



napa valley vintners



MONTEREY COUNTY VINTNERS & GROWERS



SANTA BARBARA VINTNERS



SAN DIEGO COUNTY VINTNERS ASSOCIATION



SANTA LUCIA HIGHLANDS  
EST. WINE ARTISANS 1991



RUTHERFORD DUST SOCIETY

NAPA VALLEY  
EST. 1994



CALIFORNIA ASSOCIATION  
of WINEGRAPE  
GROWERS



PASO ROBLES  
WINE COUNTRY ALLIANCE



May 6<sup>th</sup>, 2020

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

**COMMENTS OF THE CALIFORNIA AND REGIONAL WINE ASSOCIATIONS  
ON  
CDFA PROPOSED MODIFIED AND NEW REGULATIONS FOR THE  
CANNABIS CULTIVATION AND CANNABIS APPELLATIONS PROGRAMS**

The California and regional wine associations (Wine Associations) listed above submit these comments in response to the California Department of Food and Agriculture (CDFA) notice of proposed regulations to implement a system for appellations of origin for cannabis cultivation.

The Wine Associations on this letter represent the vast majority of California's wine and winegrape production. Together, the Wine Associations have considerable experience with the system for establishing, amending, and administering wine appellations in the U.S.

The Wine Associations commend CDFA for making a serious and considered effort to create a meaningful system to govern appellations of origin for cannabis cultivation. These comments will describe the interests of the California wine industry and propose improvements to the CDFA proposed regulations that recognize our industry's interests while making the CDFA regulatory system more robust.

Wine has been produced for several thousand years and appears frequently in ancient literature. Wine has been cultivated in California at least since 1769, when Padre Junipero Serra began planting grape seeds and plants with the establishment of missions. By 1919, California had over 1,000 wineries extending at least as far north as Sonoma. Winegrowing suffered under Prohibition but recovered with repeal and is now a prominent contributor to the California economy, generating approximately \$57.6 billion in annual economic activity.<sup>1</sup>

References to the specific origins of wines can be found in the Bible and in literature of Antiquity and the Middle Ages. The first official protection for an appellation was established by Italy in 1716 for Chianti. The first systematic appellation protection program was established in France in the early 1900's and the Institut National des Appellations d'Origine (INAO) was created in 1935 to administer the French system. Other winemaking countries have subsequently established their own systems.<sup>2</sup>

The U.S. system for wine appellations was established through regulations issued by the federal agency now known as the Alcohol and Tobacco Tax and Trade Bureau (TTB). In particular, TTB issued regulations governing the creation and use of American Viticultural Areas (AVAs) in 1978, with TTB approving the first AVA in 1980. TTB describes an AVA as "a delimited grape-growing region with specific geographic or climatic features that distinguish it from surrounding regions and affect how grapes are grown."<sup>3</sup>

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<sup>1</sup> See <https://wineinstitute.org/about-us/history/> and <http://wine-economy.com/>.

<sup>2</sup> See generally <https://en.wikipedia.org/wiki/Appellation>.

<sup>3</sup> See <https://www.ttb.gov/wine/american-viticultural-area-ava>.

As of May 2019, California had 139 established wine AVAs.<sup>4</sup> Many of these AVA's are nationally recognized for the quality and excellence of their wine.<sup>5</sup> Many of the AVA's have also enjoyed decades of widespread international recognition.<sup>6</sup> For instance, the Napa Valley Vintners have succeeded in protecting the integrity of the Napa Valley name through Geographic Indication status or Certification Mark Protection in more than 15 countries around the world, including the European Union, China, India, Brazil, and Canada.<sup>7</sup> Prominent AVA's have considerable value to winegrowers; they pay off in terms of consumer awareness, higher wine prices, and eventually higher grape prices.<sup>8</sup>

CDFA anticipates that appellations of origin could confer similar benefits on growers of cannabis.<sup>9</sup> The Wine Associations do not oppose this objective in general. However, we firmly believe that the CDFA regulations should not encourage cannabis licensees, including cultivators, processors, distributors and retail licensees (hereinafter referred to as "cannabis licensees"), to adopt or duplicate wine AVA's as cannabis appellations of origin, and should actively discourage cannabis licensees from improperly using AVA's in cannabis marketing, advertising, labeling and packaging.

