.

**Subdivision (b)** incorporates OCal 2006 Separation of Duties in Certification Decisions, April 6, 2020. This is comparable to NOP guidance document number 2006.

**Subdivision (c)** incorporates OCal 2602 Recordkeeping for Certified Operations April 6, 2020. This is comparable to NOP guidance document number 2602.

**Subdivision (d)** incorporates OCal 2608 Responding to Noncompliances April 6, 2020. This is comparable to NOP guidance document number 2608.

**Subdivision (e)** incorporates OCal 2609 Unannounced Inspections April 6, 2020. This is comparable to NOP guidance document number 2609.

**Subdivision (f)** incorporates OCal 2610 Sampling Procedures April 6, 2020. This is comparable to NOP guidance document number 2610.

**Subdivision (g)** incorporates OCal 2611 Laboratory Selection Criteria for Prohibited Substance Testing April 6, 2020. This is comparable to NOP guidance document number 2611.

**Subdivision (h)** incorporates OCal 2611-1 Prohibited Pesticides for Residue Testing April 6, 2020. This is comparable to NOP guidance document number 2611-1.

**Subdivision (i)** incorporates OCal 2613 Responding to Results of Testing April 6, 2020. This is comparable to NOP guidance document number 2613.

**Subdivision (j)** incorporates OCal 2614 Technical Assistance Instruction April 6, 2020. This is comparable to NOP guidance document number 2614.

**Subdivision (k)** incorporates OCal 2615 OSP Updates, and Notification of Changes, April 6, 2020. This is comparable to NOP guidance document number 2615.

**Subdivision (l)** incorporates OCal 3012 Material Review, April 6, 2020. This is comparable to NOP guidance document number 3012.

**Subdivision (m)** incorporates OCal 5006 Processed Animal Manures, April 6, 2020. This is comparable to NOP guidance document number 5006.

**Subdivision (n)** incorporates OCal 5008 Prohibited Inert Ingredients, April 6, 2020. This is comparable to NOP guidance document number 5008.

**Subdivision (o)** incorporates OCal 5020 Natural Resources and Biodiversity Conservation, April 6, 2020. This is comparable to NOP guidance document number 5020 except the Biodiversity Conservation Resources have been removed from footnotes and placed in a separate document, OCal 5020-1, to comply with Americans with Disabilities Act requirements for documents available online.

**Subdivision (p)** incorporates OCal 5021 Documenting Compost and Vermicompost in the OSP April 6, 2020. This is comparable to NOP guidance document number 5021.

**Subdivision (q)** incorporates OCal 5023 Substances used in Post-Harvest handling of OCal Products April 6, 2020. This is comparable to NOP guidance document number 5023.

**Subdivision (r)** incorporates OCal 5025 Commingling and Contamination April 6, 2020. This is comparable to NOP guidance document number 5025.

**Subdivision (s)** incorporates OCal 5026 Use of Chlorine Materials, April 6, 2020. This is comparable to NOP guidance document number 5026.

**Subdivision (t)** incorporates OCal 5029 Seeds and Planting Stock in OCal Cultivation, April 6, 2020. This is comparable to NOP guidance document number 5029.

**Subdivision (u)** incorporates OCal 5033 Classification of Unique Materials, April 6, 2020. This is comparable to NOP guidance document number 5033.

**Subdivision (v)** incorporates OCal 5033-1 Decision Tree for Classification of Materials, April 6, 2020. This is comparable to NOP guidance document number 5033-1.

**Subdivision (w)** incorporates OCal 5033-2 Definitions of Terms Used for Classification, April 6, 2020. This document was added compile in one place all terms used in documents 5033 through 5034-2 that need to be defined in order for a reader to understand classification of materials.

**Subdivision (x)** incorporates OCal 5034 Classification of Materials, April 6, 2020. This is comparable to NOP guidance document number 5034.

**Subdivision (y)** incorporates OCal 5034-1 List of Materials for OCal Cannabis Production, April 6, 2020. This is comparable to NOP guidance document number 5034-1.

**Subdivision (z)** incorporates OCal 5034-2 List of Materials Prohibited for Use, April 6, 2020. This is comparable to NOP guidance document number 5034-2.

**Subdivision (aa)** incorporates OCal 5036 Treated Lumber, April 6, 2020. This is comparable to NOP guidance document number 5036.

## **Article 2. Applicability**

This article addresses who may certify operations as agents of the department, what has to be certified, who is eligible and who is excluded from certification, use of the term OCal, recordkeeping by certified operations, and it provides an overview of the substances, ingredients, and methods allowed and prohibited in OCal production. This article is comparable to NOP regulations 7 CFR subpart B, Applicability.

Section 10100. Who may certify.

This section describes the requirements a private entity or local jurisdiction must satisfy to certify under the department. This section has been added to these regulations to clarify that certifying agents can be accredited by either OCal or the NOP and must not only be accredited, as with the NOP, but must also register with OCal.

**Subdivisions (a) and (b) establish** that only a certifying agent accredited by either the department or the NOP and registered with the department may certify for the OCal Program. This is necessary to explain the requirement that a certifier must be accredited and registered as an agent of OCal to grant certification under the program's designation.

Section 10101. What must be certified.

This section specifies that products sold and represented as OCal must come from an OCal operation and allows cannabis operations privately certified by a certifier that become registered with the OCal Program in the first twelve months of program's start to sell, label and represent their products as OCal under certain specific requirements. This section is comparable to NOP section 205.100.

**Subdivision (a)** establishes that, except for operations excluded in section 10101 of this chapter, each operation or specified portion of an operation that holds a cannabis cultivation license pursuant to commercial cannabis cultivation licensing regulations or a cannabis distributor license pursuant to commercial cannabis distributor licensing regulations and produces cannabis or nonmanufactured cannabis products that are intended to be sold, labeled, or represented as OCal shall be certified according to the provisions of article 6 of this chapter and shall meet all other applicable requirements of this chapter. This is comparable to NOP section 205.100 (a). This subdivision is necessary first to establish that an operation must hold a commercial cannabis license to be certified under OCal; second, to clarify what operations, or portion of an operation, must be certified in order to produce OCal cannabis; and, finally, to specify that

products represented as OCal must have been produced by an operation certified under the department and must meet all provisions of this chapter.

**Subdivision (b) (1-2)** establishes that any cultivation or distribution operation or specified portion of a cultivation or distribution operation can become certified under the OCal Program starting from the date that the operation's certifying agent receives its registration under this Chapter if they had been previously privately certified and can also demonstrate compliance with this chapter. This is comparable to NOP section 205.100 (b) and is necessary to establish that operations privately certified under a certifying agent when the certifying agent is initially registered with OCal will be deemed certified under the department.

**Subdivision (c)** allows for recognition under subdivision (b) only for those operations certified by a certifying agent that is registered before January 1, 2022. This is comparable to NOP section 205.100 (b) and is necessary to provide relief to certified operations which might otherwise have to be certified twice (privately and with the OCal Program) within a 12-month period, possibly creating a hardship.

Section 10102. Exclusions from certification.

This section establishes that a licensed cannabis operation that does not handle cannabis or nonmanufactured cannabis products intended to be labeled, sold or represented as OCal is excluded from the requirements of this chapter and, conversely, that all operations within the supply chain must be certified if they touch or manipulate cannabis or nonmanufactured cannabis products to be sold, labeled or represented as OCal. This is necessary because specifying exclusions from certification avoids creating possible barriers for businesses in the supply chain that do not touch or handle cannabis or nonmanufactured cannabis products intended to be sold, labeled, or represented as OCal. If an operation meets the criteria for exclusion, it is excluded, even if the operation type is not specified within this section

This section is comparable to NOP section 205.101, "Exemptions and Exclusions from Certification," but differs in that OCal has no exemptions from certification. A licensed



cannabis operation may not sell, label, or represent its nonmanufactured cannabis or cannabis products as OCal unless it has met all requirements of this chapter, including certification. Additionally, this section does not include provisions pertaining to ingredients because OCal cannabis that is produced by a cultivation or distribution operation may not be mixed with other ingredients. Finally, retail establishments are excluded from certification not because the burden of certifying retail establishments would be excessive, as with the NOP, but because cannabis regulations prohibit a retailer from receiving unpackaged cannabis products.

**Subdivisions (a) (1-3), (b) and (c)** specify that some distribution operations, all laboratory operations, and all retail operations are excluded from having to be certified. Distribution operations are excluded if they receive products in an enclosed container and those products remain unopened, except for Bureau sampling, in the enclosed container while under the control of the distributor. Containers must be labeled pursuant to subdivision 10301(a) of this chapter. This subdivision is necessary to establish the criteria by which certain businesses within the supply chain are excluded from certification. It specifies which distributors are excluded because distributors that handle cannabis and cannabis products must be certified. Although laboratory representatives do open storage containers to take samples of OCal cannabis products while the products are at the distributor, due to sampler personal equipment requirements specified in state commercial cannabis distributor licensing regulations, the risk of contamination during the sampling process is so small that the department determined it is reasonable to exclude from certification those distributors at which the container is opened only by a laboratory representative in order to take samples.

Section 10103. Use of the terms OCal and Organic.

This section establishes the department's authority to prohibit use of the term OCal to sell, label or represent products without its express consent. This section is comparable with NOP section 205.102. Subdivisions (b) through (d) were added to accommodate California cannabis regulations.

**Subdivision (a)** establishes that any cannabis or nonmanufactured cannabis product that is sold, labeled, or represented as OCal shall be produced pursuant to the requirements of this chapter. This subdivision is necessary to establish OCal as a labeling term indicating that cannabis sold, labeled, or represented as OCal has been produced through methods approved by the department and set forth in these regulations. This is comparable to NOP section 205.102.

**Subdivision (b)** specifies that no cannabis or cannabis product shall be advertised or labeled as OCal or similar terminology that leaves in doubt whether the product is being sold, labeled, or represented as certified pursuant to the requirements of this chapter. This subdivision is necessary to establish that it is prohibited to advertise or label a product in a manner that misleads a consumer into thinking it is an OCal product even if the term OCal is not expressly used. This subdivision is similar to section 46027 of the California Food and Agriculture Code, chapter 10.

**Subdivision (c)** establishes that cannabis operations are prohibited from selling, labeling, or referring to their products as organic, pursuant to section 26062.5 of the California Business and Professions Code. This subdivision is necessary to clarify that cannabis operations may not sell, label or refer to their products as organic.

Section 10104. Recordkeeping by certified operations.

This section establishes recordkeeping requirements and the department's and certifying agents' authority to inspect and copy all records concerning the cultivation or distribution of cannabis and nonmanufactured cannabis products. This section is necessary because much of the proof that a certified operation is in compliance is provided to the certifying agent in the form of records.

**Subdivision (a)** directs a certified operation to maintain records concerning the cultivation or distribution of cannabis or nonmanufactured cannabis products that are intended to be sold, labeled, or represented as OCal. This is comparable to NOP section 205.103 (a)

**Subdivision (b) (1-3)** establish that the records must: 1. fully disclose all activities and transactions of the certified operation in enough detail that they can be readily understood and audited, 2. be maintained for not less than 5 years beyond their creation; and (3) demonstrate compliance with the regulations in this chapter. This is comparable to NOP section 205.103 (b).

**Subdivision (c)** directs the certified operation to make such records available to authorized representatives of the department or the registered certifying agent for inspection and copying during standard business hours. For the purposes of this subdivision, standard business hours are 8:00am – 5:00pm (Pacific Time). This is comparable to NOP section 205.103 (c) with the addition of the defining standard business hours.

**Subdivision (d)** stipulates that a certified operation shall identify within the Track-and-Trace system, in a manner specified by the department, cannabis or cannabis products that are intended to be sold, labeled, or represented as OCal. This is necessary because Track-and-Trace allows the department to trace back cannabis from retailer to cultivator. This will assist the department with investigating labeling complaints and preventing fraud.

Section 10105. Allowed and prohibited substances and methods OCal production.

This section establishes that a licensed certified operation must only use substances, methods, and ingredients allowed by OCal and applicable state law for the production of cannabis and nonmanufactured cannabis products to be sold, labeled, or represented as OCal. It also specifies where lists of allowed and prohibited substances and registered organic input materials may be found and specifies methods that may not be used in OCal production. Subdivision (a) is comparable to NOP section 205.105.

**Subdivision (a) (1-6)** specifies that to be sold or labeled as OCal, cannabis or nonmanufactured cannabis products shall be produced without the use of most synthetic substances except as provided in the National List, nonsynthetic substances prohibited in the National List, substances prohibited for use on cannabis under state

law as determined by the Department of Pesticide Regulation, excluded methods, ionizing radiation, as described in Food and Drug Administration regulation, 21 CFR section 179.26; and sewage sludge. This provision applies to all certified operations and is comparable to NOP section 205.105.

**Subdivision (b)** directs that products used as fertilizing materials must adhere to the Fertilizing Materials Registration requirements for Organic Input Materials, 3 CCR section 2320.3. This is necessary because the OIM verifies that products appropriate for use in organic production must comply with both the USDA NOP Standards and the California Fertilizing Materials Law and regulations.

**Subdivision (c)** stipulates that agricultural inputs shall not be used in OCal production if the input utilizes synthetic substances except as provided on the National List, prohibited substances, excluded methods, ionizing radiation, or sewage sludge. This is necessary because the regulations specify that they apply to cannabis throughout and cover crops, which are input materials, will also be planted on land that will be used to cultivate OCal cannabis. While the land requirement covers this issue indirectly, this clarifies that input materials are subject to the same substance allowances and restrictions as cannabis intended to be sold, labeled, or represented as OCal.

**Subdivision (d)** specifies that if a production practice is not prohibited or otherwise restricted under this chapter, such practice shall be permitted if it complies with the requirements of this chapter. This is necessary to clarify that all production practices that may be used to produce OCal products are not specified within the regulations. This allows for innovation within the bounds of the regulations and is consistent with the Organic Foods Production Act (OFPA), title 7 of the United States Code section 6512, which states: "If a production or handling practice is not prohibited or otherwise restricted under this chapter, such practice shall be permitted unless it is determined that such practice would be inconsistent with the applicable organic certification program." The NOP was established by the OFPA and entities regulated by the NOP must comply with the OFPA.

### **Article 3. OCal Cultivation and Distribution Requirements**

This article sets forth all requirements a licensed cultivation or distribution operation must meet to be granted OCal certification. This article is comparable to NOP subpart C, Organic Production and Handling Requirements.

Sections 10202 through 10208 are comparable to NOP sections 205.202 through 205.206, 205.270, and 205.271, which establish organic practice standards for land; soil fertility and crop nutrient management; seeds and planting stock; crop pest, weed, and disease management; and facility pest management. All production operations shall meet or exceed these practice standards designed to enable cultivators and distributors, in conjunction with their certifying agents, to develop OCal system plans adapted to natural variation in environmental conditions and production systems.

#### Section 10200. General.

This section establishes the general requirements with which licensed operations must comply in order sell, label, or represent cannabis or non-manufactured cannabis products as OCal. This is comparable to NOP section 205.200, General, except that subdivision (c) was added to provide clarity regarding the standards.

**Subdivision (a)** specifies an operation intending to sell, label, or represent cannabis or non-manufactured cannabis products as OCal must comply with the applicable provisions of this chapter. This is comparable to NOP section 205.200.

**Subdivision (b)** specifies production practices implemented in compliance with this chapter must maintain or improve the natural resources of the operation, including soil, water, wetlands, woodlands, and wildlife, and respond to site-specific conditions by integrating cultural, biological, and mechanical practices that foster cycling of resources, promote ecological balance, and conserve biodiversity. This is comparable to NOP section 205.200 except that the requirement to “respond to site-specific conditions by integrating cultural, biological, and mechanical practices that foster cycling of resources, promote ecological balance, and conserve biodiversity” was added to clarify this required element of OCal production as defined in section 10000 (bb) of this chapter.

**Subdivision (c)** establishes that a certified operation shall meet or exceed all practice standards set forth in sections 10202 through 10209 of this chapter. This subdivision was added to clarify practice standards establish a minimum level of performance for planning, conducting, and maintaining a function essential to an OCal operation and include allowed and prohibited activities, materials, and conditions.

Section 10201. OCal cultivation and distribution system plans.

This section establishes the requirements of the OCal system plan (OSP), the certifying agent's obligation to work with an operation to respond to site-specific conditions within the OSP, and the authority of the certifying agent to approve the OSP. The OSP is a detailed description of how an operation will achieve, document, and sustain compliance with all applicable provisions of this chapter. The certifying agent must concur that the proposed OSP fulfills the requirements of this chapter and any subsequent modification of the OSP by the licensed cultivator or distributor must receive the approval of the certifying agent preferably prior to being implemented.

