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Filed via [CDFA.CalCannabis\\_Appellations@cdfa.ca.gov](mailto:CDFA.CalCannabis_Appellations@cdfa.ca.gov) on May 5th, 2020

California Department of Food and Agriculture (CDFA)  
Attention: Kristi Armstrong  
CalCannabis Cultivation Licensing  
Proposed Appellations Regulations  
P.O. Box 942871  
Sacramento, CA 94271

Re: [February 21, 2020 Notice of Proposed Rulemaking for the CalCannabis Appellations Program](#)

Dear Ms. Armstrong:

Origins Council (OC) is a California nonprofit education, research, and advocacy organization. We are dedicated to supporting the legacy cannabis producing regions of California through education and research programs, sustainable rural economic development initiatives, research driven policy advocacy, and the development of a legal geographical indication system for cannabis.

Foundational to the mission and work of Origins Council is our partnership with regional trade associations representing the legacy producing regions of California: the Trinity County Agricultural Alliance, the Humboldt County Growers Alliance, the Mendocino Cannabis Alliance, the Sonoma County Growers Alliance, the Nevada County Cannabis Alliance, and the Big Sur Farmers Association. The logos of our Regional Partners, whom we are proud to be partnered with, are at the top of the following page.

Representatives of our Regional Partners comprise the OC Regional Council. The Regional Council works with the staff and accredited advisers of Origins Council to develop and govern the policy initiatives of our organization. We are pleased to introduce this comment letter as a seminal work product of the OC Regional Council.



HUMBOLDT COUNTY  
GROWERS ALLIANCE



We also want to express our thanks to CDFA for providing the opportunity for Origins Council and many of our regional and coalition partners to participate in the CDFA Appellations Working Group during 2019.

We would like to begin our comments by recognizing the legacy of American Viticultural Areas (AVAs). We are especially grateful to the trailblazing wine grape growers, vintners, and legal visionaries of California wine who have been an inspiration to the legacy cannabis producers of California and our journey into appellations.

In the context of California's cannabis regulatory framework, the CalCannabis Appellations Program (CAP) is notable as a program specifically intended to facilitate the long-term success of California's cannabis producing regions. Since the passage of the Medical Marijuana Regulation and Safety Act in 2015, California cannabis policy often has been characterized as "building the plane as we're flying it," with intensive and rapid development at all levels of industry and government to build a functional regulatory framework from the ground up. We believe that the CAP provides an invaluable opportunity for recognizing the uniqueness and diversity of California cannabis and for promoting sustainable rural development, both of which are especially pressing needs as we anticipate the likely near-term opening of national and international trade. A successful CAP program will support the creation of a long-term economic engine for California, help provide sustainable livelihoods for thousands of small farmers, and promote ecologically sustainable and socially responsible cannabis cultivation practices.

To accomplish these goals, the key underlying principle of our comments is to ensure that appellations have integrity for everyone involved in the industry and for all cannabis consumers. To accomplish this, appellations must be causally connected to a region's natural environment and community, and this connection must be communicated clearly and accurately to consumers. We also believe that appellations must be *exclusive*, a key distinction that separates appellations from the more inclusive county of origin program. Specifically, appellations must be reserved to cannabis grown in full sun, open air, and in the ground. Without exclusivity, appellations will be duplicative of the already-existing county of origin program, which can be used on

cannabis grown in any fashion - in the ground, in greenhouses, with artificial light, hydroponically, and indoors - and will fail to delineate any unique quality outside a regional identifier.

CDFA’s proposed regulations mark a critical point in the development of cannabis appellations, even beyond California’s borders. While California is currently the only U.S. state with a cannabis appellation program, we have spoken with farmers, organizations, and policy makers in other states and countries who are closely watching the development of California’s appellation program in anticipation of potential programs in their own jurisdictions. Ultimately, a California appellation program will be of limited utility unless the intellectual property (IP) protections guaranteed in California law are recognized at the interstate, national, and international levels. As these discussions continue, it is vital that California set a model for a thoughtful appellation program with a high degree of integrity.

Our comments focus on issues that are key to the integrity of the CAP and of particular importance to the legacy cannabis-producing regions of California and to consumers of those products. Our specific recommendations and requests for clarification are italicized in bold for emphasis and ease of reference.

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## 1. Terroir-Driven Appellations of Origin

*Terroir* (French: from terre, "land") is the set of all natural and human factors that affect the qualities and characteristics of a crop, including the unique growing environment, farming practices, and the processing and packaging of the crop. The proposed regulations do not include any terroir baseline standard for cannabis appellations, an omission that we feel fundamentally undermines the integrity and value of the CAP.

Instead, it is left to the appellation petitioners to propose the specific cultivator license types that can and cannot use the appellation (Sec. 9102(j)) and the specific standards, practices, and cultivars that can or cannot be used to grow cannabis sold under the appellation designation (Sec. 9107). To achieve terroir-driven appellations, petitioners cannot simply propose to limit the license type to outdoor because outdoor cultivation, as defined in Sec. 8000(y), carries no requirement for planting in the ground. Such a terroir-driven restriction would have to take the form of a prescribed practice under Section 9000(d), with appropriate details on soil microbiome profiles and allowable soil amendments. See the discussion and recommendations under Topic 2 below, Causal Link and Petition Requirements.

***California cannabis appellations of origin should be established only when the petitioners adduce evidence that substantiates and protects the causal link between the qualities and characteristics of the cannabis and its geographical environment, including natural and human factors.***

Once again, we would like to acknowledge the legacy of AVAs which are firmly rooted in terroir. International appellation of origin systems also are founded upon terroir. These terroir-based systems have been proven to work; they have stood the test of time and have elevated the value of everything tied to them, from product to land to reputation.

Robust cannabis appellations will provide long-term economic opportunity to the state by establishing value that is tied to California soil and cannot be reproduced in other states or countries. In addition, a strong appellation program, mirroring that of California's other successful agricultural industries, will demonstrate California's leadership in producing highly sought-after and environmentally sustainable cannabis products. As attitudes regarding cannabis continue to shift throughout the country and as national markets begin to emerge, a terroir-based program will communicate the authenticity of California appellation-grown cannabis.

