

**CALIFORNIA CODE OF REGULATIONS**

*Title 3. FOOD AND AGRICULTURE*

*Division 8. CANNABIS CULTIVATION*

*Chapter 1. CANNABIS CULTIVATION PROGRAM*

and

*Chapter 2. CANNABIS APPELLATIONS PROGRAM*

**ADDENDUM TO THE INITIAL STATEMENT OF REASONS**

Following the 45-Day Comment Period.

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**I. Summary of Revisions to the Proposed Regulations**

After consideration of comments received during the 45-day comment period which closed on May 06, 2020 and the hearing held on May 06, 2020, revisions to the proposed regulation text are shown in the accompanying document using double-underline for additions and double-strikeout for deletions. In general, these revisions are consistent with the originally proposed regulations, increase the clarity of the regulations, increase consistency with the language used in statute, and respond to stakeholder concerns. Revisions generally relate to:

***[1] Implementation of an alternate 2-fee structure;***

***[2] Slightly shifting focus from “cannabis cultivation” to “cannabis produced in the appellation of origin” for consistency with language in Business and Professions Code § 26063(b);***

***[3] Refinement of the appellation-trademark transition period;***

***[4] Non-substantive revisions for clarity of the regulations; and***

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

**[1]** Changes to the appellation fee amount have been made in response to widespread concern that proposed fees would pose a barrier to petitioning for appellations. The revised fee has been divided into a smaller (20%) fee due upon petition submission with the remainder

(80%) due only if the petition is approved by the Department, similar to the current licensing fee structure. Minor changes to subdivisions 9100(c-d), 9101(a)(1-2), 9200(a), 9200(f), and 9202(a) have been made to describe and accommodate these two fees for each petition. The total fee amount has also been reduced slightly based on updated economic models. This change reduces the barrier to petitioning for an appellation of origin, but also carries a risk of some staff time reviewing petitions for which the Department isn't reimbursed (i.e., in cases of petition denial or abandonment).

**[2]** Several revisions have been made throughout the regulations to focus on *cannabis* “produced in a certain geographical area” for better consistency with Business and Professions Code section 26063, subdivision (b) instead of a more limiting “cannabis cultivation.” Some comments received by the Department indicated a general desire to use appellation of origin names to communicate meaningful information to consumers about the *cannabis* that is not directly related to cultivation (e.g., the reputation imparted to cannabis that is produced in an appellation area requiring certain practices such as employment practices, family ownership structure, or other business decisions about how to conduct the commercial cannabis activity licensed by the Department). Other comments raised concerns that larger geographical areas with established reputations might not be possible to protect if appellations of origin are limited to definition in petitions only by geographical features affecting cultivation directly. These revisions allow petitioners increased freedom in how to describe geographical features and production requirements represented by an appellation of origin as suggested by commenters, and preserve the ability of the Department to approve larger reputation-based cannabis appellations of origin such as the widely recognized three-county region known as the “Emerald Triangle.”

**[3]** Revisions accept the suggestions of commenters to clarify and further limit the appellation-trademark transition period afforded by the proposed regulations. Revisions reduce this period to one year, clarify that trademarks registered after February 21, 2020 (the date of the notice of this proposed rulemaking) are ineligible, and clarifies that no fines will be applied during the one-year transition period if criteria are met. These changes reserve more authority for the

Department as well as simplifying and clarifying enforcement in the period following approval of a new appellation of origin.

**[4]** Other revisions are made in response to comments expressing confusion or requesting clarification. These include:

1. Duplicative language about labeling requirements to more clearly communicate to licensees that the use of an appellation of origin requires compliance with specific appellation production requirements, while the use of a county name, city name, or city and county name does not;
2. Clarification on the submission of Notices of Use;
3. Consistent use of certain terms in regulation;
4. Clarification of the strength of a link between geography and product described in a petition;
5. Clarification of the interaction between appellation standards and certification mark use;
6. Clarification of the Department's authority to determine appropriate areas of expertise held by the members of its discretionary appellation Petition Review Panel; and
7. For clarity and consistency with federal wine appellation regulations, an example category of geographical information describing soils has been added in response to comments expressing that this additional language is expected in context, although this revision to the proposed regulation does not alter petition review.