This section is comparable to NOP section 205.201 except that the requirement to describe practices implemented to maintain or improve the natural resources of the operation, including soil and water quality, and respond to site-specific conditions by integrating cultural, biological, and mechanical practices that foster cycling of resources, promote ecological balance, and conserve biodiversity has been added pursuant to section 10200 (b) of this chapter.

**Subdivision (a)** specifies that a licensed cultivator or distributor intending to sell, label, or represent cannabis or nonmanufactured cannabis products as OCal shall develop an OSP that is agreed to by the cultivator or distributor and the registered certifying agent. This subdivision is necessary to clarify the registered certifying agent must approve, or agree to, the cultivator or distributor's OSP.

**Subdivision (b)** specifies that the OSP shall meet the requirements set forth in this chapter for OCal cultivation and distribution. This subdivision is necessary to clarify that an in-compliance OSP must meet all requirements of this chapter.

**Subdivision (c) (1-5)** requires a certified operation to use the practice standards set forth in sections 10202 through 10209 of this chapter to define and implement required components of its OCal system plan and specifies that the OSP shall include descriptions of practices, procedures, monitoring and frequency, and a description of the recordkeeping system and management practices to prevent contamination and commingling. This is comparable to NOP section 205.201 (a) (1-5) except that (c) (2) (A) provides for the unavailability of OCal seeds and planting stock when the program begins by lifting the requirement for documentation of commercial availability of seeds and planting stock for the first twelve months of the program. The department, in conjunction with the regulations development working group, determined that a conventional twelve-month growing cycle would allow sufficient time for OCal certified cultivators to produce and make available OCal seed and planting stock.

**Paragraph (6)** requires a description of practices implemented to maintain or improve the natural resources of the operation, including soil, water, wetlands, woodlands, and wildlife, and respond to site-specific conditions by integrating cultural, biological, and mechanical practices that foster cycling of resources, promote ecological balance, and conserve biodiversity and specifies that these practices may also be integrated into subdivisions (1) through (5) above. This was added pursuant to section 10200 (b) of this chapter. It specifies that this requirement may also be met by including these practices throughout the OSP because they should be integrated into all aspects of production.

**Paragraph (7)** requires the certified operation to submit additional information deemed necessary by the registered certifying agent to evaluate compliance with this chapter. This is comparable to NOP section 205.201 (6).

Section 10202. Land requirements.

This section establishes requirements for the land from which cannabis intended to be sold, labeled, or represented as OCal may be harvested. It is comparable to NOP section 205.202.

**Subdivision (a)** specifies that any field or farm parcel from which harvested cannabis is intended to be sold, labeled, or represented as OCal must be managed pursuant to sections 10203 through 10206 of this chapter. This is comparable to NOP section 205.202 (a).

**Subdivision (b)** specifies that any field or farm parcel from which harvested cannabis is intended to be sold, labeled, or represented as OCal must have had no prohibited substances, pursuant to section 10104 of this chapter, applied to it for a period of 3 years immediately preceding harvest of cannabis. This is comparable to NOP section 205.202 (b).

**Subdivision (c)** requires that fields used to produce OCal cannabis have distinct, defined boundaries and buffer zones on the operator's field or farm parcel to prevent the unintended application of a prohibited substance to the crop or contact with a prohibited substance applied to adjoining land that is not under OCal or organic management. A buffer zone shall be sufficient in size or other features (e.g., windbreaks or a diversion ditch) to prevent the possibility of unintended contact by prohibited substances applied to adjacent land areas with an area that is part of a certified operation. Split operations shall use obviously visible onsite signage to identify OCal and non-OCal production areas. This subdivision is comparable to NOP section 205.202 (c) except that the clear and visible signage requirement was added to reduce the risk of accidental contamination or commingling at split operations. These risks are higher for cannabis due to prevalent indoor growing, licensing regulations regarding canopy, and other practices that make cannabis more likely to be grown at close quarters than many other crops.

Section 10203. Soil fertility and crop nutrient management practice standard.

This section establishes requirements for OCal soil fertility and crop nutrient management. It is comparable to NOP section 205.203.

**Subdivision (a) (b) and (c) (1-4)** direct a cultivator to select tillage and cultivation practices that maintain or improve the physical, chemical, and biological condition of the



soil and minimize soil erosion. Specifically, a cultivator must manage crop nutrients and soil fertility through rotations, cover crops, and the application of plant and animal materials. Plant and animal materials must maintain or improve soil organic matter content in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, pathogenic organisms, heavy metals, or residues of prohibited substances. Animal and plant materials include raw animal manure which must be composted unless applied as specified. Composted plant and animal materials must be produced through the process described. Uncomposted plant materials and vermicompost may also be used to maintain or improve the biological condition of the soil. This is comparable to NOP section 205.203 (a-c).

**Subdivision (d) (1-5)** provides that a producer may manage plant nutrients and soil fertility to maintain or improve soil organic matter content in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, pathogenic organisms, heavy metals, or residues of prohibited substances by applying specific, listed substances. This is comparable to NOP section 205.203 (d).

**Subdivision (e) (1-3)** establishes that a cultivator must not use any fertilizer or composted plant and animal material that contains a synthetic substance not included on the National List, sewage sludge, or burning as a means of disposal for crop residues produced on the operation except that burning may be used to suppress the spread of disease or to stimulate seed germination consistent with local and state laws and regulations. This is comparable to NOP section 205.203 (e).

Section 10204. Seeds and planting stock practice standard.

This section establishes requirements for seeds and planting stock to be used in OCal cannabis production. This is comparable to NOP section 205.404.

**Subdivisions (a) through (d)** stipulate that the cultivator must use its own OCal grown cannabis seeds and planting stock or OCal seeds and planting stock from a nursery licensed by the department and certified according to the requirements of this chapter except when OCal seeds are not commercially available equivalent non-OCal grown

seeds and planting stock that have been treated with a substance allowed for use in organic crop production pursuant to the National List may be used to produce OCal cannabis. Non-OCal grown seeds and planting stock may also be used to produce an OCal crop when a temporary variance has been granted in accordance with section 10210 (d) of this chapter and seeds and planting stock treated with prohibited substances may be used to produce OCal cannabis when the application of the materials is a requirement of federal or state phytosanitary regulations. This is comparable to NOP section 205.204 (a) except that 205.204 (a) (4) is not included because cannabis is not a perennial plant.

Section 10205. Crop rotation practice standard.

This section establishes that a cultivator shall implement a system of crop rotation and outlines requirements for that system to the extent applicable to the operation. Crop rotations must maintain or improve soil organic matter content, provide for pest management, manage deficient or excess plant nutrients, and control erosion. While cultivators must implement a system of crop rotation that achieves the goals outlined in subdivisions (a) through (d), the crop rotation system may respond to site-specific conditions and commercial cannabis regulatory requirements regarding canopy. This section is comparable to NOP section 205.205.

**Subdivision (a)** directs a cultivator to implement a crop rotation in which crops maintain or improves soil organic matter content. This is comparable to NOP section 205.205 (a).

**Subdivision (b)** directs a cultivator to implement a crop rotation in which crops provide for pest management in cannabis. This is comparable to NOP section 205.205 (b).

**Subdivision (c)** directs a cultivator to implement a crop rotation in which crops manage deficient or excess plant nutrients. This is comparable to NOP section 205.205 (c).

**Subdivision (d)** directs a cultivator to implement a crop rotation in which crops provide erosion control. This is comparable to NOP section 205.205 (d).

Section 10206. Crop pest, weed, and disease management practice standard.

This section establishes the order in which practices not prohibited by the department shall be used for crop, pest, weed, and disease management, starting with cultural, mechanical, and biological preventive practices. This section is comparable to NOP section 205.206.

**Subdivision (a) (1-3)** specifies that a cultivator must use management practices to prevent crop pests, weeds, and diseases, as identified in the cultivator's pest management plan (pursuant to section 10207 of this chapter). Management practices may include those provided for in section 10205, Sanitation measures, and cultural practices that enhance crop health. This is comparable to NOP section 205.206 (a).

**Subdivision (b) (1-3)** provides that pest problems may be controlled through mechanical or physical methods, including but not limited to augmentation or introduction of predators or parasites of the pest species, development of habitat for natural enemies of pests, and nonsynthetic controls such as lures, traps, and repellents. This is comparable to NOP section 205.206 (b).

**Subdivision (c) (1-5)** provides that weed problems may be controlled through mulching, mowing, livestock grazing, hand weeding and mechanical cultivation, flame, heat, or electrical means, or plastic or other synthetic mulches, provided that they are removed from the field at the end of the growing or harvest season. This is comparable to NOP section 205.206 (c).

**Subdivision (d) (1-2)** provides that disease problems may be controlled through management practices which suppress the spread of disease organisms or through the application of nonsynthetic biological, botanical, or mineral inputs. This is comparable to NOP section 205.206 (d).

**Subdivision (e)** specifies that when the practices provided for in paragraphs (a) through (d) of this section are insufficient to prevent or control crop pests, weeds, and diseases, a biological or botanical substance or a substance included on the National List may be applied to prevent, suppress, or control pests, weeds, or diseases: Provided

that the conditions for using the substance are documented in the OCal system plan. This is comparable to NOP section 205.206 (e).

**Subdivision (f)** Directs that a cultivator must not use lumber treated with arsenate or other prohibited materials for new installations or replacement purposes in contact with soil. This is comparable to NOP section 205.206 (f).

Section 10207. OCal handling requirements.

This section establishes the handling activities a cultivator or distributor may engage in to produce a cannabis or nonmanufactured cannabis products intended to be sold, labeled, or represented as OCal. Per the Preamble to the NOP regulations, this section was added to the regulations due to public comments regarding application of prohibitions within the regulations—some handlers were not clear that the “Allowed and prohibited substances” section applied to them as much as to producers. This section is comparable to NOP section 205.270 except that any process designed to transform the product falls under “manufacturing” and is within the purview of the CDPH, which is charged with certifying manufacturers. Therefore, references to cooking, baking, heating, mixing, grinding, churning, separating, distilling, extracting, cutting, fermenting, preserving, dehydrating, freezing, chilling, or other manufacturing activities as well any provision regarding labeling of a multi-ingredient product, included in NOP section 205.270, have not been included in this section.

**Subdivision (a)** specifies that a licensed cultivator or processor may process by drying, curing, grading, trimming, rolling, packaging, re-packaging, labeling, or re-labeling cannabis or nonmanufactured cannabis products intended to be sold, labeled, or represented as OCal. This provision establishes the processing activities a licensed cultivator or processor may engage in to produce OCal cannabis. This subdivision differs from the NOP regulations to be consistent with the definition of processing as used in State commercial cannabis licensing regulations. These regulations use “processing” as defined in commercial cannabis cultivation licensing regulations.

**Subdivision (b)** specifies that a distributor may process by packaging, re-packaging, labeling, re-labeling, or rolling cannabis or nonmanufactured cannabis products intended to be sold, labeled, or represented as OCal. This provision establishes and clarifies the processing activities a distributor may engage in to produce OCal cannabis. This section is necessary to align with commercial cannabis activities licensed distributors can perform. The department does not have the authority to permit commercial cannabis activities not authorized by a distributor license.

**Subdivision (c)** stipulates that a cultivator or distributor shall not use substances or methods prohibited under section 10105 (a) of this chapter in or on cannabis or nonmanufactured cannabis products intended to be sold, labeled, or represented as OCal. This is necessary to clarify that products intended to be sold, labeled or represented as OCal must be handled according to section 10105 of this chapter. It is intended to clarify to distributors that section 10105 of this chapter applies to them as well as to cultivators.

Section 10208. Facility pest management practice standard.

This section establishes the methods a certified cultivator or distributor may use to control and prevent pest infestations and that pest management activities must be implemented in order according to their risk of contaminating cannabis or nonmanufactured cannabis products intended to be sold, labeled, or represented as OCal, starting with the lowest risk activities. Use of organic substances before use of allowed substances before use of other substances is a fundamental principle of organic agriculture. This section is comparable to NOP section 205.271.

**Subdivision (a) (1-3)** stipulates that an OCal cultivation or distribution operation may use pest prevention practices including but not limited to removal of pest habitat, food sources, and breeding areas, prevention of access to handling facilities, and management of environmental factors, such as temperature, light, humidity, atmosphere, and air circulation, to prevent pest reproduction. This is comparable to NOP section 205.271 (a).

**Subdivision (b) (1-2)** provides that pests may be controlled through mechanical or physical controls including but not limited to traps, light, or sound and lures and repellents using nonsynthetic or synthetic substances consistent with the National List. This is comparable to NOP section 205.271 (b).

**Subdivision (c)** allows that if the practices provided for in paragraphs (a) and (b) of this section are not effective to prevent or control pests, a nonsynthetic or synthetic substance consistent with the National List may be applied. This is comparable to NOP section 205.271 (c).

**Subdivision (d)** specifies that if the practices provided for in paragraphs (a), (b), and (c) of this section are not effective to prevent or control facility pests, a synthetic substance not on the National List may be applied, provided that the operation and certifying agent agree on the substance, method of application, and measures to be taken to prevent contact of the organically produced products or ingredients with the substance used. This is comparable to NOP section 205.271 (d).

**Subdivision (e)** directs a licensed OCal cultivation or distribution operation that applies a nonsynthetic or synthetic substance to prevent or control pests to update the operation's OCal system plan to reflect the use of such substances and methods of application. The updated OCal system plan must include a list of all measures taken to prevent contact of the OCal produced cannabis or cannabis products with the substance used. This is comparable to NOP section 205.271 (e).

**Subdivision (f)** affords that, notwithstanding the practices provided for in paragraphs (a), (b), (c), and (d) of this section, an operation may otherwise use substances to prevent or control pests as required by local ordinances and regulations provided that measures are taken to prevent contact of the OCal produced cannabis or cannabis products with the substance used. This is comparable to NOP section 205.271 (f).

Section 10209. Commingling and contact with prohibited substance prevention practice standard.

This section establishes practices that must be followed by the certified operation to prevent the commingling of OCal and non-OCal cannabis and to protect OCal cannabis from contact with prohibited substances. This section is comparable to NOP section 205.272.

**Subdivision (a)** stipulates that a cultivator and a distributor must implement measures necessary to prevent the commingling of OCal and non-OCal cannabis products and protect OCal products from contact with prohibited substances. This is comparable to NOP section 205.272 (a).

**Subdivision (b) (1-2)** specifies that the following are prohibited for use in the handling of any OCal cannabis product: packaging materials and storage containers or bins that contain a synthetic fungicide, preservative, or fumigant and use or reuse of any bag or container that has been in contact with any substance in such a manner as to compromise the OCal integrity of any OCal produced cannabis or cannabis product placed in those containers, unless such reusable bag or container has been thoroughly cleaned and poses no risk of contact of the OCal produced cannabis or cannabis products with the substance used. This is comparable to NOP section 205.272 (b).

Section 10210. Temporary variances.

This section establishes the department's authority to provide temporary variances, the conditions under which the department may grant a temporary variance, the process for making a request for a temporary variance, and temporary variance notification procedures. This section is comparable to NOP section 205.290, Temporary Variances, except that it replaces the NOP's list of conditions (i.e. damage caused by drought) with the condition that a temporary variance shall be granted when a state of emergency or disaster has been declared by state or local jurisdictions and allows that a temporary variance may be granted upon request.

**Subdivision (a) (1-2)** specifies that the department may establish a temporary variance from the requirements of the provisions specified in section 10203 through section 10208 of this chapter when the Governor or a local jurisdiction declares a state of emergency or disaster, or when research or trials of techniques, varieties, or ingredients used in OCal cultivation are being conducted. It provides that a Statewide or local “disaster” shall be defined pursuant to the California Government Code. This subdivision is similar to NOP section 205.209 but the department determined rather than having a list of conditions that define a disaster or emergency, like the NOP, a temporary variance shall only be granted when a State of Emergency or disaster has been declared by the state or by local jurisdictions. This provides transparency regarding the conditions that justify a temporary variance.

**Subdivision (b)** requires that a certifying agent shall submit a written request for temporary variance to the department accompanied by a copy of the emergency proclamation. This subdivision was added because, unlike the NOP, the department will only grant a temporary variance at the request of a certifying agent.

**Subdivision (c)** specifies that the department will provide written notification to certifying agents upon establishing a temporary variance that is applicable to the certifying agent's certified cultivation or distribution operations. The temporary variance shall specify the period of time it shall remain in effect, subject to extension as the department deems necessary. This is comparable to NOP section 205.290 (c).

**Subdivision (d)** provides that a certifying agent, when notified that the department has established a temporary variance, shall notify each cultivation or manufacturing operation it certifies to which the temporary variance applies. This is comparable to NOP section 205.290 (d).

