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Appellation Working Group Comments

TO: CALCANNABIS

SUBMITTED BY: THE INTERNATIONAL CANNABIS FARMERS
ASSOCIATION



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EXECUTIVE SUMMARY

The International Cannabis Farmers Association (ICFA) is a group of farmers, scientists, and stakeholders, working together to promote the unique quality and ecological superiority of sun grown Cannabis products while preserving the heritage of traditional farming communities.

Together, the organization is committed to researching, educating, and advocating for, best agricultural and farming practices. The ICFA is an organization of, by and for farmers. Internationally, regulatory frameworks often require that therapeutic Cannabis varieties be grown indoors or in all season greenhouses despite the overwhelming evidence that traditionally farmed sun grown Cannabis is qualitatively and ecologically superior. This public policy trend has devastating environmental implications and leaves both patients and adult-use consumers without access to sun grown cannabis and cannabis-derived products.

The International Cannabis Farmers Association was formed to establish the science, data, and consumer direct education necessary to break down these barriers while promoting the benefits of traditionally farmed Cannabis. Since the organization’s formation in 2017, the ICFA has prioritized the development of cannabis appellations as a primary program component. In 2017, the ICFA built a relationship, and established a strategic partnership, with the Mendocino Appellations Project (MAP), which led to a series of educational events focused on cannabis appellation development and cannabis agricultural commissions.



In 2018, the ICFA in partnership with MAP, held eleven (11) events in eight (8) sun grown regions throughout California. During these events, the organizations invited public input on the following topics:

- 1) Cannabis Appellations,
- 2) Regenerative Farming Practices,
- 3) Barriers to Entering the Licensed Marketplace,
- 4) Tax Incentive Programs, and
- 5) Sun Grown Cannabis Commissions.

In 2019, the ICFA was fortunate to participate in the CalCannabis Appellation Working Group (AWG). As such the ICFA held eight (8) meetings discussing California's developing appellation program. During these eight (8) ICFA meetings, AWG meeting materials along with ICFA's draft public comment documents, were shared with the organization's five hundred thirty-eight (538) members. In drafting these recommendations, the ICFA Board of Directors has taken considerable time reviewing the input received, and internally discussing both California's County of Origin program, and Appellation program mandates for cannabis.

The comments received to date, suggest that farmers throughout the state are struggling. Faced with local bans, exclusionary land use requirements, onerous regulations, and high cultivation taxes that are compounded by falling prices, traditional farmers have had a hard time accessing, and being successful in, the regulated marketplace.

ICFA's members view the State's appellation program as a tremendous opportunity, and some members have expressed concerns that the rigorous recommendations put forth in this document, if adopted, could exclude them from participating in the program. As such, coming to consensus with the organization members regarding the rigorousness of standards and practices, and 'number' of, and categories of, causal links has been challenging for the organization.

The statute set forth in the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) requires CalCannabis to, '...establish a process by which licensed cultivators can establish appellations of standards, practices, and varieties.'¹ The inclusion of 'standards, practices, and varieties', in California's statute, is more reflective of the French appellation d'origine controlee (AOC) model than the American Viti-cultural Areas (AVA) model.

¹ Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), *Section 26063., (b)*, (California Business and Professions Code, 2019).



Furthermore, the AOC model is based on the concept of terroir which is how a region's traditional practices, climates, soils and geography (flora, elevation, slope) affect the taste and distinctiveness of the AOC product.

AOC programs, by nature are exclusive, meaning not all farmers in the appellation region will qualify for certification to use the appellation seal. In response to this, we'd like to express the belief that terroir style appellation standards, and the marketing, and branding of cannabis appellation regions, will help to elevate all the farmers within the appellation region.

Additionally, the County of Origin program, which is similar to the AVA program, provides a fully inclusive opportunity for cultivators to participate in a geographical indicator program.

The ICFA Board of Directors believes that by adopting the recommendations in this document, the State will act to establish a legally defensible cannabis appellation program that will protect and differentiate the products produced in California's appellation regions for generations to come, in the national and international marketplace.²

This potential however, can only be realized if CalCannabis establishes the appellation process in a manner that requires licensed cultivators to establish standards, practices, and varietal controls that exclusively ensure the unique quality of the appellation product is the result of the essential causal link(s) between the product and the product's place of origin. The ICFA feels strongly that appellation crops must have full and unrestricted access to the appellation region's natural environment including native soil, native water, and the region's unique climate and weather conditions. We thank CalCannabis for taking the time to facilitate the Appellation Working Group, and respectfully request that these comments be considered when drafting regulations for the State's appellation program.

Sincerely,

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² Michael Krawitz, *The Importance of Appellations of Origin to the Successful Therapeutic Model of Whole Plane Cannabis, Follow-up to Civil Society Cannabis pre-review input*, (Coalition: VMCA, MAP, ICFA, and FAAAT, 2018), 3-11.



