

**CALIFORNIA CODE OF REGULATIONS**

*Title 3. FOOD AND AGRICULTURE*

*Division 8. CANNABIS CULTIVATION*

*Chapter 1. CANNABIS CULTIVATION PROGRAM*

and

*Chapter 2. CANNABIS APPELLATIONS PROGRAM*

**SECOND ADDENDUM TO THE INITIAL STATEMENT OF REASONS**

Following the First 15-Day Comment Period.

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This Second Addendum to the Initial Statement of Reasons provides rationale and explains specified changes to the modified regulation text published for the third 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**

After consideration of comments received during the 15-day comment period which closed on October 19, 2020, revisions to the proposed regulation text are shown in the accompanying document using black font, italics, and double-underline for additions; and black font, italics, and double-strikeout for deletions. In general, these revisions are consistent with the originally proposed regulations, increase the clarity of the regulations, and respond to stakeholder concerns. Revisions generally relate to:

***[1] Adjustments to the Administrative Actions – Operations violation table and advertising, marketing, packaging, and labeling regulation organization;***

***[2] Adjustments to the fee structure;***

***[3] Further clarification of statutory changes to Business and Professions Code section 26063 enacted by Senate Bill 67 (2019-2020 Regular Session).***

***[4] Adjustments to petition criteria language;***

***[5] Adjustments to the petition review process;***

***[6] Clarification of the appellation-trademark transition period;***

***and***

***[7] Clarification of Petition Review Panel operation;***

**[1]** Comments suggested raising the level of proposed administrative action for violations of Business and Professions Code section 26063 (described as misuse that is “likely to mislead consumers”) from “Minor” to “Serious.” Violation of labeling and advertising regulations related to protected cannabis origin designations is considered to be “significant false, misleading, or deceptive business practice” and therefore consistent with the classification of “Serious” as described in section 8601, subdivision (a)(1). Modifications add table entries for “Serious” violations specific to protected cannabis production origin designations and clarify that existing “Minor” violations are related to general advertising and labeling regulations. Section 8212 has also been reorganized to more clearly communicate regulations applicable to cannabis labeled or advertised using protected production origin designations.

**[2]** Changes to the appellation fees have been made in response to comments that the proposed petition approval fee would make department decisions on petitions less impartial. The second petition fee has been modified to be a petition proposal fee to be collected after the petition is deemed complete and before notice of proposed action on an appellation petition is given. This change incentivizes higher quality petitions and prevents incentivizing approval of petitions for the Department to collect the balance of the petition fees. With the petition approval fee structure in the first modified proposed regulations text, the Department would have not collected the second fee if the petition were denied.

**[3]** Further revisions are made to clarify the impact on the petition review process of statutory language in Business and Professions Code section 26063, subdivision (c) added by Senate Bill 67 (SB 67, 2019-2020 Regular Session). The modified proposed regulations contain an added section 9102, subdivision (j) clarifying that an appellation petition must contain practice requirements ensuring the appellation of origin be applicable only to cannabis that is planted in the ground, cultivated without the use of structures covering the plant or modifying the natural

light received by the plant in the canopy area, and cultivated without any artificial light. This section more clearly communicates the criteria imposed by Business and Professions Code section 26063, subdivision (c), including the requirement to exclude cannabis produced using light deprivation as a practice of covering the plant for the purposes of modifying the natural light it receives, and in accordance with language in the Assembly Business and Professions legislative analysis stating the intent of SB 67 to “restrict the establishment of appellations of origin to cannabis that was produced outdoors in the ground with natural light.”

**[4]** Some comments received expressed concern that a petition for a cannabis appellation of origin might be approved under the proposed regulations supported solely by description of a single reputation or cultural geographical feature. While these hypothetical situations are determined to be unlikely, the Department accepts various suggestions in comments to modify language to make petition criteria stronger and more exclusive in regulation. These modifications clarify that appellation petitions are expected to be based on more physical geographical features and their effects on the quality or characteristics of the cannabis produced in the area. These modifications are expected to help ensure that petitions received represent a strong connection between the geographical area and the cannabis to promote cannabis appellations that are meaningful and useful to consumers.

**[5]** Modifications have been made to accept comments regarding the petition review process. The public comment period provided on appellation petitions has been extended to 90 days and the regulations have been modified to clarify that the Department has the authority to extend public comment periods beyond 90 days when requested. This change allows for more robust public feedback on petitions. The optional extension beyond 90 days also allows more flexibility on finalizing petitions. Modifications were made to adjust the description of the mailing and email addresses for clarity on how appellation petitions and Notices of Use of an appellation may be submitted. These modifications provide flexibility in administering the Cannabis Appellations Program during anticipated cannabis agency consolidation efforts. A modification was made for the clarity and transparency of the petition review process to require that notices of final decision on petitions include all reasons for denial, and a new section 9203 was added to the proposed regulations to more clearly describe the basis by which appellation petitions may be denied by the Department.

