

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

Title 3 of the California Code of Regulations

Notice of Proposed Rulemaking

Action 45-Day Notice

Cannabis Appellations Program

NOTICE IS HEREBY GIVEN that the California Department of Food and Agriculture (Department) proposes to amend regulations to Chapter 2, Cannabis Appellations Program, within Title 3 of the California Code of Regulations. 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 virtual public hearing at the following date and time listed below:

Tuesday, March 19, 2024 – 11:00 AM to 1:00 PM

Attendees may participate via Zoom online meeting platform or telephone conferencing. To participate via Zoom online meeting platform please contact Eric Duran at Eric.Duran@cdfa.ca.gov or (916) 387-5887 by 4:30 p.m. on March 15, 2024, to request a link to the meeting. The link to the meeting will also be posted on the Department's website no later than 9:00 a.m. the day of the hearing.

As a reasonable accommodation, limited in-person seating may be available at the hearing in the Department Hearing Room, 1220 N Street, Sacramento, CA 95814. Attendees must comply with all COVID-19 safety protocols. Please contact Eric Duran at Eric.Duran@cdfa.ca.gov or (916) 387-5887 by 4:30 p.m. on March 11, 2024, if an accommodation is necessary.

Participants will be given instructions on how to provide oral comment once they have accessed the hearing. The hearing will proceed on the date noted above until all testimony is submitted or 1:00 PM, whichever is later. At the hearing, any person may present oral or written statements or arguments relevant to the proposed action described in the Informative Digest. The Department requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony via email.

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 at midnight on March 19th, 2024. The Department will only consider comments received at the Department offices by that time.

Submit comments to:

Cannabis Appellations Program
California Department of Food and Agriculture
Office of Environmental Farming and Innovation
1220 N Street, Sacramento, CA 95814

or

Email: CannabisAg@cdfa.ca.gov

AUTHORITY AND REFERENCE

Section 26063 of the California Business and Professions Code authorizes the Department to adopt, implement, and enforce regulations related to the cannabis appellations of origin process. The Department is proposing to amend sections 9000, 9102, 9106, 9202 and 9203, and adopt sections 9301 and 9302 of Title 3, Division 8, Chapter 2 of the California Code of Regulations

The proposed regulations will implement, interpret, make specific, or reference sections 26001, 26012, 26061, 26063, and 26160 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) required the Department to establish, no later than January 1, 2021, 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) 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.” It also 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 67 (McGuire, Chapter 298, Statutes of 2020) limited the approval of appellations of origin for cannabis unless it requires the practice of planting in the ground in the canopy area and excludes the practices of using structures and any artificial light in the canopy area.

Assembly Bill 141 (Budget Act of 2021) established the Department of Cannabis Control (DCC) and transferred to that department most of the powers, duties, purposes, functions, responsibilities, and jurisdiction of the Bureau of Cannabis Control, the Department of Food and Agriculture, and the State Department of Public Health under MAUCRSA. As a result, the authority to create and implement cannabis cultivation regulations was transferred from CDFA to the DCC. This bill maintained the mandate for CDFA to establish a process by which licensed cultivators may establish appellations of origin for cannabis produced in certain geographical areas of California. It also authorizes the Department of Food and Agriculture to collect fees to cover the reasonable regulatory costs of performing the duties relating to the appellations of origin program.

Senate Bill 160 (Committee on Budget and Fiscal Review, Chapter 87, Statutes of 2021) Delayed the requirement that the Department establish a process by which licensed cultivators may establish appellations of origin for cannabis produced in certain geographical areas of California, until January 1, 2022, and made other clarifying changes.

Effect of the Proposed Action

The proposed regulations would establish the following requirements for use of an appellation of origin:

- (1) All cultivation activities (i.e., planting, growing, harvesting, drying, curing, grading, and trimming) must occur within the area represented by the appellation of origin.
- (2) The cultivator must notify the Department of use of the appellation of origin.

Objectives and Anticipated Benefits from this Regulatory Action:

Existing law requires the Department to establish a process by which licensed cannabis cultivators may establish appellations of origin. Regulations detailing that process were approved by the Office of Administrative Law on November 23, 2021.

