

Department of Cannabis Control
Finding of Emergency and Notice for
Proposed Emergency Regulations

Subject Matter of Proposed Regulations: Track and trace requirements for delivery of cannabis goods

Sections Affected: Title 4, California Code of Regulations (CCR), sections 15049.3 and 15418.

Required Notice of Proposed Emergency Action

Government Code (Gov. Code) section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Gov. Code section 11349.6.

This document provides the required notice that the Department of Cannabis Control (Department) will submit a proposed emergency action to the OAL to implement track and trace requirements for cannabis goods carried by retail delivery employees pursuant to Business and Professions Code (BPC) sections 26067 and 26068.

As required by subdivisions (a)(2) and (b)(2) of Gov. Code section 11346.1, this notice includes and incorporates the following: (1) the specific language of the proposed regulations and (2) the Finding of Emergency, including specific facts demonstrating the need for immediate action, the authority and reference citations, the informative digest and policy statement overview, and required determinations.

Specific Facts Demonstrating the Need for Immediate Action

On June 30, 2022, Governor Gavin Newsom signed California Assembly Bill 195. This chaptered bill, codified in BPC sections 26038, 26051.5, 26067, 26068, 26090 as well as other sections of the Fish and Game Code, the Revenue and Taxation Code, and the Water Code, requires the Department to incorporate delivery into the existing track and trace program by January 1, 2023. The bill requires that information relating to cannabis and cannabis products leaving a licensed retail premises in a delivery vehicle be recorded in the statewide track and trace program.

BPC section 26068, subdivision (c) grants the Department the authority to adopt or readopt emergency regulations to implement the track and trace requirements and deems

such regulations as an emergency and necessary for the immediate preservation of public peace, health, safety, or general welfare.

Authority and Reference

The Department proposes adopting CCR, title 4, section 15049.3 and amending section 15418. BPC sections 26067, 26068, and 26090 require that the Department incorporate delivery into the track and trace system in a manner that records information relating to cannabis and cannabis products leaving a licensed premises in a delivery vehicle and delivered to customers. These emergency regulations will implement, make specific, and clarify BPC sections 26067, 26068, and 26090.

Informative Digest / Policy Statement Overview

Existing Law

On July 12, 2021, the Department was established following Governor Gavin Newsom's signing of Assembly Bill 141 (*Chapter 70, Statutes of 2021*), which consolidated regulatory, licensing, and enforcement functions previously performed by three legacy programs housed within different state departments. The Department regulates all commercial cannabis license holders in California, including cultivators, manufacturers, retailers, distributors, microbusinesses, testing laboratories, and temporary cannabis events.

BPC section 26067, subdivision (a)(5) requires that the track and trace program established by the Department have the ability to capture information relating to cannabis and cannabis products leaving the licensed premises in a delivery vehicle as determined by the Department's regulations. BPC section 26068, subdivision (d)(1) requires that the Department incorporate delivery into the track and trace program no later than January 1, 2023. BPC section 26090, subdivision (c) requires that before cannabis or cannabis products leave the licensed premises in a delivery vehicle, the retailer enter into the track and trace system all information required by the Department and update the information as required by the Department.

Policy Statement

Regulation Objectives

The Department has developed this emergency regulation to implement the new track and trace requirements imposed by Assembly Bill 195. The proposed regulations will provide licensees with guidance regarding the specific transactions that must be recorded within the track and trace system and the specific information that must be recorded for those transactions. The proposed regulations will ensure that the movement of cannabis goods on delivery vehicles is being effectively tracked using the existing track and trace system.

Anticipated Benefits to the Public

The protection of the public is the highest priority for the Department. Through the use of the statewide track and trace program, the Department is able to track the movements of cannabis and cannabis products throughout the state. This monitoring can reduce the risk of inversion of unlicensed cannabis and cannabis products into the legal market. Preventing inversion ensures that the cannabis and cannabis products obtained by consumers from the licensed cannabis market have been properly laboratory tested and comply with all packaging, labeling, and other requirements designed to protect the public. Use of the track and trace system also allows the Department to reduce the risk of diversion of licensed cannabis and cannabis products outside of the licensed market into the illegal unlicensed market. Preventing diversion ensures that licensed cannabis remains in the licensed market so that licensed operators are complying with all requirements, including taxation requirements.

