

Department of Cannabis Control
California Code of Regulations Title 4, Division 19
Initial Statement of Reasons

Subject Matter of Proposed Regulations: Track and Trace Requirements for Delivery of Cannabis Goods

Section Affected: California Code of Regulations (CCR), title 4, sections 15049.3 and 15418

Background

The Department of Cannabis Control (Department) regulates commercial cannabis license holders in California, including cultivators, retailers, manufacturers, distributors, testing laboratories, microbusinesses, and temporary cannabis events.

The statutes governing the activities of the Department and the regulation of commercial cannabis activity is found in the Medicinal and Adult-Use Cannabis Regulation and safety Act (MAUCRSA) within the Business and Professions Code.

Business and Professions Code (BPC) section 26067 requires that the Department establish a statewide track and trace program to be used for reporting the movement of cannabis and cannabis products (cannabis goods) throughout the distribution chain. BBPC section 26067, subdivision (a)(5) requires that the track and trace program be able to capture information relating to cannabis goods 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 goods leave the licensed premises in a delivery vehicle, the retailer record in the track and trace system all information required by the Department and update the information as required by the Department.

Statement of Purpose, Problem, Rationale, and Benefits

The Department has developed the proposed regulations 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.

The protection of the public is the highest priority for the Department. Using the statewide track and trace system, the Department is able to track the movements of cannabis goods throughout the state. This monitoring can reduce the risk of inversion of

unlicensed cannabis goods into the legal market. Preventing inversion ensures that the cannabis goods obtained by consumers from the licensed cannabis market have been properly tested by a licensed laboratory and comply with 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 goods outside of the licensed market into the illegal unlicensed market. Preventing diversion ensures that licensed cannabis remains in the licensed market and are properly accounted for.

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 within 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.

Specific Purpose, Necessity, and Rationale for Adoption

The Department proposes adopting section 15049.3 and amending section 15418 of Division 19, of title 4, of the California Code of Regulations, as follows.

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 system 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 create a delivery inventory ledger within the track and trace system and record all deliveries of cannabis goods within the delivery inventory ledger. This proposed subsection is necessary to implement the new requirements added to BPC sections 26067, 26068, and 26090 by AB 195. The proposed subsection also clarifies that the information that must be recorded prior to leaving the licensed premises for the delivery trip is identified in proposed subsections (b)(1)-(7). This is necessary to provide clarity to licensees regarding the specific information that must be recorded and when. The proposed subsection also provides a definition for when a delivery trip begins. This is necessary to clarify when a delivery trip begins, indicating that the required information must be entered into the system before this occurs.

Proposed subsection (b) provides that specific information that must be entered into the track and trace system when a new delivery inventory ledger is created within the

system. Proposed subsection (b)(1) requires that the delivery inventory ledger number be properly assigned to the specific delivery trip. This is necessary to ensure that the ledger is being properly tracked within the system.

Proposed subsections (b)(2), (b)(3), and (b)(4), require the recording of identifying information for the applicable licensee, the specific delivery employee, and the delivery vehicle. The inclusion of this information within the system is necessary to ensure that the deliveries being recorded under the ledger are attributed to the correct licensee, employee, and delivery vehicle. This is necessary for the effective tracking of deliveries conducted under the specific delivery inventory ledger.

Proposed subsections (b)(5) and (b)(6) requires the inclusion of identifiers for all cannabis goods carried by the delivery employee with documentation of those cannabis goods that are part of an order processed before the delivery employee left the licensed premises. This information is necessary to effectively track the cannabis goods that are carried by the delivery employee as well as those cannabis goods that were sold during the specific delivery trip.

Proposed subsection (b)(7) requires that the date and time the employee began the delivery trip be recorded. This information is necessary to effectively track the specific delivery trip being recorded within the system.

Proposed subsection (c) 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. Flexibility is necessary as it may be difficult for transactions to be instantly recorded within the track and trace system in rural areas with limited internet access.

Proposed subsection (c)(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 (c)(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 (c)(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 (c)(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 (c)(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 country not recording the specific addresses where cannabis goods are delivered.

Proposed subsection (d) provides the requirements for continuing a delivery trip when a delivery employee resumes conducting deliveries after returning to the licensed premises, 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 the delivery employee returns to the licensed retail premises for any reason, including to obtain additional cannabis goods for delivery, if the continued delivery of cannabis goods will be conducted on the same day by the same delivery employee using the same delivery vehicle. Proposed subsection (d) requires that if a licensed retailer decides to continue a delivery trip after the delivery employee returns to the licensed premises, any additional cannabis goods obtained by the delivery employee 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 specified 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, the proposed subsection allows for the option to continue the existing delivery trip by adding any 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 (d)(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 (d)(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 (e) 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 (e)(1) clarifies when a delivery trip ends. Proposed subsection (e)(1)(A) clarifies that except as listed in proposed subsection (e)(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 (e)(2).

Proposed subsection (e)(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 (e)(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 and is entered in a timely manner that allows the Department to effectively track the movement of cannabis goods.

Proposed subsection (e)(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 (e)(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.

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 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 repeated within this section.

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 amendment 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 as required in proposed section 15049.3.

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 always have access to the licensee's track and trace account while conducting delivery.

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 for recording track and trace information on 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.

Incorporation by Reference

No documents have been incorporated by reference.

Technical, Theoretical, and/or Empirical Study, Reports, or Documents

None.

Economic Impact and Fiscal Impact Assessment

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

Initial Statement of Reasons

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 withing California.

Economic Impact Assessment

The proposed regulations will not have a significant adverse economic impact on businesses.

The Department does not anticipate any increase or decrease in jobs due to the proposed regulations.

The proposed regulations would neither create nor eliminate businesses.

The proposed regulations would affect approximately 1,950 businesses. These businesses are licensed cannabis retailers and microbusinesses that are authorized to engage in retail. Of these businesses an unknown number are estimated to meet the criteria for being classified as a small business. The representative costs for a typical business to comply with the proposed regulations would equal \$32,000 in one-time costs, followed by \$0 annually. The annual benefits are difficult to quantify as the benefits include an increase in the Department's ability to track the movement of cannabis goods throughout the state.

The proposed regulations are not expected to have any impact on the expansion of businesses currently doing business in the state.

The proposed regulations would not affect worker safety.

The proposed regulations would also provide benefits to public health and safety by increasing the Department's ability to track the movement of cannabis goods which is likely to result in a decrease in the risk of diversion and inversion.

Fiscal Effect on State Government

The initial cost to the Department 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 costs due to the new requirements track and trace requirements are expected to be minimal and absorbable by the Department's current operations.

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: None

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

Effect upon housing: There is no effect on housing.

Specific Technologies or Equipment

None.

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:

The first alternatives considered for the proposed regulations was to adopt regulations that would require delivery sales to be recorded within the track and trace system instantaneously as the delivery 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. Due to the substantial increase in costs for licensees and the minimal increase in the ability to track cannabis, the Department has decided not to implement this alternative to the proposed regulations.

The second alternative considered by the Department was to not develop new regulations. This alternative was rejected because Business and Profession Code sections 26067 and 26068 requires the Department to incorporate delivery into the track and trace program in a manner that records information relating to cannabis goods leaving a licensed premises in a delivery vehicle as determined by the Department's regulations. If the Department does not develop regulations for this purpose, the Department will be out of compliance with the requirements of the statute. In addition, licensees will have no guidance for achieving compliance with the statutory requirements.

Initial Statement of Reasons