

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

On June 30, 2022, Governor Gavin Newsom signed California Assembly Bill 195. This chaptered bill, codified in Business and Professions Code (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 of Cannabis Control (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.

On December 27, 2022, the Department adopted emergency regulations for implementing Assembly Bill 195, which 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 system. On May 26, 2023, the Department issued a Notice of Proposed Rulemaking and began a 45-day comment period on the proposed regulations. The Department readopted the emergency regulations on June 9, 2023, to keep the regulations in effect while the Department continued the process to permanently adopt the regulations through a certificate of compliance.

The Department held a virtual public hearing on July 11, 2023, the final day of the 45-day public comment period. The Department reviewed comments submitted on the proposed regulations and determined that there was a sufficiently related change needed in the proposed regulations to clarify certain sections and provisions.

The Department modified the regulations to add the requirement to record the city and zip code for each delivery transaction in addition to recording the county of the transaction in the track and trace system. Pursuant to Government Code section 11346.8, subdivision (c) and California Code of Regulations, title 1, section 44, the Department made the modified text available to the public for a 15-day public comment period beginning on August 23, 2023, and ending on September 7, 2023. Following the end of the 15-day comment period, the Department has made no other changes or revisions to the regulations.

Update To Initial Statement of Reasons

Pursuant to Government Code section 11346.9 subdivision (d), the Department hereby incorporates the Initial Statement of Reasons prepared in this rulemaking. 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.

All modifications from the initially proposed text of the regulations are summarized below.

Modifications Made Available for the 15-Day Comment Period from August 23, 2023 through September 7, 2023

Section 15049.3 Track and Trace Requirements for Delivery

Proposed subsection (c)(5) was amended to require licensees to record the city and zip code for each delivery of cannabis goods in addition to recording the county. The Department received several comments during the 45-day comment period requesting this specific modification to the proposed regulations. This amendment allows for the collection of more detailed data regarding the locations where delivery requests originate and where they are completed providing a more comprehensive data set of transactions related to the movement of cannabis goods on delivery vehicles. This amendment is necessary to provide the Department with improved ability to track the delivery of cannabis goods throughout the state through the existing track and trace system as required by Business and Professions Code section 26067.

Update to Economic and Fiscal Impact Statement

Business Impact

Based on currently available information, the Department believes that there are up to 2,098 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 with a third-party software application. The Department estimates that the initial cost to third-party software application companies is \$32,000. This estimated figure represents the cost to the third-party API integrators, not the direct cost to each licensed cannabis business. Cannabis retailers are expected to utilize existing software with modifications made by the third-party API integrators to comply with the new regulatory requirements. It is expected that some or all these costs will be shared by licensed retailers who use the

third-party software applications. The Department estimates that there are approximately 100 API integrator businesses that will be directly affected by these costs. The exact cost that will be passed down to each licensee cannot readily be determined. However, the Department estimates that with an initial cost of \$32,000 and 100 API integrator businesses, the initial cost to the 2,098 licensees potentially affected by the proposed regulations will be \$1,526 per license.

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 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 2,098 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 third-party API integrator business to comply with the proposed regulations would equal \$32,000 in one-time costs, followed by \$0 annually. The direct costs to licensed cannabis retailers will be some portion of the costs incurred by the third-party API integrators. The Department estimates that with an initial cost of \$32,000 and 100 API integrator businesses, the initial cost to the 2,098 licensees potentially affected by the proposed regulations will be \$1,526 per license. 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.

Local Mandate Determination

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

Incorporated by Reference

The following documents are incorporated into the regulations by reference:

There are no documents incorporated by reference.

Summary and Response to Comments Received During 45-Day Comment Period from May 26, 2023, through July 11, 2023

Section of Regulation	Comment Numbers	Summary of Comments Received During 45-Day Comment Period	Department Response
15049.3	1	Commenter suggests that the responsibility for tracking deliveries should fall on the point-of-sale companies, not the retail licensees. Commenter indicates that entering data manually into the track and trace system is time consuming and costly. Current POS systems do not have the functionality to comply with the new requirements.	The Department disagrees with this comment. The requirement to enter transactions into the track and trace system is found in statute. The Department lacks the authority to remove this requirement. The Department does provide licensees with the flexibility to use technology platforms in achieving the goal of recording all transactions. Since the POS companies are not licensed by the Department, the Department lacks the authority to impose requirements.
General Comment	2	Commenter indicates that operating a cannabis business is already very expensive. Many of the specific examples of costs provided are associated with cultivation.	While not on the proposed action, the Department notes the comments.

