

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE  
Title 3 of the California Code of Regulations

**Notice of Proposed Rulemaking**  
**45-Day Notice**

Cannabis Appellations Program

**NOTICE IS HEREBY GIVEN** that the California Department of Food and Agriculture (Department) proposes to adopt regulations to implement Chapter 2, Cannabis Appellations Program, within Title 3 of the California Code of Regulations. The Department also proposes to amend Chapter 1, Cannabis Cultivation Program, within Title 3, Sections 8000, 8106, 8212, 8212.1, 8400, 8403, 8601 and 8602. With this rulemaking, the Department will propose permanent regulations after the consideration of all comments, objections, and recommendations regarding the proposed action.

The Department is issuing this notice to meet requirements set forth in Government Code section 11346.5.

**PUBLIC HEARING**

The Department will hold a public hearing on April 14th, 2020 at 1220 N Street, Sacramento, California. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest/Policy Statement. The Department requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

**Tuesday April 14th, 2020 1 PM to 3 PM**  
California Department of Food & Agriculture Auditorium  
1220 N Street, Sacramento, CA 95814

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. The written comment period closes on April 6th, 2020. The Department will only consider comments received at the Department offices by that time.

Submit comments to:

Kristi Armstrong  
California Department of Food and Agriculture  
CalCannabis Cultivation Licensing Division  
P.O. Box 942871  
Sacramento, CA 94271  
CDFA.CalCannabis\_Appellations@cdfa.ca.gov  
Phone: (916) 263-0801

**The written comment period closes on April 6th, 2020.** The Department will only consider comments received by that time and via the delivery methods designated above.

### **AUTHORITY AND REFERENCE**

The Department is proposing to amend sections 8000, 8106, 8212, 8400, 8403, 8601, and 8602 of Title 3, Division 8, Chapter 1 of the California Code of Regulations. The Department is also proposing to adopt section 8212.1 of Title 3, Division 8, Chapter 1 of the California Code of Regulations. Sections 26012, 26013, 26031, and 26063 of the California Business and Professions Code authorize the Department to adopt, implement, and enforce these regulations. The proposed regulations will implement, interpret, make specific, or reference sections 5200 et seq, 12601 et seq, 17500 et seq, 26001, 26013, 26031, 26051.5, 26060, 26060.1, 26063, 26055, 26067, 26069, 26120, 26121, 26150, 26151, 26152, 26153, 26154, 26155, 26156, 26160, and 26161 of the California Business and Professions Code and section 12754.5 of the California Food and Agricultural Code.

The Department is proposing to adopt Title 3, Division 8, Chapter 2 of the California Code of Regulations, including sections 9000, 9100–9107, 9200–9203, and 9300–9302, as the Cannabis Appellations Program (CAP). Sections 26012, 26013, 26063, and 26181 of the California Business and Professions Code authorize the Department to adopt, implement, and enforce these regulations. The proposed regulations will implement, interpret, make specific, or reference sections 26012, 26013, 26050, 26051, 26061, 26063, 26180, and 26181 of the California Business and Professions Code.

## **INFORMATIVE DIGEST / POLICY STATEMENT**

### **Existing Law:**

**Senate Bill 94** (Committee on Budget and Fiscal Review, Chapter 94, Statutes of 2017), also known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) requires the Department to establish standards by which a licensed cultivator may designate a county of origin for cannabis and mandates that no later than January 1, 2021, the Department (rather than the Bureau) shall establish a process by which licensed cultivators may establish appellations of standards, practices, and varieties applicable to cannabis grown in a certain geographical area in California.

**Senate Bill 185** (McGuire, Chapter 841, Statutes of 2019) expanded appellation of origin protections by specifically prohibiting cannabis from being advertised, marketed, labeled, or sold using an appellation of origin, or any similar name that is likely to mislead consumers as to the kind of cannabis, unless the cannabis meets the appellation of origin requirements for, and was produced in, the geographical area; and prohibiting an appellation of origin, or any similar name that is likely to mislead consumers as to the kind of cannabis contained in the product, from being used in the advertising, labeling, marketing, or packaging of a cannabis product unless 100 percent of the cannabis contained in the product meets the appellation of origin requirements and was produced in the geographical area. Senate Bill 185 also restored the term “appellation of origin” to statute and replaced the words “varietal” and “grown” with the more industry-appropriate terms of “cultivar” and “produced.”

### **Objectives and Anticipated Benefits from this Regulatory Action:**

Existing law obligates the Department to establish standards for the use of origin designations such as county of origin and appellation of origin on cannabis. Existing law also obligates the Department to establish a process by which licensed cannabis cultivators may establish appellations of origin.

The regulations proposed in this rulemaking action would establish a process for licensed cultivators to petition the Department to create or amend appellations of origin, establish procedures and criteria for the review and approval of petitions, and allow the formation of an independent Petition Review Panel to make recommendations to the Department. The regulations proposed in this rulemaking action also clarify the requirements for advertising, marketing, labeling, and packaging of cannabis and nonmanufactured cannabis products, including the use of county of origin and appellation of origin, and procedures for verifying compliance with appellation of origin requirements. Some of the expected impacts of the proposed regulations and CAP are:

- (1) A government-implemented, clearly defined and straight-forward process for establishing or amending an appellation of origin;
- (2) More reliable information available to consumers regarding the geographical origin of cannabis goods;
- (3) Product differentiation through promotion of appellation-specific standard, practice, and cultivar requirements.
- (4) Net economic benefit to producers due to increased market value of products from prestigious appellations of origin; and
- (5) Growth in related industries that may profit from a cannabis appellation's prestige, such as tourism, marketing, and legal services.

