

Cannabis:

*Organic-Comparable
Certification &
Regional Designation*

House Commerce & Gaming Committee

October 21, 2021, Work Session

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Program Research

Presentation Roadmap

1. **Certification of Cannabis Comparable to the National Organic Program**

- a. Enactment of ESSB 5131 (2017) in Washington State and rulemaking activity
- b. California law and final rules establishing “OCal” program for cannabis and nonmanufactured cannabis products

2. **Appellations of Origin Programs for Cannabis**

- a. California law and proposed rules

Comparable-to-Organic Certification Programs for Cannabis

Washington State Law

California Law and Rules

General Background: Organic Certification

The Organic Foods Production Act (1990). Established uniform national standards for the production and handling of foods labeled as “organic”

The National Organic Program (NOP). A program within the U.S. Department of Agriculture implementing the Organic Foods Production Act, setting standards for the production, handling, and processing of organically grown agricultural products, and overseeing mandatory certification of organic production

Organic Certification. Verifies a farm or handling facility complies with the U.S. Department of Agriculture’s organic regulations and allows the farm or facility to sell, label, and represent their products as organic

ESSB 5131 (2017): Comparable- to-Organic Cannabis

1. ESSB 5131 was enacted during 2017 Regular Session
2. Created an authorizing framework for a comparable-to-organic cannabis program developed/administered by the WA State Department of Agriculture (WSDA)
3. Granted the WSDA discretionary rule-making authority to establish:
 - a) Standards for cannabis and cannabis products produced and processed in a manner consistent, to the extent practicable, with the National Organic Program; and
 - b) A self-sustaining program for certifying cannabis producers and processors as meeting the applicable standards
4. Rules to include a fee schedule to provide for recovery of program costs
5. Included provisions addressing inspections, enforcement, and administrative penalties

Rulemaking Activity Following Enactment of ESSB 5131 (2017): Comparable- to-Organic Cannabis

1. CR 101 (preproposal statement of inquiry) filed October 2017 by the WSDA
2. Rulemaking update August 2018
3. Semi-annual rules development agendas between July 2019 and December 2020 identified this topic as a topic of possible rulemaking
4. No CR 102 (proposed rules) or CR 103 (permanent rules) as of October 2021
5. Legislature did not require adoption of rules, and program was not specifically appropriated funding in state operating budgets

California Law: Comparable- to-Organic Cannabis

1. Proposition 64 (2016) and laws in 2017, 2019, and 2021
2. Rulemaking deadline of July 2021
3. Required two separate comparable-to-organic programs for cannabis:
 - a) One program for “cannabis and nonmanufactured cannabis products” established by the State Department of Food and Agriculture
 - b) Second program for “manufactured cannabis products” established by the State Department of Public Health
4. Contingent nullification tied to future National Organic Program changes

California Department of Food and Agriculture Rules: The “OCal” Program

Final Rules. Final rules adopted in July 2021 creating the “OCal” program for cannabis and nonmanufactured cannabis products

Voluntary Certification. Cultivators and distributors may apply to certifying agents to have their operation (or portion of their operation) inspected, evaluated, and certified as OCal compliant

Labeling Terminology. “OCal” is labeling term to identify cannabis and nonmanufactured cannabis products produced according to OCal rules, which are designed to be comparable to National Organic Program rules



California Department of Food and Agriculture Rules: The “OCal” Program

Certifying Agents. Certifying agents are private entities or local governments, which are accredited by the Department or the National Organic Program and registered with the Department

Fees. Fees charged by certifying agents must be reasonable and filed in advance with the Department

System Plan. A certified cultivator or distributor must have a comprehensive System Plan agreed to with their certifying agent

Site Inspections. Initial, annual, and unannounced site inspections

Recordkeeping. Certified cultivators and distributors must maintain records, for at least 5 years, demonstrating compliance

California Department of Food and Agriculture Rules: The “OCal” Program

Prohibited Substances/Methods. Cannabis marketed as OCal must be produced without use of substances or methods including:

