

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

CALIFORNIA CODE OF REGULATIONS

Title 3. FOOD AND AGRICULTURE

Division 8. CANNABIS CULTIVATION

Chapter 1. CANNABIS CULTIVATION PROGRAM

and

Chapter 2. CANNABIS APPELLATIONS PROGRAM

INITIAL STATEMENT OF REASONS

PROBLEM STATEMENT

The California Department of Food and Agriculture (Department) CalCannabis Cultivation Licensing Division (CalCannabis) is required by the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) under Business and Professions Code (Bus. & Prof. Code) section 26063 to: (1) Establish standards by which a licensed cannabis cultivator may designate a county of origin for cannabis, and; (2) Establish a process by which licensed cannabis cultivators may establish appellations of origin including standards, practices, and cultivars applicable to cannabis produced in a certain geographical area in California.

Business and Professions Code section 26063(b) required the Department to establish the process for appellations of origin no later than January 1, 2021. The Department created the Cannabis Appellations Program (CAP) to meet this statutory obligation and implement the Department's responsibilities under MAUCRSA.

Appellations of origin are a type of label of origin which provide consumers information about where a product was produced. They differ from other labels of origin such as a company's trademark because they are associated with a geographic region rather than an individual company. As such, they are typically geographic names (or

representations) associated with that region and put on the label or advertisement of a product. Appellations of origin are understood and administered differently throughout the world. One common characteristic is that their use and protection are often accompanied by additional requirements such as the product meeting specific standards or being produced by specific methods in order to use the appellation. Bus. & Prof. Code section 26063 mandates that the future cannabis appellations are associated with standards, practices and cultivars, rather than solely the region of origin.

BENEFITS

The proposed regulations establish standards by which licensed cannabis cultivators may designate a county of origin for their cannabis and nonmanufactured cannabis products and create a process by which licensed cannabis cultivators may petition the Department to establish appellations of origin. Licensed cannabis cultivators may also petition the Department to modify or change components of an existing appellation of origin. Commercial cannabis producers and consumers recognize differences attributable to the geographical origin of cannabis which may influence product pricing and purchasing decisions. Commercial cannabis businesses may indicate the geographical origin to consumers, which can help consumers to know more about the product and justify higher prices for some products due to the added value that their origin provides.

Benefits to the Cultivators

Under the proposed regulations, licensed cannabis cultivators are provided a means to attain product recognition by linking their cannabis origin to a county or a geographical area of California. The proposed regulations also allow cultivators to promote their cannabis farming traditions and region-specific standards, practices, and cultivars. The introduction and use of origin designations on products is expected to cause market segmentation and product differentiation effects which can have the benefits of increasing the total California cannabis market value and profits on origin-designated products. Protection of the name of a place recognized to have a notable effect on cannabis acts to ensure that the reputation of that place is not exploited or damaged by the use of the name on products which were not produced in the named area and in compliance with the production requirements established for the area. As a result, communities of cannabis cultivators are provided tools to promote and manage the reputations of their geographical areas through petitioning for appellations of origin.

Benefits to the Public

Under the proposed regulations, consumers are provided information regarding the origin of cannabis and associated production requirements. The use of origin designations on cannabis can provide consumers with information about attributes of the cannabis, that are difficult or impossible for consumers to determine prior to purchase. This facilitates purchasing decisions, enhances the overall consumer experience, and benefits the efficient operation of the market in general by helping to get the most appropriate product to each consumer more often or at lower cost. Protection of the name of a place recognized to have a notable effect on cannabis acts to ensure that origin information provided to consumers is informative and useful for making purchasing decisions and enables enforcement against the misuse of recognized geographical indications (GIs) to prevent misleading consumers.

**SPECIFIC PURPOSE AND NECESSITY OF EACH SECTION, PER GOVERNMENT
CODE 11346**

Chapter 1. Cannabis Cultivation Program

The Department is amending Division 8, Chapter 1, Sections 8000, 8212, 8400, 8601, and 8602 within Title 3 of the California Code of Regulations, to clarify advertising, marketing, labeling, packaging, record retention, and enforcement requirements applicable to cannabis and nonmanufactured cannabis products in general and with respect to appellation of origin and county of origin. The purpose and necessity of each amendment are explained below.

Article 1. Definitions

Section 8000. Definitions.

The Department is amending section 8000 to include a definition for appellation of origin as a name established through the process set forth in chapter 2 of this division. Since implementation of the Cannabis Appellations Program (CAP) is proposed by adoption of chapter 2 of this division, the Department is also amending section 8000 to clarify that definitions identified in chapter 1 apply to all chapters in the division. These changes are necessary to ensure that terms are used consistently throughout the regulations, to provide the public with a clear understanding of the intent of terms, and to provide uniform implementation of the CAP.

Article 3. Cultivation License Fees and Requirements

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

The Department is amending section 8212 to clarify the requirements applicable to the advertising, marketing, packaging, and labeling of cannabis and nonmanufactured cannabis products in California Bus. & Prof. Code section 26031, to ensure that the use of appellations of origin and county of origin are not misleading to consumers.

Subdivisions (a)(1) through (a)(4) specify the requirements applicable to the advertising and marketing of cannabis and nonmanufactured products. No regulations in this chapter previously specified advertising and marketing restrictions, so the addition of subdivision (a) specifies restrictions on marketing and advertising of cannabis similar to the current packaging and labeling restrictions in section 8212. While advertising, marketing, packaging, and labeling are similar in their intent and usage in industry, cannabis advertising and marketing are treated distinctly from labeling and packaging in division 10 of the Bus. & Prof. Code. The proposed amendments to the Cannabis Cultivation Program provide similar explanation of the requirements applicable to both advertising/marketing and labeling/packageing, while clarifying the distinction between statutory sections governing those activities.

Subdivision (a)(1) requires that sections 26150 through 26156 of the Bus. & Prof. Code must be met for compliant advertising and marketing of cannabis. This regulation is necessary to identify statutory advertising and marketing requirements for the regulated public.

Subdivision (a)(2) specifies that any advertising or marketing of cannabis must be compliant with the requirements of the Bureau of Cannabis Control, which is the agency that holds authority over advertising and marketing of cannabis pursuant to division 10 of the Bus. & Prof. Code. This regulation is necessary to identify statutory advertising and marketing requirements for the regulated public.

Subdivision (a)(3) refers to general advertising and marketing requirements applicable to any business operating in California, which must also be met by cannabis businesses. This regulation is necessary to identify statutory advertising and marketing requirements for the regulated public.

Subdivision (a)(4) clarifies the requirements set forth in Bus. & Prof. Code section 26152 subdivision (c), which pertains to the advertising and marketing of cannabis creating any impression that the cannabis originated in a particular place or region. This

regulation subdivision is necessary to provide for uniform implementation of the CAP and to ensure consistency between county of origin and appellation of origin advertising and marketing requirements. The language “a particular place or region” in statute refers to an origin designation, of which two types have been described in statute for cannabis: county of origin and appellation of origin. However, the specific requirement of Bus. & Prof. Code section 26152, subdivision (c) to include an appellation of origin in any advertisement creating the impression of an origin designation conflicts directly with Bus. & Prof. Code section 26063, subdivision (a) that permits cultivators to designate their cannabis with a county of origin without requiring the use of an appellation of origin. This proposed regulation subdivision clarifies that county of origin and appellation of origin are distinct and can be used in conjunction or separately, and that complaints about advertising and marketing of cannabis origin shall be evaluated within the context of county of origin or appellation of origin on a case-by-case basis. For effective and logical protection of origin designation names, it is necessary to clarify that use of either a county of origin or appellation of origin in advertising or marketing requires that the specific county of origin or appellation of origin must appear on the label of the product. Otherwise the advertisement of the product would be inconsistent and misleading about the product’s origin as communicated to consumers by the label.

Subdivision (b) is amended to clarify the requirements applicable to the labeling and packaging of cannabis and nonmanufactured cannabis products. No amendments are made to subdivisions (b)(1) through (b)(3), previously section 8212 subdivisions (a)(1) through (a)(3). These amendments are necessary to distinguish these subdivisions relating to labeling and packaging from the new subdivision (a) which sets forth the requirements for advertising and marketing.

Subdivision (b)(4) is amended for maintenance of the code to remove an elapsed effective date and to clarify that to be exempt from the requirement for child-resistant packaging, a package must contain only seeds or immature plants.

