

**DEPARTMENT OF CANNABIS CONTROL**  
**CALIFORNIA CODE OF REGULATIONS TITLE 4, DIVISION 19**  
**INITIAL STATEMENT OF REASONS**

**SUBJECT MATTER OF PROPOSED REGULATIONS:** Quick Response (QR) Code Certificate Requirements for Cannabis Licensees

**SECTIONS AFFECTED:** Title 4, California Code of Regulations, sections 15039, 15311, and 15415.

**BACKGROUND**

The Department of Cannabis Control (Department) is charged with licensing commercial cannabis businesses. In February 2020, the Department submitted an emergency regulation package to the Office of Administrative Law (OAL) regarding requirements for retail and distributor licensees to display QR Code Certificates that were provided by the Department. The emergency regulation was in response to an outbreak of lung injuries across the state and the country in the fall of 2019 and early 2020. It was determined by the California Department of Public Health and the Center for Disease Control that many of these lung injuries were likely caused by unsafe vape products, including cannabis vape products, most of which were obtained from unlicensed sources. The emergency regulation was approved by OAL on February 13, 2020, filed the same day with the Secretary of State, and became effective immediately upon filing. The Department readopted the emergency regulation on December 8, 2020.

The goal of the proposed regulation is to provide cannabis consumers with a method to easily identify licensed cannabis businesses to avoid obtaining potentially unsafe cannabis goods from unlicensed sources. The Department has determined that continuing to provide cannabis consumers with a method for easily verifying licensed businesses, beyond the emergency period, is essential to protecting public health and safety.

In July 2021, the Department was established through the consolidation of the former three cannabis licensing authorities. The Department inherited the authorities and responsibilities of all three licensing entities including the authority to promulgate regulations. The former three licensing authorities filed actions to make changes without regulatory effect, pursuant to 1 CCR 100, to relocate and renumber the existing cannabis regulations within their respective titles to the Department under Title 4. On July 14, OAL approved the actions to renumber and relocate the regulations and filed the actions with the Secretary of State, making the changes effective the same day. Therefore, the section numbers of the regulations as initially noticed in the emergency package have been amended for clarity and accuracy. The changes are as follow: 16 CCR 5039, 5311, and 5415 have been changed to 4 CCR 15039, 15311, and 15415.

## **STATEMENT OF PURPOSE, PROBLEM, RATIONALE, AND BENEFITS**

The proposed regulations will require cannabis retailers and distributors to clearly display a QR Code Certificate, at their licensed premises, and to provide a copy of the certificate to be carried by their delivery and transportation employees.

There are numerous unlicensed cannabis businesses in operation within California. This makes it difficult for members of the public to easily determine which cannabis businesses are properly licensed and operating legally versus those that are unlicensed and operating illegally. All cannabis goods that are sold by licensed cannabis businesses must pass mandatory laboratory testing, prior to being sold at retail, in order to ensure that the cannabis goods are safe for consumption. Conversely, unlicensed cannabis businesses may sell cannabis goods that are not laboratory tested for safety. Therefore, the risk of obtaining a potentially harmful product is much higher when purchasing from an unlicensed business that illegally sells cannabis products than from a licensed business.

By requiring all storefront retailers to clearly display a QR Code Certificate, the public will be able to easily distinguish licensed cannabis retailers from unlicensed retailers because the QR Code Certificate is posted and easily identifiable and used. Once the QR Code is scanned, it will display information about the license and licensee, including if it is an active state license. This will assist in decreasing the risk of harm that may result from the purchase and consumption of untested cannabis goods. Additionally, requiring delivery and transportation employees to carry a copy of the QR Code Certificate will allow delivery customers, law enforcement, and other members of the public to use the QR Code Certificate to verify the licenses of the cannabis businesses for whom the employees work.

## **SPECIFIC PURPOSE, NECESSITY, AND RATIONALE FOR ADOPTION**

The Department proposes amending sections 15039, 15311, and 15415 of Division 19, of Title 4, of the California Code of Regulations, as follows.

### Amend 4 CCR 15039. Posting and Advertising

Proposed subsection (a) of 4 CCR 15039 contains the complete language of 4 CCR 15039, prior to the presently proposed changes. It has been identified as subsection (a), as the proposed amendments add several new subsections to 4 CCR 15039, discussed below.

Proposed subsection (b) of 4 CCR 15039 adds the requirement that storefront retail licensees must display the QR Code certificate issued by the Department so that it can be easily viewed and scanned from outside the business, allowing licensure to be verified before entering the business. This proposed addition to the regulation ensures

that all licensees will display a QR Code certificate so that members of the public and government agencies, who are visiting the licensed premises, are able to easily use the QR Code to verify that the business is properly licensed by the Department.

Proposed subsection (c) of 4 CCR 15039 requires that storefront retail licensees post the QR Code Certificate in the front window, or in a locked display within 3 feet of any public entrance, in a manner that is clearly visible to the general public and to anyone entering the licensed premises. This requirement is necessary to ensure that all persons entering the licensed premises will be able to easily identify and access the QR Code Certificate to verify the state license prior to entering the cannabis business. The locked display case requirement is necessary because if the licensed premises does not have a front window, the QR Code Certificate must be posted outside the business, so as to be visible from outside of the premises. If it is not secured, the QR Code Certificate is vulnerable to theft or damage; hence the locked display case.