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.<sup>10</sup> Wine industry members and others have serious concerns that these ill effects will not be mitigated by local land use regulations.<sup>11</sup> In any event, it seems prudent for CDFA to avoid unnecessarily attracting cannabis cultivation to areas covered by prominent AVAs with widespread winegrape vineyards.

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<sup>4</sup> See the California AVA list at [http://wineinstitute.org/wp-content/uploads/2020/01/AVAs\\_for\\_California\\_-\\_Copyright\\_2019\\_Wine\\_Institute\\_5.23.19\\_0.pdf](http://wineinstitute.org/wp-content/uploads/2020/01/AVAs_for_California_-_Copyright_2019_Wine_Institute_5.23.19_0.pdf).

<sup>5</sup> See, for example, <https://usawineratings.com/en/blog/insights-1/wine-regions-in-california-46.htm> and <https://blog.vinfo.com/2018/09/28/a-guide-to-the-best-california-wine-regions/>.

<sup>6</sup> See, for example, <https://www.usatoday.com/story/money/columnist/abrams/2016/08/31/40-years-later-french-wine-judgment-paris-california-napa-valley/89602248/>.

<sup>7</sup> See [https://napavintners.com/about/napa\\_name\\_protection.asp](https://napavintners.com/about/napa_name_protection.asp).

<sup>8</sup> See the Highlights in Walker, [Why Form an AVA?](#) (Wines & Vines, March 2006), accessible at <https://winesvinesanalytics.com/features/article/48731/Why-Form-an-AVA#>.

<sup>9</sup> CDFA Initial Statement of Reasons at p.2.

<sup>10</sup> See, for example, "Can Cannabis and Wine Coexist?" (Wine Spectator, November 22, 2019), accessible at <https://www.winespectator.com/articles/can-cannabis-and-wine-coexist>, and <https://www.latimes.com/local/california/la-me-santa-barbara-pot-grows-20190612-htmlstory.html>.

<sup>11</sup> An example of this controversy was recently reported in Burns, [Fifty-Acre Cannabis Operation Gets Green Light in Wine Country](#) (Santa Barbara Independent April 22, 2020) at <https://www.independent.com/2020/04/22/fifty-acre-cannabis-operation-gets-green-light-in-wine-country/>.

The Wine Associations' suggested revisions to the CDFA regulations are intended to strengthen the regulations and thereby help to minimize wine industry concerns. The regulations take on additional importance because they are the first effort to create a system for cannabis appellations of origin in the United States. Due to the absence of national regulation, while cannabis cultivation remains illegal under federal law, California's appellation of origin system will be the precedent for other states that want to create an appellation system for their own cannabis industry. Consequently, 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.

### **1. CDFA Should Reconsider its Economic Impact Analysis and its Timeline for Approving the Proposed Regulations.**

Although CDFA has substantial discretion to adopt cannabis appellation regulations under Business and Professions Code section 26063(b), that discretion is not unbounded. In proposing and adopting such regulations, CDFA must comply with the 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.

In adopting the APA, the California Legislature sought to improve the quality and clarity of administrative regulations, to reduce the economic impact of regulations on private individuals and entities, and to advance both goals by giving the public a voice in the administrative process.<sup>12</sup> Thus, an agency proposing to adopt any regulation must assess the potential for adverse economic impact on California business enterprises by preparing an economic impact analysis that considers "the proposal's impact on business, with consideration of industries affected including the ability of California businesses to compete with businesses in other states."<sup>13</sup> This analysis must be based on adequate information about the consequences of the proposed regulations, and members of the public must be given a meaningful opportunity to be heard.<sup>14</sup>

CDFA's process in proposing its regulations for cannabis appellations of origin falls short of fulfilling the APA's intent and substance for two reasons. First, although CDFA's Initial Statement of Reasons purports to analyze the economic costs and benefits of adopting the proposed regulations, it contains no information or analysis about the potential economic impacts the proposed regulations may have on California's wine industry. As explained above, the proposed regulations as currently

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<sup>12</sup> See Gov. Code §§ 11340-11340.1, 11346.

<sup>13</sup> Id. at § 11346.3(a)(2)-(3).

