

CALIFORNIA CODE OF REGULATIONS

Title 3. FOOD AND AGRICULTURE

Division 8. CANNABIS CULTIVATION

Chapter 1. CANNABIS CULTIVATION PROGRAM

and

Chapter 2. CANNABIS APPELLATIONS PROGRAM

THIRD ADDENDUM TO THE INITIAL STATEMENT OF REASONS

Following the Second 15-Day Comment Period.

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This Third Addendum to the Initial Statement of Reasons provides rationale and explains specified changes to the modified regulation text published for the Third 15-day comment period.

Responses to all comments received during rulemaking will be included in the Final Statement of Reasons, which will be published upon approval by the Office of Administrative Law.

I. Summary of Revisions to the Proposed Regulations

The Department anticipates amendments to Business and Professions Code division 10, which if passed, would transfer authority to create and modify cannabis cultivation licensing regulations from the California Department of Food and Agriculture (CDFA) to the Department of Cannabis Control. The authority to establish a process by which licensed cultivators may establish appellations of origin remains with CDFA. In response to these proposed statutory changes, the Department is amending the regulations to extract all proposed modifications in Chapter 1, resulting in no changes being made to the current regulation language in Chapter 1 and to remove section 9204 from Chapter 2 as this section is cultivation licensing regulation. Revisions to the proposed regulation text are shown in the accompanying document using bold, italics, and single-underline (black) for additions; and bold, italics, and single-strikeout (black) for deletions. In general, these revisions are consistent with the originally proposed regulations. Revisions generally relate to:

[1] Modifications in Chapter 1 which result in no proposed changes to the existing regulations due to the transfer of statutory authority.

[2] Replacement of a specific reference in Chapter 2 to section 8400 with a general reference to licensing record retention regulations in anticipation of changes to the cannabis licensing regulations by the Department of Cannabis Control;

[3] Non-substantive modification in Chapter 2 to clarify that public comments on proposed appellation petitions shall be received by the final day of an appellation petition comment period as expected instead of only on the final day;

[4] Non-substantive modification in Chapter 2 to correct a typographical error omitting section 9107(e) in conflict with the specific mention of those “recordkeeping standards;” and

[5] Striking of section 9204 in Chapter 2 due to the transfer of statutory authority.

[1] The anticipated amendments to Business and Professions Code division 10, which if passed, would transfer the authority to create and modify cannabis cultivation licensing regulations from CDFA to the Department of Cannabis Control. Since CDFA may not have authority to make changes to the regulations in Chapter 1, it is necessary to strike all initially proposed and modified additions to the regulations in Chapter 1 and to add back any current language which was proposed for removal, so that no proposed changes are made to the current regulations in Chapter 1.

[2] A modification to Chapter 2, section 9107(e) replaces a specific reference to Chapter 1, “section 8400 of this division” with a general reference to “cannabis licensing record retention regulations.” It is expected that the Department of Cannabis Control will make modifications to the existing cultivation licensing regulations which may change the section numbering of the cannabis licensing record retention regulations, so this modification is necessary to preserve the reference to recordkeeping regulations.

[3] A non-substantive modification to Chapter 2, section 9201(a) strikes the word “on” and replaces it with the word “by” to clarify that public comments on an appellation petition can be received throughout the comment period. The affected sentence now reads “Comments shall be submitted to the contact person identified in the notice and received by the final day identified in the notice.” The resulting regulation meets the expectation that the public may submit comments on an appellation petition throughout the comment period instead of only on the final day.

[4] A non-substantive modification to Chapter 2, section 9203(e) replaces the reference to section 9107(a) through 9107(“d”) with (“e”). It can be assumed that the mention of “recordkeeping” in section 9203(e) refers to the petition criteria imposed by section 9107(e), which states recordkeeping criteria that must be described for standard, practice, and cultivar requirements included in a petition. Correcting this subdivision reference preserves the meaning of the reason for petition denial provided under section 9203(e).

[5] Since CDFA may not have the authority to enforce licensing regulations, it is necessary to strike section 9204 regarding enforcement of labeling regulations and a limited conditional relief from the consequences of noncompliance with some licensing regulations. CDFA may lack the statutory authority to provide such relief.

Specific details of revisions may be found below by section.