If California's cannabis appellations are not tied to terroir – not tied to the land itself - then the essential causal linkage between the product and the place of origin will be indefensible, rendering the tool ineffective. Without a baseline terroir standard, consumers will not only be confused by what an appellation signifies but also will recognize the folly of appellations for cannabis grown in ways that modify or manipulate the natural environment. Indeed, the prospect of an appellation for indoor grows will be derided by consumers at home and abroad, who will lose faith in the integrity of the system. It is important to note that cultivators who do not meet the baseline terroir standard are still authorized to use the county of origin designation set forth in Business and Professions Code Sec. 26063(a).

***In order for California cannabis appellations to be meaningful and authentic, we recommend incorporating in the regulations the following baseline standard for all appellations: "An appellation of origin shall not be established unless the cannabis produced is planted in the ground, in open air, with no artificial light during the flowering stage of cultivation until harvest." This can be accomplished by revising the definition of an***

***appellation of origin in Sec. 8000(b), as recommended in Topic 3 below (Geographical Indication vs. Appellation of Origin).***

## **2. Causal Link and Petition Requirements**

The regulations are inconsistent with respect to addressing the causal link between the place and product. For example, Sec. 9106(d) requires that the petition include a description of the quality, characteristic, or reputation of the cannabis which is caused by the geographical features, whereas the first sentence of Sec. 9106 states that “[t]he petition shall describe each distinctive geographical feature affecting cannabis cultivation in the geographical area of the proposed appellation of origin.” As noted above, the causal link should be between the geographical features and the quality or the characteristics of the cannabis grown in the appellation, not between the geographical features and the cultivation.

***We recommend revising the first sentence of Sec. 9106 to read: “The petition shall describe each distinctive geographical feature that affects the quality or characteristics of the cannabis cultivated in the proposed appellation of origin.”***

CDFA states on page 23 of the Initial Statement of Reasons that it has “interpreted geography in the broadest sense, which includes cultural factors as a means of delineating a region.” See also Sec. 9106(a)(4). Cultural factors include the appellation’s standards, practices, and cultivars; in the parlance of appellations of origin such as the AOC (*appellation d’origine contrôlée*) system in France, these are the human factors (cultivation practices, yields, product standards, etc.) as opposed to natural factors (soil, climate, elevation, etc.).

Sec. 9106(e) requires that the petitioner identify “at least one specific standard, practice, or cultivar which acts to preserve the distinctiveness of the geographical feature and maintain its relevance to cannabis cultivation.” We have three concerns with this proposed wording. First, we believe the relevant link for appellations is between the geographical feature (natural and human factors) and the cannabis, not between the cultivation method and the geographical feature. For example, it could be argued that a distinctive natural climate inhospitable to cannabis cultivation requires - and is therefore indirectly linked to - an enclosed, climate-controlled cultivation practice, but this logic would undermine the integrity of the appellation program because the natural factors would have no direct effect on the quality or characteristics of the cannabis grown there. Second, we are concerned that phrases like “preserve the distinctiveness” and “maintain relevance” are too weak to encompass the causal relation between place and product. Lastly, requiring only one specific standard, practice, or cultivar to satisfy this requirement does not support a strong enough influence upon the causal link.

***In order to address these concerns, we recommend that Sec. 9106(e) be amended to read: “Identification of at least one specific standard and one specific practice requirement which acts to preserve the essential link between the product’s quality or characteristics and the place of origin.”***

In a surprising omission, the list of required geographical features in Sec. 9106(a) does not include information about soil or soil microbes, which are essential parts of the natural environment. In the context of wine appellations, soil has long been considered critical to establishing an essential link between place and product, and scientific studies conducted over the past decade demonstrate the strong influence that soil structure and

the soil microbiome exert over the phenotypic qualities of wine. For example, a 2015 study published in *Nature*<sup>1</sup> found:

... significant positive correlations between the genetic and geographic relatedness of natural *S. cerevisiae* sub-populations and their effect on resulting wine phenotypes.... This result aligns with the belief that microbes significantly contribute to the regional identity or terroir of wine and may potentially extend to the differential effects of microbes on other important agricultural crops and produce generally.

Other studies have found that soil structure, including soil composition, temperature, water-holding capacity, and depth, plays a critical role in determining the characteristics of the resulting wine.<sup>2</sup> These soil characteristics, in turn, are significantly correlated with geographical location, establishing a powerful causal link between place and product.<sup>3</sup>

While the relationship between cannabis and soil microbiomes has not been explored to the same extent as with wine due to cannabis' legal status, several recent studies establish a strong causal link between soil microbiome and cannabis quality. These studies demonstrate a clear interrelationship among cannabis cultivar, microbiome, and cannabinoid content.<sup>4</sup> Specifically, it appears that the soil itself largely determines the composition of the microbial community, while the cultivar of cannabis influences the microbiome's structure.<sup>5</sup> Considering the established role of terpenes in mediating communication with soil microbes,<sup>6</sup> there is clear evidence that soil structure and the soil microbiome exert strong and unique impacts on the most important phenotypic qualities of cannabis.

***To capture the deep causal links between soils and the quality of cannabis produced, we recommend adding the following category of mandatory geographical features to Sec. 9106(a): "native soils and soil microbiology."***

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<sup>1</sup> Knight, S., Klaere, S., Fedrizzi, B., & Goddard, M. R. (2015). Regional microbial signatures positively correlate with differential wine phenotypes: evidence for a microbial aspect to terroir. *Scientific reports*, 5(1), 1-10.

<sup>2</sup> van Leeuwen, C., Roby, J. P., & de Rességuier, L. (2018). Soil-related terroir factors: a review. *Oeno one*, 52(2), 173-188.

<sup>3</sup> Miura, T., Sánchez, R., Castañeda, L. E., Godoy, K., & Barbosa, O. (2017). Is microbial terroir related to geographic distance between vineyards? *Environmental microbiology reports*, 9(6), 742-749.