The regulations proposed in this rulemaking action provide clarity on the requirements to use an appellation of origin in advertising, marketing, labeling, and packaging of cannabis and nonmanufactured cannabis products. Some of the expected impacts of the proposed regulations are:

- (1) Provide more reliable information available to consumers regarding the geographical origin of cannabis;
- (2) Increase efficiency in administering the program by clarifying recordkeeping and Notice of Use requirements for use of an appellation of origin; and
- (3) Provide consistency on the meaning of an appellation of origin by providing a uniform definition of “produced” for cannabis originating from different appellations of origin throughout the state.

The proposed amendments to the regulations are intended to strengthen the appellations program and consequentially aid in achieving a government-implemented, clearly defined and straight-forward process for establishing and using an appellation of origin.

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://uscode.house.gov/view.xhtml?path=/prelim@title21/chapter13&edition=prelim>

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 is 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 to state agencies associated with these proposed regulations. The proposed recordkeeping and Notice of Use requirements may result in savings to the state by providing more efficient program administration.

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 is 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. Those costs are not increased by these proposed amendments to the existing regulations. 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: Participation in the appellations program is voluntary and so there is no mandated impact on small businesses. There may be a positive effect on small business. California Business and Professions Code section 26063 requires specific cultivation practices that are most associated with small cannabis farms. The appellation of origin program will provide a tool to those small businesses for collective marketing of cannabis from their region. The proposed amendments are intended to strengthen that tool.

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 Department has concluded that the proposed amendments (1) will have no significant impact on the creation or elimination of jobs in the State of California, (2) will have no impact on the creation or elimination of businesses within the State of California, (3) will have no impact on the expansion of businesses within the State of California, (4) as stated above, will benefit the health and welfare of California residents by providing clarity on the use of key terms and strengthening the appellations program, (5) are not expected to impact the state's environment, and (6) are not expected to impact workers' safety.

The proposed amendments to the regulations are intended to ensure that the benefits detailed in Economic and Fiscal Impact Analysis (EFIA) of the regulations creating the CAP are achieved, and aid in efficient administration of the program.

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 during 2018 and 2019 allowing for broad input and subsequently more focused workshops with representatives of cultivator groups and subject matter experts. The proposed amendments in this action were included in multiple iterations of proposed regulations in 2020 and 2021. Comments received during these events were considered during the

development of these amendments to the regulations. Comments not considered were either in conflict with existing statute or unreasonable to adopt.

The primary alternative for each of the proposed amendments is to not include them in the CAP. The currently proposed regulations regarding defining “produced” and requiring a Notice of Use from cultivators using an appellation of origin were included in multiple iterations of CAP’s initially proposed regulations but not in the final version. During that initial period, the department considered alternatives such as allowing each appellation of origin to define produced for their region. The Department also considered alternatives to the Notice of Use such as individual cultivators requiring certification from the Department prior to use of an appellation of origin. The Department determined that those options would weaken the program or greatly increase administrative costs for the Department and lessen the probability of achieving the potential benefits of an appellation program.

CONTACT PERSONS

Inquiries concerning the proposed action may be directed to:

Francis Bean
California Department of Food and Agriculture
Office of Environmental Farming and Innovation
1220 N Street, Sacramento, CA 95814
Email: Francis.Bean@cdfa.ca.gov
Phone: (916) 387-5853

The backup contact person for these inquiries is:

Eric Duran
California Department of Food and Agriculture
Office of Environmental Farming and Innovation
1220 N Street, Sacramento, CA 95814
Email: Eric.Duran@cdfa.ca.gov
Phone: (916) 387-5887

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 will be available on the program’s webpage at <https://www.cdfa.ca.gov/oefi/cap/>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After 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. The Department will notify any interested person who commented previously on these revised regulations. Any person interested may obtain a copy of any modified regulations prior to the date of adoption from the Contact Persons at the mailing or email addresses specified above or by accessing the program's webpage during subsequent comment periods.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons will be posted on the program's webpage and may be obtained directly from the Contact Persons at the mailing or email addresses 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 <https://www.cdfa.ca.gov/oefi/cap/>.