1. Synthetic substances and ingredients except as provided in the National List of Allowed and Prohibited Substances
2. Non-synthetic substances and ingredients prohibited in The National List of Allowed and Prohibited Substances
3. Substances prohibited by the Department of Cannabis Control for use on cannabis
4. Excluded methods involving genetic modifications
5. Ionizing radiation
6. Sewage sludge

California Department of Food and Agriculture Rules: The “OCal” Program

Testing and Sampling. Testing and sampling may be conducted at expense of certifying agent or the Department

Administrative Fines. The Department may issue administrative fines to certifying agents and certified operations for violations

- Up to \$17,952 per violation for knowingly labeling or selling a product as “OCal” or “Organic”
- Up to \$20,000 per violation with possible suspension/revocation for other intentional violations

Current Program Status. The Department is accepting applications from prospective certifying agents

Appellations of Origin Program for Cannabis

California Law and Draft Rules

Appellations of Origin Program

General Background Information on Appellations

- **Protected Designation.** An appellation of origin is a protected designation that identifies the geographical origin of a product and how that product was produced
- **Policy Goals.** Intended to promote regional products and local businesses, prevent the misrepresentation of the origin of a product, and support consumer confidence about a product's origin and characteristics
- **State Adoption.** California is the first state with legal adult-use cannabis to require the establishment of an appellations of origin program for cannabis

California Law: Appellations of Origin for Cannabis

- **City/County Designation.** California law required the adoption of standards for cultivators to designate a county, city, or city and county of origin for cannabis
- **Appellations.** By January 2022, the Department must create a process for cultivators to establish appellations of origin, including standards, practices, and cultivars applicable to cannabis produced in a certain geographic area
- **Misrepresentations.** State law prohibits misrepresentations to consumers about city/county and appellations of origin
- **Eligibility.** Appellation of origin may not be approved unless it requires the practice of planting in the ground in the canopy area and excludes the practices of using structures such as a greenhouse and any artificial light in the canopy area

California Proposed Rules: Appellations of Origin for Cannabis

Petitioning Organization. Group of three or more unique cultivators within the area of the proposed appellation of origin may petition the Department to establish or amend an appellation of origin

Proposed Fees for Establishing New Appellation of Origin

- **\$2,850** petition submission fee
- **\$14,250** petition proposal fee

Proposed Fees for Amending an Existing Appellation of Origin

- **\$1,425** petition submission fee
- **\$7,125** petition proposal fee

California Proposed Rules: Appellations of Origin for Cannabis

Proposed Requirements for Petitions to Establish a New Appellation of Origin

1. Description of proposed geographic area and mapped boundary
2. Evidence of name use
3. Descriptions of distinctive geographic features affecting cannabis production
4. Identification of all standard, practice, and cultivar requirements
5. Evidence of the legacy, history, reputation, and economic importance of cannabis production in the area
6. If partially or fully within another appellation of origin, explanation of distinctiveness
7. Practice requirements

California Proposed Rules: Appellations of Origin for Cannabis

Proposed Process for Reviewing Petitions

- When a petition is complete and both fees are paid, the Department provides public notice of proposed action to establish or amend the appellation of origin
- Notice of proposed action must include weblinks to the completed petition, a map of the area described by the petition, and the standard, practice, and cultivar requirements identified in the petition
- 90 days for public comment on petition
- Notice of final decision provided by Department on its website and directly to petitioners and others

Final rules due January 2022

Concluding Summary

Comparable-to-Organic Cannabis

- Washington State has legal framework for comparable-to-organic cannabis program from 2017 law. Rules establishing a program were authorized but not required in law, and to date no proposed or final rules have been filed
- The first comparable-to-organic cannabis program recently launched in California in 2021 following state laws and rules

Appellations or Origin Programs for Cannabis

- California is first state to enact a law requiring an appellations of origin program for cannabis
- Final rules must be adopted by January 2022

Thank You!

