

State of California
Department of Food and Agriculture
Initial Statement of Reasons
Cannabis Appellations Program

INTRODUCTION

The Department of Food and Agriculture (Department or CDFA) is responsible for creating a process for establishing appellations of origin for cannabis under the provisions of the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) as codified in Business and Professions Code (BPC) § 26063.

California Code of Regulations (CCR), Title 3, Division 10, Chapter 2 implement, interpret, and make specific BPC Section 26063. These existing laws detail applicable terms, the process and required elements of a petition to establish an appellation of origin, and the requirements to use an appellation of origin in commercial cannabis activity.

The Department is proposing to modify these regulations for the reasons described below.

PROBLEM STATEMENT

Stakeholders requested that CDFA reevaluate two aspects of the current cannabis appellations regulations that may be unreasonably burdensome or unclear and would prevent participation in the program and achieving the benefits of a cannabis appellation program for all Californians.

3-Cultivator Requirement

Under existing regulations only a petitioning organization, defined as a minimum of three licensed cultivators, may submit a petition to establish an appellation of origin. Changes in the industry since the initial development of the appellation regulations include significant decreases in the number of licensed outdoor cultivators in many cannabis growing regions. Stakeholders requested CDFA revise the requirement of three cultivators to address this change and improve participation in the program.

Effective Date

Under current regulations, the petitioner will propose a name for the appellation of origin. Consistent with the concept of appellations of origin, the proposed name must be an existing name for the area in contrast to an invented name. This may present a conflict when that name, or a similar name, is already being used in the commercial cannabis marketplace, and continued use would not meet the requirements of the appellations program. Currently, any use when not meeting the program requirements

violates cannabis labelling restrictions per section 17408 (a)(6) of CCR, Title 4, Division 19, Chapter 11, Article 3, and thus subject to enforcement activity.

CDFA considered the potential impact of an approved appellation on all licensees. To minimize the potential for negative impacts, CDFA will assess potential name conflicts during the petition review and consider existing alternative names or modifiers with the petitioner. However, given that many outdoor cultivation regions are rural, an alternative name may not always exist. Stakeholders expressed concern about this scenario and requested clarity regarding when protections against misuse of an appellation of origin are in effect and to what extent those protections apply. Further, they expressed that the lack of clarity was preventing participation in the program. Other stakeholders, including the Department of Cannabis Control (DCC) whose mandate includes enforcement of labelling rules, expressed a parallel concern regarding the potential negative impact of the approved name on existing use of that or a similar name in the cannabis marketplace. Their concern primarily focused on fairness for users of a name or similar name prior to that name being approved as an appellation of origin who may not be able to participate in the program.

CDFA proposes changes in this package addressing these two issues and correcting minor errors in the existing references.

ANTICIPATED BENEFITS

CDFA anticipates these changes will result in a long-term increase in participation in the program. They help achieve one of the primary benefits of labels of origin, which is to provide additional information to help consumers make informed purchasing decisions. Further, given the challenges with transitioning to a legal cannabis market, secondary benefits of a robust cannabis appellation program have elevated importance, including;

- Incentivizing participation in legal cultivation
- Incentivizing sustainable cultivation practices
- Supporting economic opportunities in areas disproportionately impacted by historical criminalization of cannabis cultivation
- Encouraging regional collaboration around cannabis cultivation

The proposed changes aim to achieve these benefits by strengthening the regulatory framework of the appellations program. Unlicensed cannabis cultivation continues to pose challenges for California by undermining the licensed cannabis framework while threatening public health, safety, and the environment. Therefore, a program which successfully incentivizes participation of cultivators in the legal marketplace benefits all Californians.

The specific changes in the regulations benefit the regulated industry by lessening the burden for cultivators to participate in the program and benefit from potential added value for their products. The modifications provide clarity regarding when statutory

protections against misuse of an appellations of origin are in effect and to whom they apply. Additionally, the changes lessen the burden on licensees using a name, or similar name of an appellation, prior to Department approval but not qualifying for continued use of the appellation.

