



July 7, 2020

California Department of Food and Agriculture
Attention: Kristi Armstrong
CalCannabis Cultivation Licensing Division
Proposed OCal Regulations
P.O. Box 942871
Sacramento, CA 94271

SUBMITTED VIA E-MAIL: CDFA.CalCannabis_OCal@cdfa.ca.gov

Dear Ms. Armstrong,

Center for Food Safety (CFS), on behalf of itself and its 970,000 members and supporters, submit these comments in response to the California Department of Food and Agriculture's proposed OCal Regulations. CFS is a public interest, nonprofit membership organization whose mission is to empower people, support farmers, and protect the environment from the harmful impacts of industrial agriculture and to promote organic and regenerative farming practices. Through groundbreaking legal, scientific, and grassroots action, CFS protects and promotes the public's right to safe food and farming practices. CFS has offices in San Francisco, California, Portland, Oregon, and Washington, D.C.

CFS has the following comments on the proposed regulations, which would be added to the California Code of Regulations, Title 3, Food and Agriculture, Division 8, Cannabis Cultivation, Chapter 3, OCal Program:

Proposed modification to Article 1, Definitions (Section 10000, Definitions.) The proposed regulation's definition of "excluded methods," while consistent with the National Organic Program's current regulations at 40 C.F.R. § 205.105, fails to account for the National Organic Program's review of new processes and technologies in the area of genetic engineering. Specifically, the National Organic Standards Board (NOSB) has specified the technologies that should be excluded under organic production.¹

Based on that recommendation, the following technologies must be considered as excluded methods under the OCal program: targeted genetic modification (TagMo) and similar terms, including synthetic gene technologies, genome engineering, gene editing, and gene targeting; gene silencing; accelerated plant breeding techniques; synthetic biology; cloned animals and offspring; plastid transformation; cisgenesis; intragenesis; and agro-infiltration. CFS urges OCal to modify the definition of "excluded methods" to reflect the NOSB's latest recommendations. *See* NOSB 2017 Recommendation.

¹ NOSB, Formal Recommendation to the National Organic Program (Nov. 2, 2017) ("NOSB 2017 Recommendation"), <https://www.ams.usda.gov/sites/default/files/media/MSExcludedMethodsFinalRec.pdf>

Additionally, and consistent with the NOSB's 2017 Recommendation, CFS also proposes that the Article 1, Definitions (Section 10000, Definitions) be modified to include the following definitions as recommended and approved by the NOSB:

Genetic engineering (GE) – A set of techniques from modern biotechnology (such as altered and/or recombinant DNA and RNA) by which the genetic material of plants, animals, organisms, cells and other biological units are altered and recombined.

Genetically Modified Organism (GMO) – A plant, animal, or organism that is from genetic engineering as defined here. This term will also apply to products and derivatives from genetically engineered sources.

Modern Biotechnology – (i) in vitro nucleic acid techniques, including recombinant DNA and direct injection of nucleic acid into cells or organelles, or (ii) fusion of cells beyond the taxonomic family, that overcomes natural, physiological reproductive or recombination barriers, and that are not techniques used in traditional breeding and selection.

Synthetic Biology – A further development and new dimension of modern biotechnology that combines science, technology and engineering to facilitate and accelerate the design, redesign, manufacture and/or modification of genetic materials, living organisms and biological systems. (Operational Definition developed by the Ad Hoc Technical Expert Group on Synthetic Biology of the UN Convention on Biological Diversity.

CFS strongly supports the language in Section 10105. Allowed and prohibited substances and methods in OCal production. Maintaining all the language and requirements in this section is critical to providing consistency with the National Organic Program. Similar to other organically grown products, consumers of OCal products would expect OCal cannabis to be produced without the use of (1) Synthetic substances and ingredients, (2) Nonsynthetic substances prohibited in The National List of Allowed and Prohibited Substances; (3) Substances prohibited for use on cannabis under state law as determined by the Department of Pesticide Regulation; (4) Excluded methods; (5) Ionizing radiation, and (6) Sewage sludge.