<sup>4</sup> Taghinasab, M., & Jabaji, S. (2020). Cannabis Microbiome and the Role of Endophytes in Modulating the Production of Secondary Metabolites: An Overview. *Microorganisms*, 8(3), 355.

<sup>5</sup> Winston, M. E., Hampton-Marcell, J., Zarraonaindia, I., Owens, S. M., Moreau, C. S., Gilbert, J. A., ... & Gibbons, S. M. (2014). Understanding cultivar-specificity and soil determinants of the cannabis microbiome. *PLoS One*, 9(6).

<sup>6</sup> Huang, A. C., & Osbourn, A. (2019). Plant terpenes that mediate below-ground interactions: prospects for bioengineering terpenoids for plant protection. *Pest management science*, 75(9), 2368-2377.

### 3. Geographical Indication vs. Appellation of Origin

#### Definition of Appellation of Origin

We find the definition of appellations of origin in Sec. 8000 to be insufficient, and we fear this deficiency will undermine the value and defensibility of an appellation of origin designation. California has the opportunity to establish appellations of origin for areas of the state that produce cannabis of the highest quality in the world. With the statutory requirement [Business and Professions Code Sec. 26063] that 100% of the cannabis be grown in the appellation and the incorporation of standards, practices, and cultivars as provided for in the proposed regulations, our appellations can be powerful and meaningful designations for both cultivators and consumers.

Appellations of origin are a subset of geographical indications (GIs). GIs are defined in the World Trade Organization's Agreement on the Trade-Related Aspects of Intellectual Property Rights, specifically, Article 22(1):

Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

Appellations of origin typically require a stronger link with the place of origin. Specifically, the quality and characteristics of the product protected as an appellation of origin must result exclusively or essentially from its geographical origin. See, for example, the definition of appellation of origin in the Geneva Act of the Lisbon Agreement, Article 2(1)(i) ("the name of a geographical area, or another denomination known as referring to such area, which serves to designate a good as originating in that geographical area, where the quality or characteristics of the good are due exclusively or essentially to the geographical environment, including natural and human factors, and which has given the good its reputation").

***We recommend revising the definition of an appellation of origin in Sec. 8000(b) to read: "Appellation of origin means the name of a geographical area where cannabis is cultivated, established through the process set forth in chapter 2 of this division, where the quality or characteristics of the cannabis are essentially due to the geographical environment, including natural and human factors."***

***As noted previously, we also recommend the addition of the following terroir baseline standard in Sec. 8000 (b): "An appellation of origin can only be used for cannabis that is planted in the ground, in open air, with no artificial light during the flowering stage of cultivation until harvest."***

#### Reputation

While the reputation of the regional cannabis is important corroborating information to be included in an appellation petition, it is not sufficient in and of itself to establish an appellation of origin. Our proposed definition omits reputation as the sole basis for establishing an appellation of origin. The fundamental



condition for appellation establishment is demonstrating the causal link between the natural environment and the quality or characteristics of the cannabis grown in the appellation.

***We recommend striking “reputation” from Sec. 9106 (d), and revising it to read: “A description of the quality or characteristics of the cannabis which is caused by the geographical feature, including an explanation of how the geographical feature causes the cannabis to have that quality or characteristic.”***

The reference below to cultural features, including reputation, should be tied directly to the cannabis and not simply to cannabis cultivation.

***We recommend that Sec. 9106(a)(4) with respect to the required evidence in an appellation petition be revised to read: “Cultural features which may include political boundaries associated with a history or reputation of cannabis and cannabis cultivation, the distribution of a specific set of cultivation practices, and anthropogenic features.”***

## 4. Consensus

### Voting

CDFA’s professed goal of “greater consensus-building in a proposed cannabis appellation of origin” seeks “to avoid the establishment of appellations with overly specific or burdensome requirements in favor of any individual cultivator” (Initial Statement of Reasons, page 15) or weak requirements that make the appellation meaningless. We share this goal of consensus-building but believe that the regulations, as presently written, will not achieve it because only three licensed cultivators are required to submit a petition (Sec. 9000(b)), and those three petitioners can propose whatever standards, practices, and cultivars they wish without a requirement to involve the broader community.

We believe that consensus is better achieved by requiring a much higher degree of cultivator support **before** an appellation petition is submitted. This will avoid any rush-to-market mentality that could result in chaos after the CAP regulations take effect. Such a requirement also would substantially simplify the appellation review process for CDFA staff by diminishing the potential for contentious public comments. Finally, a requirement for community consensus would avert prospective conflict within interdependent rural cannabis-producing communities.

***For a petition to be considered complete, the support of a majority of the qualifying cultivator licensees within the proposed appellation should be required on the appellation name, geographic boundaries, standards, practices, and cultivars.***

***To guard against unfair vote stacking through licensed affiliates and subsidiaries, to protect small independent businesses, and to ensure true consensus, an individual or business entity that owns or holds a financial interest in multiple licenses, including licenses that are commonly owned, defined as at least 50% ownership by the same parties directly or indirectly, should be entitled to only one vote.***

***If appellations are restricted, as we propose, to cannabis crops planted in the ground, in open air, with no artificial light during the flowering stage of cultivation until harvest, we recommend that only outdoor***

***license types - those that have the legal authority to conduct in-ground, open-air cultivation - be entitled to vote. To further clarify, it is our recommendation that all outdoor licensees within the proposed boundaries be entitled to vote, regardless of cultivation practices.***

***Additionally, we recommend that groups petitioning for nested appellations or amendments to an established appellation be required to demonstrate majority support for the proposed nested appellation or amendment by the licensed outdoor cultivators within the appellation boundaries.***

#### Public Comment

We understand that the public comment period on any proposed appellation will allow other cultivators to comment on the appellation name, boundaries, standards, practices, and cultivars, with CDFA resolving the differences of opinion in its final rule. It is essential that the public have adequate time to review CDFA's notice of proposed rulemaking and present its comments.