Subdivision (b)(5) is added to clarify the requirements for use of a county of origin or appellation of origin in the labeling and packaging of cannabis and nonmanufactured cannabis products. This regulation is necessary to provide uniform implementation of the CAP and to ensure that the use of origin names on cannabis labels is not misleading to consumers.

Subdivision (b)(5)(A) specifies that for the use of a county of origin or appellation of origin in the labeling of cannabis, one-hundred percent of the cannabis must have been produced in that county or appellation of origin as specified by Bus. & Prof. Code section 26063.

Subdivision (b)(5)(B) specifies that records demonstrating compliance with subdivision (b)(5)(A) must be retained by the licensee, which is necessary to determine compliance or non-compliance by the Department in response to complaints of misuse, which are not expected to be received in most cases until after a product has been harvested, processed, and prepared for retail sale.

Subdivision (b)(5)(C) establishes a requirement for a licensee to file a Notice of Use if the licensee will be using an appellation of origin. The Notice of Use must be submitted to the Department within 30 days of use of the appellation of origin in accordance with section 8212.1 of this chapter. This regulation is necessary to provide the Department with aggregate usage data for monitoring and outreach related to the CAP and to facilitate CAP compliance reviews, audits, inspections, and enforcement. Further clarification of subdivision (b)(5)(C) is provided in section 8212.1.

Subdivision (b)(6) clarifies section 26063 of the Bus. & Prof. Code to specify that cannabis and nonmanufactured cannabis products, for the purposes of origin, are the result of cultivation activities defined in Bus. & Prof. Code section 26001 subdivision (I). This definition includes both the growing and postharvest processing of cannabis plants. This subdivision clarifies the allowance of seeds and smaller plant propagules (often referred to as cuttings or clones) which experience a limited amount of growth outside

the area without allowing the import of larger plants that had a significant portion of their growth outside the origin area. Subdivision (b)(6) is necessary to ensure that the information provided by an appellation of origin or county of origin meets consumer expectations that the geographical origin of production of the cannabis includes all activities occurring from the time of planting to the point at which nonmanufactured cannabis products have undergone growth, harvesting, drying, curing, grading, and trimming. Subdivision (b)(6) also clarifies the difference between an immature plant used as an input to the planting activity – which is not considered to contribute to the geographical origin of the resulting product – and an immature plant which has undergone a significant amount of vegetative growth in a different county or outside the appellation of origin. Eighteen inches was chosen as the limit for consistency with existing regulations regarding transfer of immature plants. This distinction is necessary to provide clarity on the activities considered to contribute to the geographical origin of cannabis for enforcement of county of origin or appellation of origin designations.

Section 8212.1. Notice of Use for Appellation of Origin

The Department is adopting section 8212.1 to create a process by which licensed cultivators must notify the Department of their use of an appellation of origin in the labeling or packaging of cannabis and nonmanufactured cannabis products. This section is necessary to provide the Department with aggregate usage data for monitoring and outreach related to the CAP and to facilitate CAP compliance reviews, audits, inspections, and enforcement.

The Department considered an alternative approach of certification by the Department prior to use, however determined that the costs to administer Department certification would require a fee, which would contribute to barriers of entry, particularly on small cultivation businesses. Not adding potentially burdensome certification costs will result in greater equity for the industry with regard to the appellations program. The Department also considered an alternative approach of self-certification by cultivators for consistency of implementation of the use of county of origin and appellation of origin, however determined that a Notice of Use filing would provide administrative benefits to

the program not achieved under self-certification, including the opportunities for program oversight and proactive compliance inspections and records audits.

Subdivision (a) specifies that compliance with subdivision (b)(5)(C) of section 8212 of this chapter shall be met by filing a Notice of Use with the Department. Subdivision (a) defines the timeline and process required to submit the Notice of Use. This subdivision is necessary to provide clarity on the timeline and process of submitting Notice of Use for an appellation of origin for commercial cannabis. The Department determined that a notification within 30 days of use is reasonable and consistent with similar state notification systems.

Subdivisions (b)(1) through (b)(4) specify the information required to be provided in a Notice of Use for an appellation of origin. This subdivision is necessary to ensure that the Department is provided sufficient information in the Notice of Use for CAP compliance reviews, audits, inspections, and enforcement.

Subdivision (b)(1) specifies that the licensee's name and all license numbers using an appellation of origin must be provided in a Notice of Use filing. This subdivision is necessary to allow the Department to track which licenses are generating commercial cannabis using the appellation of origin. The Department determined that the likelihood of multiple licenses held by a business using the same appellation of origin is significant, so the ability to include multiple license numbers in a Notice of Use filing will reduce the workload involved in filing notices of use for both licensees and the Department.

Subdivision (b)(2) specifies that a Notice of Use filing must contain a contact email address. This subdivision is necessary to allow the Department to communicate with the licensees.

Subdivision (b)(3) specifies that for each Notice of Use filing, a single appellation of origin must be identified. This subdivision is necessary to determine which appellation of

origin the licensee is using. The Department determined that multiple appellations of origin are likely to be rare, so it is reasonable to limit one appellation of origin per Notice of Use filing and would not be burdensome because a licensee could file an additional Notice of Use for each appellation of origin used.

Subdivision (b)(4) specifies that the date the appellation of origin will be used must be provided in a Notice of Use filing. This subdivision is necessary to allow determination of compliance with the requirement that a Notice of Use must be submitted within 30 days of use of an appellation of origin.

Subdivision (c) specifies that a Notice of Use shall be valid for a period of three years, after which the licensee must submit a Notice of Use again if continuing to use the appellation of origin. This subdivision is necessary to specify the effective term of a Notice of Use and to ensure that information provided to the Department by submission of Notices of Use is current. The Department determined that a period of three years is sufficient for the Department in collecting information on the use of appellations of origin and a reasonable timeframe for licensees to refile a Notice of Use.

Subdivision (d) clarifies that submission of a Notice of Use is not evidence of compliance with the standard, practice, and cultivar requirements for the appellation of origin. This subdivision is necessary to clarify to licensees that filing a Notice of Use with the Department is required for compliance, but it is not evidence of compliance of the appellation of origin requirements and does not replace the record retention requirement specified by subdivision (b)(5)(B) of section 8212 of this division. The Department determined this was necessary for enforcement and administration of CAP.

Subdivision (e) specifies that if the Department has not received a Notice of Use filing for a specific appellation of origin during a period of five years, the Department has discretion to cancel the appellation of origin. This subdivision is necessary to provide the Department with a mechanism to cancel an inactive appellation of origin if it determines that its continued protection would degrade the value of the CAP by

saturating it with inactive appellations of origin potentially confusing consumers. Further, there may be an impediment to clear communication of the origin of cannabis to consumers if the Department did not have the discretion to cancel appellations of origin not currently in use. The Department determined that 5 years was a reasonable amount of time after which the Department could cancel an appellation of origin because it is longer than the three-year notice requirement and would allow sufficient time after the three-year period to notice all stakeholder historically involved with that appellation of origin.

Article 5. Records and Reporting

Section 8400. Record Retention.

The Department is amending section 8400 to add subdivisions (d)(13) and (d)(14) specifying that records related to documenting compliance with county of origin and appellation of origin requirements are required to be retained by licensed cultivators if a county of origin or appellation of origin is used.

Subdivision (d)(13) requires that records demonstrating that all activities occurred in eligible locations for cannabis to be considered produced in a California county must be retained by the licensee for each county of origin used in the advertising, labeling, marketing, or packaging of that cannabis. This subdivision is necessary to clarify that to use a county of origin designation, the licensee is required to retain records demonstrating that the cannabis was produced in the named county, including the requirement that immature plants be shorter or narrower than 18 inches at the time they are transferred into the county. Records retention requirements are fundamental to an effective regulatory oversight program. It is necessary for required records and documentation to be retained and made readily available to Department staff, who will be inspecting licensed facilities to determine compliance with California's licensing requirements. In the absence of specific records retention requirements, licensees would have the discretion to dispose of or destroy business records that often serve as the primary basis for determining statutory and regulatory compliance.

