UPDATED FINAL STATEMENT OF REASONS

Table of Contents

CALIFORNIA CODE OF REGULATIONS

TITLE 3. CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

DIVISION 8. CANNABIS CULTIVATION

CHAPTER 1. CANNABIS CULTIVATION PROGRAM

CHAPTER 2. CANNABIS APPELLATIONS PROGRAM

Updated Final Statement of Reasons

I. GENERAL

A. Procedural History of Rulemaking

These proposed regulations for the Cannabis Appellations Program (CAP) have been provided five times to the public for their review and comment. In 2018, the California Department of Food and Agriculture (Department or CDFA) held a series of public workshops throughout the state, and in 2019 the Department held more focused working meetings with representatives of cultivator groups. Both informed the proposed regulations.

45-Day Public Review and Comment Period

The Department provided public notification of the proposed regulations on February 20, 2020. The notification, proposed regulations, and Initial Statement of Reasons (ISOR) were provided to all those who requested such notification and were available on the Department's website.

The proposed regulations were initially offered for public review and comment through April 6, and a public hearing was initially scheduled for April 14, 2020. However, due to the COVID-19 pandemic, the comment period was extended through May 6 and the

public hearing for the regulations was also rescheduled to May 6, 2020. Also because of the pandemic, that hearing was conducted virtually. The Department received 59 written comments from entities and individuals during the comment period and 33 individuals provided verbal comments at the public hearing.

First 15-Day Notice of Modified Changes

In response to comments received during the 45-day comment period and public hearing and to address amendments to Business and Professions Code section 26063 by Senate Bill 67 (McGuire, 2019-2020 Regular Session; *Stats. 2020, Ch. 298, Sec. 1.,* hereafter "SB 67") that were enacted following the close of the 45-day comment period, the Department announced modifications to the proposed appellations regulations on October 2, 2020. Notification, revisions, and an addendum to the ISOR were distributed to all who requested notification of such changes. The documents were also available on the Department's website. The Department received 15 written comments during the comment period ending October 19, 2020.

Second 15-Day Notice of Modified Changes

In response to comments received during the first 15-day comment period and subsequent clarification meetings with commenters, the Department provided public notification on March 5, 2021 of additional modification to the proposed regulations. Notification, revisions, and a second addendum to the ISOR were distributed to all persons whose comments were received during previous comment periods or requested notification of such changes. These documents were also available on the Department's website. The Department extended the comment period from the original closing date of March 26, 2021 to April 12, 2021 and received seven written comments during the comment period ending April 12, 2021.

Third 15-Day Notice of Modified Changes

In anticipation of amendments to Business and Professions Code division 10 transferring authority to create and modify cannabis cultivation licensing regulations from the Department to the Department of Cannabis Control, the Department provided public notification on June 3, 2021 of additional modification to the proposed regulations. Notification, revisions, and a third addendum to the ISOR were distributed to all persons whose comments were received during previous comment periods or requested notification of such changes. These documents were also available on the Department's website. The Department received five written comments during the comment period ending June 18, 2021.

Fourth 15-Day Notice of Modified Changes

In response to comments received during the third 15-day comment period, the Department provided public notification on September 27, 2021 of additional modification to the proposed regulations. Notification, revisions, and a fourth addendum to the ISOR were distributed to all persons whose comments were received during previous comment periods or requested notification of such changes. These documents were also available on the Department's website. The Department received four written comments during the comment period ending October 12, 2021.

B. Local Mandate Determination

The proposed regulations do not impose any mandates on local agencies. Under the proposed regulations, participants in the appellation of origin program must be cultivators licensed by the State of California. Pursuant to Business and Professions Code section 26200, local jurisdictions have the authority to adopt ordinances to regulate businesses licensed under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). This includes the right to prohibit the establishment of one

or more types of businesses licensed under MAUCRSA, precluding a mandate regarding appellations of origin for cannabis on local jurisdictions.

C. Alternatives Determination

The Department has determined that no reasonable alternative would be more effective in carrying out the purpose for which the regulations are proposed, would be as effective and less burdensome to affected private persons, or would be more cost effective to affected private persons and equally effective in implementing the statutes. The Department's reasons for rejecting proposed alternatives are set forth in the responses to the comments, following the update to the ISOR.

II. UPDATE TO THE INITIAL STATEMENT OF REASONS

A. Documents added to the Rulemaking File

Four addendums to the Initial Statement of Reasons were added to the rulemaking file. These documents provided a summary of the modifications to the proposed text and were released with the Notice and text for each 15-day comment period. These addendums are titled:

1) *"Addendum to the Initial Statement of Reasons"*
2) *"Second Addendum to the Initial Statement of Reasons"*
3) *"Third Addendum to the Initial Statement of Reasons"*
4) *"Fourth Addendum to the Initial Statement of Reasons"*

Additionally, two foreign language documents were included in the ISOR as information relied upon. The English versions of these documents have been added to the rulemaking file to comply with Government Code section 8 with the Notice of Modification announcing the second 15-day comment period. These documents have been added to the rulemaking file pursuant to Government Code section 11347.1:

5) *"Basilico Genovese (Genoese Basil)"*

6) *"Vlaams-Brabantse Tafeldruif (Flemish Brabant Table Grape)"*

B. Economic and Fiscal Impact Statement (Std. 399 Form)

The information provided on the Std. 399 Form has been updated as it suggested that the fiscal impact of the CAP on state government would necessitate an increase in the authorized budget level for the 2021 fiscal year. There is no increase necessary for the CAP. Staffing and staff overhead cost to administer the program have been estimated to be $251,430 per year. There are no other administrative costs expected for this program. Staff work will be conducted by existing personnel that have already been working on the project to develop the CAP for the past 3 years, so no additional expenditure will be required. An "Attachment #2" has been added to the Std. 399 Form outlining these updates. Since the costs of the program will be covered through existing positions and funding that were not shifted away from the Department as part of the statutory amendments to create the Department of Cannabis Control, there is no need for the Department to request a future Budget Change Proposal for the positions necessary to administer the CAP.

C. Modifications Provided for in the 15-Day Comment Periods

The modifications to the text as originally proposed, identified below by their respective section and subdivision numbers to Title 3 of the California Code of Regulations, were as follows:

CHAPTER 1. CANNABIS CULTIVATION PROGRAM

The Department struck all initially proposed and modified additions to the regulations in chapter 1 and added back any current language which was proposed for removal, so that no proposed changes are made to the current regulations in chapter 1.

The Department no longer has the statutory authority to create and modify cannabis cultivation licensing regulations, so the Department lacks the statutory authority to make changes to chapter 1. The Department of Cannabis Control has authority to make and enforce cannabis licensing regulations.

CHAPTER 2. CANNABIS APPELLATIONS PROGRAM

Article 1. Definitions

§ 9000. Definitions

§ 9000(d)

The Department added language to include methods of conducting commercial cannabis activities as a potential practice requirement in the appellation petition. Methods of conducting commercial cannabis activities could be business activities, such as a requirement to donate a certain percentage of profits to charity or local community development, or a requirement to pay all employees a living wage.

This change is necessary to expand the definition of appellation practice requirements beyond cultivation practices to include general methods of conducting commercial cannabis activity. Comments received by the Department indicate a general desire to use appellation of origin names to communicate meaningful information to consumers about the cannabis that is not directly related to specific cultivation practices. Business and Professions Code section 26063(b)(1) specifies that cannabis appellations of origin must be "applicable to cannabis produced in a certain geographical area in California," so the Department has determined that statute is specific to "cannabis" as a good or product. Statute clearly states that cannabis appellations of origin are "applicable to cannabis," but not cannabis that was produced outside the certain geographical area. This establishes the relationship between the appellation name and the good. The Department determined that limiting the standard, practice, and cultivar production requirements possible to include in an appellation petition to those directly associated

with cultivation would exclude some that are "applicable to cannabis" and so would be inadequate to meet the description of a cannabis appellation of origin provided in Business and Professions Code section 26063(b)(1).

Article 2. Petitions

§ 9100. Submission of Petitions

§ 9100(b)

The Department modified this section to clarify that the mailing or email addresses for submission of an appellation petition shall be provided on the Department's website.

The Department determined that the requirement for the Department to provide this information on its website ensures that petitioners are able to submit appellation petitions, and therefore the previous inclusion of specific email and mailing addresses in regulation is unnecessary. The Department also determined that providing permanent submission addresses in regulation might hinder the ability of the Department to receive petitions due to cannabis licensing agency reorganization and so this change is necessary to allow flexibility in initiating and administering the CAP.

§ 9100(c)

The Department added the word "submission" to this section that states that a petition submission fee shall be paid at the time the petition is submitted to the department.

This change is necessary to clarify which fee must be paid at the time a petition is submitted to the Department. The term "submission fee" is based on the requirement that the fee shall be paid at the time the petition is submitted. Further, this change is necessary to address widespread concern that proposed fees would impose a barrier to petitioning for appellations. The revised fee has been divided into a smaller (20%) fee due as a petition submission fee, with the remainder (80%) due only if the Department

finds that the petition is complete and accepts it for further review, as a petition proposal fee. The 20/80 split was based on a cost analysis of the work involved for receiving a submitted petition and conducting a completeness check, versus the review and approval process.

§ 9100(d)

The Department added a new subdivision regarding petition proposal fees that shall be paid at the request of the department according to section 9200(b) of this chapter.

This new subdivision is necessary to clarify that petition proposal fees are due upon request by the Department when the petition is accepted for further review. The term "proposal fee" is based on the requirement that the fee shall be paid after the petition has been deemed complete by the Department and accepts it for further review, and before the Department provides notice of proposed action on the petition. Further, this new subdivision is necessary to address widespread concern that proposed fees would pose a barrier to petitioning for appellations. The revised fee has been divided into a smaller (20%) fee due as a petition submission fee, with the remainder (80%) due only if the Department finds that the petition is complete and accepts it for further review, as a petition proposal fee. The 20/80 split was based on a cost analysis of the work involved for receiving a submitted petition and conducting a completeness check, versus the review and approval process.

§ 9101. Petition Fees

§ 9101

The Department removed references to Business and Professions Code sections 26050 and 26051 as these sections of statute are specific to commercial cannabis license types and are not applicable for this section on appellation petition fees.

This change is necessary because the inclusion of these references was in error and would cause confusion, so removal of the references increases the clarity of the regulation.

§ 9101(a)(1)(A)-(B)

The Department replaced the single petition fee to establish an appellation of origin of $20,880 with a petition submission fee of $2,850 and a petition proposal fee of $14,250.

This change is necessary to reduce the financial barrier to petitioning for cannabis appellations of origin. The term "submission fee" is based on the requirement that the fee shall be paid at the time the petition is submitted. The term "proposal fee" is based on the requirement that the fee shall be paid after the petition has been deemed complete by the Department and the petition is now considered a complete proposal, ready for review. Further, this change is necessary to address widespread concern that proposed fees would impose a barrier to petitioning for appellations. The revised fee has been divided into a smaller (20%) fee due upon petition submission, with the remainder (80%) due only if the Department finds that the petition is complete and accepts it for further review, as a petition proposal fee. Revisions to various other sections have been made to describe and accommodate these two fees for each petition. Further, the total fee amount has also been reduced slightly based on updated economic models prepared by one of the Department's contracted economist, as part of EFIA development. The 20/80 split was based on a cost analysis of the work involved for receiving a submitted petition and conducting a completeness check, versus the review and approval process.

§ 9101(a)(2)(A)-(B)

The Department replaced the single petition fee to amend an appellation of origin of $10,440 with a petition submission fee of $1,425 and a petition proposal fee of $7,125.

This change is necessary to reduce the financial barrier to amending cannabis appellations of origins. Further, this change is necessary to address widespread concern that proposed fees would pose a barrier to petitioning for appellations. The revised fee has been divided into a smaller (20%) fee due upon petition submission, with the remainder (80%) due only if the Department finds that the petition is complete and accepts it for further review, as a petition proposal fee. Minor revisions to various other sections have been made to describe and accommodate these two fees for each petition. Further, the total fee amount has also been reduced slightly based on updated economic models prepared by one of the Department's contracted economist, as part of EFIA development. The 20/80 split was based on a cost analysis of the work involved for receiving a submitted petition and conducting a completeness check, versus the review and approval process.

§ 9102. Petition to Establish an Appellation of Origin

§ 9102(f)

The Department replaced the word "cultivation" with "produced" in the requirement to provide a description of the distinctive geographical features affecting cannabis produced in the proposed appellation of origin petition.

This change is necessary to clarify that an appellation petition must contain a description and evidence of distinctive geographical features that affect the cannabis produced in the geographical area pursuant to Business and Professions Code section 26063(b). The term "cannabis produced" is consistent with the term "cannabis produced" in Business and Professions Code section 26063(b)(1).

§ 9102(h)

The Department added the word "reputation" in the requirement to provide a description and evidence of the legacy, history, reputation, and economic importance of cannabis

production in the proposed appellation of origin petition. The Department also replaced the word “cultivation” with “production.”

Adding “reputation” is necessary to address comments on where the most appropriate place in the petition is to discuss reputation. The phrase “or reputation” was removed from section 9106(c), formally subdivision (d), which describes the distinctive geographical features affecting the cannabis. Section 9106(c) requires a description of attributes of the cannabis that are essentially or exclusively caused by geography. Originally, these attributes included quality, characteristic or reputation. However, it was determined that “reputation” is not essentially or exclusively caused by geography. “Reputation” was then added to section 9102(h) requiring description of the legacy, history, reputation, and economic importance of cannabis production in the proposed appellation area. These changes more clearly communicate the way in which reputation may be included in an appellation petition under response to section 9102(h) instead of as an effect on the cannabis caused by the geographical features of the area.

Further, replacing the word “cultivation” with “production” in the requirement is necessary for consistency with the description of an appellation of origin in Business and Professions Code section 26063(b) as “applicable to the cannabis produced in a certain geographical area.”

§ 9102(j)

The Department deleted subdivision (j), which required a list of cultivator license types issued by the department which are prohibited from using the appellation of origin. Further the Department replaced this subdivision with a new subdivision (j) which requires a petitioner to submit to the Department as part of the petition a description of practice requirements in the proposed appellation of origin which ensure that the appellation of origin be applicable only to cannabis that is planted in the ground in the canopy area; cultivated without the use of structures including a greenhouse, hoop house, glasshouse, conservatory, hothouse, or any similar structure covering the plant

or modifying the natural light received by the plant in the canopy area; and cultivated without any artificial light in the canopy area pursuant to Business and Professions Code section 26063(c).

This change is necessary for consistency with current statutory language in Business and Professions Code section 26063 which was amended by SB 67 during this rulemaking to add subdivision (c). The initially-proposed subdivision (j) included a requirement to specify prohibited license types in a petition that are effectively excluded by the requirement imposed on the Department by Business and Professions Code section 26063(c), and so was no longer necessary or appropriate. The replacement subdivision (j) language is necessary to clarify that requirement in Business and Professions Code section 26063(c) that the Department may not approve an appellation petition unless it requires the practice of planting in the ground in the canopy area and excludes the practices of using structures, including a greenhouse, hoop house, glasshouse, conservatory, hothouse, and any similar structure, and any artificial light in the canopy area.

§ 9104. Evidence of Name Use

§ 9104(b)(2)

The Department added the word “licensed” to the petition requirement that evidence be provided which demonstrates that the proposed appellation of origin name is directly associated with an area in which licensed cannabis cultivation exists.

This change is necessary to clarify that petitions shall demonstrate that the proposed name is directly associated with an area in which licensed cannabis cultivation exists. This change is also in response to comments requesting a requirement in regulation that an appellation of origin lie wholly within the boundaries of government jurisdictions that allow cannabis cultivation. “Licensed” cannabis cultivation can only exist within the boundaries of local jurisdictions that allow cannabis cultivation.

§ 9105. Maps and Boundary Description

§ 9105(a)(1)

The Department replaced the word “should” with “shall” in the petition requirement to provide topographical maps where the scale is large enough to show adequate geographical detail of the proposed boundary line of the appellation of origin.

This change is necessary for consistency with other subdivisions in this section and provides greater clarity to the requirement. The Department determined that requiring petitions to provide maps where the scale is large enough for the Department to read and adequately interpret, needs to be an absolute requirement instead of a suggestion to enable effective petition review.

§ 9105(b)(1)

The Department added “city, or city and county” in the list of map features relied upon to provide a detailed narrative of the proposed appellation of origin boundary in the petition.

This change is necessary for consistency with Business and Professions Code section 26063(a), which was amended by SB 67 during this rulemaking to add “city of origin” and “county of origin.”

§ 9106. Geographical Features

§ 9106

The Department struck the phrase “describe each distinctive geographical feature affecting cannabis cultivation in the geographical area of the proposed appellation of origin, including” and replaced it with the word “include.” The section provides the

criteria for petitions to describe the distinctive geographical features of the proposed appellation of origin that affect the cannabis.

This change is necessary as the phrase was redundant with Section 9102(f)*.*

§ 9106(a)

The Department added the word “distinctive” and the phrase “affecting cannabis production” to clarify that this requirement is limited to geographical features that are both differentiating and relevant to cannabis production. Struck the comma after the word “features” and before the word “including” and replaced it with a period to start a new sentence. Added the word “Examples,” replaced the word “including” with “include,” and added the word “are”.

This change is necessary to clarify that the geographical features listed in 9106(a)(1)-(5) are only examples of geographical features that could be described in the petition.

§ 9106(a)(3)

The Department added this new subdivision with an example geographical feature of soil features which may include microbiology and soil series or phases of a soil series. Further the Department renumbered subsequent subdivisions appropriately.

This change is necessary to accommodate comments seeking the addition of soil features in the list of example geographical features in section 8212(a). The addition is necessary to more clearly communicate to petitioners that soil features are one type of geographical feature that might be discussed in an appellation petition if they are distinctive and are affecting the cannabis produced in the area.

§ 9106(a)(4)

The Department struck section 9106(a)(4) on "cultural features" as a geographical feature and renumbered the subsequent subdivision.

This change is necessary to address widespread comment requesting that regulations de-emphasize human geography in the narrative description of geographical features, thereby limiting geographical features described in an appellation petition to physical geographical features having an effect on the quality or characteristics of the cannabis. The removal of cultural features from this section is necessary to avoid encouraging petitioners to discuss cultural features that might result in appellation petitions that would be denied by the Department because they do not meet the requirement that the appellation name represents a strong causal link between the geographical features and the cannabis, as described in section 9106(c) as a "quality or characteristic of the cannabis which is essentially or exclusively caused by the geographical feature" instead of merely being incidentally related to the feature or having some intangible or reputation-only effect as would be expected of cultural features.

§ 9106(c)

The Department struck the original section 9106(c) which required an explanation of how a geographical feature is considered intrinsic to the identity or character of the area by means other than being required by local or state law, regulation, or ordinance in the appellation of origin petition and renumbered subsequent subdivisions.

Striking the original section 9106(c) is necessary for consistency with striking the previous section 9106(a)(4). Given the emphasis on physical geographical features, geographical features included in appellation petitions are not expected to violate previous section 9106(c) and so it is no longer informative.

Further, the Department renumbered section 9106(d) to 9106(c)

Renumbering subdivision (d) to (c) is a non-substantive change related to the striking of the initially-proposed subdivision (c).

The Department added an “s” to the first occurrence of the word “characteristic” to pluralize.

This modification is necessary for grammatic consistency with the new phrase “one or more” in subdivision (c).

Replaced the word “is” with “are”.

This modification is necessary for grammatic consistency with the plural “characteristics.”

The Department removed the phrase “or reputation,” in two places from this subdivision.

Removing “reputation” is necessary to address comments on where the most appropriate place in a petition is to discuss reputation. This subdivision requires a description of attributes of the cannabis that are essentially or exclusively caused by the geographical features. In the initially proposed regulations, these attributes included quality, characteristics, or reputation. The Department determined that requiring appellation geographical features to be causally linked to some quality or characteristic of the cannabis would ensure that approved appellations of origin represent stronger connections between the geographical area and the cannabis, rather than merely resulting in a reputation that may not be experienced as meaningful by consumers. This change is consistent with the public expectation described by commenters that appellations of origin represent a stronger connection between the place and the product than other designations of production origin such as city of origin, county of origin, and city and county of origin. “Reputation” was then added to section 9102(h) requiring description of the legacy, history, reputation, and economic importance of

cannabis production in the proposed appellation area. These changes more clearly communicate that reputation may be included in an appellation petition under response to section 9102(h) instead of as an effect on the cannabis caused by the geographical features of the area. These changes also address comments suggesting changes to proposed regulation language to conform to the language used in the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration international treaty, specifically the removal of the word "reputation" from this subdivision and addition of “reputation” to section 9102(h).

The Department added the words “essentially or exclusively” to further define the requirement that petitions describe the causal link between each distinctive geographical feature affecting the cannabis and a quality or characteristic of the cannabis.

This modification is necessary to clarify the strength of the causal links which must be described in a petition for approval. The Department determined that the public expectation is that appellations of origin communicate to consumers a strong connection between the place and the cannabis, including that the geographical features must be the essential or exclusive cause of some quality or characteristic of the cannabis, rather than merely having an incidental effect on the cannabis or only contributing slightly to the effect. This criterion ensures that approved appellation of origin petitions do not describe effects that are unrelated to the certain geographical area. This change also accommodates comments suggesting changes to proposed regulation language to conform to the language used in the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration international treaty, specifically the addition of the word "exclusively" or the words "exclusively or essentially." The Department determined that this added phrase “essentially or exclusively” is consistent with the language describing some aspect of a good as being “essentially attributable to its geographical origin” set forth in article 22 of the Agreement

on Trade-Related Aspects of Intellectual Property Rights (TRIPS) treaty to which the United States is a signatory.

The Department replaced the word “the” with the phrase “one or more”.

This modification is necessary to state that at least one geographical feature needs to be described in this section.

The Department added an “(s)” to both occurrences of “feature” to indicate that the feature could be singular or plural. A set of brackets was added to the “s” in the word “causes” to be consistent with adding an “(s)” to the second occurrence of “feature.”

The Department added the word “distinctive” prior to both occurrences of “geographical feature(s).”

This modification is necessary to clarify that the description of the relationship between the quality or characteristics of the cannabis and geographical features is limited to geographical features that the petition has identified as distinctive to the area.

§ 9106(d)

The Department renumbered subdivision (e) to (d).

This is a non-substantive change related to the striking of the initially-proposed subdivision (c).

The Department replaced the phrase “distinctiveness of the geographical feature and maintain its relevance to” with “causal link(s) between one or more distinctive geographical feature(s) and.”

This change accommodates comments suggesting language to clarify this subdivision. The Department determined that this change is necessary to make clear that the production requirement(s) that must be described in a petition pursuant to this subdivision must act to preserve the causal link described in accordance with subdivision (c). Including "one or more" is necessary for consistency with subdivision (c). Without a requirement that the causal link between each geographical feature and the cannabis be preserved, the appellation name could cease to communicate that the cannabis has some quality or characteristic which is essentially or exclusively caused because its production occurred in the certain geographical area. One example would be an appellation petition describing a distinctive watershed feature inside the boundary which affects the cannabis, but allowing cannabis to use the appellation name even if the plants were not exposed to the watershed feature in any way. This example would result in a cannabis appellation that could be used to mislead consumers as to the geographical origin and how it affects the cannabis, which is prohibited by statute. Further, the Department removed the word "cultivation" and added the word "the" to replace the term "cannabis cultivation" with "the cannabis."

The Department determined that the term "the cannabis" is more consistent with the noun "cannabis produced" in Business and Professions Code section 26063(b)(1) than the verb "cannabis cultivation" is. Further, these changes address comments seeking more of a focus on "cannabis" as a product rather than "cannabis cultivation" as a process.

§ 9106(d)(1)

The Department replaced the phrase "relevance of the distinctive geographical feature" with "causal link."

This change accommodates comments suggesting language to clarify this subdivision. The Department determined that this change is necessary to make clear that the petition must describe how the production requirement(s) identified in accordance with

subdivision (d) must act to preserve the causal link described pursuant to subdivision (c).

§ 9107. Standard, Practice, and Cultivar Requirements

§ 9107(b)(2)

The Department added the phrase “according to the certification owner” to describe how a program-level certification granted by a certifier in good standing can be used to meet the standard requirements in an appellation of origin petition. This includes, but is not limited to, certifications associated with the department’s comparable-to-organics certification program or certification marks registered with the United States Patent and Trademark Office and applicable to cannabis.

This change is necessary to clarify the appropriate method of determining whether a certifier is in good standing pursuant to federal certification mark regulation. This clarification was requested by a commenter.

§ 9107(c)(1)

The Department replaced the term “unfamiliar person” with the phrase “licensed cultivator within the appellation of origin” in the petition requirement that practice requirements must be described to allow any licensed cultivator within the appellation of origin to comply without substantial additional research, and in plain language to provide clear understanding to the public.

This change is necessary to provide clarity and specificity on the description of practice requirements within the petition. Specifying licensed cultivators eases the burden on petitioners to describe practices in an appellation petition below the less appropriate threshold of any unfamiliar person who might not have the basic knowledge assumed of licensed cannabis cultivators.

§ 9107(d)(1)

The Department struck the phrase “and/” from this section which allows a petitioner to submit a list of allowed or prohibited cultivar names as a cultivar practice in the proposed appellation of origin.

This change is necessary to provide clarity and to simplify the regulation language, allowing additional flexibility with the cultivar requirements. The meaning of the proposed regulation is unchanged.

§ 9107(e)

The Department struck the phrase “section 8400 of this division” and replaced it with “cannabis licensing record retention regulations.”

This change is necessary to provide clarity. The Department no longer has the authority to create and modify cannabis cultivation licensing regulations. The Department of Cannabis Control has the authority, so the referenced section 8400 “Record Retention” in chapter 1 could be renumbered or moved, causing confusion. Therefore the change more clearly communicates that the same record retention regulations apply to appellation standard, practice, and cultivar production requirement compliance documentation as apply to licensing records even if the location or numbering of that regulation changes.

The Department struck the word “timely” from the requirement that appellation compliance documentation be thorough and appropriate to the standard, practice, or cultivar requirement to allow for determination of compliance based solely upon review of the records.

This change is necessary to provide clarity. The use of “timely” in the context of this subdivision is unnecessary. The Department will evaluate a recordkeeping requirement included in an appellation petition based on whether it allows determination of

compliance with the appellation production requirement, not within the context of a specific time-period.

§ 9200. Petition Review

§ 9200(a)

The Department added the word “submission” to the requirement that department shall notify the petitioner by e-mail when the petition is received and that a petition is not deemed received unless the petition submission fee is submitted in full along with the petition.

This change is necessary to be consistent with the changes made to the petition fee structure in section 9101. These changes were made in response to widespread concern that proposed fees would pose a barrier to petitioning for appellations. The revised fee has been divided into a smaller (20%) fee due upon petition submission, with the remainder (80%) due only if the Department finds that the petition is complete and accepts it for further review, as a petition proposal fee. This change reduces the barrier to petitioning for an appellation of origin.

§ 9200(b)

The Department struck language stating that the Department shall review the petition to determine whether it meets the requirements set forth in sections 9102 and 9103, and replaced it with language previously in subdivision (f) that provides the actions taken if the Department determines a petition proposal is complete and accepts it for further review. The actions taken include the Department sending a notice to the petitioner requesting payment of the petition proposal fee, the petitioner having 120 days from the date of the request to submit payment, and if no payment is received, the Department will notify the petitioner that the petition is abandoned and shall no longer be considered by the Department.

This change is necessary to be consistent with the changes made to the petition fee structure in section 9101.These changes are made in response to widespread concern that proposed fees would pose a barrier to petitioning for appellations. The revised fee has been divided into a smaller (20%) fee due upon petition submission, with the remainder (80%) due only if the Department finds that the petition is complete and accepts it for further review, as a petition proposal fee. This subdivision is necessary to explain when the second petition fee is due and the actions taken by the Department as a result of the new fee structure.

§ 9200(c)

The Department struck "finds that the petition is complete pursuant to subsection (b)" and added "receives the petition proposal fee in full" to this subdivision which identifies the actions taken once the Department receives the petition proposal in full.

This change is necessary to clarify the requirement for payment of a petition proposal fee prior to the Department conducting activities described in sections 9200(c)(1) and 9200(c)(2), originally sections 9200(c)(2) and 9200(c)(3). Further, this change is necessary to remain consistent with modifications made to the petition fee structure described in section 9101.

§ 9200(c)(1)

The Department struck the entire sub-section 9200(c)(1).

This change is necessary as the initially proposed subdivision (c)(1) is no longer necessary. This subdivision required the Department to notify the petitioner via email when determining that the petition is complete. With amendments to subdivision 9200(b), the Department will send a notice to the petitioner requesting payment of the petition proposal fee as stated in 9200(b) when the petition is considered complete and

accepted for further review. Renumbering section 9200(c)(2) to 9200(c)(1) is a non-substantive change.

§ 9200(c)(2)

The Department struck the entire sub-section 9200(c)(2), which relates to the petition review panel role in the petition review process.

This change is necessary as the initially proposed sections 9300, 9301, and 9302, which established and defined the petition review panel, were struck from the proposed regulations. Without these sections, there is no petition review panel to be included in section 9200(c).

Striking sub-sections 9200(c)(1) and 9200(c)(2) leaves only one sub-section in section 9200(c). Section 9200(c) was reformatted to remove the remaining single sub-section denotation.

This is a non-substantive change

§ 9200(d)

The Department replaced the phrase “by e-mail” with “in writing” to describe the method of notifying a petitioner if the Department determines a petition to be incomplete or additional information is required to make a decision on the petition.

This change is necessary to provide flexibility in the methods by which the Department may communicate appellation petition deficiencies or clarification with the petitioner.

§ 9200(e)

The Department struck the word “to” and replaced it with the phrase “acknowledging receipt” to clarify that the 60-day time limit applies only to the requirement that the petitioner acknowledge receipt of the appellation petition deficiency notice.

This change is necessary to increase the clarity of the regulation by more clearly differentiating between the limit of 60 days to acknowledge receipt of the notice and the limit of 180 days to provide the information requested in the notice. The Department determined that due to the fact that communication between the petitioner and Department staff during petition review is expected to be infrequent, it is necessary to require acknowledgment of receipt of an appellation petition deficiency notice within 60 days to ensure that petitioners will have at least 120 days remaining to consult with others in the local area in order to provide the information requested in the notice.

§ 9200(f)

The Department struck this subdivision and moved the language (modified to refer to the notice of proposed action instead of the notice of final decision; and modified to refer to a petition proposal fee instead of a petition approval fee) into section 9200(b).

This change is necessary to be consistent with the changes made to the petition fee structure in section 9101.

§ 9201. Notice of Proposed Action on Appellation of Origin

§ 9201(a)

The Department revised language in this subdivision which describes the actions taken by the Department following a determination that a petition is complete, and payment of the petition proposal fee has been received.

The Department added the phrase “and payment of the petition proposal fee.”

This modification to specify that notice of proposed action occurs following payment of the petition proposal fee is necessary to be consistent with the changes made to the petition fee structure in section 9101.

The Department replaced the phrase “the proposal” with “proposed action.”

This change is necessary for clarity and consistent use of the term “notice of proposed action.” Further, this change accommodates comments suggesting that language used to refer to notices of proposed action should be more consistent between sections.

The Department replaced “30” days with “90” days.

These changes accommodate comments suggesting that the public needs significantly more time to provide input on a petition and that 90 days is more appropriate. The Department determined that 90 days was a more reasonable time frame for allowing public comments.

The Department replaced the word “proposed” with “petition.”

These changes are necessary for clarity and consistent use of the term “notice of proposed action.” Further, this change accommodates comments suggesting that language used to refer to notices of proposed action should be more consistent between sections.

The Department struck the phrases “shall be” and “by 5:00 p.m.” The Department also struck the word “on” and replaced it with “by” to clarify that comments can received throughout the comment period. The affected sentence now reads “Comments shall be submitted to the contact person identified in the notice and received by the final day identified in the notice”.

These changes are necessary to be consistent with the modification to provide a longer public comment period. Removing the requirement that comments be submitted by 5:00 p.m. on the final day is necessary to allow a full 90 days for the public to submit a comment. The modification to replace "on" with "by" is non-substantive because it can be assumed that the phrases "on the final day" and "by the final day" are interpreted to have the same meaning in the context of this subdivision. It does not make sense that the regulation would require comments to be received on the final day identified in the notice, since commenters would need to time the submission of comments so that they are received only on the final day, and this would be impractical. The resulting regulation that comments shall be "received by the final day identified in the notice" meets the expectation that the public may submit comments on an appellation petition throughout the comment period.

The Department added "The department may extend the comment period in response to a request showing a reasonable basis for extension."

This change is necessary to provide the Department flexibility in holding appellation petition public comment periods. The Department observed that public comment periods for American Viticultural Area petitions are extended in response to public requests indicating the need for additional time for stakeholders to consider and respond meaningfully to the appellation petition, so the Department determined that it would be reasonable to expressly permit this practice in regulation in case it is needed for effective review of cannabis appellation petitions. Further, this change was suggested by commenters.

