

DEPARTMENT OF CANNABIS CONTROL
CALIFORNIA CODE OF REGULATIONS TITLE 4, DIVISION 19
NOTICE OF PROPOSED RULEMAKING

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.

Notice is hereby given that the Department of Cannabis Control (Department) proposes to adopt the proposed amended regulations, described below, after considering all comments, objections, and recommendations regarding the proposed action. The Department, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below, or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for inspection and copying 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

All the proposed text sections are proposed to be added to the California Code of Regulations (CCR), under Division 19 of Title 4.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or the interested person's authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or the interested person's authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. Written comments, including those sent by mail or e-mail to the addresses listed below.

Comments submitted by must be received by the Department at its office by 5:00 p.m. on September 21, 2021.

Submit comments to:

Department of Cannabis Control, Legal Affairs Division
2920 Kilgore Road
Rancho Cordova, CA 95670
E-mail: publiccomment@cannabis.ca.gov

AUTHORITY AND REFERENCE

Business and Professions Code (BPC) section 26013 authorizes the Department to adopt regulations for the licensing of commercial cannabis activity. The proposed regulations implement, interpret, and make specific sections 26012, 26053, 26070, and 26090 of the Business and Professions Code, also known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).

Pursuant to BPC section 26010.5, subsection (d), the Department has the power, duty, responsibility, and jurisdiction to regulate commercial cannabis activity as provided in the MAUCRSA. Pursuant to BPC section 26011.5, the protection of the public shall be the highest priority for all licensing authorities in exercising licensing, regulatory, and disciplinary functions under the MAUCRSA. The aim of the proposed regulations is protection of the public by providing cannabis consumers with a method for easily identifying licensed cannabis businesses. Licensed cannabis businesses are only authorized to sell cannabis goods that have passed mandatory laboratory testing requirements prior to sale. Cannabis goods sold by unlicensed businesses do not have the same laboratory testing requirements, thus, having a higher risk of causing harm to consumers. Thus, the ability to easily identify licensed cannabis businesses is critically important to protect cannabis consumers.

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

This rulemaking action amends the Department's regulations to add a requirement for licensed retailers and distributors to display a QR Code certificate provided by the Department. Additionally, the proposed regulations will require employees engaged in the transportation or delivery of cannabis goods to carry the QR Code certificate. The regulations will provide the size and placement requirement for the QR Code certificate to ensure visibility and easy customer access to the QR Codes.

The proposed regulations are necessary to provide members of the public with a method for verifying that a cannabis business is properly licensed. 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 through use of the QR Code certificate. Once the QR Code is scanned, it will display information about the license, 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 and unsafe 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 delivery employees work.

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.

Incorporated by Reference

There are no documents incorporated by reference.

Anticipated Benefit of the Proposed Regulations

The broad objective of these proposed regulations is to provide a mechanism for purchasers of cannabis goods to easily identify whether the retailer they are purchasing cannabis goods from is properly licensed by the Department. The proposed amendments to the regulations will allow consumers to expediently and conveniently determine if a cannabis business is licensed at the specific business location before entering the business to make a purchase. Additionally, consumers purchasing cannabis goods by delivery will also be able to confirm licensure through the QR Code certificate carried by the delivery driver. Also, those transporting and delivering cannabis will have the license and QR Code certificate in their vehicle, allowing for easier verification of their employer's license.

It is expected that the requirements created by the proposed amendments to the regulations will allow customers to more easily make a determination of the legality of a specific cannabis business and avoid entering unlicensed premises, thereby decreasing purchases from unlicensed businesses. This should aid in preventing illegal cannabis goods from reaching consumers, thereby reducing the potential of harm to the consumer.

The present proposal will also allow easier access to information on legal cannabis businesses and provide consumers with a better means of finding and purchasing safer,

laboratory tested, legal cannabis products from licensed businesses in the future. This should better protect the public health and safety, as outlined above.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

The Department has determined that these proposed regulations are not inconsistent or incompatible with existing regulations.

Evaluation of Inconsistency/Incompatibility with Existing Federal Regulations

Under the federal Controlled Substances Act (21 U.S.C. §801, *et seq.*), cannabis is federally illegal. However, California, through the MAUCRSA, has decriminalized the cultivation, sale, and possession of cannabis goods for persons aged 21 or older, and medicinal patients. After conducting a search and review of any similar regulations on this topic, the Department has determined that these proposed regulations are not inconsistent or incompatible with existing regulations and are the only regulations regarding cannabis retailers and distributors related to the use of QR Codes and a QR Code certificate.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Local mandate: There will be no local mandate.

Cost to any local agency or school district requiring reimbursement pursuant to Gov. Code sections 17500, *et seq.*: None.

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

Cost or savings to any state agency: None.

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

Economic Impact and Fiscal Impacts

Cost impacts on a representative private person or business: None. The Department is not aware of any cost impacts other than described below that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulations.

Statewide adverse economic impact directly affecting businesses and individuals: The Department has determined that the proposed regulations may have a cost impact on businesses that are licensed by the Department. These businesses may incur a one-time cost of up to \$100 to comply with the requirements of the proposed regulation.

This cost would include the making copies of the QR Code certificate, providing copies

to delivery and transport employees, and posting a copy of the certificate in a location on the licensed premises that complies with the proposed requirements. Such costs are anticipated to be minor and absorbable by businesses, and will therefore not have an adverse economic impact statewide.

Small Business Determination: The Department has determined that the proposed regulations will affect small businesses. Small businesses that are licensed by the Department may incur a one-time cost of up to \$100 to comply with the requirements of the proposed regulation.

The proposed regulation will not have a significant adverse economic impact on businesses. As indicated above, some licensees may incur a one-time cost of up to \$100 to comply with the posting requirement found in the proposed regulations.

The Department does not anticipate the creation or elimination of jobs or licensed businesses, or the expansion of existing businesses, as a result of the proposal, although the public's use of the QR Code certificates will likely lead illegally operating cannabis business to lose business to legally operating businesses, which is an anticipated consequence of this regulation for the public safety reasons outlined herein. However, the amount of the shift in business is speculative, at this time, and thus unquantifiable.

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.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Kaila Fayne
Department of Cannabis Control
2920 Kilgore Road
Rancho Cordova, CA 95670
916-465-9025
Kaila.Fayne@cannabis.ca.gov

The backup contact person for these inquiries is:

Paul Atienza
Department of Cannabis Control
2920 Kilgore Road
Rancho Cordova, CA 95670
916-465-9029
Paul.Atienza@cannabis.ca.gov

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to the contact persons listed above.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying, throughout the rulemaking process, at its office at the address above. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulations, and the Initial Statement of Reasons. Copies of materials may be obtained by contacting Kaila Fayne at the address, email or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations, substantially, as described in this Notice. If the Department makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations, as revised. Please send requests for copies of any modified regulations to the attention of Kaila Fayne at the address, email, or phone number indicated above.

The Department will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Kaila Fayne at the above address, email, or phone number indicated above.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the notice of proposed action, the initial statement of reasons, and the text of the regulations can be accessed through the Department's website at:

<https://cannabis.ca.gov/resources/rulemaking/>.