Subdivision (d)(14) requires that records demonstrating that all activities occurred in eligible locations, and all standard, practice, and cultivar requirements of the appellation of origin were met for cannabis to be considered produced in an appellation of origin must be retained by the licensee for each appellation used in the advertising, labeling, marketing, or packaging of that cannabis. This subdivision is necessary to clarify that to use an appellation of origin designation, the licensee is required to retain records demonstrating that the cannabis was produced in the appellation of origin, including the requirement that immature plants be shorter or narrower than 18 inches at the time they are transferred into the geographical area, as well as the compliance documentation requirements of each standard, practice, and cultivar requirement of the appellation of origin as specified in the appellation petition. Records retention requirements are fundamental to an effective regulatory oversight program. It is necessary for required records and documentation to be retained and made readily available to Department staff, who will be inspecting licensed facilities to determine compliance with California's licensing requirements. In the absence of specific records retention requirements, licensees would have the discretion to dispose of or destroy business records that often serve as the primary basis for determining statutory and regulatory compliance.

Article 7. Enforcement

Section 8601. Administrative Actions – Operations.

The Department is amending section 8601 to include violation entries in Table A under subdivision (d) related to labeling and packaging requirements detailed in section 8212 to reflect the addition of advertising and marketing requirements to section 8212. These entries are necessary to establish the specific statutory and regulatory sections subject to violation, the violation category and fine assessment, and to allow the Department to impose administrative actions in response to violations of advertising and marketing regulations. Fine amounts were determined by assessing the potential impact from the violation on the environment and public safety, similar to and consistent with fine amounts for labeling and packaging violations, and the Department's ability to effectively administer the CAP.

Section 8602. Administrative Actions – Recordkeeping.

The Department is amending section 8602 to add violation entries to Table B specific to record-retention requirements for use of county of origin and appellation of origin. These entries are necessary to establish the specific statutory and regulatory sections subject to violation, the violation category, and fine assessment, and to allow the Department to impose administrative actions in response to violations of record retention specific to county of origin and appellation of origin requirements. Fine amounts were determined based upon consistency with the Minor recordkeeping violation category based upon Bus. & Prof. Code section 26160 and the same as other section 8400 recordkeeping violations.

Chapter 2. Cannabis Appellations Program

The Department proposes the adoption of Division 8, Chapter 2, Sections 9000 to 9302, within Title 3 of the California Code of Regulations, to implement the Cannabis Appellations Program (CAP) in accordance with Bus. & Prof. Code section 26063. The Chapter will have 4 articles, each containing rules for different aspects of the program. The purpose and necessity of each article are explained below.

Article 1 Definitions

Section 9000. Definitions.

The Department is adopting section 9000 and subdivisions (a) through (e) in Chapter 2 to define language used in the proposed regulations, ensure language is used consistently throughout the regulations, provide stakeholders clear understanding of the intent of specific words, and provide uniform implementation of the CAP.

Subdivision (a) defines **cultivar** as a cultivated variety, trade designation, or strain of cannabis. This definition is necessary to clarify the use of the term in Bus. & Prof. Code section 26063.

Subdivision (b) defines **petitioning organization** as a group of licensed cultivators representing three or more unique businesses. This definition is necessary to clarify

who may petition to establish an appellation of origin. The Department determined three or more licensed cultivators would be sufficient to form a petitioning organization and encourages collaboration among cultivators on standards, practices, and cultivar requirements. This mirrors existing law (Bus. & Prof. Code section 26223) which permits three or more natural persons engaged in the cultivation of cannabis to form a nonprofit cooperative association for the purposes of, “cultivation, marketing, or selling,” of cannabis products. As the role of the petitioning organization is similar to the nonprofit cooperative in terms of its marketing function, it is appropriate to maintain consistency with existing law in defining the requirements for a petitioning organization.

Subdivision (c) defines **petitioner** as the licensed cultivator designated by the organization to be the primary contact for the petition. This definition is necessary to simplify references to the primary contact for appellation petitions.

Subdivision (d) defines **practice** as an allowed or prohibited method of cultivation for use of an appellation of origin. This definition is necessary to clarify the use of the term in Bus. & Prof. Code section 26063 and enable petitioners to determine appropriate practices for the appellation of origin petition.

Subdivision (e) defines **standard** as a measurable, scorable, or certified requirement applicable to the cannabis or cultivation for use of an appellation of origin. This definition is necessary to clarify the use of the term in Bus. & Prof. Code section 26063 and enable petitioners to identify standards for the appellation of origin petition.

Article 2. Petitions

Section 9100. Submission of Petitions.

The Department is adding Section 9100 (a)-(c), to provide information regarding who may petition for an appellation of origin, types of petitions, and how to submit a petition and associated fees to the Department. This section is necessary for the Department to fulfill its obligation to develop a process to allow licensed cultivators to establish appellations of origin for cannabis as required by Bus. & Prof. Code section 26063 (b).

Subdivisions (a)(1) and (a)(2) specify who may submit a petition to the Department and provide information on the types of petitions that may be submitted to the Department. This subdivision is necessary to clarify who may petition the Department and for what purposes. The Department determined that a group of licensed cultivators representing three or more unique businesses represents the minimum number of licensees needed for a group to represent an area rather than a single business or partnership venture. The Department considered the alternative of allowing individual cultivation licensees to petition for an appellation of origin, similar to the U.S. wine American Viticultural Area (AVA) petition system. However, the inclusion of standard, practice, and cultivar requirements in Bus. & Prof. Code section 26063(b) necessitates greater consensus-building in a proposed cannabis appellation of origin to avoid the establishment of appellations with overly specific or burdensome requirements in favor of any individual cultivator. Therefore, the Department chose three licensees as a minimum requirement to promote consensus building among cultivators within the proposed appellations. The Department also considered several alternative approaches requiring demonstration of consensus, however the potential differences in proposed appellations' standards, practice, and cultivar requirements complicate the ability to effectively quantify consensus other than the requirement for a petitioning organization. Additionally, a requirement to demonstrate consensus might result in an undue burden on petitioners. Providing opportunity for public comment on appellation petitions will allow the Department to estimate the amount of support and opposition to a given petition.

Subdivision (a)(1) identifies that one type of petition is to establish an appellation of origin. Subdivision (a)(2) identifies that another type of petition is to amend an existing appellation of origin. These subdivisions are necessary to establish that appellations of origin may be amended after approval, and that there are different criteria for establishing an appellation and amending an existing appellation.

Subdivision (b) provides the specific method by which petitioners shall submit a petition to the Department. This subdivision is necessary to establish how to submit a petition to the Department.

Subdivision (c) specifies that petition fees must be submitted to the Department before review of the petition will be initiated. This subdivision is necessary to establish the fee requirement and clarify the process. The Department considered an alternative approach of performing an initial review of petitions before collecting a fee but determined that the uncertainty in amount of pre-fee-collection review workload may result in insufficient funding to administer the CAP. Requiring the submission of fees with the petition is necessary for funding of the CAP including petition review.

Section 9101. Petition Fees.

This section specifies petition fees for each type of petition. This section is necessary to establish the fee amount required for each type of petition. The Department determined that the petition fee for each type of petition covers the long-term administrative costs of the petition review activities of the CAP. Fees were determined based on the data, methods, and conclusions of the CAP regulation Economic and Fiscal Impact Analysis. Fees were determined by modeling an average of ten petitions to establish new appellations of origin per year, with an expected rate of petitions to amend consistent with amendment rates reported for other geographical indications (GI), and a total number of anticipated cannabis appellations slightly higher than for wine to account for the ability of cannabis appellations to vary by standard, practice, and cultivar requirements within the same geographical area in California. The Department determined that fees based on these conservative estimates are necessary to ensure effective administration of the CAP during the years following implementation, in which petition rates are anticipated to vary widely and decline over time in general.

Subdivision (a)(1) specifies that the fee for a Petition to Establish an Appellation of Origin is \$20,880.

Subdivision (a)(2) specifies that the fee for a Petition to Amend an Appellation of Origin is \$10,440.

The Department determined that a lower fee is appropriate for petitions to amend existing appellations of origin because some portions of the existing appellation will not be changed by a petition to amend and have already completed review. Because established GIs are observed to be amended relatively frequently, the Department determined that a fee of approximately 50% of the fee for a petition to establish a new appellation of origin is necessary and reasonable to minimize the financial barrier to innovation within an appellation community and provide sufficient funding for administration and enforcement of the CAP.

Section 9102. Petition to Establish an Appellation of Origin.

This section specifies the information and documentation required in a petition to establish an appellation of origin. This section is necessary to ensure that the Department is provided sufficient information in a petition to make a decision on the petition.

Subdivision (a) requires the petitioner's name, license numbers, primary contact phone number, and email address. This subdivision is necessary to ensure the Department has a single point of contact for each petition to ensure the Department can communicate with the petitioner during the petition review process.