§ 9202. Notice of Final Decision on Appellation of Origin

§ 9202(a)

The Department numbered the first paragraph of this section to be subdivision (a).

This change is necessary for consistency with section 9201 and is non-substantive.

The Department struck the phrase “Following the submission of any applicable petition approval fee in full.”

This change is necessary to be consistent with the changes made to the petition fee structure in section 9101. Because the second fee is paid before notice of proposed action is provided {pursuant to § 9201(a)}, mention of fees is not necessary in this section regarding notices of final decision.

The Department struck the phrase “by e-mail.”

The first paragraph of section 9202 as initially proposed specified that the petitioner would be notified by e-mail and additionally that other parties and stakeholders would be notified by e-mail. This regulation was duplicative and the modifications clarify that the petitioner and other recipients will receive notice of final decision at the same time. This change is necessary for consistency with the change to describe notice to the petitioner as part of the list in subdivisions (a)(1)-(3) instead of separately.

The Department struck the phrase “, or cancelled.” As part of this change, the word “or” was added before “denied” to preserve the grammar of the provided list of final decision options.

This change is necessary for consistency with the change to strike the provision that appellations may be cancelled in cases of extended disuse that was provided in the initially proposed section 8212.1(e). The addition of “or” is a non-substantive change.

The Department struck “to the petitioner.” and “In addition, the department shall notify the following of the decision.”

These changes are necessary for clarity on the entities to which the Department shall provide notices of final decision. The petitioner was described separately in the initially proposed regulation which was duplicative and could be unclear. The removal of the requirement that an "approval fee" be paid prior to notice of final decision allows notification of the petitioner and other parties at the same time which increases the clarity and efficiency of the notice.

The Department added language specifying that notices of final decision shall be provided on the Department's website and by e-mail to the list of entities provided in subdivisions (a)(1)-(3).

This change adding the requirement that notices of final decision be posted to the Department's website is necessary to ensure that appropriate notification and information is provided by the Department. The retention of "by e-mail" is necessary to more clearly communicate that e-mail will be the method by which the Department will notify the recipients listed in section 9202(a)(1)-(3).

§ 9202(a)(1)

A new subdivision (a)(1) was added preserving and clarifying the requirement that the Department provide the petitioner with notice of final decision on a petition.

This new subdivision is necessary to increase clarity on the requirement of what entities must be provided notices of final decision. This new subdivision is necessary to retain the requirement that the petitioner receive notices of final decision and more clearly communicate what entities must be provided notices of final decision by organizing them into a single list in section 9202(a)(1)-(3).

§ 9202(a)(2)

The Department renumbered this subdivision from (a) to (a)(2).

This change is necessary to more clearly communicate the list of what entities must be provided notices of final decision, and is non-substantive.

§ 9202(a)(3)

The Department renumbered this subdivision from (b) to (a)(3).

Renumbering this subdivision is necessary to more clearly communicate the list of what entities must be provided notices of final decision, and is non-substantive.

The Department replaced the phrase “Appellations list serv” with “Cannabis Appellations Program Mailing List”.

The change describing the name of the mailing list is necessary for flexibility in maintaining the Cannabis Appellations Program Mailing List, instead of requiring a specific software or service vendor.

The Department also added language clarifying where an interested stakeholder can subscribe to the Cannabis Appellations Program Mailing List.

This language is necessary to specify the various ways a stakeholder could enroll themselves onto the mailing list. The changes to Business and Professions Code division 10 resulting from Assembly Bill 141 transferred the authority to create and modify cannabis cultivation licensing regulations from the Department of Food and Agriculture to the Department of Cannabis Control. However, the Cannabis Appellations Program remains under the authority of the Department of Food and Agriculture. Specificity is needed in the regulations to clarify that an interested

stakeholder may subscribe to the mailing list on the Department of Food and Agriculture's Cannabis Appellations Program webpage.

§ 9202(b)

The Department added a new subdivision describing that if a petition is denied, the notice of final decision shall include all of the reasons why the petition was denied.

This new subdivision is necessary for transparency and clarity of the petition review process by requiring notification of the reason(s) an appellation petition is denied following review of public comment and the recommendation of the Petition Review Panel. The Department also determined this was necessary so the petitioner would be informed of why the petition was denied so they could correct it if they choose to resubmit the petition.

§ 9203. Denial of Petition for Appellation of Origin

§ 9203

The Department added this new section stating the various reasons the Department may deny an appellation of origin petition.

This new section is necessary to conform to the requirement added by section 9202(b) that reasons for denial be included in a notice of final decision to deny.

§ 9203(a)

The Department added this new subdivision regarding insufficient description and evidence to demonstrate the legacy, history, reputation, and economic importance of cannabis production in the proposed geographical area.

This subdivision is necessary to specify a potential basis for denial of a petition for failure to meet the criteria set forth in section 9102(h). The Department determined that an appellation petition must include "a description and evidence of the legacy, history, reputation, and economic importance of cannabis production in the area" in order to be recognized and approved as an appellation of origin. Cannabis appellations of origin are used to indicate that cannabis was produced in a certain geographical area having some legacy, history, reputation, and economic importance of cannabis production. If the petition lacks this information, it cannot be established as a cannabis appellation of origin.

§ 9203(b)

The Department added this new subdivision regarding insufficient evidence to demonstrate that the proposed appellation name has been used in direct association with a cannabis production area.

This subdivision is necessary to specify a potential basis for denial of a petition for failure to meet the criteria set forth in section 9104(b)(2)-(4). The Department determined that an appellation petition must include evidence that the proposed name is directly associated with a cannabis production area as described in section 9104(b)(2) as "an area in which licensed cannabis cultivation exists." Business and Professions Code section 26063(b) specifies that cannabis appellations of origin shall be "applicable to cannabis produced in a certain geographical area in California" which the Department determined to impose a requirement that the proposed name be directly associated with the certain geographical area. The Department also determined that evidence from sources independent of the petitioner would be required to demonstrate this geographical association in section 9104(b)(3) and provided examples in subdivision (b)(4) of appropriate name evidence sources consistent with regulations governing federal wine appellations. Cannabis appellations of origin are names that have a

demonstrated and direct association to the certain geographical area. If the petition lacks this information, it cannot be established as a cannabis appellation of origin.

§ 9203(c)

The Department added this new subdivision regarding insufficient evidence to demonstrate that the proposed geographical area is distinctive with respect to the geographical features affecting cannabis.

This subdivision is necessary to specify a potential basis for denial of a petition for failure to meet the criteria set forth in section 9106(b). The Department determined that petitions for cannabis appellations of origin must describe a certain geographical area that is distinct from other cannabis production areas for approval. Cannabis appellations of origin are names that represent to consumers that the cannabis was produced in a certain geographical area pursuant to Business and Professions Code section 26063(b), which would not be the case if the area is indistinct from other areas. If the petition lacks this information, it cannot be established as a cannabis appellation of origin.

§ 9203(d)

The Department added this new subdivision regarding geographical feature that are not causally-linked.

This subdivision is necessary to specify a potential basis for denial of a petition for failure to meet the criteria set forth in sections 9106(c) and 9106(d). The consumer expectation of an appellation of origin is to communicate effects on the cannabis because of the certain geographical area where it was produced, so the Department determined that failure to describe the causal link between each geographical feature included in a petition and some quality or characteristic of the cannabis would prevent approval of the petition, as described in section 9106(c). Because cannabis is an annual

crop cultivated using widely variable methods, and these methods might include preventing the plants from experiencing the effects of the geographical area, the Department determined that at least one production requirement is required to preserve each causal link as specified in section 9106(d). Cannabis appellations of origin represent strong causal links between the certain geographical area and the cannabis that is prevented from being broken by production requirements, so that the name retains its meaning to consumers. If the petition lacks this information, it cannot be established as a cannabis appellation of origin.

§ 9203(e)

The Department added this new subdivision regarding standard, practice, and cultivar requirements. The Department also replaced the reference to section 9107(“d”) with 9107(“e”).

This subdivision is necessary to specify a potential basis for denial of a petition for failure to meet the clarity, form, or recordkeeping criteria set forth in section 9107(a)-(e). Business and Professions Code section 26063(b) specifies that cannabis appellations of origin include standard, practice, and cultivar production requirements. The Department has determined that this section of statute imposes a requirement that appellation petitions must include at least one of each of standard, practice, and cultivar production requirements, as described in the first paragraph of section 9107. The Department has determined that these requirements may vary greatly between appellations. Because of this, it is necessary that production requirements in an appellation petition are clear, as specified by section 9107(a) to allow cultivators and consumers to comply with and understand the requirements. Also because of the variety of possible requirements, the Department determined that providing form criteria is necessary for description in petitions of standard requirements according to subdivision (b), practice requirements under subdivision (c), and cultivar requirements per subdivision (d) to enable compliance with and understanding of the requirements.

The Department determined that because complaints of appellation misuse are likely to be received by the Department after the cannabis has been harvested and processed, it is necessary for production requirements in a petition to include recordkeeping requirements that cultivators must meet to demonstrate the eligibility of the cannabis to be designated with the appellation in order to ensure the Department's ability to determine compliance with advertising and labeling regulations. The modification to replace "d" with "e" is non-substantive because it can be assumed that the mention of "recordkeeping" in this subdivision refers to the petition criteria imposed by section 9107(e), which states recordkeeping criteria that must be described for standard, practice, and cultivar requirements included in a petition. Correcting this subdivision reference preserves the meaning of the reason for petition denial provided under section 9203(e). If the petition lacks this information, it cannot be established as a cannabis appellation of origin.

§ 9203(f)

The Department added this new subdivision regarding petitions to amend an appellation of origin.

This subdivision is necessary to specify a potential basis for denial of a petition for failure to meet the criteria set forth in section 9103(b)-(d).The Department determined that because an appellation name communicates the production origin of cannabis, including boundaries of a geographical area, causal links between the geography and the cannabis, and appellation-specific production requirements, it is necessary to require that a petition to amend an appellation of origin be consistent with the geographical features recognized to be causally linked to the cannabis. Amendments to cannabis appellations of origin shall be denied if they are not communicated clearly pursuant to section 9103(b), if they break the causal linkage between the geographical features and cannabis per section 9103(c), or if they are not supported according to section 9103(c). As such, the petition could not be approved.

§ 9203(g)

The Department added this new subdivision regarding any other reasonable cause to deny the petition.

This subdivision is necessary to communicate the authority of the Department to deny an appellation petition based on any reasonable cause that the Department determines would preclude approval. As the first cannabis appellation of origin program in history, no cannabis appellation petitions have yet been submitted and so the Department determined that the flexibility the proposed regulation provides is necessary for successful initiation and administration of the program. In cases where reasonable cause for denial other than those described in preceding subdivisions is submitted by the public, not having this subdivision would prevent the Department from being able to exercise the decision-making authority provided under Business and Professions Code section 26063(b), and would force the Department to approve the petition against the objections received during review.

§ 9204. Effective Dates

The Department renumbered this section from 9203 to 9204, but subsequently struck this section.

The Department determined that it lacks statutory authority to include the regulation in this section in chapter 2 of the proposed regulations. This section directs the Department in enforcement of cannabis cultivation licensing regulations, but authority to make and enforce cannabis licensing regulations has been transferred from the Department to the Department of Cannabis Control by amendments to Business and Professions Code division 10. The Department of Cannabis Control has authority to make and enforce cannabis licensing regulations including cannabis designation of origin labeling requirements.

ARTICLE 4. PETITION REVIEW PANEL

The Department struck Article 4 entirely, which includes sections 9300, 9301, and 9302.

This change is necessary as the petition review panel has not been formed prior to the development of these proposed regulations. As such, the public have not had adequate opportunity to comment on its creation and role in the Program. The Department received requests in public comment for more detailed regulation of the panel's operation, membership, and duties. The Department determined that it would be impractical to develop further details in regulations regarding the panel during this rulemaking, due to the nascent nature of the petition review process for cannabis appellations of origin and the uncertainty inherent in establishing a new program. However, this resulted in a simple structure for the panel in previously proposed regulations without adequate detail on how the panel may be selected and operated, which would allow the public to provide more meaningful comments. Based on the preceding, the Department determined that it would be inappropriate to include these sections in this rulemaking without sufficient public consideration and comment. Regulations regarding the establishment, membership, and duties of an advisory body to the Cannabis Appellations Program may be developed and proposed by the Department in a subsequent rulemaking to allow for full consideration of public comment.

III. COMMENT SUMMARIES AND RESPONSES, 45-DAY COMMENT PERIOD

Pursuant to Government Code section 11346.9(a)(3), the Department summarized and responded to the objections and recommendations directed at the 45-day language or the process by which it was proposed and adopted. Direct quotes of comments are shown using block-indentation and quotation marks.

The Department received numerous comments during this rulemaking. Due to the length and volume of comments, many of which overlapped and asserted the same points for varying reasons, many comments were grouped together to provide as uniform and concise of a response as possible. Despite this, some duplication in the responses was inevitable.

A. List of Commenters for the 45-Day Comment Period

The comment summaries and responses for the regulatory text as originally noticed are first organized by chapter (1-2), then by article (1-7 and 1-4 respectively) and further organized by proposed regulation section. General comments are organized by subject matter, followed by comments directed at the process by which the regulations were proposed and adopted, miscellaneous, and irrelevant comments.

The number designation following each comment summary identifies the written letter/email where the comment originated, numbered in order of receipt by the Department (numbered 0001 through 0059), or the verbal comment received at the hearing (numbered 1H.1 through 1H.34) also in order received.

ID Number	Name	Organization
0001	Steve Hall	
0002	Scott Brown	

0003	Mike Spangler	
0004	Kevin Minassian	
0005	Jessica Santillan	
0006	Marion Collamer	
0007	Maggie Chui	
0008	Carm Lyman	
0009	Sarah Armstrong	Americans for Safe Access Los Angeles
0010	Nancy and Brantly Richardson	
0011	Rachel Zierdt	
0012	Brian Hershey	
0013	Krista Chaich	
0014	Edward Embly	
0015	Christina Sava	Napa Valley Fume
0016	Kim Stemler	Monterey County Vintners & Growers Association
0017	Tamsen Kelly	Holmes Flat Farms LLC
0018	Brian Applegarth	California Cannabis Tourism Association
0019	Joyce Stavert	Oakville Winegrowers
0020	Marty Flynn	Napa Valley Fume
0021	Rebecca Reidelbach	Fume
0022	Jennifer Clarke	Napa Valley Fume

0023	Mitzie Engstrom	Fume
0024	Blue Ryon	Napa Valley Fume
0025	Sica Roman	Spring Creek Farm
0026	Cathie Bennett Warner	CBW Group Incorporated
0027	Sandra and Joshua Khankhanian	Moon Gazer Farms
0028	Rashad Johnson	Eaze and Napa Valley Fume
0029	Loren Miller	
0030	Jenny Russo	
0031	John Simcha	
0032	Genine Coleman	Origins Council
0033	Mitch Springer	
0034	Tyler Blackney	Wine Institute
0035	Stephanie Honig	Honig Wine
0036	Molly Williams	Napa Valley Grape Growers
0037	Charley Pappas	Divinity Tree Patients Wellness Coop SF, 2005 -12
0038	Charles Pappas	Divinity Tree Patients Wellness Coop SF, 2005 -12
0039	Grant Babbitt	Expanding Roots, Inc.
0040	Richard Almaraz	Santa Rosa Projects
0041	Justin	Regenerative Design Center
0042	Michael Krawitz	

0043	Ashley Overhouse	South Yuba Citizens League
0044	Jude Thilman	Change.Org
0045	Hollie Hall	Compliant Farms
0046	Christopher Davis	International Cannabis Bar Association
0047	Karla Avila	Flower Daze Farm
0048	Hannah Stitt	International Cannabis Bar Association
0049	Raymond Strack	
0050	Mary Shapiro	International Cannabis Bar Association
0051	Adam Berger	Berger Greer LLP
0052	Carmela Beck	
0053	Robert DiVito	Element 7
0054	Paul Hansbury	
0055	Heather Burke	Origin Group Law LLP
0056	Kristin Nevedal	
0057	Omar Figueroa	
0058	Rosalie Reynolds	
0059	Miro Shileff	
1H.1	Genine Coleman	Origins Council
1H.2	Ross Gorden	Humboldt County Growers Alliance
1H.3	Casey O'Neill	Mendocino County Farmer
1H.4	Corinne Powell	Mendocino County Cultivator

1H.5	Diana Gamzon	Nevada County Cannabis Alliance
1H.6	Joanna Cedar	Sonoma County Growers Alliance
1H.7	Eleanor Kuntz	Canndor Herbarium
1H.8	Kenzi Riboulet-Zemouli	Independent Researcher
1H.9	Jude Thilman	Medical Cannabis Educator
1H.10	Tyler Blackney	Wine Institute
1H.11	Max Esdale	Meadow
1H.12	Heather Burke	Origin Group Law LLP
1H.13	Michael Katz	Emerald Exchange
1H.15	Omar Figueroa	Law Offices of Omar Figueroa
1H.16	Oliver Bates	Big Sur Farmers Association
1H.17	Adrian Keys	Trinity County Agriculture Alliance
1H.18	Hollie Hall	Compliant Farms
1H.19	Jonathan Collier	Nevada County Cannabis Alliance
1H.20	Hannah Nelson	Mendocino County Cannabis Alliance
1H.21	Maggie Philipsborn	Nevada County Cannabis Alliance
1H.22	Swami Winans	Mendocino Appellations Project
1H.23	Adan Berger	Berger Greer, LLP
1H.24	Michael Krawitz	Veterans for Medical Cannabis
1H.25	Kristin Nevedal	International Cannabis Farmers Association

1H.26	Eric Sklar	Napa Valley Fume
1H.27	Maureen Hayes	
1H.28	Raymond Strack	City of Weed Appellations Development Committee
1H.29	Wade Laughter	Project CBD, House of Harlequin
1H.30	Kevin Jodrey	
1H.31	Kim Dellacorva	
1H.32	Luke Zimmerman	Attorney in San Francisco
1H.33	Khalid Almudarris	Weed Farmer
1H.34	Karla Avila	Cannabis Farmer

B. Comments and Responses Related to Chapter 1, Articles 1 through 7 and Chapter 2, Articles 1 through 4.

CHAPTER 1. CANNABIS CULTIVATION PROGRAM

Article 1. Definitions

Section 8000. Definitions.

Comment:

"Synthesizing Existing Geographic Indication and Appellation of Origin Definitions/Policies Under the current proposed regulations, an appellation of origin is defined as the following:"(b) "Appellation of origin" means the name established through the process set forth in chapter of this division." Section 8000(b). In context with the proposed regulations, it is understood that "appellations" means the name of a geographic area in which the cannabis is produced along with Standards, Practices and Cultivar Requirements. (Sections

8212((b)(5)-(6); 9107) seq.)" **[This exact quote was included in the following three comments: 0046, 0048, 0050]**

Response: The Department acknowledges this comment. No modifications to the proposed regulations are necessary.

Article 3. Cultivation License Fees and Requirements

Section 8212. Advertising, Marketing, Packaging, and Labeling of Cannabis and Nonmanufactured Cannabis Products.

Comment:

"Create emergency regulations to allow flexibility in extraordinary circumstances (i.e. in times of severe drought an appellation licensee could use alternate water sources if the water source originally designated ceased to exist. During a severe storm, licensees could cover the crop to keep it from being destroyed." **[0009]**

Response: The Department has decided not to accommodate this comment. The Department regulations currently provide for disaster relief requests whereby licensees can request relief from regulatory requirements including those in section 8212. As such, there is no need for the Department to create separate emergency regulations.

Comment: Create an official seal to be used by businesses to indicate that their product is eligible for an appellation of origin or other origin designation. **[0032, 0046, 0048-0050, 0052, 0056, 0057, 1H.15, 1H.20, 1H.28]**

Response: The Department has decided not to accommodate this comment. The Department considered creating an official seal similar to that proposed for the comparable organic program for cannabis. The Department ultimately determined that it

would not be appropriate here because unlike comparable organics there is no certification provided by the Department prior to use of an appellation of origin.

Comment: Add labeling requirements to the proposed regulations that would require the use of an origin designation or require the labeling of origin designations to be performed in conjunction with other qualifying origin designations. **[0018, 0032, 0056]**

Response: The Department has decided not to accommodate this comment. The proposed regulations allow appellation petitions to include standard or practice requirements such as conjunctive labeling, standardized trade dress, or other labeling and advertising restrictions that must be met by cannabis advertised or labeled using the appellation of origin. The Department determined that requiring conjunctive labeling in regulation would be too restrictive and could instead be a requirement established by an appellation of origin as a standard or practice requirement in the appellation of origin petition.

Comment:

> "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) ***[sic]*** 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." **[0032]**

Response: The Department acknowledges this comment. This comment referred to the regulation in section 8212(a)(4) which is renumbered in the proposed regulation to section 8212(b). No modifications to the proposed regulations are necessary.

Comment: The similarities and distinctions between the use of appellation of origin and county of origin in section 8212(b)(6) are unclear in the proposed regulations. **[0015, 0020-0024, 0026, 0028-0030, 0035, 0039, 0053, 1H.26]**

Response: The Department accepts these comments and the proposed section 8212(d)(4), originally 8212(b)(6), has been revised to be specific to county of origin, city of origin, and city and county of origin. An additional section 8212(d)(5) has been added to clarify the criteria for considering cannabis "produced in" an appellation of origin.

Comment:

> "Please protect the lawful use of county of origin names in advertising, marketing, and labeling, in compliance with the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA") and the will of California voters as expressed by Proposition64, and to preserve the critical distinction between the county of origin and appellations of origin regulations, in accordance with MAUCRSA. We work and take great pride in the product we produce here in Lake County, CA. While we respect the introduction of the Appellations of Origin Program, we ask that you uphold the County of Origin Program and ensure that there is a critical distinction between the two." **[0022]**

Response: The Department acknowledges this comment. No further changes to the regulations are necessary.

Comment:

> "Failure to include a "City of Origin" designation in the appellations program, will create confusion and defeat a key goal of the Program, fraud protection.

It's not unusual for cultivators growing adjacent to cities known for cannabis to incorporate the City name in their marketing. Allowing a "city of origin" designation would stop this fraudulent practice.

The City of Los Angeles allows cannabis cultivation. The County of Los Angeles does not allow cannabis cultivation. Forcing City of Los Angeles Cultivators to use the designation "Grown in Los Angeles County" gives the impression that City of Los Angeles Cultivators are engaged in illegal activity. Counties have been slow to allow cannabis cultivation so cultivators across the state are in the same position as those in Los Angeles.

Counties (i.e. San Francisco) may wish to differentiate between cannabis grown in unincorporated areas and cannabis grown within cities which bear the county's name.

Most importantly some areas would prefer and benefit from, a city of origin designation (i.e. the town of Weed, in Northern California).” **[0009]**

Response: The Department accepts this comment. During the second 15-day comment period and pursuant to changes made to statute by SB 67 during this rulemaking, the proposed regulations were modified to conform to the specific protection of the cannabis production origin designations county of origin, city of origin, and city and county of origin under section 26063(a) of the Business and Professions Code.

Comment:

“Thank you for the opportunity to submit feedback on the CDFA’s proposed regulations for the cannabis appellations of origin program. Eaze appreciates the opportunity to support and add commentary to potential policies that impact long standing members of the cannabis community. CDFA’s proactive outreach to stakeholders shows the agency's commitment to engaging effectively with the entire cannabis eco-system. Attached is a letter from an Eaze partner and

cannabis community leader who has some concerns about the conflation of two different programs. Please consider his feedback, as he and his company are champions in the legal and regulated cannabis space. Eaze urges the CDFA to explicitly protect the lawful use of county of origin names in advertising, marketing, and labeling, in compliance with the Medicinal and Adult Use Cannabis Regulation and Safety Act ("MAUCRSA") and the will of California voters as expressed by Proposition 64, and to preserve the critical distinction between the county of origin and appellations of origin regulations, in accordance with MAUCRSA." **[0028]**

Response: The Department acknowledges this comment. No further changes to the regulations are necessary.

§ 8212.1 Notice of Use for Appellation of Origin

Comment: Allow a business to file a single Notice of Use for multiple appellations of origin. **[0032]**

Response: The Department accepts this comment and amended section 8212.1(e) to read as follows: "(e) A Notice of Use may include more than one appellation of origin only if all license numbers indicated will begin use of all of the listed appellations of origin within the specified time period."

Comment:

"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." **[0032]**

Response: The Department rejects this comment. "Licensee" within the proposed regulations has a clear meaning consistent with the term used in the Department's

existing licensing regulations California Code of Regulations, title 3, division 8, chapter 1 of "any person holding a license pursuant to this chapter," and includes nursery and processing licenses. Further clarification of the regulations is unnecessary.

Comment:

> "CDFA should clarify on which, if any, manufactured cannabis products an appellation of origin can be used, and what labeling regulations would apply." **[0032]**

Response: The Department rejects this comment. "Licensee" within the proposed regulations has a clear meaning consistent with the term used in the Department's existing licensing regulations California Code of Regulations, title 3, division 8, chapter 1 of "any person holding a license pursuant to this chapter," and does not include manufacturing or distribution licenses. Business and Professions Code section 26063(b)(3) specifies that an appellation of origin "shall not be used in the advertising, labeling, marketing, or packaging of a cannabis product unless 100 percent of the cannabis contained in the product meets the appellation of origin requirements and was produced in the geographical area." The Department lacks the authority to impose labeling regulations on, or to accept Notice of Use filings from businesses other than licensees. Further clarification of the regulations is unnecessary.

Comment: Require Notices of Use to be submitted to the Department prior to the use of an appellation of origin instead of within 30 days of the use. **[0056]**

Response: The Department has decided not to accommodate this comment. The Department determined that the proposed regulation provides an appropriate balance between ensuring effective enforcement of compliance and the amount of staff work

time required to process and record Notices of Use without unduly increasing the burden on licensees imposed by program fees.

Comment: Reduce the effective period of a Notice of Use from three years to one year. **[0056]**

Response: The Department has decided not to accommodate this comment. The Department determined that a three-year effective period for Notices of Use is an appropriate balance between providing the Department with information on the use of appellations of origin by licensees and the amount of staff work time required to process and record those notices without unduly increasing the burden on licensees imposed by program fees.

Article 5. Records and Reporting

Section 8400. Record Retention.

Comment:

> "§§8400 (d)(13) (14) – Requirement that licensees provide proof that all cultivation was within a certain area.
>
> Licensees may only grow in the area specified in their cultivation license, and all licenses are tied to a specific location. As long as a cultivator can show a lease or deed which matches the location listed on the appellation application and the annual cultivation license, no further documentation should be required to show all cannabis was produced within the appellation/county of origin granted to the appellation/origin licensee." [**0009]**

Response: The Department disagrees with this comment and has determined that the record retention requirements in the proposed regulations are both sufficient and

necessary to the functioning of the CAP. The Department has proposed record retention regulations consistent with the existing licensing regulatory requirements. It is necessary for the Department to require records for enforcement purposes to ensure compliance with the appellation of origin requirements that the cannabis was produced in the appellation of origin boundary and in accordance with the standard, practice, and cultivar requirements. State license approval and a deed or lease does not demonstrate that a specific cannabis good was produced in compliance with the established appellation of origin or that the cannabis was produced in the geographical area. As such, the Department cannot make the requested change to the regulations.

Comment:

> "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." **[0032]**

Response: The Department acknowledges this comment. No further changes to the regulations are necessary.

The Department has determined that the record retention requirements in the proposed regulations are both sufficient and necessary to the functioning of the CAP. The Department has proposed record retention regulations consistent with the existing licensing regulatory requirements, which are expected to be necessary for enforcement of misuse of cannabis origin designations under Business and Professions Code section 26063 in cases where complaints of misuse to the Department lead to

investigation of a potential violation at a date after the cannabis cultivation was completed.

Article 7. Enforcement

Section 8601. Administrative Actions - Operations.

Comment: Raise the severity level of the violations added to the enforcement violation tables in sections 8601 and 8602 specific to the misuse of origin designations from "Minor" to "Moderate" or "Serious." **[0032, 0034, 0046, 0048, 0056]**

Response: The Department partially accepts this comment. During the second 15-day comment period, the Department amended the entries in Table A of section 8601 to specify that violations for advertising, marketing, labeling, or packaging specific to use of cannabis production origin designation are “Serious” violations. The Department determined raising the levels of the violations in Table B of section 8602 to be unnecessary because there is not an identified potential for significant monetary gain for violating recordkeeping requirements, as there is with advertising, marketing, labeling, or packaging violations. Leaving recordkeeping violations as minor provides the appropriate level of deterrent for this type of violation.

Comment:

> **“**In addition to imposing fines, CDFA has other enforcement authorities it can exercise to more effectively deter violations of §8212. For example, CDFA has authority to revoke or suspend a license, issue a probationary license and order “an administrative hold of cannabis or nonmanufactured cannabis products” in response to a violation. Unfortunately, CDFA’s proposed appellation regulations have defined the misuse of an appellation as a “Minor” violation, which will undoubtedly limit the use of these tools. In the absence of significant fines, and

without the real threat of administrative action against a cannabis licensee's business and product, there is very little deterrent for a cannabis licensee to misuse an appellation." **[0034]**

Response: The Department accepts this comment. During the second 15-day comment period, the Department amended the entries in Table A of section 8601 to specify that violations for advertising, marketing, labeling, or packaging specific to use of cannabis production origin designation are "Serious" violations.

Comment: Add language to the proposed regulations to allow the Department to recoup the costs of investigation and prosecution of origin designation misuse. **[0009, 1H.20]**

Response: The Department has decided to not accommodate this comment because Business and Professions Code section 26031.5(e) already provides the Department the authority to recover the costs of investigation and enforcement.

CHAPTER 2. CANNABIS APPELLATIONS PROGRAM

Article 1. Definitions

Section 9000. Definitions.

Comment:

"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." **[0032]**

Response: The Department acknowledges this comment. No modifications to the proposed regulations are necessary.

Comment:

> "Section 9000(c): suggest the licensed cultivator designated by the organization to be the primary contact for the petition. This definition is necessary to simplify references to the primary contact for appellation petitions." **[0008]**

Response: The Department acknowledges this comment. No modifications to the proposed regulations are necessary.

Comment: Expand the type of standards and practices which may be included in an appellation petition to allow standards and practices unrelated to cultivation. Some commenters suggested the addition of the specific terms "land management," "human resource practices," and "business practices" to the definition of practice in section 9000(d). **[0032, 0046, 0048, 0055, 0056, 1H.5]**

Response: The Department partially accepts this comment. The Department accepts the suggestion to broaden the proposed regulations on practice requirements included in an appellation petition beyond cultivation of cannabis, and has revised the proposed definition of a practice in section 9000(d) to "(d) "Practice" means an allowed or prohibited method of cultivation or method of conducting commercial cannabis activity." Business and Professions Code section 26001(k) defines "commercial cannabis activity" to include the "cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of cannabis and cannabis products" and the Department determined that conducting commercial cannabis activity may include methods considered business practices such as land management and labor practices. Based on the foregoing, including the specific terms suggested by commenters in section 9000(d) would not increase the clarity of the

regulation and is unnecessary. The proposed definition of standard is already widely inclusive of any standard applicable to the cannabis (not merely cultivation).

Article 2. Petitions

Section 9100. Submission of Petitions.

Comment:

> "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."**[0032]**

Response: The Department rejects this comment. The proposed section 9100(a) does not contain any language that restricts the submission of petitions to amend to the original petitioning organization.

Section 9101. Petition Fees.

Comment: Many commenters expressed concern that the proposed fees to petition for an appellation of origin are large and may pose a barrier to petitioning by cultivators in areas containing predominantly smaller cannabis cultivation businesses. Several different alternative fee structures were suggested by these commenters, including reduction of petition fees, staggering of fees throughout the petition review process and introduction of ongoing costs such as a Notice of Use filing fee or appellation renewal fee, and implementation of a fee waiver or deferral program that would apply to

appellation petition fees. **[0006, 0009, 0018, 0025, 0032, 0046, 0047, 0048, 0050, 0052, 0054, 0055, 0056, 0057, 0058, 1H.6, 1H.11, 1H.13, 1H.14, 1H.15, 1H.29, 1H.30]**

Response: The Department partially accepts these comments. The Department acknowledges the barrier and amended the fee structure to mitigate the burden. The revised fee has been divided into a smaller (20%) fee due as a petition submission fee, with the remainder (80%) due only if the Department finds that the petition is complete and accepts it for further review, as a petition proposal fee. In addition, the total amount of the proposed petition fees has been reduced slightly based on updated economic models. The Department has decided not to accommodate suggestions to impose additional ongoing costs on cultivators in the form of Notice of Use filing fees or appellation renewal fees because administering such additional ongoing costs would require additional ongoing funding, thus raising total cost to cultivators over the long term. In addition, the current American Viticultural Area (AVA) system for U.S. wine appellations does not impose such recurring cost, so the Department determined it would not be reasonable to impose them for the CAP. The Department also determined that for initiation and establishment of the CAP, the Department cannot consider fee waivers or deferral programs at this time.