**Subdivision (e)** provides that temporary variances may not be granted for any practice, material, or procedure prohibited under section 10104 of this chapter. This is comparable to NOP section 205.290 (e).



#### **Article 4. Labels, Labeling, and Market Information**

This article establishes labeling requirements for cannabis intended to be sold, labeled, and represented as OCal. It is intended to ensure consistency in product labeling. OCal products have one labeling category, "OCal," and it is for products that contain 100 percent OCal cannabis.

This article contains provisions comparable to those provisions of NOP 205 subpart D that apply to single-ingredient products. CDPH has been given statutory authority for establishing a program for certifying manufacturers and manufactured products (see Business and Professions Code § 26062 (b)), which may contain ingredients other than OCal cannabis.

#### Section 10300. Non-manufactured cannabis products labeled OCal.

This section establishes labeling requirements for OCal cannabis products and is comparable to section 205.302 of the NOP regulations. It is necessary because products labeled OCal must have been produced by an OCal producer that uses only those methods and materials allowed in OCal production.

This section differs from the NOP labeling requirements because non-manufactured cannabis products contain only one ingredient, cannabis.

**Subdivision (a)** establishes that Cannabis or a cannabis product to be sold, labeled, or represented as OCal must contain 100 percent OCal produced cannabis and the OCal cannabis or cannabis product must be labeled pursuant to §10302 of this chapter. This is comparable to NOP section 205.301 (a).

**Subdivision (b)** specifies that all cannabis products labeled as OCal and all ingredients identified as OCal in the ingredient statement of any product must not be produced using excluded methods, pursuant to section 10105(a)(4) of this chapter, be produced using ionizing radiation, pursuant to section 101045(a)(5) of this chapter, be processed using sewage sludge, pursuant to section 10105(a)(6) of this chapter, or include OCal and non-OCal forms of cannabis. This is comparable to NOP section 205.301(f).

**Subdivision (c)** provides that OCal cannabis product packages may display, on the principal display panel, information panel, and any other panel of the package and on any labeling or market information concerning the product: the term OCal to modify the name of the product; the OCal seal; or the seal, logo, or other identifying mark of the certifying agent which certified the cultivation or distribution operation producing the finished product provided that such seals or marks are not individually displayed more prominently than the OCal seal. This subdivision is intended to ensure that the term OCal and other similar terms or phrases are not used on a product package in a way that misleads consumers as to the contents of the package. This includes wording similar to some provisions of NOP section 205.304 (a) (3).

**Subdivision (d)** specifies that the information panel on a cannabis package, below the information identifying the producer of the cannabis product and preceded by the statement, “Certified OCal by \* \* \*,” or similar phrase, identify the name of the certifying agent that certified the producer of the finished product and may display the business address, business website address, or telephone number of the certifying agent in such label. This is comparable to NOP section 205.304 (b) (2).

Section 10301. Labeling of nonretail containers used for storage or transport of OCal cannabis.

This section establishes that nonretail containers used to store or transport OCal cannabis products shall have obviously visible OCal designation. This is necessary because operations are exempt from certification if they do not open containers or touch or handle certified cannabis. Therefore, containers with OCal cannabis must be visibly labeled so that excluded operations do not need to open the container to identify the contents.

Section 10302. OCal seal.

This section establishes how the OCal seal must be displayed on consumer packages and used in market information to show that an OCal product has been produced in

accordance with these regulations. This section is comparable to section 205.311 of the NOP regulations.

**Subdivision (a)** The OCal seal described in paragraph (b) of this subdivision may be used only for cannabis products described in section 10301 of this chapter. This is comparable to NOP section 205.311 (a).

**Subdivision (b)** specifies the OCal seal must replicate the form and design of the examples in figures 1 and 2 and must be printed legibly and conspicuously. This is comparable to NOP section 205.311 (b).

**Paragraph (1)** specifies that the seal be displayed on a white background and with the term OCal (“O” in green with white cannabis flower inside “O” and “Cal” in orange overlapping the “O”). This is necessary to ensure that the seal is consistently displayed and easily identifiable as the OCal seal.

**Paragraph (2)** specifies that the seal be displayed on a white or transparent background with the term OCal (“O” in dark gray with white cannabis flower inside “O” and “Cal” in black overlapping the “O”). This is comparable to NOP section 205.311 (b) (2). This is necessary to ensure that the seal is consistently displayed and easily identifiable as the OCal seal.



Figure 1    Figure 2

Section 10303. Registered certifying agent seal, logo, or other identifying mark.

This section establishes that a private entity or local jurisdiction registered as a certifying agent under this chapter may establish a seal, logo, or other identifying mark to be used by cultivation operations certified by the certifying agent to indicate affiliation with the certifying agent and specifies conditions for use of the certifying agent’s seal, logo, or other identifying mark. This is comparable to NOP section 205.501(b).

A private entity or local jurisdiction registered as a certifying agent under this chapter may establish a seal, logo, or other identifying mark to be used by cultivation operations certified by the registered certifying agent to indicate affiliation with the registered certifying agent provided that the registered certifying agent. This is comparable to NOP section 205.501 (b).

**Subdivisions (a) and (b)** stipulate that a certifying agent must not require, as a condition of certification, use of its seal, logo, or other identifying mark on any product sold, labeled, or represented as OCal and that OCal does not require, as a condition of use of the certifying agent's identifying mark, compliance with any cultivation practices other than those provided for in this chapter. This is comparable to NOP section 205.501 (b) (1-2).

#### **Article 5. Accreditation and Registration of Certifying Agents**

This article establishes the requirements for department accreditation and registration of certifying agents. All NOP accreditation requirements have been incorporated into this article to provide for an OCal accreditation program with the same requirements as NOP accreditation and a process that is consistent with the NOP process.

##### Section 10400. Areas and duration of accreditation and registration.

This section establishes the areas and duration of accreditation and registration. It is comparable to NOP section 205.500.

**Subdivision (a)** specifies that the department shall accredit or register a qualified applicant to certify cannabis operations for the OCal Program in the areas of cultivation, distribution, or both. This is comparable to NOP section 205.500 (a).

**Subdivision (b)** specifies that accreditation shall be for a period of not more than five (5) years from the date of approval of accreditation pursuant to section 10405 of this chapter. This is comparable to NOP section 205.500 (b).

**Subdivision (c)** specifies registration shall be valid until January 1 of the following year pursuant to section 10409 of this chapter. This is necessary because the department

determined that having all registration renewals fall on the same date provides for administration efficiency and it is reasonable for the renewal date to be the start of the year because it is a standard date. Initial registration may be for a term of less than one year but renewal registration will last one year, starting January 2 and expiring January 1 of the following year unless registration is terminated by the registered certified agent or suspended or revoked by the department.

Section 10401. Requirements for accreditation.

This section establishes the criteria for a certifying agent to be accredited by OCal. The site-specific nature of OCal production necessitates that certifying agents have the ability to determine whether an operation's OSP meets the requirements of this chapter. The accreditation process provides an assurance to the department and to consumers that certifying agents are competent to make this determination and are doing so consistently throughout the state. Certifying agents accredited by the department will undergo a similar accreditation process and be held to the same requirements as certifying agents accredited by the NOP.

This section provides mechanisms for the department to ensure that certifying agents for the program are qualified and able and continue to be qualified and able to comply with the requirements of this chapter.

This section is comparable to NOP section 205.501.

**Subdivision (a)** specifies all items a private entity or local jurisdiction accredited as a certifying agent under this chapter must comply with in order to be accredited under this chapter.

**Paragraphs (1) through (8)** specify that the certifying agent must have expertise, ability, trained and knowledgeable personnel and contractors; carry out all applicable provisions of the regulations in this chapter, including the provisions of sections 10500 through 10506 of this chapter, Certification of operations, and section 10710 of this chapter, Inspection, testing, and reporting; perform annual employee performance evaluations and an annual internal program review; and provide

sufficient information to persons seeking certification. These paragraphs are comparable to NOP provisions NOP section 205.501 (a) (1) through (8).

**Paragraph (9)** specifies that a certifying agent must maintain records as outlined in subparagraphs (A) through (C): records obtained from applicants for certification and certified operations shall be maintained for not less than 5 years beyond their receipt; records created by the certifying agent regarding applicants for certification and certified operations shall be maintained for not less than 10 years beyond their creation; and records created or received by a certifying agent pursuant to the accreditation requirements of this chapter, excluding any records covered by section 10401(a)(9)(B) in this chapter, shall be maintained for not less than 5 years beyond their creation or receipt. This recordkeeping provision is comparable to NOP section 205.510 (b) (1) through (3).

**Paragraph (3)** specifies that a certifying agent must make all records in paragraph (9), above, available for inspection and copying during standard business hours and provide such records to authorized representatives of the department within 10 business days of a request. For the purposes of this section, standard business hours are 8:00am to 5:00pm (Pacific Time). This provision is comparable to NOP section 205.103 (c) except that it requires that the records be not only available for inspection, as the NOP provision requires, but that they be provided to the department within a specific timeframe. It also specifies the department's definition of business hours. This is necessary because it is more efficient to receive the records electronically than to visit the certifying agent and copy the records in-person. The department determined that 10 business days is sufficient for a certifying agent to provide all certification records, whether via the postal service or electronically. The provision defines business hours to increase transparency and avoid confusion.

**Paragraphs (11) through (14)** stipulate that a certifying agent must maintain strict client confidentiality; that a certifying agent must prevent conflicts of interest by not certifying an operation if a certifying agent or a responsibly connected party has or has held a commercial interest in the operation and excluding any person from work,

discussion, decisions and monitoring of a certified operation such person has or has held a commercial interested within 12 months prior to application for certification, by not permitting acceptance of payment, gifts, or favors of any kind from any business inspected with the exception that voluntary labor may be accepted by a not-for-profit certifying agent, by not giving advice or providing consultancy services to applicants or certified operations, by requiring all persons responsibly connected to the certifying agent to complete an annual conflict of interest disclosure report, by ensuring the certification decision is made by a person different from the person who reviewed the documents and performed the on-site inspection, by reconsidering a certified operation's application for certification when it is determined that, within 12 months of certifying an operation a person covered under section 10401(a) (12) (B) of this chapter has or had a conflict of interest, and by referring a certified operation to a different registered certifying agent when it is determined that any person covered under section 10401 (a) (12) (A) had a conflict of interest involving the applicant at the time of certification; that a certifying agent must accept the decisions of another certifying agent registered by the department to certify under the OCal Program, and that a certifying agent must not make false or misleading claims about its status, the program, or the nature or qualities of non-manufactured cannabis products labeled as OCal produced. This is comparable to NOP section 205.501 (a) (10-14).

**Paragraph (15)** specifies that certifying agents must only charge fees and charges for certification activities that are on file with the department pursuant to section 10402 (a) (8) of this chapter. This is comparable to NOP section 205.501 (a) (16).

**Paragraph (16)** specifies that a certifying agent must pay and submit fees, payments, or fines to the department pursuant to section 10700 of this chapter. This is comparable to NOP section 205.501 (a) (17).

**Paragraph (17)** specifies that a certifying agent must provide the inspector, prior to each on-site inspection, with previous on-site inspection reports and notify the inspector of its decision regarding certification of an operation site inspected by the inspector and of any requirements for the correction of minor non-compliances. This

is necessary so the inspector can follow-up on anything noted during the previous inspection that wasn't addressed in the OSP or during the audit of the operation. It also gives context to the operation's practices. This is comparable to NOP section 205.501 (a) (18).

**Paragraph (18)** specifies that a certifying agent must accept all applications within its accredited certification type(s) and certify all qualified applicants, to the extent of its administrative capacity to do so, without regard to size or membership in any association or group. This paragraph is comparable to NOP section 205.501 (a) (19).

**Paragraph (19)** specifies that a certifying agent must comply with, implement, and carry out any other terms and conditions pursuant to this chapter or determined by the department to be necessary. This is comparable to NOP section 205.501 (a) (21).

**Subdivision (b)** specifies that the department may initiate suspension or revocation of an accreditation if the certifying agent fails to meet, conduct, or maintain accreditation requirements pursuant to this chapter. This is comparable to NOP section 205.660 (c).

**Subdivision (c)** provides that amendment to the types of certification accreditation covers may be requested at any time. The application for amendment shall be sent to the department and shall contain information applicable to the requested change in accreditation, a complete and accurate update of the information submitted pursuant to sections 10402 and 10407, and the applicable fees required in section 10700 of this chapter. This is comparable to NOP section 205.510 (f).

Section 10402. Application for accreditation.

The preamble to the regulations establishes how an application for accreditation shall be submitted to the department and that following receipt of the application the department will determine, pursuant to section 10402 of this chapter, whether the applicant for accreditation should be accredited as a certifying agent. This is comparable to NOP section 205.502 except that rather than refer an applicant to



multiple sections of this chapter to find all information and supplemental documents the department needs to ensure the applicant meets the requirements for accreditation, subdivisions (a) through (h) of this section were added to compile, in one section, all requirements and supplemental documentation the department needs to assess a private entity's or a local jurisdiction's ability to comply with the accreditation requirements. This is consistent with other department regulations. Subdivisions (a) through (h) of this section are comparable to NOP sections 205.503, 205.504, and 205.505.

**Subdivision (a) (1-8)** specifies the business information an applicant must provide, including legal name; Employer Identification or Taxpayer Identification Number; primary office physical address, mailing address, web address, and name of the person(s) responsible for the applicant's day-to-day operations and their contact number(s) and email address; subsidiary office(s) physical address(es), mailing address(es), phone number(s), and a contact name(s) and number(s) for each subsidiary office; entity type (e.g., government agricultural office, for-profit business, not-for-profit membership association); for a local jurisdiction, a copy of the official's authority to conduct certification activities under this chapter; for a private entity, copies of all formation documents, which may include, but are not limited to, articles of incorporation, operating agreement, partnership agreement, and fictitious business name statement. The applicant shall also provide all documents filed with the California Secretary of State, which may include but are not limited to, articles of incorporation, certificate of stock, articles of organization, certificate of limited partnership, and statement of partnership authority. If the applicant is a foreign corporation, a certificate of qualification issued by the California Secretary of State; and each area of operation for which accreditation is requested and the estimated number of each type of operation anticipated to be certified annually by the applicant along with a copy of the applicant's schedule of fees for all services to be provided under these regulations by the applicant. This is comparable to NOP section 205.503 (a) through (d)(2).

**Subdivision (b) (1-4)** specifies the personnel information that must be submitted for each certification inspector and application reviewer: a copy of the applicant's training,

evaluating, and supervising policies; name and position description of all personnel to be employed in the certification operation, including administrative staff, certification inspectors, members of any certification review and evaluation committees, contractors, and all parties responsibly connected to the certifying agent; description of training the applicant has provided or intends to provide to personnel to; and for those personnel employed in the certification operation, a description of qualifications, including experience, training, and education in agriculture, organic production, and organic handling. This is comparable to NOP section 205.504 (a).

**Subdivision (c) (1-6)** specifies the certifying agent administrative policies and procedures that must be submitted: a copy of the procedures to be used to evaluate certification applicants, make certification decisions, and issue certificates; a copy of the procedures to be used for reviewing and investigating certified operation compliance with this chapter and the reporting of violations of this chapter to the department; a copy of the procedures to be used for complying with the recordkeeping requirements set forth in section 10401(a)(9)-(10); a copy of the procedures to be used for maintaining the confidentiality of any business-related information as set forth in section 10401(a)(11); a copy of the procedures to be used, including any fees to be assessed, for making certified operation information available to any member of the public upon request, including copies of certification certificates, a list of certified operations and their certification statuses, cities or counties of operation, products certified, and commercial cannabis license number(s), the results of laboratory analyses for residues of pesticides and other prohibited substances, and other business information deemed necessary by the applicant; and, a copy of the procedures to be used for sampling and residue testing pursuant to section 10709 of this chapter. This is comparable to NOP section 205.504 (b).

**Subdivision (d) (1-2)** stipulates the certifying agent must submit a copy of the procedures intended to be implemented to prevent the occurrence of conflicts of interest and a conflict of interest disclosure report that identifies any cannabis-related business interests, including business interests of family members, that may cause a conflict of interest. This subdivision is necessary because it requires certifying agents to show that

all persons to certification and that all parties responsibly connected to the certifying agent have revealed existing or potential conflicts of interest. Certifying agents are to prevent conflicts of interest by not giving advice or providing consultancy services to applicants for certification and certified operations for overcoming identified barriers to certification. This is comparable to NOP section 205.504 (c).