Subdivision (b) requires the petitioner to provide the names and license numbers of individuals in the petitioning organization. The Department determined that these pieces of information are necessary for the Department to identify the licensees associated with the petitioning organization and verify that there is a petitioning organization as required.

Subdivision (c) requires the petitioner to provide a general description and location of the proposed appellation of origin and provides examples of information that petitioners

may include. This subdivision is necessary for transparency of the review process and efficient understanding to the public of the area associated with the appellation of origin. While subdivision (i) of this section specifically requires explanation of the distinctiveness of the proposed area in relation to established appellations of origin, subdivision (c) provides petitioners with an opportunity to communicate the context of the proposed appellation including flexibility to include any information considered relevant by the petitioner. This ability to place the appellation in context facilitates understanding by the public and provides better control to petitioners over the information communicated by the proposed appellation of origin and therefore its reputation in the market.

Subdivision (d) requires the petitioner to provide the name of the proposed appellation of origin and evidence of the association of that name and the area encompassing the appellation of origin pursuant to section 9104. This subdivision is necessary to ensure that the name of the proposed appellation of origin has a direct relationship to the geographical area.

Subdivision (e) requires the petitioner to provide a depiction of the boundary of the proposed appellation of origin pursuant to section 9105. This subdivision is necessary to ensure that the proposed appellation of origin refers to a clearly-defined geographical area as specified by Bus. & Prof. Code section 26063 (b).

Subdivision (f) requires the petitioner to provide information on all geographical features argued to justify recognition of the proposed appellation of origin pursuant to section 9106. This subdivision is necessary to ensure that the proposed appellation of origin is distinctive from other areas and the geography of the area has a meaningful impact on the cannabis produced there. Additional explanation of this requirement is provided below specific to section 9106.

Subdivision (g) requires the petitioner to identify all standard, practice, and cultivar requirements agreed by the petitioning organization as necessary and representative of

the geographical area pursuant to section 9107. This subdivision is necessary to ensure that petitions are compliant with Bus. & Prof. Code Section 26063(b) which requires the inclusion of standard, practice, and cultivar to establish an appellation of origin.

Subdivision (h) requires the petitioner to describe and provide evidence of the legacy, history, and economic importance of cannabis cultivation in the area. This subdivision is necessary to identify, record, and communicate to the public the current and historical context of cannabis cultivation in the local community which affects the cannabis produced there and its reputation. As a marketing device defined by a local community, it is necessary that an appellation of origin petition include this information to provide context to the public. This information about the many communities in California having extensive history, legacy, and economic importance of cannabis cultivation is not otherwise easily accessed by the public. This is due to the long history of prohibition of cannabis cultivation in the United States, which discouraged the retention and publishing of information related to cannabis. This allows petitioners to better differentiate their product within the marketplace, and to also differentiate their proposed appellation of origin relative to other appellations of origin. The requirement to identify prohibited license-types provides a clear and efficient method for consumers, producers, and the Department to understand the appellation of origin petition.

Section 9103. Petition to Amend an Appellation of Origin.

This section specifies the requirements to modify any components of an established appellation of origin. This section is necessary to ensure that the Department is provided sufficient information to make a decision on the petition, including ensuring that the Department is provided a complete set of information as needed to establish an appellation of origin as well as additional clarifying information facilitating review of changes to an appellation of origin previously approved by the Department. The Department has determined that for uniform implementation of the CAP and to ensure that approved appellations of origin continue to represent meaningful information to consumers, decisions on amendments to appellations of origin should be consistent with unchanged portions of existing appellations of origin to prevent consumer

confusion. This section also facilitates the Department's review and communication to the public of changes to existing appellations of origin.

Subdivision (a) requires that a petition to amend an existing appellation must meet all the criteria of a petition to establish an appellation pursuant to section 9102. This subdivision is necessary to communicate to licensees that changes to an existing appellation have all of the requirements of a new appellation petition in addition to specific requirements needed to justify the changes, in order to allow the Department to evaluate petitions to amend in relation to decisions on previous petitions.

Subdivision (b) requires a summary description of, and reason for, the proposed changes. This section is necessary to facilitate petition review, public notice, and consumer information of petitions to amend existing appellations of origin, and to ensure that petitions to amend an existing appellation are justified as appropriate for approval because it would better reflect the geographical area and provide more meaningful information to consumers compared to the existing appellation of origin. Because an appellation of origin is a name recognized to provide information on product features or reputation caused by production origin, the Department expects that all of the required components of a petition may interact and influence each other, and so must be evaluated in context as a whole rather than as independent parts. This subdivision is necessary to provide summary and justification of each change proposed in a petition to amend so that this information is available for effective public comment and review by the Department in context.

Subdivision (c) requires an explanation of how the causal links between place and product required to be described in the petition by section 9106, subdivision (d) and preserved by at least one production requirement per section 9106, subdivision (e) are preserved considering the proposed changes. This subdivision is necessary to justify that changes to an established appellation are consistent with the petition information and approval decision of the established appellation of origin.

Subdivision (d) requires that the proposed changes be supported by evidence. This subdivision is necessary to facilitate petition review by the Department.

Section 9104. Evidence of Name Use.

This section specifies the requirements for providing evidence that the proposed appellation of origin is used to refer to the geographical area.

Subdivision (a) requires an explanation of how the name has been used to refer to the geographical area, including that the narrative be supported by evidence of name recognition and that the relationship between the name and the boundary of the geographical area should be thoroughly explained. This subdivision is necessary to ensure that the proposed appellation name directly relates to the proposed geographical area and appellation boundary, and to allow the Department to review and decide on the petition. In addition, name evidence is also necessary to ensure the label on the cannabis products will not be misleading to the consumer or the public.

Subdivisions (b)(1) through (b)(4) specify the requirements for evidence of name usage included in a petition. Subdivision (b)(1) requires that evidence of name usage be appropriately cross-referenced in the petition narrative to allow the Department to identify name evidence and review for compliance with petition requirements.

Subdivision (b)(2) requires evidence of name usage to demonstrate that the name is directly associated with an area in which cannabis cultivation exists. Bus. & Prof. Code section 26063 provides the ability to establish appellations of origin for use by eligible licensed cultivators and outlines the importance of both appellation and similar names that do not mislead consumers as to the kind of cannabis. Therefore, it is necessary to evaluate the relationship between the name and geographical area of the proposed appellation of origin in the context of state-licensed commercial cannabis cultivation to uphold Bus. & Prof. Code section 26063 and not mislead consumers. Subdivision (b)(3) requires that evidence of name usage must come from sources independent of the petitioning organization. This subdivision is necessary to allow the Department to evaluate evidence of name recognition without having to perform additional research to

confirm that the name recognition reflects the geographical area. Subdivision (b)(4) provides examples of appropriate sources of evidence of name usage, which is necessary to clarify for licensees what types of sources are considered appropriate for evidence of name usage.

Section 9105. Maps and Boundary Description.

This section specifies boundary evidence as a component of the petition requirements to satisfy the requirement of Bus. & Prof. Code section 26063 subdivision (b) that appellations of origin be applicable to cannabis grown in a certain geographical area.

Subdivisions (a)(1) and (a)(2) require petitions to include map(s) showing the location of the proposed area associated with the appellation of origin and details of the map(s).

This regulation is necessary so that the Department can properly propose boundaries of an area associated with an appellation of origin and distinctive geographical features.

The requirement also ensures the boundary and location of the proposed appellation of origin may be clearly communicated to consumers and members of industry.

Subdivision (a)(1) specifies that the scale of the provided map(s) should be large enough to show adequate geographical detail of the proposed boundary line, which is necessary to allow any person to locate the boundary and for the Department to evaluate the relationship of the boundary to the evidence of name recognition and to the geographical features described in the petition. Subdivision (a)(2) requires that the exact boundary of the proposed appellation of origin be prominently and clearly drawn while not obscuring the underlying features that define the boundary line. This is necessary to allow the Department to verify the consistency of the information in the petition and the proposed boundary on the map(s).

