

**Department of Cannabis Control
California Code of Regulations Title 4, Division 19**

Final Statement of Reasons

Subject Matter of Proposed Regulations: Quick Response (QR) Code Certificate Requirements for Cannabis Licensees

Section(s) Affected: Title 4, California Code of Regulations, §§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.

Typographical Corrections to Proposed Text of Regulations

After mailing notice of the proposed rulemaking action, the Department was notified of minor typographical errors in the proposed text including a misspelling in the title of Chapter 1 and a reference to “Bureau” instead of “Department” in a section. The errors identified were already corrected in the Department’s rulemaking action to make changes without regulatory effect which was approved by OAL on July 14, 2021.

Update of Initial Statement of Reasons

As authorized by Government Code section 11346.9, subdivision (d), the Department hereby incorporates the Initial Statement of Reasons prepared in this matter. Unless a specific basis is stated for any modification to the regulations as initially proposed, the necessity for the adoption of new regulations as set forth in the Initial Statement of Reasons continues to apply to the regulations as adopted.

Update of Informative Digest

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Rulemaking.

Local Mandate Determination

The proposed regulations do not impose any mandate on local agencies or school districts.

Significant Effect on Housing Costs Determination

The proposed regulations will have no fiscal or other effect upon housing in the state.

Summary and Response to Comments Received During the 45-Day Public Comment Period

Written comments were received during the 45-day comment period on the proposed regulations. The Department did not receive any request for a public hearing on this proposed regulatory action. The Department’s summary and responses to written comments received are shown below:

Comment No. 1: Commenter requests information on what can be done to get their manufactured cannabis good to market and ensure it is safe for consumption.

Department Response: The Department rejects this comment as irrelevant because it does not address provisions of the Department’s QR Code regulations contained in this regulation package. The commenter poses questions, which are not directed to any specific provision of the regulations.

Comment No. 2: Commenter suggests the Use of NFC chips over QR Codes, which would provide blockchain implementation to create immutable ledgers of activation records; remote data collection of all activation activity; and ability to add/edit information without the need for a brand new code, ensuring more accurate tracking data.

Department Response: The Department rejects this comment as irrelevant because it does not address provisions of the Department’s QR Code regulations contained in this regulation package.

The commenter appears to confuse the intent of the proposed QR Code regulations. 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. By requiring all storefront retailers to clearly display a QR Code Certificate, the public will be able to scan the code with their cellular phone to display information about the license and licensee, including if the establishment they are at holds an active state license. 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.

Comment No. 3: Commenter recommends the use of QR codes to track each cannabis plant. The commenter suggests providing a QR code generator to each licensee and implement a data base tracking program.

Department Response: The Department rejects this comment as irrelevant because it does not address provisions of the Department’s QR Code regulations contained in this regulation package.

The commenter appears to confuse the intent of the proposed QR Code regulations. 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. By requiring all storefront retailers to clearly display a QR Code Certificate, the public will be able to scan the code with their cellular phone to display information about the license and licensee, including if the establishment they are at holds an active state license. 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.

Comment No. 4: Commenter commends the Department on the proposed use of QR Codes to aid the public in identifying commercial cannabis businesses with valid licenses and suggests extending this requirement to licensed manufacturers. However, the commenter noticed several errors in the proposed rulemaking including a misspelling of the term “microbusiness” in the title of Chapter 1, and that “Bureau” is still referenced instead of “Department” in the regulations text.

Department Response: The errors identified were already corrected in the Department's rulemaking action to make changes without regulatory effect which was approved by OAL on July 14, 2021.

With regards to the commenter's suggestion that the requirement be extended to manufacturers, the Department disagrees. Commercial cannabis licensees are already responsible for confirming the licensure status of commercial cannabis businesses that they engage in business with. 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. By requiring all storefront retailers to clearly display a QR Code Certificate, the public will be able to scan the code with their cellular phone to display information about the license and licensee, including if the establishment they are at holds an active state license. 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.

Comment No. 5: Commenter commends the Department on the proposed use of QR Codes to aid the public in identifying commercial cannabis businesses with valid licenses.

Department Response: Comment noted by the Department.

Alternatives Determination

In accordance with Government Code section 11346.9, subdivision (a)(4), the Department has determined that no reasonable alternative it considered 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.

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

- 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.

The regulations adopted by the Department are the only regulatory provisions identified by the Department that accomplish the goal of protecting consumers from the harm to health and safety caused by unregulated cannabis businesses. Except as set forth and discussed above, no other alternatives have been proposed or otherwise brought to the Department's attention.