**Subdivision (e) (1-3)** specifies the activities of applicants who currently certify cultivation or distribution operations and requires these applicants to submit a list of all cultivation or distribution operations currently certified by the applicant, copies of at least 3 different inspection reports and certification evaluation documents for cultivation, distribution, or manufacturing operations certified by the applicant during the previous year for each area of operation for which accreditation is requested; and the results of any accreditation process of the applicant's operation by an accrediting body during the previous year for the purpose of evaluating its certification activities. This subdivision is necessary because it allows the program to evaluate whether a certifying agent is competent and able to certify to the program's standards, which aids the auditor's decision whether or not move to the next step in the accreditation process. This is comparable to NOP section 205.504 (d).

**Subdivision (f)** requires that an applicant declare under penalty of perjury that the information contained within and submitted with the application is complete, true, and accurate. The applicant must also declare that they understand that a misrepresentation of fact is cause for denial of the application, or revocation or suspension of the accreditation issued. Having to declare that the information they provide to the department is true and correct to the best of their knowledge is necessary to create consequences should the department learn that the information provided in the application was false or fraudulent. It is intended to deter applicants from providing false information.

**Subdivision (g)** requires that an applicant pay and submit fees to the department in accordance with section 10700 of this chapter. This is comparable to NOP section 205.501 (a) (17).

**Subdivision (h)** requires that an applicant submit any other information the department requires to assist in the department's evaluation of the application. This is comparable to NOP section 205.504 (e).

Section 10403. Review of accreditation application.

This section establishes the notification procedures the department will follow after an application has been reviewed for completeness. It also specifies a time constraint for submitting missing information. This section is necessary so applicants know they will be notified, and how they will be notified, if the application is incomplete.

**Subdivisions (a) and (b) (1)** require that the department notify the applicant in writing that the application has been accepted for further review or that the application is incomplete and the reasons for the incompleteness. It also stipulates that the department must receive the missing information or fee, payment, or fine from the applicant no more than 30 calendar days from the date of notification. In addition, failure to provide the designated missing information or any fees, payments, or penalties that are due and payable will result in disqualification of the application from further consideration and the applicant will have to reapply and pay a new application fee. This is necessary because it establishes the process the department will use to notify applicants of missing information and give applicants the opportunity to supply the information. The department determined the submission time frame to be adequate for an applicant to provide missing information without unreasonably delaying the processing of an application and impacting staff efficiency. This is consistent with other department regulations. If the application is abandoned, the forfeited fee will cover the time the department will spend processing and reviewing the application in order to assess its completeness.

**Subdivision (c)** provides that if the application is deemed abandoned the applicant may reapply and pay a new application fee. This is necessary to provide clarity and transparency regarding reapplication.

Section 10404. Withdrawal of accreditation application.

This section establishes that an applicant may withdraw an application at any time prior to the department's issuance of accreditation or denial of accreditation and the procedures and restrictions for such withdrawal.

Much of the information in this section is comparable to NOP section 205.402 (c) but the organization and terminology are consistent with the application withdrawal procedures specified in commercial cannabis cultivation licensing regulations.

**Subdivisions (a) (b) and (c)** specify that requests to withdraw an application must be submitted to the department in writing, dated, and signed by the applicant; that the application fee will not be refunded, and an applicant that withdraws may reapply and pay a new fee. This section is necessary to clarify that an applicant may withdraw an application at any time and it will not impact their ability to reapply. The application fee is not refundable as it will cover department staff time spent processing and reviewing the application prior to withdrawal.

Section 10405. Granting accreditation and registration.

This section establishes the department's process for granting accreditation. This is necessary because an established process increases administrative consistency and efficiency, producing clarity and transparency for applicants.

**Subdivision (a)** Specifies that if the department determines the accreditation applicant meets the requirements for accreditation, pursuant to section 10401 of this chapter, the department shall notify the accreditation applicant in writing of the determination and bill the amount due. Payment shall be due ten (10) calendar days past the date the notice was issued. This is necessary to provide process transparency to accreditation applicants. The timeframe for payment is typical for similar department regulations; it provides enough time for the applicant to pay the fee without adversely affecting department processing efficiency.

**Subdivision (b)** specifies that accreditation shall be granted and the accredited certifying agent shall be registered when the required payment has been submitted pursuant to section 10600 of this chapter. This is necessary to establish that all requirements for registration are satisfied by accreditation so when accreditation is granted a certifying agent will also be registered as long as registration fees are paid. This is comparable to NOP section 205.506 (a) (1-3).

**Subdivision (c)** specifies the department shall notify the accredited certifying agent of the granting of accreditation and registration in writing. The notice shall state the effective and expiration dates of accreditation, the type(s) of certification for which the accreditation is granted, and the registration effective and expiration dates. This is necessary because a written notice of accreditation avoids confusion by clarifying the effective and expiration dates and specifying the area(s) of accreditation. If there is a discrepancy the certifying agent may follow-up immediately with the department. This is comparable to NOP section 205.506 (b) (1-4).

**Subdivision (d)** specifies the accredited certifying agent shall be registered pursuant to section 10409 (e) of this chapter. This is necessary to avoid redundant requirements because all of the registration requirements are covered by accreditation. This provides for an efficient and streamlined process and prevents certifying agents accredited by the department from having to provide duplicate information in a registration application.

**Subdivision (e)** specifies that accreditation shall be valid for a period of five (5) years from the effective date of accreditation. The department shall grant the accredited certifying agent a grace period between the accreditation expiration date and January 1 of the following year so that accreditation and registration renewals may be applied for and completed simultaneously. Accreditation may be renewed pursuant to section 10409 (c) of this chapter unless the accredited certifying agent voluntarily ceases its certification activities or the accreditation is suspended or revoked pursuant to the requirements of section 10703 of this chapter. This is necessary to establish the period of accreditation, describe where to find renewal procedures within this chapter, and to explain that there will be a grace period between the accreditation expiration and the registration expiration so that the accreditation and registration renewal process may be

undertaken and completed simultaneously in order to eliminate redundancy. The 5 year time period for accreditation is consistent with the NOP.

Section 10406. Denial of accreditation.

This section establishes the procedures for denial of accreditation. This is necessary to establish a process for denial of accreditation that affords applicants their due process rights and increases administrative consistency and efficiency. This section is comparable to NOP section 205.507.

**Subdivision (a)** specifies that upon department determination the accreditation applicant does not meet the requirements for accreditation pursuant to section 10401 of this chapter, the department shall provide written notification of accreditation denial to the applicant. Such notification shall include the reasons for the department's assessment and appeal procedures. This is comparable to NOP section 205.507(a) except that instead of providing a notification of non-compliance the department will provide a notification of denial if the department determines the applicant will be unable to comply with the regulations of this chapter. This also clarifies that the applicant will be afforded due process with the opportunity to appeal the denial decision. This process is consistent with other department regulations.

**Subdivision (b)** specifies that the applicant who receives notification of accreditation denial may appeal the denial of accreditation pursuant to section 10706 of this chapter within 30 days after the date of the notice of accreditation denial. This is necessary to clarify that a denial must be appealed within 30 days. The 30 day timeframe for appeal of denial is consistent with state commercial cannabis cultivation licensing regulations.

**Subdivision (c)** Specifies that the applicant who receives notification of accreditation denial may apply for accreditation again at any time and pay a new application fee. This is necessary to clarify that there is no penalty or waiting time for applicants denied accreditation and they may reapply at any time. It also clarifies that they will have to pay a new fee.

Section 10407. Accreditation renewal.

This section establishes the process for renewing accreditation. It is necessary to provide process transparency and administrative consistency, reducing anxiety for regulated entities. This section is comparable to NOP section 205.510. It includes a concurrent registration process.

**Subdivision (a) (1-3)** specifies that a certifying agent shall renew its accreditation concurrently with its annual registration renewal pursuant to section 10405 (e) and 10410 of this chapter except that the accredited certifying agent renewing both accreditation and registration shall receive a notice of expiration of registration and accreditation approximately 6 months prior to the registration expiration date; the dual accreditation and registration renewal package shall be submitted no more than 4 months and no less than 3 months prior to the registration expiration date; and the department shall conduct a site evaluation within 3 months of the registration expiration date. The department determined it is necessary to make accreditation and registration renewal one process in order to avoid redundancy because documents submitted for accreditation renewal include all documentation needed for registration renewal. Staff determined that sending the expiration notice 6 months prior to expiration provides accredited certifying agents sufficient time to gather and submit all documents necessary for accreditation renewal no less than 3 months prior to the registration and accreditation expiration date. Whereas documents received for registration renewal are reviewed in January and February, after the renewal, accreditation renewal requires an in-depth audit of the certifying agent prior to renewal, including an onsite audit and report of findings. Therefore, the department determined it needs at least 3 months to review all accreditation information submitted, schedule and perform a 2-person site visit, and develop a summary report of findings prior to accreditation and registration expiration. However, because most certifications and re-certifications take place during harvest season, the third quarter of each year, if a certifier submits a renewal package more than 4 months prior to accreditation and registration expiration it will not include many of the certifications and re-certifications that take place during the third quarter. This is comparable to NOP 205.510 (c) but the department sends notice of expiration 6



months rather than one year prior to expiration and the application for renewal must be received by the department 3 months rather than 6 months prior to expiration. This change was necessary because the department does not anticipate being inundated with accreditation renewals and determined that three months is sufficient to perform all activities associated with accreditation. The department can also plan for the exact number of accreditation renewals it will be performing and accreditation renewal season was scheduled for the fourth quarter of each year because there will more staff in the office to process applications and conduct site visits after harvest and before planting seasons.

**Subdivision (b)** specifies that if the department determines the accredited certifying agent meets the requirements for accreditation, the accredited certifying agent's accreditation and registration shall be renewed pursuant to section 10405 of this chapter except that the notice will state any terms and conditions for continued accreditation, including minor non-compliances and the date by which such non-compliances shall be satisfied by the accredited certifying agent. A written notice of accreditation renewal avoids confusion by clarifying the effective and expiration dates and providing proof of the terms on which the accreditation was issued. Terms shall include a timeframe for satisfying minor non-compliances and reporting completion of this corrective action by a specified date. The department determined it is reasonable to issue a renewal with conditions rather than risk the possibility of causing great harm to both the certifying agent and its certified operations if an accreditation expires while correction of a minor non-compliance is underway. A renewal will not be issued if the renewal process reveals non-correctible issues or the certifying agent has willfully violated the regulations in this chapter. The notice of registration renewal acceptance is issued concurrently because accreditation satisfies all annual registration renewal requirements. This subdivision is similar to NOP 205.510 (d).

**Subdivision (c)** stipulates that the department shall issue a notice of proposed suspension or revocation of accreditation to a certifying agent that does not satisfy all terms and conditions or non-compliances by the date specified on the notice of accreditation renewal. This is necessary because accreditation approval was issued in

good faith with the requirement and expectation that non-compliances would be satisfied, within a specified timeframe. Certifying agents may not operate ad infinitum while out of compliance with this chapter. This subdivision is similar to NOP 205.510(e).

**Subdivision (d)** stipulates that the department shall issue a written notice of denial of renewal of accreditation pursuant to section 10406 of this chapter if it finds the certifying agent unable to comply with the regulations of this chapter. The notice will specify the date the accreditation and registration shall expire and provide accreditation denial appeal instructions pursuant to section 10707 of this chapter. This is necessary because a certifying agent found unable to comply with the regulations of this chapter cannot reliably determine whether a certified operation is able to comply with this chapter. A written notice of denial avoids confusion by documenting the denial and the accreditation and registration expiration date. This also clarifies that an applicant that receives a denial is afforded due process with the opportunity to appeal the denial decision. This provision is consistent with other department regulations.

**Subdivision (e)** stipulates that the certifying agent that receives a denial of renewal shall transfer to the department or make available all records or copies of records concerning the certifying agent's certification activities pursuant to section 10408(a)(4) of this chapter. This is necessary because, depending upon the reason(s) for the denial of accreditation renewal, a certifying agent's records may be used to determine whether operations certified by the certifying agent may retain their OCal certification. This is comparable to NOP section 205.501 (c) (3).

Section 10408. Requirements for registration.

This section establishes registration requirements for all certifying agents to be granted the authority to certify an operation under the OCal Program. It also provides authority for the department to suspend or revoke certifying agent registration and ensure only certifying agents that are qualified and able to follow the requirements of this chapter remain registered. This section was added so that certifying agents accredited by the NOP can register and become certifying agents for the OCal Program without being accredited by the OCal Program.

**Subdivision (a)** lists the requirements a private entity or local jurisdiction registered as a certifying agent must meet in order to be registered by the department to certify under the OCal Program.

**Paragraph (4)** requires accreditation by the department as set forth in section 10401 of this chapter or possession of current and valid accreditation by the NOP pursuant to 7 CFR part 205. The scope of accreditation shall be comparable to scope of registration. This paragraph is necessary to establish that registration requires accreditation by the department or the NOP. The department accepts NOP accreditation because a certifying agent will certify operations based on the same criteria and using most of the same processes whether certifying under the department or the NOP. NOP-accredited certifiers are accredited within certain areas (scopes). The area(s) in which an NOP-accredited certifier is accredited to certify for the NOP must be comparable to the area for which the certifier certifies under the OCal Program.

**Paragraph (5)** requires that a certifying agent comply with, implement, and carry out all terms and conditions pursuant to this chapter. This paragraph is necessary because while accreditation establishes that a certifying agent is competent to determine whether an operation meets the requirements of this chapter, registration obliges a certifying agent, whether accredited by the department or the NOP, to comply with this chapter and department requirements.

**Paragraph (6)** requires annual renewal of registration and a report of activities as set forth in section 10410 of this chapter unless the certifying agent voluntarily ceases its certification activities, accreditation is suspended or revoked pursuant to 7 CFR part 205 or section 10705 of this chapter, as applicable, or its registration is suspended or revoked pursuant to section 10705 of this chapter. This paragraph is necessary because information required for annual registration renewal allows the department to assess whether a certifying agent is certifying consistently to OCal Program standards and to require minor corrections annually that will help to keep a certifying agent in compliance with the regulations.

**Paragraph (7)** requires transfer to the department and availability of all records or copies of records concerning the certifying agent's certification activities if the certifying agent dissolves or loses its registration. This is comparable to NOP section 205.501 (c) (3).

**Paragraph (8)** requires payment and fee submittal to the department in accordance with section 10601. This is necessary because registration will not be issued if payment is not received. This is consistent with the NOP and other department regulations. Further information for necessity of this section can be found in section 10601 of this chapter.

**Paragraph (9)** requires demonstration of the ability to fully comply with the requirements for registration set forth in this section. This paragraph clarifies that a certifying agent must demonstrate through its activities, which the department will evaluate through the registration and renewal processes, whether it is able to comply with the requirements of this chapter.

**Subdivision (b) (1-2)** specifies the registered certifying agent shall notify the department in writing of receipt of payment and amount paid for certification or recertification of the operation. The notification shall also contain the operation's business name, cannabis license number(s), license type(s), mailing address, physical address, telephone number, number of square feet certified, and products produced. Paragraph (1) specifies upon receipt of notification the department will issue a certification number. Paragraph (2) specifies that the certification number shall be valid from the date the department received notification. This is necessary because when the certifying agent contacts the department it will run a final check to make sure the operation is licensed and only the licensed premises is being certified. The department requires the amount paid for certification as a method of verifying that the annual renewal fee paid by certifying agents is correct. The department shall issue a certification number as a means of tracking certification and the certification number is valid from the date the notification was received by the department so that any department delay in issuing the number will not interfere with the ability of a licensed

operation in good standing with its licensing agency to do business as a certified operation.

**Subdivision (c)** specifies that the department may initiate suspension or revocation of a registration if the certifying agent fails to meet, conduct, or maintain registration requirements pursuant to this chapter. This provision is comparable to NOP section 205.660 (c).

**Subdivision (d)** stipulates that a certifying agent's registration will expire as scheduled unless renewed prior to the scheduled expiration date and that certifying agents with an expired registration must not perform certification activities under the regulations of this chapter. This subdivision clarifies that a certifying agent must proactively annually renew its registration. It also establishes that performing certification activities with an expired registration will violate the regulations of this chapter.

Section 10409. Registration.

This section establishes the process for registering to be a certifying agent under the department. This is necessary to establish processes that allow for administrative consistency, efficiency and transparency.

The preamble specifies that an accredited certifying agent's registration shall be submitted electronically or by mailing a hard copy to the department at OCal Registration, P.O. Box 942872, Sacramento, CA 94271-2872. This is necessary to establish how and to whom registration shall be submitted. The department is able to process registrations more quickly and accurately when information is provided on how to submit the application.

**Subdivision (a) (1-13)** specifies the items the application shall include: the registration fee, proof of accreditation by the NOP if applicable, business information, areas of operation, a fee schedule, a conflict of interest report, the most recent annual internal program review, any other information the department requires to assist in the department's evaluation of the application; and a declaration that all information provided in the application is true and correct. This information is necessary for the

department to identify the registrant and confirm eligibility for registration. This provision provides transparency by detailing required information and specifies that certifying agents accredited by OCal do not need to provide proof of accreditation.

