

Date: May 6, 2020

To: Attention: Kristi Armstrong (CDFA.CalCannabis.Appellations@cdfa.ca.gov)
CalCannabis Cultivation Licensing
California Department of Food and Agriculture
1220 N Street
Sacramento, CA 95814

Re: Comments on Proposed Cannabis Appellations Regulations

I write to respectfully submit the following comments concerning the draft regulations for cannabis appellations. By way of background, I have practiced cannabis law in California for more than twenty-one years and I am the founder of a boutique law firm focusing on California cannabis and hemp law. I am the author of a series of books compiling California's laws and regulations for historical purposes, and I look forward to adding the final appellations regulations to the 2021 edition. I am also a Director of the International Cannabis Bar Association, the California Cannabis Tourism Association, and the National Cannabis Industry Association. The following comments are my own, and at this time I am not speaking for any organization other than the Law Offices of Omar Figueroa.

I hope that after hearing today's oral comments, you will agree with the fundamental principle that appellations need to be grounded in terroir. It is critical that appellations of origin require that cannabis be an expression of the place where it is grown. The concept of terroir is rooted in the recognition of an astounding fact of nature: particular characteristics of the natural geography result in unique cannabis products that cannot be replicated anywhere else in the world. Thus, Section 8000(b) should be amended to include a terroir baseline standard: "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." Simply put, a terroir-based program adds more value because it is better at explaining to consumers the unique characteristics of regions where cannabis is cultivated.

To incentivize the State of California to promote, preserve and protect the value and integrity of cannabis appellations of origin, we also propose an "Official" seal. The official seal would feature a uniform design element (with perhaps the wording OFFICIAL CALIFORNIA CANNABIS APPELLATION near the perimeter) and a unique appellation design provided by the petitioner in the field (the area in the center). With

an official seal, the state would be incentivized to ensure that the official seal is not misused. Additionally, in order to help fund the CAP's enforcement activities, use of the proposed official seal could be subject to a modest fee.

The Origins Council has suggested similar seals, for county of origin and appellation of origin respectively, and we agree with this suggestion. The two seals could be similar to the ones used in Europe, such as the following:

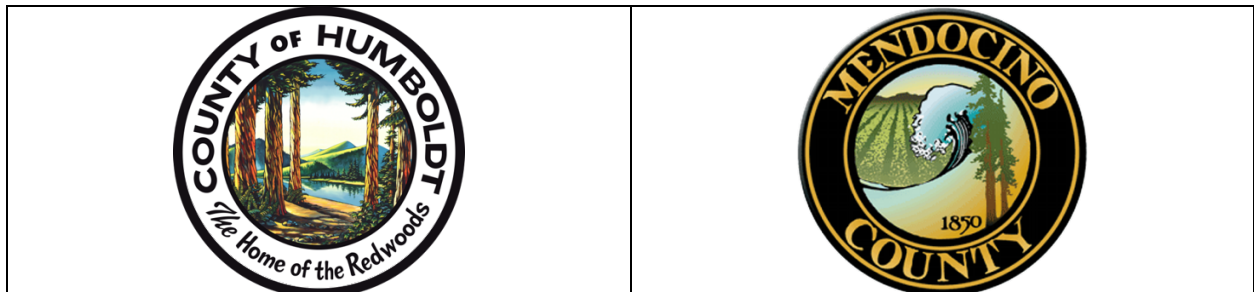


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For the county of origin seals, the field (area in the center) would be the county seal, and for the appellation seals, the area in the center would be a unique design provided by the appellation petitioner. Examples of county seals are below.



Such seals would advance the reasons underlying the regulations. According to the CDFA's Initial Statement of Reasons ("ISOR"), "[u]nder the proposed regulations, consumers are provided information regarding the origin of cannabis and associated production requirements. The use of origin designations on cannabis can provide consumers with information about the attributes of the cannabis that are difficult or impossible for consumers to determine prior to purchase." (ISOR, p. 3). Thus, one of the guiding purposes of the appellation of origin regulatory framework is to provide a means for the consumer to obtain additional information that would assist consumers

in differentiating among products, particularly those bearing the appellation of origin designation.

In order to assist this underlying purpose, the proposed official seal system would provide consumers with key information that would advance important objectives of the program such as: “facilitat[ing] purchasing decisions, [and] enhanc[ing] the overall consumer experience, and benefits the efficient operation of the market in general by helping to get the most appropriate product to each consumer more often or at a lower cost.” (ISOR, p. 3). Indeed, by implementing an official California seal system, consumer confusion could be greatly reduced, counterfeiting could be frustrated and potentially prevented outright, and could enable “enforcement against the misuse of recognized geographical indications (GIs) to prevent misleading [sic] consumers,” key concerns and objectives noted by the CDFA in the creation of the proposed regulations. (ISOR, p. 3).

We also urge that you reconsider the fee structure. One-time funding of a program expected to continue into perpetuity is unwise as it puts a substantial burden on the initial petitioners. Ideally, the cost of the CAP would be borne by all licensed cannabis businesses (including BCC and CDPH licensees) as the entire supply chain stands to benefit from the premium value added by a robust and well-functioning appellations program.

Rather than seek a large upfront payment, which would impose an almost-insurmountable barrier to entry for struggling farmers, we request that the CDFA consider the following alternatives. First, charge an initial \$500 to conduct an initial review of a petition for completeness; this will give the CAP a better understanding of how many groups of licensed cultivators are seriously interested in doing the work necessary to submit petitions, unclouded by financial barriers to entry. Second, lower the fee for filing a petition to establish an appellation and introduce other fees during the lifecycle of an appellation. For example, the CAP could require fees associated with filing the Notice of Use, which, according to the proposed regulations, must be filed every three years. This is an opportunity to generate revenue for the CAP in perpetuity while lowering the initial barriers to entry.

Separate and apart from Notice of Use fees, we recommend that the CDFA institute Appellation Renewal fees every ten years to fund the CAP program in future decades. Again, this is an opportunity to lower the initial barriers to entry. This would accomplish the objective of funding the CAP in the future while making appellations accessible to struggling farmers. Indeed, this would generate far more revenue for the CAP compared to a one-time fee and ensure that the CAP does not wither away for lack of funding in future decades.

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Another option is to set a modest fee for use of the proposed official seal to help fund the CAP (as well as motivate official enforcement against misuse of the seal). Finally, there should be a hardship waiver to allow petitions to be submitted with a significantly lower, or even no, fee at all, for veterans and equity applicants, and for others who can prove financial difficulty.

Thank you for considering these comments, as well as the oral comments delivered this afternoon. Please let me know if you have any questions.

Sincerely,

Omar Figueroa

Omar Figueroa, Principal
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