***Thirty days for public comment on a proposed appellation, as set forth in Sec. 9201(a), is too short. We recommend 45 to 90 days, at the discretion of CDFA depending on the complexity of the issues, with the right for anyone to request an extension of the comment period for good cause.***

## **5. Standards, Practices and Cultivars**

#### Standards

We suggest that "standards," as defined in Sec. 9000(e) ("Standard means a measurable, scorable, or certified requirement applicable to the cannabis or cultivation") is too narrow.

***We propose that petitioners also be able to stipulate labeling standards, production standards, business standards, social standards, and land use standards. Some of these standards, such as production, labeling, and packaging standards, may apply to non-cultivator licensees using the appellation designation, which will require regulation and coordination with other cannabis licensing agencies. ( See the further discussion of this point under the Verification and Enforcement topic )***

#### Practices

Sec. 9107 proposes that: "The petition shall identify and define at least one of each of the following production requirements for the proposed appellation of origin: standard, practice, and cultivar."

***Sec. 9107(d)(1) allows for a prohibited cultivar to satisfy this requirement, which we support. However, we recommend that the regulations clarify that a prohibited practice by itself does not satisfy this requirement; a list of both mandatory and prohibited practices, however, would qualify.***

The definition of "practice" in Sec. 9000(d) ("Practice means an allowed or prohibited method of cultivation") is also too narrow.

***We recommend the adoption of a more expansive definition of practice that includes a wider range of activities, including without limitation cultivation, land management, and business practices. Defining practices more broadly provides the opportunity to protect and promote cultural values, development approaches, land management practices, as well as practices that directly relate to cultivation methods.***

Sec. 9107 (b) (1) proposes that petitioners “[i]nclude a description of the practice requirement to allow any unfamiliar person to comply without substantial additional research, and in plain language to provide clear understanding to the public.”

***For ease of petition review and compliance, we recommend amending this to read: “Include a description of the practice that provides a clear understanding to the public of the requirements and that is not unduly burdensome to comply with.”***

### Certifications

Currently, there is no pathway to register collective or certification marks for cannabis in California. This opportunity would tremendously benefit the California cannabis industry as a whole by extensively expanding the IP protections and tools available for California products, brands, communities, and sectors.

***We recommend that the California Secretary of State (SOS) establish a process for cannabis businesses to register California collective and certification marks. Additionally, we recommend that the SOS adopt the United States Patent and Trademark Office (USPTO) registration process and requirements for collective and certification marks.***

***A certifier in good standing should be allowed to substantiate practices and cultivars, in addition to standards. We further request that in relation to 9107 (b)(2), specific criteria be provided to determine that a certifier is in good standing.***

### Cultivars

The proposed cultivar requirements in Sec. 9107(d) are sufficiently flexible to address the challenges associated with the current nascent stage of cannabis cultivar research and IP protections, while allowing petitioning groups to define boundaries around cultivars.

***The regulations propose that one way to satisfy cultivar requirements in an appellation petition is “cultivar identity certification with identified limits on acceptable methods, vendors, and practices.” Given the nascent field of cannabis cultivar identity certification, we request that CDFA provide a cultivar registration process for petitioners that follows well established and defined international conventions, standards, and procedures. Cultivar registration provides an opportunity to identify and file substantiating data for cultivars that act to preserve the essential link between the product’s quality or characteristics and the place of origin.***

The Canndor Herbarium is a Strategic Partner of the Origins Council. Herbaria are traditional houses of dried, preserved plant material that serve as a library of historical and biological records, and act as the foundation of community-driven cultivar definitions and standards. Canndor has adapted the International Union for the Protection of New Varieties hemp registration form for cannabis cultivar registration. Canndor’s Cultivar

Registration Form (Attachment A) adds fields for chemical profiles and essential data sets for defining cannabis cultivars.

***In order to support CDFA in conducting an expert review of applications for cannabis cultivar registrations, CDFA should earmark part of its budget to hire or contract with a cannabis botanist to serve as a petition review panelist and to support cultivar registrations.***

***Additionally, we recommend that the CDFA Herbarium and Botany Laboratory support the research and development of the CAP by coordinating with CalCannabis to provide expertise and resources to the CAP, including the expansion of the CDFA Herbarium program to intake cannabis specimens as a part of the CAP cultivar registration process as well as partnering with community-based cannabis herbariums.***

## **6. Partially Overlapping and Nested Appellations**

### Partially Overlapping Appellations

***We propose that no partially overlapping appellations be allowed because they are inherently confusing to consumers, will make it substantially more difficult to reach community consensus on appellation petitions, and will dilute the distinction of appellations rather than strengthening them.***

### Nested Appellations

***We support nested appellations (that is, an appellation that is wholly inside one or more larger appellations), but only with the requirement for consensus mentioned above, with only the qualifying licensees contained within the proposed nested appellation voting.***

***We recommend that a single petition be allowed to propose multiple appellations that are nested within one another, with only one filing fee required. Petitions for nested appellations should examine and explain how the appellations interrelate, which will allow for an easier review process for the agency and the Petition Review Panel. Additionally, this will encourage broader consensus-based regional appellation development.***

### Multi-County Designations

Sec. 9105(b)(1) provides that an appellation of origin cannot “be based solely on the political entity lines of a single county.” That implies that an appellation of origin cannot be a single county, but it might leave open the option of a multi-county appellation.

***We propose amending Sec. 9105(b) to prohibit appellations of origin “based solely on the political entity lines of a single county or counties.”***

***Our position is that California cannabis appellations of origin should be based on evidence presented in appellation petitions that substantiates and protects the causal link between the qualities or characteristics of the cannabis and its natural environment. This leads us to oppose the establishment of appellations of***

*origin for regions such as the Emerald Triangle that can only demonstrate a commonality of reputation and not a shared geographical causal link to product quality. Such regions are certainly deserving of a geographical indication, and we would support the expansion of county of origin designations to allow for multi-county designations with names based on historic evidence of use, such as the Emerald Triangle.*

## **7. Appellations vs. Trademarks**

### Geographic Trademarks

Sec. 9203(c) of the proposed regulations adopts a sunset provision that would allow any owner of a geographic trademark registered with the California Secretary of State or U.S. Patent and Trademark Office and in use in California prior to CDFA's publication of a Notice of Proposed Rulemaking for an appellation of the same or similar name to continue to use the trademark for three years after CDFA's notice of final decision establishing the appellation so long as the trademark is accompanied by a truthful county of origin or appellation of origin.