RECOMMENDATIONS

APPELLATION PETITION

The ICFA supports the use of the petition process as the pathway by which licensed cultivators will apply for appellation designation, and suggests that CalCannabis be responsible for reviewing each petition. To ensure adequate public notice, public comment opportunities, and a transparent process, the ICFA recommends using the rulemaking process for the final review and establishment of each appellation region.

Petition requirements will be a critical part of ensuring the integrity and stringency of the appellation program, which the ICFA feels is essential for the program to hold value outside of California and for generations to come. The ICFA believes that establishing an appellation should not be about a minimum number of causal links, but more about the quality of argument provided for each causal link. As such, each petition must, at a minimum, include the following:

- 1) Regional name information with historical evidence of open-air cannabis cultivation³,
- 2) Description of geographical feature(s) including GIS mapping and narrative description of the appellation boundary,
- 3) Argument of causal link between geography and product,
- 4) Argument of causal link between native water resources and product,
- 5) Argument of causal link between native soil resources and product,
- 6) Argument of causal link between native growing season and product,
- 7) Argument of causal link between native climate and product, and
- 8) Description of distinctive practices and quality control protocols that result in superior appellation product feature(s).

Currently California's appellation statute allows only licensed cultivators the opportunity to establish appellations of standard, practice, and varietal. This varies from wine models, which

³ International Cannabis Farmers Association (ICFA), *Member Supported Examples*, (2019)

- a) Print articles documenting the cultivation, and/or eradication, of traditionally farmed open-air cannabis within the region.
- b) Law enforcement records documenting the cultivation, and/or eradication, of traditionally farmed open-air cannabis within the region.
- c) Official news footage, audio and/or video, documenting cultivation, and/or eradication of traditionally farmed open-air cannabis.



allows any interested party the ability to apply for appellation recognition and preserve the region's namesake.

Because most jurisdictions ban open-air cannabis farming, many traditional farmers will be unable to petition for appellation designation. Considering the inherent cultural interdependence developed between farmers and cannabis and community in these regions over the decades, it is imperative traditional farming communities existing within banned jurisdictions not be regulated out of appellation branding indefinitely.

Thus, to protect traditional cannabis farming communities, CalCannabis should provide some pathway for appellation petitions to be filed that preserves the right to the appellation name, or preserves the appellation designation, but holds the appellation designation in abeyance, pending licensure of the petitioner-members. Such a pathway would additionally allow farmers in "ban" jurisdictions to better negotiate for policy changes with their local governments to allow licensure and thus access to the appellations program.

APPELLATION CONTROL

The ICFA believes that thoughtful and thorough control of an appellation is critical for the program's integrity. As such, we support CalCannabis taking the lead on the implementation and enforcement of California's cannabis appellation program. The appellation program should include the following primary components for control:

- 1) A strong petition and review process.
- 2) Certification of appellation farm(s), verifying compliance with the appellation regulations.
- 3) Certification of off-site appellation support facilities, verifying compliance with the appellation regulations.
- 4) Ongoing surveillance enforcement folded into routine State licensing inspections.
- 5) And, oversight of complaint-based enforcement.

For certification purposes, the ICFA suggests a *hybrid* process be considered. To help alleviate the burden on CalCannabis and to reduce the cost of the program for applicants, we suggest that CalCannabis establish a process by which qualified third-parties may conduct the certification inspections as a designee of CalCannabis. Under this *hybrid* model, CalCannabis or an approved designee, would conduct the on-site inspection of the appellation facility, complete the inspection report, and submit the report to CalCannabis for review. CalCannabis would



retain the authority to issue a notice of deficiency, issue an approval of appellation status, and/or issue a denial of appellation status to the entity seeking certification.

The intention of this proposal is to allow CalCannabis the ability to 'approve' certifiers such as a certification body, a trade group, an organization, an ag commission, etc. By using this type of certification structure, CalCannabis can reduce the amount of staff hours and expense associated with oversight of the appellation program, while upholding the integrity of the program. This type of structure also stands to reduce the cost to farmers, assuming many are likely to engage in certification programs, trade groups, an ag commission, or other types of organizations that assist them in navigating regulatory compliance and business hurdles.

USE OF THE APPELLATION SEAL

The ICFA supports the use of the appellation seal on all non-manufactured products including – leaf, flower, kief, and pre-rolls. The ICFA also supports the use of the appellation seal on traditional hashish products derived mechanically or with water as a solvent. Starting with these simple single ingredient products will help ensure that appellation products truly reflect the unique qualities of the region in which the product was produced.