**[5]** Revisions are made to conform to current statutory language in Business and Professions Code section 26063 which was recently amended by Senate Bill 67 (SB 67, 2019-2020 Regular Session). Proposed regulations previously enabled implementation of the changes made by SB 67 directly without revision, but the current rulemaking period affords an opportunity to include non-substantive revisions to match statutory language for clarity that are consistent with the original rulemaking. Two revisions implement these changes:

1. Pursuant to the addition of city of origin and city and county of origin designations to Business and Professions Code section 26063, subdivision (a), proposed regulations mentioning "county" have also been updated to include "city" and "city and county" for consistency and clarity.

2. Pursuant to the addition of Business and Professions Code section 26063, subdivision (c) limiting the Department’s authority to approve appellation petitions unless they include a set of three specific practice requirements only possible to meet by Outdoor license types issued by the Department, the information requested in a petition by the proposed section 9102, subdivision (j) to provide a list of prohibited license types is no longer meaningful for understanding of an appellation of origin by consumers and has therefore been removed. Appellation petitions are still able to include production requirements related to processing, nursery operations, license size, or other business aspects as practice or standard requirements, so retaining the requirement of subdivision (j) would provide little or no benefit to consumers or the Department.

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

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

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

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

#### **CHAPTER 1. CANNABIS CULTIVATION PROGRAM**

#### **ARTICLE 3. CULTIVATION LICENSE FEES AND REQUIREMENTS**

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

**8212(a)(4):** Added mention of “city” and “city and county” for consistency with statute.

**8212(b)(5) & (b)(5)(A):** Added mention of “city” and “city and county” for consistency with statute.

**8212(b)(6):** Removed mention of appellation of origin and appellation of origin standard, practice, and cultivar requirements for clarity on the similarities and differences in eligibility to use county names, city names, or city and county names, compared to appellations of origin on cannabis. Added mention of “city” and “city and county” for consistency with statute.

**8212(b)(7):** Added this subdivision to clarify the similarities and differences in eligibility to use appellations of origin compared to county names, city names, or city and county names on cannabis. Specifically, this subdivision specifies that in addition to criteria associated with the location of cultivation activities, cannabis labeled with an appellation of origin must also comply with all of the appellation-specific standard, practice, and cultivar requirements.

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

**8212.1(f):** Added this subdivision to communicate to licensees that a single notice of use may reference multiple appellations of origin only if all license numbers indicated begin-use of all of the listed appellations of origin on the date specified in the Notice to comply with subdivision (b)(4). This situation would only occur for cannabis produced in a single area that qualifies for multiple nested or overlapping appellations of origin. Licenses using different combinations of these appellations of origin or different begin-use dates still must be filed under multiple Notices of Use – one for each combination – to facilitate the clear communication and efficient processing of Notices of Use filed with the Department.

## **ARTICLE 5. RECORDS AND REPORTING**

### **Section 8400. Record Retention.**

**8400(d)(13):** Added mention of “city” and “city and county” for consistency with statute and revised slightly for clarity.

**8400(d)(14):** Revised slightly for clarity and consistency with subdivision (d)(13).

## **ARTICLE 7. ENFORCEMENT**

## **Section 8602. Administrative Actions - Recordkeeping.**

**Table Entry “BPC 26160, 3 CCR 8400(d)(13) ‘Failure to maintain on the licensed premises records demonstrating that the cannabis was produced in the named county...’ ”:** Added mention of “city” and “city and county” for consistency with statute.

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

### **ARTICLE 1. DEFINITIONS**

#### **Section 9000. Definitions**

**9000(d):** Added language clarifying that practice requirements included in appellation petitions may include methods of conducting business related to the commercial cannabis activities enabled by a license issued by the Department.

### **ARTICLE 2. PETITIONS**

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

**9100(c):** Added the word “submission” to clarify which fee must be paid at the time a petition is submitted to the Department.