**Subdivision (b)** specifies that an applicant for registration shall receive written notification of disqualification if registration is disqualified due to missing information or ineligibility. This establishes how a candidate will be provided notification of disqualification. A written notice avoids confusion and providing the reason(s) for disqualification makes the process transparent to the disqualified candidate.

**Subdivision (c) (1-2)** specifies that a certifying agent shall receive written notification of registration that includes the effective and expiration dates of the registration when the registration applicant has submitted the information required in section 10409 of this chapter and paid the required fee or fines in accordance with section 10601 of this chapter. This provision explains that certifying agent registration is conditioned upon receipt of the required fee and all required information. The information will be used to prepare for periodic site visits to registered certifying agents and may be referenced during a complaint investigation. Written notification that includes the registration effective and expiration dates avoids confusion.

**Subdivision (d)** establishes that a registration will be valid through January 1 of the following year and may be renewed as provided in section 10407 of this chapter unless the certifying agent voluntarily ceases its certification activities or registration is suspended or revoked pursuant to section 10705 of this chapter. This is necessary to establish the term of the registration and explains that it may be renewed and where to find renewal information within this chapter. The registration term is comparable to the NOP annual report requirement, section 205.510. The department determined it was reasonable not to allow registration to continue after suspension or revocation.

Section 10410. Registration renewal and reporting.

This section establishes the process for renewing registration and stipulates the items a registered certifying agent must submit to the department annually with its registration renewal. Established processes allow for administrative consistency, efficiency and

transparency, factors which engender ease and foster increased confidence in the process by regulated entities. This section also provides mechanisms for the department to meet its statutory requirement to be comparable to the NOP by assuring that all registered certifying agents are certifying consistently and in compliance with this chapter.

**Subdivision (a)** specifies that a registered certifying agent's registration renewal shall be due January 2 of each year and completed in a form specified by the department. If mailing a hard copy of the application to the department, send to: OCal Registration, P.O. Box 942872, Sacramento, CA 94271-2872. This is necessary to clarify that a registered certifying agent's renewal is always due January 2 and it must be submitted in a form specified by the department. The department is able to process registrations more quickly and accurately when submitted in a specific form. This is consistent with other department regulations.

**Subdivision (b)** specifies that the department will send the registered certifying agent a notice of pending expiration of registration approximately ninety (90) calendar days prior to the scheduled date of expiration. The notice will include the registration number, the date of expiration, and any outstanding fines. Fines shall be paid prior to consideration for renewal of registration, regardless of the due date for the fine. Sending a notice of impending expiration is in-line with other department regulations. The department determined that this is necessary to increase on-time registration renewals and decrease late fees and registrations that expire prior to renewal. It will also help the department staff to manage workflow if fewer registrations are subject to a rushed process.

**Subdivision (c)** specifies that failure to receive a notice of pending expiration of registration does not relieve a certifying agent of the obligation to renew registration as required. This is necessary to clarify that the notice of pending expiration is a courtesy and the registration will expire on the expiration date whether or not a registered certifying agent receives a notice. Therefore, certifying agents may not use this as an excuse for not submitting renewals.

**Subdivision (d) (1-2)** specifies that registration renewal shall be submitted prior to registration expiration and include the legal name of the registered certifying agent and the registration number and expiration date. This is necessary to clarify that registration renewal must be submitted prior to registration expiration and include basic information necessary for the department to begin processing a registration renewal.

**Paragraph (3)** specifies that a certifying agent shall submit a complete and accurate update of information pursuant to section 10409 of this chapter, or, if applying for concurrent accreditation and registration renewal, a complete and accurate update of information submitted pursuant to section 10402 (a) through (d) of this chapter. This is necessary so the department is verifying compliance by looking at the certifying agents' current policies.

**Paragraphs (4-5)** specify that the renewal application include the application fee and full payment of all outstanding fees, payments, or fines pursuant to section 10603(b) of this chapter. This is necessary because requiring pre-payment allows the department to better streamline its resources by avoiding the inefficiency of having department staff devote valuable time to delinquent fee collection, which helps to keep fees low.

**Paragraph (6)** requires a list of each cannabis operation granted certification during the previous year that includes the business name, license number(s), license type(s), mailing address, physical address, county, telephone number, number of square feet certified, and products. This is necessary because the department will list online, for public verification, all certifying agents, their certified operations, the certification date, and products certified. The department may also have need, if the certifying agent's accreditation or registration is suspended or revoked, to contact the certified operations.

**Paragraph (7)** requires a copy of the OSP and an inspection report for each cannabis operation granted certification during the previous year. This information is necessary because the department will use the inspection reports to assess certifying agent compliance and will work with certifying agents to correct any issues.



**Paragraph (8)** requires Certificates of Analysis (COA) for no less than 5 percent of the certifying agent's certified operations tested in the previous year as is required by section 10711 of this chapter. This is necessary to verify that a certifying agent tested least 5 percent of its certified operations during the previous year, as required. Testing 5 percent of certified operations is comparable to the NOP.

**Paragraph (9)** specifies that a certifying agent must submit any other information the department requires to assist in the department's evaluation of the application. This is necessary to clarify that the department may require a certifying agent submit additional information or information not specified in this section in order to verify compliance with this chapter.

**Subdivision (e)** specifies that registration renewals submitted before the expiration date printed on the notification of pending expiration will not expire prior to a renewal decision by the department. This is necessary to clarify that the registration of a certifying agent that submits its renewal prior to expiration shall not expire during processing. This prevents possible deleterious effects to a certifying agent or its certified operations if the department cannot process a registration renewal received prior to the noticed expiration date.

**Subdivision (f) and paragraph (1)** specify that in the event a renewal is not submitted prior to the expiration date printed on the notification of pending expiration, a registered certifying agent may submit a registration renewal up to 30 calendar days after the expiration date printed on the notification of pending expiration. Certifying agents with an expired registration shall not perform certification activities under this chapter. It also specifies that a late renewal will be subject to a fee of fifty (50) percent of the flat renewal fee to be paid in addition to the regular renewal fee. This is necessary to accommodate registered certifying agents unable to submit registration renewal prior to expiration. The late fee compensates the department for extra staff time associated with expedited processing and acts as a deterrent to late submission. Submission of renewals more 30 days past the expiration date is prohibited because a finite period for processing renewals creates program efficiencies that will be lost if renewal processing continues ad infinitum.

**Subdivision (g)** specifies that a registered certifying agent that does not submit a complete registration renewal to the department within 30 calendar days after the expiration date printed on the notification of pending expiration shall be ineligible for renewal and may register pursuant to section 10409 of this chapter. This is necessary to communicate the consequences of failure to renew registration and explain that a certifying agent may become registered again if its eligibility for renewal is lost.

**Subdivision (h) (1-2)** specifies that the department shall notify the registered certifying agent in writing if the renewal is incomplete and the reason(s) for the incompleteness. Paragraphs (1) and (2) specify that the department must receive the missing items no later than 15 calendar days from the date of the notification and that a certifying agent that fails to provide the missing items within the time allotted shall be disqualified and may register pursuant to section 10409 of this chapter. The department determined that allowing certifying agents to submit missing items is consistent with other department regulations. The 15 day timeframe allows a certifying agent adequate time to respond or submit the items, facilitates processing efficiency, and is consistent with other department regulations.

Section 10411. Registration renewal acceptance.

This section establishes the department's process for accepting a renewal of registration and notifying the registrant. Established processes allow for administrative consistency, efficiency and transparency, factors which engender ease and foster increased confidence in the process by regulated entities.

**Subdivision (a) (1-2)** specifies a registered certifying agent shall receive written notice of renewal acceptance that includes the registration number and the effective and expiration dates of the renewal when all registration information required in section 10410 of this chapter has been submitted and required fee(s) or fine(s) have been paid in accordance with section 10601 of this chapter. This subdivision is necessary to clarify what happens once the renewal has been approved.

**Subdivision (b)** specifies a registration shall be valid through January 1 of the following year and may be renewed as provided in section 10410 of this chapter unless the certifying agent voluntarily ceases its certification activities or registration is suspended or revoked pursuant to section 10705 of this chapter. This is necessary to establish the term of the registration once renewed.

Section 10412. Site evaluations for accredited and registered certifying agents.

This section establishes that a representative of the department will conduct at least one site evaluation during the period of accreditation and may also conduct site evaluations for registered certifying agents to ensure certifying agent compliance with the regulations in this chapter. This section is comparable to NOP section 205.508.

**Subdivision (a)** stipulates that site evaluations will be conducted for the purpose of examining the certifying agent's operation and evaluating its compliance with the regulations in this chapter. Site evaluations must include an on-site review of the certifying agent's certification procedures, decisions, facilities, administrative and management systems, and production operations certified by the certifying agent and they must be conducted by a representative of the department. This is comparable to NOP section 205.508 (a).

**Subdivision (b)** provides that one or more site evaluations will be conducted during the period of accreditation to determine whether an accredited certifying agent is complying with the general requirements set forth in section 10401 of this chapter. This is comparable to NOP section 205.508 (b).

**Article 6. Certification of Operations**

This article establishes requirements for operations that wish to sell, label or represent their products as OCal. The certification process will be carried out by registered certifying agents. This article is comparable to NOP subpart E, Certification.

Section 10500. General requirements for certification.

This section establishes general requirements for an operation that wishes to sell, label or represent its products as OCal to be certified under the department. These requirements are comparable to NOP section 205.400.

**Subdivision (a)** requires that the operation have an active and valid commercial cannabis license. This is necessary because an operation must hold a commercial cannabis license in order to legally cultivate or distribute cannabis in California.

**Subdivision (b)** requires an operation comply with the requirements of the department under this chapter. This is comparable to NOP section 205.400 (a).

**Subdivision (c)** requires an operation establish, implement, and annually update their OCal system plan. This is comparable to NOP section 205.400 (b).

**Subdivision (d)** requires an operation permit on-site inspections by the certifying agent or the department, with complete access to the operation, including noncertified areas, structures, and offices. This is comparable to NOP section 205.400 (c).

**Subdivision (e)** requires an operation maintain all records applicable to the certified operation for not less than 5 years beyond their creation and allow authorized representatives of the department and the registered certifying agent access to such records during standard business hours for review and copying to determine compliance with this chapter pursuant to section 10104 of this chapter. For the purposes of this section, standard business hours are 8:00am – 5:00pm (Pacific Time). This is comparable to NOP section 205.400 (d). Standard business hours are consistent with other department regulations.

**Subdivision (f)** requires an operation submit applicable fees to the certifying agent. This is comparable to NOP section 205.400 (e).

**Subdivision (g) paragraph (1)** requires an operation immediately notify the certifying agent concerning any application, including drift, of a prohibited substance to any field, production unit, site, facility, or product that is certified under the department.

**Paragraph (2)** requires operations to immediately notify the certifying agent concerning

any change in a certified operation or any portion of a certified operation that may affect its compliance with this chapter. **Paragraph (3)** requires an operation to immediately notify the certifying agent of any change in commercial cannabis license status that would make the operation ineligible for certification. Paragraphs (1) and (2) are comparable to NOP section 205.400 (f). Paragraph (3) was added pursuant to subdivision (a) of this section.

Section 10501. Application for certification.

This section establishes certification application requirements for operations that wish to sell, label, or represent their products as OCal. It is comparable to NOP section 205.401 with added requirements pursuant to California commercial cannabis regulation.

**Subdivision (a)** requires submission of the OCal system plan (OSP), which is specified in section 10201 of this chapter. The OSP has six components and is the basis on which the certifying agent will determine if an operation complies with or can comply with the requirements of certification. The OSP is unique to the specific characteristics of each operation. This is comparable to NOP section 205.401(a).

**Subdivision (b)** requires submission of contact information for the person completing the certification application. This subdivision will allow the certifying agent and department to communicate with the person who submitted the paperwork on behalf of the licensee. This person may or may not be the same person as listed in subdivision (d). This is comparable to NOP section 205.401(b).

**Subdivisions (c) and (d)** require submission of business and contact information for the commercial cannabis licensee. This subdivision was added because the department must verify that the potential certified operation holds a valid commercial cannabis license.

**Subdivision (e)** requires submission of a list of all valid commercial cannabis license types the commercial cannabis licensee holds and the associated license number(s) from the licensing authority. This subdivision was added to allow the department to

cross reference information from the State commercial cannabis cultivation licensing agency.

**Subdivision (f)** requires submission of information regarding the history of any previous certification attempts and outcomes. This is necessary because a certifying agent must verify an applicant has corrected any previous non-compliances prior to certification. This is comparable to NOP section 205.401 (c).

**Subdivision (g)** requires submission of a statement allowing the department to obtain all certification information from a registered certifying agent. This is necessary to ensure the department can access all information regarding an applicant for certification. This is comparable to NOP section 205.401(d).

**Subdivision (h)** requires submission of other information deemed necessary, by the department or registered certifying agent, to determine compliance with this chapter. This is necessary so the certifying agent or department has the flexibility to request information not listed above but needed to verify compliance with this chapter.

Section 10502. Review of certification application.

This section establishes what must be reviewed and verified by the certifying agent prior to certification and details what a certifying agent must provide to the applicant during the certification review process. This is comparable to NOP section 205.402.

**Subdivision (a) (1-3)** requires a certifying agent review the application to ensure completeness and to determine whether the applicant appears to comply or may be able to comply with the regulations of this chapter. Review of the application also includes verification of certification history and if there were any notices of non-compliances, evidence to show that the issues were corrected. This is comparable to NOP sections 205.402 (a) (1-3).

**Subdivision (a) (4)** requires a certifying agent schedule and conduct an on-site inspection once it has been determined that the application shows the applicant is in compliance with the requirements of certification. This is comparable to NOP section 205.402 (a) (4).

**Subdivision (b) (1-3)** requires that a certifying agent communicate findings after the application review and to provide any copies of the on-site inspection report and test results for any samples taken during the on-site inspection. This is comparable to NOP section 205.402 (b) (1-3).

**Subdivision (c)** provides that the applicant may withdraw a certification application any time but will be liable for the costs of services provided up to the time of withdrawal of its application. This provision is necessary to ensure that applicants can withdraw but that a certifying agent will be reimbursed for the time spent reviewing the application prior to withdrawal. An applicant that voluntarily withdraws its re-certification application prior to the issuance of a notice of non-compliance will not be issued a notice of non-compliance. This is comparable to NOP section 205.402 (c). The word “re-certification” was added for clarity; the department determined an operation that is not certified cannot be deemed noncompliant.

Section 10503. On-site inspections.

This section establishes that a certifying agent must conduct an on-site inspection prior to certification or re-certification, the components of the on-site inspection, and information a certifying agent must provide to the applicant during inspection. This is comparable to NOP section 205.403.

**Subdivision (a) (1)** requires a certifying agent conduct an initial on-site inspection of each unit, facility, and site that produces OCal cannabis and that is included in an operation for which production certification is requested. Certifying agents must also annually conduct an on-site inspection for each certified operation that produces non-manufactured OCal cannabis products for the purpose of determining whether to approve the request for certification or whether the certification of the operation should continue. This is comparable to NOP section 205.403 (a).

**Subdivision (a) (2) (A-C)** provides that certifying agent may conduct additional on-site inspections to determine compliance and also as requested by the department. Additional inspections can be announced or unannounced. This subdivision is

necessary so a certifying agent can verify the operation's compliance or ability to comply with this chapter. It is comparable to NOP section 205.403 (a) (2) (i-iii).

**Subdivisions (a) (2) (D)** stipulates that if any deficiencies are found during an on-site inspection, the certifying agent must follow-up with an on-site inspection. This is necessary because while certified operations must report corrections, the certifying agent must evaluate the correction and attest to its adequacy and to ensure operations are in compliance. This subdivision was added to support program integrity by making sure the certifying agent is consistently following up on any deficiencies found during an inspection.

**Subdivision (b) (1-2)** stipulates that the on-site inspection must follow the review of the certification application, that the on-site inspection will be conducted when an authorized representative of the operation who is knowledgeable about the operation is present, and that the on-site inspection will be conducted at a time when land, facilities, and activities that demonstrate the operation's compliance with or ability to comply with the applicable provisions of this chapter can be observed, except that this requirement does not apply to unannounced on-site inspections. This subdivision is necessary because it clarifies that the on-site visit will be scheduled after review of the application. It also establishes that a person knowledgeable about the operation must be on-site during the inspection to answer the inspector's questions. This section is comparable to NOP sections 205.403 (b) (1-2) but differs slightly in that the NOP requirement that the on-site inspection be conducted within "a reasonable time" has been removed due to varying interpretations of "reasonable." Due to potential unintended consequences of replacing "reasonable" with a more specific timeframe the department determined that since certification will not be granted and certifying agents will not be paid until after the on-site inspection is completed, certifying agents will be motivated to conduct the inspection in a timely manner and as such the regulations do not need to specify a timeframe.

