

BUREAU OF CANNABIS CONTROL
CALIFORNIA CODE OF REGULATIONS TITLE 16, DIVISION 42
COMMERCIAL CANNABIS QUICK RESPONSE CODE CERTIFICATE
REQUIREMENTS

February 12, 2020

ADDENDUM TO FINDING OF EMERGENCY

BACKGROUND

On January 23, 2020, the Bureau of Cannabis Control (Bureau) provided notice to the public on a proposed emergency rulemaking action that would require licensed cannabis storefront retailers to display their unique Quick Response Code (QR Code) certificate on their licensed premises and also require licensed cannabis distributor and delivery employees to carry a copy of the QR Code certificate when transporting or delivering commercial cannabis goods. On February 3, 2020, the Bureau submitted the emergency rulemaking action for review by the California Office of Administrative Law (OAL).

The Bureau hereby incorporates this addendum as part of the emergency rulemaking package. Unless a specific basis is stated for any modification to the purpose, necessity, and rationale for each adoption as initially stated in the Finding of Emergency, the purpose, necessity, and rationale for each adoption of the regulations as set forth in the Finding of Emergency continues to apply to the regulations as adopted. The modified purpose, necessity, and rationale for the proposed text of the regulations are summarized below. Additionally, the Bureau has provided a correction to one of the documents relied upon in the Finding of Emergency.

MODIFIED INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Proposed subsection (d)(1) of section 5039 has been amended to allow the QR Code certificate to be printed on “paper, glass, metal, or other material not less than 8 ½ inches by 11 inches.” The Bureau received comments from the public stating that it would be beneficial for licensees to be able to print the QR Code certificate on mediums other than paper. The Bureau has determined that as long as all the other requirements are met regarding the certificate, licensees should be allowed to use different mediums on which to print the certificate and have the ability to determine which is best for their business.

CORRECTION TO TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

In the Finding of Emergency, the Bureau provided a link to one of the documents relied upon, the California Department of Public Health’s (CDPH) Weekly Vaping-Associated Pulmonary Injury (VAPI) Update Report, dated November 12, 2019. The link included in the Finding of Emergency no longer links to the November 12, 2019 report, but instead to the most recent

report published by CDPH. The Bureau has the November 12, 2019 report and will make it available to any member of the public who requests to inspect the document.

**BUREAU OF CANNABIS CONTROL
FINDING OF EMERGENCY AND
NOTICE OF PROPOSED EMERGENCY REGULATIONS**

**QUICK RESPONSE (QR) CODE CERTIFICATE
REQUIREMENTS FOR CANNABIS LICENSEES**

The Bureau of Cannabis Control (Bureau) finds that an emergency, as defined in Government Code section 11342.545 currently exists. As such, the Bureau finds that immediate action to amend the Bureau's regulations is required to avoid serious harm to the public peace, health, safety, and general welfare. A delay in implementing the new requirements will result in continued harm to the public. Additionally, Business and Professions Code section 26013(b) deems the adoption of emergency regulations by a licensing authority to implement the Medicinal and Adult-Use Regulation and Safety Act (MAUCRSA) as an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare.

According to the Center for Disease Control and Prevention (CDC), as of November 13, 2019, there have been 2,172 lung injury cases and 42 deaths associated with using e-cigarette, or vaping products reported across the country. From these cases, the CDC collected fluid samples from the lungs of 29 patients. Of the 29 samples, THC was identified in 82%. The CDC now recommends that those individuals using e-cigarette or vaping products should not buy the products from informal sources, or "off the streets."

As of November 12, 2019, the California Department of Public Health (CDPH) has recorded 163 cases of Vaping-Associated Pulmonary Injury in the state of California. CDPH has been able to survey 86 of these individuals. Of the individuals interviewed, 71 of the 86 individuals, which equates to 83%, reported consuming vaping products containing THC. Of the 71 that consumed vaping products containing THC, only one individual reported buying THC vaping products from retailers licensed by the Bureau. The other 70 individuals surveyed reported buying THC vaping products from unlicensed sources. From these studies, it has been determined that the risk of harm to the public is greater from the use of THC vaping products obtained from unlicensed sources.

Specifically, retailers licensed by the Bureau are only permitted to sell cannabis goods that have passed strict laboratory testing requirements meant to protect consumer safety. Cannabis goods sold by unlicensed cannabis retailers do not have to meet the same consumer safety standards imposed during the testing process. Due to the Bureau's strict consumer safety standards, cannabis goods, including vape products, purchased from a licensed retailer are less likely to result in injury to the consumer.

The Bureau's current regulations require that licensees conspicuously display their license on the licensed premises. Despite this requirement and the existence of a state-wide license search system, the Bureau has found that the data regarding death and illness due to vaping reveals that consumers continue purchasing cannabis goods from illegal businesses, which may lead to severe health consequences.

Often, illegal retail commercial cannabis businesses visibly resemble, or have names that sound similar to, legal cannabis businesses. If consumers are provided information that a cannabis business is legal, via the use of a posted QR Code certificate for instant verification as they are preparing to enter a business, they will be less likely to enter an illegal business. This should decrease the likelihood that the consumer will purchase cannabis goods from the illegal business and lower the potential risk of harm to their safety and health.