**[6]** Revisions accept suggestions of commenters to clarify the appellation-trademark transition period afforded by the proposed regulations. Revisions clarify that renumbered section 9204, subdivision (b) provides limited relief from administrative actions that could otherwise be imposed on businesses using currently established trademarks in violation of labeling regulations prohibiting the false or misleading use of cannabis appellations of origin protected under Business and Professions Code section 26063. To achieve relief for a one-year period while adjusting branding, a trademark must have been registered and in use prior to the start of the current proposed rulemaking. The trademark must be accompanied by a valid and truthful designation of the geographical origin of the cannabis – in compliance with the proposed labeling regulations in section 8212 – to mitigate the confusion that is likely to be caused by the use of a trademark that falsely suggests that the cannabis is eligible for the appellation designation. These changes clarify the limited circumstances under which relief from the consequences of labeling regulation noncompliance may be obtained.

**[7]** Comments requesting comprehensive guidelines for operation of the Petition Review Panel are partially accepted. A subdivision added to section 9300 requires the Panel to operate according to a charter that is approved by the Department every two years. This modification clarifies that the Petition Review Panel is established as an independent body to advise the Secretary and Department and shall determine its own operation by submitting a charter for department review.

*Specific details of revisions may be found below by section.*

## **II. Update to the Initial Statement of Reasons**

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

The second modifications to the text as previously 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 3. CULTIVATION LICENSE FEES AND REQUIREMENTS**

#### **Section 8212. Advertising, Marketing, Packaging, and Labeling of Cannabis and Nonmanufactured Cannabis Products.**

**8212:** Reorganized subdivisions in this section for clarity. The resulting subdivision (a) describes general advertising and marketing requirements, while subdivision (b) describes restrictions specific to cannabis advertised or marketed using a production origin designation protected by Business and Professions Code section 26063 (county of origin, city of origin, city and county of origin, or appellation of origin). Similarly, the resulting subdivision (c) specifies general packaging and labeling requirements, while subdivision (d) describes the restrictions applicable to cannabis packaged or labeled using a production origin designation protected by Business and Professions Code section 26063. Specifically, former subdivision (a)(4) has been renumbered as subdivision (b), former subdivision (b) becomes (c), former subdivision (b)(5) becomes (d), and former subdivisions (b)(5)(A)-(C) and (b)(6)-(7) become (d)(1)-(5). Punctuation has also been modified for consistency and clarity of the regulation according to the new subdivision numbering.

**8212(d)(5)** (resulting): Added the word “boundary” to clarify that the appellation of origin boundary defines the geographical area that the cannabis must be considered produced in for compliance with appellation of origin labeling and packaging requirements.

#### **Section 8212.1. Notice of Use for Appellation of Origin.**

**8212.1(a):** Modified to clarify that the email address for submission of Notice of Use of an appellation of origin shall be provided by the Department on its website. This modification is needed for flexibility in administering the Cannabis Appellations Program during an anticipated California cannabis agency consolidation.

**8212.1(e):** Struck this subdivision to ease program implementation during California cannabis agency consolidation. The subdivision as previously drafted was not expected to apply for at

least six years, and so can be implemented in a future rulemaking if it is determined to be necessary for Cannabis Appellations Program administration. The following subdivision (f) was renumbered to (e).

## **ARTICLE 7. ENFORCEMENT**

### **Section 8601. Administrative Actions - Operations.**

**Table Entry “BPC 26031, 3 CCR 8212(a)”** modified to specify general advertising or marketing requirements.

**Table Entry “BPC 26031, 3 CCR 8212(b)”** added to specify a “Serious” violation class for noncompliance with advertising or marketing requirements specific to the use of cannabis production origin designations protected by statute. Commenters with experience in enforcing similar advertising and marketing requirements stated that significantly higher fines were important for protection of designations of origin such as appellations of origin.

**Table Entry “BPC 26031, 3 CCR 8212(b)”** modified to specify 3 CCR 8212(c) and general labeling or packaging requirements.

**Table Entry “BPC 26031, 3 CCR 8212(d)”** added to specify a “Serious” violation class for noncompliance specific to protected cannabis production origin designation (county of origin, city of origin, city and county of origin, and appellation of origin) labeling and packaging requirements. Commenters with experience in enforcing similar labeling and packaging requirements stated that significantly higher fines were important for protection of designations of origin such as appellations of origin.