**Subdivision (c) (1-3)** stipulates the on-site inspection must verify: the operation's compliance or ability to comply with this chapter; that the information, including the OCal



system plan, accurately reflects the practices used or to be used by the applicant for certification or by the certified operation; and that prohibited substances have not been and are not being applied to the operation through means which, at the discretion of the certifying agent, may include the collection and testing of soil, water, waste, seeds, plant tissue, plant, or cannabis product samples. This provision is necessary so that the inspector has the tools to verify compliance with this chapter and is comparable to NOP section 205.403 (c) (1-3).

**Subdivision (d)** stipulates the inspector must conduct an exit interview with an authorized representative of the operation who is knowledgeable about the operation to confirm the accuracy and completeness of the observations and information gathered during the on-site inspection. This provision is necessary so the applicant is aware of the inspector's findings and to ensure any miscommunications, misunderstandings, or inaccuracies in the report are corrected while the inspector is still onsite and before the report is transmitted to the certifying agent. This is comparable to NOP section 205.403 (d).

**Subdivision (e) (1-2)** stipulates the inspector must provide the operation's authorized representative with a receipt for any samples taken by the inspector, the inspector will not be charged for samples taken, and a copy of the on-site inspection report and any test results will be sent to the inspected operation by the certifying agent. This is comparable to NOP section 205.403 (e) (1-2).

Section 10504. Granting certification.

This section establishes the process for granting certification to an operation. This is comparable to NOP section 205.404 except the issuance of a certification number by the department has been added. This is necessary for tracking purposes and to make sure the potential certified operation holds a valid commercial cannabis license from a State commercial cannabis licensing agency.

**Subdivision (a)** stipulates that upon completion of the initial on-site inspection, the registered certifying agent shall review the on-site inspection report, the results of any

analyses for substances conducted, and any additional information requested from or supplied by the applicant. If the registered certifying agent determines that the OCal system plan and all procedures and activities of the applicant's operation are in compliance with the requirements of this chapter and that the applicant is able to conduct operations in accordance with the plan, the registered certifying agent shall begin granting certification. The certification may include requirements for the correction of correctable non-compliances within a specified time period as a condition of continued certification. The operation is certified upon issuance of the certificate. This is comparable to NOP section 205.404 (a).

**Subdivision (b)** specifies the department will issue each operation a certification number pursuant to 10408 (b). This section was added for tracking purposes and so the department can verify that the potential certified operation holds a valid commercial cannabis license from a state licensing agency before it's certified.

**Subdivision (c) (1-6)** specifies the information that will be printed on a certificate of OCal operation, including the name and premises address of the certified operation, the department-issued certification number, the effective date of certification, most recent inspection date, the active and valid commercial cannabis license numbers and license type names associated with the OCal operation, and the name, address, and telephone number of the certifying agent. This is necessary so all OCal certificates will provide the same information for verifying certification. This is comparable to NOP section 205.404 (a) but differs slightly in that it will require the license numbers and types of licenses rather than categories of organic operation which do not apply to this program.

**Subdivision (d)** stipulates that once an operation is certified a production operation's OCal certification continues in effect until surrendered by the operation or suspended or revoked by the certifying agent or the department or the cannabis license is no longer active or valid. This is comparable to NOP section 205.404 (c).

**Subdivision (e)** stipulates the OCal certificate shall be prominently displayed by the certified operation where it can be viewed by state or local agencies. This subdivision was added to establish the department's expectation that a certified operation will post

its certificate so that any state or local representative on a routine inspection knows the facility or a portion of the facility is certified OCal and may readily determine the validity of the certification. This protocol parallels similar department regulations.

Section 10505. Denial of certification.

This section establishes the process for denying a certification if the certifying agent determines the applicant is not able to comply or is not in compliance with this chapter. This is comparable to NOP section 205.405.

**Subdivision (a) (1-3)** specifies when a certifying agent has reason to believe an applicant is not able to comply or is not in compliance with the requirements of this chapter the certifying agent shall issue a written notice of non-compliance. The notification of non-compliance will describe each non-compliance, the facts on which the notification is based, and the date by which rebuttal or correction of each non-compliance must be made. This is comparable to NOP section 205.405 (a) (1-3).

**Subdivision (b) (1-3)** specifies the actions an applicant may take in response to a notice of non-compliance. This includes correcting the non-compliances and submitting, by the date specified, a description of correction and supporting documentation to the certifying agent or submitting a new application to another certifying agent along with the notification of non-compliance and a description of correction of the non-compliances and supporting documentation. Or submitting, by the date specified, written information to the issuing certifying agent to rebut the non-compliance described in the notification of non-compliance. This is comparable to NOP section 205.405 (b) (1-3).

**Subdivision (c) (1-3)** stipulates that a certifying agent must evaluate the response of the applicant and depending on whether the corrective action or rebuttal is sufficient, the certifying agent will issue an approval of certification or issue a written notice of denial of certification. If the applicant does not respond to the notification of non-compliance, the certifying agent will issue a written notice of denial of certification. The certifying agent

will inform the department of the notice of approval or denial. This is comparable to NOP section 205.405 (c) (1-3).

**Subdivision (d) (1-3)** stipulates the information that must be included on a denial of certification, including the right to reapply for certification, request mediation, or file an appeal. This is comparable to NOP section 205.405 (d) (1-3).

**Subdivision (e)** stipulates that the applicant for certification who has received a written notification of non-compliance or a written notice of denial of certification may apply for certification again at any time with any registered certifying agent pursuant to sections 10501 and 10505(e) of the regulations. When such applicant submits a new application to the registered certifying agent other than the agent who issued the notification of non-compliance or notice of denial of certification, the applicant for certification shall include a copy of the notification of non-compliance or notice of denial of certification and a description of the actions taken, with supporting documentation, to correct the non-compliances noted in the notification of non-compliances. This is comparable to NOP section 205.405 (e).

**Subdivision (f)** stipulates a certifying agent that receives a new application for certification, which includes a notification of non-compliance or a notice of denial of certification, shall treat the application as a new application. This is comparable to NOP section 205.405 (f).

**Subdivision (g)** provides that a certifying agent may deny certification if there is reason to believe an applicant for certification has willfully made a false statement or otherwise purposefully misrepresented the applicant's operation or its compliance with the certification requirements pursuant to this chapter. This is comparable to NOP section 205.405 (g).

Section 10506. Continuation of certification.

This section establishes the requirements for a certified operation to continue certification. Certification does not expire, rather operations must be re-certified each year. Per the NOP's Preamble to the Regulations, the NOP determined that if

certifications were to expire this may result in termination of an operation's certification if the certifying agent is unable to renew certification in a timely manner, which would have deleterious consequences for the operation. This section is comparable to NOP section 205.406.

**Subdivision (a) (1-4)** stipulates that to continue certification, a certified operation shall annually pay the certification fees and submit the following information, as applicable, to the registered certifying agent: an updated OCal system plan which includes a summary statement supported by documentation and detailing any deviations from, changes to, modifications to, or other amendments made to the OSP during the previous year; any additions or deletions to the previous year's OSP intended to be undertaken in the coming year, detailed pursuant to section 10201 of this chapter; any additions to or deletions from the information required pursuant to section 10501 of this chapter; an update on the correction of minor non-compliances previously identified by the registered certifying agent as requiring correction for continued certification; and other information as deemed necessary by the registered certifying agent to determine compliance with this chapter. This is comparable to NOP section 205.406 (a) (1-4).

**Subdivision (b)** stipulates that following receipt of the information specified in paragraph (a) of this section, the registered certifying agent shall arrange and conduct an on-site inspection of the certified operation pursuant to section 10503 of this chapter, except when it is impossible for the registered certifying agent to conduct the annual on-site inspection following receipt of the certified operation's annual update of information. In such cases the registered certifying agent may allow continuation of certification and issue an updated certificate of organic operation on the basis of the information submitted and the most recent on-site inspection conducted during the previous 12 months provided that the annual on-site inspection, required pursuant to section 10503 of this chapter, is conducted within the first 6 months following the certified operation's scheduled date of annual update. This is comparable to NOP section 205.406 (b).

**Subdivision (c)** stipulates if the registered certifying agent has reason to believe, based on the on-site inspection and a review of the information specified in section 10504 of

this chapter, a certified operation is not complying with the requirements of this chapter, the registered certifying agent shall provide a written notification of non-compliance to the operation pursuant to section 10703(b) of this chapter. This is comparable to NOP section 205.406 (c).

**Subdivision (d)** stipulates if the registered certifying agent determines the certified operation is in compliance with this chapter, the registered certifying agent shall issue an updated certificate of OCal operation pursuant to section 10504 of this chapter. This is comparable to NOP section 205.406 (d).

## **Article 7. Fees**

This article establishes and defines fees and other charges for accreditation, registration, certification, and renewals and the process for paying fees and other charges. The department is proposing fees for accreditation and accreditation renewal, and registration and registration renewal. The department is proposing other charges for accreditation as described in section 10600 of this chapter.

### Section 10600. Fees and other charges for accreditation and accreditation renewal.

This section establishes the fees for accreditation and accreditation renewal. It is necessary to facilitate transparency.

**Subdivision (a)** stipulates a non-refundable application fee of \$500 shall be due at the time of application. This fee will be applied to the total amount due for accreditation. This is necessary to cover the initial application review and ensure the applicant is serious about being accredited. This is comparable to NOP section 205.640 (a) (3).

**Subdivision (b)** specifies the department shall charge an hourly fee for service of \$55 for time spent on accreditation or accreditation renewal. Accreditation fees are based on the time required to render the service provided calculated to the nearest 15-minute period, including the review of applications and accompanying documents and information, evaluator travel time, the conduct of on-site evaluations, review of annual reports and updated documents and information, and the time required to prepare

reports and any other documents in connection with the performance of service. The hourly rate for audit verification services covers the hourly salary plus benefits for current Environmental Scientists within the Department. It is also commensurate with the department's 2019 Price Schedule for Assessment Audits for a single commodity audit.

**Subdivision (c)** specifies that travel and per diem charges shall be administratively determined by the California Department of Human Resources, 2 CCR sections 599.615 to 599.638.1, Traveling Expenses. Per diem charges to the applicant will cover the same period of time for which the evaluator(s) receives per diem reimbursement. The accreditation or accreditation renewal applicant will not be charged a new travel or per diem rate without notification before the service is rendered. This is necessary because the department will perform certifying agent site visits during accreditation to cover the department's per diem costs. This is comparable to NOP sections 205.640 (b) and (c).

**Subdivision (d)** specifies that when costs other than costs specified in paragraphs (a), (b), and (c) of this section are associated with providing the services, the accreditation or accreditation renewal applicant will be charged for these costs. Such costs include but are not limited to equipment rental, photocopying, delivery, facsimile, telephone, or translation charges incurred in association with accreditation services. The amount of the costs charged will be determined administratively by the department. This is necessary because there may be unforeseen charges associated with an accreditation and the applicant must bear all costs associated with accreditation. This is comparable to NOP section 205.640 (d).

**Subdivision (e)** stipulates the balance due upon completion of accreditation or accreditation renewal shall be billed to the applicant and due to the department ten (10) calendar days after the bill or notice date. Fees shall be collected from applicant prior to issuance of accreditation or accreditation renewal. The department determined 10 calendar days to be sufficient and reasonable to ensure process efficiency. This is commensurate with other department regulations. Requiring pre-payment allows the

department to better streamline its resources by avoiding the inefficiency of having department staff devote valuable time to delinquent fee collection.

Section 10601. Fees for registration and registration renewal.

This section establishes fees for registration and registration renewal. Registration fees will cover the program's operating costs.

**Subdivision (a) (1-2)** specifies that fees for initial registration shall be due at registration and initial registration shall expire on January 1 of the year following initial registration. The initial registration fee shall be a flat fee of \$1,000 if a certifying agent is registered during the first three quarters of 2021, or \$750 if a certifying agent is registered during the final quarter of 2021. The initial registration fee shall be a flat fee of \$5,000 if a certifying agent is registered during the first three quarters of 2022 or subsequent years, and \$3,000 if a certifying agent is registered during the final quarter of 2022 or subsequent years. This is necessary because the lower 2020 fee is intended to incentivize OCal Program participation during the first year, which will be crucial to the OCal program's success. None of the initial registration fees are intended to cover Departmental operating costs associated with ensuring registered certifying agent compliance and enforcement. Per the program's economic analysis, an initial fee that covers these costs would be prohibitive and act as a barrier to entry.

**Subdivision (b)** specifies an annual registration renewal fee of 26 percent of gross revenue earned from certification during the previous calendar year or a flat fee of \$100, whichever is higher. This is necessary because the department proposes charging certifying agents a percentage of their gross revenue from certification during the previous year, akin to a franchise fee, rather than a flat fee or a sliding scale fee based on total area certified as either of these schemes may disadvantage or advantage some certifiers and certified operations. The department determined this scheme provides all certifying agents a fair and equal chance of succeeding. For more information regarding how this fee was determined, please see the economic analysis portion of this Initial Statement of Reasons



**Subdivision (c)** specifies that fees and other charges shall be collected from applicants prior to issuance of initial registration and registration renewal. Requiring pre-payment allows the department to better streamline its resources by avoiding the inefficiency of having department staff devote valuable time to delinquent fee collection, which helps to keep fees low.

Section 10602. Payment of fees and other charges.

This section requires that fees shall be paid in accordance with sections 10600 or 10601 and pursuant to the directions on the bill or notice. This is necessary for clarity because each section of these regulations that requires fees includes payment instructions but regulated entities must also follow the payment instructions included on the bill for accreditation.

**Article 8. Compliance**

The purpose of this article is to make clear the compliance activities, administrative actions, and related processes the department undertakes to meet its statutory obligation under Bus. and Prof. Code 26062 to be comparable to the NOP.

This article is necessary to provide a clear compliance structure and to ensure the department is consistent and transparent in its application of administrative remedies associated with violations of the statute and regulations. This article is consistent with other department regulations.

Section 10700. General.

This section differs from NOP section 205.660, General, in that it does not include subparts (b) and (c) concerning initiation of suspension or revocation proceedings against certified operations and certifying agents and mediation for certified operations. Subparts (b) and (c) have been included in other sections of this article, as indicated.

This section specifies that the department may inspect, audit, review or investigate a certified operation's or a certifying agent's compliance with this chapter without prior notice.

This section is necessary because it makes clear the department's authority to conduct these compliance and enforcement activities in order to fulfill its oversight role. The department oversees certifying agent compliance through the accreditation (sections 10401 through 10406 of this chapter), accreditation renewal (section 10407 of this chapter), registration (sections 10408 through 10410 of this chapter), and annual registration renewal (sections 10411 and 10412 of this chapter) processes.

These processes include review of a certifying agent's processes and procedures, audits of its records, a site visit (section 10413 of this chapter) at which a department representative may audit and review a certifying agent's records and processes connected with certification, may speak with employees connected with certification, and may audit random records, and a site visit to one or more of a certifying agent's certified operations, as selected by the department.

The department will perform many of the same activities during the investigation of a certifying agent it has reason to believe is not in compliance with the regulations in this chapter or in response to a complaint against a certifying agent. The department is also ultimately responsible for overseeing compliance of certified operations and may investigate a certified operation that it believes may be out of compliance with this chapter in order to fulfill its oversight obligation.

The department will conduct random spot checks and take field samples to confirm a certified operation's compliance in connection with an investigation, when necessary. The department has also identified random sampling and discussions with certified operations as activities that will be especially important at the beginning of the program to help the department identify certification inconsistencies or certifying agent misinterpretations that indicate either gaps in the regulations or need for additional training.

Section 10701. Adverse action.

This section establishes the adverse actions that may be taken by the department or by a certifying agent, the administrative penalties that may accompany an action, and how a notice must be sent to a recipient. This section has been added to these regulations because the department determined that outlining and explaining all adverse actions within one section provides additional clarity and transparency and supports a robust enforcement program.

**Subdivision (a) (1-4)** specifies that the department may initiate (one or a combination of) Notice of Non-compliance, Notice of Proposed Suspension of no less than six (6) months, Notice of Proposed Revocation or Notice of Suspension or Revocation against a registration, accreditation, or certification when the department has reason to believe that a certifying agent or a certified operation has violated or is not in compliance with this chapter, when a registered certifying agent fails to take appropriate action to enforce this chapter. The department determined that this subdivision is necessary for establishing when and how an adverse action may be taken against the certified operation or the registered certifying agent. The department, in consultation with the SOP, determined that a suspension term shorter than 6 months is an ineffective deterrent for a non-compliant certified operation or certifying agent.