Comment:

> "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." **[0032]**

Response: The Department has decided not to accommodate this comment. The Department determined that providing a pathway for multiple appellations in a petition

would not be feasible because it would be unreasonable to expect program staff or the petition review panel to assess the qualifications of multiple appellations of origin within one petition. This would complicate the review process if only some of the appellations were supported and others were not. Furthermore, it would require a reassessment of the fees charged if multiple appellations could be contained in one petition.

Comment:

> "Amendments to seek to change the name and boundaries of the appellation may merit a high fee, but simple changes do not. And the cost substantially deters innovation and robust communications at CDFA." **[1H.6]**

Response: The Department rejects this comment. The Department has determined that the multiple relationships between a name, a boundary, geographical features, production requirements, and effects on the cannabis require careful review of an entire petition regardless of the number and nature of the components being amended, so petitions to amend an appellation of origin are reviewed under a consistent process. The Department cannot reasonably distinguish between "minor" or "major" changes without a review of the entire petition. Petition fees in the proposed regulations are staggered into two fees and are lower than initially proposed to reduce the financial barrier to petitioning. To mitigate the financial barrier to innovation, petitions to amend appellations of origin have lower proposed fees than petitions to establish an appellation of origin.

<u>Section 9102. Petition to Establish an Appellation of Origin.</u>

Comment: Two comments expressed concerned about how section 9102(h) affects the constitutional Fifth Amendment right against self-incrimination, and potential waivers of the Fifth Amendment privilege, where historical information or evidence regarding

legacy farmers is presented in a petition that may lead to criminal investigations in the future. Further, because “petitioning organizations” are defined under Section 9000(b) as a group of licensed cultivators representing three or more unique businesses within the geographical area of the proposed appellation of origin, commenters suggest this creates an additional concern that a petition will cause potential waivers of the Fifth Amendment privilege for not just one, but multiple entities and individuals. **[0051, 1H.23]**

Response: The Department rejects these comments. The proposed requirement to describe the legacy, history, reputation, and economic importance of cannabis to an area does not impose any requirement of self-identification, nor does it require that the description be specific to the petitioner or individuals in the petitioning organization. Petitioners are free to include descriptions of the legacy, history, reputation, and economic importance of cannabis to their area which do not implicate any specific persons in illicit activity. Petitioners can also solely provide publicly available sources as evidence of historical information or legacy for the region.

Comment: Make minor changes to regulation language to focus more on "cannabis" as a product rather than "cannabis cultivation" as a process in some sections. **[0032, 0051, 0055, 0056, 1H.17]**

Response: The Department accepts these comments and has modified the language in proposed sections 9000(d), 9102(f), 9102(h), 9106, and 9106(d) to reflect the connection between the certain geographical area and the cannabis described in Business and Professions Code section 26063(b), rather than directly between the geographical area and cultivation. Specifically, the definition of the term “practice” was expanded beyond cultivation, the term “cannabis cultivation” was amended to “cannabis produced” in sections 9102(f) and 9106, amended to “cannabis production” in section 9102(h), and amended to “the cannabis” in section 9106(e).

Comment: Some expressed the importance of preserving legacy and reputation as it relates to the appellations program. **[0004, 0025]**

Response: The Department acknowledges these comments. The proposed regulation, specifically section 9102(h), addresses the legacy, history, reputation, and economic importance of cannabis production.

Section 9104. Evidence of Name Use.

Comment: Several commenters expressed concern that one type of appellation used in the wine industry – an American Viticultural Area (AVA) – might introduce the risk of consumer confusion with cannabis appellations of origin having similar but not the same geographical boundaries. These commenters suggested that various limitations or controls be placed upon cannabis appellation of origin petitions in the proposed regulations to mitigate that risk. **[0034, 0036, 0046, 0048, 0050]**

Response: The Department has decided not to accommodate this comment. Given the dramatic differences between wine and cannabis and statutory market separation, it is unlikely that similar appellation names and boundaries will cause consumer confusion. Under the proposed regulation section 9104, an approved appellation for cannabis requires demonstration of the historical connection between the name and the proposed area of the appellation. Given that wine AVAs are already established, evidence has already been publicly proposed and recognized by a government agency that those boundaries are directly associated with those specific geographical names. The Department has determined that including additional limitations in regulation is unnecessary.

Section 9105. Maps and Boundary Description.

Comment:

> "CDFA should also consider adding a new subdivision to proposed section 9105 to clarify that a proposed appellation of origin will only be approved if it lies wholly within the boundaries of local governments that permit cannabis cultivation. In theory, the proposed regulations' requirement that petitions provide "evidence of the legacy, history, and economic importance of cannabis cultivation in the area[,]" along with CDFA's existing licensing requirements, should prevent the establishment of appellations in areas where cannabis cultivation is not permitted. In practice, however, we believe that clearer guidance will ensure that CDFA staff and its Petition Review Panel appropriately exercise their discretion in approving proposed appellations, and thus reduce the likelihood of litigation challenging the approval of petitions in the future." **[0032]**

Response: The Department has decided not to accommodate this comment. Business and Professions Code section 26063 is clear that only licensed cannabis cultivators are eligible to establish an appellation of origin. The MAUCRSA further provides that an applicant for a commercial cannabis license must be in compliance with local ordinances. Because only licensed cultivators can petition for an appellation of origin, the petitioners must be within the boundary of the proposed appellation of origin geographical area, and a license cannot be obtained without local compliance, amendments to the regulations are unnecessary.

Comment :

> "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.” **[0032]**

Response: The Department partially accepts this comment. The Department lacks the authority to implement the suggested modification of section 9105(b). Business and Professions Code section 26063(b) states that cannabis appellations of origin may be approved for a certain geographical area not otherwise specified in section 26063(a). Protected cannabis origin designations specified in section 26063(a) are limited to the single political boundaries of a county, city, or city and county.

However, the Department announced with the second 15-day public comment period to section 9106 of the proposed regulations act to ensure that approved appellation petitions represent strong links between the geographical area and the quality or characteristics of the cannabis. These modifications greatly reduce the likelihood that an appellation petition delimited by a multi-county political boundary may be approved by the Department. The Department determined that a strong link between the geographical area and the quality and characteristics of the cannabis is consistent with other similar appellation or origin programs and necessary to ensure the integrity of the CAP

Comment: Impose a requirement that petitions demonstrate a majority (51%) of support for a petition as consensus. **[0032, 1H.19, 1H.20, 1H.28]**

Response: The Department has decided not to accommodate this comment. Regarding consensus within the geographical area of a proposed appellation, the Department considered various options including a majority consensus requirement. However, the Department determined that a majority consensus requirement would be overly restrictive and that a minimum consensus of least three licensed cultivators would be more appropriate. Furthermore, section 9201(a) provides for notice of all proposed appellations of origin and the public will have 90 days to provide comments.

Comment: Allow any individual licensee to petition, in case there are not 3 licensed cultivators, or it is too difficult to organize collectively. **[0006, 0008, 0047, 0049, 1H.17, 1H.28, 1H.30]**

Response: The Department has decided not to accommodate this comment. Regarding petitioning organizations, the Department considered various options including allowing a petition by one licensed cultivator. However, the Department determined that at least three licensed cultivators would be required to define an area and would encourage collaboration among cultivators on standards, practices, and cultivar requirements. This mirrors existing law, in Business and Professions Code section 26223, which permits three or more natural persons engaged in the cultivation of cannabis to form a nonprofit cooperative association for the purposes of, “cultivation, marketing, or selling,” of cannabis. As the role of the petitioning organization is similar to the nonprofit cooperative in terms of its marketing function, it is appropriate to maintain consistency with existing law in defining the requirements for a petitioning organization.

Comment: Add criteria to the proposed regulations requiring petitions to establish an appellation of origin to not overlap with the boundaries of any established cannabis

appellation of origin unless the proposed appellation boundaries lie entirely inside the boundaries of the existing appellation of origin. This suggestion can be summarized as to "prohibit overlap" but "allow nesting" in a petition to establish an appellation of origin. **[0032, 0056]**

Response: The Department has decided not to accommodate this comment. The Department has determined that prohibiting overlap is not necessary to include in regulations for the functioning of the proposed CAP. The Department observed that overlapping appellations of origin continue to exist and provide added value in many geographical areas, so the Department determined it would not be reasonable to prohibit overlapping appellations for the CAP. Petition criteria in the proposed regulations ensure that an approved appellation of origin adequately represents the effects of a certain geographical area on the cannabis in a manner which is meaningful to consumers.

Section 9106. Geographical Features.

Comment: Add an example geographical feature of soil and soil microbiology to section 9106(a). **[0032, 0044, 1H.9, 1H.29]**

Response: The Department accepts the suggestion to include soil features in the list of example geographical features in section 9106(a). The Department amended the proposed regulations to add a section 9106(a)(3) modeled on Title 27 of the Code of Federal Regulations part 9.12(a)(3)(iii) as an example geographical feature of “soil features which may include microbiology and soil series or phases of a soil series.”

Comment: Add a requirement in regulations that petitions address each of the examples listed in section 9106(a) or a requirement that petitions describe "all distinctive geographical features that could affect cannabis cultivation." **[0034]**

Response: The Department partially accepts this comment. The Department has determined that it is not necessary to require that appellation petitions address every category of example geographical feature in section 9106(a), but has modified section 9106 to require that more than one geographical feature must be described in an appellation petition for approval. The Department encourages petitioners to describe all geographical features that affect the cannabis and are distinctive to the area to ensure strong appellation petitions.

Comment: Add a requirement in section 9106 to require the use of native soil and native water. **[0055, 0056]**

Response: The Department has decided not to accommodate this comment. The Department disagrees that a requirement to use native soil and native water is appropriate to include in section 9106, which specifies the requirements for description of the distinctive geographical features affecting cannabis in an appellation petition. If the distinctive geographical features affecting cannabis described in a petition include causal links between the native soil or native water of the area, then section 9106(d) imposes a requirement that at least one production requirement be described in the petition to identify the requirements for maintaining the causal link between the cannabis and those factors of the geographical feature described as affecting the cannabis.

Comment:

> "§9106 - Geographical Features
>
> Allow applicants, whenever feasible, to use existing premise diagrams approved in their cultivation application and allow the use of pre-existing government maps in the appellation of origin application." **[0009]**

Response: The Department rejects this comment. Section 9105(a) specifies that graphical boundary identification in a petition shall use United States Geological Survey (U.S.G.S.) topographical maps. Premises diagrams are not acceptable because they only show a licensees premises and not the entire geographical area of the proposed appellation of origin. No other maps or diagrams satisfy this requirement to identify the boundary in an appellation petition under section 9105 because U.S.G.S. topographical maps are the standard and will provide consistent information on many kinds of geographical features for petition review. U.S.G.S. maps are readily available for all areas of California and provide critical detail and accuracy that can be universally relied upon. The requirement to use U.S.G.S. topographical maps is also consistent with AVA regulation in title 27 of the Code of Federal Regulations part 9.12(a)(4).

Comment: Require that both a standard and a practice be required to maintain the causal link between geographical features and the cannabis under section 9106(e). **[0032]**

Response: The Department has decided not to accommodate this comment. The Department rejects the suggestion to require in regulation both a standard and a practice to maintain a causal link described in an appellation petition. The regulation in section 9106(d), originally 9106(e), requires “at least one” instead of simply “one” production requirement to allow petitions to include multiple production requirements when necessary to maintain a causal link between a geographical feature and the cannabis, and provides the Department authority to request clarification of a petition that is determined to inadequately “preserve the causal link” between each geographical features and the cannabis. Section 9203(d) reiterates that a petition may be denied if “the causal links are not maintained” according to section 9106(d), instead of specifying that only one production requirement would satisfy this requirement in all cases. The Department determined that in some cases, a single practice requirement could be sufficient to preserve the causal link between a geographical feature and the cannabis

and so requiring both a standard and a practice requirement would be unduly burdensome on petitions.

Comment: Most of the proposed section 9106 is appropriate. **[0034]**

Response: The Department acknowledges this comment. No modifications to the proposed regulations are necessary.

Comment: Change the proposed regulation language in subsection 9106(d) to conform to the language used in the *Lisbon Agreement for the Protection of Appellations of Origin and their International Registration* international treaty, specifically to add the word "exclusively" or the words "exclusively or essentially" and to remove or relocate the word "reputation" in various places. **[0032, 0034, 0046, 0048, 0050, 0056, 1H.9]**

Response: The Department accepts this comment. Pursuant to changes made to section 26063 of the Business and Professions Code by SB 67 during this rulemaking, which requires appellations of origin to exclude cannabis unless it was produced outside in the ground without the use of artificial light, and to promote petitions for cannabis appellations which represent strong causal linkage between the geographical area and the cannabis, several modifications have been made to the petition requirements in the proposed section 9106. Specifically, section 9106(c), originally 9106(d), has been revised to remove the phrase “or reputation” and to add the words "essentially or exclusively" to describe the link between the effects of a certain geographical area on the cannabis, so that petitions must include a description of the quality or characteristic of the cannabis which is essentially or exclusively caused by each geographical feature, including an explanation of how the geographical feature causes the cannabis to have that quality or characteristic. To further strengthen petitions, the proposed section 9106 has been modified to require that more than one distinctive geographical feature affecting cannabis be described in an appellation petition for approval. Section 9106(d)

has also been modified to clarify the requirement that cannabis appellation petitions must identify the production requirements by which the causal links between each geographical feature and the cannabis are preserved. The word “reputation” was added to section 9102(h) to clarify the acceptable place in a petition to provide a description and evidence of the legacy, history, reputation, and economic importance of cannabis production in the area.

Comment: Many commenters expressed a desire for the CAP to be "terroir-based." **[0031, 0033, 0041, 0046-0048, 0050, 0055, 1H.7, 1H.8, 1H.15, 1H.19, 1H.26-1H.28, 1H.34]**

Response: The Department accepts these comments. Pursuant to Business and Professions Code section 26063(b), the Department has designed a process specifically to recognize "a certain geographical area" that is understood to have an effect on the cannabis produced in the geographical area, including standard, practice, and cultivar requirements. This is similar to the “specific geographical area” defined by the French agency responsible for administering its appellation of origin program (INAO) as the French term "*a terroir*," with roots similar to "*terre*," or "*land*," and referring to a recognized place of production. According to this definition, no modifications to the proposed regulations are necessary to make them “certain geographical area”-based which is consistent with the suggestion in comments to make the program “specific geographical area”-based. The Department could determine no clear definition of the specific term “terroir-based.” To try to determine what changes to the proposed regulations some commenters were suggesting by the term “terroir-based,” the Department considered that some other comments described a concept of “*a terroir*” that minimizes human features and emphasizes natural features of geography. With the second 15-day comment period, the Department announced modifications accepting other suggestions to strike section 9106(a)(4) that contained an example geographical feature of “cultural features,” and to move “reputation” from section 9106(c) to section

9102(h). These changes also accommodate this interpretation of the term “terroir-based” by ensuring that cannabis appellations of origin approved through the process described in the proposed regulation chapter 2 will represent a strong causal link between the certain geographical area and the quality or characteristics of the cannabis. In addition, to try to determine what changes to the proposed regulations some commenters were suggesting by the term “terroir-based,” the Department considered that some other comments referred to requirements generally consistent with those described in Business and Professions Code section 26063(c) as “terroir baselines.” Pursuant to the addition of section 26063(c) to the Business and Professions Code by SB 67 during this rulemaking, the proposed section 9102(j) also accommodates this interpretation of the term “terroir-based” by clarifying that a cannabis appellation petition must include:

> “(j) Practice requirements described according to section 9107 of this chapter ensuring that the appellation of origin be applicable only to cannabis that is planted in the ground in the canopy area; cultivated without the use of structures including a greenhouse, hoop house, glasshouse, conservatory, hothouse, or any similar structure covering the plant or modifying the natural light received by the plant in the canopy area; and cultivated without any artificial light in the canopy area pursuant to Business and Professions Code section 26063(c).”

Comment:

> “Overall, SYRCL appreciates that the regulations provide structure to implement both the County of Origin and Appellations of Origin systems. While the implementation of the County of Origin program will still capture Nevada County’s unique cannabis culture, SYRCL believes that an Appellation of Origin designation for the Yuba River watershed would provide the most protective system for both the small cannabis farmers as well as the Yuba River watershed. Additionally, SYRCL generally supports the concept of “nested appellations”,

which would allow a Yuba River watershed appellation to exist within a larger regional appellation such as the Sierra Foothills.1As a requirement for an appellation of origin, SYRCL thanks CDFA for including a geographical marker, such as a watershed. The regulations state, “Geographical Features. The petition shall describe each distinctive geographical feature affecting cannabis cultivation in the geographical area of the proposed appellation of origin, including: . . . (3) Physical features which may include flat, hilly, or mountainous topography, geographical formations, bodies of water, watersheds, and irrigation resources.” ” **[0043]**

Response: The Department acknowledges this comment. The proposed regulations do not prohibit the “nesting” of cannabis appellations located within the boundaries of other cannabis appellations. No modifications to the proposed regulations are necessary.

Section 9107. Standard, Practice, and Cultivar Requirements.

Comment: Make changes regarding the criteria for practice descriptions in the proposed section 9107(c), including to add mention of supporting documentation provided in a petition and to broaden the language in subdivision (c)(2). **[0032, 0046, 0048]**

Response: The Department has decided not to accommodate this comment. The Department may request clarification and refinement of any practice requirement included in an appellation petition during review to ensure that practices are adequately described for the industry and public and possible for licensees to demonstrate compliance through recordkeeping. The Department determined that the proposed regulation in section 9107(c) is sufficient to achieve this purpose.

Comment:

> “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.” **[0032]**

Response: The Department rejects the comment. The Department has determined that Business and Professions Code section 26063(b) imposes a requirement that at least one of each of standard, practice, and cultivar requirements be included in an appellation petition for approval. The Department determined that it may be more efficient to describe a production requirement in a petition in terms of what is not allowed rather than describing all things that are allowed. Because of this, the Department has determined that flexibility in describing whether production requirements are mandatory or prohibited is necessary to provide petitioners the ability to adequately and clearly describe their appellation and that the suggestion made by the commenter to require both mandatory and prohibited practices would be unduly burdensome on appellation petitions. The proposed regulations do not prohibit petitioners from including additional production requirements.

Comment: Many commenters suggested that the Department enact statewide baselines in regulation that would restrict the ability to petition for and use appellations of origin to certain groups of cultivators based upon cultivation method to the exclusion of other cultivators in the industry. The statewide baseline suggestions varied, but generally focused on combinations of "planted in the ground," "without the use of any structure in the canopy areas at any time," and "without the use of artificial lighting in the canopy areas at any time." Some commenters opposed statewide baselines or expressed support for the ability of local petitioning organizations to determine

appropriate production requirements in the absence of statewide baseline requirements. **[0009, 0011, 0012, 0017, 0018, 0027, 0032-0034, 0043, 0045, 0046, 0048, 0049, 0052, 0055-0058, 1H.1-1H.4, 1H.11-1H.13, 1H.15, 1H.16, 1H.18, 1H.22, 1H.25, 1H.28, 1H.29, 1H.31, 1H.33]**

Response: The Department accepts these comments. The Department modified the proposed text to implement the comments after the statutory amendment made pursuant to SB 67. The bill added Business and Professions Code section 26063(c) that specifies practices which must be required or excluded in appellations of origin for approval. The Department amended section 9102 subdivision (j) to clarify that a cannabis appellation petition must include:

> "(j) Practice requirements described according to section 9107 of this chapter ensuring that the appellation of origin be applicable only to cannabis that is planted in the ground in the canopy area; cultivated without the use of structures including a greenhouse, hoop house, glasshouse, conservatory, hothouse, or any similar structure covering the plant or modifying the natural light received by the plant in the canopy area; and cultivated without any artificial light in the canopy area pursuant to Business and Professions Code section 26063(c)."

Comment:

> "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." **[0032]**

Response: The Department accepts this comment. Certified requirements described as standards in an appellation petition may refer to practices or cultivars pursuant to section 9000(e). The phrase "according to the certification owner" has been added to section 9107 subdivision (b)(2) to address this comment.

Comment:

> "9107(d) -CDFA should provide examples, guidance, and parameters regarding "acceptable methods, vendors and practices" and provide updates as additional acceptable methods, vendors and practices are recognized and in good standing with the CDFA." **[This exact quote was included in the following two comments: 0046, 0048]**

Response: The Department rejects this comment. The Department determined that it is more appropriate for cultivar petition criteria to be flexible and for the cultivators in a certain geographical area to determine their own goals for genetic resource management and propose cultivar requirements to help meet those goals. The Department determined it would be premature to provide examples of acceptable methods, vendors, or practices and no petitions have been submitted or approved. As such, no changes to the regulations are necessary.

Comment:

> "Record keeping and recording of info related to compliance (Â§ 9107. Standard, Practice, and Cultivar Requirements). Consider what is already mandated and use that information." **[0008]**

Response: The Department disagrees with this comment and has determined that the record retention requirements in the proposed regulations are both sufficient and necessary to the functioning of the CAP. The Department did consider what records were already required to be kept and only included additional records that were necessary for investigation and enforcement of misuse of cannabis origin designations.

Comment:

> "Special Case: Merchandise. As it is likely that appellations will want to offer merchandise and clothing, there a concern that there could be brand/appellations collision, e.g., Garnet Hill, Willow Creek, who are likely not using their marks in a geographically descriptive manner and are rather using a geographic designation in an arbitrary manner. This could be addressed by clarifying that appellations are unique to cannabis, wine and other agricultural products and will not allow an appellation to be established and then trump Marks established for products other than agricultural products." **[This exact quote was included in the following three comments: 0046, 0048, 0050]**

Response: The Department cannot accommodate this comment. The Department's authority in establishing the appellation program is limited to a process to establish appellations of origin and there is no authority to limit use of an appellation of origin beyond cannabis and cannabis goods.

Comment: Several commenters suggested that the Department work with the California Secretary of State to develop a state program for registration of certification marks and collective marks in addition to the current state registration service provided for trademarks and service marks. Some of these commenters suggested that the Department "consider the interplay between the various forms of Intellectual Property [appellation of origin, geographical indication, certification marks, and collective marks], and offer them all to the cannabis industry." **[0046, 0048, 0050, 1H.5, 1H.22, 1H.32]**

Response: The Department cannot accommodate these comments. The Department does not have the statutory authority to offer registration of certification or collective marks. To the extent the comments suggested consideration of other form of intellectual property, the comments did not provide sufficient information to meaningfully respond or make changes to the regulations.

Article 3. Petition Review Process

Section 9200. Petition Review.

Comment: Lengthen the non-response period used as a criterion to determine petition abandonment in Section 9200(e). **[0046, 0048]**

Response: The Department has decided not to accommodate this comment. The Department considers the 60-day time period more than enough time for a petitioner to make an initial response acknowledging receipt of an appellation petition deficiency notice. The proposed section 9200(e) also provides a lengthy 180 days to provide the requested information in the appellation petition deficiency notice.

Comment: Add a regulatory requirement that the Department determine whether a submitted petition is complete within a specified time limit. **[0032, 0056]**

Response: The Department has decided not to accommodate this comment. The Department determined that processing each petition will require significant staff resources. The Department needs flexibility in the process to effectively administer the CAP because petition submission is unpredictable.

Section 9201. Notice of Proposed Action on Appellation of Origin.

Comment:

> "The ICFA believes that in order to ensure adequate public notice, inclusive public comment, and a transparent process for establishing appellation of origin that each petition recommended for approval should be subject to a formal rule-making process. Using the formal rule-making process will provide a fair opportunity for all members of the public to participate in the comment period.

This is especially important for legacy farmers in regions where outdoor cultivation is banned as these farmers could find themselves needing to protect the legacy of their region until such time as they can become licensed.

RECOMMENDATIONS: The ICFA respectfully requests that the department utilize the rule-making process for the notice and final determination action on all appellation of origin petitions. Additionally, to ensure that all interested parties are properly noticed, we recommend that the department develop a list-serve that members of the public can sign-up for to receive updates regarding the CAP, notices of petition filings, and notices regarding petition recommendations and public comment periods.

SUGGESTED LANGUAGE CHANGES: § 9201. Notice of Proposed Action on Appellation of Origin. (a) Following determination that a petition is complete pursuant to section 9200 of this chapter, the department shall provide public notice of the draft regulation to establish or amend the appellation of origin, and clear instructions regarding the submittal of public comments.

(b) 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;

(3) The standard, practice, and cultivar requirements identified in the petition; and

(4) Clear instructions regarding the submittal of, and timeline for, public comments." **[0056]**

Response: The Department rejects this comment. The proposed process for notifying and providing opportunity to comment on the appellation petition as specified in sections 9200 through 9203 provide adequate opportunity to address the concerns raised in the comment. Furthermore, these regulations make specific the statutory requirement for the Department to establish a process by which licensed cultivators may establish

cannabis appellations of origin. Based on the foregoing, amending the regulations to require formal rulemaking is unnecessary. The proposed regulations already address the suggestion to provide "clear instructions regarding the submittal of, and timeline for, public comments" by specifying in section 9201(a) that notices of proposed action will include a contact person and the final date to submit public comments. As such, there is no need to provide a weblink to this information as it will be included in the notice of proposed action.

Comment:

> "The publication of cultivation locations relating to local or provisional licenses has resulted in violent robberies, with predators determining the location of their targets by accessing the licensee addresses from application information made public by regulatory agencies. To ensure the safety of applicants, the address of the farms seeking an appellation of origin should be unavailable to the general public." **[0009]**

Response: The Department rejects this comment. The Department has not included requirements in the proposed regulations for addresses of cultivators to be posted. However, the names and license numbers of petitioners and members of petitioning organizations are required to be included in an appellation petition pursuant to sections 9102(a) and 9102(b), and licensee addresses may be subject to disclosure in response to Public Records Act requests received by the Department. No modifications to the proposed regulations are necessary.

Comment: Lengthen the appellation public comment period provided in section 9201. **[0032, 0034, 1H.20]**

Response: The Department accepts these comments. The Department, in the second 15-day comment period, amended section 9201 (a) to specify that "the public will have

90 days from the initial date identified in the notice to provide comments on the petition" and that the Department may "extend the comment period in response to a request showing a reasonable basis for extension."

Comment:

> "Additionally, SYRCL supports and thanks the CDFA for including a mandatory thirty-day public comment period in any proposed action to designate an appellation of origin.5 This allows for further inclusivity, improved development, transparency, and community input into an important Program for the promulgation of watershed-friendly cannabis cultivation." **[0043]**

Response: The Department acknowledges this comment. The Department has decided to lengthen the public comment period to 90 days, based on other comments requesting a longer comment period.

Comment: Some commenters suggested revising language used to refer to appellation notices in the proposed regulations to be more consistent between sections. **[0046, 0048, 0050]**

Response: The Department accepts these comments and has revised the language in proposed section 9201(a) slightly for clarity and for overall consistency of the terminology of "notice of proposed action" and "notice of final decision" used in the proposed regulations. Section 9201(a) has been revised to:

> "(a) Following determination that a petition is complete and payment of the petition proposal fee pursuant to section 9200 of this chapter, the department shall provide public notice of proposed action to establish or amend the appellation of origin. The public will have 90 days from the initial date identified in the notice to provide comments on the proposal petition. Comments shall be

submitted to the contact person identified in the notice and received by the final day identified in the notice."

Comment:

"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." " **[0032]**

Response: The Department acknowledges this comment. No modifications to the proposed regulations are necessary.

Section 9202. Notice of Final Decision on Appellation of Origin.

Comment:

"The Notice of Final Decision on Appellations of Origin Should Include CDFA's Response to Public Comments. Proposed §9202 describes the procedure for notifying the petitioner and certain other parties of CDFA's decision on a proposed new or amended cannabis appellation of origin. The regulation does not require CDFA to explain how it responded to the public comments on the proposed new or amended appellation of origin submitted pursuant to proposed §9201. Proposed §9202 should be modified to correct this deficiency. CDFA should explain its response to public comments in making decisions on cannabis appellations of origin for several reasons. Members of the cannabis industry and other interested parties would see that their comments had been fairly

considered and that CDFA's decision was not arbitrary. The explanation also would provide guidance for future petitions for and comments on cannabis appellations of origin. Requiring an explanation would conform CDFA's decision-making process to what the California Administrative Procedure Act requires for new or amended regulations. See Government Code §11346.9(a)(3).23 Consequently, the Wine Associations recommend that proposed §9202 be amended to read as follows:§9202. Notice of Final Decision on Appellation of Origin.(a) The department shall provide notice by email of the final decision on a petition for an appellation of origin (i.e., established, amended, denied, or cancelled) to the petitioner. In addition, the department shall notify the following of the decision by e-mail:1) Designated responsible parties of licenses issued by the department and located within the areas directly impacted by the decision; and 2) Stakeholders enrolled on the department's Appellations list serv.(b) The notice shall include in the body of the e-mail or in an attachment:1) A summary of each objection or recommendation regarding the proposed establishment or amendment of the specific appellation of origin made in comments submitted in response to the public notice provided pursuant to section 9201 of this chapter; and 2) An explanation of how the proposed action has been changed to accommodate each objection or recommendation, or the reasons for making no change." **[0034]**

Response: The Department has decided not to accommodate this comment. The Department has determined that requiring a response to all comments on appellation petitions in regulation is not necessary to the program. The resources needed to prepare such a comment response document for each petition would require a substantial increase in the petition fees such that it would be infeasible. Under the proposed regulations, the Department may in its discretion respond to comments received on appellation petitions for the benefit of the program, industry understanding, and consumer information, but must provide at minimum the reasons for denial of a petition pursuant to section 9202(b).

Comment: Notify all cannabis licensees in California of final decisions on appellation petitions. **[0032, 0046, 0048, 0050]**

Response: The Department has decided not to accommodate this comment. The proposed section 9202(a) directs the Department to post notices of final decision on its website, and subdivision (a)(3) provides that the Department shall notify stakeholders enrolled on the Department's Cannabis Appellations Program Mailing List, which the Department has determined to be sufficient.

Section 9204. Effective Dates.

Comment: Several commenters suggested changes to sections 9203(c), 9203(c)(1), and 9203(c)(2) that provide a limited exception from enforcement against the infringing use of trademarks during a transition period following the approval of an appellation of origin. One suggestion was to use the trademark filing date rather than its registration date. Another suggestion was to set the trademark filing limitation to a set date of February 21, 2020 rather than a rolling transition period based on the date of each notice of proposed action on an appellation of origin. A third suggestion was to reduce the mark enforcement transition period to one year instead of three years, although one commenter expressed support for the proposed three-year transition period. **[0032, 0046, 0048, 0050, 0055, 0056, 1H.11, 1H.2, 1H.26]**

Response: The Department accepts these comments and has amended the regulations to address them. The Department has revised the proposed sections 9204(b), 9204(b)(1) and 9204(b)(2) (formerly 9203(c), 9203(c)(1), and 9203(c)(2)) for clarity and to incorporate the suggested changes.

Comment:

"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." **[0032]**

Response: The Department acknowledges this comment. No modifications to the proposed regulations are necessary.

Article 4. Petition Review Panel

Section 9300. Establishment of the Petition Review Panel.

Comment: Make the establishment of the Review Panel Review by the Department mandatory by changing "may" to "shall" in section 9300(a). **[0032, 0052, 0056]**

Response: The Department rejects this comment. With a nascent industry such as legal cannabis cultivation and with the proposed CAP being the first cannabis appellation of origin program in the world, the Department has determined that the flexibility the currently proposed language provides is necessary for effective administration of the Program.

Section 9301. Membership of the Petition Review Panel.

Comment: Several commenters suggested various changes to the proposed experience or expertise requirements of Petition Review Panel members in section 9301(d). **[0034, 0056, 1H.7]**

Response: The Department partially accepts these comments, and has revised the proposed section 9301(d) to add “geography” and “other areas determined appropriate by the department." The Department has determined that the list of relevant experience in geography, cannabis cultivation, intellectual property, sustainable agriculture, and community-based research is necessary to communicate the expectation on general fields of experience related to the recognition and implementation of cannabis appellations of origin, and that no additional specificity is necessary for the Department to appoint effective members to the panel that could not be accommodated by the authority provided in regulation for the Department to determine other areas appropriate for that purpose.

Comment: Several commenters made various suggestions related to the distribution of Petition Review Panel members. **[0009, 0032, 0054]**

Response: The Department has decided not to accommodate these comments. With a seven-member panel, it is not practical to balance or to be overly prescriptive with all potential aspects of membership. It is unclear what benefit there would be to require in regulation any such distribution of membership for the Petition Review Panel.

Comment: Several commenters suggested changes to the proposed regulations for the establishment of a Petition Review Panel, which would require more specific detail concerning the selection criteria for panel members, instead of leaving this up to the discretion of the Department. **[0032, 0052, 0056]**

Response: The Department has decided not to accommodate these comments. With a nascent industry such as legal cannabis cultivation and with the proposed CAP being

the first cannabis appellation of origin program in the world, the Department has determined that the flexibility the current proposed language provides is necessary for effective initiation and administration of the Program.

