

THIRD ADDENDUM TO THE INITIAL STATEMENT OF REASONS  
CALIFORNIA CODE OF REGULATIONS  
*Title 3. Food and Agriculture Division 8. Cannabis Cultivation*

**I. Revisions to the Proposed Regulations**

After consideration of the comments received from the Office of Administrative Law (OAL) and related public comments received during the three public comment periods associated with this regulatory action, the department made additional revisions to the proposed regulation text. The currently proposed revisions are shown in the accompanying Amended Express Terms document using blue text for additions and red text with strikeout for deletions. Previously proposed revisions made to the text during this regulatory action are also shown as indicated in the legend.

These revisions are consistent with the intent and necessity of the originally proposed modifications to the regulations. They do not impose any additional requirements on cultivators but provide more clarity about those requirements and on the specific responsibilities of the department.

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

The specific modifications to the text as originally proposed, and reasoning for the revisions are identified below by their respective sections and subdivision numbers to Division 8 of Title 3 of the California Code of Regulations.

**A. CHAPTER 2. CANNABIS APPELLATIONS PROGRAM**

**Article 4. Requirements for Use of an Appellation of Origin**

**1. Section 9301. Recordkeeping**

California Business and Professions Code (BPC) section 26063(b)(3) requires that “an appellation of origin established pursuant to [BPC section 26063(b)], including any similar name that is likely to mislead consumers as to the kind of cannabis contained in a product, shall not be 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.” Modifications to the proposed section 9301 are necessary to more clearly state what is needed by a cultivator to show compliance with that statutory requirement.

Subdivisions (a)(1) and (a)(2) are necessary to clarify with specificity what records are needed to comply with the statutory conditions that cannabis “meets the appellation of origin requirements” and be “produced in the geographical area.”

Subdivision (b) modifications are necessary to more clearly state which existing recordkeeping requirements for cultivators will demonstrate compliance with the required location of production activities (i.e., produced in) without incorporating inappropriate references.

Subdivision (c) is necessary to clarify that the records required for compliant use of an appellation of origin are for commercial cannabis activity and as such are subject to any rules developed pursuant to BPC section 26160.

**a) Revisions made to section 9301**

- Added “a” in front of the first paragraph of section 9301 to facilitate ease in referencing the paragraph. Relabeled previous subdivisions (a) and (b) to (1) and (2), respectively, to accommodate the insertion of (a) to rectify the previously floating paragraph.
- Removed "the following in accordance with all recordkeeping requirements developed by the Department of Cannabis Control pursuant to Business and Professions Code 26160" to avoid confusion and prospective incorporation by reference. This was replaced with “records showing 100 percent of the cannabis was produced in the appellation of origin,” more clearly aligning the text with the intent of the section which is to clearly state that compliance with the requirements of BPC section 26063 must be demonstrated with records.

**b) Revisions made to subdivision (a)(1)**

- Removed “Records showing 100 percent of the cannabis” because its intent is captured in the modified text in subdivision (a) as “these records must demonstrate.”
- Replaced “produced in” with the equivalent, and more precise, “production activities specified in section 9000, subdivision (h) occurred within.” Statute requires that cannabis must be produced in the appellation as a requirement of use and section 9000, subdivision (h) defines “produced in” as including the cultivation activities that are required to be conducted within the area represented by that appellation for eligibility to use that appellation of origin.
- Removed “in accordance with the track and trace program” because, as written, it was unclear how a licensee meets this requirement. The intent of this phrase is addressed with improved clarity in the modified text in subdivision (b).
- Removed “developed by the Department of Cannabis Control pursuant to Business and Professions Code section 26067” to avoid prospective incorporation by reference.

**c) Revisions made to subdivision (a)(2)**

- Removed “Records showing” because its intent is captured in the modified text in subdivision (a) as “these records must demonstrate.”
- Replaced “according to” with “in compliance with” to more closely communicate these records must be complaint with any specific methods to verify standards, practices, or

varietals (i.e., “the appellation of origin requirements” in BPC section 26063(b)(3)) as detailed in the petition to establish the appellation of origin.

