

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE  
Title 3 of the California Code of Regulations

**Notice of Proposed Rulemaking**

Ocal Program

**NOTICE IS HEREBY GIVEN** that the California Department of Food and Agriculture (Department) proposes to adopt regulations to implement Chapter 3, OCal Program, within Title 3 of the California Code of Regulations. With this rulemaking, the Department will propose permanent regulations after the consideration of all comments, objections, and recommendations regarding the proposed action.

The Department is issuing this notice to meet requirements set forth in Government Code section 11346.5.

**PUBLIC HEARING**

Any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a hearing by contacting the persons listed in this notice under Contact Persons.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit to the Department written comments relevant to the proposed regulatory action. The written comment period closes on July 7, 2020. The Department will only consider comments received at the Department offices by that time.

Submit comments to:

Kristi Armstrong  
California Department of Food and Agriculture  
CalCannabis Cultivation Licensing Division  
P.O. Box 942871  
Sacramento, CA 94271  
CDFA.CalCannabis\_OCal@cdfa.ca.gov  
Phone: (916) 263-0801

**AUTHORITY AND REFERENCE**

The Department is proposing to adopt Title 3, Division 8, Chapter 3 of the California Code of Regulations, including sections 10000-10001, 10100–10105, 10200–10210, 10300–10303, 10400-10412, 10500-10506, 10600-10603, and 10700-10713 as the OCal Program. Sections

26012, 26013, 26062, and 26062.5 of the California Business and Professions Code authorize the Department to adopt, implement, and enforce these regulations. The proposed regulations will implement, interpret, make specific, or reference sections 26012, 26013, 26050, 26061, 26062, 26062.5, 26180, and 26181 of the California Business and Professions Code.

## **INFORMATIVE DIGEST / POLICY STATEMENT**

### Existing Law:

**Senate Bill 94** (Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2017), also known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) requires, not later than January 1, 2021, the Department of Food and Agriculture to establish a program for cannabis comparable to the National Organic Program and the California Organic Food and Farming Act. Existing law requires the department to be the sole determiner of organic designation and certification, unless the National Organic Program authorizes organic designation and certification for cannabis, in which case 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 in the OCal Program regulations.

**Assembly Bill 97** (Ting, Chapter 40, Statutes of 2019) removed the requirement that the Department of Food and Agriculture be the sole determiner of designation and certification. The bill requires the State Department of Public Health (CDPH) to establish a certification program for manufactured cannabis products comparable to the National Organic Program and the California Organic Food and Farming Act and would make the State Department of Public Health's authority inoperative if the National Organic Program authorizes organic designation and certification for cannabis. The bill would prohibit 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 of Food and Agriculture or the State Department of Public Health, except as provided in the OCal Program and the CDPH certification program regulations.

### Objectives of this Regulatory Action

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 an organic certification program for California cannabis, the OCal Program.
- 2) Establish an OCal Program seal and designation (OCal).

- 3) Set minimum standards for production of cannabis intended to be sold, labeled, or represented as OCal that are comparable to the National Organic Program and the California Organic Food and Farming Act.
- 4) Establish labeling and marketing standards for use of the program's seal and designation.

The OCal Program held multiple public meetings, allowing for broad input from county representatives, current organic certifiers, cannabis industry representatives, and members of the public. Comments received during meetings were considered during the development of the regulations. Comments not considered were either in conflict with existing statute or not within reason.

#### Anticipated Benefits of this Regulatory Action

Some of the many benefits of creating a State level program, comparable to the NOP, for certifying cannabis produced organically are listed below.

##### 1) Public and Consumer Benefits

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

##### 2) Environmental Benefits

A well-managed organic farming system:

- Creates healthy soils with the potential for increased carbon sequestration and available water capacity;
- Reduces fossil fuel needs associated with external nitrogen fertilizer inputs; and
- Reduces waste by recycling excess or deficient nutrients and container growing media.

#### Inconsistency with Federal Regulations or Statutes

The United States Drug Enforcement Administration, under the Controlled Substances Act, lists cannabis as a Schedule I drug. Schedule I drugs are defined as having a high potential for abuse, having no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use of the drug under medical supervision (21 U.S.C. § 812).