Comment:

"The nature, study, and application of specific terroir and consequent application involve a number of disciplines; among them, but not limited to:

a. Botany
b. Horticulture
c. Soil Engineering
d. Climate
e. Societal and Regional anomalies
f. Artisanal vs. Commercial interface with such disciplines. The two proposed staff members for the California Cannabis Appellation Program should, at a minimum, possess degrees and/or advanced training in at least three (3) of the foregoing disciplines.

Additionally, annual continuing education in the foregoing and ancillary disciplines should be a requirement for the position." **[0054]**

Response: The Department has decided not to accommodate this comment. Neither the State nor the Department have developed educational curriculum for cannabis to provide staff or panel members for continuing education. As such, it would be impractical for the Department to amend the regulations as the comment suggests.

Section § 9302. Duties of the Petition Review Panel.

Comment: Some commenters expressed that the proposed Petition Review Panel is important and suggested that the Petition Review Panel's duties could be expanded beyond advising the Department in its review of cannabis appellation of origin petitions to include dispute or conflict resolution or coordination with petitioners. **[0007, 0008, 0049, 1H.19, 1H.28]**

Response: The Department has decided not to accommodate this comment. It would be premature to assume that there would be disputes or conflict resolution necessary related to petitions as this is a nascent program. As such, it is not necessary for the Department to amend the regulations.

C. Responses to General, Miscellaneous, and Irrelevant Comments Received for the Initial Comment Period, Grouped According to Subject Matter

General Comments - Background

Comment: Some commenters provided background information on others, themselves, their business, or their organization. **[0003, 0013, 0014, 0016, 0019, 0020, 0036, 0038, 0042, 0044, 0046-0053, 0055, 0056, 0058, 1H.24]**

Response: The Department acknowledges these comments. However, they are too generalized or too personalized so that no meaningful response can be formulated to refute or accommodate the comments.

General Comments - Appellations Database

Comment:

> "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." **[0032]**

Response: The Department acknowledges this comment. The Department intends to provide a public-facing database of cannabis appellation details, but maintaining a database is not a "rule" and does not require adoption through regulation.

Comment:

"Geographic marks can acquire distinctiveness after an exclusive and/or extensive period of use in the marketplace. If there are cannabis trademarks that fit the criteria, those facts should be the focus of any analysis. It is possible that establishment of such a trademark could have been the precedent for the area flourishing as a cannabis cultivation region, and but for the growth of the brand, there would be no appellation. Again, a highly factual analysis. In any case, in order to comply with this section, there must be a publicly available database for proposed establishment of appellations of origin (under Section 9201) and established appellations (under 9202). Otherwise, how can an entity seeking to register a trademark effectively check and/or clear itself of any potential issues concerning appellation right holders? Is such a publicly accessible database contemplated?" **[This exact quote was included in the following three comments: 0046, 0048, 0050]**

Response: The Department acknowledges this comment. The Department intends to provide a public-facing database of cannabis appellation details, but maintaining a database is not a "rule" and does not require adoption through regulation.

General Comments - Intellectual Property

Comment: Work with the California Secretary of State to create a program for registration of certification and collective marks. **[0032, 0046, 0048, 0050]**

Response: The Department cannot accommodate this comment. The Department does not have the authority in statute to create a program for registration of certification or collective marks. The Department does not regulate collective marks or certification marks and as such no amendments to the regulations are necessary.

Comment: Provide guidance and clarification in regulation to petitioners on avoiding conflicts with trademarks, service marks, collective marks, and certification marks. **[0046, 0048, 0050]**

Response: The Department rejects these comments. These comments are outside the scope of the Department's regulations. Furthermore, the Department does not regulate trademarks, service marks, collective marks, or certification marks and as such no amendments to the regulations are necessary.

Comment: Some commenters expressed concern that federal protection of cultivar intellectual property is unavailable for cannabis and suggested that the Department develop a state registration process for cannabis cultivars to protect their intellectual property. **[0001, 0009, 0032, 0056, 1H.7]**

Response: The Department cannot accommodate these comments. The Department does not have the authority in statute to create a registration process for cannabis cultivars.

Comments Directed at the Process by which the Regulations were Proposed and Adopted

Comment: Several commenters suggested that the Department initiate a second public comment period following revisions to the proposed regulations to allow more time and

extend deadlines. The commenters emphasized the importance to get the regulations right and set a standard. **[0032, 1H.4, 1H.8, 1H.19, 1H.22]**

Response: The Department accepts this comment. The Department has conducted three comment periods after these comments were received and has extended timelines for this rulemaking.

Comment: Several commenters expressed that the Department should not move forward with the regulatory process in the middle of a pandemic; some suggesting extensions. **[0010, 0011, 0034, 0036]**

Response: The Department partially accepts this comment. While the Department has continued the rulemaking process, the Department has taken these comments into consideration and has conducted three additional comment periods and has extended timelines for this rulemaking. Specifically, the first 45-day comment period and public hearing were extended due to the COVID-19 emergency.

Comment:

> "strongly recommend that CDFA be responsible for the administration of the Cannabis Appellations Program." **[This quote was included in the following two comments, only differing in the use of "CAP" in place of "Cannabis Appellations Program": 0032, 1H.21]**

Response: The Department acknowledges these comments. However, they are too generalized or too personalized so that no meaningful response can be formulated to refute or accommodate the comments.

Comment: The Department must include estimated economic impacts of the proposed regulations on the wine industry in its economic and fiscal impact analysis to meet the requirements of the California Administrative Procedure Act ("APA"). **[0034]**

Response: The Department rejects this comment. The Department has complied with all requirements of the California Administrative Procedure Act ("APA") set forth in Chapter 3.5 of Title 2, Division 3, Part 1 of the Government Code, including giving the public a voice in the administrative process.

California Government Code section 11346.5(a)(9) requires the Department to describe all cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Since only commercial cannabis businesses must comply with the proposed regulations, the estimation of potential impacts on individuals and businesses who are not conducting commercial cannabis activity is not included in this proposed rulemaking.

Miscellaneous Comments

Comment:

> "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." **[0032]**

Response: The Department decided not to accommodate this comment in regulation. The Department considered an alternative regulatory system under which inspection and approval by the Department would be required prior to use of an appellation of origin, however determined that this alternative would be more costly and burdensome. The Department also determined that this alternative would not be any more effective in achieving the purpose of the regulation to recognize cannabis appellations of origin and

protect them against misuse. Licensees are subject to inspection to determine compliance with applicable laws and regulations pursuant to Title 3 of the California Code of Regulations, section 8500, subdivision (a).

Comment:

> "To avoid fraud and impropriety, no individual who is part of a group with a pending appellation of origin or is subsequently awarded an appellation of origin, may serve as an inspector, regulator, or be employed in any capacity involving enforcement of the Program." **[0009]**

Response: The Department decided not to accommodate this comment as it is unnecessary as conflicts of interest are already addressed in statute. Section 87406(d)(1) of the California Government Code requires ex-state employees that prohibits certain ex-state employees and other officials, for one year after leaving state service, from representing any other person by appearing before or communicating with, for compensation, their former agency in an attempt to influence agency decisions that involve the making of general rules (such as regulations or legislation), or to influence certain proceedings involving a permit, license, contract, or transaction involving the sale or purchase of property or goods. The proposed section 9302, subdivision (c) also requires any members of the petition review panel holding ownership or economic interest in any cannabis business located within the areas directly impacted by a petition to recuse themselves from contributing to the panel's recommendation on the petition, and the proposed subdivision (d) also requires the panel to disclose information on participation and recusals to the Department with each recommendation.

Comment:

> "I also look at the genetics and how we look at genetics based on like wine genetics. But wine has a 2600-year cultivation history, and cannabis does not. And so I think that we need to make sure that we leave ourselves open to opportunities to be able to develop and define the genetic packages that we use in these appellations as we move forward." **[1H.30]**

Response: This comment is too generalized or too personalized such that no meaningful response can be formulated to refute or accommodate the comment.

Irrelevant Comments

Many comments received were not specifically directed at the Department's proposed regulations or at the procedures followed by the Department in proposing or adopting these regulations.

Response: The Department is not required to respond to the following comments as they do not specifically relate to the Department's proposed regulations or at the procedures followed by the Department in proposing or adopting these regulations pursuant to Government Code section 11346.9(a)(3).

Comments:

Comments in support of the proposed Cannabis Appellations Program. **[0004, 0007, 0018, 0032, 0034, 0041, 0043, 1H.5, 1H.9]**

Comments that expressed general support for other commenters. **[1H.25, 1H.29, 1H.31, 0041, 0053]**

Comments that expressed general opposition for an appellations program or doubt that it will work. **[0002, 0003, 0059]**

Comments that only asked questions regarding the proposed regulations instead of providing any discernable opinions or suggestions. **[0005, 0040]**

> “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.” **[0032]**

> “If the appellations make the land more valuable, it might increase the chances of the area being taken over by Eminent Domain (the public rationale might be for the installation of a high-speed train or the a new electrical grid).” **[0003]**

> “Although I do not have a problem with smoking or using the product, medical officials say that smoking and vaping make you more susceptible to the virus and make it harder to treat once you have it. So its not the best decision right now to smoke. I wish cannabis growers would use the land to grow food so we could all benefit. Tomatoes are less contentious.” **[0011]**

> “Given the renown of certain wine AVA’s, some cannabis growers might be tempted to appropriate the consumer goodwill associated with those AVA names. In addition, there are potential conflicts between cannabis cultivation and other agricultural commodities, including winegrapes, due to pesticide and herbicide concerns (going both ways), the potential for contamination of winegrapes from terpenes, and cannabis odors impacting tasting room and other wine hospitality operations.10 Wine industry members and others have serious concerns that

these ill effects will not be mitigated by local land use regulations.11 In any event, it seems prudent for CDFA to avoid unnecessarily attracting cannabis cultivation to areas covered by prominent AVAs with widespread winegrape vineyards."
[0034]

"From my over 2 decade cannabis activist perspective, I will briefly outline general cannabis legalization points needing attention, consideration resolution I look forward to your insights and conversation today, with so many problems since the outset of California cannabis legalization and regulation. Notably, there simply would be no statewide cannabis legalization, and probably nationally as well, without over50 years of California cultivation activity/efforts, and over 20 years of statewide medical cannabis advocacy/commitment. Both these endeavors remain illegal federally and before legalization had limited statewide and local regulation. By the time California voters accepted cannabis legalization, the only existing state regulations were from Prop215 (1996) and SB 420 (2004), with CA AG guidelines (2008). Some local municipalities adopted dispensary and cultivation ordinances; however, most localities lacked necessary political oversight and/or issued bans, distribution, possession penalties. Currently, I acknowledge and applaud the ongoing diligent efforts of the Bureau of Cannabis Control. Nevertheless there is a great deal of improvement required probably requiring California Assembly and Senate attention and legislation. Therefore, please consider in order of most egregious: - Large percentage (70%?) statewide municipalities lacking cannabis distribution/delivery- Limits on medical cannabis production due to confusing Prop 64 cultivation limits- Lack of inclusion for vast majority of cultivators included in previous coop distribution models- Small percentage (30%) of expected statewide tax revenue due to above "lack of inclusion"- High cost and complicated licensing fees, statewide and local- Indeed existing regulations favor the larger, less quality commercial cannabis operations- Therefore, relative failure for statewide and local Equity efforts-

Reverse coop ban which was the only practically speaking existing regulation until Prop 64- Review and reinstatement with license/fee consideration for previous medical cannabis operations." **[0037]**

"Cannabis oil purchased online didn't help. But all they knew about cannabis medicine came from marketing messages on the internet.[1] I became increasingly alarmed, wondering how we could identify and link our high-quality cannabis medicines to the needs of these patients? Since legalization, increased scientific research has helped us appreciate the complexities of this amazing plant. Consider the work of scientists from McGill University.[2] In an article published just this year, they highlight the interaction of endophytes with other plant microbes to, among other things, induce defense resistance against pathogens, and promote a healthy cannabis microbiome." **[0044]**

"Please keep hierarchy out of the Wellness industry; however, I do wish the farmers well and perhaps a World Heritage Site which consecrates the Emerald Triangle as a repository for the cultivation of botanical medicines might be something that can be protected.

Protecting the farmers might be accomplished by making the entire Emerald Triangle a repository for botanical medicines across two states making it more difficult to claim through Eminent Domain. Please keep the hierarchy out of the Wellness industry." **[0003]**

"Critical in the survival of small craft farms. I think it was somewhat disappointing to see the one-acre cap loophole in this onset of large corporate farms." **[1H.19]**

"And I would last like to close by pointing out that, as a patient advocate and a user of cannabis to treat my glaucoma for many years, I really feel like what cannabis has done for our culture is really huge, and that it is, in fact, the healing of the peoples." **[1H.29]**

"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." **[0032]**

"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." **[0032]**

IV. COMMENT SUMMARIES AND RESPONSES, FIRST 15-DAY COMMENT PERIOD

Pursuant to Government Code section 11346.9(a)(3), the Department summarized and responded to the objections and recommendations directed at the first 15-day

modifications or the process by which they were proposed and adopted. Direct quotes of comments are shown using block-indentation and quotation marks.

The Department received 15 comments during this rulemaking. Due to the length of some comments, many parts of which overlapped and asserted the same points for varying reasons, some parts of comments were grouped together to provide as uniform and concise a response as possible. Despite this, some duplication in the responses was inevitable.

A. List of Commenters for the First 15-Day Comment Period

The comment summaries and responses for the regulatory text as originally noticed are first organized by chapter (1-2), then by article (1-7 and 1-4 respectively) and further organized by proposed regulation section. General comments are organized by subject matter, followed by comments directed at the process by which the regulations were proposed and adopted and irrelevant comments.

The number designation following each comment summary identifies the written letter/email where the comment originated, numbered in order of receipt by the Department (numbered 1001 through 1015).

ID Number	Name	Organization
1001	Rand Martin	MVM Strategy Group
1002	Jason Bryant	Bryant Government Affairs
1003	Leigh Kammerich	Rural County Representatives of California
1004	Lisa Lai	
1005	Sam De La Paz	Green Wave Consulting Group

1006	Tim Schmelzer	Wine Institute and the Napa Valley Vintners
1007	Ashley Overhouse	South Yuba River Citizens League
1008	Javier Bastidas	Leland, Parachini, Steinberg, Matzger & Melnick LLP
1009	Kila Peterson	
1010	Mary Shapiro	Evoke Law, PC
1011	Christopher Davis	International Cannabis Bar Association
1012	Heather Burke	Origin Group Law LLP
1013	Genine Coleman	Origins Council: Mendocino Appellations Project
1014	Peter Kiel	Dickenson, Peatman & Fogarty
1015	Anira G'Acha	Mendocino Innovations For Quality, Inc.

B. Comments and Responses Related to Modifications of Chapter 1, Articles 1 through 7 and Chapter 2, Articles 1 through 4 Announced on October 2, 2020.

CHAPTER 2. CANNABIS APPELLATIONS PROGRAM

Article 1. Definitions

Section 9000. Definitions.

Comment

"We appreciate the revision to Sec. 9000(d) expanding the definition of a practice to include cultivation or method of conducting commercial cannabis activity. **[1013]**

Response: The Department acknowledges this comment. No modifications to the proposed regulations are necessary.

Article 2. Petitions

Section 9101. Petition Fees.

Comment:

> "We appreciate that the Cannabis Appellations Program is designed to be solely undertaken by the Department, including reviewing applications and conducting enforcement. RCRC recognizes that high cannabis excise and cultivation taxes can be a barrier to entry into the legal marketplace. While we are sensitive to those concerns, we caution CalCannabis from reducing and restructuring application fees in a way that could ultimately risk greater fiscal solvency at the Department level. This could have downstream effects, potentially straining county Agricultural Commissioners from carrying out their duties in other programs." **[1003]**

Response: The Department partially accepts this comment. The "approval" fee was changed to a "proposal" fee in the proposed sections 9101(a)(1)(B) and (2)(B). Other modifications to sections 9200(b), 9201(a), and 9202(a) require the second petition fee to be paid when the Department finds the petition complete and accepts it for further review. This change ensures that the program will not incur the cost to fully review a petition without receiving the second petition fee. The Department balanced the amount of petition fees with the estimated effort to implement the program based on independent economic analysis.

Comment: Some commenters recommended that the CAP should be budget-neutral so that decisions on petitions are not influenced by budget, and suggested alternative funding sources to allow reduction of petition fees, including: charging a fee for the use of an official appellations seal, Notice of Use filing fees, and appellation renewal fees. **[1008, 1011, 1013]**

Response: The Department partially accepts these comments. The proposed regulations no longer require approval for the Department to receive the second petition fee, so that the Department's decision making on appellation petitions is neutral to the program budget. Specifically, the approval fee was changed to a proposal fee requiring the second petition fee to be paid when the department finds the petition complete and accepts it for further review. The total amount of the initially-proposed petition fees have been reduced slightly based on updated economic models. The Department decided not to accommodate suggestions to impose additional ongoing costs on cultivators in the form of Notice of Use filing fees or appellation renewal fees because administering such additional ongoing costs would require additional ongoing funding, thus raising total cost to cultivators over the long term. In addition, the current American Viticultural Area (AVA) system for U.S. wine appellations does not impose such recurring cost, so the Department determined it would not be reasonable to impose them for the CAP. The Department determined that it is not appropriate to implement an official appellations seal during this rulemaking. The Department based the petition fees on the estimated cost to implement the program based on independent economic analysis.

Section 9106. Geographical Features.

Comment:

> "We appreciate the revisions to the regulations tying the causal link to the cannabis rather than the cannabis cultivation, and we support the use of the term

"produced" where applicable. However, in reading the discussion regarding this change, the agency omits what we regard as the fundamental reasoning for this change: the terroir baseline, whereby the natural environment directly influences some quantifiable quality or characteristic(s) of the cannabis itself." **[1013]**

Response: The Department acknowledges this comment. No modification to the proposed regulations are necessary. The Department clarified in section 9102(j) the requirements imposed by Business and Professions Code section 26063(c), added by SB 67 during this rulemaking, which are generally consistent with what many commenters have referred to as a "terroir baseline."

Comment:

"The revised regulations strengthen the terroir-based causal link premise in a number of ways, but they also retain provisions from the initial draft regulations that are in direct conflict with this fundamental premise. Because of the critical importance of this state-legislated terroir baseline for cannabis appellations, we have organized our comments regarding a number of related subtopics under this overarching topic. We enthusiastically support the addition of "essentially or exclusively" to Sec. 9106(d). This language fundamentally strengthens the terroir-based causal link premise of CAP, in line with the intent of Senate Bill 67." **[1013]**

Response: The Department acknowledges this comment. No modifications to the proposed regulations are necessary.

Comment:

"We are pleased to see the addition of Sec 9106(a)(3) to Geographical Features: "Soil features which may include microbiology and soil series or phases of a soil series." However, we are concerned by the following ISOR language regarding

this revision: “For clarity and consistency with federal wine appellation regulations, an example category of geographical information describing soils has been added in response to comments expressing that this additional language is expected in context, although this revision to the proposed regulation does not alter petition review. Once again, we would like to underscore the intent of SB 67, which is to ensure that California cannabis appellations are premised upon evidence of a causal link between some quantifiable quality or characteristic of the cannabis and its geographical origin, including natural and human factors. Specifically, SB 67 requires qualified appellation cannabis to be planted in the ground, underlying the critical importance of soils in the causal link between place and product. This soil criterion will be critical to substantiating and evaluating terroir-based causal link claims put forward in petitions. Accordingly, if this criterion ties into the petition’s specific terroir-based causal link claim(s), this provision can and should impact the petition review process considerably.” **[1013]**

Response: The Department acknowledges this comment in support of the addition of soil features to section 9106 (a)(3). The Department agrees that the requirements imposed by Business and Professions Code section 26063(c) added by SB 67 during this rulemaking will have an impact on petition review. Those requirements, clarified in section 9102(j), are generally consistent with what many commenters have referred to as a “terroir baseline.” No further modifications to the proposed regulations are necessary.

Comment: One comment supported the inclusion of soil features and watersheds as an example of geographical features used to delineate an appellation of origin in section 9106(a)**. [1007]**

Response: The Department acknowledges this comment. No modifications to the proposed regulations are necessary.

Section 9107. Standard, Practice, and Cultivar Requirements.

Comment:

> "We appreciate the revision clarifying Sec. 9107(b)(2) which added the phrase "according to the certification owner" to clarify the appropriate method of determining whether a certifier is in good standing pursuant to federal certification mark regulation." **[1013]**

Response: The Department acknowledges this comment. No modifications to the proposed regulations are necessary.

Comment:

> "Senate Bill 67 has amended Business & Professions Code 26063(c) to read: An appellation of origin shall not be approved unless it requires the practice of planting in the ground in the canopy area and excludes the practices of using structures, including a greenhouse, hoop house, glasshouse, conservatory, hothouse, and any similar structure, and any artificial light in the canopy area. We recommend that this required practice be added as a new provision under Sec. 9107. Standard, Practice, and Cultivar Requirements. Additionally, we recommend that CDFA require that appellation petitioners certify, subject to a CDFA inspection, that they meet the requirement." **[1013]**

Response: The Department rejects this comment. The Department determined that imposing requirements of specific practices in section 9107 is unnecessary because section 9107 specifies criteria for how production requirements may be described in an appellation petition, not what production requirements shall be described. Since the proposed section 9102(j) clarifies the statutory requirements of Business and Professions Code section 26063(c) for petition approval, it is not necessary to duplicate

these requirements in section 9107. The Department determined that requiring inspection of petitioners is unnecessary. Section 8212(d)(3) requires licensees to submit a Notice of Use to the Department within 30 days of starting to use an appellation of origin. Section 8212(d)(2) requires licensees to retain records demonstrating that the cannabis was produced in the appellation of origin pursuant to section 8212(d)(1) and (d)(5). Licensees are subject to inspection to determine compliance with applicable laws and regulations pursuant to Title 3 of the California Code of Regulations, section 8500(a).

Comment:

> "In addition, while our organizations appreciate the reference to the requirements in Business and Professions Code §26063 as amended by Senate Bill 67 (McGuire), the modified regulations do not specifically include the "outdoor" cultivation requirements as defined in statute. Consequently, our organizations request for those requirements to be explicitly incorporated into the regulations." **[1006]**

Response: The Department accepts this comment. Section 9102(j) was modified to clarify the requirements imposed by Business and Professions Code section 26063(c) added by SB 67 during this rulemaking. Section 9102(j) requires appellation petitions to include:

> "(j) Practice requirements described according to section 9107 of this chapter ensuring that the appellation of origin be applicable only to cannabis that is planted in the ground in the canopy area; cultivated without the use of structures including a greenhouse, hoop house, glasshouse, conservatory, hothouse, or any similar structure covering the plant or modifying the natural light received by the plant in the canopy area; and cultivated without any artificial light in the canopy area pursuant to Business and Professions Code section 26063(c)."

Comment: Two comments requested that specific cultivation practices (i.e., Tier 1 Light Deprivation and Indoor) be eligible for participation in the appellations program. **[1015, 1004]**

Response: The Department cannot accommodate these comments. SB 67, amended Business and Professions Code section 26063 to prohibit establishment of appellations unless the cannabis is planted in the ground, excluding the use of structures, and excluding the use of any artificial light.

Comment:

> "We recommend adding language in the CAP regulations clarifying that the practice of trellising is not included in the prohibition of using structures as described in BPC 26063(c)." **[1013]**

Response: The Department rejects this comment. It is unnecessary and does not provide additional clarity to the regulations. Trellising is a practice commonly used in cannabis cultivation involving netting or framing to support and position cannabis plants and branches, and as such does not cover the plants nor modify the natural light received by the plants, nor is trellising considered a structure for the purposes of cannabis cultivation licensing under the definition in section 8000(t) [renumbered to 8000(u) in the proposed regulations] of "mixed-light cultivation" meaning "the cultivation of mature cannabis in a greenhouse, hoop-house, glasshouse, conservatory, hothouse, or other similar structure." Neither the list of structures provided in Business and Professions Code section 26063(c) of "greenhouse, hoop house, glasshouse, conservatory, hothouse, and any similar structure," nor the clarification in the proposed regulation section 9102(j) that the use of any structure "covering the plant or modifying the natural light received by the plant" must be excluded in appellation petitions would be interpreted to prohibit the practice of trellising.

Article 3. Petition Review Process

Section 9200. Petition Review.

Comment: Two commenters suggested that the appellation petition review process should be required to follow the Administrative Procedure Act (APA) formal rulemaking process. **[1013, 1014]**

Response: The Department rejects the comment. The proposed process for notifying and providing opportunity to comment on the appellation petition as specified in sections 9200 through 9203 provide adequate opportunity to address the concerns raised in the comment. Furthermore, these regulations make specific the statutory requirement for the Department to establish a process for licensed cultivators to establish appellations. Based on the foregoing, amending the regulations to require formal rulemaking is unnecessary.

Comment:

> "We ask that a detailed petition review process, along the lines suggested below, be included in the regulations:
>
> 1. The department shall have up to six months to respond to a submitted petition or a resubmitted petition.
>
> 2. Following receipt of the second fee payment, the department reviews the substance of the petition, including input from the Petition Review Panel.
>
> 3. After that review is done and the department is ready to act, it should announce its intended decision and invite public comments for a minimum of 45 days and up to 90 days, at the discretion of the department, with

extensions granted for good cause. All comments should be made available to members of the public.

4. Specific notice should be sent to every licensee in the state. We support the proposal in Sec. 9201(b):

"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."

5. The department shall have up to 12 months to issue a final decision on the petition, including a statement of reasons, following the end of the public comment period." **[1013, 1014]**

Response: The Department partially accepts the comment.

The Department decided not to accommodate suggestions to impose time limits on the Department's review of appellation petitions. The Department determined that processing each petition will require significant staff resources so maintaining flexibility in the process is necessary for effective administration of the CAP. In contrast with the licensing process, approval of an appellation of origin is not required for any businesses to conduct commercial cannabis activity.

The Department accepts the suggestion to modify the second petition fee to be collected before notice of proposed action on the petition. In section 9200(c), the phrase "finds that the petition is complete pursuant to subsection (b)" was replaced by "receives the petition proposal fee in full" to accommodate the suggestion. Section 9200(b) was also modified to describe that the Department will request payment of the petition proposal fee when the petition is found complete and accepted for further review.

The Department accepts the suggestion to lengthen the public comment period on appellation petitions. In section 9201(a), "30" days was replaced with "90" days; "The department may extend the comment period in response to a request showing a

reasonable basis for extension" was added; and "shall be" and "5:00 p.m. on" were struck to provide a full 90 days for comment.

The Department decided not to accommodate the suggestion to notify all licensees. The proposed section 9202(a) directs the Department to post notices of final decision on its website, and section 9202(a)(3) provides that the Department shall notify stakeholders enrolled on the Department's Cannabis Appellations Program Mailing List. The Department finds these sufficient.

Section 9202. Notice of Final Decision on Appellation of Origin.

Comment:

> "Given the common use of geographic trademarks for cannabis brands, particularly those that include the names of regions renowned for cannabis production, we urge CDFA to notify all cannabis licensees in California of notices of proposed action and final determinations on petitions, both those to establish an appellation and to amend an appellation." **[1013]**

Response: The Department decided not to accommodate this comment. The proposed section 9202(a) directs the Department to post notices of final decision on its website, and section 9202(a)(3) provides that the Department shall notify stakeholders enrolled on the Department's Cannabis Appellations Program Mailing List, which the Department has determined to be sufficient.

Section 9204. Effective Dates.

Comment: Revise the Modified Language Published on October 4, 2020 to be:

"9203(c) The use of trademarks that are identical to an appellation of origin in advertising, labeling, marketing, or packaging shall not be subject to fines pursuant to section 8601 during a period of one year following the date identified in the notice of final decision establishing the relevant appellation of origin provided that:

(1) The trademark was filed with the California Secretary of State prior to the date identified in the notice of final decision establishing the relevant appellation of origin, and the appellation applicant has notified the owner of the trademark at issue of the pending appellations application; or

(2) The trademark was used in the California cannabis marketplace prior to the date identified in the notice of final decision to establish the appellation of origin and the appellation applicant has notified the owner of the trademark at issue of the pending appellations application within 3 months of learning of use of a mark identical to the appellation name;

(3) Documentation of compliance with the requirements in subdivisions (c)(1) or (c)(2) is retained by the trademark owner and is provided to the department upon request, including the notice provided by the appellations applicant to the trademark owner. Additionally, the use of a trademark incorporating an appellation name may continue without being subject to fines if the entity using the trademark adheres to the standards and practices set forth in the relevant approved petition for that appellation of origin. Further, the use of the trademark must be accompanied by an appellation of origin applicable to the cannabis and clearly indicated as the geographical origin pursuant to section 8212 of this division." **[1010]**

Response: The Department decided not to accommodate this comment. The Department rejects the use of "identical" in the proposed section 9204 as inconsistent with the protection afforded cannabis appellations of origin against any false use

“including any similar name which is likely to mislead consumers as to the kind of cannabis” pursuant to Business and Professions Code section 26063(b).

The Department rejects the suggestion to modify the dates in sections 9204(b)(1) and 9204(b)(2). The Department determined that a rolling transition period based on the date of each notice of proposed action might incentivize registration of geographically mis-descriptive trademarks to use on cannabis in violation of labeling regulations and Business and Professions Code section 26063(b). February 21, 2020 is the date the Department provided public notice of the proposed regulations for the appellations program.

The Department rejects the suggestion to require petitioners to notify trademark owners. The proposed section 9202(a) directs the Department to post notices of final decision on its website, and section 9202(a)(3) provides that the Department shall notify stakeholders enrolled on the Department's Cannabis Appellations Program Mailing List, which the Department determined to be sufficient.

Comment: Oppose the date of February 21, 2020 in sections 9203(c)(1)-(2). **[1008, 1010, 1011])**

Response: The Department rejects these comments. For consistency with the strong protection of cannabis appellations of origin in statute and for clarity, the Department set the trademark filing and use date limitations in sections 9204(b)(1)-(2), initially 9203(c)(1)-(2), to a set date of February 21, 2020 rather than a date based on each notice of proposed action on an appellation of origin. The Department determined that a rolling transition period based on the date of each notice of proposed action might incentivize registration of geographically deceptively misdescriptive trademarks to use on cannabis in violation of labeling regulations and Business and Professions Code section 26063(b). February 21, 2020 is the date the Department provided public notice of the proposed regulations for the appellations program.

Comment:

> "The language specifying the criterion for whether there is an issue when a geographical term is used in a trademark is "part of or similar to" an appellation of origin introduces a new test, one that has no line of precedential decisions. Meaning, that any litigation over such trademark use may be protracted, expensive and otherwise undermined by a lack of pre-established legal standards. One way of addressing this is to simply require that the trademark and appellation be identical for such use to be subject to a fine. Alternatively, it would be prudent to look to the well-established test for trademark infringement, focusing on whether there is a likelihood of confusion, to assess whether such use should be subject to a fine." **[This exact quote was included in the following three comments: 1008, 1010, 1011]**

Response: The Department partially accepts these comments. The Department announced modifications to section 9204(b), initially section 9203(c), with the second 15-day comment period. The revisions conform to the language in Business and Professions Code section 26063(b) prohibiting the false use of appellations of origin on cannabis, "including any similar name that is likely to mislead consumers as to the kind of cannabis." The regulation in section 9204(b) imposes no criterion on whether branding conflicts with cannabis appellations of origin, that criterion is imposed by statute. Instead section 9204(b) provides a limited relief from administrative actions for violation of labeling regulations to allow one year for historically established geographically misdescriptive brands to be transitioned into compliance following the approval of an appellation of origin.

Comment: Referring to section 9203(c)(4):

> " "the use of the trademark is accompanied by a county of origin, city of origin, city and county of origin, or appellation of origin applicable to the cannabis and

clearly indicated as the geographical origin pursuant to section 8212 of this division"--support with edits. It is unclear why the CDFA would require use of a designation other than the appellation in conjunction with a trademark that may be considered similar to an appellation, e.g., city or county of origin. It is difficult to imagine a county or city that would qualify for an appellation, as the addition of standards and practices in addition to geography would necessarily shut out cannabis operators who in fact provide cannabis cultivated 100% within that city's or county's borders. Surely, that is not the intent of the appellations program. Moreover, to the extent that a trademark incorporates an appellation name, it would seem appropriate to allow continued use of such trademark, so long as it is used along with a designated appellation of origin." **[This exact quote was included in the following three comments: 1008, 1010, 1011]**

Response: The Department partially accepts these comments and included a modification clarifying the requirement in section 9204(b)(4), initially section 9203(c)(4), with the second 15-day comment period that this subdivision requires the use of a valid and truthful protected cannabis origin designation (in compliance with labeling regulations pursuant to section 8212) for eligibility for relief from administrative actions for the misuse of a brand likely to mislead consumers that the cannabis originated in the appellation of origin. The Department determined the requirement in section 9204(b)(4) is necessary to mitigate consumer confusion caused by misuse of a newly approved appellation of origin that would otherwise be subject to administrative action.