The proposed regulations would strengthen the Department's ability to effectively monitor the movement of cannabis goods throughout the state by more closely tracking cannabis goods that are being carried on retail delivery vehicles. This increases the Department's ability to reduce the risk of inversion and diversion. Additionally, the increased tracking will allow the Department to collect more detailed data regarding the purchase of cannabis goods through delivery. This data will likely be useful in making decisions related to the proper regulation of cannabis businesses withing California.

Add Section 15049.3. Track and Trace Requirements for Delivery

BPC sections 26067 and 26068 require the Department incorporate delivery into the track and trace program by January 1, 2023, in a manner that captures information relating to cannabis goods leaving the licensed premises on a delivery vehicle as determined by the Department's regulations. Accordingly, the Department proposes adding section 15014.1 to provide the requirements for recording information pertaining to cannabis goods on a delivery vehicle within the track and trace system.

Proposed subsection (a) indicates that licensed retailers conducting delivery shall record all deliveries of cannabis goods on a delivery inventory ledger within the track and trace system. This proposed subsection is necessary to implement the new requirements added to BPC sections 26067, 26068, and 26090 by AB 195. The proposed subsection informs licensees of the requirement to record delivery information into the track and trace system by providing a general requirement that introduces the more specific requirements found in the subsequent subsections. The proposed subsection also identifies the delivery inventory ledger as the mechanism within the track and trace system that will be used to record the delivery information.

Proposed subsection (b) implements the requirements of BPC 26067, 26068, and 26090 by providing the requirement that a licensed retailer engaging in delivery must create a delivery inventory ledger in the trace and trace system before each delivery trip begins. This is necessary to ensure the proper tracking of cannabis goods carried on a

delivery trip. The creation of a new delivery inventory ledger is necessary to allow the track and trace system to track the cannabis goods carried by the delivery employee on the specific delivery trip. The proposed subsection also requires that the information listed in proposed subsections (c)(1) through (6) be entered into the system before the delivery employee leaves the licensed premises for each delivery trip. This is necessary to ensure that the proper information needed for recording the delivery trip in the track and trace system is entered into the system before the trip begins. This allows the licensed retailer to correct any issues that may affect the tracking of the delivery trip before the delivery employee leaves the licensed premises. The proposed subsection also defines when a trip begins and when a trip ends. This is necessary to clarify the beginning and end of a trip since there are specific requirements that apply to those events.

Proposed subsection (c) provides a list of the information that must be entered into the delivery inventory ledger after the delivery inventory ledger is created. This is necessary to clarify what information must be entered into the track and trace system in order to allow the system to effectively track the movement of cannabis goods on delivery vehicles.

Proposed subsection (c)(1) requires the delivery inventory ledger to contain the delivery inventory ledger number that is generated by the track and trace system and assigned to the specific delivery trip. This requirement is necessary to allow for the effective tracking of cannabis goods on the specific delivery trip and the delivery inventory number is a unique number that is used to identify each specific delivery trip.

Proposed subsection (c)(2) requires that the delivery inventory ledger include the name and license number of the licensed retailer. This is necessary to record the retailer that is engaged in the specific delivery trip.

Proposed subsection (c)(3) requires that the name, employee ID and driver's license number of the delivery employee conducting the deliveries be identified on the delivery inventory ledger. This is necessary to identify the employee conducting the deliveries.

Proposed subsection (c)(4) requires that the delivery inventory ledger include the make, model, and license plate number of the vehicle used to conduct deliveries. This is necessary to allow for the identification of the vehicle used by the licensed retailer to conduct cannabis deliveries. Additionally, this information will allow the Department to more easily determine whether the vehicle being used is authorized to be used for cannabis delivery.