II. Update to the Initial Statement of Reasons

A. Modifications Provided for in the Third 15-Day Comment Period

The third 15-day modifications to the text as initially proposed, identified below by their respective section and subdivision numbers to Title 3 of the California Code of Regulations, were as follows:

CHAPTER 1. CANNABIS CULTIVATION PROGRAM

ARTICLE 1. CULTIVATION LICENSE FEES AND REQUIREMENTS

Section 8000. Definitions.

Initially proposed and modified additions to this section have been struck and current regulation language re-inserted to result in no changes being made to the current regulation. CDFA may lack the statutory authority to make changes to this section.

ARTICLE 2. APPLICATIONS

Section 8106. Cultivation Plan Requirements.

Initially proposed and modified additions to this section have been struck and current regulation language re-inserted to result in no changes being made to the current regulation. CDFA may lack the statutory authority to make changes to this section.

ARTICLE 3. CULTIVATION LICENSE FEES AND REQUIREMENTS

Section 8212. Packaging and Labeling of Cannabis and Nonmanufactured Cannabis Products.

Initially proposed and modified additions to this section have been struck and current regulation language re-inserted to result in no changes being made to the current regulation. CDFA may lack the statutory authority to make changes to this section.

Section 8212.1 Notice of Use for Appellation of Origin.

This proposed added section has been struck. CDFA may lack the statutory authority to make changes to this Chapter.

ARTICLE 5. RECORDS AND REPORTING

Section 8400. Record Retention.

Initially proposed and modified additions to this section have been struck to result in no changes being made to the current regulation. CDFA may lack the statutory authority to make changes to this section.

Section 8403. Track-and-Trace System Unique Identifiers (UID).

Initially proposed and modified additions to this section have been struck and current regulation language re-inserted to result in no changes being made to the current regulation. CDFA may lack the statutory authority to make changes to this section.

ARTICLE 7. ENFORCEMENT

Section 8601. Administrative Actions - Operations.

Initially proposed and modified additions to Table A have been struck and current regulation language re-inserted to result in no changes being made to the current regulation. CDFA may lack the statutory authority to make changes to this section.

Section 8602. Administrative Actions - Recordkeeping.

Initially proposed and modified additions to Table B have been struck to result in no changes being made to the current regulation. CDFA may lack the statutory authority to make changes to this section.

CHAPTER 2. CANNABIS APPELLATIONS PROGRAM

ARTICLE 2. PETITIONS

Section 9107. Standard, Practice, and Cultivar Requirements.

9107(e): Replaced the phrase “section 8400 of this division” with “cannabis licensing record retention regulations” to preserve the reference to record retention regulations that may be renumbered from section 8400 or moved to a different division by the Department of Cannabis

Control. The anticipated changes to Business and Professions Code division 10, transfer the authority to create and modify cannabis cultivation licensing regulations from CDFA to the Department of Cannabis Control. It is expected that the Department of Cannabis Control will make modifications to the existing cultivation licensing regulations which may move or change the section numbering of the cannabis licensing record retention regulations.

ARTICLE 3. PETITION REVIEW PROCESS

Section 9201. Notice of Proposed Action on Appellation of Origin.

9201(a): Struck the word, “on” and replaced it with the word “by” to allow a full 90 days for the public to submit a comment instead of limiting comment submission to the final day of an appellation petition comment period.

Section 9203. Denial of Petition for Appellation of Origin.

9203(e): Struck the subdivision reference “d” and replaced it with “e.” This change is necessary to preserve consistency between the regulation set forth in section 9203(e) that a reason for denial is that the proposed standard, practice, and cultivar requirements fail to meet the recordkeeping standards set forth in section 9107(e). The specific subdivision reference in section 9203(e) to “section 9107, subdivisions (a) through (d)” previously omitted section 9107(e) in error.

Section 9204. Effective Dates.

Struck this section entirely. The anticipated changes to Business and Professions Code division 10, transfer the authority to enforce cannabis cultivation licensee labeling and advertising regulations from CDFA to the Department of Cannabis Control. Since CDFA will no longer have authority to enforce licensing regulations, it is necessary to strike this section regarding enforcement of labeling regulations and a limited conditional relief from the

consequences of noncompliance with some licensing regulations. CDFA may lack the statutory authority to provide such relief.