Section of Regulation	Comment Numbers	Summary of Comments Received During 45-Day Comment Period	Department Response
General Comment	3	<p>Commentor has no comments regarding the regulation language. Commentor indicates that the cost estimates in the Department's economic analyses are incorrect. Commentor indicates that the new requirements do have a significant impact on businesses and that the new requirements will result in a loss of jobs. Commentor cites their own experience in dealing with their Point of Sale (POS) system provider and that provider's inability to make changes to the system that would allow the licensee to comply with the new requirements.</p>	<p>The Department disagrees with this comment. The Department's economic assessment is based on the expected long-term effect of the proposed regulations. Although it may be the case that the transition into the new requirements may involve some delays on the part of some POS providers, these delays and issues are expected to be relatively temporary. Once these changes are implemented, the expected economic impact on specific areas such as the number of jobs in the industry overall is minimal.</p>
15049.3	4, 6, 12	<p>Commentor recommends requiring that the city and zip code where the delivery takes place be recorded in addition to the county. Commentor claims that recording this information would provide the Department and local jurisdictions with valuable data that can be used to ensure compliance and market access.</p>	<p>The Department agrees with this comment. The Department has amended 15049.3 to require the city and zip code.</p>

Section of Regulation	Comment Numbers	Summary of Comments Received During 45-Day Comment Period	Department Response
15418	5, 7, 8, 13, 15, 17	Commentor recommends removing the requirement in section 15418 that a delivery driver who does not have any delivery requests for a 30-minute period not make any additional deliveries and return to the licensed premises. Commentor claims that the requirement is arbitrary and difficult to enforce. Commenter also claims that the requirement conflicts with 15418(d).	While not on the proposed action, the Department notes the suggestion.
General Comment	9	Commenter expresses desire to see more guard rails in place to protect workers to make the process safer for delivery employees.	While not on the proposed action, the Department notes the comment. The Department agrees that worker safety is very important and will continue to consider worker safety in developing regulations.
15418	10	Commenter appreciates the ability to add more product to a delivery trip without the need to create a new delivery trip.	The Department agrees with this comment and notes commenter's support of the changes.

Section of Regulation	Comment Numbers	Summary of Comments Received During 45-Day Comment Period	Department Response
General Comment	11, 16	Commenter does not feel that additional requirements that increase costs for retailers are necessary.	The Department disagrees with this comment. The requirement to enter transactions into the track and trace system is found in statute. The Department lacks the authority to remove this requirement. The Department does provide licensees with the flexibility to use technology platforms in achieving the goal of recording all transactions. Since the POS companies are not licensed by the Department, the Department lacks the authority to impose requirements..
15418	14	Commenter expresses appreciation for the 30-minute requirement in section 15418(h), indicating that it benefits worker safety.	While not on the proposed action, the Department notes commenter's support of this requirement.

Summary and Response to Comments Received During 15-Day Comment Period from August 23, 2023, through September 7, 2023

Section of Regulation	Comment Numbers	Summary of Comments Received During First 15-Day Comment Period	Department Response
15418	1, 4	Commenter expresses confusion regarding the allowed length for a delivery trip.	While not on the proposed action, the Department notes the questions. Section 15049.3 (e)(2) indicates that a delivery trip cannot extend past the calendar date the trip was initiated. Further, drivers are prohibited from making deliveries past 10:00 p.m. and must return to the licensed premises if they have unsold cannabis goods.
15418	2	Commenter expresses confusion the ability to deduct taxes from the cost of the trip.	While not on the proposed action, the Department notes the comments. The proposed regulations do not require licensees to record “the cost of the trip.”
15418	3, 6	Commenter expresses confusion regarding the valuation of cannabis products carried on a delivery trip.	While not on the proposed action, the Department notes the comments. Section 15418 (b)(2) indicates that the value of the cannabis goods carried for delivery is based on the current retail price.

Section of Regulation	Comment Numbers	Summary of Comments Received During First 15-Day Comment Period	Department Response
General Comment	5	Commenter indicates that there are methods available for bypassing the licensed cannabis market and that the barrier for entry is high.	While not on the proposed action, the Department notes the comments.
15049.3	7	Commenter is against decision to record city and zip code of deliveries into the track and trace system as the decision to do so raises privacy concerns, specifically for cannabis consumers that receive federal housing subsidies or are prohibited from consuming cannabis.	The Department disagrees with this comment. The Department has determined that including the city and zip code of deliveries in addition to county, is not expected to violate the privacy of specific cannabis users as the specific address of the delivery is not being recorded into the track and trace system. The addition of city and zip code information on top of the requirement to record the county, does not substantially impact each customer's right to privacy.
15049.3	8	Commenter supports the addition of city and zip code of delivery being added to the information recorded within track and trace.	The Department agrees with this comment.

Section of Regulation	Comment Numbers	Summary of Comments Received During First 15-Day Comment Period	Department Response
15418	9	<p>Commentor recommends removing the requirement in section 15418 that a delivery driver who does not have any delivery requests for a 30-minute period not make any additional deliveries and return to the licensed premises. Commentor claims that the requirement is arbitrary and difficult to enforce. Commentor also claims that the requirement conflicts with 15418(d).</p>	<p>While not on the proposed action, the Department notes the comments.</p>

Alternatives That Would Lessen the Adverse Economic Impact on Small Business

No alternative proposed to the Department that would lessen any adverse economic impact on small businesses was rejected by the Department.

Alternatives Determination

The Department determined that no alternatives it considered or that were otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the regulation is proposed, nor would be as effective and less burdensome to affected private persons than the adopted regulation, nor would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The amendments adopted by the Department are the only regulatory provisions identified by the Department that would accomplish the goal of developing requirements for the recording, within the track and trace system, of information relating to cannabis goods leaving a licensed premises in a delivery vehicle. Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

The first alternative 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.