SPECIFIC PURPOSE OF, AND RATIONALE FOR, EACH PROPOSED AMENDMENT

Issue: 3-cultivators requirement

Overview

The purpose of the combined changes in Articles 1 and 2 of Chapter 2 is to allow for an individual licensed cultivator to submit a petition to establish or amend an appellation of origin. Existing regulations require submission from a petitioning organization which is defined as a minimum of three licensed cultivators. Consolidation and loss of outdoor cannabis cultivators in the industry since legalization is the reason behind this change. The change will allow for greater participation in the program from individual cultivators who may not have been able to otherwise participate due to a lack of neighboring licensed cultivators.

This change necessitates amendments to the definitions and location of petitioner contact information within the regulations.

Proposed Amendments

Article 1. Definitions.

Amend Section 9000. Definitions.

The purpose of repealing existing subsections (e) and (f), which define “petitioning organization” and “petitioner” is to align the defined terms with the proposed changes to subsection 9100(a) to allow a single cultivator to submit a petition. With that revision, the definitions of petitioning organization and petitioner are not meaningful and serve no purpose. This change is necessary for clarity in the express terms used in petitioning process.

Existing subsections (g) through (i) are renumbered subsections (e) through (g) to reflect the deletion of existing subsections (e) and (f). These nonsubstantial changes are needed to accommodate the deletion of subsections (e) and (f).

Article 2. Petitions

Amend Section 9100. Submission of Petitions.

The purpose of revising subsection (a) is to allow a single licensed cultivator rather than a minimum of three cultivators to submit a petition to establish or amend an appellation

of origin. It is necessary to lessen the burden of petitioning and increase cultivator participation in the appellations program.

The purpose of adding the phrase “for their cultivation region” is to maintain the important requirement that petitioning licensees were from “within the geographical area of the proposed appellation of origin” that was previously captured in the repealed definition of petitioning organization. This change is necessary for clarity in the petitioning process.

Amend Section § 9101. Petition Fees.

The Authority and Reference notes for subsection (a) are amended to correct citation errors. Existing use of sections 26012, 26013 and 26180 are repealed. This subsection details the required fees for establishing or amending an appellation of origin. This amendment is a necessary correction because the appropriate authority and reference for section 9101(a) is BPC section 26063.

Amend Section 9102. Petition to Establish an Appellation of Origin.

Section 9102 details the required elements of a petition to establish an appellation of origin, including petitioner information. Allowing a single cultivator necessitates changes in the contact information required in a petition in section 9102, subsections (a) and (b).

The purpose of amending subsection (a) is to align the information requested about the petitioner with the allowance of petition submission by a single cultivator. The change results in no need to identify a “primary contact” because the petitioner automatically becomes the primary contact rather than needing to be identified by an organization as such. Signature is added as a requirement to accommodate the reorganization of required contact information resulting from changing the cultivator requirement. Additionally, the phrase, “preferred method of contact” is removed because it is inconsistent with section 9200(a) in which the Department will be communicating by email. This is not an additional burden, as an email address is an existing requirement of cultivation licensure. These revisions are necessary for clarity in petition requirements.

The purpose of subsection (b) amendments is to include contact information for alternative contacts for the petitioner. This revision is necessary to accommodate for the removal of a petitioning organization, allowing the petitioner the flexibility to include other licensed cultivators as alternative contacts. Phone numbers and email addresses are necessary for consistency with the required petitioner contact information.

Issue: Effective date

Overview

Article 3 details the Department’s review of petitions to establish an appellation of origin. That process extends from confirming receipt of a petition through notification of the final

decision on the proposed appellation. Existing regulations define an appellation of origin as a name, which has been approved by the Department as meeting the requirements in Chapter 2 and thus protected in statute against misuse.