## **CHAPTER 2. CANNABIS APPELLATIONS PROGRAM**

### **ARTICLE 2. PETITIONS**

#### **Section 9100. Submission of Petitions**

**9100(b):** Modified to clarify that the mailing or email addresses for submission of an appellation petition shall be provided by the Department on its website. This modification increases flexibility in implementing the Cannabis Appellations Program during California cannabis agency consolidation.

**9100(d):** Replaced the word “approval” with “proposal” to be consistent with amended subsection 9200, subdivision (b) and to update the reference to that subdivision. The petition proposal fee will be requested by the Department once the petition has been deemed complete and accepted for further review.

### **Section 9101. Petition Fees**

**9101(a)(1)(A):** Replaced the word “approval” with “proposal” for consistency of the name of the second petition fee.

**9101(a)(2)(A):** Replaced the word “approval” with “proposal” for consistency of the name of the second petition fee.

### **Section 9102. Petition to Establish an Appellation of Origin**

**9102(h):** Edited to clarify that a description and evidence of the legacy, history, reputation, and economic importance of cannabis production is necessary for the Department to approve the geographical designation of a cannabis production area. This modification more clearly communicates the way in which reputation may be included in an appellation petition.

**9102(j):** Added subdivision (j) to clarify the requirement in Business and Professions Code section 26063, subdivision (c) that the Department may not approve an appellation petition unless it includes practice requirements requiring planting in the ground, excluding modification of the natural light received by the plant, and excluding the use of artificial light.

### **Section 9104. Evidence of Name Use.**

**9104(b)(2):** Added the word “licensed” to clarify that petitions shall demonstrate that the proposed name is directly associated with an area in which licensed cannabis cultivation exists.

### **Section 9105. Maps and Boundary Description.**

**9105(a)(1):** Replaced the word “should” with the word “shall” for consistency with other subdivisions in this section.

### **Section 9106. Geographical Features.**

**9106 and 9106(a):** Replaced the word “each” with the word “the” and pluralized the term “geographical feature” to be “geographical features” to impose a requirement that more than one geographical feature be described in an appellation petition as suggested by commenters. This will ensure that approved cannabis appellations represent a stronger connection between the geographical area and the cannabis.

**9106(a)(5) (previous):** Struck this subdivision on “cultural features” as a geographical feature and renumbered the following subdivision on the widespread advice of commenters. By de-emphasizing human geography in the narrative, geographical features described in an appellation petition are expected to be intrinsic to the area. The following subdivision (a)(6) was renumbered to (a)(5).

**9106(c) (previous):** Struck this subdivision and renumbered the following subdivisions for clarity and in acceptance of comments requesting the striking of previous subdivision (a)(5). Given the emphasis on physical geographical features, geographical features included in appellation petitions are not expected to violate previous subdivision (c) and so it is no longer informative.

**9106(d) (former):** Renumbered this subdivision to (c). Struck the phrase, “or reputation” at the widespread request of commenters and clarified that the causal link between each



geographical feature and a quality or characteristic of the cannabis shall be described in an appellation petition.

**9106(e) and (e)(1)** (former): Renumbered these subdivisions to (d) and (d)(1). Partially accepted comments suggesting clarification language for these subdivisions. Replaced the references to the relevance of the distinctive geographical feature with “causal link.”

### **Section 9107. Standard, Practice, and Cultivar Requirements.**

**9107(c)(1)**: Replaced the term “unfamiliar person” with the phrase “licensed cultivator within the appellation of origin” for clarity.

**9107(d)(1)**: Struck the phrase “and/” for clarity.

**9107(e)**: Struck the word “timely” as unnecessary. The Department will evaluate a recordkeeping requirement included in an appellation petition on the basis of whether it allows determination of compliance with the appellation production requirement, not within the context of a specific time period.

## **ARTICLE 3. PETITION REVIEW PROCESS**

### **Section 9200. Petition Review.**

**9200(b)**: Moved and modified language regarding payment of the second petition fee from subdivision (f) to subdivision (b) for conciseness and clarity.

**9200(c)**: Modifications to clarify the requirement for payment of a petition proposal fee prior to the Department conducting activities described in subdivisions (c)(1) and (c)(2).

**9200(d)**: Replaced the phrase “by e-mail” with the phrase “in writing” to provide flexibility in the methods by which the Department may communicate appellation petition deficiencies or clarification with the petitioner.

**9200(f):** Struck this subdivision as no longer necessary. This subsection required the payment of the petition approval fee, after a petition was approved. With amendments to subsections 9100(d), 9101(a)(1)(B), 9101(a)(2)(B) and 9202(b), there is no longer a petition approval fee. This change ensures that Department decisions on appellation petitions are neutral to the Cannabis Appellations Program budget.