Proposed subsection (c)(5) requires the delivery inventory ledger to include the name, category, UID, and number of units for each cannabis good carried on the delivery trip. This is necessary to allow for the effective tracking of cannabis goods carried on the delivery trip. The information that must be included in the delivery inventory ledger in this proposed subsection will allow the track and trace system to properly identify which cannabis goods held by the licensed retailer will be moved onto the delivery vehicle during the duration of the delivery trip.

Proposed subsection (c)(6) requires that the delivery inventory ledger include the UIDs of any cannabis goods that were ordered by customers and processed by the licensed retailer prior to the delivery employee leaving the licensed retail premises. This is necessary to allow the system to be able to identify which cannabis goods carried on the delivery trip are part of an order that was processed prior to the delivery employee leaving the licensed premises and which cannabis goods carried by the delivery employee are not part of an order that was previously received.

Proposed subsection (c)(7) requires the delivery inventory ledger to include the date and time the delivery employee leaves the licensed retail premises to begin conducting deliveries. This is necessary to allow the track and trace system to properly track when a delivery trip begins.

Proposed subsection (d) provides the information that must be recorded into the track and trace system for each sale of cannabis goods completed through delivery. This is necessary to ensure that the correct information is entered into the system to allow the system to effectively record each sale of cannabis goods and track the movement of the cannabis goods from the licensed retailer to the end customer. The proposed subsection also requires that the information pertaining to each sale be recorded into the track and trace system before the end of the calendar day on which the sale was completed. This is necessary to ensure that licensees are recording the transactions in a timely manner while providing licensees with some flexibility with when the information must be recorded into the system. Deliveries made in rural areas with poor or no internet service connection may make it difficult for transactions to be instantly recorded within the track and trace system.

Proposed subsection (d)(1) requires that the date and time the sale was completed be recorded. This is necessary to ensure that the Department is able to properly identify the sale transaction by referring to the specific date and time. The proposed subsection also clarifies that a sale is completed at the time the cannabis goods are physically provided to the customer. This is necessary for clarification and to avoid any potential confusion regarding when a sale occurs.

Proposed subsection (d)(2) requires that the type of customer for the delivery be identified. This includes adult-use, medicinal patient, or patient primary caregiver. This is necessary to allow the Department to record the types of cannabis sales that are being conducted through delivery and applicable tax requirements.

Proposed subsection (d)(3) requires that the UID and the quantity of each cannabis good sold in the sale transaction be recorded. This is necessary to allow the track and trace system to identify the cannabis goods that were sold and track the movement of those cannabis goods from the licensed retailer to the customer.

Proposed subsection (d)(4) requires that the purchase price of each cannabis good sold as part of the sale transaction be recorded. This is necessary to properly record the sale price associated with the purchase of cannabis goods.

Proposed subsection (d)(5) requires that the county of the physical location of the delivery be recorded. The proposed subsection also clarifies how to determine the location at which the delivery occurred. This is necessary to provide the Department with information regarding where deliveries of cannabis goods are occurring while at the same time protecting the privacy of customers by only recording the county not recording the specific addresses where cannabis goods are delivered.

Proposed subsection (e) provides the requirements for a delivery employee returning to the licensed premises to obtain additional cannabis goods for delivery without needing to end the current delivery trip and create a new delivery trip. The proposed subsection allows a licensed retailer to continue an existing delivery trip after having the delivery employee return to the licensed retail premises to obtain additional cannabis goods if the delivery of cannabis goods will be conducted on the same day by the same delivery employee. Proposed subsection (e) requires that if a licensed retailer decides to continue a delivery trip after the delivery employee returns to the licensed premises to obtain additional cannabis goods, the additional cannabis goods be considered part of the inventory of the existing delivery trip and that a new delivery inventory ledger is not required to be created within the track and trace system. The proposed subsection requires that information specific in subsections (d)(1)-(2) be recorded for all additional cannabis goods added to an existing delivery trip. This proposed subsection is necessary to provide licensees with additional flexibility to conducting deliveries of cannabis goods. Rather than requiring licensed retailers to end the current delivery trip and begin a new delivery trip any time a delivery employee returns to the licensed retail premises to obtain additional cannabis goods for delivery, the proposed subsection allows for the option to continue the existing delivery trip by adding newly obtained cannabis goods to the inventory of an existing delivery trip. This flexibility may allow retailers to conduct deliveries in a more efficient manner.