California Business and Professions Code Sec. 26063, as amended by Senate Bill 185 (effective January 1, 2020), provides in pertinent part

... (b)(2) Cannabis shall not be advertised, marketed, labeled, or sold using an appellation of origin established pursuant to paragraph (1) including any similar name that is likely to mislead consumers as to the kind of cannabis [defined as "the applicable type or designation regarding a particular cannabis variant, origin, or product type, including, but not limited to, strain name, trademark, or production area designation"], unless the cannabis meets the appellation of origin requirements for, and was produced in, the geographical area.

(3) An appellation of origin established pursuant to this subdivision, 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 the cannabis contained in the product meets the appellation of origin requirements and was produced in the geographical area.

In addition, Business and Professions Code Sec. 26121(a), added by Senate Bill 94, effective June 27, 2017, states:

A cannabis product is misbranded if ... (2) its labeling is false or misleading in any particular.

By authorizing trademarks that conflict with an appellation of origin for up to three years, we are concerned that the proposed regulations conflict with these statutory requirements. The sunset proposal also is misguided. It will lead to a rush to use and register geographic trademarks before CDFA proceeds with rulemaking on a given appellation. Those registrations would then authorize the misdescriptive and misleading use of those geographic trademarks for three years after the appellation is established. The resulting confusion between appellations and trademarks, occurring at the earliest and most sensitive time in the

appellation program, would threaten to prevent the program from getting off the ground and potentially undermine the integrity of appellations permanently.

CDFA may have based its proposed resolution of conflicts between geographic trademarks and appellations of origin on TTB's resolution of the Calistoga AVA conflict. In that case, there were several Calistoga-named wineries whose wines wouldn't qualify for the proposed Calistoga AVA. They wanted to be forever grandfathered, with no sunset date. Instead, TTB established the Calistoga AVA and granted those wineries a three-year transition period to use their existing wine labels with Calistoga in the brand name on wines that do not qualify for the Calistoga AVA. The agency explained in its Final Rule, 74 Fed. Reg. 64602 (2010):

*We are providing this 3-year transition period to allow the use-up of existing label stocks, to provide time for the design of new labels, to submit labels and receive label approvals from TTB, and to allow each affected brand label holder the opportunity to consider other changes required of its business model in light of this rulemaking, including whether to begin sourcing 85% or more of its grapes from the new Calistoga viticultural area in order to continue to use its brand name or to transition to a new brand name.*

***We recommend that CDFA allow for a one year sunset period only for geographic brands that were in use before February 21, 2020, when this Notice of Proposed Rulemaking for the CAP was published. The one year sunset of the geographic trademark would begin when an appellation with the same or similar geographic name is established.***

#### Notification

Sec. 9202(a) provides that CDFA shall provide notice by e-mail of final decision on a petition for an appellation of origin (i.e., established, amended, denied, or cancelled) to designated responsible parties of licenses issued by the department and located within the areas directly impacted by the decision.

***Given the widespread use of geographic trademarks for cannabis brands, particularly using the names of regions renowned for cannabis production, we propose that CDFA notify all cannabis licensees in California of perfected petitions, notices of proposed rulemaking, and final decisions on cannabis appellation petitions, both those to establish an appellation and to amend an appellation. This is particularly important if the amendment involves a change of name of the appellation.***

It is worth mentioning that the timeline to develop a petition and receive the final agency determination for an appellation is likely to span one to two years. This process timeline should be considered when determining what constitutes fair notice to geographic trademark owners. In addition, all licensees already are on notice that if they use a brand name that includes a geographic term that later becomes an appellation, the cannabis sold under that brand name ultimately will have to qualify for the appellation or be sold under a new, non-misleading brand name.

## Priority

We would like to emphasize that the establishment and use of appellations of origin for cannabis constitutes the "fair use" of geographic names that are in the public domain and that no one can own and use those names exclusively. These designations also protect collective intellectual property and regional identity whereas trademarks that incorporate place names are the intellectual property of individual businesses leveraging a regional identity. If the producers of a region are invested enough in their collective identity, values, and standards to devote the effort and spend the money necessary to build producer consensus and prepare and file an appellation petition, that appellation, when established, will become the intellectual property that rightfully belongs to that collective. Of course, the trademark owner is allowed to continue to use the geographic trademark on products that conform to the appellation requirements.

## **8. Use on Cannabis and Cannabis Products**

### CDFA Licensees

Sec. 8212.1 provides that "a licensee shall submit a Notice of Use to the department within 30 days of use of an appellation of origin." Sec. 8000(q) defines "licensee" as "any person holding a license pursuant to this chapter, namely, California Code of Regulations Title 3 Food and Agriculture, Division 8 Cannabis Cultivation, Chapter 1 Cannabis Cultivation Program. Chapter 1 provides for cultivation, nursery, and processing licenses.

***We request clarification that an appellation of origin designation can be used by a cultivation, nursery, or processing licensee by filing a Notice of Use.***

### Cannabis Products

It is not clear on which cannabis products an appellation of origin can be used. While the use of an appellation in the marketing, advertising, packaging, and labeling of cannabis and non-manufactured cannabis (the latter including flower, shake, and kief per Sec. 8000(w)) is authorized in Sec. 8212 of the proposed regulations, Business and Professions Code Sections 26120(c)(4) and 26001(i) and Health and Safety Code Sec. 11018.1 suggests that an appellation of origin also can be used on "cannabis products," which include but are not limited to cannabis concentrates, edibles, and topicals.