Proposed subsections (d)(1)-(3) of 4 CCR 15039 provide additional requirements to the QR Code Certificate's posting. Proposed subsection (d)(1) of 4 CCR 15039 requires that the QR Code Certificate be printed on paper, glass, metal, or other material no less than 8 ½ inches by 11 inches. Proposed subsection (d)(2) requires that the QR Code printed on the Certificate be no less than 3.75 inches by 3.75 inches. The dimensions proposed are those of the QR Code if the Certificate from the Department is printed without alteration. This size is also highly visible, while maintaining the clarity necessary to be effectively scanned.

Both proposed subsections (d)(1) and (d)(2) are necessary to ensure that the size of the Certificate and QR Code printed on the Certificate are of a large enough size that the QR Code is reasonably visible and accessible to individuals who may use the QR code to verify the business' license and other information about the licensee. During the initial emergency action to amend section 15039, the Department proposed that subsection (d)(1) only allow the QR Code certificate to be printed on "paper not less than 8 ½ inches by 11 inches." The Department received comments from the public stating that it would be beneficial for licensees to be able to print the QR Code certificate on mediums other than paper. The Department determined that as long as all the other requirements are met regarding the certificate, licensees should be allowed to use different mediums on which to print the certificate and have the ability to determine which is best for their business. The Department amended subsection (d)(1) to allow the QR Code certificate to be printed on "paper, glass, metal, or other material not less than 8 ½ inches by 11 inches."

Subsection (d)(3) of 4 CCR 15039 requires that the QR Code printed on the Certificate be of a sufficient clarity that the code can be read from at least 3 feet away. This requirement is necessary to ensure that the QR Codes displayed by licensees are clear enough to be scanned and reasonably used, by the public, to verify the business'

license. If the quality and clarity of the QR Code is too low, the QR Code could not be scanned and read. This would prevent the QR Code from being useful to the public, thus defeating the purpose of the proposed regulation. The requirements found in proposed subsection (d) of 4 CCR 15039 apply to all licensees to ensure that all QR Code Certificates, when displayed by licensees, are of a certain size and clarity so that they may be easily identified and used to verify a license.

#### Amend 4 CCR 15311, Subsections (c) through (p). Requirements for the Transportation of Cannabis Goods

Proposed subsection (c) of 4 CCR 15311 has been amended to add the new requirement that employees of a licensed distributor, who are engaging in the transportation of cannabis goods, carry a copy of the licensee's license and the QR Code Certificate issued by the Department. This amendment is necessary to ensure that law enforcement and other licensees will be able to easily access the QR Code Certificate to easily verify the validity of the distributor's license. Additionally, as subsection (c) contains new language, prior subsections (c) through (o) have been renumbered to subsections (d) through (p), respectively, so as not to have two subsections entitled (c) and allow sequential numbering of all subsequent subsections. Additionally, cross references within 4 CCR 15311 have been changed to correspond to the new subsection letters for accuracy.

#### Amend 4 CCR 15415, Subsection (e), Subsection (d). Delivery Employees

Proposed subsection (e) of 4 CCR 15415 has been amended to add a requirement that a delivery employee of a licensed retailer carry a copy of the QR Code Certificate while conducting deliveries. In addition, the subsection has been amended to require delivery employees to provide the copy of the retail license, the QR Code Certificate, and their employee identification badge to any delivery customer, for viewing and inspection, upon request. These additional requirements are required to ensure that delivery employees will be able to easily provide identifying documentation to verify that the delivery employee is conducting deliveries of cannabis goods on behalf of a retailer that has been properly licensed by the Department. This will reduce the risk of customers inadvertently purchasing cannabis goods from an unlicensed source.

### **INCORPORATION BY REFERENCE**

No documents have been incorporated by reference.

## **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS**

1. Centers for Disease Control and Prevention. Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping, Products (as of February 25, 2020).
2. California Department of Public Health, Center for Healthy Communities, VAPI Weekly Update Report July 16, 2020 (as of July 16, 2020).
3. Department of Cannabis Control Public Comments on Proposed Emergency Regulations for Quick Response Code Certificate Requirements, February 2020.

The Department has the February 25, 2020 report from the Centers for Disease Control and Prevention, the July 16, 2020 report from the California Department of Public Health, and the public comments on the proposed emergency regulations and will make them available to any member of the public who requests to inspect the documents.