Upon approval of an appellation and the certification of the farm(s) wishing to use the appellation seal, CalCannabis should be responsible for issuing labeling guidance that ensures the proper use and placement of the appellation seal. Each appellation cultivator should be allowed the ability to apply the appellation seal, should the cultivator be allowed to conduct post-harvest processing on-site, at the farm. The ICFA feels that it is important to note that cannabis farmers may be prohibited from conducting post-harvest processing activities on the farm by their local jurisdiction.

With that said, we suggest a certification pathway be created for licensed processors, manufacturers, and distributors who work directly with appellation farmer(s). The certification program should be designed to protect appellation products from cross contamination while maintaining the quality controls set forth by the individual appellation. The certified processors, manufacturers, and distributors who assist farmers by assuming all or a portion of the post-harvest processing activities, should be located within the appellation they serve.

While the ICFA strongly supports requiring that off-site support facilities be located within the appellation, we are also acutely aware of the fact that some of the jurisdictions providing open-air cultivation permits, do not yet offer permits for post-harvest support facilities. This is so prevalent throughout California that the ICFA Board of Directors suggest some flexibility



during the rulemaking process that allows the petitioner to work with licensed processors, manufacturers, and distributors located within a specified radius of the appellation boundary as identified in the petition.

STANDARDS, PRACTICES, AND VARIETAL CONTROL

The following standards, practices, and varietal controls are supported by the ICFA Board of Directors to ensure the appellation program is legally defensible and has integrity in the marketplace beyond California. By requiring the rigorous standards, practices, and varietal controls recommended herein, the State will be able to create an appellation program that protects the culture, tradition, and intellectual property of traditional cannabis farmers in national and international commerce for decades to come.

While the ICFA understands that the following recommendations will result in the exclusion of many traditional farmers, we firmly believe that rigorous standards stand to benefit not only those farmers certified to use the appellation designation, but also the greater community. As such, it is important to the ICFA Board of Directors that we disclose that the following standards, may not be supported by all members.

Faced with barriers to entry, as stated earlier in this document, many traditional farmers are fearful of being excluded from the appellation program. However, the Board finds it important to again mention that a rigorous appellation program stands to support not only appellation farmers but also non-appellation farmers from the designated region.

While the implementation of the standards, practices, and varietal controls recommended herein would result in only outdoor license type holders being able to qualify for appellation certification, it is important to note that this approach does not preclude application to the program by all licensed cultivators. In doing so, the ICFA believes that these recommendations would meet the legal requirements of the statute set forth in California Business & Professions Code, Section 26063(b).

Due to their critical importance to the appellations program, the ICFA focuses here on four essential standards and/or practices that must be required by the state to ensure the appellation program establishes and maintains integrity on an international level.



At a minimum, CalCannabis should include the following requirements in the upcoming regulations.

- 1) Cannabis plants must be cultivated in an open-air setting,
- 2) Flowering must be conducted using natural sun-light only,
- 3) The cannabis plant's roots must have contact with native soil, and
- 4) Irrigation water must be supplied by a native water source.

CULTIVATING IN AN OPEN-AIR SETTING

Appellation crops must have full exposure to the climate and geography of the region.

Cannabis has been cultivated for thousands of years, throughout the world, and used by indigenous peoples for fiber, nutrition, and medicine. *Cannabis*, regardless of use and cannabinoid profile, has been traditionally farmed in an 'open-air' setting. Due to the long-term global prohibition on *Cannabis* inflorescence, gardeners and farmers alike have resorted to cultivating the flowers, especially those varieties rich in THC, within fully enclosed structures.

The cultivation of cannabis in fully enclosed structures restricts the plants ability to be influenced by the natural climate, sun-light hours, flora, and microbiome of the appellation region. For this reason, the ICFA recommends that only traditional open-air cultivation be allowed to qualify for appellation certification.

Open-air cultivation means the cannabis was farmed without the use of any type of material(s), or structure, that could alter the temporal setting of, and/or exposure to, the region's natural climate. This standard should not prohibit appellation farmers from altering the temporal setting of, and/or exposure to, the appellation region's natural climate for the purposes of propagation and nursery.

Each appellation choosing to allow the use of temporal manipulation, artificial lighting, and/or supplemental lighting for propagation and/or nursery purposes, should be required to set strict practices around the structures, materials, and seasonal timelines for such use. Additionally, those appellations allowing for supplemental and/or artificial lighting should be required to set rigorous practices around the source of energy used, and the carbon emissions associated with the energy used.



FLOWERING IN NATURAL SUN-LIGHT

Appellation crops must be flowered using natural sun-light hours, without restriction or manipulation.

Cannabis has been traditionally cultivated for thousands of years using only natural sunlight, from propagation through harvest. Traditionally planted from seed, cannabis genetics have been shared from farmer to farmer, and region to region, through seed, cuttings, and pollen sharing. The ICFA believes that by requiring appellation farmers to flower using natural sun-light hours, while prohibiting cultivation techniques that: a) restrict the amount or intensity of sun-light the crop is subject too, and/or b) manipulates the daily duration of naturally occurring daylight hours; the appellation program will help to ensure the region's ability to show essential causal link to the natural climate and geography of place.