Article 4. Petition Review Panel

Section 9301. Membership of the Petition Review Panel.

Comment:

"Furthermore, we would ask that the CDFA develop comprehensive guidelines for how the panel will function and the clearly articulated requirements for basis of why the panel members are chosen.

We recommend the CDFA consider striking the California residence requirement from section 9301(c), as we believe there are knowledgeable and highly skilled professionals from other parts of the county, and the world at large, who could provide critical analysis of the Appellation petitions, and any respective knowledge base needed to assess the petitions. We also believe that having panelists from outside of California might prevent bias in the review process."
[This exact quote was included in the following two comments: 1008, 1011]

Response: The Department rejects this comment. In response to previous comments, the list of relevant experience appropriate for panel members in section 9301(d) was expanded to include "geography" and "other areas determined appropriate by the department." The Department has determined the membership requirements for the Petition Review Panel provide sufficient guidance regarding qualifications while allowing the Department flexibility in determining relevant experience in the future as the program develops by preserving the Department's authority to specify appropriate requirements when publicly requesting nominations to the panel. The Department has decided not to accommodate the request to "develop comprehensive guidelines" for the operation of the panel, but added section 9300(c) to clarify expectations as to the establishment and operation of the panel by requiring the panel to submit a charter to the Department every two years for approval to continue in effect. The Department has decided not to accommodate the suggestion to remove the California residency requirement for panel members. Observed advisory bodies to the Department described in statute specifically limit seats to California residents. The Department determined it was reasonable to have the same California residency requirement here and having multiple members on the panel reduces the chances of bias impacting recommendations.

Comment: Comments suggested regulations include specific expertise requirement for membership in the Review Panel. Suggestions include soil science, natural sciences, sustainable agriculture, environmental science, climate change, botany, geographical indication law, cultural anthropology, community-based participatory research, and cannabis botany and cultivation. **[1007, 1013]**

Response: The Department rejects this comment. In response to previous comments, the list of relevant experience appropriate for panel members in section 9301(d) was expanded to include "geography" and "other areas determined appropriate by the department." The Department has determined the membership requirements for the Petition Review Panel provide sufficient guidance regarding qualifications while allowing the Department flexibility in determining relevant experience in the future as the program develops by preserving the Department's authority to specify appropriate requirements when publicly requesting nominations to the panel. No further amendments to the proposed regulations regarding the experience of the panel are necessary.

Comment:

> "The review panel would benefit from greater participation by cannabis cultivators who can provide the agency and the review panel with a deeper understanding of the profound diversity of cannabis products, cultivation practices, standards, and cultivars.
>
> For this reason, we recommend that (1) the number of cannabis cultivator 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." **[1013]**

Response: The Department rejects this comment. With a nascent industry such as legal cannabis cultivation and with the proposed CAP being the first cannabis appellation of origin program in the world, the Department has determined that the flexibility the current proposed language provides is necessary for effective administration of the Program.

Comment:

> "There is no formal process for nominating the Petition Review Panelists. We request that this process be defined. We recommend that outdoor cultivation licensees be entitled to nominate panelists or serve on the panel. Those panelists would recuse themselves from any discussion of a petition for an appellation in which they have a licensed farm." **[1013]**

Response: The Department rejects this comment. The Department determined that it is not necessary for the nomination process for members of the Petition Review Panel to be detailed in regulations because the Department will accept the nominations in any form and use the regulations regarding the membership of the panel in making appointments to the panel. As such, no modifications to the proposed regulations are necessary.

C. Responses to General, Miscellaneous, and Irrelevant Comments Received for the First 15-day Comment Period, Grouped According to Subject Matter

General Comments – Support

Comments: Some comments expressed general support for the Department, the proposed regulations, or other commenters. **[1003, 1005, 1007, 1011, 1012]**

Response: The Department acknowledges these comments. However, they are too generalized or too personalized so that no meaningful response can be formulated to refute or accommodate the comments.

General Comments – Other Cannabis Licensing Agencies

Comment:

> "On behalf of CMG/Caliva, please allow us to share a question and comments relative to the modification to proposed regulations regarding the Cannabis Appellations Program (3 CCR 8212 et seq). Caliva is a licensed cannabis cultivator but would not be eligible for the Cannabis Appellations Program because the process whereby our cultivation occurs does not meet the parameters established in Section 26063(c) of the Business and Professions Code. However, Caliva is licensed and operates as a manufacturer and retailer of cannabis products, some of which may use raw material that will carry an appellation of origin. It is likely that when that material makes its way to a Caliva licensee and then to a Caliva customer, it will be advertised and marketed with that appellation of origin.
>
> The current proposed regulations include requirements for securing an official appellation and defines penalties for those persons who violate that approval process and advertise and market an appellation that has not been approved by the state. However, the regulations do not address possible consequences for a cannabis licensee further down the supply chain that receives material with an unapproved appellation and unknowingly perpetuates that appellation through its own advertising and marketing when that material is manufactured and/or retailed. This uncertainty leads to an initial question: does the department believe that a downstream cannabis licensee like a manufacturer or retailer is liable if the cultivator advertises or markets its material with an unapproved appellation? If

the department opines that the downstream licensee, acting in good faith, is not responsible for advertising an unapproved appellation, then we submit that the regulations should so assert.

If the department opines that the downstream licensee is culpable for perpetuating an unapproved appellation, then the regulations should be amended to aver that a licensee acting in good faith is not liable for the failure of the cultivator to market product only with an appellation that is approved.

In either case, we submit that the regulations should include the following, or similar, provision:

An entity licensed by the Bureau of Cannabis Control or the Department of Public Health that advertises or markets a manufactured or retailed cannabis product that includes raw material from a cultivator with an unapproved appellation of origin shall not be liable for advertising or marketing that unapproved appellation if the licensee was acting in good faith.

We submit that it is unfair to hold a downstream licensee to blame if that licensee is unaware that the appellation is unapproved. We further suggest that in the interest of transparency, CalCannabis should notify the Bureau of Cannabis Control and the Department of Public Health whenever the department finds that a cultivator has advertised or marketed material with an unapproved appellation of origin." **[1001]**

Response: The Department cannot accommodate this comment. The Department does not have authority to impose regulations on cannabis businesses that do not hold licenses issued by the Department. Business and Professions Code section 26063(b) does not prohibit the advertising or marketing of cannabis using names which have not been approved as appellations of origin pursuant to the process described in the proposed regulation chapter 2.

Comments Directed at the Process by which the Regulations were Proposed and Adopted

Comment: Postpone implementation of the CAP from January 2021 to January 2022, to:

> "enable the CDFA to further clarify the regulations, specifically as it relates to the implications of the interagency consolidation that will be taking place between the CDFA, BCC, and CDPH and the impact that this will have on the CAP. Our concern is that consolidation will inevitably require further clarification of which agency will be assigned to carry out CAP and how it will implement the proposed regulations. Delaying the implementation of the program will give time to clarify the impact consolidation will have on CAP." **[This exact quote was included in the following two comments: 1008, 1011]**

Response: The Department rejects these comments. The Department was required by statute to implement the appellations process by January 1, 2021 and can only operate under the authority currently provided in statute. No modifications to the proposed regulations are necessary.

Comment: Postpone implementation of the CAP from January 2021 to January 2022, to:

> "allow time for the agency to create a discretionary review process and establish the panel of experts to effectively evaluate causal link determinations as well as standards, practices, and cultivar criteria." **[This exact quote was included in the following two comments: 1009, 1013]**

Response: The Department rejects these comments. The Department was required by statute to implement the appellations process by January 1, 2021 and can only operate under the authority currently provided in statute. The proposed regulations make specific the statutory requirement for the Department to establish a process for licensed

cultivators to establish appellations and represent a discretionary review process. The Department determined that there is likely to be a delay between approval of the proposed regulations and receipt of the first appellation petitions because petitioners will need time to prepare petitions based on the criteria in the proposed regulations once they are effective. Requests can be made for nominations to the panel once the proposed regulations are enacted and appointments to establish the panel may occur prior to notification of proposed action on the earliest petitions, so the Department determined that setting a delayed program start date in regulations is not necessary to allow for the establishment of the panel. Based on the foregoing, no modifications to the proposed regulations are necessary.

Comment:

> "The Draft CAP Regulation Should be Reconsidered in Light of SB 67, Amended As Appropriate, and Reissued with New Statement of Reasons with 45-Day Comment Period" **[1014]**

Response: The Department rejects this comment. The proposed section 9102(j) clarifies the requirement in Business and Professions Code section 26063(c) and various modifications conform the regulation language to Business and Professions Code section 26063(a) by adding "city" and "city and county," and together these modifications satisfy the statutory requirements added by SB 67. Based on the foregoing, the Department determined that withdrawing the proposed rulemaking is unnecessary.

Irrelevant Comments

Many comments received during the first 15-day comment period included parts that were not specifically directed at the modifications to the proposed regulations announced by the Department on October 2nd, 2020 with the first 15-day comment

period, or at the procedures followed by the Department in proposing or adopting these regulations.

Response: The Department is not required to respond to the following comments submitted during the public re-notice period as they do not specifically relate to the changes to the regulation text announced during the re-notice period, pursuant to Government Code section 11346.8(c). The 45-day comments that these comments repeated were addressed in the response to 45-day comments in Part III of this FSOR (Comment Summaries and Responses, 45-Day Comment Period) pursuant to Government Code section 11346.9(a) and (a)(3). Government Code section 11346.9 directs the Department to include its responses to related comments in "a final statement of reasons."

Comments:

One comment included a section titled "Outstanding Comments Not Yet Addressed by CDFA" with an introduction of:

> "The following topics and comments were not addressed by the agency in the revised proposed regulations or the ISOR. As stated in the introduction, we expected an explanation, as required by Government Code 11346.9, of why you rejected these comments. These comments address critical issues that we believe will impact the integrity and success of CAP. They are presented in order of priority to our stakeholders."

The content of this comment section is summarized below.

Regarding consensus, the commenter recommended:

- the Department require the support of a majority of the qualifying cultivator licensees within a proposed appellation for a petition to be considered complete.

- 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, be entitled to only one vote.
- all outdoor licensees within the proposed boundaries be entitled to vote, regardless of cultivation practices.
- groups petitioning for nested appellations or amendments to an established appellation be required to demonstrate majority support for the proposals by the licensed outdoor cultivators within the appellation boundaries.

Regarding other issues, the commenter recommended:

- enforcement of established appellations by CDFA through site inspections and audits of the cultivators using an appellation designation.
- first-time offenses to the labeling requirements be classified as “Moderate” violations and that subsequent violations be classified as “Serious” and subject to license suspension or revocation.
- no overlapping appellations be allowed.
- a single petition be allowed to propose multiple appellations that are nested within one another, with only one filing fee required.
- CDFA establish a searchable database for approved appellations and petitions under review. **[1013]**

Create an official seal to be used by businesses to indicate that their product is eligible for an appellation of origin or other origin designation. **[1008, 1011, and 1013]**

Delay implementation of the program and restart the rulemaking process. **[1108, 1009, and 1011, 1013, and 1014]**

Raise the severity level of the violations added to the enforcement violation tables in sections 8601 and 8602, specific to the misuse of origin designations from "Minor" to "Moderate" or "Serious." **[1006, 1008, 1010, and 1011]**

Remove reputation as geographical feature in Section 9106. **[1002, 1006, 1007, 1008, 1009, 1011, and 1012]**

Make the establishment of the Review Panel Review by the Department mandatory by changing “may” to “shall.” **[1002, 1008, 1009, 1011]**

> “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.” **[1013]**

> “We reiterate our request to additionally expand the definition of a practice to include “land management,” which may not easily be defined as “cultivation” or a method of conducting commercial cannabis activity.” **[1011]**

> “We propose amending Sec. 9105(b) to prohibit appellations of origin “based solely on the political entity lines of a single county *or counties*.” **[1013]**

“Clearly establish a requirement that an appellation of origin must lie wholly within the boundaries of government jurisdictions that allow cannabis cultivation.” **[1006]**

“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 or exclusive causal link between the quality or characteristics of the cannabis and the geographical features.” **[1013]**

“Additionally, we recommend that a certifier in good standing should be allowed to substantiate practices and cultivars, in addition to standards.” **[1013]**

“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 preserve the essential link between the product’s quality or characteristics and the place of origin.” **[1013]**

“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." **[1011]**

"Allow reasonable public review: Allow more than 30 days for comments on a proposed appellation of origin in §9201." **[1006]**

"Enhance transparency: CDFA should be required to provide reasons – that include responses to stakeholder comments – for final approval of an appellation of origin in §9202. Interested stakeholders should know that their comments are being fairly considered and that CDFA's decision was not arbitrary." **[1006]**

"Procedural due process includes the right to be heard and have a fair hearing, and more fundamentally, the right to receive notice of a proposed rule directly affecting your property and your business. The proposed appellation petition notice and approval processes fail this basic constitutional protection." **[1014]**

"The proposed regulations include no provision for response to comments, no provision for public hearing, and no standards governing the Department's discretionary authority to approve or deny a petition. This process is not sufficient. This procedure conflicts with the APA, which at a minimum requires publication of an initial statement of reasons, 45-day comment period, opportunity for public meeting, and additional steps." **[1014]**

"Access to a public database of appellations is essential for deterring selection and adoption of a mark that may be considered confusingly similar to an appellation that has been applied-for." **[This exact quote was included in the following three comments: 1010, 1011, 1008]**

"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.

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." **[1013]**

"Limit the cannabis industry to no more than three members. However, this still allows for the review panel to be heavily dominated by cannabis industry representatives with potential conflicts of interest. Additionally, the review panel should not supplant CDFA internal expertise." **[1006]**

V. COMMENT SUMMARIES AND RESPONSES, SECOND 15-DAY COMMENT PERIOD

Pursuant to Government Code section 11346.9(a)(3), the Department summarized and responded to the objections and recommendations directed at the second 15-day modifications or the process by which they were proposed and adopted. Direct quotes of comments are shown using block-indentation and quotation marks.

The Department received seven comments during this rulemaking. Due to the length of some comments, many parts of which overlapped and asserted the same points for varying reasons, some parts of comments were grouped together to provide as uniform

and concise a response as possible. Despite this, some duplication in the responses was inevitable.

A. List of Commenters for the Second 15-Day Comment Period

The comment summaries and responses for the regulatory text as originally noticed are first organized by chapter (1-2), then by article (1-7 and 1-4 respectively) and further organized by proposed regulation section. General comments are organized by subject matter, followed by miscellaneous, and irrelevant comments.

The number designation following each comment summary identifies the written letter/email where the comment originated, numbered in order of receipt by the Department (numbered 2001 through 2007).

ID Number	Name	Organization
2001	Tim Schmelzer	Wine Institute/Napa Valley Vintners
2002	Mary Shapiro	International Cannabis Bar Association (INCBA)
2003	David Silverstone	
2004	Joyce Stavert	Oakville Winegrowers
2005	Pat Malo	Pajaro Valley Cannabis Appellation Project
2006	Genine Coleman	CAP Coalition Advocacy Letter
2007	Genine Coleman	OC Partners CAP Comments

B. Comments and Responses Related to Modifications of Chapter 1, Articles 1 through 7 and Chapter 2, Articles 1 through 4 Announced on March 5, 2021.

CHAPTER 1. CANNABIS CULTIVATION PROGRAM

Article 1. Definitions

Section 8000. Definitions.

Comment:

"Definition of Appellation of Origin

We recommend that Sec. 8000(b) be revised. That section currently provides that "'Appellation of origin' means a name established through the process set forth in chapter 2 of this division." This is wholly inadequate. Appellations are much more than mere names. They capture the causal link between the cannabis and the place of production in a way that informs consumers about the quality and characteristics of the cannabis. We propose a more complete definition of appellation of origin that underscores this essential aspect of the CAP and that will help us as a global model for cannabis appellations. Specifically, we suggest the following revision: "'Appellation of origin' means a geographical name or other denomination used to identify cannabis that is cultivated in a particular place and whose qualities or characteristics are essentially or exclusively attributable to that place, including its natural and human factors." This encapsulates what a cannabis appellation of origin truly is." **[2007]**

Response: The Department rejects this suggestion. The proposed definition in section 8000(b) is sufficient to describe appellation of origin within the context of cannabis licensing regulations, including advertising, marketing, packaging, and labeling regulations. Furthermore, the definition captures that the appellation of origin name is established through the petition process which incorporates the requirement to describe a causal link. As such, no modifications to the proposed regulations are necessary.

Article 3. Cultivation License Fees and Requirements

Section 8212. Advertising, Marketing, Packaging, and Labeling of Cannabis and Nonmanufactured Cannabis Products.

Comment: Add the phrase “marketing and advertising” to sections 8212(d)(4) and 8212(d)(5). **[2007]**

Response: The Department rejects this comment. It is unnecessary for the proposed regulations in section 8212(d)(4)-(5) to add marketing and advertising as these requirements are already addressed in section 8212(b). Making the change suggested by the commenter would create duplication and confusion. The Department separated the advertising and marketing requirements, which specify Business and Professions Code section 26152(c) relating to advertising or marketing using a protected cannabis production origin designation, from labeling and packaging requirements for clarity.

Comment:

> “6. Advertising, Marketing, Packaging and Labeling
>
> We appreciate the clarifications in Sec. 8212 to add the word “boundary” to clarify that the appellation of origin boundary defines the geographical area where the cannabis must be produced to comply with appellation of origin labeling and packaging requirements.” **[2007]**

Response: The Department acknowledges this comment. No modifications to the proposed regulations are necessary.

Article 7. Enforcement

Section 8601. Administrative Actions - Operations.

Comment:

"8. Fines

We appreciate the creation of two new classes of administrative violations for designations of origin, as reflected in 8601 Table A.

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." **[2007]**

Response: The Department rejects this comment. Business and Professions Code section 26063 specifically protects certain cannabis production origin designations against false use that is misleading, and violation of licensing regulations for misuse of these designations are consistent with the violation type described in regulation section 8601(a)(1):

"(1) "Serious." Violations which preclude or significantly interfere with enforcement of any state law, or those that cause significant false, misleading, or deceptive business practices, potential for significant level of public or environmental harm, or for any violation that is a repeat of a Moderate violation that occurred within a two-year period and that resulted in an administrative civil penalty. All Serious violations are subject to license suspension or revocation."

Comment:

"Penalties and Fines

In the prior rounds of public comment, we advocated for increasing the proposed fines and penalties for administrative actions involving the proposed regulations (Sections 8601- 8602). The newly modified draft regulations have increased the violation type from minor to serious for some of the proposed fines. However, in

our prior comment, we requested the CDF A to clarify whether the penalties set forth in Section 8601 and 8602 are assessed per instance or in the aggregate. To date, the CDF A has not provided clarification or further explanation of this point within the regulations. Accordingly, we reiterate our concerns and request that the CDF A provide further explanation or commentary on this section of the proposed regulations." **[2002]**

Response: The Department rejects this comment. The language of the regulatory requirement determines how the fine is assessed either in aggregate or per instance. No further clarification to the regulations is necessary.

CHAPTER 2. CANNABIS APPELLATIONS PROGRAM

Article 2. Petitions

Section 9101. Petition Fees.

Comment:

"The Cannabis Appellation Program fees should be classified as 'approval fees' (as in previous drafts) rather then 'proposal fees'. A proposal fee of $17,000 may be seen as a risk and deter some farms. Any reduction in cost should increase the number of petitions submitted and lead to a healthier and more robust program over time." **[2005]**

Response: The Department rejects this comment. The proposal fee is collected prior to a determination being made on the petition and labeling it as an "approval fee" is misleading and confusing. The fees associated with an appellation have been divided to address the issue that the fees would act as a deterrent to petitioning.

Section 9102. Petition to Establish an Appellation of Origin.

Comment:

“Practice Requirements

Section 9102(j) provides the following modified text: "Practice requirements described according to section 9107 of this chapter ensuring that the appellation of origin be applicable only to cannabis that is planted in the ground in the canopy area; cultivated without the use of structures including a greenhouse, hoop house, conservatory, hothouse, or any similar structure covering the plant or modifying the natural light received by the plant in the canopy area; and cultivated without any artificial light in the canopy area pursuant to Business and Profession Code section 26063, subdivision(c)." We understand these new practice requirements were intended to address the terroir baseline standards included in SB 67, the appellations program's authorizing statute, but believe it would be helpful to clarify the regulations for cultivation activities that occur before a cannabis plant is 18 inches tall or wide. See Section 8212 (d)(5). The term "cultivation" was replaced with "produced" and reference is made in Section 8212(d)(5) to cultivation, as defined in Business and Professions Code section 2600 I, which includes "planting." The requirement that cannabis be planted in the ground, in the canopy area, without structures or artificial light could be confusing when the starts or clones may have been "planted" inside a structure using artificial light. We recommend a definition that clarifies that plants less than 18 inches tall or wide are not precluded from being inside structures or under artificial light. Alternatively, add clarification in Section 8212(d)(5), and/or Section 9102 to maintain consistency with the statute.” **[2002]**

Response: The Department rejects this comment. The Department determined that the regulation in section 8212(d)(5) is appropriate and that clarification of the regulation is unnecessary. The regulation in section 9102(j) is specific that Business and Professions Code section 26063(c) requires appellation petitions to include practice requirements

regarding cultivation activities conducted in the canopy areas where appellation-designated cannabis was produced. No further clarification is necessary.

Comment:

"1. Terroir-Based Causal Link Between Product and Place

Reputation

Reputation alone cannot justify the establishment of an appellation of origin. We greatly appreciate the revisions to Sec. 9102 and Sec. 9106 which acknowledge this critical difference in qualifying criteria versus supporting criteria for a cannabis appellation of origin, pursuant to the passage of SB 67." **[2007]**

Response: The Department acknowledges this comment. No modifications to the proposed regulations are necessary.

Comment:

"Comments Pursuant to Current Revisions

3. Baseline Practices We appreciate the addition of § 9102(j) pursuant to the passage of Senate Bill 67. However, we recommend revising the language for clarity, as follows: "Practice requirements described according to section 9107 of this chapter ~~ensuring that~~ must include the following: the appellation of origin is applicable only to cannabis that is planted in the ground in the canopy area; cultivated without the use of structures including a greenhouse, hoop house, glasshouse, conservatory, hothouse, or any similar structure covering the plant or modifying the natural light received by the plant in the canopy area; and cultivated without any artificial light in the canopy area pursuant to Business and Professions Code section 26063, subdivision (c)."

Additionally, we recommend that CDFA require that appellation petitioners certify, subject to a CDFA inspection, that they meet these requirements." **[2007]**

Response: The Department rejects this comment. Business and Professions Code section 26063(c) imposes baselines by which the Department shall test the practice requirements meeting the purposes described in section 9102(j), but the regulation language as written does not necessarily meet the clarity or recordkeeping criteria presented in section 9107. The proposed section 9102(j) clarifies that practice requirements must be included in an appellation petition to ensure planting in the ground in the canopy area in some way and to exclude modification or supplementation of the natural light received by the plants in the canopy area. Statute and regulations already require these practice requirements in petitions, but the way these practice requirements are implemented is determined by the petitioners and there is no need to include explicit practice requirements in regulation to satisfy statute. The proposed section 8212(d)(3) requires licensees to submit a Notice of Use to the Department within 30 days of starting to use an appellation of origin. Section 8212(d)(2) requires the licensee to also retain records demonstrating that the cannabis was produced in the appellation of origin pursuant to section 8212 (d)(1) and (d)(5). Licensees are subject to inspection to determine compliance with applicable laws and regulations pursuant to Title 3 of the California Code of Regulations, section 8500(a). The Department determined that requiring inspection of petitioners is unnecessary.

Section 9106. Geographical Features.

Comment:

"According to the ISOR, Section 9106 was modified "to impose a requirement that more than one geographical feature be described in an appellation petition." However, not all geographic features that may present in a petitioning region

necessarily involve a causal link to the cannabis produced there. In fact, requiring each (and every) geographic feature to be incorporated into practices and standards could be impossible. A more workable requirement would be the identification of standard or practice requirements which act to preserve the causal link between one or more geographical features and the cannabis. On this basis, we recommend modifying the text to say, "at least one geographical feature." **[2002]**

Response: The Department rejects this comment. The proposed sections 9102(f) and 9106 are clear that the causal links only need to be described in a petition for each of the geographical features identified as both distinctive pursuant to section 9106(b) and reliably affecting cannabis pursuant to sections 9106(c) and 9106(d). Each example geographical feature identified in section 9106(a) does not need to be described, only those which are distinctive and affecting the cannabis.

Comment:

"Section 9106 pertaining to geographical features and causal links, should not require more than one geographic feature be described in a petition. In many cases one unique geographical feature combined with the right practices, people, and cultivars may be enough to differentiate that regions products from others." **[2005]**

Response: The Department rejects this comment. Cannabis appellations of origin are expected to represent to consumers strong connections between the place of production and the cannabis. Without imposing a requirement that multiple geographical features be included in an appellation petition, the Department might approve weak petitions based solely on a single geographical feature such as a minimum or maximum elevation described under section 9106(a)(5). The Department determined that the requirement to describe more than one geographical feature is appropriate to ensure that approved appellation petitions represent a strong connection between the

geographical area and the cannabis while maintaining the flexibility permitted to petitioners under section 9106(a) to describe the area. This will ensure that cannabis appellations of origin are meaningful to consumers.

Comment:

> “Causal Links Should Not be Required for All Geographical Features in a Region
>
> In our response to the draft regulations proposed on October 2, 2020, we emphasized concern regarding language that would enable an appellation to be established based on the reputation of a region alone. Such appellations would not be based on a causal link between place and product, but rather based on the reputation of a product in a specified geographical area.
>
> We appreciate the attention to these issues in the March 5, 2021 proposed regulations. We were especially glad to see that the most recent regulations propose striking references to "reputation" and "cultural features" in Section 9106, so that the causal link necessary to establish an appellation is based on terroir and not reputation.
>
> In addressing those issues, though, we're concerned another issue has been introduced in Section 9106(c), which now requires petitions to include: A description of the quality or characteristic of the cannabis which is essentially or exclusively caused by each geographical feature, including an explanation of how the geographical feature causes the cannabis to have that quality or characteristic. Similar language is included in 9106(d) as revised, requiring applicants to identify a standard, practice, and cultivar requirement that maintains a causal link between “each” geographical feature identified.
>
> The word "each" is our main concern. In our last round of comments, as well as the present public comment period, we suggest wording for 9106(c) which would require a causal link to be drawn based on "one or more" geographical features.

We're concerned that requiring a causal link to be established for at least five geographical features - climate, geology, soil, physical features, elevation, and potentially others - establishes a standard which will be difficult or impossible to meet.

We think a standard of "one or more" geographical features in Sections 9106(c) and 9106(d) is sufficient to establish a terroir-based causal link. Absent these amendments, we are concerned that the establishment of an appellation would become so onerous as to not be practical." **[2006]**

Response: The Department rejects this comment. The proposed section 9102(f) and section 9106 are clear that the causal links only need to be described in a petition for each of the geographical features identified as both distinctive pursuant to section 9106(b) and reliably affecting cannabis pursuant to sections 9106(c) and 9106(d). Each example geographical feature identified in section 9106(a) does not need to be described, only those which are distinctive and affecting the cannabis.

Comment:

"Geographical Feature(s) and Causal Link Section 9106, which covers geographical features and the standards, practices, and cultivar requirements, has been modified to require multiple geographical features including climate, geological information, soil features, physical features and elevation information that cause the distinctive cannabis characteristics, rather than only those that may be applicable to the petition at issue. Specifically, subsection (c) has been modified from requiring a description of the quality or characteristic of the cannabis that is essentially or exclusively caused by "the geographical feature" to requiring a description of "each geographical feature." Likewise, subsection (d) has been modified to require identification of at least one standard, practice or cultivar requirement which acts to preserve "the causal link between each geographical feature" and the cannabis." **[2002]**

Response: The Department acknowledges this comment. No modifications to the proposed regulations are necessary.

Comment:

"Terroir-Based Causal Link
We appreciate the revisions to Sec. 9106 clarifying that the causal link(s) are between the unique quality and characteristics of the cannabis and the natural environment in which it was produced. However, several of the new revisions appear to require that ALL natural features described in the petition be shown to contribute to the causal link. In the context of Sec. 9106(a), this means that an independent causal link claim would need to be established based on each of climate, geology, soil, physical features, elevation, and potentially other factors, which is an unnecessary requirement and an impossible burden of proof.
We recommend that Section 9106 be revised to require a description of the geographical features of the appellation area AND an explanation of how the area's distinctive geographical features affect the quality or characteristics of the cannabis grown there. Our proposed changes follow:

§ 9106. Geographical Features. The petition shall include ~~describe the distinctive geographical features affecting cannabis produced in the geographical area of the proposed appellation of origin, including:~~:
(a) A narrative description of the geographical features, including, but not limited to:

(1) Climate information which may include temperature, precipitation, wind, fog, solar orientation and radiation;
(2) Geological information which may include underlying formations, landforms, and such geophysical events as earthquakes, eruptions, and major floods;
(3) Soil features which may include microbiology and soil series or

phases of a soil series;

(4) Physical features which may include flat, hilly, or mountainous topography, geographical formations, bodies of water, watersheds, and irrigation resources; and

(5) Minimum and maximum elevations.

(b) Substantial evidence that the geographical area is distinctive when compared to areas outside the proposed boundary and to other relevant areas which produce cannabis for sale into the marketplace;

(c) A description of the quality or characteristics, of the cannabis which ~~is~~ are essentially or exclusively caused by ~~each~~ one or more distinctive geographical feature(s), including an explanation of how the distinctive geographical feature(s) cause the cannabis to have that quality or characteristic; and

(d) Identification of at least one specific standard, practice, or cultivar requirement which acts to preserve the causal link(s) between ~~each~~ one or more distinctive geographical features and the cannabis including;

(1) Description of the mechanism by which the requirement preserves or maintains the causal link; and

(2) A clear distinction between cultivation methods which are allowed and prohibited under each requirement." **[2007]**

Response: The Department rejects this comment. The proposed section 9102(f) and section 9106 are clear that the causal links only need to be described in a petition for each of the geographical features identified as both distinctive pursuant to section 9106(b) and reliably affecting cannabis pursuant to sections 9106(c) and 9106(d). Each example geographical feature identified in section 9106(a) does not need to be described, only those which are distinctive and affecting the cannabis.

Section 9107. Standard, Practice, and Cultivar Requirements.

Comment:

"We do not support the baseline requirement practices in Sec 9102(j) as being applicable to satisfying the Standard, Practice, and Cultivar requirements of Sec. 9107. We recommend that this section be revised to read: "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. The practices set forth in Section 9102(j) do not satisfy this requirement." **[2007]**

Response: The Department rejects this comment. The Department determined that Business and Professions Code section 26063(b)(1) imposes a requirement of at least one of each of standard, practice, and cultivar production requirements in a petition, but Business and Professions Code section 26063(c) does not specify that the production requirements it imposes are independent of those described in Business and Professions Code section (b)(1). Based on the foregoing, the Department has decided not to amend section 9107 as suggested.

Article 3. Petition Review Process

Section 9202. Notice of Final Decision on Appellation of Origin.

Comment:

"•Enhance transparency: CDFA should be required to provide reasons – that include responses to stakeholder comments – for final approval of an appellation of origin in§9202. Interested stakeholders should know that their comments are being fairly considered and that CDFA's decision was not arbitrary. The explanation would also provide guidance for future petitions and comments on cannabis appellations of origin. Our organizations appreciate CDFA adding the provision requiring CDFA to provide "all of the reasons" for petition denial, but

this requirement should extend to petition approval, including responses to public comments that were either accepted or rejected by CDFA in deciding to approve a petition." **[2001]**

Response: The Department rejects this comment. The Department determined the proposed regulation provides an appropriate balance between ensuring transparent and effective review of petitions and the amount of staff work time required to review petitions without unduly increasing the burden on licensees imposed by program fees.

Comment:

"Notice

We recommend that any notice of final decision be provided on the CDFA's website in order to provide stakeholders and the public notice. Currently, Section 9202(b)(3) only requires the CDF A to provide notice to the CAP mailing list." **[2002]**

Response: The Department rejects this comment. Section 9202(a) already specifies that the Department shall provide notice of final decision on its website. No further modifications to the proposed regulations are necessary.

Section 9203. Denial of Petition for Appellation of Origin.

Comment:

"Grounds for Denial of Petition

The modified proposed regulations contain Section 9203, a new section altogether that sets forth the grounds for the denial of a petition. As a preliminary matter, Section 9203 does not specify which evidentiary standard(s) or standard of review would apply to the CDFA's evaluation of a petition. Likewise, to date, it

is unclear whether and how the Administrative Procedures Act may apply in the processing and review of a petition. Before any final regulations are promulgated, the CDP A should provide further guidance on these points or include specifics within the regulations.