Controlled Substances Act, Title 21 – Food and Drugs, Chapter 13 – Drug Abuse and Prevention Control, Subchapter 1 – Control and Enforcement, Part B – Authority to Control; Standards and Schedules: <https://www.deadiversion.usdoj.gov/21cfr/21usc/812.htm>.

### Consistency with Existing State Regulations

As required by Government Code section 11346.5(a)(3)(D), the Department has conducted an evaluation of these regulations and has determined that they are not inconsistent or incompatible with existing state regulations.

### **PLAIN ENGLISH REQUIREMENT**

The Department staff prepared the proposed regulations pursuant to the standard of clarity provided in Government Code section 11349 and the plain English requirements of Government Code sections 11342.580 and 11346.2, subdivision (a)(1). The proposed regulations are written to be easily understood by the persons that will use them.

### **DISCLOSURES REGARDING THE PROPOSED ACTION**

The Department has made the following initial determinations:

Mandate on local agencies and school districts—None.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630—None.

Cost or savings to state agencies—There will be a cost to the State to administer the OCal program. There are no additional costs or savings to state agencies associated with the proposed regulations.

Non-discretionary cost or savings imposed upon local agencies—None.

Cost or savings in federal funding to the state—None.

Cost impacts on a representative private person or business—Participation in the cannabis OCal program will be voluntary. Thus, there are no mandated costs on cannabis businesses. There would be a cost to cannabis businesses that choose to participate in the OCal Program. Consumers may choose to purchase potentially more expensive OCal cannabis.

Business created to certify for the OCal Program may compete with existing cannabis certification businesses.

Effect on small business—There may be an effect on small businesses.

Effect on housing costs—None.

Significant, statewide adverse impact directly affecting business, including the ability of California businesses to compete with businesses in other states—The Department has made an initial determination that there will not be a significant, statewide adverse economic impact

directly affecting business, including the ability of California businesses to compete with businesses in other states.

## **RESULTS OF THE ECONOMIC IMPACT ANALYSIS**

California Government Code section 11346.3 requires state agencies to assess the potential economic impacts on California businesses and individuals when proposing to adopt or amend any administrative regulation. Following is a summary of results of the economic impact analysis:

- The proposed OCal Program would result in an estimated net increase of 142 FTE jobs in California.
- The proposed OCal Program would not impact the creation of new businesses or elimination of existing businesses but it will encourage modest new business development.
- The proposed OCal Program would not affect the expansion of businesses currently doing business within the State.
- 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.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

The Department considered an alternative to the proposed OCal regulations in which the Department would certify cultivators and distributors rather than using independent certifying agents. This would result in significantly higher economic and fiscal costs without generating additional quantifiable benefits.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

## **CONTACT PERSONS**

Inquiries concerning the proposed action may be directed to:

Kristi Armstrong  
California Department of Food and Agriculture  
CalCannabis Cultivation Licensing Division  
P.O. Box 942871  
Sacramento, CA 94271  
CDFA.CalCannabis\_OCal@cdfa.ca.gov  
Phone: (916) 263-0801

The backup contact person for these inquiries is:

Charlene Graham  
California Department of Food and Agriculture  
CalCannabis Cultivation Licensing Division  
P.O. Box 942871  
Sacramento, CA 94271  
CDFA.CalCannabis\_OCal@cdfa.ca.gov  
Phone: (916) 576-4234

## **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS**

The Department has prepared and has available for public review an Initial Statement of Reasons for the proposed regulations, including all the information upon which the proposed regulations are based, and the express terms of the proposed regulations. A copy of the Initial Statement of Reasons and the proposed regulations in underline may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. Requests should be directed to Kristi Armstrong at the mailing or email address specified above.

## **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After holding the hearing and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the revised regulations. Any person interested may obtain a copy of any modified regulations prior to the date of adoption by contacting Kristi Armstrong at the mailing or email address specified above.

## **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Kristi Armstrong at the mailing or email address specified above.

## **AVAILABILITY OF DOCUMENTS**

Copies of the Notice of Proposed Action and other information related to this regulatory action can be accessed through our website at [cannabis.cdfa.ca.gov](http://cannabis.cdfa.ca.gov).