Subdivisions (b)(1) through (b)(6) require a narrative description of the proposed appellation boundary, specify the method of structuring the boundary narrative, and provide examples of appropriate map features to describe the boundary. This subdivision is necessary for the Department, consumers, and cultivators to easily identify the boundary of an appellation of origin. It will also to assist the Department in

carrying out compliance and enforcement activities. Subdivision (b)(1) specifies that state, county, township, forest, or other political entity lines may be used for description of the proposed appellation boundary but clarifies that pursuant to Bus. & Prof. Code section 26063 subdivision (b), it is necessary that a proposed appellation boundary must not be the same as the political boundary of a single county as they are distinctly protected as county of origin by Bus. & Prof. Code section 26063 subdivision (a). Subdivisions (b)(2) through (b)(6) provide additional examples of map features. This subdivision is necessary to communicate to petitioners the types of features acceptable for use in describing an appellation boundary.

Section 9106. Geographical Features.

This section specifies the criteria that each geographical feature argued in the petition is a cause of the quality, characteristics, or reputation of the cannabis produced in the area represented by a proposed appellation. Statute requires that appellations are applicable to cannabis. Thus, the geographical features used to delineate an area represented by those appellations must also be related to cannabis for the delineation of that area to be meaningful and readily understood by consumers. This section is needed to provide clarity to petitioners on how to delineate an area represented by a proposed appellation of origin.

Subdivisions (a)(1) through (a)(4) require a narrative description of each geographical feature and provide examples of appropriate geographical features for inclusion in an appellation petition. These subdivisions are necessary to facilitate the Department's review and decisions on a petition. Statute requires that the appellations are applicable to certain geographical areas, as opposed to any arbitrary area. Geographical areas are comprised of different physical and/or cultural features. The Department has interpreted geography in the broadest sense, which includes cultural features as a means of delineating a region. The narrative is necessary to ensure adequate understanding by the department and consumers of the geographical features used to delineate the area represented by the appellation. The examples are needed to promote understanding of the requirement by petitioners.

Subdivision (b) requires evidence that the combination of geographical features in the petition result in a distinctive geographic region compared to areas outside the proposed boundary to other relevant areas which produce cannabis for sale into the marketplace. This subdivision is necessary because statute requires that the appellations be applicable to certain geographical areas, not any arbitrary area. Geographical areas are comprised of different physical and/or cultural features. If the combination of those factors is the same between two contiguous areas, then they are more appropriately treated as one geographic area. So, a petitioner must demonstrate how their proposed area is distinctive. This is necessary to prevent consumer confusion from possible over-subdivision of areas that are more alike than different.

Subdivision (c) requires explanation of how each geographical feature is intrinsic to the identity or character of the place and limits these explanations to reasons other than legal or regulatory requirements. This subdivision is necessary to justify that the geographical features of the proposed appellation of origin are directly related to the place and some quality, characteristic, or reputation of the cannabis produced in that place. This requirement is needed to make the future CAP meaningful and more consistent with existing label of origin agreements.

Subdivision (d) requires a description and explanation of how the referenced geographical features cause specific qualities, characteristics, or reputation for cannabis produced in the area. This subdivision is necessary to facilitate petition review by the Department. Statute requires that the appellations be associated with cannabis. This subdivision is needed to ensure that the unique geographic features that combine to create a distinctive cannabis producing region are also associated with cannabis.

Subdivisions (e)(1) and (e)(2) require that for each geographical feature, a standard, practice, or cultivar requirement must be identified which acts to preserve the distinctiveness of the geographical feature and maintain its relevance to cannabis

cultivation. They also provide clarity on the level of detail required in the petition. This regulation is necessary to create a label of origin system that will provide meaningful information to consumers and to ensure equal requirements on petitioners representing different cultivation methods. For a region to be associated with cannabis, the geographical features used to delineate that region need to have an influence on the cannabis produced in that region. These subdivisions are necessary to maintain the meaningfulness of the delineated areas and the cannabis produced there by requiring an explanation of the connection between distinctiveness of geographical features used to delineate an area and the cultivation methods within that area. It is also necessary to ensure equal treatment in the department's assessing a proposed delineation of a region. An explanation of how the geographical features, whether physical or cultural, impacts the cannabis creates an equal requirement on petitioners.

Section 9107. Standard, Practice, and Cultivar Requirements.

This section specifies the petition criteria for standard, practice, and cultivar requirements for a proposed appellation of origin. This section is necessary to satisfy and clarify the requirement in Bus. & Prof. Code section 26063, subdivision(b) that appellations of origin include standard, practice, and cultivar requirements and to provide uniform implementation of the CAP and facilitate the Department's petition review and compliance actions related to appellations of origin.

Subdivision (a) requires that all standard, practice, and cultivar requirements comply with the clarity requirements proposed in the regulations. This subdivision is necessary to ensure that petitions include information that is easily understood by consumers and cultivators. The Department selected these clarity regulations by reviewing similar clarity standards in existing regulations and determined that they were reasonable and appropriate for this purpose. It is necessary to review production requirements in an appellation petition for clarity to ensure the information about the cannabis labelled with the appellations of origin is understandable and meaningful to consumers and licensees.

Subdivision (b) clarifies the criteria for standard requirements included in an appellation petition. This subdivision is necessary to provide uniform implementation of the CAP and to facilitate the Department's petition review and enforcement actions. Subdivisions (b)(1) and (b)(2) specify that the standards in the petition shall be either measurable, scorable, or certified. The Department chose these forms for the standard based on consultations with industry and stakeholders. The Department determined that excluding the category of practices in the definition of standard is most consistent with the statutory requirement in Bus. & Prof. Code section 26063, subdivision (b)(1) requiring appellations of origin to include both standards and practices. The criteria of measurable, scorable, or certified for standards will allow the Department to more easily determine compliance with the standard when needed for enforcement. These subdivisions are necessary to ensure that the Department is able to efficiently and effectively determine compliance with varying standard requirements among different appellations of origin.

Subdivision (c) clarifies the criteria for practice requirements included in an appellation petition. This Subdivision is necessary to provide uniform implementation of the CAP and to facilitate the Department's petition review and compliance and enforcement actions. Subdivision (c)(1) requires that practice requirements are described in the petition in sufficient detail to be easily understood by consumers and producers. This subdivision is necessary to enable cultivators to comply with appellation practice requirements and help consumers understand them. Subdivision (c)(2) specifies that the names of practices included in petitions must not be misleading to consumers. This subdivision is necessary to ensure that the names of practices required by appellations of origin are easily understood, since unclear practice terms could potentially mislead consumers. From stakeholders, the Department learned there are many terms used in the marketing of cannabis which have multiple and sometimes incompatible definitions. Due to the lack of consensus on such terms for cultivation practices, the Department determined it is necessary to ensure that terms included as practice requirements for proposed appellations do not cause consumer confusion and are readily understood by cultivators who may desire to use the appellation.

Subdivisions (d)(1) and (d)(2), clarify the criteria for cultivar requirements included in a petition and provide examples. This subdivision is necessary to provide uniform implementation of the CAP and to facilitate the Department's petition review and compliance and enforcement actions. The Department consulted with industry and stakeholders and performed a review of the cannabis plant propagule (seed and clone) markets. The Department determined that protection of intellectual property related to cultivar development is not yet fully available to cannabis breeders in the United States, genome sequencing and genetic identity certification services are available for cannabis but not widely applied in industry, and communities of legacy cultivators in California may have locally-adapted cannabis genetic resources that may contribute to the reputation of their product and area. In addition, the Department found that a lack of established cannabis breeding and propagule marketing conventions has contributed to a lack of confidence that a strain name accurately conveys genetic identity. While cultivator communities may desire to protect the intellectual property of locally-developed cultivars, the Department lacks that statutory authority. Such action might also present a conflict with the United States Department of Agriculture and United States Patent and Trademark Office who award plant variety intellectual property. Furthermore, while statute mandates the inclusion of cultivars in the requirements for an appellation, given the current status of understanding the genetics of cultivars, it is inappropriate to be overly restrictive on the use of cultivar names by businesses not participating in CAP. Based on these considerations, the Department has determined that flexibility in determining cultivar requirements in a petition provides petitioners a wide range of tools that may be used to develop and maintain the appellation reputation and to preserve and develop the cannabis genetic resources of a geographical area. Because of the uncertainty evident in the cannabis propagule market, freedom to require genetic identity testing or genetic resource management can both increase the value added by using the appellation as well as help move local cultivar development toward eligibility for intellectual property protections. Freedom to require or prohibit lists of cultivar names allows petitioners the opportunity to manage the development of the appellation reputation by preventing the association of certain cultivar names with the

appellation and/or by focusing the reputation of the appellation on cultivars selected for adaptation to the local environment. Because of the current status of strain names, the Department determined that the criteria to include a cultivar requirement should be broad, even allowing an appellation of origin to be associated with all cultivar names. This option is necessary when petitioners cannot yet determine which cultivars are well-suited to an area.