Proposed subsection (e)(1) requires that the name, category, UID, and quantity of each additional cannabis good be recorded on the existing delivery inventory ledger. This is necessary to allow the track and trace system to accurately identify and track the cannabis goods that are being added to the inventory of the existing delivery trip.

Proposed subsection (e)(2) requires that the date and time that the delivery employee left the licensed retail premises to continue deliveries be recorded. This is necessary to properly track the movement of cannabis goods on the delivery vehicle.

Proposed subsection (f) provides requirements regarding the end of delivery trips. The proposed subsection is necessary to clarify when a delivery trip ends and what information must be recorded at the end of each delivery trip.

Proposed subsection (f)(1) clarifies when a delivery trip ends. Proposed subsection (f)(1)(A) clarifies that except as listed in proposed subsection (f)(1)(B), delivery trips end when the delivery employee returns to the licensed retail premises after conducting all deliveries that are part of the same delivery trip. This is necessary to clarify that the end of a delivery trip may be determined by when the delivery employee returns to the retail

premises. It is important to identify when a delivery trip ends in order to properly record the information required in subsection (f)(2).

Proposed subsection (f)(1)(B) provides an alternate determination of when a delivery trip may end. In cases where a delivery employee sells all the cannabis goods carried on the delivery trip and does not return to the licensed premises, the end of the delivery trip is when the last sale of cannabis goods was completed. This proposed subsection is necessary to provide clarification for situations where the delivery employee does not return to the licensed retail premises. Since delivery employees who are not carrying cannabis goods are not required to return to the licensed premises after completing deliveries, it is necessary to identify a specific time for when those types of delivery trips officially end.

Proposed subsection (f)(2) provides the requirements for recording information into the track and trace system at the end of each delivery trip. This proposed subsection is necessary to ensure that the information that is required to effectively track the movement of cannabis goods on delivery vehicles is properly being entered into the system.

Proposed subsection (f)(2)(A) requires that for delivery trips where the delivery employee still holds cannabis goods at the end of the trip, the delivery employee return to the licensed premises and the unsold cannabis goods held on the delivery inventory ledger be returned to the retailer's inventory within the track and trace system. This is necessary to ensure the proper tracking of cannabis goods. Cannabis goods that remain unsold at the end of the delivery trip must be removed from the delivery inventory ledger and moved back to the retailer's inventory. This track and trace entry is to coincide with the physical movement of the cannabis goods from the delivery vehicle to the retailer's physical inventory as required in section 15418.

Proposed subsection (f)(2)(B) requires that the end time and date for the delivery trip be recorded in the track and trace system. This proposed subsection is necessary to allow the track and trace system to properly track the movement of cannabis goods on delivery vehicles.

Proposed subsection (g) provides the specific date for when licensed retailers will be required to comply with the new delivery track and trace requirements. Proposed subsection (g) provides licensees with an alternate method of complying with proposed section 15049.3 until April 1, 2023. Proposed subsection (g)(1) allows licensees to maintain delivery inventory ledgers physically or electronically outside of the track and trace system until the specified date. This proposed subsection is necessary to provide licensees with flexibility in coming into compliance with the new delivery track and trace requirements and to comply with the requirements of BPC section 26068. Under BPC section 26068, the Department is required to ensure that licensees are allowed to use third-party programs to comply with track and trace requirements. The Department has determined that providing until April 1, 2023, to allow for third-party software developers

to implement the necessary changes to account for the new regulatory requirements is a reasonable amount of time.