***CDFA should clarify on which, if any, manufactured cannabis products an appellation of origin can be used, and what labeling regulations would apply.***

Much of the value of appellation products is due to their exclusivity, provenance, and compliance with the region's production practices and product standards. It is of the utmost importance that appellation designations not be used by downstream product manufacturers unless those manufacturers comply with the

appellation's adopted production and product standards. Otherwise, the appellation will be diluted and tarnished to the detriment of the cultivators and the CAP as whole.

Additionally, structuring the appellation program so that it supports and incentivizes local economic development and the regional pooling of collective resources, such as appellation hubs for nursery, processing, manufacturing, retail and distribution would bring substantial benefits to cannabis producers and California as a region.

#### Use by Other Licensees

Cannabis can be packaged and labeled by cultivation, processing, manufacturing, and distribution licensees. Cannabis products can be packaged and labeled by manufacturing licensees.

***We request clarification that an appellation of origin designation for cannabis and cannabis products can be used by manufacturing or distribution licensees packaging or labeling qualifying products by filing a Notice of Use.***

## **9. Labeling**

#### CDPH Regulations

Labeling of cannabis and cannabis products are primarily within the purview of the California Department of Public Health (CDPH). To date, we have few, if any, appellation-related labeling regulations or guidelines.

Specific labeling requirements are essential to the success of the CAP because they inform the consumer's experience and understanding of the county of origin and appellation of origin designations.

***We respectfully request that the CDPH Manufactured Cannabis Safety Branch and the Bureau of Cannabis Control undertake the timely research and development of cannabis county and appellation of origin labeling regulations.***

#### Labeling and Advertising

CDFA clarified on page six of the Initial Statement of Reasons that a county of origin and an appellation of origin, while distinct, can be used in conjunction or separately in advertising and labeling so long as the product complies with the requirements for each such designation.

***We strongly support the proposed requirement in Sec 8212(4) which specifies that a county or appellation name can be used in marketing and advertising only if the label includes such county or appellation designation.***



## Conjunctive Labeling

Cannabis appellation of origin and county of origin designations are complementary and will function in tandem as part of a comprehensive geographical indication system for California cannabis. California Business and Professions Code Sec. 26130(c)(7) requires that all licensed California cannabis products must include the California Universal Symbol sign on the product packaging. With the opportunity to include a county of origin and appellation of origin designation on the label conjunctively, a consumer can contextualize a product as being from a specific cannabis appellation and county within California. This helps consumers discover and relate to products of place originating from lesser known regions, in turn driving regional agritourism that will benefit a myriad of local business sectors. The value and import of conjunctive labeling using geographic designations will only increase as national and international markets open to California producers.

There is no mention in the proposed regulations of conjunctive labeling. Under the proposed regulations, it is our understanding this type of conjunctive labeling would be allowed so long as the product complies with the requirements for both these origin designations.

***We recommend that appellation petitioners be able to require conjunctive labeling as one standard among the standards, practices, and cultivars for that appellation.***

## State Seals

The absence of prescribed language or standardized marks for compliant use of origin designations greatly diminishes the efficacy of this program. It increases the marketing burden exponentially for all appellation-designated regions and likely will lead to consumer confusion.

***We propose the adoption of an official state-designed logo or seal for both county and appellation of origin designated products. We propose that the seals be designed with a standardized perimeter and a customized interior field that is unique to and designed by each region. County governments would submit designs in the case of county of origin, and appellation petitioners would submit their designs for appellations of origin designations. CDFA and CDPH would have the authority to approve these local designs for appellation and county of origin products.***

## Name of the Appellation

***We recommend that in addition to the official seal(s), labeling requirements should stipulate that the appellation name is prominently and legibly displayed on the label, along with the county of origin if applicable.***

## 10. Petitioning Organizations

CDFA defines a “petitioning organization” as a “group of licensed cultivators representing three or more unique businesses within the geographical area of the proposed appellation of origin.”

***We support this open requirement to allow “groups” to take a variety of organizational forms, affording petitioners and appellation producers maximum flexibility with respect to organizational structure.***

Sec. 9100 (a) provides that: “A petitioning organization may submit a petition to the department to: (1) Establish a new appellation of origin; or (2) Amend an existing appellation of origin.”

***We recommend that for the purposes of amending an existing appellation, the “petitioning organization” not be limited to the original petitioning organization.***

Additionally, we support amendments to California Business and Professions Code Sections 26220-26231.2 that support appellation producers to more viably organize as Cannabis Cooperative Associations.

## 11. Appellation Review Process and Final Determinations

### Public Comment Period

***As mentioned previously in the Consensus topic, 30 days is too short for public review and comment. We recommend 45 to 90 days, at the discretion of CDFA depending on the complexity of the issues, with the right for anyone to request an extension of the comment period for good cause.***

### Petition Review Panel

We support the proposed review panel and believe the analysis and recommendations of this panel will be instrumental to the function, development, and success of the appellation program. It is essential to the success and sustainability of the CAP that the review panel consist of accredited experts. The petition and amendment review process will be the primary mechanism informing the development of the program over time and is an essential area of the program in which to invest resources.

***We recommend that Sec. 9300(a) be amended to read: “The department shall establish a Petition Review Panel to assist the department with review of petitions.”***

Sections 9300 and 9301 allow CDFA to appoint a volunteer Petition Review Panel consisting of seven members and two alternates with experience in cannabis cultivation, intellectual property, sustainable agriculture, or community-based research, to review petitions and make recommendations to CDFA. We believe that a specific spectrum of subject matter expertise be required, not solely experience.

***We recommend amending Sec. 9301(d) to read: “Members of the panel shall have expertise in cannabis cultivation, cannabis botany, natural sciences, sustainable agriculture, geographical indication law, cultural anthropology, and community-based participatory research.”***

***In order to support a more culturally balanced review panel, greater participation by cannabis cultivators, as well as agency and review panel understanding of the profound diversity of cannabis products, cultivation practices, standards, and cultivars, we recommend that (1) the number of cannabis cultivation seats on the Petition Review Panel be expanded to three, and (2) the cannabis cultivation expert seats rotate more frequently than those of the other subject matter experts.***

***There is no formal process for nominating the Petition Review Panelists. We request that this process be defined. If appellations are restricted, as we propose, to cannabis crops planted in the ground, in open air, with no artificial light during the flowering stage of cultivation until harvest, we recommend that only outdoor license types - those that have the legal authority to conduct in-ground, open-air cultivation - be entitled to nominate panelists or serve on the panel.***

#### Agency Time Frames

There are no time limits for CDFA to determine if an appellation petition is complete and for final action on a petition. Additionally, there are no provisions for appeals of final determinations.