**Subdivision (b) (1-3)** specifies the registered certifying agent may initiate (one or a combination of) Notice of Non-compliance, Notice of Proposed Suspension, or Notice of Proposed Revocation. This is necessary to clarify the actions a certifying may initiate against a certified operation.

**Subdivision (c) (1-2)** specifies the department may initiate suspension, for a term of no less than six (6) months, or revocation of a certification when the department has reason to believe a certified operation has violated or is not in compliance with this chapter and the registered certifying agent fails to take appropriate action to enforce this chapter. This subdivisions necessary to establish that a term of suspension is no less than 6 months and that the department may directly exercise its authority over potentially non-compliant certified operations in the absence of the certifying agent. The

department, in consultation with the SOP, determined that a suspension term shorter than 6 months is an ineffective deterrent for a non-compliant certified operation or certifying agent.

**Subdivision (d)** specifies the department may initiate suspension or revocation of an accreditation or registration if the registered certifying agent fails to meet, conduct, or maintain accreditation or registration requirements pursuant to this chapter. The suspension term will be no less than six (6) months. This subdivision clarifies the actions the department may take against a non-compliant registered certifying agent. The department, in consultation with the SOP, determined that a suspension term shorter than 6 months is an ineffective deterrent for a non-compliant certified operation or certifying agent.

**Subdivision (e) (1-4)** specifies the department may levy administrative fines of up to \$20,000 on certified operations and \$25,000 in certifying agents for violating this chapter except that the department may levy fines of up to \$17,952 per violation for knowingly labeling or selling a product as OCal or Organic except in accordance with the Organic Foods Production Act of 1990. The fine amount was determined based upon feedback from stakeholders.

**Subdivision (e) (5-6)** specifies the department shall receive payment of fine no later than 30 calendar days from the date of notification unless the fine is being appealed and that all fines shall be paid prior to consideration for reinstatement or renewal of accreditation, regardless of due date. The department determined that 30 days provides sufficient time for payment of fines and contributes to processing efficiency. This timeframe is consistent with other department regulations.

**Subdivision (f)** specifies that all correspondence issued pursuant to sections 10702, 10703, 10704, and 10705 of this chapter and responses to correspondence shall be sent to the recipient's place of business via a delivery service which provides dated return receipts. This is necessary because the recipient's place of business is generally a physical street address and the recipient or an agent of the recipient will likely be available to receive and sign for correspondence delivered by a delivery service. Return

receipts are necessary so the department can verify that correspondence sent to the recipient was received at the recipient's place of business.

Section 10702. Investigation of certified operations.

This section establishes a certifying agent's authority to investigate certified operations and makes clear the activities the department expects a certifying agent to perform during and pursuant to investigation.

This section expands upon NOP section 205.661 by adding language comparable to the California Organic Food and Farming Act and the department's commercial cannabis cultivation licensing regulations for consistency.

**Subdivision (a)** The registered certifying agent shall investigate suspected non-compliance and credible complaints of non-compliance with this chapter concerning cultivation or distribution operations certified as OCal by the registered certifying agent. This subdivision establishes a certifying agent's authority to investigate a certified operation and stipulates that a certifying agent must investigate if the certifying agent expects non-compliance or receives a complaint regarding one of its certified operations. This is comparable to NOP section 206.661 (a) except that the department requires a certifying agent to investigate complaints rather saying they may investigate complaints. This is necessary because a certifying agent works with a certified operation to create its OSP and decides whether the OSP complies with this chapter. Therefore, if there is reason to believe a certified operation is not in compliance with this chapter or there has been a complaint against a certified operation, it is the responsibility of the certifying agent, who is knowledgeable about the certified operation, to perform the investigation.

**Subdivision (b)** specifies the registered certifying agent must notify the department of all compliance proceedings and actions taken pursuant to this chapter. This is necessary because the department tracks and reports all compliance activities to the public and because the department is ultimately responsible for revocation so it should

be aware of compliance actions at earlier stages. This is comparable to NOP section 205.661 (a).

**Subdivision (c)** specifies the department may assign a complaint against a certified operation to its registered certifying agent for investigation and specify a timeframe during which the investigation shall take place. This is necessary to establish the department's authority to assign a complaint against a certified operation to its registered certifying agent. The time frame will be determined on a case by case basis between the department and the registered certifying agent. This is necessary because it is dependent on the nature of the violation and investigation and cannot be determined before the department knows the nature of the complaint.

**Subdivision (d)** stipulates the registered certifying agent shall investigate a complaint against a certified operation within the specified timeframe. This is necessary because the timeframe will be developed based upon agreement between the department and the registered certifying agent and the registered certifying agent needs to know that the department will hold them accountable for abiding by the agreement. In addition, if the expected non-compliance may lead to exclusion from sale as OCal the certified operation should be investigated as quickly as possible for consumer protection and reliability that the OCal labeled is not being misused.

**Subdivision (e)** Specifies the registered certifying agent may refer an investigation back to the department, within the specified timeframe, if the registered certifying agent lacks resources, expertise, or for some other reason beyond its control is unable to resolve the case. The registered certifying agent shall provide the department written explanation for its inability to reach a conclusion along with all findings. This is comparable to the SOP regulations 3 CCR section 1391.3 (c), except those items in (1) through (6) that do not apply to this program are not included here and the written explanation requirement was added. This is necessary to clarify that a certifying agent may refer a case it is unable to resolve back to the department and avoid adverse action so long as they provide notice to the department. The department will use the written explanation to evaluate the certifying agent's actions and to determine how it should proceed.

**Subdivision (f)** specifies the registered certifying agent shall, in a timely manner, take appropriate action against a certified operation. This is necessary because if a certified operation is found not in compliance with this chapter the certifying agent should immediately start compliance proceedings in order to ensure the certified operation either fixes its non-compliances in a timely manner or is removed from the OCal Program as quickly as possible. This is consistent with the SOP regulations 3 CCR section 1391.3 (d), second sentence.

**Subdivision (g)** stipulates that if the registered certifying agent fails to comply with paragraphs (a) through (f) of this section, the department will resolve the complaint or take appropriate action against a certified operation and may begin non-compliance proceedings against the registered certifying agent pursuant to section 10704 of this chapter. This is necessary to establish the department's authority to investigate suspected non-compliance and complaints without the certifier, to clarify that the department will only investigate suspected non-compliances and complaints without the certifier if the certifier does not investigate, and to establish that a certifying agent that does not investigate suspected non-compliances and complaints is out of compliance with this chapter.

Section 10703. Non-compliance procedures for certified operations.

This section explains when and how a notice of non-compliance may be issued. Subdivision (d) differs from the NOP regulations in that there is a 6-month minimum suspension term and the term is specified upon suspension. Subdivision (g) (1-3) differ from the NOP regulations in that when a previously certified operation is eligible for certification after suspension, the operation will apply directly to the certifying agent rather than requesting reinstatement by the department. In addition, the period of ineligibility may not be reduced at the department's or the certifying agent's discretion.

**Subdivision (a)** specifies the registered certifying agent shall notify the certified operation and the department of any denial of certification or proposed fine, suspension or revocation of a certification pursuant to this chapter.

**Subdivision (b) (1-3)** specify a written notification of non-compliance shall be sent to the certified operation when an inspection, audit, or review of a certified operation by the registered certifying agent or the department reveals any non-compliance with this chapter and provides that the notification will include a description of each non-compliance; the facts upon which the notification of non-compliance is based; and the date by which the certified operation shall rebut or correct each non-compliance and submit supporting documentation of each such correction when correction is possible. This is comparable to NOP section 205.662 (a) (1-3).

**Subdivision (c)** specifies the registered certifying agent or the department, as applicable, shall send the certified operation a written notification of non-compliance resolution when the certified operation demonstrates that each non-compliance has been resolved. This is comparable to NOP section 205.662 (b).

**Subdivision (d) (1-5)** specify the registered certifying agent or department official shall send the certified operation a written notification of proposed suspension or revocation of certification of the entire operation or a portion of the operation, as applicable to the non-compliance, when rebuttal is unsuccessful or correction of the non-compliance is not completed within the prescribed time period. When correction of a non-compliance is not possible, the notification of non-compliance and the proposed suspension or revocation of certification may be combined in one notification. It also stipulates that the notification shall include the reasons for the proposed suspension or revocation; the proposed effective and expiration dates of such suspension; the proposed effective date and impact of a revocation on future eligibility for certification; the administrative fine amount; and the right to request mediation pursuant to section 9704 of this chapter or request an appeal pursuant to section 9706 of this chapter. This is comparable to NOP section 205.662 (c) (1-4). The minimum six month suspension term was added so the minimum suspension term will be long enough to be effective, to provide transparency to suspended entities by specifying the suspension term at the time of suspension, and to allow entities to become certified when the suspension term ends rather than having to apply to the department for reinstatement.



**Subdivision (e)** specifies, notwithstanding paragraph (b) of this section, if the registered certifying agent or the department has reason to believe that a certified operation has willfully violated the Act or regulations in this chapter, the registered certifying agent or the department shall send the certified operation a notification of proposed suspension or revocation of certification of the entire operation or a portion of the operation, as applicable to the non-compliance. This is comparable to NOP section 205.662 (d).

**Subdivision (f) (1)** specifies if a certified operation fails to correct the non-compliance, to resolve the issue through rebuttal, or to file an appeal of the proposed suspension or revocation of certification, the department shall send the certified operation a written notification of suspension or revocation that includes the amount of the administrative fine, if applicable. It also specifies that a certifying agent the department must not send a notification of suspension or revocation to a certified operation that has requested mediation pursuant to section 205.663 of this chapter or filed an appeal pursuant to section 205.681 of this chapter, while final resolution of either is pending. This is comparable to NOP section 205.662 (e) (1-2).

**Subdivision (g) (1)** lists documents required for certification upon expiration of the suspension term. This is necessary first to establish that an operation that was suspended may be re-certified when the suspension ends and to clarify the documents a certifying agent must receive in order to certify an operation that was previously suspended.

**Subdivision (g) (2)** specifies when items in (g)(1) above have been satisfied the registered certifying agent may issue a new OCal certificate to the operation according to section 10505 of this chapter. This is necessary to establish the certifying agent's authority to issue a new certification when all requirements are met.

**Subdivision (g) (3)** specifies a certified operation whose certification has been revoked will be ineligible to receive certification for a period of 5 years following the effective date of such revocation. This is necessary to establish the penalty period for revocation. This

penalty period is based on that assigned for revocations by the NOP. This is comparable to NOP section 205.662 (f) (2).

Section 10704. Mediation for certified operations.

This section provides that any dispute with respect to denial of certification or proposed suspension or revocation of certification under this chapter may be mediated at the request of the applicant for certification or certified operation and with acceptance by the certifying agent. Mediation must be requested in writing to the applicable certifying agent. If the certifying agent rejects the request for mediation, the certifying agent must provide written notification to the applicant for certification or certified operation. The written notification must advise the applicant for certification or certified operation of the right to request an appeal, pursuant to section 10706 of this chapter, within 30 days of the date of the written notification of rejection of the request for mediation. If mediation is accepted by the certifying agent, such mediation must be conducted by a qualified mediator mutually agreed upon by the parties to the mediation. The parties to the mediation must have no more than 30 days to reach an agreement following a mediation session. If mediation is unsuccessful, the applicant for certification or certified operation must have 30 days from termination of mediation to appeal the certifying agent's decision pursuant to section 10706 of this chapter. Any agreement reached during or as a result of the mediation process must be in compliance with the regulations in this chapter. The department may review any mediated agreement for conformity to the regulations in this chapter and may reject any agreement or provision not in conformance with this chapter. This section is comparable to NOP section 205.663.

Section 10705. Non-compliance procedure for certifying agents.

This section explains when and how a notice of non-compliance may be issued to a certifying agent, remedies for non-compliance, when a certifying agent is eligible for reinstatement, and the procedures for reinstatement. Subdivision (g) differs from the NOP regulations in that there is a 6-month minimum suspension term and all fines are due prior to reinstatement.

**Subdivision (a) (1-3)** specifies a written notification of non-compliance shall be sent to the registered certifying agent when an inspection, audit, or review of the registered certifying agent or the department reveals any non-compliance with this chapter and provides that the notification will include a description of each non-compliance; the facts upon which the notification of non-compliance is based; and the date by which the certified operation shall rebut or correct each non-compliance and submit supporting documentation of each such correction when correction is possible. This is comparable to NOP section 205.665 (a).

**Subdivision (b)** specifies the department, as applicable, shall send the registered certifying agent a written notification of non-compliance resolution when the registered certifying agent demonstrates that each non-compliance has been resolved. This is comparable to NOP section 205.665 (b).

**Subdivision (c) (1-5)** specifies the department shall send the registered certifying agent a written notification of proposed suspension or revocation of accreditation or registration when rebuttal is unsuccessful or correction of the non-compliance is not completed within the prescribed time period. When correction of a non-compliance is not possible, the notification of non-compliance and the proposed suspension or revocation of accreditation or registration may be combined in one notification. It also stipulates that the notification shall include the reasons for the proposed suspension or revocation; the proposed effective and expiration dates of such suspension; the proposed effective date and impact of a revocation on future eligibility for certification; the administrative fine amount; and the right to request mediation pursuant to section 9704 of this chapter or request an appeal pursuant to section 9706 of this chapter. This is comparable to NOP section 205.665 (c). The minimum six month suspension term was added 1) so that the minimum suspension term will be long enough to be effective, 2) to provide transparency to suspended entities by specifying the suspension term at the time of suspension, and (3) by allowing entities to become certified when the suspension term ends rather than having to apply to the department for reinstatement.

**Subdivision (d)** specifies, notwithstanding paragraph (b) of this section, if the department has reason to believe that a certifying agent has willfully violated the Act or

regulations in this chapter, the department shall send the certified operation a notification of proposed suspension or revocation of accreditation or registration, as applicable to the non-compliance. This is comparable to NOP section 205.665 (d).

**Subdivision (e) (1)** specifies if a certifying agent fails to correct the non-compliance, to resolve the issue through rebuttal, or to file an appeal of the proposed suspension or revocation of accreditation or registration, the department shall send the certifying agent a written notification of suspension or revocation that includes the amount of the administrative fine, if applicable. This is comparable to NOP section 205.665.

**Subdivision (f) (1-2)** specifies the registered certifying agent whose accreditation or registration is suspended or revoked shall cease all certification activities and transfer to the department and make available to department officials all records concerning its certification activities that were suspended or revoked. This is comparable to NOP section 205.665.

**Subdivision (g) (1-2)** specifies a certifying agent whose accreditation or registration has been suspended under this chapter may submit a request to the department for reinstatement of its accreditation or registration, to take effect after the expiration date of the suspension or revocation. The request shall be accompanied by evidence demonstrating correction of each non-compliance and corrective actions taken to comply and remain in compliance with this chapter. All fines shall be paid prior to consideration for reinstatement. Furthermore, a certifying agent whose accreditation or registration is revoked by the department will be ineligible to be accredited or registered as a certifying agent under this chapter for a period of not less than 3 years following the date of such revocation. This is comparable to NOP section 205.665. Payment of fines prior to reinstatement was added for clarity and to ensure and demonstrate compliance regarding any outstanding compliance and enforcement issues.

Section 10706. Appeals – general.

This section establishes the procedures for appealing adverse actions under the department. It is necessary to ensure all affected persons understand their rights to appeal any adverse actions taken against their application for certification, accreditation,

or registration or their certification, accreditation, or registration. This section is comparable to NOP section 205.680 but the language has been modified to be consistent with other department regulations regarding informal hearing proceedings.

**Subdivision (a)** provides that the certified operation or certifying agent (respondent) may appeal a denial, administrative fines, or proposed notice of suspension or revocation to the department. This is comparable to NOP section 205.680 (a) (c).

**Subdivision (b)** provides that all appeals shall be reviewed, heard, and decided by persons not involved with the decision being appealed. This is comparable to NOP section 205.680 subpart (e).

Section 10707. Appeals – submission.

This section establishes department authority and outlines the process and procedures for a timely and effective adjudication of a certifying agent's or certified operation's appeal of an adverse action via an informal administrative hearing.

**Subdivision (a) (1-3)** specifies how a notice of adverse action may be appealed within 30 days of the notice and an informal hearing requested. It provides a list of information that must be contained in the request. The requested information is standard. The thirty 30 day appeal request deadline provides an operation adequate time to respond and is consistent with other department regulations. The department determined that it is reasonable to expect a response within thirty 30 days, which is 15 days more than the California Government Code allows, and that after 30 days the right to appeal should expire.