Subdivision (e) requires that each standard, practice, and cultivar requirement in a petition must also include description of how compliance with the requirement will be documented by cultivators. This subdivision is necessary to enable the Department to determine compliance of a product after it has been prepared for retail sale. Documentation requirements must be present to provide the Department the ability to investigate complaints of misuse of the appellation of origin. The Department has determined that it is more appropriate for petitioning organizations to determine the methods by which compliance documentation is accomplished than for the Department to impose compliance documentation requirements.

Article 3. Petition Review Process

Section 9200. Petition Review.

This section specifies procedures and criteria necessary for the Department to review and make decisions on petitions.

Subdivision (a) requires the Department to provide petitioners with a notice by email confirming receipt of a petition and clarifies that a petition is not considered received until the appropriate fee is submitted to the Department in full. This subdivision is necessary to ensure effective communication with the petitioner and to prevent the fiscal costs to the Department for petition review from exceeding the funding provided by petition fees.

Subdivision (b) requires the Department to perform a review to determine whether a received petition meets the criteria required in sections 9102 and 9103. This subdivision

is necessary to give transparency to the petition process and establish criteria for determining if the petition is complete.

Subdivision (c) specifies that a petition is considered complete when subdivision (b) is satisfied and requires the Department at that time to conduct certain activities. This subdivision is necessary to clarify and provide transparency to the petition review process. Subdivision (c)(1) requires the Department to notify the petitioner by email that the petition is complete. This subdivision is necessary to inform the petitioner that the petition is complete. Subdivision (c)(2) requires the Department to request that the Petition Review Panel, if established, review and provide a recommendation on the petition. This subdivision is necessary to establish the Department's procedure which will involve consulting the Petition Review Panel as further explained in sections 9300 through 9302. Subdivision (c)(3) requires the Department to publicly propose establishing or amending the appellation of origin as described by the complete petition pursuant to section 9201. This subdivision is necessary to establish that the Department will follow a public review process as further explained below in section 9201.

Subdivision (d) specifies that if a petition is considered incomplete or additional information is needed, the Department will provide the petitioner with notice by email that the petition is incomplete and specify what changes, information, additions, or clarifications must be provided to complete the petition. This subdivision is necessary to establish the procedure the Department will follow to notify the petitioner of deficiencies.

Subdivision (e) specifies a time limit of 60 days for response to a petition deficiency notice, a time limit of 180 days for resolution of a petition deficiency, and that if either of these time limits is exceeded, the Department must consider the petition abandoned and may not continue to review it unless it is resubmitted with the appropriate fee. The Department determined that these time limits are reasonable because 60 days provides sufficient time to acknowledge receipt of a deficiency notice if the petitioner is upholding their responsibility as the point of communication on the petition. Acknowledgement of deficiencies is necessary to ensure adequate time to resolve deficiencies which may need to be discussed among the petitioning organization. The Department determined

that because the limit of 180 days to resolve an appellation petition deficiency notice is double the length of time provided a Designated Responsible Party to resolve a license application deficiency pursuant to chapter 1, section 8112, subdivision (b)(1) of this division that the limit is appropriate and necessary for timely review of petitions. This subdivision is necessary to clarify and add transparency to the petition review process and to establish the procedures the Department will apply to give a petitioner time to correct deficiencies in their petition.

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

This section is added to provide a public review and comment period for proposed actions on complete appellation of origin petitions and specify the information that will be included in the notification of the public review process. This section also specifies parameters for public input on the proposed actions. The Department considered requiring petitions to follow the formal rulemaking process under the Administrative Procedures Act but determined that it was more reasonable and efficient to provide a more streamlined process in the interest of providing timely updates to appellation requirements expected through petitions to amend existing appellations of origin. The Department observed that more than 15% of GIs for food registered in the European Union are significantly amended within the first twenty years after establishment. Because the cannabis industry is newly-regulated in California, the Department anticipates that the rate of petitions to amend cannabis appellations is likely to be at least as high as seen in Europe, and there may also be higher rates of petitioning to establish cannabis appellations than are seen for wine. The Department consulted with wine industry experts and learned of general criticism that existing appellation of origin systems are remarkably slow to establish appellations (e.g., several years from petitioning to approval in France and the United States). The Department determined that the petition review process should include notifying the public of the petition and a public comment period to ensure transparency of the CAP and to facilitate the Department's evaluation of the acceptance of appellation of origin details and standard, practice, and cultivar requirements by affected stakeholders of the appellation of origin

Subdivision (a) requires public notice and a 30-day public comment period as part of the process for proposed actions on appellations of origin. This subdivision is necessary to establish that the Department will provide notice to the public on proposed actions, both ensuring transparency and facilitating decision making by the Department. A defined comment time period is needed to ensure the public is fully aware of how to participate in the process. The Department determined that 30 calendar days is reasonable and provides enough time for the public to provide comments while maintaining an efficient time schedule to review and made determinations on appellation of origin petitions.

Subdivisions (b)(1) and (b)(2) specify the content of a notice of proposed action on appellations of origin. These subdivisions are necessary for clarity, transparency, and consistency of notices of proposed action, and ensure the public receives sufficient information in the form of the completed petition, a map of the proposed appellation area, and a summary of the appellation production requirements so that they may provide meaningful comments.

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

This section is added to clarify how notices of final decisions on petitions will be provided by the Department.

Subdivision(a)(1) and (a)(2) require the process of notice of final decision on an appellation of origin and specify who will be notified and how. These subdivisions are necessary to ensure that cultivation licensees with direct interest in an appellation of origin and all other interested parties are notified directly of final decisions on appellation of origin petitions.

Section 9203. Effective Dates.

This section clarifies the dates for which an appellation of origin established pursuant to this chapter is protected against misbranding and false-advertising. This section is necessary to clearly define the start and end of protection to inform consumers and industry and to facilitate compliance and enforcement actions by the Department.

Subdivision (a) specifies that an appellation of origin is established when the Department issues a notice of the final decision to establish an appellation of origin and is protected on and after the date identified in the notice. This subdivision is necessary to clarify the time point after which an appellation of origin or similar name which is likely to mislead consumers as to the kind or origin of cannabis is considered misbranding or false-advertising if used in the labeling or marketing of cannabis not produced in the geographical area of, and according to all standard, practice, and cultivar requirements of, the appellation of origin for the purposes of compliance and enforcement actions by the Department.

Subdivision (b) specifies that an appellation is no longer protected when the Department issues a notice of the final decision to cancel the appellation triggered by an extended period of disuse of an appellation as described in subdivision (e) of section 8212.1 of this division. This subdivision is necessary to provide a process to cancel an appellation of origin after a lengthy period of disuse and to ensure that the CAP remains a useful marketing tool for licensed cultivators and consumers.

Subdivisions (c)(1) through (c)(4) implement a transition period for which the Department will not consider conflicts with an existing trademark to be infringing of an appellation of origin, provided that the registration and use of the trademark are in good faith according to criteria which minimize the confusion caused for consumers by the use of a trademark which infringes the protection of a newly-established appellation of origin. These subdivisions are necessary to provide clarity on anticipated conflicts between trademarks and appellations of origin and to allow holders of existing trademarks enough time to transition their branding into compliance with appellation of origin protections before being subject to administrative actions. The Department determined that three years is reasonable because it is generally accepted as a sufficient period for a business to transition their branding to a new, non-infringing trademark applied in trademark infringement cases. Subdivisions (c)(1) and (c)(2) require that the trademark must have been registered and used in commerce prior to

the public notice of the proposal to establish the appellation of origin. These subdivisions are necessary to ensure that the transition period does not create or incentivize a loophole in the protection of appellations of origin which could be exploited by registering and using an infringing trademark after it has been publicly noticed that establishment of the appellation of origin is proposed. Subdivision (c)(3) requires trademark holders to retain and provide records demonstrating compliance with subdivisions (c)(1) and (c)(2). This subdivision is necessary to enable compliance and enforcement actions by the Department related to appellations of origin. Subdivision (c)(4) requires transition period trademark holders to use a valid county of origin or appellation of origin on any product also using the trademark in order to qualify for the transition period exemption. This subdivision is necessary to minimize consumer confusion about the geographical origin of a product which is caused by the use of a trademark infringing the protection of a newly-established appellation of origin.