Inconsistency with Federal Regulations or Statutes:

The United States Drug Enforcement Administration, under the Controlled Substances Act, lists cannabis as a Schedule I drug. Schedule I drugs are defined as having a high potential for abuse, having no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use of the drug under medical supervision (21 U.S.C. § 812).

Controlled Substances Act, Title 21 – Food and Drugs, Chapter 13 – Drug Abuse and Prevention Control, Subchapter 1 – Control and Enforcement, Part B – Authority to Control; Standards and Schedules: <https://www.deadiversion.usdoj.gov/21cfr/21usc/812.htm>

Consistency with Existing State Regulations:

As required by Government Code section 11346.5(a)(3)(D), the Department has conducted an evaluation of these regulations and has determined that they are not inconsistent or incompatible with existing state regulations.

**PLAIN ENGLISH REQUIREMENT**

The Department staff prepared the proposed regulations pursuant to the standard of clarity provided in Government Code section 11349 and the plain English requirements of Government Code sections 11342.580 and 11346.2, subdivision (a)(1). The proposed regulations are written to be easily understood by the persons that will use them.

## **DISCLOSURES REGARDING THE PROPOSED ACTION**

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Cost or savings to state agencies: There will be a cost to the state to administer the appellations program. The Department has estimated that the fees for petitioning to participate in the program will cover those administrative costs. There are no additional costs or savings to state agencies associated with the proposed regulations.

Non-discretionary cost or savings imposed upon local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative private person or business: Participation in the cannabis appellations program will be voluntary. Thus, there are no mandated costs on cannabis businesses. There would be a cost to cannabis businesses choosing to participate in the appellations program. Consumers may choose cannabis produced in an appellation that might be more expensive, but they will also have the choice to purchase cannabis produced outside of the appellations program.

Effect on small business: There may be an effect on small business.

Effect on housing costs: None.

Significant, statewide adverse impact directly affecting business, including the ability of California businesses to compete with businesses in other states: The Department has made an initial determination that there will not be a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

## **RESULTS OF THE ECONOMIC IMPACT ANALYSIS**

California Government Code section 11346.3 requires state agencies to assess the potential economic impacts on California businesses and individuals when proposing to adopt or amend any administrative regulation.

The following is a summary of results from the economic impact analysis:

- The proposed CAP would provide a net benefit of \$4.36 million annually to businesses and individuals 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 result in modest job impacts.
- The proposed CAP would not require the creation of new businesses or elimination of existing businesses within California. The indirect 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 impact the expansion of businesses currently operating within the state.
- The proposed CAP would provide benefits to small businesses, estimated to equal \$0.86 million annually.
- The proposed CAP may result in benefits to the health and welfare of California residents, worker safety, and the state's environment. These benefits are not possible to quantify because there is no way to predict what production requirements will be included in an appellation petition.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

To gain stakeholder input regarding the appellations program, the Department held outreach events throughout the state allowing for broad input and subsequently more focused workshops with representatives of cultivator groups. Comments received during both were considered during the development of the regulations. Comments not considered were either in conflict with existing statute or unreasonable to adopt.

The two programs most commonly referenced by stakeholders as examples for the future cannabis appellations program are the appellation of origin systems for French agricultural products including wine (i.e., appellation d'origine contrôlée [AOC]) and American wine (i.e., American Viticultural Area [AVA]). Both were explored by the Department and found lacking as models for the future cannabis appellations program. The AOC model was considered to be overly bureaucratic and having the potential to inhibit innovation in the nascent industry. The AVA model was insufficient in that it does not address standards, practices and cultivars as is required by the statute for cannabis appellations. The Department also considered various options at multiple decision points within the chosen program format. For example, the Department considered alternative certification structures and prohibitions on overlapping and nesting of areas. Resulting decisions were based on the Department's authority and the most effective means in pursuing the goals of the program. However, no reasonable alternative considered or otherwise identified and brought to the attention of the Department would be as or more effective in carrying out the purpose for which the action is proposed, or less burdensome. 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.

## **CONTACT PERSONS**

Inquiries concerning the proposed action may be directed to:

Kristi Armstrong  
California Department of Food and Agriculture  
CalCannabis Cultivation Licensing Division  
P.O. Box 942871  
Sacramento, CA 94271  
[CDFA.CalCannabis\\_Appellations@cdfa.ca.gov](mailto:CDFA.CalCannabis_Appellations@cdfa.ca.gov)

Phone: (916) 263-0801

The backup contact person for these inquiries is:

Keir Furey

California Department of Food and Agriculture

CalCannabis Cultivation Licensing Division

P.O. Box 942871

Sacramento, CA 94271

CDFA.CalCannabis\_Appellations@cdfa.ca.gov

Phone: (916) 576-4154

### **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS**

The Department has prepared and has available for public review an Initial Statement of Reasons for the proposed regulations, including all the information upon which the proposed regulations are based, and the express terms of the proposed regulations. A copy of the Initial Statement of Reasons and the proposed regulations in underline may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. Requests should be directed to Kristi Armstrong at the mailing or email address specified above.

### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After holding the hearing and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the revised regulations. Any person interested may obtain a copy of any modified regulations prior to the date of adoption by contacting Kristi Armstrong at the mailing or email address specified above.

### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Kristi Armstrong at the mailing or email address specified above.



## **AVAILABILITY OF DOCUMENTS**

Copies of the Notice of Proposed Action and other information related to this regulatory action can be accessed through our website at [cannabis.cdfa.ca.gov](http://cannabis.cdfa.ca.gov).