- Removed “in accordance with section 9107(e)” in relationship to “as detailed in the petition,” because the reference is incorrect as that section 9107(e) says what must be included in a petition (i.e., specific records needed to show compliance with the appellation-specific standard, practice or cultivars). Thus, the required records for compliance would be specified in the petition to establish the appellation of origin, not in section 9107(e).

#### **d) Additions of subdivisions (b) and (c)**

- Subdivision (b) is added to clarify that the information needed to demonstrate compliance with production location requirements is captured in all cultivators’ mandatory entries in the track and trace system. The track and trace system requires documentation of cannabis plant movement through the supply chain, and cultivators can use the data in track and trace to meet the requirements of subdivision (a)(1).
- Subdivision (c) is added to clarify that the records referenced in subdivision (a) are subject to all rules propagated to implement BPC section 26160 as they pertain to commercial cannabis.

#### **e) Proposed section 9301**

The following shows section 9301 incorporating the changes detailed above.

##### **§ 9301. Recordkeeping**

- a) For each appellation of origin used in the advertising, labeling, marketing, or packaging of cannabis, cultivators must maintain records showing 100 percent of the cannabis was produced in the appellation of origin. These records must demonstrate the following:
  - (1) The production activities specified in section 9000, subdivision (h) occurred within that appellation of origin; and
  - (2) The cannabis was produced in compliance with all standards, practices, and cultivar requirements as detailed in the petition to establish the appellation of origin.
- b) Information submitted to the track and trace system confirming the requirements of subdivision (a)(1) are met, will show compliance.
- c) The records demonstrating compliance with subdivision (a) shall be maintained pursuant to Business and Professions Code section 26160.

## **2. Section 9302. Notice of Use for an Appellation of Origin**

### **Subdivision 9302(e)**

In addition to the necessity of subdivision (e) provided in the original ISOR, clarity is needed on the department’s action in the event of non-use of an appellation of origin in the cannabis marketplace.

This will ensure that the regulations do not inadvertently create a situation in which a geographical name is restricted from use in the marketplace despite it lacking any significant value for the appellation for origin program. Without the ability to cancel an appellation of origin, a name could be established as an appellation of origin, and then never used in the marketplace, effectively restricting its use indefinitely. As an appellation of origin, it would be unavailable for use by other licensees producing cannabis in that area but not meeting the appellation of origin requirements. Subdivision(e) prevents that unfair scenario.

**a) Revisions made to subdivision 9302(e)**

- Changed “Notice of Use of a specific appellation” to “a Notice of Use from at least one cultivator within a specific appellation” to make clear that a minimum of one notice of use from a single cultivator during a 5-year period satisfies the condition for the department to receive a Notice of Use.
- Removed “of final decision” so as not to give the false impression that there is a process that will occur prior to the department’s action. The department’s action will be based on non-use of the appellation of origin in the commercial cannabis marketplace for a 5-year period.
- Changed, “may” to “shall” regarding the department’s action to cancel an appellation of origin. This revision is necessary to provide clarity that the department’s cancellation of an appellation of origin will not be discretionary but will be automatic if the department does not receive any required notification of use.
- Added “and to those entities designated in section 9202, subdivision (a)” to the list of recipients for the department’s notification of the cancellation. This addition is necessary for consistency with other required notifications provided by the department during the petition approval process. The recipients of those notifications are specified in section 9202, subdivision (a).

**b) Proposed 9302(e)**

The following shows subdivision 9302(e) incorporating the changes detailed above.

- e) If the department does not receive a Notice of Use from at least one cultivator within a specific appellation of origin during a period of five (5) years, the department shall issue a notice that the appellation of origin is cancelled.
- (1) The notice shall be sent to the licensee’s email(s) previously provided in any Notices of Use associated with that appellation of origin and to those entities designated in section 9202, subdivision (a).