**Subdivision (b)** stipulates that if the certifying agent or certified operation fails to submit a timely request for hearing pursuant to subdivision (a) above, the Proposed Suspension or Revocation is not appeal-able and the department may proceed upon the violations noticed without a hearing. This subdivision is necessary to clarify that once the deadline has passed the suspension or revocation becomes final.

Section 10708. Appeals – evidence provided by certifying agent.

This section establishes timelines for receiving supporting evidence from the certifying agent and for either scheduling or sustaining the appeal based on timely receipt of the evidence. This section is not in the NOP regulations. It was added to these regulations to facilitate timely due process for the respondent and provide process transparency for the respondent and the certifying agent. It is consistent with other department regulations.

**Subdivision (a)** If the certified operation (respondent) appeals the proposed suspension or revocation action by the certifying agent, the department shall request evidence from the certifying agent to support the suspension or revocation action. This provision is necessary as the department must evaluate the certifying agent's documentation supporting the action in order to make a decision.

**Subdivision (b)** Within thirty (30) days from the date of the request by the department, the certifying agent shall provide or send all information supporting the suspension or revocation action to the department. This provision facilitates prompt scheduling and processing of appeal requests and grants timely due process to the respondent. This provision also affords process transparency for the certifying agent and respondent.

**Subdivision (c)** If the certifying agent fails to send supporting information to the department within the specified time frame, the appeal shall be sustained with no impact on the respondent's certification. This provision facilitates the department's prompt scheduling and processing of appeal requests and grants timely due process to the respondent. This provision also provides process transparency for the certifying agent and respondent.

**Subdivision (d)** Within forty-five (45) days from the date of the request for supporting evidence, the department shall send the respondent either a notice of informal hearing pursuant to section 10709 of this chapter or notify the respondent that the appeal is sustained with no impact on the respondent's certification. This provision ensures the respondent is provided due process in a timely manner and affords process transparency for the certifying agent and respondent.

Section 10709. Appeals – informal hearing schedule and notification.

This section establishes the timeline for an informal hearing. This section is not in the NOP regulations. It was added to these regulations to facilitate timely due process for the respondent and provide process transparency for the respondent and the certifying agent. This section is consistent with other department regulations.

**Subdivision (a)** stipulates the department shall schedule an informal hearing within 45 calendar days from receipt of the request for an informal hearing. This provision facilitates granting the respondent timely due process and provides process transparency for the certifying agent and respondent.

**Subdivision (b) (1-5)** stipulates the department shall provide notice of the informal hearing to the respondent and the information the notice shall contain. This provision affords the respondent process clarity and transparency.

Section 10710. Appeals – conduct of informal hearing.

This section outlines the procedures, time requirements, and conduct of an informal administrative hearing. It is consistent with other department regulations regarding conduct of informal hearings.

**Subdivision (a)** provides that the standard of proof applied by the hearing officer shall be a preponderance of the evidence. This is a standard practice.

**Subdivision (b)** allows for an informal hearing to be conducted by phone at the request of the respondent. This is necessary because many cannabis cultivation licensees are located in distant or remote areas. This provision protects the due process rights of remote operations and mitigates potential hardships by providing all hearing respondents with the option to participate remotely.

**Subdivision (c) (1-3)** requires the decision of the hearing officer to be in writing within thirty (30) calendar days, to include a statement of the legal basis for the decision, and to be delivered by personal service, mail, email, or via facsimile, depending upon the

method by which the appeal was received. These are standard practices for legal proceedings.

**Subdivision (d)** Specifies that review of the department's decision may be sought by the respondent within thirty (30) days from the date of the decision pursuant to section 1094.5 of the Code of Civil Procedure. This is necessary to clarify and establish the respondent's rights upon decision.

Section 10711. Inspection, testing, and reporting.

This section establishes the conditions under which responsible parties should conduct testing of products intended to be sold, labeled, or represented as OCal. It is comparable to NOP section 205.670.

Residue testing plays an important role in OCal certification by providing a means for monitoring compliance with the department and by discouraging the use of prohibited substances in the cultivation or handling of products to be sold, labeled or represented as OCal. It also helps to prevent labeling of cannabis products as being in compliance with OCal Program regulations when they are not.

The department and certifying agents will perform both preharvest and postharvest testing. Sampling and testing will be performed at random, due to increased risk (e.g. split operations), and during complaint investigations.

Postharvest testing at the final product stage is mandated by State commercial cannabis regulation, which requires that all harvest batches are sampled and tested for the presence of 66 pesticides, specified heavy metals, solids and microbial contamination. However, many agricultural inputs prohibited by the OCal Program are not included on this test.

Testing also provides registered certifying agents and department officials with a tool for ensuring compliance with this chapter during the entire production cycle since prohibited substances and materials may not be used at any stage. The OCal Program will



conduct preharvest testing to detect residues of substances that may have decayed to the point that they're not detectable in the final product.

This section is comparable to NOP section 205.670 and contains inspection and testing requirements of the California Organic Food and Farming Act and the SOP regulations, 3 CCR 1391.1.

**Subdivision (a)** requires a certified operation to make all agricultural inputs, cannabis waste, or cannabis that is to be sold, labeled, or represented as OCal accessible to the department or the certified operation's registered certifying agent for examination, sampling and testing by the department or the certified operation's registered certifying agent. This is comparable to NOP section 205.670 (a), the California Organic Food and Farming Act section 46003.2 (a) (2), and SOP regulations 3 CCR section 1391.2 (a).

**Subdivision (b)** requires that the department or the certifying agent require preharvest or postharvest testing of any agricultural input used, cannabis waste, or cannabis that is, labeled, or represented as OCal when there is reason to believe that the agricultural input or cannabis has come into contact with a prohibited substance or has been produced using excluded methods. Samples may include the collection and testing of soil; water; waste; seeds; plant tissue; and whole plants. Such tests must be conducted by the department or the certifying agent at the official's or certifying agent's own expense. This is comparable to section 205.670 (b) of the NOP regulations.

**Subdivision (c)** requires that the certifying agent conduct periodic residue testing of cannabis waste and pre and post-harvest cannabis that is to be sold, labeled, or represented as OCal. Samples may include the collection and testing of soil, water, cannabis waste, seeds, plant tissue, and whole plants. Such tests must be conducted by the certifying agent at the certifying agent's own expense. This is comparable to section 205.670 (c) of the NOP regulations.

**Subdivision (d)** requires that a certifying agent must, on an annual basis, sample and test from a minimum of five percent of the operations it certifies, rounded to the nearest whole number. A certifying agent that certifies fewer than thirty operations on an annual

basis must sample and test from at least one operation annually. Tests conducted under paragraphs (b) and (c) of this section will apply to the minimum percentage of operations. This is comparable to section 205.670 (d) of NOP the regulations.

**Subdivision (e)** requires that the sample collection pursuant to paragraphs (a) and (b) of this section must be performed by the department or a representative of the registered certifying agent and sample integrity must be maintained throughout the chain of custody. This is comparable to section 205.670 (e) (1) of NOP the regulations.

**Subdivision (f)** requires that testing be performed by the Department of Food and Agriculture Center for Analytical Chemistry or an accredited laboratory approved by the department. It also allows a duplicate of each sample to be taken. This subdivision is comparable to section 205.670 (e) of NOP regulations except that it specifies the Center for Analytical Chemistry (CAC), a department laboratory, as an option because the CAC routinely tests for more than 400 pesticide residues for the SOP and the California Department of Pesticide Regulation.

**Subdivision (g)** requires that the results of all analyses and tests required under this chapter will be available for public access, unless the testing is part of an ongoing compliance investigation. This is comparable to NOP section 205.670 (f) and is necessary for public transparency and confidence that products with the OCal label are being tested and verified for compliance with this chapter.

**Subdivision (h)** describes that when residue testing detects prohibited substances, the certified operation must be investigated by the registered certifying agent or by the department to determine the cause of the prohibited substance. This subdivision is necessary to establish that a registered certifying agent must investigate any prohibited substance detection. While the detection may not reach the level of exclusion, certified operations should be made aware of the issue, evaluate the risk of increased contamination and, if necessary, take measures to decrease or eliminate this risk.

Section 10712. Exclusion from sale as OCal.

This section sets forth conditions for exclusion from sale of cannabis intended to be sold, labeled or represented as OCal.

This section specifies that when residue testing detects unavoidable residual environmental contamination or prohibited substances at levels greater than 0.01 parts per million (ppm) or greater than the action level set by the Bureau of Cannabis Control, if this action level is greater than 0.01 parts per million (ppm), the cannabis product shall not be sold, labeled, or represented as OCal. The registered certifying agent shall investigate according to section 10702 of this chapter. This is comparable to the NOP regulations regarding exclusion from sale. Greater than 0.01 parts per million (ppm) is the NOP's recommended exclusion level for products with no tolerance level set by the EPA or action level set by the FDA (NOP guidance document 2613).

This section is necessary because the department has been charged, by its direction to be comparable to the NOP, with assuring consumers that products labeled OCal were produced in compliance with this chapter and therefore not contaminated with prohibited substances or materials.

Section 10713. Emergency pest or disease treatment.

This section establishes that when a prohibited substance is applied to a certified operation due to a federal or state emergency pest or disease treatment program and the certified operation otherwise meets the requirements of this chapter, the certification status of the operation must not be affected as a result of the application of the prohibited substance except that any harvested crop or plant part to be harvested that has contact with a prohibited substance applied as the result of a federal or state emergency pest or disease treatment program cannot be sold, labeled, or represented as OCal. This is necessary for clarity and transparency and comparable to NOP section 205.672.

## DOCUMENTS RELIED UPON

California Department of Food and Agriculture (CDFA). (2019). *Minutes of July 24, 2019 Working Group Meeting*. Sacramento. Retrieved from <https://www.cdfa.ca.gov/calcannabis/documents/OCal-SummaryMeetingNotes-07242019.pdf>

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Hudson, B. (1994). Soil Organic Matter and Available Water Capacity. *Journal of Soil and Water Conservation*, 2.

National Organic Program Handbook Guidance Documents. Retrieved March 6, 2020, from

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NOP 2006 Separation of Duties in Certification Decisions

NOP 2602 Recordkeeping of Certified Operations

NOP 2608 Responding to Noncompliances

NOP 2609 Unannounced Inspections

NOP 2610 Sampling Procedures for Residue Testing

NOP 2611 Laboratory Selection Criteria for Pesticide Residue Testing

NOP 2611-1 Prohibited Pesticides for NOP Residue Testing

NOP 2613 Responding to Results from Pesticide Residue Testing

NOP 2614 Technical Assistance

NOP 2615 Organic System Plans, Organic System Plan Updates, and Notification of Changes

NOP 3012 Material Review

NOP 5006 Processed Animal Manure in Organic Crop Production

NOP 5008 Reassessed Inert Ingredients

NOP 5020 Natural Resources and Biodiversity Conservation  
NOP 5021 Compost and Vermicompost in Organic Crop Production  
NOP 5023 Substances used in Post-Harvest Handling of Organic Products  
NOP 5025 Commingling and Contamination Prevention in Organic Production and Handling  
NOP 5026 The Use of Chlorine Materials in Organic Production and Handling  
NOP 5029 Seeds, Annual Seedlings, and Planting Stock in Organic Crop Production  
NOP 5033 Classification of Materials  
NOP 5033-1 Decision Tree for Classification of Materials as Synthetic or Nonsynthetic  
NOP 5034 Materials for Organic Crop Production  
NOP 5034-1 Materials for Organic Crop Production  
NOP 5034-2 Appendix of Prohibited Materials for Organic Crop Production  
NOP 5036 Treated Lumber – Draft Guidance  
PM 11-13 Genetically modified organisms  
PM 13-1 Cell Fusion Techniques Used in Seed Production  
PM 13-2 Humic Acid Extraction  
PM 13-3 Synthetic Algicides, Disinfectants, and Sanitizers Allowed in Organic Crop Production  
PM 14-1 Aquatic Plant Extracts  
PM 15-2 Nanotechnology  
Certification of Organic Crop Container Systems

United States Department of Agriculture. (n.d.). *National Organic Program Regulations, Title 7 Part 205*. Retrieved March 6, 2020, from Code of Federal Regulations: <https://www.govinfo.gov/content/pkg/CFR-2019-title7-vol3/xml/CFR-2019-title7-vol3-part205.xml>

## **ECONOMIC IMPACT ASSESSMENT**

California Government Code sections 11346.3 and 11346.5 require state agencies to assess the potential economic impacts on California businesses and individuals when proposing to adopt or amend any administrative regulation. The economic and fiscal impacts of the regulations must be disclosed using Standard Form 399, Economic and Fiscal Impact Statement (STD 399).

Attachment 1, Economic Impact Assessment (i.e. Economic and Fiscal Impact Analysis) of the OCal Program Regulations, summarizes the data, methods, and results of the analysis developed to evaluate the required economic and fiscal impacts of the proposed regulation as required by Government Code section 11346.3(b).

### **Summary of the Results of the Economic Impact Assessment**

#### Creation or elimination of jobs within the state

The potential price premium realized by certified operations of 30% and 40% over current baseline prices and the increased output by certified operations will result in an estimated 142 additional full-time equivalent (FTE) jobs.

#### Creation of new businesses or elimination of existing businesses

The impact of the OCal Program on businesses is likely to be positive. It will not eliminate existing businesses and it will encourage modest development of new businesses and industries in the State.

#### Expansion of businesses currently doing business within the state

The proposed OCal Program would not affect the expansion of businesses currently doing business within the State.

#### Benefits of the regulations

The proposed OCal Program could provide benefits to the health and welfare of California residents, worker safety, and the state's environment by creating additional jobs, providing consumers with a means for product differentiation, spurring industry

innovation in sustainable agriculture, and stimulating increased economic activity in regions heavily populated by OCal cannabis producers.

## **REASONABLE ALTERNATIVES**

### **Alternatives to the proposed regulatory policies that would lessen adverse impacts on small businesses**

California Government Code section 11346.2(b)(4)(B) requires state agencies to consider reasonable alternatives that would lessen any adverse impact on small businesses.

The OCal Working Group was a subcommittee created by the department's California Organic Products Advisory Committee (COPAC). The group consisted of four organic experts, advocates, and educators who volunteered to assist the program with developing an organic certification for cannabis. Committee members are producers of certified organic wine, vegetables, herbs, poultry, and manufactured products.

The primary goal of the OCal Working Group was to assist the program with creating regulations that accommodate California cannabis regulation and laws and are consistent with NOP and SOP laws including discussing reasonable alternatives.

The committee met five times during 2019 and all meetings were open to members of the public; the largest meeting was attended by more than 100 people. Many agenda items provoked significant discussion between members of the public and the Working Group. (California Department of Food and Agriculture, 2019)

The department considered an alternative to the proposed OCal regulation that would have the department take full responsibility for OCal Program development and enforcement. As described in more detail in Attachment 1, this alternative would result in the same level of benefits, but would impose greater costs on businesses, including small businesses in the state. Therefore, the proposed OCal regulation provides a positive net benefit to small businesses and lessens any cost impacts to small

businesses relative to the proposed alternative. It follows that there is no evidence that small businesses would be disproportionately affected or overly burdened by the proposed OCal Program regulation.

## **MANDATED USE OF TECHNOLOGY**

### **Track-and-Trace**

The department was required to establish a Track-and-Trace system for reporting the movement of commercial cannabis items throughout the distribution chain that utilizes a unique identifier. The department was unable to consider any other alternatives including those that do not prescribe the use of specific technologies.

OCal will require certified operations to identify their OCal products within the existing Track-and-Trace system, which must be use by all cannabis licensees.

## **CONFLICTS WITH FEDERAL REGULATIONS**

The U.S. Food and Drug Administration (FDA) currently lists cannabis as a Schedule 1 drug under the Controlled Substances Act and has not approved cannabis for medical uses: “To date, the FDA has not approved a marketing application for marijuana for any indication. The FDA generally evaluates research conducted by manufacturers and 50 | Page other scientific investigators. Our role, as laid out in the Federal Food, Drug, and Cosmetic Act, is to review data submitted to the FDA in an application for approval to assure that the drug product meets the statutory standards for approval.” The U.S. Department of Justice issued a Memorandum on January 29, 2013 titled “Guidance Regarding Marijuana Enforcement,” commonly referred to as the Cole Memo. The Cole Memo set forth marijuana enforcement priorities as guidelines for state and local regulatory and enforcement systems. However, the Cole Memo was rescinded by the Attorney General Jeff Sessions via the Sessions Memo title “Marijuana Enforcement” on March 21, 2018. The Sessions Memo shifted federal policy from the hands-off approach of the Cole Memo to permitting federal prosecutors across the country to decide individually how to prioritize resources to crack down on cannabis possession,



distribution, and cultivation in states where it is legal.