<sup>14</sup> Id. at § 11346.3(a)(1); *Voss v. Superior Court* (1996) 46 Cal.App.4th 900, 908; *Sims v. Dept. of Corr. & Rehab.* (2013) 216 Cal.App.4th 1059, 1073.

drafted leave open the possibility that cannabis licensees could usurp the substantial consumer goodwill associated with California AVA's. Further, allowing cannabis licensees to market their products using AVA names could incentivize more cannabis cultivation in proximity to high-value winegrape vineyards—exacerbating the economic effects that follow from the fundamental incompatibility with cannabis cultivation in close proximity to winegrapes and wine hospitality.

The Wine Associations respectfully request that CDFA revise its economic impact analysis to address these issues and consider amending its proposed regulations to minimize these economic impacts. For example, revising the proposed regulations to preclude the use of California AVAs that are not coextensive with local political boundaries would do much to ameliorate the economic impacts we have identified, and doing so is consistent with CDFA's broad discretion to "establish a process by which licensed cultivators may establish appellations of origin."<sup>15</sup>

Second, CDFA's decision to move forward with the process of adopting its proposed regulations in the middle of an unprecedented pandemic is inconsistent with its obligation to permit meaningful public participation in the regulatory process. Growers and vintners across California have been affected significantly by the extraordinary economic conditions created by the state and local governments' response to COVID-19. The potential adoption of these regulations in this climate—especially in light of the lack of consideration given to their economic effects—is unnecessary. Indeed, CDFA's decision to hold its public hearing, over the internet, on the same day written comments are due may preclude CDFA and its staff from meaningful consideration of both written and oral comments. This is precisely why certain listed associations requested that both the deadline for written comments and the public hearing be extended by at least 30 days. And while the Wine Associations were able to address the proposed regulations and their effects in detail, not all members of the public are able to engage in a similar effort in this economic and social climate. Because CDFA has until January 1, 2021, to adopt cannabis appellation regulations, its decision to press forward now is shortsighted. We thus suggest that CDFA consider waiting to adopt cannabis appellation regulations—both to address the concerns in this letter and the concerns of members of the public whose immediate attentions are necessarily focused on surviving the broader crisis at hand.

## **2. The Proposed Regulations Should Be Revised to Provide More Clarity on the Establishment and Use of Appellations of Origin.**

CDFA should revise the proposed regulations to limit the use of appellations of origin to only cannabis grown outdoors by holders of Outdoor Cultivation licenses without temperature control, solely under direct natural light, and in soil native to the appellation

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<sup>15</sup> See Bus. & Prof Code § 26063(b)(1).

region. CDFA should also clarify that appellations may only be established if the local governments in which the proposed appellation is located permit commercial cannabis cultivation.

The proposed regulations correctly require appellations to be established only on the basis of substantial evidence of how geography and cultivation practices distinctly affect the quality or characteristics of cannabis grown within an appellation of origin.<sup>16</sup> Unfortunately, proposed section 9102(j) leaves open the possibility that indoor or mixed-light grown cannabis could use an appellation of origin.

Indoor and mixed-light cultivation practices are inconsistent with the requirement that there be a connection between climate, geology, and physical features of land and the character or quality of cannabis grown within an established appellation of origin. Indeed, both the French and American appellation of origin systems for wine rely on the concept of *terroir*: the interaction between climate, soils, geomorphology and other environmental factors that combine to express a distinct geographical character or quality in wines from a particular area. Although the French system addresses some human factors that can affect this expression, such as the cultivation of specific varieties or specific cultivation practices, the concept of *terroir* is meaningless without full exposure to the unique environmental factors discussed above. Cannabis appellations will not fulfill the Legislature's—and voter's—aspirations if appellations can be used to market cannabis that has not been fully exposed to these kinds of environmental factors.

Accordingly, we respectfully request that CDFA delete subdivision (j) of proposed section 9102, and revise its regulations to clarify that only cannabis cultivated wholly outdoors, under direct natural light, in soil native to the appellation of origin, and for the life of the plant from propagation to harvest, may be marketed using appellations established under the proposed regulations. Additionally, such clarifying language should reasonably be added to proposed section 8212(b)(5).<sup>17</sup>

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

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<sup>16</sup> See Proposed Text of Regulations at § 9106.