Proposed Modification to OCal 1000, Methods and Materials in OCal Production. CFS opposes the inclusion of hydroponic and other plant pot-based systems without soil as the growing media as allowable container systems under OCal, as currently defined in OCal 1000, Methods and Materials in OCal Production, and incorporated by reference into the current proposed regulations under Section 10001. OCal 1000 states that certification of container systems is allowed “as long as the certifying agent determines that the system complies with OCal regulations,” and defines “container system” as including “container, hydroponic, and other plant pot-based systems, with or without soil as the growing media.” OCal 1000, subsection (4). While CFS does not oppose hydroponic systems in cannabis production, it is not consistent with federal organic regulations that rightfully mandate soil fertility and biodiversity requirements in organic production. The proposed OCal regulations at Section 10203 requires that cultivators under the OCal program to “manage crop nutrients and soil fertility,” as well as “maintain or improve soil organic matter content, biological diversity, nutrient cycling, and microbial activity.” Proposed Section 10203.

These nutrient cycling, soil fertility, and biological diversity requirements are consistent with the requirements of the National Organic Program as well as the principles of organic farming. Hydroponic growing systems and other soil-less growing systems cannot meet these soil fertility and biodiversity requirements since they do not rely on soil fertility for cultivation. While the USDA has taken the interpretation, contrary to the recommendations of the NOSB, that such systems can nonetheless be certified organic, that interpretation is current being reviewed in federal district court. Thus, to adhere to the principles of organic farming and ensure consistency with other provisions of OCal's proposed regulations, CFS proposes the following modification to section 4 of OCal 1000 (edits are italicized):

Container Systems

The OCal Program permits the certification of container systems as long as the certifying agent determines that the system complies with OCal regulations. Certifiers must evaluate the compliance of the overall system, including maintaining or improving natural resources, supporting nutrient cycling, promoting ecological balance, and conserving biodiversity. Container system *excludes hydroponic, and other plant pot-based systems without soil as the growing media.*

Proposed modification to Section 10201. OCal cultivation and distribution system plans, subsection (c)(2)(A) Documentation of commercial availability of OCal seeds and planting stock is not required for the first 12 months of the program. CFS requests documentation of commercial availability of OCal seeds and planting stock **not** be exempt for the first 12 months of the program. Developing demand for OCal seeds and planting stock is critical to ensure cannabis is produced from seed to final product without synthetic inputs such as pesticides or through the process of genetic engineering as this is what consumers expect from products grown “organically.” In order to build demand for OCal seeds and planting stock, documentation should be required from the onset of the program as this indicates need for these products to seed and planting stock cultivators and gives them adequate time to develop such stocks in accordance with OCal standards.

Proposed modification to OCal Section 10302. The OCal Seal. The Draft Rule should require that products labeled ‘OCal’ include a ‘Certified OCal by...’ statement. The NOP states that raw or processed agricultural products in packages labeled ‘*100 percent organic*’ or ‘*organic*’ must include the label ‘Certified Organic by...’ the certifying agent of the handler of the finished product. The Draft Rule should include an equivalent directive to remain consistent with the NOP.

CFS supports Section 10711. Inspection, testing, and reporting requirements. In particular, CFS supports subsection (i) “Results of all analyses and tests performed under this chapter will be available for public access unless the testing is part of a compliance investigation or action. Results may be reviewed as part of a department audit pursuant to section 10412 of this chapter.” Consumers of OCal products expect these products to be free to contaminants such as pesticides and heavy metals, and these consumers will likely be paying a premium price for these products. As such, transparency in production of these OCal products is essential for consumer confidence. Requiring that results of all analyses and tests be made available for public access is critical to ensuring true transparency, thus CFS strongly supports this provision.

OCal 3012 Material Review. OCal 3012 guidance specifies that a certifier must maintain documentation regarding the compliance of materials that are allowed or prohibited, ‘including those products that are approved based on prior determination by another certifier or the CDFA OIM program.’ For clarity and consistency with NOP guidance, OCal 3012 should also specify that

certifiers should maintain documentation of products that are approved by all Material Review Organizations, as defined. OCal 3012 must be equivalent to NOP 3012.

In conclusion, CFS supports the development of these OCal Regulations which will provide stringent requirements for OCal producers and strengthen consumer confidence in these cannabis products.

Please feel free to contact us with questions or clarifications.

Sincerely,

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