**9100(d):** Added this subdivision to clarify that petition approval fees are due upon request by the Department.

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

**9101(a)(1):** Replaced the single petition fee to establish an appellation of origin of \$20,880 with a petition submission fee of \$2,850 and a petition approval fee of \$14,250 to reduce the financial barrier to petitioning for cannabis appellations of origin.

**9101(a)(2):** Replaced the single petition fee to amend an appellation of origin of \$10,440 with a petition submission fee of \$1,425 and a petition approval fee of \$7,125 to reduce the financial barrier to amendment of cannabis appellations of origin.

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

**9102(f):** Replaced the word “cultivation” with the word “produced” to clarify that an appellation petition must contain a description and evidence of distinctive geographical features that affect the cannabis produced in the geographical area pursuant to Business and Professions Code section 26063, subdivision (b).

**9102(h):** Replaced the word “cultivation” with the word “production” to clarify that a description and evidence of the cultural and economic importance of cannabis production is necessary for the Department to approve the geographical designation of a cannabis production area.

**9102(j):** Deleted subdivision (j) entirely for consistency with Business and Professions Code section 26063, subdivision (c).

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

**9105(b)(1):** Added mention of “city” and “city and county” for consistency with Business and Professions Code section 26063, subdivision (a) and to conform to the requirement in subdivision (b)(1) that an appellation of origin be applicable to the cannabis produced in a certain geographical area other than those described in subdivision (a).

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

**9106:** Replaced the word “cultivation” with the word “produced” to clarify that an appellation petition must contain a description of distinctive geographical features that affect the cannabis produced in the geographical area pursuant to Business and Professions Code section 26063, subdivision (b).

**9106(a)(3):** Added a new subdivision (a)(3) and renumbered following subdivisions to include an example category of soil features for better consistency with federal appellation of origin petition regulations.

**9106(d):** Added the words “essentially or exclusively” to clarify the significance of the causal link between the geographical feature and the cannabis which must be described in an appellation petition for approval.

**9106(e):** Removed the word “cultivation” to clarify that an appellation petition must contain a production requirement which maintains the relevance of each geographical feature to the cannabis produced in the geographical area pursuant to Business and Professions Code section 26063, subdivision (b).

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

**9107(b)(2):** Added the phrase “according to the certification owner” to clarify the appropriate method of determining whether a certifier is in good standing pursuant to federal certification mark regulation.

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

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

**9200(a):** Added the word “submission” to clarify that a petition shall not be deemed received until the petition submission fee is submitted in full.

**9200(f):** Added this subdivision to clarify that the Department shall request payment of the petition approval fee before making a final decision to approve the petition, and that petitioners will have 120 days to submit payment of the petition approval fee when requested before the petition will be considered abandoned.



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

**9201(a):** Revised language slightly for clarity and consistent use of the term “notice of proposed action.”

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

**9202(a):** Revised language slightly for consistent use of the term “notice of final decision” and to clarify that notice of final decision will be issued only after payment of the petition approval fee in cases where the appellation petition is not denied or cancelled. Re-numbered this section for clarity and for consistency with other sections in this article.

### **Section 9203. Effective Dates.**

**9203(b):** Revised language slightly for consistent use of the term “notice of final decision.”

**9203(c):** Revised language to clarify the actions taken by the Department in response to use of a trademark on cannabis which infringes a recently approved appellation of origin. Reduced the term of this trademark transition period from three years to one year following approval of the appellation of origin and clarified that the trademark transition period provides protection against fines that would otherwise be assessed for misuse of the appellation of origin pursuant to labeling and advertising regulations.

**9203(c)(1):** Revised the requirement for registration of the trademark to qualify for the transition period to be based on the trademark filing date and prior to the February 21, 2020 date of the Notice of Proposed Action of this proposed rulemaking.

**9203(c)(2):** Revised the requirement for use of the trademark to qualify for the transition period to be prior to the February 21, 2020 date of the Notice of Proposed Action of this proposed rulemaking.

**9203(c)(4):** Added mention of “city of origin” and “city and county of origin” for consistency with statute.

**ARTICLE 4. PETITION REVIEW PANEL**

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

**9301(d):** Added “geography” to the list of relevant experience for the panel and language clarifying that the Department may determine necessary areas of experience for the panel.