<sup>17</sup> Cannabis grown indoors could be marketed using county of origin names. Cultivators and processors of indoor-grown cannabis should, however, be required to explicitly state that the product was grown indoors to prevent consumer confusion and to make clear that the geographic location had no impact on the character or quality of the cannabis (e.g., “Grown in a warehouse in Santa Barbara County, California,” or “Grown in a greenhouse in Yolo County, California”).

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.

The Wine Associations agree with CDFA that petitions for cannabis appellations of origin need to describe and provide evidence of the legacy, history, and economic importance of cannabis cultivation in the proposed area. This is important to provide to the public background and context for the proposed appellation of origin.<sup>18</sup> However, proposed §9102(h) should also require a description and evidence of the reputation and cultural importance of cannabis cultivation in the proposed area.

While there is language regarding reputation and cultural importance in §9106, as discussed below, the Wine Associations believe that this requirement is inappropriately placed in §9106 and should be moved to §9102(h). In addition, the regulation should make clear that evidence is expected on each of the aspects of the proposed areas that are listed. Consequently, §9102(h) should be revised to read as follows:

*(h) A description of and supporting evidence relating to each of the legacy, history, reputation, and cultural and economic importance of cannabis cultivation in the area.*

Proposed §9102(f) would require cannabis appellation of origin petitions to describe and provide evidence for distinctive geographic features affecting cannabis cultivation in the proposed area. This requirement is fleshed out in proposed §9106. Most of that proposed regulation is appropriate but it needs modifications to correct some significant flaws.

§9106 begins by requiring a description of “each distinctive geographical feature affecting cannabis cultivation” in the proposed appellation of origin. This wording and the wording of paragraph (a) of the section suggests that only one of the geographical features listed in the paragraph is necessary. This is inconsistent with cannabis cultivation literature, which indicates that several geographic features, including climate, topography, and soil types, can affect outdoor cannabis cultivation.<sup>19</sup> It is also inconsistent with the practice in wine AVA petitions of discussing all of the distinguishing features potentially affecting viticulture, including those listed in the TTB AVA petition regulation at 27 CFR §9.12(a)(3). Consequently, §9106 (a) should require a description

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<sup>18</sup> CDFA Initial Statement of Reasons at page 19.

<sup>19</sup> See, for example, Leafly Staff, [How to grow marijuana outdoors: a beginner’s guide](https://www.leafly.com/news/growing/outdoor-cannabis-grows-101-everything-you-need-to-start-growing-o) (Leafly, June 21, 2016, updated April 2, 2020) at <https://www.leafly.com/news/growing/outdoor-cannabis-grows-101-everything-you-need-to-start-growing-o>. See also [The basics of growing cannabis outdoors](https://www.cannaconnection.com/blog/2258-basics-growing-outdoors) (Cannaconnection, December 18, 2019) at <https://www.cannaconnection.com/blog/2258-basics-growing-outdoors>.

of “all” the geographic features potentially affecting cannabis cultivation in the proposed cannabis appellation of origin.

The Wine Associations also submit that §9106(a)(4) should be deleted and §9106(d) modified to remove all references to “reputation,” as referenced above. CDFA says that it has included these provisions because it interprets geography in its broadest sense to include cultural features, including reputation, as a means of delineating an appellation of origin.<sup>20</sup> CDFA’s rationale for this interpretation is unclear and, in any event, it is entirely inconsistent with the common understanding of a geographic feature. The interpretation also conflicts with the TTB’s regulation (27 CFR §9.12(a)(3)), which considers only climatic and geological aspects of an area as distinguishing features.

Including cultural factors – including reputation – as a geographic feature that affects cannabis quality or characteristics is inappropriate for purposes of establishing a cannabis appellation of origin. Cultural factors influence the popular recognition of an appellation of origin but not the quality or characteristics of the cannabis grown there. Rather, the recognition and reputation of a cannabis growing area derives from the quality and characteristics of the cannabis grown there. For example, the growing region widely known as the “Emerald Triangle” has a reputation for producing some of the best cannabis in the world. This high quality comes from the specific effects of the Emerald Triangle’s marine climate and “terroir” on cannabis cultivation.<sup>21</sup>

In short, evidence of cultural factors belongs in the section of cannabis appellation of origin petitions specified in §9102(h). The only exception could be for physical “anthropogenic features”, which should be listed in §9106(a)(3).