Stakeholders have expressed concern over lack of clarity about when those protections against misuse are in effect and to whom they apply. The DCC, the agency responsible for enforcement of cannabis labelling rules, has expressed concern over the immediate impact of an approved name on existing use of that name in the marketplace. The need for additional clarity and to reduce adverse impacts on licensees necessitates the addition of regulations which address this.

The primary purpose of all labels of origin laws is to ensure consumers are provided with accurate information to facilitate informed purchasing decisions. BPC section 26063, subsections (b)(2) and (b)(3) prohibit misleading information related to appellations of origin from being used in advertising, labeling, marketing, or packaging of a cannabis product. Therefore, the processes developed by CDFA to establish appellations of origin must limit this risk. Allowing continued use of the name of an appellation of origin on non-qualifying products would be misleading to consumers and statute makes no exceptions of prohibitions on use of an appellation of origin when the requirements of use are not met.

The provisions added in section 9204 provide clarity on the effects of approval of an appellation of origin on existing use of the name in the cannabis marketplace. They make specific the time that prohibitions against misuse of an appellation of origin are in effect after Department approval of the appellation. The additions reduce any potential adverse impacts on historical users of a geographic name, or similar name, by providing time to either come into compliance with the established appellation requirements or discontinue use of the name. All licensees who have been using the name, or similar name, and may no longer qualify due to not meeting the requirements to use of an appellation of origin, as detailed in Article 4 of Chapter 2, will be allowed continued use for 30 days after approval of an appellation of origin. Further, licensees meeting specific conditions of historical use will be provided with an additional year during which historical use of a name will serve as an alternative to the requirements to use an appellation of origin.

Adopt Section 9204. Effective Date.

Section 9204(a) provides that an appellation of origin is established and thus protected against misuse 30 days after the date the Department issues notice of the final decision to establish an appellation of origin. This subdivision is necessary to clarify the point in time after which an appellation of origin or similar name must meet the requirements for use of an appellation of origin to prevent misleading consumers as to the origin of cannabis. The purpose of “30 days” is to reduce the burden on a licensee using that name or similar name but will no longer qualify as they do not meet the requirements of use for the established appellation of origin. The Department determined that 30 days will provide sufficient time for licensees to sell off potentially conflicting inventory while not extensive enough to cause confusion or incentivize misuse of the name.

Subsection (b) provides that documentation of historical good-faith use of a trademark, as detailed in subdivisions (b)(1) through (b)(5), will function as an alternative, for one year, to the requirements for use an appellation of origin to those detailed in section 9103 of this chapter. They allow users of existing trademarks additional time to transition their branding or become compliant with the appellation requirements before being subject to administrative actions. The Department determined that one year is a sufficient period for a business to transition their branding to a new, non-infringing trademark. This subsection is necessary to provide clarity on anticipated conflicts between trademarks and appellations of origin and to minimize confusion caused by that conflict.

Subdivision (b)(1) requires that the use of the name does not mislead consumers about the geographical origin of the cannabis. This is necessary to ensure the new provision does not conflict with existing California law protecting geographical origin of all products, including but not limited to California Civil Code, Chapter 3, Section 1770.

Subdivision (b)(2) requires that the trademark was established prior to February 21, 2020, which is the date CDFA notified the public of the establishment of the appellations program. This subdivision is 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 public notice of the establishment of the appellation of origin program. The requirement that the trademark was “filed with the California Secretary of State or the United States Patent and Trademark Office or used in commerce” is necessary to provide clarity on the meaning of “established.”

Subdivision (b)(3) requires that the trademark was used in cannabis commerce at least annually since its establishment up to the public notification of approval of an appellation with which it may not qualify for use. This subdivision is 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 public notice of the establishment of the appellation of origin program.

Subdivision (b)(4) requires trademark users to retain and provide records demonstrating compliance with subdivision (b)(2). This subdivision is necessary to provide clarity on how to demonstrate compliance with appellations of origin requirements. Further, this enables enforcement against the misuse of recognized appellations of origin to prevent misleading consumers.