***We recommend allowing CDFA up to six months to respond to a submitted petition or a resubmitted petition if the petition is not deemed to be perfected following the initial submission. We recommend allowing CDFA up to 12 months to issue a final determination on the petition subsequent to the completion of the public comment period.***

#### Public Access to Petitions

The ability of the public to access petitions under review as well as those approved is essential to the functioning and success of the program.

***We support the proposal in 9201(b) that “A notice of proposed action on an appellation of origin shall include weblinks to: (1) The completed petition; (2) A map of the area described by the petition; and (3) the standard, practice, and cultivar requirements identified in the petition.”***

***We also recommend that CDFA establish and manage a web-based platform that serves as a searchable database for petitions under review as well as those approved and that can function as a consumer facing marketing tool for the CAP and for all established appellations of origin.***

## 12. Verification and Enforcement

The verification and enforcement of appellation regulations are absolutely essential to the integrity and success of CAP.

### Self Certification of Terroir-Based Cultivation

***We strongly recommend that cannabis appellations not be tied to license type but rather to our recommended terroir baseline standard. This will require that appellation petitioners certify, subject to a CDFA inspection, that they meet the baseline standard.***

### Recordkeeping

We support the proposed recordkeeping requirements in Sections 8400(d)(13) and 8400(d)(14) as the means of verifying compliance for county of origin and appellation of origin designated products.

However, we believe that recordkeeping alone is insufficient to meaningfully verify and enforce compliance with standard, practice, and cultivar requirements. In order for the CAP to be meaningful to the consumer, more rigorous verification requirements need to be included.

### Site Inspections

***After an appellation is established, we recommend active enforcement through regular or spot CDFA audits of the cultivators and users of the appellation designation (these might be conducted by CDFA's Market Enforcement Branch, with separate funding) and/or the assignment of enforcement responsibility to a third-party certifier.***

### Agency Coordination

***Because some of the appellation standards and practices may apply to manufacturers and distributors, and because manufacturers and distributors can package and label cannabis and cannabis products, CDFA may have to coordinate with other agencies to enforce specific appellation standards and practices as well as labeling requirements that apply at different levels of the supply chain.***

### Fines

Violations of the marketing, advertising, labeling, and packaging regulations are classified as "minor" in Sec. 8601, and the fines are in the minor range of \$100 to \$500 per violation. They are too low. CDFA justifies the proposal on page 23 of the Initial Statement of Reasons: "Fine amounts were determined by assessing the potential impact from the violation on the environment and public safety, similar to and consistent with fine amounts for labeling and packaging violations, and the Department's ability to effectively administer the CAP."

We believe that this analysis is flawed and overlooks the cost to the CAP in having inconsequential fines that encourage abuse of the system, rendering it meaningless to consumers. In the case of appellations of origin, the violation of marketing, advertising, labeling, and packaging regulations should constitute “Moderate” violations because these activities mislead or deceive the public and significantly interfere with enforcement of state law, namely, Business and Professions Code Sec. 26063.

***Given that CAP is a new program, globally the first of its kind for cannabis, we recommend that a first time offense be classified as “Moderate” (Fine range: \$501 to \$1,000 per violation) and that subsequent violations be classified as “Serious” (Fine range: \$1,001 to \$5,000 per violation), subject to license suspension or revocation.***

Without active enforcement and meaningful fines, the burden of verification and policing of appellation standards, labeling compliance, trademark disputes, and counterfeiting will fall solely on appellations organizations. While, practically speaking, we recognize that each appellation will be responsible for upholding the appellation’s standards for quality and integrity, an effective state compliance and enforcement presence is absolutely necessary.

### **13. CAP Funding and Administration**

#### Building a Sustainable Program

The Economic and Fiscal Impact Analysis for CAP projects the cost for the program to be \$251,000 annually. According to the Initial Statement of Reasons (page 49), adopting an AOC system, as was advocated for by the industry for several years and recommended by the vast majority of CDFA Appellations Working Group participants, would require \$1.6 million in annual program funding. This alternative was dismissed because it would have a “greater adverse impact on small business” and “the economic benefits of the alternative would not exceed the benefits of the proposed regulation.”

We disagree with this assessment and believe that the proposed budget for the program is severely inadequate and will undermine the viability of the program. One such impact is the necessity to rely heavily upon a volunteer panel to review petitions. Another impact of this budgetary deficiency may be ineffective enforcement, which would undermine consumer trust and the opportunity to establish product loyalty.

***We recommend that the fiscal components of this proposal be further assessed with an eye toward the long-term viability and success of the CAP, prioritizing the funding of an exemplary team of accredited experts to serve on the Petition Review Panel.***

#### Fees

The fees of \$20,880 to file an appellation petition and \$10,440 to amend an appellation are excessive and poorly structured. As proposed these fees create substantial barriers to entry for small legacy farmers already challenged by costs associated with regulatory compliance, capital expenditures and limited market access

due to an insufficient number of licensed retailers in the state. Regarding petitions, it is possible that CDFA will not deem an appellation petition to be “complete,” in which case a large fee would be totally inappropriate.

***We recommend that a portion of the petition fee be paid initially, with the remainder of the fee due upon the determination of petition completeness.***

***We also recommend that fee sharing occur with the users of the appellation. This can be accomplished by charging those users when they submit their Notice of Use.***

***We further recommend allowing for the filing of one Notice of Use covering multiple appellations. We believe that it will not be rare for a licensee to use more than one appellation when there are nested appellations.***

If the amendment is solely to amend a practice, standard, or cultivar, the fee of \$10,440 would be prohibitive and stifle innovation and the natural evolution of the CAP. If the amendment seeks to change the name and boundaries of the appellation, a higher fee may be appropriate.