Accordingly, the Wine Associations recommend the following changes to proposed §9106:

- The first paragraph of §9106 should be amended to read: “*The petition shall describe all distinctive geographic features that could affect cannabis cultivation in the geographic area of the proposed appellation of origin, including:*”.
- The first line of §9106(a) should be amended to read: “*A narrative description of the distinctive geographic features, including but not limited to:*”.
- §9106(a)(3) should be amended to read: “*Physical features, which may include flat, hilly, or mountainous topography, geographical formations, bodies of water, watersheds, irrigation resources, and physical anthropogenic features.*”.

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<sup>20</sup> CDFA Initial Statement of Reasons at page 23.

<sup>21</sup> See Proper Staff, [Why Is Everyone Obsessed With California’s Emerald Triangle](https://aproperhigh.com/articles/why-is-everyone-obsessed-with-california-s-emerald-triangle) (January 15, 2019) at <https://aproperhigh.com/articles/why-is-everyone-obsessed-with-california-s-emerald-triangle>.



- §9106(a)(4) should be deleted and what is now §9106(a)(5) renumbered as the new §9106(a)(4).
- §9106(d) should be amended to read: “*A description of the quality or characteristic of the cannabis that is caused by the distinctive geographical features, including an explanation of how those features cause the cannabis to have that quality or characteristic; and*”.

### **3. CDFA Should Allow More Time for Comments on Cannabis Appellations of Origin Proposals.**

Proposed §9201(a) allows only 30 days for comments after CDFA provides public notice of a proposal to establish or amend a cannabis appellation of origin. CDFA says that a defined comment period is needed to ensure the public is aware of how to participate in the process. CDFA also says that 30 days is enough time for the public to provide comments while maintaining an efficient time schedule for processing appellation of origin petitions.<sup>22</sup>

The Wine Associations submit that the proposed strict 30-day comment period will not allow enough time for considered comments on many of the cannabis appellation of origin petitions. Experience with proposed AVA’s for wine demonstrates that more time is needed to properly prepare responsive comments. Among other things, review of a proposed AVA and preparation of comments sometimes requires identification of and consultation with historians, geographers, and cultivation experts having relevant experience. These experts often need to conduct research on the specific factors cited to support the proposed AVA. Thirty days simply would not be enough time for this effort on a proposed new or modified cannabis appellation of origin.

CDFA should allow more time to ensure that it receives fully considered and well-supported comments on proposals for cannabis appellations of origin. For example, TTB allows at least 60 days for public comment on proposed new or modified AVAs but TTB also liberally grants extensions to this comment period when appropriate. CDFA should adopt the same approach for public comment on cannabis appellations of origin. Consequently, the Wine Associations propose that the second sentence of proposed §9201(a) be amended to read as follows:

*The public will have 60 days from the initial date identified in the notice to provide comments on the proposal provided that the department will further extend the notice period in response to a request showing a reasonable basis for the extension.*

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<sup>22</sup> CDFA Initial Statement of Reasons at page 31.

#### **4. 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).<sup>23</sup>

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.*

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<sup>23</sup> AVAs for wine are codified in the TTB regulations in 27 CFR Part 9. Consequently, TTB must comply with the federal Administrative Procedure Act in announcing its decisions on new or modified AVAs. TTB provides detailed reasons including responses to comments, in the public notice of its decisions. These explanations provide valuable information and guidance to the wine industry.

## **5. The Petition Review Panel Should Not Supplant CDFA Internal Expertise and the Qualifications for the Panel Should Be Expanded.**

§§9300-9302 of the proposed regulations concern the creation, qualifications, and duties of a Petition Review Panel (Panel) that CDFA may establish to assist in review of cannabis appellation of origin petitions. CDFA believes that the detailed nature of these petitions might require input from experts and the Panel would assist in the petition review process.<sup>24</sup>

The Wine Associations do not oppose the Panel concept. However, we are concerned that CDFA will rely too heavily on the Panel's recommendations and will not develop the necessary internal staff expertise to independently review appellation of origin petitions. TTB does not utilize a similar panel for review of wine AVA petitions. TTB is able to conduct careful and in-depth review of those petitions through internal expertise in the Regulations and Rulings Division with support as needed from a dedicated Wine Trade and Technical Specialist. The Wine Associations recommend that CDFA dedicate adequate funds and support to develop similar internal staff expertise for review of cannabis appellation of origin petitions.