These proposed regulations will provide an additional and highly visible way for consumers to immediately identify licensed businesses that sell cannabis goods meeting the state's rigorous safety and testing requirements. Additionally, consumers may not know that a license can be checked through the Bureau's license search or how to do this. The proposed regulations provide for a certificate that indicates a license can be easily checked and a way to do so directly from that certificate. The QR Code certificate contains a unique digital bar code that can be scanned from a smartphone or other portable device. Once scanned, it provides information related to the license, including the license number, license status, licensee's name, licensed premises address, business contact information, and owner.

The proposed amendments to the current regulation will require retailers, whose premises are open to the public, to display the QR Code certificate issued by the Bureau on the licensee's licensed premises in a manner that makes the QR Code easily visible to members of the public as they are about to enter the licensed premises. The QR Code certificate will provide notice that a license may be checked for validity and how to do so directly from the certificate. Easy access to the QR Code will provide a valuable tool for a consumer with a smartphone or other device capable of reading QR codes to easily verify that the retailer is operating under an active state license. By making license information readily available via the QR Code certificate, the state is protecting consumers who may, erroneously, believe that a premises they enter has a valid license and is subject to all of the state testing requirements.

The proposed regulation amendment will also require licensee employees engaging in the transportation or delivery of cannabis goods to carry a copy of the QR Code certificate along with a copy of the distributor's or retailer's license. This will allow delivery customers, other licensees, and law enforcement to use the QR Code certificate to verify the business' license and that the cannabis goods being transported are legal. Enabling members of the public to easily distinguish licensed businesses from unlicensed businesses will assist consumers in more easily identifying legal retailers and prevent consumers from purchasing untested and potentially harmful cannabis goods from an unlicensed source; this should reduce the risk of injury or death suffered by consumers consuming unregulated and illegal cannabis products. Further, by providing a way to immediately and conveniently check licensure information using the QR Code certificate, law enforcement can more readily identify vehicles carrying illegal cannabis goods and prevent these potentially harmful products from reaching illegal retailers, who will ultimately sell them to consumers.

Government Code section 11346.1(a)(2) requires that at least five working days prior to

submission of a proposed emergency regulation to the Office of Administrative Law (OAL), the adopting agency shall 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 regulation to the OAL, the OAL shall allow interested persons five calendar days to submit comments, on the proposed emergency regulations, as set forth in Government Code section 11349.6.

BACKGROUND

In June 2017, the California State Legislature passed a budget trailer bill, Senate Bill 94, that integrated the Medical Cannabis Regulation and Safety Act with the Adult-Use Marijuana Act and created the MAUCRSA. (Bus. & Prof. Code, §26000, et seq.) Under MAUCRSA, a single regulatory system governs the cannabis industry (both medicinal and adult-use) in California. The Bureau is charged with the licensing, regulation, and enforcement of the following types of commercial cannabis businesses: distributors, retailers, microbusinesses, temporary cannabis events, and testing laboratories. On January 16, 2019, the Bureau's current regulations took effect.

AUTHORITY AND REFERENCE

Business and Professions Code section 26013 authorizes the Bureau to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific the MAUCRSA at Business and Professions Code sections 26000, 26012, 26070, and 26090.

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

This rulemaking action amends the Bureau's regulations to add a requirement for licensees open to the public to display a QR Code certificate provided by the Bureau with their license and requiring those transporting or delivering cannabis goods to carry the QR Code certificate with them. The regulations will provide the size and placement requirement for the QR Code certificate s to ensure visibility and customer access to the QR Codes.

The proposed regulations are necessary to address a recent outbreak of lung disease believed to be primarily caused by the use of vaping products containing THC, as discussed above. By requiring all storefront retailers clearly display a QR Code certificate, consumers will be able to easily distinguish licensed cannabis retailers from unlicensed retailers because the QR Code certificate is posted. Once the QR Code is scanned, it will display information about the license, including if it is an active state license. This will assist in decreasing the risk of illness that may result from the purchase and consumption of untested cannabis goods. Additionally, requiring delivery and transportation employees to carry a copy of the QR Code certificate will allow delivery customers, law enforcement, and other members of the public to use the QR Code certificate to verify the licenses of the cannabis businesses for whom the employees work.

Proposed subsection (a) contains the language in the current regulation. It has been

identified as subsection (a) as the proposed amendments add several subsections to section 5039.

Proposed subsection (b) of section 5039 adds the requirement that storefront retail licensees must display the QR Code certificate issued by the Bureau so that it can be easily viewed and scanned from outside the business, allowing licensure to be verified before entering the business. This proposed addition to the regulation ensures that all licensees will display a QR Code certificate so that members of the public and government agencies, who are visiting the licensed premises, are able to easily use the QR Code to verify that the business is properly licensed by the Bureau.