Article 4. Petition Review Panel

Section 9300. Establishment of Petition Review Panel.

This section enables the Department to establish a Petition Review Panel and clarifies the effective operation of the panel.

Subdivision (a) specifies that the Department may establish a Petition Review Panel to assist the Department with petition review. This subdivision is necessary to allow the Department to form an independent body to review petition requirements, if needed. The Department determined that the detailed nature of petitions may require input from experts and that forming an optional panel provides flexibility and transparency to the operation of the petition review process and permits it to continue in cases where a Petition Review Panel has not been formed or has been suspended or terminated.

Subdivision (b) specifies that the Petition Review Panel shall continue in effect until suspended or terminated by the Department. This subdivision is necessary to clarify the effective operation of the panel and no longer utilize the panel should the Department determine that outside input is no longer required.

Section 9301. Membership.

This section describes the membership of the Petition Review Panel, if established. This section is necessary to ensure transparency in the selection and operation of the panel, and to ensure that the panel has both the requisite expertise and familiarity with the California cannabis marketplace to conduct review of appellation petitions.

Subdivision (a) describes the size and membership status of the panel and is necessary to ensure orderly operation of the panel and to ensure that panel recommendations are representative of more than a few opinions. The Department selected this number of members and alternate members by examining similar bodies formed to assist the Department and determined that it is reasonable and appropriate for the panel's purpose. The Department determined that the number of members and alternates is large enough to generally be representative of a significant portion of California, but small enough to promote the efficient generation of recommendations on appellation petitions. Two alternate members are necessary to ensure that member availability does not interfere with fulfillment of the panel duties within a relatively short timeframe. The Department determined that it is necessary to receive recommendations within the 30-day period provided for public comment to allow for efficient and timely decision-making on petitions.

Subdivision (b) specifies that alternate members shall be designated in priority to act in place of absent members. This subdivision is necessary to ensure timely and efficient operation of the panel in conducting review of appellation petitions.

Subdivision (c) specifies that members of the panel must be California residents, and specifies the method of appointment of panel members. This subdivision is necessary to enable formation of the petition review panel and to ensure that the panel is composed of members likely to have at least a basic familiarity with the California cannabis marketplace by living in California, even if not employed in the cannabis industry. Persons not holding California residency are less likely to be familiar with California and

may be less affected by decisions on appellation petitions. Since an appellation of origin is a name recognized to provide information on cannabis produced in a specific place in California, the Department determined that it would be inappropriate to ask nonresidents to provide a recommendation on California cannabis appellation of origin petitions.

Subdivision (d) specifies the experience and qualifications of members of the panel. The Department has determined that a mix of experience in intellectual property, cannabis cultivation, sustainable agriculture, and community-based research is expected to be necessary in fulfilling the duties of the panel. The Department conducted reviews of existing GI systems, literature reviews, and outreach to the industry and public; and learned that these subjects are relevant to or commonly associated with appellation of origin systems. Since appellations of origin are a type of intellectual property, associated experience is expected to assist the panel in comparing appellation petitions to other available forms of intellectual property protection such as trademarks, certification marks, patents, and trade secrets. Because the CAP provides a process for establishing cannabis appellations, experience in cannabis cultivation is expected to assist the panel in evaluating the geographical feature and production requirement components of cannabis appellation of origin petitions. The Department determined that sustainable agriculture methods are often implemented for products using appellations of origin and are already commonly signified on cannabis products through the use of certification marks (e.g., Clean Green Certified®; Demeter® Biodynamic® certification; and anticipation of the applicability of the Department's comparable-to-organic certification), so experience and knowledge of sustainable agriculture are expected to assist the panel in evaluating likely production requirements included in a petition distinct from comparable-to-organic certification. Community-based research approaches determine research goals and strategy directly through community involvement. Because development of an appellation petition involves consensus-building and evidence collection, the Department determined that experience related to community-based research is expected to assist the panel in evaluating petitions.

Subdivision (e) specifies the term of office of members of the petition review panel or at the discretion of the Department. This subdivision is necessary to ensure consistent administration of the panel. The Department selected this term of office by examining similar bodies formed to assist the Department and determined that it is reasonable and appropriate for this purpose. In consideration that panel members serve voluntarily and without the possibility of reimbursement for their time, the Department determined that four years is not so long as to impose an undue burden on the members. The Department determined that a shorter term of office would be less efficient for Department staff to request, receive, and evaluate nominations; and might introduce more inconsistency in panel recommendations because of more frequent turnover.

Section 9302. Duties of the Petition Review Panel.

This section specifies and clarifies the duties of the petition review panel and is necessary to establish the duties of the petition review panel to assist the Department.

Subdivision (a) specifies that by the deadline identified in a request for a recommendation on a pending appeal petition, the petition review panel shall provide a single recommendation on the pending appeal petition. This subdivision is necessary to specify the duties of the panel and to ensure that recommendations from the panel are timely for the purposes of the Department's review and decision making on pending petitions.

Subdivision (b) clarifies that the requirement in subdivision (a) of this section does not impact the rights of individual petition review panel members to submit comments independently to the Department as part of the public comment period of a pending appeal petition. This subdivision is necessary to clarify that by volunteering to serve on the petition review panel, members are not required to relinquish their ability to submit public comment on pending appeal petitions as any other member of the public may.

Subdivision (c) states the requirement that Petition Review Panel members shall not be involved in any recommendations to the Department on proposed actions on appellations of origin that may impact their business interests. This subdivision is necessary to maintain integrity in the program and ensure individual panel member participation does not pose a conflict of interest.

Subdivision (d) states the requirement for the review panel to communicate to CDFA which members participated in any recommendation given to the Department. This subdivision is necessary to ensure compliance with subdivision (c) above. To ensure those with business interests potentially impacted by Department final decisions are not involved in the recommendations, the Department needs to know who was involved in developing the recommendations.

ECONOMIC IMPACT ANALYSIS/ASSESSMENT

California Government Code sections 11346.3 and 11346.5 requires state agencies to assess the potential economic impacts on California businesses and individuals when proposing to adopt or amend any administrative regulation. The economic and fiscal impacts of the regulations must be disclosed using Standard Form 399, Economic and Fiscal Impact Statement (STD 399). Attachment 1, Economic and Fiscal Impact Analysis (EFIA) of CalCannabis Cannabis Appellations Program regulations, summarizes the data, methods, and results of the analysis developed to evaluate the required economic and fiscal impacts of the proposed regulation as required by Government Code section 11346.3(b).

Attachment 1 identifies the economic and fiscal impacts to business associated with the proposed regulation. This analysis supports estimates used in Standard Form 399, Economic and Fiscal Impact Statement.

Costs and Benefits of the Proposed Regulation

The proposed regulation would result in costs and benefits to businesses and individuals in California. The CAP is a labeling and marketing program. Labels

(appellations of origin) provide information to consumers that is otherwise not easily available. This additional information is beneficial to consumers as they are now more informed as to the exact attributes of the product. It is also beneficial to producers as they are able to segment and differentiate the market to reflect unique aspects of their product. This results in costs and benefits to businesses and individuals, which are estimated and described in Attachment 1.

The CAP regulation is estimated to generate an average annual benefit of \$5.8 million to the State and create an additional 16 full-time equivalent (FTE) jobs. The benefits of the CAP are a result of the price premium realized by cultivators that are eligible to market appellation-labeled cannabis. The estimated price premium is between 15% and 25% over current baseline prices. The price premium is estimated to vary across appellations based on factors including location, production requirements, and quality. Attachment 1 summarizes the data, methods, and detailed results of the economic benefits analysis. Other benefits not monetized include:

- It is likely that the CAP will encourage the development of new businesses for marketing and developing cannabis appellations. This would create additional jobs that are in addition to the analysis presented in Table 8. It is not possible to quantify these additional jobs because there is no way to estimate the number of new businesses entering the industry.
- Benefits would accrue to a range of businesses, including smaller outdoor cultivators in the northern part of the state. There is no data on the share of businesses that would participate in the CAP, therefore this benefit is not quantified.
- The CAP may provide additional benefits to consumers, called consumer surplus, but these benefits are not quantified in this analysis. Data to estimate the necessary own- and cross-price elasticities is not available.
- Increased product differentiation and increased market penetration for specialty products developed by cultivators and other businesses. This could encourage innovation in the industry.