The Panel members will be unpaid volunteers despite possibly needing to devote significant time to review of cannabis appellation of origin petitions. It seems likely that most volunteers would come from the cannabis industry since they would have a direct or indirect economic interest in promoting cannabis. The Panel should be providing unbiased recommendations to CDFA on cannabis appellations of origin. Consequently, to minimize any potential Panel bias, the Wine Associations recommend that the Panel should not be allowed to have more than three (3) of its seven (7) members with any ownership, employment, or consulting connection with the cannabis industry.

In addition, the experience qualifications specified for Panel members are too restrictive. For example, the Panel would benefit by having at least one member who could evaluate the climate and geographic information in a petition. Consequently, Panel members should be qualified if they have expertise relevant to any area related to consideration of a cannabis appellation of origin petition.

For the foregoing going reasons, the Wine Associations recommend that paragraphs (a) and (d) in proposed §9301 be revised to read as follows:

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<sup>24</sup> CDFA Initial Statement of Reasons at page 33.

(a) *The panel shall be composed of seven (7) members and two (2) alternates. No more than three (3) members of the panel shall at any time have an ownership interest in any cannabis-related business or have an employment or consulting relationship with any person or entity involved in a cannabis-related business.*

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(d) *The panel shall have expertise in areas relevant to consideration of petitions. This may include geography, climate, cannabis cultivation, intellectual property, sustainable agriculture, community-based research, or other relevant areas.*

## **6. The Penalties for Violations of the CDFA Regulations Are Not an Adequate Deterrent and Should Be Strengthened.**

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.<sup>25</sup>

CDFA's Initial Statement of Reasons indicates that cultivators eligible to market appellation-labeled cannabis will obtain an estimated price premium of approximately 15-25 percent for their products. Less than two weeks before CDFA released its proposed regulations, the average wholesale price of outdoor-grown cannabis in California was approximately \$1,000 per pound.<sup>26</sup> According to a recent study published in California Agriculture, outdoor cultivators achieved an average yield of 0.10 pound per square foot.<sup>27</sup> Thus, a small cannabis farm of 5,000 square feet could expect to produce approximately \$500,000 worth of cannabis per year even without the ability to market appellation-labeled cannabis. A 15-25 percent premium for that product would create an additional \$75,000-125,000 in value.

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<sup>25</sup> See Cal. Code Regs., tit. 3, § 8608(a)(1).

<sup>26</sup> Bart Schaneman, California wholesale marijuana flower prices holding steady on lack of licenses, growing demand (Feb. 10, 2020) (available at <https://mjbizdaily.com/wholesale-marijuana-prices-in-california-for-flower-hold-steady/>).

<sup>27</sup> H. Wilson, *et al.*, First known survey of cannabis production practices in California, 73 California Agriculture 98, 121 (Jul.-Dec. 2020) (available at <http://calag.ucanr.edu/archive/?type=pdf&article=ca.2019a0015>).

A maximum fine of \$500 is wholly insufficient to prevent all but the very smallest-scale cannabis licensee from violating the regulations proposed in §8212(a)-(b).<sup>28</sup> A rational economic actor would gladly pay a \$500 fine for a 15-25 percent increase in the value of its product.

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.<sup>29</sup>

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.<sup>30</sup>

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.

Given the potential for significant public harm, the deceitfulness of misusing an appellation, and the additional remedies available under section 8601(a)(1), the Wine Associations request that the regulatory language be amended to list the misuse of an appellation as “Serious,” defined as, “[v]iolations 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. . . .”<sup>31</sup>

As stated above, a cannabis cultivator with 5000 square feet could profit \$75,000-125,000 by falsely misleading consumers to purchase their product through misusing an appellation. This is a deceptive business practice that has dire economic consequences for consumers, but also the cannabis industry generally, and specifically the cannabis licensees appropriately using the appellation.<sup>32</sup>

Furthermore, the Wine Associations strongly believe that the misuse of an AVA by a cannabis licensee is serious. As discussed above, the wine industry has spent decades investing in the 139 California AVA’s and has significant concerns that these regulations increase the likelihood that cannabis licensees will usurp the substantial consumer

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<sup>28</sup> Assuming that appellation-labeled cannabis achieves only a 15 percent price premium, growers cultivating more than approximately 33 square feet of cannabis would remain incentivized to violate section 8212 and pay a \$500 fine in exchange for a 15 percent increase in the value of their crop.