## **ECONOMIC IMPACT AND ASSESSMENT**

### Business Impact

Such costs are anticipated to be minor and absorbable by businesses and will therefore not have an adverse economic impact statewide. The proposed regulations impose continuing requirements on licensed retailers and distributors. The proposed regulations may have a cost impact on cannabis businesses licensed by the Department, to the extent that some businesses may be required to obtain a locked display case and mount the case on the outside wall of the licensed premises. Businesses that have a window, by the entrance to the premises, may not have any added expenses aside from the printing of a copy of the QR Code Certificate, since an external locked display case will not be necessary. Additionally, all licensees shall be required to produce copies of the QR Code Certificate and provide a copy to employees engaging in delivery and transportation of commercial cannabis. The Department expects that the proposed regulations will result in minimal additional costs (up to \$100) to licensees. Additionally, the Department expects that many licensees will incur no additional costs, aside from printing additional copies of the QR Code Certificate.

### Economic Impact Assessment

Current regulations already require licensees to print a copy of their issued license and post it in their licensed retail premises or carry it while conducting commercial cannabis activities such as delivering or transporting cannabis goods. The QR Code Certificate is generated within the same document as the business's cannabis license and the proposed regulations would require licensees to print, post, and carry the certificate in the same manner that is already required for cannabis licenses. Thus, the Department does not anticipate the creation or elimination of jobs or businesses, or the expansion of existing businesses, as a result of the proposal.

This regulatory proposal benefits the health and welfare of California residents by allowing easier access to information on legal cannabis businesses and providing consumers with a means of finding and purchasing safer, laboratory tested, legal cannabis products from licensed businesses.

This regulatory proposal does not affect worker safety. This regulatory proposal does not benefit or negatively impact the State's environment because the proposed regulatory action does not involve any topic that induces harm or benefit to the environment in the State.

## **FISCAL IMPACT**

### Fiscal Effect on State Government

The Department anticipates that there will not be an increased cost to the state as a result of adopting and amending the sections identified in this regulatory proposal. Under the proposed regulations, licensees will be required to display a copy of the QR Code Certificate on their licensed premises. Licensees, who engage in transportation and delivery of commercial cannabis, will also be required to carry a copy of the QR code Certificate for public and law enforcement inspection.

Although the proposed regulations will create a new requirement for licensees to comply with and enforcement staff to verify compliance of, there will not be additional costs to the Department's operations. Specifically, while Department enforcement staff conduct an inspection of a commercial cannabis business, they will be able to easily verify compliance with QR Code Certificate posting requirements while concurrently verifying compliance with existing license posting requirements. Similarly, Department enforcement staff will be able to verify that transportation and delivery employees are carrying a copy of the QR Code Certificate while concurrently verifying all other documents that are required under existing regulations. Therefore, the proposed regulations are not expected to lead to an increase in the number of inspections to be performed by Department enforcement staff under the existing regulations. Thus, it is not expected that the proposed regulations will result in any additional costs to the Department.

## **DISCLOSURES REGARDING THE PROPOSED ACTION**

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500, *et seq.*: None.

Other non-discretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Effect upon Housing: There is no effect upon housing.

### **SPECIFIC TECHNOLOGIES OR EQUIPMENT**

None.

### **CONSIDERATION OF ALTERNATIVES**

The Department has made an initial determination that no reasonable alternative to the regulatory proposal will be either more effective in carrying out the purpose for which the regulation is proposed or be as effective or less burdensome, to affected private persons, than the proposed regulation, or equally effective in achieving the purposes of the regulation in a manner that is consistent with the Department's goal of protecting the public from the harm to health and safety caused by unregulated cannabis businesses.

Set forth below are the alternatives that were considered and the reason the alternative was rejected or adopted:

**Option 1:** To create an emblem program that would provide licensed cannabis businesses with an emblem that can be displayed on their premises to inform their customers that the business is licensed. To be effective, this program would require significant anti-counterfeit measures, as well as a method for tracking, providing, and revoking emblems due to changes in a licensee's license status. The effectiveness of a program, such as this, would be similar to the use of QR Codes Certificate, but would require considerable additional costs to implement and maintain for both the Department and the licensees.

To implement such a program, the Department would be required to direct Department resources into designing the emblem, arranging for the manufacturing of the emblems, providing the emblems to all licensees, educating licensees on the use of the emblems, tracking the distribution of emblems, and collecting emblems from licensees who have their licenses revoked or suspended. In addition, additional enforcement resources could be required to ensure that licensees are complying with all emblem related requirements. Licensees would be required to pay for the cost of manufacturing and distributing the emblems assigned to them. There would also be significant costs associated with administering the program, which do not exist with the proposed QR Code Certificate in the proposed regulations.

Although additional staff may not be required to administer a new emblem program, training for existing staff from the Department's administration, licensing, and enforcement units would be required, which would be more costly

in time and resources than the proposed program. The Department expects that the resources for administering and enforcing an emblem program would result in costs of roughly \$50,000, annually.

The Department opted not to pursue this option because the Department's license system currently provides QR Codes that link to updated information regarding the associated license and can be used by customers to verify the license. The use of the QR Code Certificates will provide customers with the ability to verify licensed businesses without the added costs of the emblem program.

**Option 2:** Do nothing, meaning the Department would not adopt the regulations. The Department opted not to pursue this option because the Department's mandate to protect the public is more effectively achieved by providing a highly visible and convenient way of informing the public that a particular premise is licensed.