Subsection (g) provides that a petition may be denied for "any other reasonable cause submitted by the petition review panel, or through a public comment process, that the department determines would preclude the appellation from being established." Section 9203 should be modified to include a requirement that petitioners be given an opportunity to address and cure the deficiencies identified by the CDP A in its response.

If a petition is amended, and still denied, the standard should be that, on appeal, the applicant/appellant have the burden of producing substantial evidence that supports their position on the particular requirements not met. Once that burden is met, the state would then have the burden to prove, by a preponderance of the evidence, that their denial is justified. If the state does not meet their evidentiary burden, the application will be established." **[2002]**

Response: The Department rejects this comment. The Department has determined that specifying the evidentiary burden in section 9203 is unnecessary. Section 9203 references other subdivisions in this chapter that impose petition criteria including any applicable evidentiary burdens. Decision-making on appellation petitions by the Department is not subject to appeal. The proposed regulations specify the information necessary to qualify for a petition and the denial of the petition will inform the petitioning organization which part(s) of the petition did not meet the regulatory requirements. References to the Administrative Procedure Act also do not require modifications to the regulation text as the proposed regulations are specifying the process by which petitions are reviewed, approved, or denied.

Comment:

"We do not support Sec. 9203(b) which provides that a petition can be denied because "evidence is not sufficient to demonstrate that the proposed appellation name has been used in direct association with a cannabis production area pursuant to section 9104, subdivisions (b)(2) through (b)(4) of this chapter." While we support that an appellation of origin name should have historic ties to the delineated region, due to the history of cannabis prohibition we cannot support the requirement that the delineated name be tied specifically to cannabis production. Instead, the name should be tied to the region, as defined by the specified geographic boundaries of the proposed appellation." **[2007]**

Response: The Department rejects this comment. The proposed section 9203(b) does not require that the appellation name be tied specifically to cannabis production, only that the appellation name has been used in direct association with a cannabis production area. Section 9104(b)(2) describes a cannabis production area as "an area in which licensed cannabis cultivation exists." This does not establish a requirement of historical cannabis production, but imposes requirements that the proposed name is directly associated with the geographical area and that licensed cannabis cultivation exists in that geographical area at the time the petition is submitted.

Comment:

"Additionally, we do not support Sec. 9203(d) as written. This language currently requires that ALL geographical features are causally linked to the cannabis, which as mentioned above is an unattainable and unnecessary burden of evidence for the terroir based causal link of appellations of origin. We propose the following revised language: "No ~~P~~proposed geographical feature is ~~as described are not~~ causally-linked to the cannabis or the causal link(s) are not maintained according to the standards set forth in section 9106, subdivisions (c) and (d) of this chapter;" **[2007]**

Response: The Department rejects this comment. The proposed sections 9102(f) and 9106 are clear that the causal links only need to be described in a petition for each of the geographical features identified as both distinctive pursuant to section 9106(b) and reliably affecting cannabis pursuant to sections 9106(c) and 9106(d). Each example geographical feature identified in section 9106(a) does not need to be described, only those which are distinctive and affecting the cannabis.

Comment:

> "We recommend that 9203(g) be revised to read: Any other substantial evidence raised by the petition review panel or through the public comment process that the department determines would preclude the appellation from being established or amended." **[2007]**

Response: The Department rejects this comment. It is not clear what if anything the suggested language adds with respect to the possible basis for denying the petition. The Department is required to list all the applicable reasons why the petition was denied, which would include any other reasonable cause why the petition could not be established. The Department determined that because this is a nascent program, it is necessary to consider any reasonable cause for denial not anticipated by petition criteria but raised through the public comment process or by the petition review panel, otherwise the Department might be forced to approve an appellation petition over public or panel objections. Based on the foregoing, the Department has decided not to amend section 9203(g) as suggested.

Comment:

> "While we appreciate the introduction of the new Sec. 9203 ("Denial of Petition for Appellation of Origin") which outlines the grounds for denial, we still believe

that appellation petition processing constitutes rulemaking that should be governed by the APA. The department's decisions are rights that run with the land, and the department's decisions will establish precedents that affect cannabis cultivators and others in the cannabis business statewide." **[2007]**

Response: The Department rejects this comment. The proposed process for notifying and providing opportunity to comment on the appellation petition as specified in sections 9200 through 9203 provide adequate opportunity to address the concerns raised in the comment. Furthermore, these regulations make specific the statutory requirement for the Department to establish a process for licensed cultivators to establish appellations. Based on the foregoing, amending the regulations to require formal rulemaking is unnecessary.

Section 9204. Effective Dates.

Comment:

"We have concerns about the revised language in Section 9204(b) that states that the "use of trademarks containing an appellation of origin - including any similar name which is likely to mislead consumers as to the kind of cannabis ... " (emphasis added). We are concerned that the bolded language could include trademarks that are "similar" to appellations of origin and we would ask that this standard be further clarified. As there is already a need to phase out trademarks that use names that are identical to names of appellation regions, determining what trademarks are "likely to mislead" creates a standard that needs a standard. We previously suggested relying on the likelihood of confusion standard relied upon in assessing similarity under trademark law trademark infringement, which has a robust set of precedents to analyze. We would suggest the CDF A consider the standard "likely to mislead" be replaced with "intentionally

misleading to consumers." This is a higher standard that would avoid capturing trademarks that are inadvertently similar to the appellation and would instead focus on marks intentionally trying to to mislead consumers as to the source of the cannabis.

Further the phrase "kind of cannabis" is vague and subject to misinterpretation. Appellations relate to a geographic source rather than a kind of cannabis, which could be interpreted as to whether the cannabis is indica, sativa, or hybrid, whether it is an edible, smokable, or topical, whether it is Blue Dream or some other strain. The phrase "kind of cannabis" doesn't even suggest anything related to geographic origin.

Considering the foregoing, we recommend that the wording of "which is likely to mislead consumers as to the kind of cannabis" be changed to "which is likely to intentionally mislead or confuse consumers as to whether the cannabis originated within the appellation." Our belief is that this is more accurate as to the concern of how a consumer might be confused or misled." **[2002]**

Response: The Department rejects this comment. Business and Professions Code section 26063 identifies cannabis production origin designations that are expressly protected against misuse "including any similar name that is likely to mislead consumers as to the kind of cannabis" in the California cannabis marketplace. "Kind" is defined in Business and Professions Code section 26001(v) to include "origin" and "production area designation:"

> "(v) "Kind" means 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."

Comment:

"The proposed amendments to Section 9204 have unforeseen consequences for owners of registered trademarks that must be considered. Section 9204(6) (1) & (2) requires use or registration of the potentially similar or misleading marks prior to February 21, 2020. While it is clear the intent is to use this date as a one year phase out period from the notice of final decision to establish the appellation of origin, we have two concerns:

First, it is possible that trademark applications will be filed with the California Secretary of State and/or United States Patent and Trademark Office ("USPTO") after this date. Any such trademarks may have validly been used in commerce from the date of filing or before that date . The proposed language in the regulation could render any such trademarks (including the then pending applications or registrations) void--surely that cannot be the intended outcome of the proposed regulation. Take for example, a trademark is validly registered February 22, 2020 and then on January 1, 2030, an appellation is granted notice of final decision to establish the appellation which is the same name as the trademark registered on February 22, 2020. When would the owner of that trademark have to stop use? Would the otherwise valid trademark registration have to be surrendered? As it stands, it is unclear if the mark would have a one-year phase out period or if it would have to be abandoned immediately." **[2002]**

Response: The Department rejects this comment. Approval of a cannabis appellation of origin as a designation of the geographical production origin of cannabis pursuant to the proposed regulation chapter 2 does not constitute a challenge to or conflict with any trademark right. Limitations imposed by the MAUCRSA and implementing regulations upon the use of trademarks on cannabis must be met as a condition of licensure to conduct commercial cannabis activity in California. One such limitation is the inability of cannabis licensees to place cartoons on their labels pursuant to Business and Professions Code section 26120(b) as clarified in Title 16 of the California Code of Regulations section 40410(b). Business and Professions Code section 26063(b) specifies that appellations of origin are protected against any use on cannabis that is

likely to mislead consumers as to its geographical production origin, which is consistent with the prevention of registration of trademarks which are deceptively misdescriptive of the geographical origin of the good pursuant to Title 15 of the U.S. Code section 1052(e).

Comment:

> "In Section 9204(b)(3) there is a requirement for "documentation of compliance" for trademark use or registration. This wording is vague as to whether a trademark registration certificate from the Secretary of State (or the USPTO) would be sufficient to establish compliance or if additional evidence would be required by a trademark holder. We recommend indicating what types of evidence would be sufficient to meet this requirement, for example, at least that a state trademark registration (or federal registration) could satisfy the requirement." **[2002]**

Response: The Department rejects this comment. The proposed section 9204(b)(1) requires that for relief the trademark must have been filed prior to February 21, 2020. Trademark registration certificates from the California Secretary of State and United States Patent and Trademark Office include information on the date the trademark was filed or registered. Further, trademark registrations are granted only after an application for registration has been filed with the California Secretary of State or United States Patent and Trademark Office. These are one type of record which would clearly demonstrate compliance with section 9204(b)(1), and as such the suggested modification to the regulation is unnecessary.

Comment:

> "5. Geographic Trademark Sunset
>
> We appreciate the agency's revisions to Sec. 9204 which further clarify the penalties for the misuse of an appellation of origin.

We recommend that Section 9204(b)(1) be revised to read: “The trademark was filed with the California Secretary of State or the United States Patent and Trademark Office for use on cannabis prior to February 21, 2020.”

In a similar vein, we recommend that Section 9204(b)(2) be revised to read: “The trademark was used on cannabis prior to February 21, 2020.”

These two changes will clarify that the filing and use of a trademark for cannabis services and for goods other than cannabis do not qualify under this section. **[2007]**

Response: The Department disagrees with this comment. The Department has determined the proposed regulation in section 9204(b)(2) specifying that the trademark was used in the California commercial cannabis marketplace to be sufficient. The commercial cannabis marketplace does not include goods that are not defined as “cannabis” pursuant to Business and Professions Code section 26001(f) and the term “trademark” does not include service marks. Based on the foregoing, the suggestions made in the comment would not increase the clarity of the regulation, which already clearly excludes services and goods other than cannabis.

Article 4. Petition Review Panel

Section 9300. Establishment of the Petition Review Panel.

Comment:

“We appreciate the addition of Sec. 9300(c) which mandates that The Petition Review Panel submit a charter to the department in January of each odd-numbered year for approval in order to continue in effect.” **[2007]**

Response: The Department acknowledges this comment. No modifications to the proposed regulations are necessary.

Section 9301. Membership of the Petition Review Panel.

Comment: Remove the requirement in section 9301(c) that members of the Petition Review Panel be residents of California. **[2002, 2005]**

Response: The Department has decided not to accommodate this comment. Observed advisory bodies to the Department described in statute specifically limit seats to California residents. As such, the Department determined it was reasonable to require a similar California residency limitation in the proposed regulations for the Panel.

Comment:

> "Selecting Panelists
>
> Sec 9301(d) has been revised to read: "Members of the panel shall have relevant experience in geography, cannabis cultivation, intellectual property, sustainable agriculture, community-based research, or other areas determined appropriate by the department."
>
> We reiterate our previously submitted concern that petition review panelists should be subject matter experts, not simply individuals experienced in a given field." **[2007]**

Response: The Department rejects this comment. The Department is unaware of certifications, collective mark registrations, or other official recognition of persons as "subject matter experts" in the general fields of study and experience listed in section 9301(d), but the Department would consider these during review of nominations to the panel. As such, it would be impractical for the Department to evaluate whether the information provided on nominees' experience in these areas meets some subjective concept of expertise when making appointments to the panel. Appellation Petition

Review Panel members serve as subject matter experts on recommendations regarding proposed appellation petitions by using their experience in fields related to cannabis appellation of origin development and implementation or in other areas determined appropriate by the Department. Based on the foregoing, amending the proposed regulation according to the suggestion is unnecessary.

Comment:

> "We do not support the most recent revision of 9301(d) that replaces the term "necessary" with "appropriate". The petition review panel and the requisite expertise within the Petition Review Panel are in fact necessary to the proper functioning of the program and the review of petitions for evidence of terroir-based causal link(s) pursuant to the passage of SB 67." **[2007]**

Response: The Department rejects this comment.. As a nascent program, the Department determined that the flexibility to determine appropriate areas of experience for panel members is necessary to establish the panel and to appoint new members. The modification of "necessary" to "appropriate" referring to "other areas" does not indicate that the panel itself nor the listed general fields of related study and experience are unnecessary.

Comment:

> "Given the addition of soil criteria to petition requirements, we recommend the addition of an expert in soil science to the petition review panel." **[2007]**

Response: The Department rejects this comment. The example geographical features listed in section 9106(a)(1)-(a)(5), including soil science, all refer to related fields of study within geography. The proposed section 9301(d) already indicates that geography is one of the types of experience which will be considered by the Department when

appointing members to the panel. Based on the forgoing, amending section 9301(d) to include soil science would be duplicative and unnecessary.

Comment:

> "The following revision to Sec. 9301(d) addresses our concerns: "Members of the panel shall have ~~relevant experience~~ expertise in ~~geography~~ cannabis cultivation, cannabis botany, soil science, natural sciences, ~~intellectual property,~~ sustainable agriculture, geographical indication law, cultural anthropology, community-based participatory research, or other areas determined by the department to be necessary ~~appropriate~~ for the review of petitions." **[2007]**

Response: The Department rejects this comment. As a nascent program, the Department determined that the flexibility to appoint panel members provided by broadly describing experience requirements for panel members is necessary to establish the panel and to appoint new members. The Department is unaware of certifications, collective mark registrations, or other official recognition of persons as "subject matter experts" in the general fields of study and experience listed in section 9301(d), but the Department would consider these during review of nominations to the panel. As such, it would be impractical for the Department to evaluate whether the information provided on nominees' experience in these areas meets some subjective concept of expertise when making appointments to the panel. The commenter's suggestions to restrict "geography" and "intellectual property" to the narrower "soil science" and "geographical indication law" would unduly limit the Department's authority to appoint panel members, and also would reduce the clarity of the regulation by directly conflicting with the suggestion to add the impractically broad and duplicative "natural sciences." The addition of "cannabis botany" would not increase the clarity of the regulation and could be considered to be duplicative of the existing "cannabis cultivation." The included "community-based research" is not a specific reference to Community-Based Participatory Research (CBPR) but is instead a broad term including

both research based on communities (such as “cultural anthropology”) and research based in and involving communities (such as CBPR). As such, the suggested addition of “participatory” would be more restrictive and the addition of “cultural anthropology” would be duplicative. The use of “appropriate” referring to “other areas” in section 9301(d) does not indicate that the panel itself nor the listed general fields of related study and experience are unnecessary. Section 9302(a) specifies that the panel has a duty to provide a recommendation to the Department on a pending appellation petition, which would require review of the pending appellation petition, and as such specifying that the other areas of experience of the panel determined appropriate by the Department are “for the review of petitions” would not increase the clarity of the regulation. Based on the foregoing, the suggested modifications to the regulation are unnecessary.

Comment: Set aside funds to reimburse members of the Petition Review Panel. **[2006, 2007]**

Response: The Department cannot accommodate this comment. The Department lacks statutory authority to reimburse members of the Petition Review Panel.

Comment:

> “The review panel would benefit from greater participation by cannabis cultivators who can provide the agency and the review panel with a deeper understanding of the profound diversity of cannabis products, cultivation practices, standards, and cultivars.
>
> For this reason, we reiterate our recommendations that (1) the number of cannabis cultivator 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.” **[2007]**

Response: The Department rejects this comment. With a nascent industry such as legal cannabis cultivation and with the proposed CAP being the first cannabis appellation of origin program in the world, the Department has determined that the flexibility the current proposed language provides is necessary for effective administration of the Program. The proposed section 9301 does not impose a limitation on the number of panel members having experience in cannabis cultivation, so modifying the proposed regulation according to the commenter's suggestion to expand "the number of cannabis cultivator seats" is unnecessary. The five general fields of relevant experience in section 9301(d) are not reserved by the proposed regulation to distinct members of the panel; some members of the panel may have experience in several of these fields, in various specializations within them, or in other areas determined appropriate by the Department. Based on the foregoing, the Department determined that imposing specific membership term limits based on the experience a member holds as suggested by the commenter would be unnecessary.

Comment:

> "•Broaden Review Panel Composition and Responsibilities: The Petition Review Panel in §9301 should be modified to limit the cannabis industry to no more than three members. CDFA did recognize our comment on expertise of the Petition Review Panel by adding "or other areas determined appropriate by the department" at the end of §9301(d). However, this still allows for the review panel to be heavily dominated by cannabis industry representatives with potential conflicts of interest. The composition of the review panel is particularly important as CDFA builds internal expertise in reviewing appellation petitions. Additionally, the panel should be required to provide an analysis detailing the specific reasons for the recommendation to approve or deny a petition. The panel's recommendation and analysis should be made public, and the public should be given an opportunity to comment on the recommendation and analysis. To allow

for meaningful public comment, we recommend at least 45 days, which can be built into the petition comment period. This can be achieved by modifying the petition comment period to be the greater of 90 days or 45 days after the Review Panel's recommendations and reasoning are published, subject to further extension upon a reasonable basis. Again, comments should be made part of the record, and CDFA should be required to respond to public comments that were either accepted or rejected." **[2001]**

Response: The Department rejects this comment. The Department observed many similar advisory panels composed almost entirely of representatives of industry and so determined that it is not necessary to impose a limit in regulation on the participation of the cannabis industry. The proposed section 9302(c) already requires panel members to recuse themselves from contributing to the panel's recommendation on a petition if they have a conflict of interest, which addresses the commenter's concern. A 90-day period is provided in section 9201(a) in which the public may provide comment that the Department will consider in making its decision on an appellation petition. The Department determined that this public comment on the appellation petition is necessary for effective petition review, but it is unclear what utility, if any, would be provided by public comment on a recommendation from the panel. The proposed section 9202 requires the Department to include all of the reasons for denial in a notice of final decision to deny a petition, including any reasonable cause submitted by the petition review panel or through the public comment process that the Department determines would preclude the appellation from being established or amended pursuant to section 9203(g). This requirement already provides that the petitioner will be informed of why the petition was denied so they can correct it if they choose to resubmit the petition. Based on the foregoing, the Department determined that the commenter's suggestions to modify the public comment period in regulation for the purpose of allowing public comment on panel recommendations are unnecessary. The Department determined that requiring the Department to respond to all comments on an appellation petition is unnecessary and that the proposed regulation in section 9202(b) provides an

appropriate balance between ensuring transparent and effective review of petitions and the amount of staff work time required to review petitions without unduly increasing the burden on licensees imposed by program fees.

Comment:

> "There is no formal process for nominating the Petition Review Panelists. This process should be defined in the regulations. We recommend that outdoor cultivation licensees be entitled to nominate panelists or to serve on the panel. Those panelists would recuse themselves from any discussion of a petition for an appellation in which they have a licensed farm." **[2007]**

Response: The Department disagrees with this comment. A formal process for nominations is not necessary because this is a nascent program and the Department wants the flexibility to accommodate all forms of nomination. As proposed the regulations would allow outdoor cultivators to nominate panelists and serve on the panel. Furthermore, section 9302(c) of the proposed regulations would require panelists with an interest to recuse themselves from participating in the recommendation. Based on the foregoing, no amendments to the proposed regulations are necessary.

C. Responses to General, Miscellaneous, and Irrelevant Comments Received for the Second 15-day Comment Period, Grouped According to Subject Matter

General Comments - Background

Comment: Some commenters provided background information on themselves, their business, or their organization. **[2001, 2002, 2005, 2006, 2007]**

Response: The Department acknowledges these comments. However, they are too generalized or too personalized so that no meaningful response can be formulated to refute or accommodate the comments.

Miscellaneous Comments

Comment:

> "I am writing to comment on the regulations being developed for cannabis appellations of origin. Clearly we are supporters of that concept and support cannabis AVA's. However, there has been proven conflict and damage (Santa Barbara County) when cannabis growing farms are in close proximity to vineyards. We'd like to see a regulation that states that no cannabis growing operation or appellation can be located within TBD miles of an already established winegrape AVA. There are issues with drift of the various chemicals each grower uses, strong, unpleasant smell from the cannabis and probably other problems. The Santa Barbara Vintners group likely has some data on this that could assist in developing a boundary regulation." **[2004]**

Response: The Department acknowledges this comment. Authority over the proximity of cannabis cultivation to other land uses is provided to local municipal governments pursuant to Business and Professions Code sections 26054(b) and 26055(d)-(h). Authority to develop guidelines for the use of pesticides in the cultivation of cannabis is granted to the Department of Pesticide Regulation by Business and Professions Code section 26060(d). Based on the foregoing, the Department determined that imposing proximity limitations on licensees would be unnecessary and outside the scope of the CAP.

Comment:

> “the cannabis culture and industry existed in California for 30 years before these regulations. many of the communities are well known appellations in cannabis history culture nomenclature and people worldwide are familiar with them as well as have been published in numerous articles magazines and newspapers world wide for decades. These communities having been affected financially by the war on drugs have now become marginalized by these new regulations making financial and legislative barriers to entry for these already existing communities and operators who have come out of the shadows been taxed and have jumped through countless hoops to meet state regulations which are applied only to cannabis not any other agricultural crop.
>
> Please provide for legacy communities and farming areas within the states existing budget at no additional cost to already overtaxed participants in this broken system built for factory farming. these legacy farms provide crucial links in nature needed today. Utilize state tax money to provide grants to qualified members of existing appellations of origin.” **[2003]**

Response: The Department rejects this comment. Under the proposed regulations, approval of an appellation of origin is not required for any businesses to conduct commercial cannabis activity, and therefore the proposed regulations do not impose any “barriers to entry.” Further, the comment does not provide any specific suggestions for the proposed regulations, so the Department is unable to meaningfully respond or make changes to the regulations. Regarding the suggestion in the last sentence of this comment, the Department lacks statutory authority to provide grants to licensees through the CAP, and no cannabis appellations of origin have yet been approved.

Comment:

"An Adequately-Resourced Petition Review Panel is Necessary to Review Petitions

Under a terroir-based framework, it is essential that appropriate expertise is involved to evaluate petitions for the substance of their causal link claim and for the inclusion of standard, practice, and cultivar criteria. Appellations are not solely, or even primarily, cultural markers: they are based on human factors but also scientific determinations, based on hard data and evidence that establishes a causal link between product and place." **[2006]**

Response: The Department rejects this comment. The Department lacks statutory authority to reimburse members of the Petition Review Panel. The Department is unaware of certifications, collective mark registrations, or other official recognition of expertise in the general fields of study and experience listed in section 9301(d), but the Department would consider these during review of nominations to the panel. As such, it would be impractical for the Department to evaluate whether the information provided on nominees' experience in these areas meets some subjective concept of expertise when making appointments to the panel. Further, the comment does not provide any specific suggestions for the proposed regulations, so the Department is unable to meaningfully respond or make changes to the regulations.

Comment:

"Comments Pursuant to Implementing Senate Bill 67 (McGuire 2020)

On September 30th, 2020, Governor Newsom signed Senate Bill 67, establishing CAP as the world's first terroir-based cannabis program. SB 67 ensures that appellations established through CAP are premised upon evidence of terroir-based causal link(s) between the qualities or characteristics of the cannabis and the geographical area in which it was produced, including human and natural factors. This is accomplished through the introduction of the following statewide

qualifying criteria for appellation approval in Business & Professions Code 26063(c):

An appellation of origin shall not be approved unless it requires the practice of planting in the ground in the canopy area and excludes the practices of using structures, including a greenhouse, hoop house, glasshouse, conservatory, hothouse, and any similar structure, and any artificial light in the canopy area.

The recently revised regulations strengthen the premise of terroir-based causal link in a number of ways, but they also present challenges that undermine the successful implementation of this fundamental premise.

Because of the critical importance of this state-legislated terroir baseline for cannabis appellations, we have organized our comments regarding a number of related subtopics under this overarching topic." **[2007]**

Response: The Department acknowledges this comment. The proposed section 9102(j) already clarifies the requirement in Business and Professions Code section 26063(c) which was added by SB 67. Further, the comment does not provide any specific suggestions for the proposed regulations, so the Department is unable to meaningfully respond or make changes to the regulations.

Irrelevant Comments

Several comments received during the second 15-day comment period included parts that were not specifically directed at the modifications to the proposed regulations announced by the Department on March 5th, 2021 with the second 15-day comment period, or at the procedures followed by the Department in proposing or adopting these regulations.

Response: The Department is not required to respond to the following comments submitted during the public re-notice period as they do not specifically relate to the changes to the regulation text announced during the re-notice period, pursuant to

Government Code section 11346.8(c). The comments that these comments repeated were addressed in the response to 45-day comments in Part III of this FSOR (Comment Summaries and Responses, 45-Day Comment Period) or in the response to the first 15-day comments in Part IV of this FSOR (Comment Summaries and Responses, First 15-Day Comment Period) pursuant to Government Code section 11346.9(a) and (a)(3). Government Code section 11346.9 directs the Department to include its responses to related comments in "a final statement of reasons."

Comments:

One comment included a section titled "Outstanding Comments Not Yet Addressed by CDFA" with an introduction of:

> "The following topics and comments were not addressed by the agency in the revised proposed regulations or the ISOR. As stated in the introduction, we expected an explanation, as required by Government Code 11346.9, of why the agency rejected these comments. These comments address critical issues that we believe will impact the integrity and success of CAP. They are presented in order of priority to our stakeholders."

The content of this comment section is summarized below.

Regarding consensus, the commenter recommended:

- the Department require the support of a majority of the qualifying cultivator licensees within a proposed appellation for a petition to be considered complete.
- 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, be entitled to only one vote.

- all outdoor licensees within the proposed boundaries be entitled to vote, regardless of cultivation practices.
- groups petitioning for nested appellations or amendments to an established appellation be required to demonstrate majority support for the proposals by the licensed outdoor cultivators within the appellation boundaries.

Regarding other issues, the commenter recommended:

- adoption of an official state-designed logo or seal for county, city, city and county, and appellation of origin designated products
- adoption of a more expansive definition of practice that includes a wider range of activities, including without limitation “cultivation,” “land management,” and “business practices.”
- amending section 9107(d)(1) to clarify that “a prohibited practice by itself does not satisfy this requirement; a list of both mandatory and prohibited practices, however, would qualify.”
- that a certifier in good standing should be allowed to substantiate practices and cultivars, in addition to standards.
- amending section 9105(b) to prohibit appellations of origin “based solely on the political entity lines of a single county or counties.”
- enforcement of established appellations by CDFA through site inspections and audits of the cultivators using an appellation designation.
- no overlapping appellations be allowed.
- a single petition be allowed to propose multiple appellations that are nested within one another, with only one filing fee required.
- CDFA establish a searchable database for approved appellations and petitions under review. **[2007]**

“The second concern is related to rights granted by trademarks that have been registered with the United States Patent and Trademark Office ("USPTO"). Consider a particular geographic designation outside of California that happens to be identical to a California appellation. The right granted by the federal registration would have a superior claim and the CDF A would appear to lack the authority to direct that the trademark registration (or pending application), be abandoned even if CDF A retains the authority to demand cessation of use of the mark within the state of California. In the event this proposed regulation is challenged in federal court, the authority of the state regulators overseeing state-specific appellations of origin will be tested as a novel issue. As the federal government currently does not acknowledge appellations of origin, and regards cannabis as a Schedule 1 substance, we believe this would cause a serious issue for enforcement for the CDF A. We point this issue out not to resolve it at this time but to identify for CDF A the potential future limitations on enforcement of California's appellations program and naming designations against federal registrations. We recommend that the CDFA encourage all petitioners to do an initial screening for existing federal trademarks and seek federal registration prior to filing the petition to avoid potential federal conflict.” **[2002]**

“Agency Consolidation
In our prior comment, we suggested that the implementation of the CAP be postponed one year to January 2022 due to the looming challenges of agency consolidation. To that end, we currently recommend that the CDF A begin accepting appellation petitions at a date no earlier than January 1, 2022 in order to provide stakeholders, advocates and third parties sufficient time to review the anticipated final regulations and to prepare accordingly.” **[2002]**

"Draft regulations propose that CDFA "may" establish a Petition Review Panel, but this panel is not required in current regulation. We are concerned that, without a mandatory Petition Review Panel that is established and appointed before the agency receives petition submissions, there will not be sufficient structure in place to ensure that appellation petitions are of high quality and express defensible causal links." **[2006]**

"Given the common use of geographic trademarks for cannabis brands, particularly those that include the names of regions renowned for cannabis production, we reiterate the recommendation that CDFA notify all cannabis licensees in California of notices of proposed action and final determinations on petitions, both those to establish an appellation and to amend an appellation." **[2007]**

VI. COMMENT SUMMARIES AND RESPONSES, THIRD 15-DAY COMMENT PERIOD

Pursuant to Government Code section 11346.9(a)(3), the Department summarized and responded to the objections and recommendations directed at the third 15-day modifications or the process by which they were proposed and adopted. Direct quotes of comments are shown using block-indentation and quotation marks.

The Department received five comments during this rulemaking. Due to the length of some comments, many parts of which overlapped and asserted the same points for varying reasons, some parts of comments were grouped together to provide as uniform and concise a response as possible. Despite this, some duplication in the responses was inevitable.

A. List of Commenters for the Third 15-Day Comment Period

The comment summaries and responses for the regulatory text as originally noticed are first organized by chapter (1-2), then by article (1-7 and 1-4 respectively) and further organized by proposed regulation section. General comments are organized by subject matter, followed by miscellaneous, and irrelevant comments.

The number designation following each comment summary identifies the written letter/email where the comment originated, numbered in order of receipt by the Department (numbered 3001 through 3005).

ID Number	Name	Organization
3001	John Peters	NorCal Kronic
3002	Kenzi Riboulet-Zemouli	Assemblée Nationale of France
3003	Tim Schmelzer	Wine Institute
3004	Christopher Davis	International Cannabis Bar Association
3005	Genine Coleman	Origins Council

B. Comments and Responses Related to Modifications of Chapter 1, Articles 1 through 7 and Chapter 2, Articles 1 through 4 Announced on June 3, 2021.

CHAPTER 1. CANNABIS CULTIVATION PROGRAM

Comments Opposing the Proposed Modifications to Chapter 1

Several comments received during the third 15-day comment period included opposition for rescinding the modifications to chapter 1. While comments vary slightly, the response to the following comments remains the same. For this group of comments and

for ease to the reader, all respective comments are quoted or summarized before one single response.

Comments:

"Wine Institute and the Napa Valley Vintners oppose the June 3, 2021, modifications to the proposed regulations for the Cannabis Appellation Program. CDFA proposes to rescind all of the modifications to Chapter 1 of its Cannabis Cultivation regulations despite the extensive review and effort of both CDFA and industry stakeholders that contributed to the development of those revised regulations. Among other things, the rescission of the modifications to Chapter 1 would eliminate the meaningful and robust enforcement and penalty provisions added in the previous modifications issued on March 5, 2021. As discussed below, there is no good reason for the June 3, 2021 modifications, and we respectfully request that CDFA reinsert the enforcement and penalty provisions together with the other previously noticed modifications." **[3003]**

"CDFA does not provide any policy reasons for rescinding the modifications that strengthen and improve the enforcement and penalty provisions, and, in fact, seems to support the policy of strengthening and improving those provisions,

Apparently, CDFA is taking this action based on the potential passage of a proposed Budget Trailer Bill that has yet to be introduced. The Third Addendum to the Initial Statement of Reason states that the removal of the changes in Chapter 1 are due to anticipated amendments to Business and Professions Code division 10, potentially creating a situation where CDFA "may" not have the authority to make changes in Chapter 1. However, these statutory changes may not come to fruition, or the changes may specifically adopt CDFA regulations as discussed below. Either way, CDFA should not be making regulatory decisions based on uncertain legislative action.

Under existing statutory authority, CDFA has jurisdiction over cannabis cultivation licensing and has the authority to pass and implement changes to Chapter 1. CDFA should continue to include these changes as part of the overall Cannabis Appellation Program since these changes are integral to the program's success and CDFA has the authority.

Furthermore, the Department of Cannabis Control Budget Trailer Bill, as proposed on the Department of Finance website, specifically adopts previously approved CDFA regulations and states they shall remain in effect and be fully enforceable. New Business and Professions Code Section 26010.7(c), as drafted in the proposed Budget Trailer Bill states:

> "Any regulation, order, or other action adopted, prescribed, taken, or performed by the Bureau of Cannabis Control, the State Department of Public Health, or the Department of Food and Agriculture under this division in effect immediately preceding the operative date of this section shall remain in effect and shall be fully enforceable unless and until readopted, amended, or repealed, or until they expire by their own terms, and shall be deemed to be a regulation, order, or action of the Department of Cannabis Control. On and after the operative date of this section, any proposed regulation noticed by, or submitted to the Office of Administrative Law by, the Bureau of Cannabis Control, the State Department of Public Health, or the Department of Food and Agriculture under this division, shall be deemed to be a regulation noticed by or submitted by the Department of Cannabis Control."