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

**9201(a):** Modified to implement a petition proposal fee requirement, to increase the public comment period to 90 days, and clarify that the Department may extend public comment period beyond 90 days. With the change from a petition approval fee to a petition proposal fee, the fee is now due before the Department provides public notice of the proposed action to establish or amend the appellation of origin. This also addresses comments that the public needs significantly more time to provide input for a petition and that 90 days was a more reasonable time. Struck the phrase, “by 5:00 p.m.” to allow a full 90 days for the public to submit a comment.

### **Section 9202. Notice of Final Decision on Appellation of Origin**

**9202(a):** Revised language to remove the petition approval fee, clarify that the Department shall also post notices of final decision on its website, and clarify the name of the email list service used for notification. Struck the term “, or cancelled” for consistency with the striking of previous section 8212.1, subdivision (e).

**9202(b):** Added this subdivision to specify that a notice of final decision to deny a petition shall contain all reasons for denial. This modification maintains the transparency of the petition review process by requiring publication of the reason(s) an appellation petition is denied.

### **Section 9203. Denial of Petition for Appellation of Origin.**

**9203:** Added this section to clearly specify the basis by which a petition may be denied. This addition increases clarity related to the petition review process and the Department's decisions on appellation petitions.

**9203(a):** Added this subdivision to specify that if the evidence provided is not sufficient to demonstrate the legacy, history, reputation, and economic importance of cannabis production to the proposed geographical area pursuant to section 9102, subdivision (h), this would be a potential basis for denial of a petition.

**9203(b):** Added this subdivision to specify that if the evidence provided is not sufficient to demonstrate that the proposed appellation name has been used in direct association with a cannabis production area pursuant to section 9104, subdivisions (b)(2) through (b)(4), this would be a potential basis for denial of a petition.

**9203(c):** Added this subdivision to specify that if the evidence provided is not sufficient to demonstrate that the proposed geographical area is distinctive with respect to the geographical features affecting cannabis pursuant to section 9106, subdivision (b), this would be a potential basis for denial of a petition.

**9203(d):** Added this subdivision to specify that if the proposed geographical features as described are not causally-linked to the cannabis or if the causal links are not maintained according to the standards set forth in section 9106, subdivisions (c) and (d), these would be potential bases for denial of a petition.

**9203(e):** Added this subdivision to specify that if the proposed standard, practice, and cultivar requirements do not meet the clarity, form, or recordkeeping standards set forth in section 9107, subdivisions (a) through (d), these would be potential bases for denial of a petition.

**9203(f):** Added this subdivision to specify that if the amendments to the appellation of origin are not consistent with the proposed geographical features according to section 9103, subdivisions (b) through (d), this would be a potential basis for denial of a petition.

**9203(g):** Added this subdivision to specify that the Department may deny a petition on the basis of any other reasonable cause submitted by the petition review panel or through the public comment process that the Department determines would preclude the appellation from being established or amended.

### **Section 9204. Effective Dates.**

**9204:** Renumbered this section from 9203 to 9204, as the new section 9203 was added.

**9204(b):** Struck this subdivision for consistency with the striking of the previous section 8212.1, subdivision (e). If the Department determines that cancellation of cannabis appellations of origin is necessary for the administration of the Cannabis Appellations Program, such regulation may be implemented in a future rulemaking.

**9204(c):** Renumbered subdivision (c) to (b). Revised language for consistency with Business and Professions Code section 26063 and to specify that limited relief is provided from administrative actions for violation of section 8212, subdivision (b)(5) specific to the appellation of origin.

**9204(b)(4) (resulting):** Added the phrase “valid and truthful” to clarify that relief from administrative actions is conditional on the compliant use of another cannabis production origin designation protected under Business and Professions Code section 26063. This is necessary to mitigate consumer confusion resulting from noncompliant use of a recently-approved appellation of origin.

## **ARTICLE 4. PETITION REVIEW PANEL**

### **Section 9300. Establishment of the Petition Review Panel.**

**9300(c):** Added this subdivision directing the Petition Review Panel to submit a charter governing its operation to the Department for approval every two years.

**Section 9301. Membership of the Petition Review Panel.**

**9301(d):** Replaced the word “necessary” with the word “appropriate” to clarify that the Department may communicate what relevant experience is considered appropriate in a request for nominations.

**Section 9302. Duties of the Petition Review Panel.**

**9302(b):** Struck the term “30-day” as inconsistent with modifications to lengthen the public comment period.