***We recommend the development of a tiered fee schedule that addresses the full spectrum of possible amendments.***

***We propose that fees to amend any appellation standard, practice, or cultivar should be low in order to support regional innovation and the development of CAP.***

***Use of the proposed official seal or seals (discussed in Labeling, topic 9 above) also could be subject to a fee to help fund the CAP and support active enforcement against counterfeit products.***

#### CDFA Administration of CAP

In January 2020, the Governor’s Administration announced plans to consolidate the three cannabis licensing entities that are currently housed at the Bureau of Cannabis Control, the Department of Food and Agriculture, and the Department of Public Health into a single Department of Cannabis Control by July 2021.

Current statute and these proposed regulations assign to CDFA the responsibility for administering the program and reviewing, designating, and enforcing appellations. Establishing an appellation of origin program for cannabis is a milestone in the advocacy efforts of the industry toward the common goal of having cannabis cultivation recognized as farming and having commercial cannabis legally designated and regulated as an agricultural crop. Other programmatic resources housed within CDFA that would benefit cannabis farmers include access to the CDFA Botany Lab, the CDFA Herbarium, the Healthy Soils Program, the Specialty Product Block Grant Program and Marketing Services. Some of these programs will be unavailable to cannabis farmers until Federal rescheduling or descheduling of cannabis occurs. Hemp currently qualifies for all of these programs and would appear to remain under CDFA’s jurisdiction regardless of proposed changes to cannabis regulation.

***We strongly recommend that CDFA be responsible for the administration of the CAP.***

\* \* \* \* \*

Given the challenge of undertaking public comment during the COVID-19 crisis, the wide range of topics covered in this comment letter, the many technical considerations, and the varied views of interested parties, we recommend that CDFA revise the proposed regulations and prepare a second notice of proposed rulemaking. It is not unusual for a rulemaking of this magnitude to have several notices of proposed rulemaking. For example, the California cannabis regulations in 2018 included several opportunities for public comment before the regulations were finalized.

In closing, Origins Council thanks you for this opportunity to offer these comments and would be pleased to provide any further clarifying information or explanations that would be helpful.

Sincerely



Genine Coleman  
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Origins Council



Terra Carver  
Executive Director  
Humboldt County Growers Alliance



Oliver Bates  
President  
Big Sur Farmers Association



Diana Gamzon,  
Executive Director  
Nevada County Cannabis Alliance



Patrick Sellers  
Chair of the Board of Directors  
Mendocino Cannabis Alliance



Adrien Keys  
President  
Trinity County Agricultural Alliance



Joanna Cedar,  
Board Member  
Sonoma County Growers Alliance

Attachment A

# Canndor Cultivar Registration Intake Form



As part of Cultivar Registration, the Canndor team will develop a botanical description that will be part of your registration package and can be used to facilitate community driven Cultivar definitions and standards. Please complete the form below to the best of your ability.

Client: \_\_\_\_\_ Email: \_\_\_\_\_

Organization/Farm: \_\_\_\_\_ Date: \_\_\_\_\_

Cultivar/Landrace/Strain Name: \_\_\_\_\_

**Parents:**

 <b>Mother</b>	 <b>Father</b>
<b>Name:</b>	<b>Name:</b>
<b>Mother traits (if known):</b>	<b>Father traits (if known):</b>
<b>Mother's parents (if known):</b>	<b>Father's parents (if known):</b>

**Grower & Plant History:**

Is this plant (seed set) an original breeding creation? Y/ N

How long have you stewarded this plant?



Where did you acquire this plant?

**General cultivation characteristics:**

What do you love about this plant?

What is challenging about growing this plant?

**Plant Cultivation Variables:**

Plant grows best (circle or rank): Outdoor\_\_\_\_ Indoor\_\_\_\_ Greenhouse\_\_\_\_ Mixed light\_\_\_\_

Plant pest or Pathogen information:

Susceptible to: \_\_\_\_\_

Resistant to: \_\_\_\_\_

**Plant Morphology and Phenotype Descriptions:**

Differences among siblings, or range of phenotypes produced: High\_\_\_\_ Medium\_\_\_\_ Low\_\_\_\_

Average height (inches): \_\_\_\_\_

General plant structure: Short/Bushy\_\_\_\_ Christmas Tree like\_\_\_\_ Tall\_\_\_\_ Other\_\_\_\_

Stem hollow (if known): Y / N

Flower color: Purple\_\_\_\_ White\_\_\_\_ Orange\_\_\_\_ Green\_\_\_\_ Other\_\_\_\_

Leaf shape: Sativa like (narrow lobed)\_\_\_\_ Mixed\_\_\_\_ Indica like (large lobed)\_\_\_\_

Upper surface of leaf color / hairiness (if any): \_\_\_\_\_

Bottom surface of leaf color / hairiness (if any): \_\_\_\_\_

Flowering window (days to flower after planting):

♀: 40\_\_\_\_ 50\_\_\_\_ 60\_\_\_\_ 70\_\_\_\_ Other:\_\_\_\_\_  
♂: 40\_\_\_\_ 50\_\_\_\_ 60\_\_\_\_ 70\_\_\_\_ Other:\_\_\_\_\_

Additional phenotypes that make this plant unique (if any):\_\_\_\_\_

Chemical profile:

THC: High\_\_\_\_ Medium\_\_\_\_ Low\_\_\_\_

CBD: High\_\_\_\_ Medium\_\_\_\_ Low\_\_\_\_

Terpenes (mark high):

Limonene\_\_\_\_ Pinene\_\_\_\_ Myrcene\_\_\_\_ Linalool\_\_\_\_ Caryophyllene\_\_\_\_ Other\_\_\_\_

Do you have a chemical report you want to link to this plant? Yes\_\_\_\_ No\_\_\_\_

If yes: please attach the chemical report to this intake form.

Medicinal use(s) : \_\_\_\_\_

Experience/User profile: \_\_\_\_\_