Subdivision (b)(5) makes notifying CDFA of good faith historical use of a name a requirement to qualify for continued use during a transition period of one year after approval of the name as an appellation. This notification is necessary as an alternative to the notice of use requirement for cultivators using an appellation of origin and for efficient administration of the appellation of origin program.

Subdivision (b)(6) requires transition period trademark holders to use a valid county of

origin or appellation of origin on any product also using the trademark to qualify for the transition period exemption. This subdivision is necessary to minimize consumer confusion about the geographical origin of a product caused by use of a trademark infringing the protection of a recently established appellation of origin

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

The following documents were relied on for this rulemaking process:

1. California Department of Food and Agriculture, Initial Statement of Reasons, CCR Title 3. Division 8. Chapter 1. Cannabis Cultivation Program and Chapter 2. Cannabis Appellations Program (February 20, 2020).
2. Federal Register. Rules and Regulations. Volume 74, No. 234. Establishment of the Calistoga Viticultural Area, Final Rule. pp. 64602-13 (December 8, 2009).
3. Mills, E. Harmonizing cannabis and environmental policy. In International Journal of Drug Policy, Volume 143, Article 104923 (September 2025).

ECONOMIC IMPACT ASSESSMENT

In accordance with California Government Code sections 11346.3 and 11346.5 the Department assessed the potential economic impacts on California businesses and individuals by the proposed rulemaking. The economic and fiscal impacts of the proposed amendments to regulations are disclosed in Attachment 1 (Standard Form 399, Economic and Fiscal Impact Statement (STD 399)).

Based on the economic analysis, CDFA does not anticipate the proposed amended regulations will affect to any significant degree:

- 1) the creation or elimination of jobs in California.
- 2) the creation of new businesses or the elimination of existing businesses within California.
- 3) the expansion of businesses currently doing business in California.
- 4) the health and welfare of California residents, worker safety, and the state's environment.

CONSIDERATION OF ALTERNATIVES

3-cultivators requirement

CDFA evaluated two alternatives for the petition submittal requirement: (1) making no change, and (2) changing the requirement to 2 cultivators. The 3-cultivator requirement was intended to ensure that the appellation represented a region not an individual farm. Cultivators have communicated that this requirement is preventing them from developing a petition for region due to their uncertainty if they will be able to complete the process. CDFA determined the goal of regional representation is already achieved by requiring the area represented to be delineated by geographical features. The proposed changes do not exclude two or more cultivators from being part of the petition as they can be identified as alternative petitioners. The benefits of making the change largely outweigh the benefits of keeping the requirement of three cultivators.

Effective date

CDFA evaluated two alternatives for the effective date of protections against misuse of an appellation of origin: (1) making no change, and (2) making the effective date one year after department approval. Further, CDFA also considered using the public notification date rather than the appellation program establishment date in section 9204(b)(2).

Alternative 1: The Department rejected the option of making no change to the existing regulations because it does not address concerns about unclarity in the existing process or potential unfair burdens on licensees using the name or similar name in the cannabis marketplace but no longer qualifying for use after approval of that name as an appellation of origin.

Alternative 2: The Department rejected the option of making the effective date of the prohibitions against misuse of an appellation one year after Department approval of a name. A one-year grace period, during which use of an appellation or similar name will not be considered misuse for all licensees was rejected because it incentivizes misuse, resulting in a devaluation of the name, and ultimately discourages the establishment of appellations.

CDFA also considered making the required date of initial trademark use to be prior to the public notification of a proposed approval of a name as an appellation of origin rather than the date of the establishment of the appellations program. The Department determined that using the rotating date would be confusing and do little to disincentivize misuse of names and misleading consumers.

ATTACHMENT 1
ECONOMIC AND FISCAL IMPACT
ASSESSMENT

(STD. 399)