- Additional indirect economic benefits from regional economic activity in appellation regions that produce a premium product. This could include agritourism, additional sales to support industry expansion, and other regional employment benefits.

The CAP regulation is estimated to cause an average annual statewide cost of \$794,062 and create an additional 2 FTE jobs. The costs of the CAP are a result of three factors: (i) petition development and administrative costs, (ii) fees paid to the Department to cover program costs, and (iii) enforcement and compliance costs. Cultivators are required to develop and submit a petition to establish the appellation to the Department. Petition requirements include specifying boundaries, production requirements, and other documentation as well as region-specific information regarding the history, economic importance, and contribution of cannabis cultivation to the area. The Department charges fees to cover its administrative costs for review of petitions. Finally, cultivators may incur additional direct costs from documenting compliance with appellation production requirements and any changes in cultural practices to meet appellation production requirements. Attachment 1 summarizes the data, methods, and detailed results of the economic costs analysis.

The net effect of the CAP is a statewide benefit of \$5.4 million (\$5.8 million benefit less \$0.4 million cost) and creation of 18 FTE jobs. The impact of the CAP on small businesses is likely to be similar to the impact on all businesses. Using CalCannabis licensing data to estimate the approximate share of small cannabis businesses and proportionally allocating benefits and costs, the net effect of the CAP is positive (total estimated benefits are greater than costs), equal to \$1.05 million and 3 FTE jobs. Attachment 1 summarizes the data, methods, and detailed results of the net economic benefits and associated impacts to small businesses.

The CAP would create fiscal impacts. The Department estimated an additional 2 FTE employees/positions are required to manage the appellations program. This includes 2 staff environmental scientists. The additional FTEs will largely be responsible for reviewing appellation petitions and communication with the petitioners. Additional time will also be required to monitor and record appellation usage in the market and

investigate complaints received by the Department. Department personnel cost for the appellations program equals approximately \$251,000 annually. These costs will be recovered through petition fees.

Attachment 1 details the results of the economic impact analysis. In summary:

- The proposed CAP would provide a net benefit of \$4.4 million annually and 18 FTE jobs to businesses and individuals in the state.
- The proposed CAP would not impose a mandate on local agencies or school districts that would require reimbursements.
- The proposed CAP would result in fiscal impacts to State or local agencies or school districts of approximately \$251,000 per year. These fiscal costs to the Department would be recovered through fees.
- The proposed CAP would not have a significant effect on housing costs.
- The proposed CAP would not have a significant statewide adverse economic impact directly affecting business, including ability to compete. The impact of the CAP on businesses is likely to be positive, encouraging development of new businesses and industries in the state.
- The proposed CAP would result in a net increase of 18 FTE jobs in California. The estimated impact on jobs is small relative to the costs and benefits of the CAP because most costs and benefits are changes in proprietor income that results in modest job impacts.
- The proposed CAP would not affect the creation of new businesses or elimination of existing businesses within California. The impact of the CAP on businesses is likely to be positive, encouraging development of new businesses and industries in the state.
- The proposed CAP would not affect the expansion of businesses currently doing business within the State.
- The proposed CAP would not require business reports to be made.
- The proposed CAP would provide benefits to small businesses, estimated to equal \$1.05 million annually.
- The proposed CAP would not mandate the use of specific technologies,

equipment or impose any performance standards.

Evidence Supporting the Initial Determination that the Proposed Regulatory Amendment will not have a Significant Adverse Economic Impact on Business

The benefits and economic impact on business that will result from the CAP are discussed in greater detail in Attachment 1, EFIA. The net effect of the CAP is a statewide benefit of \$5.4 million (\$5.8 million benefit less \$0.4 million cost) and creation of 18 FTE jobs. The impact of the CAP on small businesses is likely to be similar to the impact on all businesses. Using CalCannabis licensing data to estimate the approximate share of small cannabis businesses and proportionally allocating benefits and costs, the net effect of the CAP is positive (total estimated benefits are greater than costs), equal to \$1.05 million and 3 FTE jobs. Attachment 1 summarizes the data, methods, and detailed results of the net economic benefits and associated impacts to small businesses.

INFORMATION RELIED UPON

The Department referred to the following studies and reports while developing the proposed regulations for the CAP:

- Alcohol, Tobacco Products and Firearms, PART 4—LABELING AND ADVERTISING OF WINE, 27 C.F.R. §§ 4.1-4.101 (1960).
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MANDATED USE OF TECHNOLOGY

The proposed regulations do not mandate the use of any technology other than the use of e-mail to communicate and to file Notice of Use of an appellation of origin with the Department. The Department determined that mandating email as the sole method of

Notice of Use filing is not overly burdensome to cultivators since it occurs only once every three years, but allows the Department to avoid charging a fee for filing which otherwise would be necessary to accommodate the additional staff workload of processing paper Notice of Use filings.

CONSIDERATION OF REASONABLE ALTERNATIVES

To gain stakeholder input regarding the appellations program, the Department held outreach events throughout the state allowing for broad public input and subsequently held more focused working group meetings with representatives of cultivator groups. Comments received during both were considered during the development of the proposed regulation. Those comments and suggestions that were not considered were in conflict with existing statute, not reasonable to adopt, or determined to not be necessary for the functioning of the CAP. The Department also conducted outreach to industry experts in order to benchmark industry data and to understand the economic impact of components of the regulations.

The two existing programs most commonly referenced by stakeholders as examples for the future CAP are the appellation of origin systems for French products (Appellation d'Origine Contrôlée [AOC]) and American wine (American Viticultural Area [AVA]). Both were explored by the Department and found insufficient as models for the future CAP. The AVA model was rejected and not considered a reasonable alternative regulation because as a recognition of only geographical features it does not address standard, practice, and cultivar requirements which is necessary to meet the statutory requirements of Business and Professions Code section 26038(b).

A regulation alternative similar to the French AOC model was considered because it does include standard, practice, and cultivar requirements. Under the alternative regulation, the Department would expand its role in developing and implementing cannabis appellations in California by assuming more authority in defining appellations and full authority for enforcing individual appellation requirements, including direct inspection-driven certification by the Department prior to eligible use by a cultivator. The

economic impacts of this alternative were examined and compared to the proposed regulation. However, the Department determined that the economic benefits of the alternative would not exceed the benefits of the proposed regulation, and the administrative costs of the alternative regulation would be almost eight times (784.67%) the costs of the proposed regulation. Because higher administrative costs would need to be passed on to licensed cultivators, the alternative regulation would have a greater adverse impact on small business. The Department also determined that the alternative regulation is not as effective because it carries higher risks of inconsistent enforcement and inhibiting innovation than the proposed regulation.

The Department also considered various options at multiple decision points within the proposed regulation. For example, the Department considered alternative certification structures and agents, prohibitions on overlapping and nesting of geographical areas, and prescribed language or marks for compliant use of origin designations. Resulting decisions were based on the Department's authority, the most effective means in pursuing the goals of the program, minimizing adverse impacts on small business, and minimum required regulations to enable effective functioning of the CAP. However, no reasonable alternative options considered or otherwise identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome than the proposed regulation. Pursuant to Government Code Section 11346.9(a)(5), if anyone proposes an alternative that would lessen the adverse economic impact on small businesses, the final statement of reasons must include an explanation setting forth the Department's reasons for accepting or rejecting the proposed alternatives.

CONFLICTS WITH FEDERAL REGULATIONS

The U.S. Food and Drug Administration (FDA) currently lists cannabis as a Schedule 1 drug under the Controlled Substances Act and has not approved cannabis for medical uses: "To date, the FDA has not approved a marketing application for marijuana for any indication. The FDA generally evaluates research conducted by manufacturers and

other scientific investigators. Our role, as laid out in the Federal Food, Drug, and Cosmetic Act, is to review data submitted to the FDA in an application for approval to assure that the drug product meets the statutory standards for approval.”

The U.S. Department of Justice issued a Memorandum on January 29, 2013 titled “Guidance Regarding Marijuana Enforcement,” commonly referred to as the Cole Memo. The Cole Memo set forth marijuana enforcement priorities as guidelines for state and local regulatory and enforcement systems. However, the Cole Memo was rescinded by the Attorney General Jeff Sessions via the Sessions Memo titled “Marijuana Enforcement” on March 21, 2018. The Sessions Memo shifted federal policy from the hands-off approach of the Cole Memo to permitting federal prosecutors across the country to decide individually how to prioritize resources to crack down on cannabis possession, distribution, and cultivation in states where it is legal.