

Department of Cannabis Control
California Code of Regulations Title 4, Division 19
Notice of Proposed Rulemaking

Notice Date: May 26, 2023

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

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 will hold a virtual public hearing at the following date and time listed below:

Tuesday, July 11, 2023 – 10:00 AM to 1:00 PM

Attendees may participate via WebEx online meeting platform or telephone conferencing. To participate via WebEx online meeting platform please email Charisse Diaz at Charisse.Diaz@cannabis.ca.gov or (916) 465-9025 by 4:30 p.m. on July 10, 2023 to request a link to the meeting. The link to the meeting will also be posted on the Department's website no later than 9:00 a.m. the day of the hearing.

As a reasonable accommodation, limited in-person seating may be available at the hearing in the Department Hearing Room, 2920 Kilgore Road, Rancho Cordova, CA 95670. Attendees must comply with all COVID-19 safety protocols. Please contact Charisse Diaz at Charisse.Diaz@cannabis.ca.gov or (916) 465-9025 by 4:30 p.m. on July 5, 2023, if an accommodation is necessary.

Participants will be given instructions on how to provide oral comment once they have accessed the hearing. The hearing will proceed on the date noted above until all testimony is submitted or 1:00 PM, whichever is later. At the hearing, any person may present oral or written statements or arguments relevant to the proposed action described in the Informative Digest. The Department requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony via email.

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 **must be received by the Department at its office by Tuesday, July 11, 2023.**

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 these proposed regulations. Business and Professions Code section 26067, subsection (a)(5), section 26068, subsection (d), and section 26090, subsection (c) require the Department to incorporate the delivery of cannabis and cannabis products (cannabis goods) into the track and trace program. Specifically, the statutes require the Department to develop regulations for the recording, within the track and trace program, of information relating to cannabis goods leaving a licensed premises in a delivery vehicle.

The proposed regulations implement, interpret, and make specific the requirements for recording cannabis delivery information within the track and trace program under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). (Bus. & Prof. Code, section 26000 et. seq.)

Informative Digest / Policy Statement Overview

The purpose of these proposed regulations is to provide guidance to licensees regarding the specific requirements for recording deliveries of cannabis goods within the track and trace system as required by the MAUCRSA. The proposed regulations provide the requirements for creating an inventory ledger within the track and trace

system, the information that must be included within the ledger, and the specific transactions that must be recorded.

Existing Law

Pursuant to MAUCRSA, the Department regulates commercial cannabis license holders in California, including cultivators, retailers, manufacturers, distributors, testing laboratories, microbusinesses, and temporary cannabis events. BPC section 26067, subdivision (a)(5) requires that the track and trace program established by the Department 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 within the track and trace system, all information required by the Department and update the information as required by the Department.

Policy Statement

This rulemaking action would allow the Department to comply with the requirements found in BPC sections 26067, 26068, and 26090 regarding the tracking of cannabis goods carried on retail delivery vehicles. The proposed regulations would provide licensees with specific requirements for creating delivery inventory ledgers within the track and trace system and the specific information and transactions involving the delivery of cannabis goods that must be properly recorded within the track and trace system.

Regulation Objectives and Anticipated Benefits of the Proposed Regulations

The Department has developed the proposed regulations to implement the 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. Through the use of 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 is 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.

Section 15049.3. Track and Trace Requirements for Delivery.

This proposed section provides the general requirements for creating a delivery inventory ledger within the track and trace system. The proposed section provides the specific information that must be recorded within the ledger, the requirements for recording sales transactions, the requirements for recording the end of a delivery trip, and the requirements for returning to the licensed retail premises for any reason, including to obtain additional cannabis goods, while continuing the existing delivery trip.

Section 15418. Cannabis Goods Carried During Delivery

This section is amended to incorporate the proposed track and track delivery inventory ledger requirements found in proposed section 15049.3. The section is also being amended to clarify the requirements for maintaining a delivery inventory ledger in situations where the track and trace delivery inventory ledger is inaccessible to a delivery employee while they are conducting deliveries of cannabis goods.

Incorporated by Reference

There are no documents incorporated by reference.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

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

Evaluation of Inconsistency with Federal Regulation or 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 MAUCRSA and other laws, has decriminalized the cultivation, sale, and possession of cannabis goods for persons aged 21 or older and for medicinal patients.

Plain English Requirement

Department staff prepared these proposed 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, subsection (a)(1). The proposed 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: None

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

Effect on Housing Costs: The proposed regulations will have no fiscal or other effect upon housing in the state.

Significant Statewide Adverse Economic Impact Directly Affecting Businesses: The Department has determined there will not be a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Small Business Determination: The proposed regulations would affect approximately 1,950 businesses. Of these businesses, an unknown number are estimated to meet the criteria for being classified as a small business.

Cost Impacts on a Representative Private Person or Business: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

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.

Results of the Economic Impact Assessment

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

The Department does not anticipate any creation or elimination of 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.

Consideration of Alternatives

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, 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 and equally effective in implementing the statutory policy or other provision of law.

The Department invites interested persons to present alternatives with respect to the proposed regulations during the written comment period or at the public hearing.

The Department itself considered alternatives to the proposed regulations. 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 BPC 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.

Contact Person

Inquiries concerning the proposed administrative action may be directed to:

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

The backup contact person for these inquiries is:

Kaila Fayne
Department of Cannabis Control
2920 Kilgore Road
Rancho Cordova, CA 95670
916-251-4544
Kaila.Fayne@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 the contact person 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 the contact person 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 the contact person 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 or Reasons, and the text of the regulations can be accessed through the Department's website at:
<https://cannabis.ca.gov/cannabis-laws/rulemaking/>.