Proposed subsection (c) of section 5039 requires that storefront retail licensees post the QR Code certificate in the front window, or in a locked display within 3 feet of any public entrance, in a manner that is clearly visible to the general public and to anyone entering the licensed premises. This requirement is necessary to ensure that all persons entering the licensed premises will be able to easily identify and access the QR Code certificate to verify the state license prior to entering the cannabis business. The locked display case requirement is necessary because if the licensed premises does not have a front window, the QR Code certificate must be posted outside the business, so as to be visible from outside of the premises. If it is not secured, the QR Code certificate is vulnerable to theft or damage; hence the locked display case.

Proposed subsections (d)(1)-(3) of section 5039 provide additional requirements to the QR Code certificate posting. Proposed subsection (d)(1) of section 5039 requires that the QR Code certificate be printed on paper no less than 8 ½ inches by 11 inches. Proposed subsection (d)(2) requires that the QR Code printed on the certificate be no less than 3.75 inches by 3.75 inches. The dimensions proposed are those of the QR Code if the certificate from the Bureau is printed without alteration. This size is also highly visible, while maintaining the ability to be effectively scanned.

Both proposed subsections (d)(1) and (d)(2) are necessary to ensure that the size of the certificate and QR Code printed on the certificate are of a large enough size that the QR Code is reasonably visible and accessible to individuals who may use the QR code to verify the business' license. Subsection (d)(3) of section 5039 requires that the QR Code printed on the certificate be of a sufficient clarity that the code can be read from at least 3 feet away. This requirement is necessary to ensure that the QR Codes displayed by licensees are clear enough to be scanned and reasonably used, by the public to verify the business' license. If the quality of the QR Code is too low, the QR Code could not be scanned and read. This would prevent the QR Code from being useful, defeating the purpose of the proposed regulation. The requirements found in proposed subsection (d) of section 5039 apply to all licensees to ensure that all QR Code certificates displayed by licensees are of a certain size and clarity so that they may be used to verify a license.

Proposed subsection (c) of section 5311 has been amended to add the new requirement that employees of a licensed distributor who are engaging in the transportation of cannabis goods, carry a copy of the licensee's license and the QR Code certificate issued by the Bureau. This amendment is necessary to ensure that law enforcement and

other licensees will be able to easily access the QR Code certificate to easily verify the validity of the distributor's license. Additionally, as subsection (c) contains new language, prior subsections (c) through (o) have been renumbered to subsections (d) through (p), respectively, so as not to have two subsections entitled (c) and allow sequential numbering of all subsequent subsections. Additionally, cross references within section 5311 have been changed to correspond to the new subsection letters for accuracy.

Proposed subsection (e) of section 5415 has been amended to add a requirement that a delivery employee of a licensed retailer carry a copy of the QR Code certificate while conducting deliveries. In addition, the subsection has been amended to require delivery employees to provide the copy of the retail license, the QR Code certificate, and their employee identification badge to any delivery customer, for viewing and inspection, upon request. These additional requirements are required to ensure that delivery employees will be able to easily provide identifying documentation that can be used to verify that the delivery employee is conducting deliveries of cannabis goods on behalf of a retailer that has been properly licensed by the Bureau. This will reduce the risk of customers inadvertently purchasing cannabis goods from an unlicensed source.

Anticipated Benefit of the Proposed Regulations:

The broad objective of these proposed regulations is to provide a mechanism for purchasers of cannabis goods to be able to easily identify whether the retailer they are purchasing cannabis goods from is properly licensed by the Bureau. The proposed amendments to the regulations will allow consumers to expediently and conveniently determine if a cannabis business is licensed at the specific business location before entering the business to make a purchase. Additionally, consumers purchasing cannabis goods by delivery will also be able to confirm licensure through the QR Code certificate. Also, those transporting and delivering cannabis will have the license and QR Code certificate in their vehicle, allowing for easier verification of their employer's license.

It is expected that the requirements created by the proposed amendments to the regulations will allow customers to more easily make a determination of the legality of a specific cannabis business and avoid entering unlicensed premises, decreasing purchases from unlicensed businesses. This should aid in preventing illegal cannabis goods from reaching consumers, thereby reducing the potential of harm to the consumer.

The present proposal will allow easier access to information on legal cannabis businesses and provide consumers with a better means of finding and purchasing safer, legal cannabis products from licensed businesses in the future. This should better protect the public health and safety, as outlined above.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

Under the federal Controlled Substances Act (21 U.S.C. §801, *et seq.*), cannabis is federally illegal. However, California, through the MAUCRSA, has decriminalized the

cultivation, sale, and possession of cannabis goods for persons aged 21 or older, and medicinal patients. After conducting a search and review of any similar regulations on this topic, the Bureau has determined that these proposed regulations are not inconsistent or incompatible with existing regulations and are the only regulations regarding cannabis retailers and distributors related to the use of QR Codes and a QR Code certificate.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Bureau has made the following initial determinations:

Mandate on local agencies and school district: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500, *et. seq.*: None.

Other non-discretionary cost or savings imposed on local agencies: None.

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

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

1. Centers for Disease Control and Prevention. Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping, Products https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html. Accessed November 14, 2019.
2. California Department of Public Health, Center for Healthy Communities, *VAPI Weekly Update Report 11/12/2019* (November 2019)