

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

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

**SUBJECT MATTER OF PROPOSED REGULATIONS:** Quick Response (QR) Code Certificate Requirements for Cannabis Licensees

**SECTIONS AFFECTED:** Title 16, California Code of Regulations (CCR), sections 5039, 5311, and 5415.

The Bureau of Cannabis Control (Bureau) finds that an emergency, as defined in Government Code section 11342.545, continues to exist. As such, the Bureau finds that immediate action to readopt the Bureau's amended regulations is required to avoid serious harm to the public peace, health, safety, and general welfare. A delay in re-implementing these requirements will result in harm to the public. Additionally, Business and Professions Code (BPC) 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.

As of July 15, 2020, the California Department of Public Health (CDPH) has recorded 228 cases and 5 deaths resulting from of Vaping-Associated Pulmonary Injury in the state of California. According to the Center for Disease Control and Prevention (CDC), as of February 18, 2020, there have been 2,807 lung injury cases and 68 deaths associated with using e-cigarette, or vaping products reported across the country. Laboratory data shows that vitamin E acetate, an additive in some THC-containing e-cigarette or vaping, products, is strongly linked to the illness.

The CDC recommends that people not use THC-containing products from informal or unlicensed sources. From these studies, the CDC has determined that the risk of harm to the public is greater from the use of THC vaping products that contain vitamin E acetate and products obtained from informal sources. The CDC is no longer providing regular updates on the number of patients hospitalized for vaping related illness. However, the risk of illness from consuming some e-cigarette or vaping products continues to exist.

Retailers licensed by the Bureau are only permitted to sell cannabis goods that have passed strict laboratory testing requirements meant to protect consumer safety. Conversely, cannabis goods sold by unlicensed cannabis retailers do not have to meet the same (if any) consumer safety standards imposed during the testing process for licensed cannabis retailers. 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 caused by a lack of testing at the illegal business.

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 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 business owner.

The proposed readoption of the current regulation will continue to 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 amendments 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 easily 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 unsuspecting 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.

The present emergency regulation package was filed with OAL on February 3, 2020 and an addendum Finding of Emergency was filed on February 12, 2020. The Emergency Regulations were approved on February 13, 2020, filed the same day with the Secretary of State, and became effective immediately upon filing. The Bureau has made substantial progress and proceeded with diligence to move the emergency regulation to a permanent regulation via a Certificate of Compliance (Certificate). The Bureau has completed the drafting of the regulation package with the Certificate and it is undergoing the Department of Consumer Affairs (DCA) required internal review and approval process. The Bureau prepared the present readoption package to ensure the public health is protected until the Certificate has been approved and adopted. The Bureau anticipates that the Certificate will be completed well within the readoption period.

## **AUTHORITY AND REFERENCE**

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

## **INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW**

This rulemaking action readopts the amendments to 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 also provide the size and placement requirement for the QR Code certificate to ensure visibility and customer access to the QR Codes.

The proposed readopted 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 cannabis retailers to 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 more easily verify the licenses of the cannabis businesses for whom the employees work.

Proposed subsection (a) contains the language in the pre-revised regulation. It has been identified as subsection (a), as the proposed readopted amendments add several subsections to 16 CCR 5039.

Proposed readopted subsection (b) of 16 CCR 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 readopted revision 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 readopted subsection (c) of 16 CCR 5039 requires that storefront retail licensees post the QR Code certificate in the front window, or in a locked display within three (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 if the licensed premises does not have a front window, since 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 readopted subsections (d)(1)-(3) of 16 CCR 5039 provide additional requirements to the QR Code certificate posting. Proposed readopted subsection (d)(1) of 16 CCR 5039 requires that the QR Code certificate be printed on paper, glass, metal, or other material no less than 8 ½ inches by 11 inches. Proposed readopted 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 readopted subsections (d)(1) and (d)(2) of 16 CCR 5039 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. Proposed readopted 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 three (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 or law enforcement to verify the business' license.

If the quality of the QR Code is too low, the QR Code cannot be scanned and read. This will prevent the QR Code from being useful, defeating the purpose of the proposed readopted regulation. The requirements found in proposed readopted subsection (d) of 16 CCR 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 readopted subsection (c) of 16 CCR 5311 has been maintained to continue the 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 readopted subsection letters for accuracy.

Proposed readopted subsection (e) of 16 CCR 5415 has been maintained to continue the 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 readopted regulations is to continue 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 readopted 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 continue to be able to confirm licensure through the QR Code certificate. Also, those transporting and delivering cannabis will continue to 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 readopted 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 potentially dangerous illegal cannabis goods from reaching consumers, thereby reducing the potential of harm to the consumer.

The present readoption 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 for 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 districts: None.

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

Cost or savings to any state agency: None

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

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

Effect upon Housing: This readoption will have no fiscal or other effect upon housing in the state.

**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 (as of February 25, 2020).
2. California Department of Public Health, Center for Healthy Communities, *VAPI Weekly Update Report July 16, 2020* (as of July 16, 2020).

The Bureau has the February 25, 2020 report from the Centers for Disease Control and Prevention and the July 16, 2020 report from the California Department of Public Health and will make them available to any member of the public who requests to inspect the documents.