However, the ICFA would like to make it clear that this requirement should not preclude certified appellation farmers from being allowed to use supplemental and/or artificial lighting for the purposes of propagation and nursery activities, so long as the requirements noted in the previous section are met.

We believe this allowance, or exemption, will be necessary to ensure that appellations can conduct research on, engage in the genetic development of, and stabile, appellation specific varieties.

ROOTS TOUCHING NATIVE SOIL

The roots of appellation crops must have contact with the native soil.

While ICFA appreciates the complexity of mandating a standard for the use of native soil in cultivation, it is imperative the agency does so for this program to have value. ICFA requests CalCannabis impose the highest possible standard in this regard, and offers the following consideration:

- 1) **SOIL CONSTITUTION:** Due to decades of cannabis prohibition, traditional cannabis farmers have sought out parcels in remote areas to cultivate cannabis. In many cases, traditional farmers purchased land that had previously been subject to resource extraction and developed their traditional farms on pre-existing logging flats, skid roads, and mill sites. In these instances, the native top soil is often lost. A rich tradition of reclaiming and regenerating these areas with homesteads, including cannabis farming, must be recognized by this developing appellation program. As such, the ICFA supports appellation standards that require cannabis to be cultivated in naturalized soil conditions. Ideally, these conditions would be comprised of native soil that has only been amended with organic materials sourced regionally. The



ICFA recommends that CalCannabis include a standard or practice requirement that inputs be limited to regionally-derived organic materials that are indigenized on the farm.

- 2) **USE OF CONTAINERS:** The ICFA suggests that CalCannabis prohibit the use of non-indigenous containers in the cultivation of appellation crops. Non-indigenous containers may be used during propagation only.

APPELLATION SOURCED IRRIGATION WATER

If the appellation crop is irrigated, the water must be sourced from within the appellation. All appellation crops and soil in which they are grown, shall be subject to all weather and rain events.

If the appellation plants are irrigated, the water used must originate from within the appellation and be sourced from rainwater, surface water, or groundwater. No municipal, industrial, or treated irrigation water supplies should be allowed for irrigation purposes. Furthermore, the appellation crop must be cultivated in a manner that allows the soil in which the crop is grown be subjected to all naturally occurring rainwater, snow, and seasonal weather conditions.

Standardizing native water sourcing and mandating full exposure to the appellation environment will contribute to the causal linkage of appellation products to place of origin.

VARIETAL CONTROLS

Due to the easy hybridization of the cannabis plant, and the lack of genetic research data identifying true varieties, the ICFA membership strongly suggests that CalCannabis refrains from requiring that a mandatory varietal control be presented at time of petition.

A great deal of hybridization has occurred between the species *Cannabis sativa*, *Cannabis Indica*, and *Cannabis ruderalis*, producing an unknown number of potential subspecies. Each subspecies has a potentially wide range of observable characteristics which are the result the interaction of its genotype to the natural environment.

While the legal recognition of a plant variety could provide an appellation with some legal protection, that protection would be depend on having a distinct and replicable unique taxonomic plant, which is not currently a certainty for cannabis. Until the genetic science of cannabis has progressed in terms of access, ethics, and cultural agreement, requiring genetically unique varieties be presented in the petition, would be unduly burdensome for the applicants.

The ICFA instead recommends that CalCannabis require that each petitioner submit a plan by which varietal controls will be established. In all cases, the plan to establish varietal control



should ensure that the appellation will be able to provide distinctive and consistently high quality product in relationship to all varieties allowed to wear the appellation seal.

To ensure the development of reasonable and responsible varietal controls, CalCannabis should at minimum require appellation petitions include:

- 1) A Varietal Control Plan that outlines a plan to establish stability and consistency of allowed appellation varieties⁴ and
- 2) A Quality Control Plan that ensures the consistent quality of allowed appellation varieties.⁵

⁴ICFA Policy Call Notes, *Member Supported Examples*, (International Cannabis Farmers Association (ICFA), 2019).

- a) a 5-year plan to internalize the production of approved variety(ies) within the appellation area; or
- b) the implementation of an appellation wide breeding program to ensure the varieties used are properly acclimated and consistent from season to season and harvest to harvest; and/or
- c) a system by which the harvested plant material will be graded and sorted to ensure consistency and quality of the appellation product(s). (2019)

⁵ ICFA Standards Committee: Grading & Sorting Working Group, *Grading and Sorting Rubric & Guidance Doc*, (International Cannabis Farmers Association (ICFA), 2017, 3-10).