Proposed subsections (g)(1)(A) and (g)(1)(B) require that the item name, category, UID, and quantity of each cannabis good held in a delivery vehicle be documented in the delivery inventory ledger. These proposed subsections are necessary to ensure that a delivery inventory ledger that is maintained outside of the track and trace system, contains all the information that would allow Department staff or law enforcement officers to properly identify the cannabis goods held on a delivery vehicle by referencing the delivery inventory ledger.

Proposed subsection (g)(2) requires that any delivery inventory ledger maintained outside of the track and trace system identify all cannabis goods prepared for orders received prior to the delivery employee leaving the licensed premises. The proposed subsection also requires that the delivery inventory ledger be updated to accurately reflect the current inventory of cannabis goods held by the delivery employee and that all sales of cannabis goods conducted through delivery be recorded within the track and trace system within 24 hours of the date and time the sale was completed. This proposed subsection is necessary to provide licensees and the Department with a suitable alternative to tracking the movement of cannabis goods on delivery vehicles during the short period of time where licensees may not be able to fully record delivery transactions within the track and trace program as required by this proposed section. The requirements in subsection (g)(2) will ensure that even if licensees are not yet able to record all delivery information into the track and trace system as required by the proposed section, delivery sales information will be recorded into the system and a delivery inventory ledger will be maintained in a manner that can be used by the Department and law enforcement to properly identify the cannabis goods carried by retail delivery employees.

Amend Section 15418. Cannabis Goods Carried During Delivery

Subsection (d) is proposed to be removed. The Department has determined that it is not necessary to require retailers to have at least one delivery order prepared before allowing a delivery employee to leave the licensed premises to conduct deliveries. The added track and trace requirements for delivery in proposed section 15049.3 will allow for more effective tracking of cannabis goods in delivery vehicles, making this requirement unnecessary. Removing this provision is necessary as it is not consistent with the functionality for including delivery into the track and trace system.

The numbering of subsections (e), (f),(g),(h), and (i) have been changed to accommodate the removal of subsection (d).

Throughout the section, the term delivery driver has been amended to delivery employee. This change is necessary for clarity and to ensure consistency regarding the use of the term throughout the regulations. This change does not change the substance of the section.

Former subsection (e), now subsection (d) has been amended to replace the specific requirements for the delivery inventory ledger with a reference to the requirements within proposed section 15049.3. All of the requirements for the delivery inventory ledger that were removed from this subsection are found in proposed section 15049.3. In the interest of clarity, the same requirements are not required to be repeated here.

Former subsection (e), now subsection (d) has also been amended to clarify that the delivery inventory ledger must be updated to reflect the current inventory of cannabis goods held by the delivery employee and that the delivery inventory ledger must be entered into the track and trace system as required by proposed section 15049.3. This is necessary to ensure that the delivery inventory ledger contains information that is necessary to track the movement of cannabis goods in delivery vehicles and that the information is properly recorded into the track and trace system.

Former subsection (e), now subsection (d) has also been amended to clarify that retail licensees have the option to maintain an additional physical or electronic copy of the delivery inventory ledger outside of the track and trace copy, if doing so is necessary to comply with the requirements of subsection (g)(1). Subsection (g)(1) requires that retail delivery employees provide a copy of the delivery inventory ledger to the Department or law enforcement upon request. If the delivery employee does not have the ability to display an up to date, track and trace delivery inventory ledger, they may maintain an electronic or physical copy of the ledger for this purpose. This amendment is necessary to clarify for licensees that although an accurate delivery inventory ledger must be maintained, delivery employees are not required to have access to the licensee's track and trace account at all times.

Former subsection (h)(1), now subsection (g)(1) has been amended to indicate that the delivery employee must be able to provide the delivery inventory ledger, instead of all delivery inventory ledgers. This is necessary for clarity. Under the current requirements only one delivery inventory ledger is required for each delivery trip. Therefore, a delivery employee would not have multiple delivery inventory ledgers that would apply to the current delivery trip.

