

## Responding to Results of Pesticide Residue Testing

### 1. Purpose

This instruction supports a consistent response by certifying agents to prohibited pesticide residue detections that result from following OCal regulations § 10711.

### 2. OCal Regulations, Title 3 California Code of Regulations (3 CCR)

3 CCR § 10000. Definitions.

3 CCR § 10105. Allowed and prohibited substances, and methods in OCal production.

3 CCR § 10202. Land Requirements.

3 CCR § 10209. Commingling and contact with prohibited substance prevention practice standard.

3 CCR § 10408. Requirements for registration.

3 CCR § 10711. Inspection, testing and reporting.

3 CCR § 10712. Exclusions from sale as OCal and reporting.

### 3. Background

The National Organic Program (NOP) policy is to take action if residue of a prohibited pesticide is detected at or above 0.01 ppm.

If there is no EPA tolerance or FDA action level, the product will be excluded for sale as organic.

If the residue detected is at or below 5 percent of the EPA tolerance or, if there is no EPA tolerance, at or below the FDA action level, actions taken will vary but it's possible the product will not be excluded from sale as organic.

### 4. Policy

Section 10711 of the OCal regulations specifies testing requirements for nonmanufactured cannabis and cannabis products that will be sold, labeled, or represented as OCal.

Certifying agents are responsible for collecting samples of OCal nonmanufactured cannabis and cannabis products from certified operations and having those samples tested to detect the presence of residues in violation of the OCal regulations as specified in § 10105 or § 10711(e) of the OCal regulations.

The OCal Program has set its action level for detection of a prohibited pesticide at 0.01 ppm to reflect the NOP policy.

There are no established EPA tolerances or FDA action levels for cannabis but if the Department of Cannabis Control (DCC) has established an action level for the detected residue that is higher than 0.01 ppm and the residue detected is at or below the DCC action level, actions taken will vary (see details below) but it's possible the product will not be excluded from sale as OCal.

If there is no DCC action level for the prohibited detected pesticide, residue detected at or above 0.01 ppm will result in the product being excluded from sale as OCal.

## **5. Procedure**

### **5.1. No Detected Residues**

If no residues of prohibited pesticides are detected, the registered certifying agent should:

- a. Notify the certified operation of the test results and indicate that the product may be sold as OCal; and
- b. Retain the test results, which must be made available to the public upon request and will be reviewed as part of the next registration renewal.

### **5.2. Residues Detected at Less Than 0.01 ppm**

If tests detect residues of prohibited pesticides at less than 0.01 parts per million (ppm), which is the same as 10 parts per billion (ppb), or below the action level set by the DCC in 4 CCR Section 15719:

- a. Notify the certified operation of the test results and indicate that the product may be sold as OCal;

- b. Assess why the residue is present and follow up with operation as appropriate; and
- c. Retain the test results, which must be made available to the public upon request and will be reviewed as part of the next registration renewal.

### 5.3. Residues Detected at or Above 0.01 ppm

If a test detects a residue of a prohibited pesticide at or above 0.01 ppm, the certifying agent should first determine if the DCC has established an action level for that pesticide.

#### 5.3.1. DCC Action Level is Established and Residue Is At or Below the DCC Action Level

If the DCC has established an action level for the detected pesticide in the tested sample, follow the appropriate instructions below based on the level detected (for residues below 0.01 ppm, see 5.2 above):

- a. Notify the certified operation of the test results.
- b. Assess why the residue is present.
- c. If appropriate, consider a notice of noncompliance for the following violations:
  - 1. OCal regulations § 10202(a)(2): application of prohibited substances. The certifying agent should consider suspending or revoking the operation's certification.
  - 2. OCal regulations § 10202(a)(3): inadequate buffer zones to prevent the unintended application of prohibited substances. The notice should require corrective actions to prevent future contamination.
  - 3. OCal regulations § 10209: inadequate measures to prevent commingling or contamination of OCal cannabis. The notice should require corrective actions to prevent future contamination.
- d. If residues are not a result of the application of prohibited pesticides, the cannabis may be sold as OCal.
- e. If suspensions, revocations, or civil penalties are appropriate, coordinate adverse actions with the department.

- f. Retain the test results, which must be made available to the public upon request and will be reviewed as part of the registration renewal.

#### 5.3.2. DCC Action Level Is Not Established or Residue Is Above the DCC Action Level

- a. Immediately notify the certified operation of the test results and indicate that the product may not be sold as OCal;
- b. If appropriate, immediately report the violation to the department as described in 4.4 below; and
- c. If appropriate, consider a notice of noncompliance for the following violations:
  - 1. OCal regulations § 10202(a)(2): application of prohibited substances. The notice should propose to suspend or revoke the operation's certification.
  - 2. OCal regulations § 10202(a)(3): inadequate buffer zones to prevent the unintended application of prohibited substances. The notice should require corrective actions to prevent future contamination.
  - 3. OCal regulations § 10209: inadequate measures to prevent commingling or contamination of OCal products. The notice should require corrective actions to prevent future contamination.
- d. If suspension, revocation, or a civil penalty is appropriate, coordinate adverse actions with the department.
- e. Retain the test results, which must be made available to the public upon request and will be reviewed as part of the next registration renewal.

#### 5.3.3. Unavoidable Residual Environmental Contamination

If residue testing detects Unavoidable Residual Environmental Contamination (UREC) at levels greater than 0.01 parts per million (ppm), the certifying agent should notify the certified operation of the finding and that the cannabis product shall be excluded for sale as OCal.

#### 5.4. Reporting Violations

If test results indicate that the tested sample contains pesticide residues that exceed the Food and Drug Administration's (FDA) or the Environmental Protection Agency's (EPA) regulatory tolerances, the registered certifying agent must promptly report such data to the department.

Violations may include application of a pesticide which is prohibited by the EPA, the California Department of Pesticide Regulation, or the Bureau of Cannabis Control or application of an allowed pesticide at levels exceeding regulatory tolerances.

## **6. References**

### **Other Laws and Regulations**

Environmental Protection Agency. OCSPP Harmonized Test Guidelines Series 860 - Residue Chemistry Test Guidelines. United States Environmental Protection Agency, Aug. 1996. Web. 21 Dec. 2010.

Title 40 Code of Federal Regulations Part 180. US EPA tolerances.

"Guidance for Industry: Action Levels for Poisonous or Deleterious Substances in Human Food and Animal Feed." U.S. Food and Drug Administration Home Page. 22 Dec. 2010.