<sup>29</sup> See Cal. Code Regs., tit. 3, § 8608.

<sup>30</sup> See proposed § 8601.

<sup>31</sup> See Cal. Code Regs., tit. 3, § 8608(a)(1).

<sup>32</sup> Id.

goodwill associated with them.<sup>33</sup> Without robust penalties for violations of §8212, there is no real deterrent for a cannabis licensee to simply use an AVA name in advertising marketing, labeling or packaging.<sup>34</sup>

As such, the Wine Associations request that the penalties provisions in proposed § 8601, as they relate to violations of §8212, be upgraded to “Serious” violations.

### Conclusion

The Wine Associations would again like to commend CDFA for making a serious and considered effort to create a meaningful system to govern appellations of origin for cannabis cultivation. Thank you in advance for consideration of these comments. If you should have any questions, please do not hesitate to reach out to Tyler Blackney, Director of Legislative and Regulatory Affairs for Wine Institute, at (916) 441-6974 or tblackney@wineinsitute.org.

Respectfully submitted,



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Linda Reiff  
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Napa Valley Vintners



Jake Hawkes  
President  
Alexander Valley Winegrowers



Kara Sather  
Executive Director  
El Dorado Winery Association



Alison Laslett  
CEO  
Santa Barbara Vintners

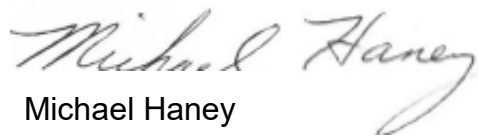


Cheryl Quist  
Executive Director  
Petaluma Gap Winegrowers Alliance

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<sup>33</sup> See the California AVA list at [http://wineinstitute.org/wp-content/uploads/2020/01/AVAs\\_for\\_California\\_-\\_Copyright\\_2019\\_Wine\\_Institute\\_5.23.19\\_0.pdf](http://wineinstitute.org/wp-content/uploads/2020/01/AVAs_for_California_-_Copyright_2019_Wine_Institute_5.23.19_0.pdf).

<sup>34</sup> See proposed § 8601.



Michael Haney  
Executive Director  
Sonoma County Vintners



Kim Stemler  
Executive Director  
Monterey County Vintners & Growers



Beth Costa  
Executive Director  
Wine Road Northern Sonoma County



Krista Chaich  
Executive Director  
Temecula Valley Winegrowers Association



Edward Embly  
President  
San Diego County Vintners Association



Sara Soergel  
Executive Director  
Rutherford Dust Society



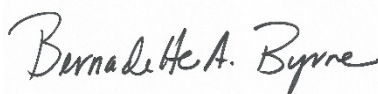
Chris Chandler  
Executive Director  
Livermore Valley Winegrowers Association



Anne Steinhauer  
Executive Director  
San Luis Obispo Coast Wine Collective



Ryan P. Klobas, JD  
Chief Executive Officer  
Napa County Farm Bureau



Bernadette Byrne  
Executive Director  
Mendocino Winegrowers Inc.



Michael Miller  
Director of Government Affairs  
California Association of Winegrape Growers



Tony Baldini  
President of the Board of Directors  
Santa Lucia Highlands Wine Artisans



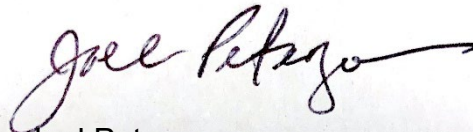
Joyce Stavert  
Executive Director  
Oakville Winegrowers




Paul Goldberg  
President  
Napa Valley Grapegrowers

*Barbara Satterfield*

Barbara Satterfield  
Sta. Rita Hills Wine Alliance



Joel Peterson  
Executive Director  
Paso Robles Wine Country Alliance



Jocelyn Maddux  
Director  
Placer County Vintner's Association  
Sierra Vintners Association



Wendy Hilberman  
Executive Director  
Russian River Valley Winegrowers