As such, even if the proposed Budget Trailer Bill is to pass, the changes made by CDFA will remain in effect. Since the Chapter 1 changes are vital to the success of the overall Cannabis Appellation Program, they should remain part of this regulatory package. If CDFA's statutory authority changes via legislation, then at that time CDFA can determine whether it needs to adjust its regulations. As

noted above, if the Budget Trailer bill passed in its current form, CDFA would not need to do anything because its regulations would be automatically adopted by its successor agency. In any event, CDFA certainly should not rescind its carefully developed regulatory modifications just because of something that may happen. **[3003]**

"For these reasons, we must respectfully oppose the modified draft regulations dated June 3, 2021, and request that CDFA reinsert the deleted provisions of Chapter 1 and reconsider our outstanding concerns related to transparency and the review panel. Our organizations are appreciative of CDFA's continued work to make this a robust and fair program. However, the latest modifications go in the wrong direction, and our organizations must oppose." **[3003]**

"In our initial review of the proposed modified regulations, we noted that several key sections of the proposed regulations have been altogether eliminated and struck from the current set of proposed regulations, namely, the definition of appellation of origin, Sec. 8000(b); Sec. 8212 regulations on advertising, marketing and labeling; Sec. 8212.2 notice of use of appellation of origin; Sec. 8601 and 8602 administrative actions on marketing and labeling; and Sec. 9203-9204 effective dates (a section addressing trademarks and sunset period) ("Deleted Proposed Regulations"). Our prior three rounds of public comment included in depth discussions of these respective sections. To that end, we note that the CDFA anticipates that upcoming 2021-2022 consolidation of the original three California cannabis agencies (BCC, CDFA, CDPH) into the Department of Cannabis Control (the "Consolidation") may limit the ability of the agency to promulgate and/or enforce the particular respective regulations which have been struck indicated by the commentary in the current Addendum to the Initial Statement of Reason ("ISOR").

Given the current procedural history and attendant uncertainty that Consolidation will pose, we hold deep concerns for the future of the CAP program. In short, we

do not know what Consolidation will look like or how much, if any, of the Deleted Proposed Regulations will be reintroduced upon Consolidation. While we cannot speak to the potential future regulations, we can attest that unless these Deleted Proposed Regulations are incorporated into the CAP, we anticipate there will be serious issues with the scope, structure and enforcement of the CAP, including a clear set of expectations for appellation petitions." **[3004]**

"Packaging and Labeling

We understand that the CDFA may lack the statutory authority to make changes to the various sections touching upon packaging and labeling. If packaging and labeling standards are not included in the CAP, there is strong potential for consumer confusion and unfair and deceptive marketing practices. **[3004]**

"CAP Revisions Based on Anticipated Legislation

Governor Newsom's fiscal year 2021-2022 budget proposal includes a proposal 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 (DCC), operational by July 1st, 2021. Under the proposal, the California Department of Food and Agriculture (CDFA) will retain the Cannabis Appellations Program. This proposal is currently being considered by the legislature.

The modified Initial Statement of Reason references this proposed consolidation as the rationale for almost all of the June 3rd revisions to the proposed regulations:

> *The Department anticipates amendments to Business and Professions Code division 10, which if passed, would transfer authority to create and modify cannabis cultivation licensing regulations from the California Department of Food and Agriculture (CDFA) to the Department of*

Cannabis Control. The authority to establish a process by which licensed cultivators may establish appellations of origin remains with CDFA. In response to these proposed statutory changes, the Department is amending the regulations to extract all proposed modifications in Chapter 1, resulting in no changes being made to the current regulation language in Chapter 1 and to remove section 9204 from Chapter 2 as this section is cultivation licensing regulation.

Based on this rationale, the revised regulations propose to strike language regarding fundamental components of the program, including sections that pertain to:

- The definition of appellations of origin
- Advertising, marketing, packaging and labeling
- Notice of use
- Record retention and reporting requirements
- Enforcement and fines
- Effective dates
- Trademark conflicts

These provisions are fundamental to the function and integrity of CAP. These provisions have evolved considerably since the initial draft regulations were published on February 21st of 2020, as a result of the cumulative efforts of CDFA to respond to robust stakeholder input to the initial proposal and the two subsequent revisions to the package.

Legal Research Regarding the Necessity of Proposed Revisions

Our research did not reveal any provisions within CA Government Code, CA Code of Regulations, or OAL guidance that require or permit an agency to refrain from enacting regulation when it merely ***anticipates*** that a new law will take away that agency's rulemaking authority. The CA Govt. Code requires the OAL to

review, and if necessary, reject agency's proposed rules if they conflict with ***existing*** statutes or if there is no ***existing*** authority under California law. Examples:

- CA Govt. Code § 11349.1(b): "In reviewing proposed regulations for the criteria in subdivision (a), the office may consider the clarity of the proposed regulation in the context of related regulations ***already in existence***."
- CA Govt. Code § 11349(d): " 'Consistency' means being in harmony with, and not in conflict with or contradictory to, ***existing*** statutes, court decisions, or other provisions of law.
- CA Govt. Code § 11349.8(a): "If the office is notified of, or on its own becomes aware of, an ***existing*** regulation in the California Code of Regulations for which the statutory authority has been repealed or becomes ineffective or inoperative by its own terms, the office shall order the adopting agency to show cause why the regulation should not be repealed for lack of statutory authority and shall notify the Legislature in writing of this order."

There is nothing, however, that says that a proposed rulemaking should be rejected or delayed simply because the rulemaking agency or the OAL ***anticipates*** a new law being passed. Simply stated, we see no legal basis for CDFA to refrain from mandated rulemaking when rules are ***not yet in existence***, i.e., merely anticipated, especially when existing law (CA Business & Professions Code §26063(b)) requires the agency to establish certain cannabis cultivation licensing regulations by January 1, 2021. There is currently no ***existing*** law that conflicts with this mandate or removes CDFA's authority to establish such regulations. Indeed, the proposed trailer bill currently at the legislature may never be passed in the form the CDFA is expecting. Therefore, we do not believe the CDFA has a sound legal basis for abdicating its rulemaking responsibility by

deleting large portions of the proposed regulations; instead, CDFA should proceed with the present rulemaking as required by statute." **[3005]**

Response: The Department cannot accommodate the preceding quoted or summarized comments opposing the proposed modifications to chapter 1. The Department no longer has the authority to create and modify cannabis cultivation licensing regulations. Because of this, the Department lacks the statutory authority to make the initially proposed changes to the licensing regulations in chapter 1. The Department of Cannabis Control, not CDFA, is the only agency that has authority to make and enforce cannabis licensing regulations including cannabis origin advertising, marketing, packaging, and labeling requirements. CDFA has authority to establish a process by which licensed cultivators may establish cannabis appellations of origin pursuant to Business and Professions Code section 26063(b). This process of review and decision-making on appellation petitions is described in chapter 2 of the proposed regulations as the Cannabis Appellations Program (CAP). Labeling, advertising, recordkeeping, and enforcement regulations are a necessary part of licensing regulations to communicate to licensees what requirements must be followed, but are not necessary to the program for review and decision-making on appellation petitions.

CHAPTER 2. CANNABIS APPELLATIONS PROGRAM

Article 3. Petition Review Process

Section 9204. Effective Dates.

Comment:

"Trademarks
We understand the CDFA may lack the statutory authority to make changes to this section, but we believe the current proposed regulations, absent the

language in the Deleted Proposed Regulations, makes this section wholly unenforceable. The ability for petitioners to have a legal right to enforce the appellation name is essential for the success of petitioners and to provide clarity to consumers about the nature of the cannabis cultivated in the appellation." **[3004]**

Response: The Department cannot accommodate this comment. The Department no longer has the authority to enforce cannabis cultivation licensing regulations and by extension exempt licensees from being subject to enforcement. Because of this, the Department determined that it would be inappropriate to include section 9204 in the proposed regulations, which would specifically direct the Department as to the enforcement of cannabis licensing regulations over which it lacks statutory authority. The Department of Cannabis Control, not CDFA, is the only agency that has authority to make and enforce cannabis licensing regulations including labeling requirements using origin designations.

Comment: One commenter objected to the striking of section 9204 on the basis that the commenter believes that a section pertaining to "trademark conflicts" is "fundamental to the function and integrity" of the CAP. **[3005]**

Response: The Department cannot accommodate this comment. The Department no longer has the authority to enforce cannabis cultivation licensing regulations. Because of this, the Department determined that it would be inappropriate to include section 9204 in the current rulemaking, which would specifically direct the Department as to the enforcement of cannabis licensing regulations over which it lacks statutory authority. The handling of enforcement of advertising and labeling regulations is distinct from the process to review appellation petitions and make decisions on appellations, therefore the initially proposed regulation in section 9204 is not necessary for the function of the CAP. The Department of Cannabis Control, not CDFA, is the only agency that has

authority to make and enforce cannabis licensing regulations including labeling requirements using origin designations.

C. Responses to General, Miscellaneous, and Irrelevant Comments Received for the Third 15-day Comment Period, Grouped According to Subject Matter

General Comments – Support

Comment:

"Although I have no particular input directly related to the proposed modifications for which the comment period is open, I thought your department would be interested to know that the Assemblée Nationale of France (national Parliament) recently released a trans-partisan report where the CDFA Cannabis Appellations Program is praised and seen as a leading example.

You can find the report online at this address: https://www2.assembleenationale.fr/content/download/341940/3351816/version/1/file/210505+Rapport+cannabis+recreatif.pdf

With the section referring to CFDA's CAP on page 208:

> *« Certains États américains, comme la Californie, qui en cela fait figure de pionnière sur cet aspect, mettent en oeuvre des programmes d'appellation contrôlée destinés à la protection de leurs terroirs de cannabis. Ainsi, en 2018, le Département d'alimentation et agriculture (CDFA) a lancé à la demande du parlement de Californie le "CalCannabis Appellations*

Program" pour mettre en place les dénominations de comté (que l'on peut assimiler à des IGP de par le fait que seul le critère géographique permette l'éligibilité) et publiait les brouillons de réglementation pour un système d'Appellations d'Origine au niveau, dans un premier temps, de l'État de Californie. Après trois ans de revue et concertation avec les organisations et fédérations d'agriculteurs, de petits paysans, et en particulier les cultivateurs et cultivatrices traditionnels de Cannabis (représentés en particulier par l'organisation "Origins Council"), les réglementations finales entrent en vigueur début 2021, avec les premières AOP californiennes validées attendues d'ici début 2022 au plus tôt. »

Although they seem to expect the final regulations to have been ready already earlier this year, it is interesting to know that California's efforts are inspiring overseas, even in one of the countries that helped create the very concept of Appellations." **[3002]**

Response: The Department acknowledges this comment. However, it is too generalized or too personalized so that no meaningful response can be formulated to refute or accommodate the comment.

General Comments - Background

Comment:

"The Rulemaking Timeline and Statutory Deadlines

Upon enacting Business and Professions Code Section 26063, the legislature prompted the CDFA rulemaking for CAP, requiring that the regulations be adopted by January 1st, 2021.

(b) (1) No later than January 1, 2021, the Department of Food and Agriculture shall establish a process by which licensed cultivators may establish appellations of origin, including standards, practices, and

cultivars applicable to cannabis produced in a certain geographical area in California, not otherwise specified in subdivision (a)

CDFA published its Notice of Proposed Rulemaking for CAP on February 21st, 2020. Section 11346.4 of the Government Code regarding state agency rulemaking and notifications stipulates:

(b) If the adoption, amendment, or repeal of a regulation proposed in the notice is not completed and transmitted to the office (Office of Administrative Law) within the period of one year, a notice of the proposed action shall again be issued pursuant to this article.

However, on March 4th, 2020, Governor Newsom declared a State of Emergency due to the COVID-19 pandemic which, as of this writing, is still in effect.

On March 21st, 2020 Governor Newsom signed Executive Order N-35-20, which invoked the Governor's emergency authority under Government Code Sec. 8571:

During a state of war emergency or a state of emergency the Governor may suspend any regulatory statute, or statute prescribing the procedure for conduct of state business, or the orders, rules, or regulations of any state agency, including subdivision (d) of Section 1253 of the Unemployment Insurance Code, where the Governor determines and declares that strict compliance with any statute, order, rule, or regulation would in any way prevent, hinder, or delay the mitigation of the effects of the emergency.

Under Government Code Sec. 8567(b) this authority expires immediately after the state of emergency terminates.

Given that CDFA has met neither of the statutory deadlines for CAP's rulemaking, as stipulated in Business and Professions Code Section 26063, or Government Code Section 11346.4, it is our assumption that the emergency

authority of the Governor under Government Code Sec. 8571 granted CDFA flexibility in meeting the statutory deadlines related to the CAP rulemaking, and that this authority remains intact.

On June 4, Governor Newsom announced that the state of emergency pursuant to COVID would not be lifted concurrent with the June 15 re-opening date, and implied that the emergency may be extended through at least the summer months. Consequently, we are not aware of any statutory deadline requiring promulgation of regulations by a specific date, and encourage CDFA to prioritize an effective and considered roll-out of appellation regulations over any specific deadline." **[3005]**

Response: The Department acknowledges this comment. However, it is too generalized or too personalized so that no meaningful response can be formulated to refute or accommodate the comments. The Department has considered Business and Professions Code section 26063(b), Government Code section 11346.4, and Executive Order N-35-20 in the current rulemaking.

Comment:

"California's State of Emergencies and Stakeholder Engagement in the CAP Rulemaking

Twelve days after CFDA published their February 21st, 2020 Notice of Proposed Rulemaking for CAP, Governor Newson declared a statewide state of emergency due to the COVID-19 pandemic.

Motivated by the dual circumstances of the CAP rulemaking and the COVID-19 pandemic, Origins Council formalized the Government Affairs program of the Regional Council in partnership with our Regional Partners, convening for our first weekly policy meeting on March 26th, of 2020.

On April 3, 2020, CDFA announced that, in response to the COVID-19 emergency declaration, the agency would be extending the public comment period for the February 21st rulemaking to May 6, 2020.

On May 5th, 2020 Origins Council submitted our comment letter on the February 21st CAP rulemaking. This policy analysis and the resulting comment letter was the seminal work product of the OC Regional Council. This initial comment letter, the 2 subsequent letters and this current 4th public comment letter, represent the positions of our collective membership. Our membership includes nearly 500 independently owned and operated small licensed cannabis businesses, predominantly legacy farmers cultivating, on average, 1/4 acre of cannabis on homestead farms across the legacy producing regions of California. Our membership is incredibly invested in the CAP.

Other invested stakeholder groups who have engaged during the entirety of the CAP rulemaking and contributed substantial comments include Humboldt County Growers Alliance, representing 275 cannabis businesses in Humboldt County; a statewide coalition of 24 wine associations, representing the vast majority

of California's wine and winegrape production; and the International Cannabis Bar Association, with a membership of over 400 legal professionals practicing within California.

On August 16-17, 2020 what would become known as the August Lightning Siege - a siege of dry lightning from rare, massive summer thunderstorms, ignited a series of 650 wildfires across Northern California. The August Complex, surpassing the 2018 Mendocino Complex to become both the single-largest wildfire and the largest fire complex in recorded California history, burned in the Coast Range of Northern California. On August 18, Governor Newsom declared *an additional* statewide state of emergency.

On October 2nd, 2020 CDFA published their first Notice of Modifications to the Proposed Regulation for CAP, their second on March 5th, 2021 and now this third on June 3rd, 2021." **[3005]**

Response: The Department acknowledges this comment. However, it is too generalized or too personalized so that no meaningful response can be formulated to refute or accommodate the comments. The Department appreciates stakeholder engagement throughout the rulemaking process and the chronology of events during this rulemaking, including the two statewide emergency declarations.

Comments Directed at the Process by which the Regulations were Proposed and Adopted

Comment:

"Accordingly, we suggest the legislature either amend California Business and Professions Code Section 26063 to push back the date by which CDFA must establish the CAP program requirements as part of the Consolidation process or that the CDFA notice an additional comment period following the Consolidation in accordance with the Administrative Procedure Act." **[3004]**

Response: The Department cannot accommodate this suggestion. A new Department of Cannabis Control has been created and the authority to create and modify cannabis cultivation licensing regulations has been transferred from the Department to the Department of Cannabis Control. The Department cannot amend Business and Professions Code section 26063(b) through regulation and no further amendments to regulation are necessary.

Comment:

"Agency Consolidation

In light of the significant changes proposed based upon Consolidation and the CDFA's lack of statutory authority for some aspects of the CAP program, we request that the CDFA consider postponing the launch of CAP until after Consolidation with the Department of Cannabis Control. There are too many unknowns regarding the essential scope, nature, and enforcement of the rights granted by CAP. If the program moves forward with the current proposed modifications, the onerous interpretation of the rights granted by a petition will be decided by the courts. Instead, we believe petitioners should have more clarity of the scope of their rights if they are going to participate in the CAP. We propose that CDFA move slowly in applying CAP as opposed to pushing forward with significant uncertainty." **[3004]**

Response: The Department rejects this comment. Pursuant to Business and Professions Code Section 26063(b), the Department is required to establish the process by which state-licensed cannabis cultivators may establish appellations of origin. The CAP is the process by which licensed cultivators may petition for recognition of a cannabis appellation of origin and does not directly include enforcement, so the Department determined that it is not necessary to postpone the launch of the CAP until advertising and labeling regulations are promulgated or updated by the Department of Cannabis Control.

Comment:

"**2. Request that the Launch of CAP be Delayed until January 1st, 2022**

The proposed revisions which are attributed to the anticipated agency consolidation are core to the function and integrity of CAP. These provisions have been shaped through significant input on the part of deeply invested

stakeholders, throughout an extended rulemaking, under extraordinary emergency circumstances.

We oppose the currently proposed revisions on the basis of this disruption of meaningful public process, given that it is unclear under what legal premise or practical necessity the proposed CAP revisions are currently being required, particularly given the importance of these provisions to the program.

It is with the utmost concern that we urgently request that the launch of the program be delayed until January 2022. This will allow for sufficient time for a number of critical factors to play out prior to the launch of the program:

1. This will allow time for agency consolidation to be authorized by the legislature, and for the new consolidated agency to be established and implemented.

2. Once the new consolidated agency is established and able to conduct a regular rulemaking, it can promulgate any necessary regulations related to CAP through a process that ensures that the public and stakeholders who have so deeply invested in the process to date can continue to review and provide input on any final regulatory proposals for CAP.

3. This would support any additional promulgation on the part of CDFA that is necessary prior to the launch of the program to happen in tandem with any prospective promulgation of the new licensing authority.

4. Additional time would support transitioning CAP from the purview of CalCannabis to its new division within CDFA, and to develop administrative aspects of the program.

5. Finally, this additional time would support the recruitment of accredited experts to serve on the petition review panel and ensure that this critical component of the program is soundly established prior to receiving any appellation petitions for review.” **[3005]**

Response: The Department cannot accommodate this suggestion. Pursuant to Business and Professions Code Section 26063(b), the Department is required to establish the process by which state-licensed cannabis cultivators may establish appellations of origin. The CAP is the process by which licensed cultivators may petition for recognition of a cannabis appellation of origin and does not directly include enforcement, so the Department determined that it is not necessary to postpone the launch of the CAP until advertising and labeling regulations are promulgated or updated by the Department of Cannabis Control.

Irrelevant Comments

Several comments received during the third 15-day comment period included parts that were not specifically directed at the modifications to the proposed regulations announced by the Department on June 3rd, 2021 with the third 15-day comment period, or at the procedures followed by the Department in proposing or adopting these regulations.

Response: The Department is not required to respond to the following comments submitted during the public re-notice period as they do not specifically relate to the changes to the regulation text announced during the re-notice period, pursuant to Government Code section 11346.8(c). Any comments that these comments repeated were addressed in the response to 45-day comments in Part III of this FSOR (Comment Summaries and Responses, 45-Day Comment Period), in the response to the first 15-day comments in Part IV of this FSOR (Comment Summaries and Responses, First 15-Day Comment Period), or in the response to the second 15-day comments in Part V of this FSOR (Comment Summaries and Responses, Second 15-Day Comment Period) pursuant to Government Code section 11346.9(a) and (a)(3). Government Code section 11346.9 directs the Department to include its responses to related comments in “a final statement of reasons.”

Comments:

One comment included a section titled "Outstanding Comments Not Yet Addressed by CDFA" with an introduction of:

> "The following topics and comments were not addressed by the agency in the revised proposed regulations or the ISOR. We expected an explanation, as required by Government Code 11346.9, of why the agency rejected these comments. We understand that such explanations may be set forth in the Final Statement of Reasons, but without knowing the department's reasoning throughout the rulemaking, it has been challenging to respond effectively to your proposed modifications.
>
> These comments address critical issues that we believe will impact the integrity and success of CAP. They are presented in order of priority to our stakeholders."

The content of this comment section is summarized below.

The commenter recommended:

- revising the definition of "appellation of origin" in section 8000(b).
- replacing the phrase "ensuring that" with "must include the following:" in section 9102(j).
- requiring that petitioners certify, subject to inspection, that they meet the requirements of 9102(j).
- specifying in section 9107 that the practice requirements imposed by section 9102(j) do not count as a practice requirement for purposes of meeting the petition criteria to include at least one of each standard, practice, and cultivar requirement.
- clarifying that trellising is not prohibited by Business and Professions Code section 26063(c).

- implementing alternative fee structures including tiered fees to amend an appellation, notice of use filing fees, and a fee to use an official appellation seal.
- adding the phrase “for use on cannabis” to section 9204(b)(1) and “on cannabis” to section 9204(b)(2).
- requiring that the Department notify all cannabis licensees of notices of proposed action or final decision on appellation petitions.
- clarifying the ability to file a notice of use by licensees.
- revising some violations as “Moderate” instead of “Serious” in Table A of section 8601.
- adding the phrase “marketing and advertising” to sections 8212(d)(4) and 8212(d)(5).

Regarding consensus, the commenter recommended:

- the Department require the support of a majority of the qualifying cultivator licensees within a proposed appellation for a petition to be considered complete.
- 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, be entitled to only one vote.
- all outdoor licensees within the proposed boundaries be entitled to vote, regardless of cultivation practices.
- groups petitioning for nested appellations or amendments to an established appellation be required to demonstrate majority support for the proposals by the licensed outdoor cultivators within the appellation boundaries.

Regarding other issues, the commenter recommended:

- adoption of an official state-designed logo or seal for county, city, city and county, and appellation of origin designated products
- adoption of a more expansive definition of practice that includes a wider range of activities, including without limitation “cultivation,” “land management,” and “business practices.”
- amending section 9107(d)(1) to clarify that “a prohibited practice by itself does not satisfy this requirement; a list of both mandatory and prohibited practices, however, would qualify.”
- that a certifier in good standing should be allowed to substantiate practices and cultivars, in addition to standards.
- amending section 9105(b) to prohibit appellations of origin “based solely on the political entity lines of a single county or counties” and opposing the establishment of appellations of origin for regions such as the “Emerald Triangle.”
- enforcement of established appellations by CDFA through site inspections and audits of the cultivators using an appellation designation.
- no overlapping appellations be allowed.
- a single petition be allowed to propose multiple appellations that are nested within one another, with only one filing fee required.
- CDFA establish a searchable database for approved appellations and petitions under review. **[3005]**

One commenter made suggestions previously received regarding the implementation of changes made to Business and Professions Code section 26063 by SB 67, specifically recommending:

- removing the requirement that geographical features described in a petition must each be distinctive and affecting the cannabis produced in the appellation boundary.

- replacing the word “may” with “shall” in section 9300(a) to make establishment of the petition review panel mandatory for the Department.
- reimbursing petition review panel members in some way.
- delaying accepting appellation petitions until January 1, 2022.
- using the word “expertise” or the phrase “subject matter expert” in place of “experience” in section 9301(d)
- using the word “necessary” in place of the word “appropriate” to describe other areas of experience considered by the Department in making appointments to the petition review panel, and specifying that this is “for the review of petitions.”
- adding other fields of experience such as “cannabis botany,” “soil science,” “natural sciences,” “geographical indication law,” and “cultural anthropology” and removing “geography” and “intellectual property” in section 9301(d).
- clarifying whether appellation petition review and decision-making is a formal rulemaking subject to the Administrative Procedures Act.
- clarifying the reason for denial in section 9203(b) related to the petition criteria in sections 9104(b)(2)-(4) to specify that the requirement is not that the “delineated name be tied specifically to cannabis production.”
- adding the phrase “substantial evidence” to the reason for denial in section 9203(g). **[3005]**

“Appellations first requirement is native soil. Period. If the plant does not touch native soil and absorb its water and nutrients from native soil, the whole program is a farce. Appellations around the world adhere to this basic premise.

Appellations IS the soil the crop is grown in that is particular to any given region.

If this appellations project goes forward without VERY STRICT outdoor requirements, this will be the laughing stock of literally “The World”.” **[3001]**

“We also request that CDFA reconsider our requests for further modifications to the Cannabis Appellations Program regulations.” **[3003]**

“As stated in our initial letter submitted to CDFA on May 6, 2020, “CDFA’s regulations must create a strong system for cannabis appellations of origin and CDFA must be committed to robust implementation and enforcement of that system.” Without robust implementation and enforcement, any system created for cannabis appellations is rendered meaningless.

The need for robust enforcement and penalties in the cannabis appellation program has been a top priority for our associations:

> Wine Association letter submitted May 6: “A comprehensive regulatory regime for appellations of origin cannot succeed without robust enforcement and penalties that effectively deter cannabis licensees from engaging in misleading labeling and marketing practices. Unfortunately, CDFA’s decision to label the misuse of an appellation of origin as a “Minor” violation and set a maximum fine of $500 in proposed §8601 will not effectively deter unscrupulous cannabis licensees from violating the requirements of proposed §8212. As such, the Wine Associations recommend increasing the fine and penalties to act as a reasonable deterrent, and to upgrade violations of §8212 to “Serious” violations.”
>
> Wine Association letter submitted October 19: “Change the classification of the penalties in §8601 for failure to comply with advertising, marketing, labeling, or packaging requirements from “Minor” to “Serious”. Without robust penalties for violations of §8212, there is not an effective deterrent

against a cannabis licensee simply using an American Viticultural Area (AVA) name, misusing an approved cannabis appellation, or using some other misleading or false geographic indicator in advertising, marketing, labeling, or packaging. These would be highly false, misleading, and deceptive business practices that could result in significant public harm."

Wine Association letter submitted March 26: Referring to positive changes made in the March 5, 2021, modifications, "[t]hese changes address some of our concerns and will work to preserve the integrity of the term "appellation", provide meaningful public comment in the petition review process and ensure robust enforcement and penalties to effectively deter cannabis licensees from engaging in misleading labeling and marketing practices." **[3003]**

"In addition, the modified language fails to address our remaining concerns as noted in our March 26, 2021, letter:

- **Enhance transparency:** CDFA should be required to provide reasons – that include responses to stakeholder comments – for final approval of an appellation of origin in §9202. Interested stakeholders should know that their comments are being fairly considered and that CDFA's decision was not arbitrary. The explanation would also provide guidance for future petitions and comments on cannabis appellations of origin. Our organizations appreciate CDFA adding the provision requiring CDFA to provide "all of the reasons" for petition denial, but this requirement should extend to petition approval, including responses to public comments that were either accepted or rejected by CDFA in deciding to approve a petition.
- **Broaden Review Panel Composition and Responsibilities:** The Petition Review Panel in §9301 should be modified to limit the cannabis

industry to no more than three members. CDFA did recognize our comment on expertise of the Petition Review Panel by adding “or other areas determined appropriate by the department” at the end of §9301(d). However, this still allows for the review panel to be heavily dominated by cannabis industry representatives with potential conflicts of interest. The composition of the review panel is particularly important as CDFA builds internal expertise in reviewing appellation petitions. Additionally, the panel should be required to provide an analysis detailing the specific reasons for the recommendation to approve or deny a petition. The panel's recommendation and analysis should be made public, and the public should be given an opportunity to comment on the recommendation and analysis. To allow for meaningful public comment, we recommend at least 45 days, which can be built into the petition comment period. This can be achieved by modifying the petition comment period to be the greater of 90 days or 45 days after the Review Panel’s recommendations and reasoning are published, subject to further extension upon a reasonable basis. Again, comments should be made part of the record, and CDFA should be required to respond to public comments that were either accepted or rejected.” **[3003]**

“Fees

The current fee schedule remains out of reach for many stakeholders who would benefit from the CAP. We recommend the CDFA consider a further sliding scale as it relates to fees, or consider allowing a staggered payment schedule.

Seals

We strongly suggest that the CAP include an official seal in the final CAP regulations. As discussed in our prior three rounds of comment, seals provide critical information to the consumer, and deter fraud and counterfeiting, among

other things, and assuming eventual future federal legalization, could be registered with the United States Patent and Trademark Office.

Review Panel

We believe that the role of the Review Panel needs further clarification as it relates to procedure for petition review. It would be in the interest of the CDFA, petitioners, and the members of the review panel to have the duties and authority clarified. As it stands, the petition review panel regulations discuss membership qualifications and that the duties shall include providing recommendations on pending petitions. Additional details regarding the scope of review, review criteria, specific work product required, and appeal process would be especially helpful for all involved." **[3004]**

"Emergency Rulemaking Exempt from the Administrative Procedures Act

The Governor's consolidation proposal includes provisions that would authorize the DCC to pursue an emergency rulemaking, exempt from the Administrative Procedures Act, and to readopt these emergency regulations once consolidation is enacted. This means that these DCC regulations would be developed devoid of any opportunity for public review or input; those regulations would then be in effect for up to one year.

> *SEC. 12. Section 26013 of the Business and Professions Code is amended to read:*
>
> *26013. (a) The department shall make and prescribe reasonable rules and regulations as may be necessary to implement, administer, and enforce its duties under this division in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Those rules and regulations shall be consistent with the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act.*

(b) (1) The department may adopt emergency regulations to implement this division.

(2) The department may readopt any emergency regulation authorized by this section that is the same as, or substantially equivalent to, an emergency regulation previously adopted as authorized by this section. Any such readoption shall be limited to one time for each regulation.

(3) Notwithstanding any other law except as provided in subdivision (c), the adoption of emergency regulations and the readoption of emergency regulations authorized by this section shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. The emergency regulations and the readopted emergency regulations authorized by this section shall be each submitted to the Office of Administrative Law for filing with the Secretary of State and shall remain in effect for no more than 180 days, by which time final regulations may be adopted.

(c) Notwithstanding subdivision (b), initial regulations promulgated by the department shall be exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). This subdivision does not restrict the department's authority to post proposed regulations on its internet website for public review or to consider any comments submitted in response to such review in connection with the proposed regulations. If the department posts proposed regulations on its internet website prior to adoption, they shall be posted for at least 15 calendar days and the department may consider comments submitted during that time related to the proposed regulations. The final adopted regulations shall be filed with the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations.

(d) Regulations issued under this division shall be necessary to achieve the purposes of this division, based on best available evidence, and shall mandate only commercially feasible procedures, technology, or other requirements, and shall not unreasonably restrain or inhibit the development of alternative procedures or technology to achieve the same substantive requirements, nor shall the regulations make compliance so onerous that the operation under a cannabis license is not worthy of being carried out in practice by a reasonably prudent businessperson.

Based on the Governor's proposal that the new agency be authorized to adopt and re-adopt emergency regulations exempt from the Administrative Procedures Act, stakeholders may be unable to review and provide input on these critical CAP provisions, should they be taken up by the DCC in the proposed emergency rulemaking, exempt from APA. Additionally, the resulting CAP provisions of such an APA exempt emergency rulemaking could be in effect for up to a year, coinciding with the launch and roll out of the program, a formative period which will fundamentally shape the long-term viability and success of CAP." **[3005]**

VII. COMMENT SUMMARIES AND RESPONSES, FOURTH 15-DAY COMMENT PERIOD

Pursuant to Government Code section 11346.9(a)(3), the Department summarized and responded to the objections and recommendations directed at the fourth 15-day modifications or the process by which they were proposed and adopted. Direct quotes of comments are shown using block-indentation and quotation marks.

The Department received four comments during this rulemaking. Due to the length of some comments, many parts of which overlapped and asserted the same points for varying reasons, some parts of comments were grouped together to provide as uniform

and concise a response as possible. Despite this, some duplication in the responses was inevitable.

A. List of Commenters for the Fourth 15-Day Comment Period

The comment summaries and responses for the regulatory text as originally noticed are first organized in chapter 2 by articles 2-4 and further organized by proposed regulation section. General comments are organized by subject matter, followed by miscellaneous, and irrelevant comments.

The number designation following each comment summary identifies the written letter/email where the comment originated, numbered in order of receipt by the Department (numbered 4001 through 4004).