Former subsection (j), now subsection (i) has been amended to replace the requirement that track and trace information be recorded the same day, with the requirement that the track and trace information be recorded as required under proposed section 15049.3. This amendment is necessary for clarity and consistency. Since the requirements for track and trace recording at the end of a delivery trip are already provided in proposed section 15049.3, it is not necessary to repeat those same requirements here.

Inconsistency with Federal Regulation Statute

The United States Drug Enforcement Administration (DEA) under the Controlled Substances Act lists cannabis as a Schedule 1 Drug. This means that commercial cannabis activity is illegal under federal law. However, California, through the Medicinal and Adult-Use Cannabis Regulation and Safety Act (BPC §§ 26000 et seq.) and other

laws, has decriminalized the cultivation, sale, and possession of cannabis goods for persons aged 21 or older and for medicinal patients.

Consistency with Existing State Regulations

As required by Gov. Code section 11346.5(a)(3)(D), the Department has conducted an evaluation of these emergency regulations and has determined that they are not inconsistent or incompatible with existing regulations.

Plain English Requirement

Department staff prepared these emergency regulations pursuant to the standard of clarity provided in Gov. Code section 11349 and the plain English requirements of Gov. Code sections 11342.580 and 11346.2, subdivision (a)(1). The emergency regulations are written to be easily understood by the persons that will use them.

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 section 17500, et seq: None.

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

Cost or savings to any state agency: The Department's staff workload associated with the additional operational activities created by these regulations can be absorbed by existing staff.

Any costs or savings in federal funding to the state: None.

Economic Impact and Fiscal Impacts

Business Impact

Based on currently available information, the Department believes that there are up to 1,950 retail and microbusiness licensees that may be eligible to engage in cannabis delivery activities. Those licensees who decide to engage in the sale of cannabis goods through delivery will have to comply with the delivery track and trace requirements within the proposed regulations.

Estimated Costs to Businesses

The proposed regulations would require a change to the track and trace system. Many licensees engaging in delivery are accessing the track and trace system through the use of a third-party software application. The Department estimates that the initial cost to third-party software application companies is \$32,000. It is expected that some or all

these costs will be shared by licensed retailers who use the third-party software applications. At this time, it is unclear what proportion of these costs will be apportioned to licensees engaging in cannabis deliveries.

Estimated Benefits of Regulation

The monetary benefits of the proposed regulations are difficult to quantify. The proposed regulations would strengthen the Department's ability to effectively monitor the movement of cannabis goods throughout the state. The proposed regulations would allow the Department to more closely track cannabis goods that are being carried on retail delivery vehicles. This increases the Department's ability to reduce the risk of inversion and diversion. Additionally, the increased tracking will allow the Department to collect more detailed data regarding the purchase of cannabis goods through delivery. This data will likely be useful in making decisions related to the proper regulation of cannabis businesses within California.

Fiscal Effect on State Government

The initial cost to integrate delivery into the track and trace system is expected to be about \$36,000. The ongoing costs of maintaining the new functionality within the track and trace system and added enforcement due to the new requirements track and trace requirements is expected to be minimal and absorbable by the Department's current operations.

Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

1. Option 1: Adopt regulations that would require delivery sales to be recorded in the track and trace system instantaneously as sales occur. This alternative would likely be significantly more costly for licensees while providing a minimal increase in the Department's ability to track the movement of cannabis goods on delivery vehicles.
2. Option 2: Not adopt new regulations. This alternative was rejected because BPC sections 26067 and 26068 requires the Department to incorporate delivery into the track and trace program by January 1, 2023, in a manner that records information relating to cannabis and cannabis products leaving a licensed premises in a delivery vehicle as determined by the Department's regulations. If the Department does not adopt regulations, the Department will be out of

compliance with the requirements of the statute. In addition, licensees will have no guidance regarding how to comply with the new statutory requirements.