ID Number	Name	Organization
4001	Tim Schmelzer	Wine Institute
4002	Mary Shapiro	Evoke Law, PC
4003	Christopher Davis	International Cannabis Bar Association
4004	Genine Coleman	Origins Council

B. Comments and Responses Related to Modifications of Chapter 2, Articles 2 through 4 Announced on September 27, 2021.

CHAPTER 2. CANNABIS APPELLATIONS PROGRAM

Article 2. Petitions

§ 9106. Geographical Features

Comments:

"This program will not only set global precedent by establishing the world's first cannabis appellations system but will also drive groundbreaking cannabis

research within a number of scientific disciplines as petitioners conduct the requisite research to build their petitions. Research to evidence the distinct expression of cannabis caused by a regionally specific natural feature or set of features will require scientific expertise and data related to cannabis botany and chemistry, agricultural practices and various disciplines of natural sciences. We anticipate this effort to be a significant investment of time and resources on the part of petitioners.

Our organizations previously communicated our concern that language in this section could be interpreted to require petitioners to provide evidence of a causal link between every natural feature described in the petition and the quality and characteristics of the cannabis.

Initially, our organizations had concerns that this section of the regulations could have been interpreted to require a description of a minimum of five categories of natural features, thus potentially requiring petitioners to elucidate a causal link between a minimum of 5 natural features.

Importantly, certain regions may have one outstanding distinguishing natural factor that causes the unique quality or characteristics of their cannabis.

The more natural features influencing the expression of the cannabis, (i.e., the more “causal links”) the more complex, time consuming and expensive the research will be to develop the petition. In our engagement with subject matter experts we have determined that the petition development process for California cannabis appellations could take a year or more with a cost upwards to $100,000 with a significant portion of the expense going towards scientists and analytics.

Once a petition is submitted to CDFA for review, that burden of proof must then be reviewed to examine the research. The more causal link(s) and correlative scientific evidence put forward in the petition, the more time and resources the agency must expend to review the petition and make their determination.

Given the fact that there may simply be one outstanding natural distinguishing feature influencing the unique expression of cannabis, and given the high burden of scientific evidence being required of petitioners, we believe it is essential that petitioners are given the flexibility to provide evidence of one or more causal links in their petition.

We greatly appreciate and fully support the revisions to Sections 9106 clarifying that CDFA requires petitions to evidence a minimum of one causal link in an appellation petition." **[4004]**

Response: The Department acknowledges this comment in support of the revisions to Sections 9106. No further modifications to the proposed regulations are necessary.

Article 3. Petition Review Process

§ 9203. Denial of Petition for Appellation of Origin

Comment:

"Previously we had expressed concern related to Sec. 9203(d), which was connected to our concerns with the previous language in Sec. 9106. Pursuant to the revisions of 9106 in this rulemaking, we remove our opposition to Sec. 9203(d) as written." **[4004]**

Response: The Department acknowledges this comment. No modifications to the proposed regulations are necessary.

Comment:

> "Section 9203(g) proposes to strike the language related to the Petition Review Panel. Pursuant to the aforementioned comments related to a potential advisory body to CAP, we recommend this section be revised to account for the possibility of an advisory body, and the appropriate consideration of recommendations from such a prospective advisory body as potential cause for petition denial. Furthermore, we believe it is important that any such cause for denial not just be reasonable, but also premised on substantial evidence.
>
> We recommend that 9203(g) be revised to read: Any other ~~reasonable cause submitted~~ substantial evidence raised by any CAP advisory body or through the public comment process that the department determines would preclude the appellation from being established or amended." **[4004]**

Response: The Department rejects this comment. Given the removal of the Petition Review Panel from regulations, other references to the panel in the regulations are unclear. Furthermore, a reference to "any CAP advisory body" is too broad to meaningful. Any individual may present "substantial evidence" during the public comment process.

Article 4. Petition Review Panel

Section 9300. Establishment of the Petition Review Panel.

Comment:

"The revised regulations propose to entirely eliminate the Petition Review Panel. The revised ISOR explains:

> *The petition review panel has not been formed prior to the development of these proposed regulations. As such, the public have not had adequate opportunity to comment on its creation and role in the Program. The Department received requests in public comment for more detailed regulation of the panel's operation, membership, and duties. The Department determined that it would be impractical to develop further details in regulations regarding the panel during this rulemaking, due to the nascent nature of the petition review process for cannabis appellations of origin and the uncertainty inherent in establishing a new program. However, this resulted in a simple structure for the panel in previously proposed regulations without adequate detail on how the panel may be selected and operated, which would allow the public to provide more meaningful comments. Based on the preceding, the Department determined that it would be inappropriate to include these sections in this rulemaking without sufficient public consideration and comment. Regulations regarding the establishment, membership, and duties of an advisory body to the Cannabis Appellations Program may be developed and proposed by the Department in a subsequent rulemaking to allow for full consideration of public comment.*

The revised ISOR does not explain why CDFA determined it was necessary to completely eliminate the authority to establish a petition review panel, given the language in previous versions afforded CDFA discretion to establish a petition review panel, or not. Confusingly, the revised ISOR indicates that CDFA may propose regulations regarding an advisory body to CAP in a future rulemaking.

"We request clarification from CDFA as to why they felt it was necessary to completely eliminate CDFA's authority to establish a Petition Preview Panel from the regulations."

"We request clarification regarding whether the intent of CDFA is to pursue further rulemaking to establish such an advisory body prior to accepting petitions." ***[4004]***

Response: The Department rejects these comments. As mentioned in the Addendum to the ISOR, issued September 27, 2021, the petition review panel is not being established in this rulemaking. Because of this, prior proposed regulations regarding the petition review panel have been deemed inappropriate as they did not consider the panel in a comprehensive manner. Further, the Department retains the authority to establish a review panel and may consider establishing one in the future thorough the rulemaking process. That process will afford the public the ability to comment on all aspects of the review panel at the time of its establishment.

§ 9301. Membership of the Petition Review Panel

Comments:

"Given the significant influence of any advisory body reviewing and making recommendations and/or determinations on petitions, and the CDFA comments in the ISOR regarding the need for more public consideration and comment on this integral component of the program, we recommend that CDFA consider the formation of a temporary stakeholder working group, including subject matter expert(s), to help inform future regulations of any advisory body's operation, membership, and duties." ***[4004]***

"The strength of the appellations program hinges on the capacity for CDFA to bring appropriate scientific expertise to the petition review process. Proposed

CAP regulations would enable a regional group of licensed cannabis farmers to collaboratively research and author a petition to establish an appellation. CDFA would then be required to review the evidence presented in the petition, and determine whether or not to grant an appellation to the petitioning group.

Proper review of appellation petitions will require appropriate expertise to evaluate petitions in aspects including completeness; standard, practice, and cultivar criteria; and the substance and strength of the research substantiating the causal link claim(s) between the geographical features of an area and the qualities or characteristics of the cannabis. The more causal links and correlative scientific evidence put forward in a given petition, the more diversity of expertise will be required to support the agency in making their determination. Because California cannabis appellations require a causal link to be demonstrated between natural environmental factors and the cannabis itself, the cannabis plant and its metabolic expression will play a central role in the causal link research and evidence put forward in petitions. Therefore, it is essential that CAP staff include an accredited botanist with expertise in cannabis.
We reiterate our previously submitted concern that advisors supporting petition review should be subject matter experts, not simply individuals experienced in a given field."

"We believe the retention of appropriate, paid scientific experts by CDFA to support the review of petitions will be critical to the integrity and success of the program. Specifically, we believe that funds should be allocated to support CDFA in hiring an accredited botanist with expertise in cannabis, and to contract with additional subject matter experts as needed, as determined by CDFA. **[4004]**

Response: The Department acknowledges these comments. No further modifications are necessary at this time.

Comment:

"In this round of proposed regulations, Section 9300, which covered the standards for the Petition Review Panel, was entirely eliminated. In the four prior rounds of proposed regulations, the CDFA did not indicate that the petition review panel was problematic or controversial. In fact, in the prior rounds, our comments on the review panel had been limited to specific suggestions on which kind of specialists and experts would be qualified to participate in the panel. By removing the review panel from the petition review process there is now a lack of clarity as to who will be charged with the responsibility of reviewing, and assessing the validity, of the petitions.

The ISOR does not resolve this critical issue, and instead kicks the can down the road for a potential, but not mandatory panel, stating "[r]egulations regarding the establishment, membership, and duties of an advisory body to the Cannabis Appellations Program may be developed and proposed by the Department in a subsequent rulemaking to allow for full consideration of public comment." (Emphasis added). We understand the formation of the review panel should not be rushed, but our concerns are twofold if the petition review panel "may be" considered in the future.

First, because appellation petitions are required to cover a wide array of subject matter, such as soil, geography, geology, water systems, cultivars, assessment of the causal link requirement, and other standards and practices, a panel of experts is necessary and essential to the petition review process. It is our view that no one person has sufficient knowledge to adequately evaluate the entirety of a petition's subject matter, only a panel of experts will have the knowledge and expertise for a fair, comprehensive, and informed petition review.

Second, if the CDFA waits to revisit the creation of the review panel, but moves forward with allowing the submission of petitions, the petitions reviewed prior to the creation of the panel will receive a different (i.e. less comprehensive) evaluation. The lack of equally applied standards for review, depending on the timing of filing the petition, and possibility of a future review panel, is likely to cause confusion and distrust in the process, and potential legal challenges. Additionally, aspiring petitioners are likely to look to the panel's expertise when drafting their petitions. Removing the panel entirely deprives the petitioners of their ability to take such expertise into consideration when preparing their petitions.

In the interest of fairness and uniformity, if a review panel is ultimately included in the review process, the standards for the panel must be included and clearly defined in the regulations at the inception of the CAP and before any petitions are accepted. We suggest the CDFA considers delaying the acceptance of petition submissions until the review process is finalized.

In the event the CDFA chooses to forgo a petition review panel, we request the CDFA create a publicly available list of experts and specialists which the CDFA will be working with to evaluate petitions. This level of transparency is essential for preserving a fair process and, ultimately, the petitioners' trust in the CAP program." **[4003]**

Response: The Department acknowledges this comment. It is the Department's intention to assess and approve any petition in a fair and uniform manner. Therefore, no further modifications to the regulations are necessary.

C. Comments and Responses to General, Miscellaneous, and Reiterated Comments Received for the Fourth 15-day Comment Period

General Comments Directed at the Process by which the Regulations were Proposed and Adopted

Comment:

"The June 2021 CDFA CAP rulemaking struck language from the CDFA regulations regarding fundamental components of the program, including sections that pertain to:

- The definition of appellations of origin
- Advertising, marketing, packaging and labeling
- Notice of use
- Record retention and reporting requirements
- Enforcement and fines
- Effective dates
- Trademark conflicts

The modified Initial Statement of Reason references this proposed consolidation as the rationale for these revisions to the proposed regulations:

The Department anticipates amendments to Business and Professions Code division 10, which if passed, would transfer authority to create and modify cannabis cultivation licensing regulations from the California Department of Food and Agriculture (CDFA) to the Department of Cannabis Control. The authority to establish a process by which licensed cultivators may establish appellations of origin remains with CDFA. In response to these proposed statutory changes, the Department is amending the regulations to extract all proposed modifications in Chapter 1, resulting in no changes being made to the

current regulation language in Chapter 1 and to remove section 9204 from Chapter 2 as this section is cultivation licensing regulation.

The topics to which these provisions pertain are fundamental to the function and integrity of CAP. These provisions have evolved considerably since the initial draft regulations were published on February 21st of 2020, as a result of the cumulative efforts of CDFA to respond to robust stakeholder input to the initial proposal and the two subsequent revisions to the package.

The DCC Emergency Rulemaking in September did not include any CAP provisions. We very much appreciate and support that the DCC did not take up CAP regulations during the emergency DCC rulemaking. The limited 5 day public comment period for that rulemaking would not have allowed sufficient time to review and comment on such substantive provisions.

It is our understanding that the DCC intends to promulgate regulations related to CAP through a regular rulemaking later this year.

We strongly urge the DCC to re-introduce CDFA's proposed language for the provisions that were struck from the CDFA regulations in the June 2021 rulemaking. Further, we recommend this re-introduction of language be accompanied by a full 45-day public comment period, as a robust starting place for DCC and stakeholder engagement on CAP. These provisions address topics that are essential to the function and integrity of CAP and were informed by robust stakeholder input over the successive CDFA rulemakings." **[4004]**

Response: The Department cannot accommodate this suggestion. The comment is directed at the Department of Cannabis Control, not the Department.

Comment:

"Upon enacting Business and Professions Code Section 26063, the legislature prompted the CDFA rulemaking for CAP, requiring that the regulations be adopted by January 1st, 2021.

> *(b) (1) No later than January 1, 2021, the Department of Food and Agriculture shall establish a process by which licensed cultivators may establish appellations of origin, including standards, practices, and cultivars applicable to cannabis produced in a certain geographical area in California, not otherwise specified in subdivision (a)*

CDFA published its Notice of Proposed Rulemaking for CAP on February 21st, 2020. Section 11346.4 of the Government Code regarding state agency rulemaking and notifications stipulates:

> (b) *If the adoption, amendment, or repeal of a regulation proposed in the notice is not completed and transmitted to the office (Office of Administrative Law) within the period of one year, a notice of the proposed action shall again be issued pursuant to this article.*

However, on March 4th, 2020, Governor Newsom declared a State of Emergency due to the COVID-19 pandemic which, as of this writing, is still in effect.

On March 21st, 2020 Governor Newsom signed Executive Order N-35-20, which invoked the Governor's emergency authority under Government Code Sec. 8571:

> *During a state of war emergency or a state of emergency the Governor may suspend any regulatory statute, or statute prescribing the procedure for conduct of state business, or the orders, rules, or*

regulations of any state agency, including subdivision (d) of Section 1253 of the Unemployment Insurance Code, where the Governor determines and declares that strict compliance with any statute, order, rule, or regulation would in any way prevent, hinder, or delay the mitigation of the effects of the emergency.

Under Government Code Sec. 8567(b) this authority expires immediately after the state of emergency terminates.

In July the Governor signed SB/AB 160, which amended Business and Professions Code Section 26063, delaying the statutory requirement for the CDFA CAP regulations to be adopted to no later than January 1, 2022.

Given that, prior to the passage of AB/SB 160, CDFA had met neither of the statutory deadlines for CAP's rulemaking, as stipulated in Business and Professions Code Section 26063, or Government Code Section 11346.4, it is our assumption that the emergency authority of the Governor under Government Code Sec.8571 granted CDFA flexibility in meeting the statutory deadlines related to the CAP rulemaking, and that this authority remains intact.

Consequently, we are not aware of any currently active statutory deadline requiring promulgation of regulations by a specific date, and encourage both the CDFA and the DCC to prioritize an effective and considered roll-out of appellation regulations over any specific deadline." **[4004]**

Response: The Department acknowledges this comment. The Department intends to coordinate with the Department of Cannabis Control on issues related to the CAP.

Comment:

"We urge the DCC and CDFA to coordinate on these immediately anticipated as well as any future CAP rulemakings, and the administration of the County and City of Origin designations, under the purview of the DCC, and the administration of the CAP, under the purview of CDFA." **[4004]**

Response: The Department acknowledges this comment. The Department intends to coordinate with the Department of Cannabis Control on issues related to the CAP.

Comment:

"It is with the utmost concern that we urgently request that CDFA delay opening to submission of petitions until such time as the DCC regulations are adopted and the appropriate expertise is in place within the CAP to evaluate petitions in the following respects: completeness; standard, practice, and cultivar criteria; and the substance and strength of the terroir-based causal link claim(s)." **[4004]**

Response: The Department rejects this comment. The Department determined that it is not necessary to postpone the launch of the CAP until further regulations are promulgated or updated by the Department of Cannabis Control. Further, the Department fully intends to review appellation petitions with the appropriate expertise.

Comment:

"We would like to reiterate our previous recommendation that CDFA consider the formation of a stakeholder working group, including subject matter expert(s), to help inform future regulations or programmatic development of

CAP, and to encourage continued stakeholder engagement and investment into this program." **[4004]**

Response: The Department acknowledges this comment. No further changes to the regulations are necessary.

Comment:

"We recommend that any stakeholder working group convened by CDFA regarding the formation of a CAP advisory body or any other topic related to CAP include staff from DCC to support harmonization of regulations and interagency coordination on the implementation of the program." **[4004]**

Response: The Department acknowledges this comment. No further changes to the regulations are necessary.

Comment:

"While the provisions creating the Petition Review Panel have been struck, our organizations remain concerned with transparency in CDFA's decision making, as outlined above, and the thoroughness of CDFA's review. Our organizations strongly encourage CDFA to build internal expertise to review appellation petitions in a thorough and impartial manner. We understand this will take time and resources, but it is essential to ensuring a successful program." **[4001]**

Response: The Department acknowledges this comment. No further changes to the regulations are necessary.

Miscellaneous Comments

Comment:

> "Due to the technical nature and costs associated with petition requirements, we recommend that once all CAP CDFA and DCC regulations are final, and adequate expertise and the internal procedures to review petitions are in place, CDFA consider conducting public outreach and educational meetings. These meetings would help to support the viability of the program by ensuring more local jurisdictions and cannabis cultivation communities are informed about CAP and associated opportunities and requirements." **[4004]**

Response: The Department acknowledges this comment. The Department intends to promote the program and provide outreach and education.

Reiterated Comments

Many comments received during the fourth 15-day comment period are reiterations of comments received during previous comment periods. They are not specifically directed at the modifications to the proposed regulations announced by the Department on September 27, 2021 with the fourth 15-day comment period, or at the procedures followed by the Department in proposing or adopting these regulations. Government Code section 11346.9 directs the Department to include its responses to related comments in "a final statement of reasons."

Response: The following reiterated comments are organized according to the comment period in which the comment first occurs. Responses to these comments are in this FSOR in the Comment Summaries and Responses sections associated with the listed comment periods below.

Comments addressed in 45-Day Comment Period:

“In order for appellation groups to bring forward sound community supported petitions and in order to mitigate conflict and thus enhance efficiency during the public comment and petition review process, we strongly urge the department to adopt our consensus recommendations below.

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.

To further clarify, it is our recommendation that all outdoor licensees within the proposed boundaries be entitled to vote, regardless of cultivation practices.” **[4004]**

“We strongly urge that the CAP fee structure for amending an appellation be tiered in a way that recognizes the differences between different types of amendments. By lowering the fee for amendments to an appellation’s standards, practices, and cultivars (as opposed to amendments to change the appellation name or boundaries), the department will incentivise rather than discourage regional innovation and will promote the continued positive development of the CAP.” **[4004]**

“We reiterate our recommendation 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. Use of a proposed official appellation seal or seals also could be subject to a fee to help fund the CAP and support active enforcement against counterfeit products." **[4004]**

"Given the common use of geographic trademarks for cannabis brands, particularly those that include the names of regions renowned for cannabis production, we reiterate the recommendation that CDFA notify all cannabis licensees in California of notices of proposed action and final determinations on petitions, both those to establish an appellation and to amend an appellation." **[4004]**

"Additionally, we urge CDFA to add language to Sec. 9202 requiring that If the petition is approved, the notice of final decision shall include all of the reasons why the petition was approved. This information is critical to ensuring transparency within the approval process and to supporting public knowledge regarding causal link research for cannabis***."*** **[4004]**

"Enhance transparency: CDFA should be required to provide reasons – that include responses to stakeholder comments – for final approval of an appellation of origin in §9202. Interested stakeholders should know that their comments are being fairly considered and that CDFA's decision was not arbitrary. The explanation would also provide guidance for future petitions and comments on cannabis appellations of origin. Our organizations appreciate CDFA adding the provision requiring CDFA to provide "all of the reasons" for petition denial, but this requirement should extend to petition approval, including responses to public comments that were either accepted or rejected by CDFA in deciding to approve a petition." **[4001]**

“We reiterate our request for clarification that an appellation of origin designation can be used by a cultivation, nursery, or processing licensee by filing a Notice of Use.” **[4004]**

“We also reiterate our request for clarification that an appellation of origin designation for cannabis and cannabis products can be used by manufacturing or distribution licensees to package or label qualifying products by filing a Notice of Use.” **[4004]**

“We would like to strongly urge the agency to consider our recommendation to charge a modest fee for notice of use registration.” **[4004]**

“Finally, 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.” **[4004]**

“We reiterate our proposal for the adoption of an official state-designed logo or seal for county, city and appellation of origin designated products, akin to the OCal seal which has been proposed by CDFA.” **[4004]**

“We reiterate our request to additionally expand the definition of a practice to include “land management,” which may not easily be defined as “cultivation” or a method of conducting commercial cannabis activity.” **[4004]**

“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.” **[4004]**

“We recommend that a certifier in good standing should be allowed to substantiate practices and cultivars, in addition to standards.” **[4004]**

“We propose amending Sec. 9105(b)(1) to prohibit appellations of origin “based solely on the political entity lines of a single county or counties.” **[4004]**

“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.” **[4004]**

“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.” **[4004]**

“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.” **[4004]**

“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 strengthen them.” **[4004]**

“We 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.” **[4004]**

“In the four prior rounds of public comment, we strongly advocated for the development of an official state appellation seal, similar to official Appellation of Origin (“AO”) designations in Europe, and that CDFA govern and enforce the use of any such seal. To date, the CDFA has not incorporated this concept in the proposed regulations. However, without the use of an official seal or insignia of some kind, consumers, stakeholders, and the licensed supply chain as a whole will have no ability to easily ascertain or confirm that a product has in fact been produced in the AO, subject to AO standards and practices, and that is in fact a bona fide product worthy of an AO designation.” **[4003]**

“Again, we ask the CDFA to contemplate pursuing the registration of a certification mark with the administration or directly with the Secretary of State to be used with appellations designated by the CAP program. Either way, we further request CDFA revisit this issue after federal legalizations and consider registering a California Appellation of Origin certification mark (consistent with the seal that will be used by CDFA and California appellations) with the USPTO for cannabis cultivated in a California appellation of origin region. We believe this would strengthen the CDFA’s ability to enforce CAP standards and preserve the integrity of the rights granted by the CAP program. When the possibility of interstate commerce is allowed, a certification mark will also add value on a national level to cannabis produced in the appellation regions. We believe a registration of this nature will not only protect the interests of the petitioners, but also grant the CDFA additional rights for preserving the integrity of the CAP in

the years to come. Accordingly, we ask that your agency take this issue up on consideration even though it might not be acted upon until cannabis is re- or de-scheduled federally." **[4003]**

"In the prior rounds of public comment, there have been advocates for the development of an official state appellation seal, similar to official Appellation of Origin ("AO") designations in Europe, and that the state of California be responsible for governing and enforcing authorized use of any such seal. Though we understand that creating, governing, and enforcing such a seal has associated expenses, a primary benefit of the proposed seal is marketing, in part, but is mainly maintaining the integrity of CAP, which is not the responsibility of any particular appellation.

To date, the agency has not incorporated this concept in the proposed regulations. Without the use of an official seal or state regulated insignia of some kind, consumers, stakeholders, and the licensed supply chain as a whole will have no ability to easily ascertain or confirm that a product has in fact been produced in the AO, subject to AO standards and practices, and that is in fact a bona fide product worthy of an AO designation.

We further request at least committing to revisiting this issue after federal legalization occurs and consider registering a California Appellation of Origin certification with the USPTO for use by cannabis operators with cannabis cultivated in a California appellation of origin region. We believe this would significantly strengthen the agency's ability to enforce CAP standards and preserve the integrity of the rights granted under CAP.

Alternatively, it may be possible to register a Certification Mark federally for "providing information online about California cannabis appellations." If this

direction was pursued, each appellation would be required to publish a page about the CAP program, its purpose, features, and benefits, which itself would help market the integrity and credibility of CAP.

We believe a registration of this nature will not only protect the interests of the petitioners, but also grant the state of California additional rights for preserving the integrity of the CAP in the years to come. Accordingly, we ask that the agency take this issue up on consideration, even though it might not be acted upon until the legality of cannabis is recognized federally." **[4002]**

Comments addressed in the First 15-Day Comment Period:

"Still of particular concern to us are the lack of clarity regarding whether the appellation petition review and approval process is a formal rulemaking, subject to the Administrative Procedures Act (APA), and the potential impacts that will have on public notifications, public comment, and the publication of the department's reasoning and findings. These unanswered questions are fundamental to understanding the mechanics and evaluating the integrity of the proposed petition review and determination process.

While we appreciate the introduction of the Sec. 9203 in the March 2021 revisions to CAP regulations ("Denial of Petition for Appellation of Origin") which outlines the grounds for denial, we still believe that appellation petition processing constitutes rulemaking that should be governed by the APA. The department's decisions are rights that run with the land, and the department's decisions will establish precedents that affect cannabis cultivators and others in the cannabis business statewide." **[4004]**

"We do not support the baseline requirement practices in Sec 9102(j) as being applicable to satisfying the Standard, Practice, and Cultivar requirements of Sec. 9107.

We recommend that this section be revised to read: "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. The practices set forth in Section 9102(j) do not satisfy this requirement." **[4004]**

"Cannabis cultivation almost always requires the practice of trellising the plant. We request clarification that the practice of trellising is not prohibited by Business and Professions Code Sec. 26063(c)." **[4004]**

Comments addressed in the Second 15-Day Comment Period:

"Again, critical provisions related to advertising, marketing, labeling and packaging labeling requirements for appellation of origin, county of origin and/or city of origin were struck in the previous revision to the proposed regulations. These provisions are key to the implementation of the program. We previously recommended that Sec. 8212(d)4 and (d)5 be revised to read: "For purposes of labeling, packaging, marketing and advertising using a …..county of origin ……. appellation of origin, ..."

We reiterate our recommendation 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." **[4004]**

"We do not support Sec. 9203(b) which provides that a petition can be denied because "evidence is not sufficient to demonstrate that the proposed appellation name has been used in direct association with a cannabis production area

pursuant to section 9104, subdivisions (b)(2) through (b)(4) of this chapter." While we support that an appellation of origin name should have historic ties to the delineated region, due to the history of cannabis prohibition we cannot support the requirement that the delineated name be tied specifically to cannabis production. Instead, the name should be tied to the region, as defined by the specified geographic boundaries of the proposed appellation." **[4004]**

"Section 9204, which addressed the critical issue of interplay between appellations of origin and trademarks, was struck in the previous revision to the proposed regulations. Previously, we recommended that Section 9204(b)(1) be revised to read: "The trademark was filed with the California Secretary of State or the United States Patent and Trademark Office for use on cannabis prior to February 21, 2020." In a similar vein, we recommended that Section 9204(b)(2) be revised to read: "The trademark was used on cannabis prior to February 21, 2020." **[4004]**

"Previously, Sec. 8000(b) read that: *"'Appellation of origin' means a name established through the process set forth in chapter 2 of this division."* We commented that this definition was inadequate. This definition was struck in the previous revision to the proposed regulations. No alternative definition was proposed.

Appellations are much more than mere names. They capture the causal link between the cannabis and the place of production in a way that informs consumers about the quality and characteristics of the cannabis. We propose a more complete definition of appellation of origin that underscores this essential aspect of the CAP and that will help us as a global model for cannabis appellations. Specifically, we suggest the following language: "'Appellation of origin' means a geographical name or other denomination used to identify

cannabis that is cultivated in a particular place and whose qualities or characteristics are essentially or exclusively attributable to that place, including its natural and human factors." This encapsulates what a cannabis appellation of origin truly is." **[4004]**

"We appreciate the addition of § 9102(j) pursuant to the passage of Senate Bill 67. However, we recommend revising the language for clarity, as follows: "Practice requirements described according to section 9107 of this chapter ensuring that must include the following: the appellation of origin is applicable only to cannabis that is planted in the ground in the canopy area; cultivated without the use of structures including a greenhouse, hoop house, glasshouse, conservatory, hothouse, or any similar structure covering the plant or modifying the natural light received by the plant in the canopy area; and cultivated without any artificial light in the canopy area pursuant to Business and Professions Code section 26063, subdivision (c)." **[4004]**

"Additionally, we recommend that CDFA require that appellation petitioners certify, subject to a CDFA inspection, that they meet these requirements." **[4004]**

Comments addressed in the Third 15-Day Comment Period:

"In our previous comments on the CDFA modifications of June 3, 2021, our organizations expressed opposition to the removal of provisions in Chapter 1 that had been included in the previous modifications issued on March 5, 2021. The removed provisions had laid the groundwork for meaningful and robust enforcement against and penalties for violations of the CDFA cannabis appellation of origin requirements. Our organizations respectfully requested that CDFA reinsert those provisions. At the time, the Department of Cannabis Control

(DCC) had not been formed and the consolidation trailer bill was still pending." **[4001]**

"Now that the DCC has been formed, and emergency consolidation regulations have been enacted, we respectfully request that CDFA work with the DCC to reinstate the proposed enforcement and penalty provisions of Chapter 1 into the DCC's regulations. Specifically, DCC should modify the Disciplinary Guide to specifically classify a violation of §17408(f) and §17408(a) as "Serious" violations. Our organizations submitted comments to DCC requesting this change. See attached.

As stated in our initial letter submitted to CDFA on May 6, 2020, "CDFA's regulations must create a strong system for cannabis appellations of origin and CDFA must be committed to robust implementation and enforcement of that system." Without robust implementation and enforcement, any system created for cannabis appellations is rendered meaningless. As such, it is in CDFA's interest to work with DCC to ensure the integrity of the Cannabis Appellation Program through robust penalties and enforcement. Again, we respectfully request and urge CDFA to work with DCC to reinstate the enforcement and penalty provisions as was proposed in Chapter 1.

For these reasons, we remain concerned with the modified draft regulations dated September 27, 2021. Our primary concern remains the enforcement and penalty provisions and urge CDFA to coordinate with DCC to ensure these provisions are robust by specifically classifying a violation of §17408(f) and §17408(a) as "Serious" violations. Our organizations are appreciative of CDFA's continued work; however, these changes need to be made if the program is to be successful." **[4001]**

“The regulations pertaining to trademarks was removed in a prior round of proposed regulations, because of the state regulatory consolidation; however, it was not added to the Department of Cannabis Control’s (“DCC”) emergency regulations and was similarly excluded in the emergency regulations.

We believe such trademark regulations are necessary to reduce potential issues that would otherwise be created for both appellation petitioners and existing trademark holders. The last round of commentary indicated that this issue would be addressed in the new regulations promulgated by the DCC, but the new emergency regulations fail to take the relative rights between appellations and trademarks into consideration. In particular, the delay in addressing the intersection of trademarks and appellations is making advising trademark applicants challenging, when the California regulations have not been finalized.

Please note the last version of the regulations relating to trademarks read as follows; we have noted our comments to the right of the proposed regulations.

There is an issue of federal pre-emption as to the effect of the fact of an appellation on a federal registration has not yet been addressed. The CAP program will have no impact on federal registrations (either before or after an appellation has been authorized), since the federal government does not recognize trademarks for cannabis generally, nor appellations in California or elsewhere. Meaning, a federal trademark will maintain validity, regardless of what happens in California under CAP.

This is how it should be. The USPTO already considers geographic features of an applied-for mark and will not issue a federal registration if (1) the primary significance of the mark is a generally known geographic location; (2) the goods/services originate in the place identified in the mark, (3) purchasers are

likely to believe that the g/s originate in the geographic place identified in the mark.

That said, there could be a federal trademark issued for a seemingly arbitrary mark, that is a geographical area in California but not outside of California." **[4002, 4003]**

"Provisions related to fines for failure to comply with advertising, marketing, labeling and packaging requirements for appellation of origin, county of origin and/or city of origin were struck in the previous revision to the proposed regulations. We cannot emphasize how critical rigorous enforcement and penalties are to the integrity of this program.

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." **[4004]**

"Section 9203 does not specify which evidentiary standard(s) or standard of review would apply to the CDFA's evaluation of a petition. As noted in our last comment, it is unclear whether and how the Administrative Procedures Act may apply in the processing and review of a petition. Before any final regulations are promulgated, the CDFA should provide further guidance on this section.

Subsection (g) provides that a petition may be denied for "any other reasonable cause submitted by the petition review panel, or through a public comment process, that the department determines would preclude the appellation from being established." Section 9203(g) should be modified to include a requirement

that petitioners be given an opportunity to address and cure the deficiencies identified by the CDFA in its response.

If a petition is deemed “denied”, an appeal procedure is necessary to protect due process rights of the petitioner(s). In a similar “denial” section of the new DCC Emergency Regulations, Section 15021 provides a time frame of 30 days to request a hearing from the “Department”. Once a hearing is requested, the appeal proceeds under Government Code Section 11500, et seq., Administrative Adjudication: Formal Hearing. Similar procedural guidelines are not difficult to add. Without this type of clarity respecting an appeal from the denial of a petition, the Petitioners are in jeopardy of paying non-refundable fees without recourse. This position is truly a black hole since the Review Panel has been eliminated, leaving no transparency to the Petition process and nothing to guide an appeal when the evidence is “not sufficient”. An appeal process should be added to Section 9203 to protect the petitioner(s) due process rights.” **[4003]**