

Final Proposed Filing - Coversheet

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the "Rule on Rulemaking" adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms shall be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of "Proposed Rule Postings" online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

**PLEASE REMOVE ANY COVERSHEET OR FORM NOT
REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!**

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Rule 4: Compliance and Enforcement

_____/s/ James Pepper_____, on 3/9/2022
(signature) (date)

Printed Name and Title:

James Pepper, Chair, Cannabis Control Board

RECEIVED BY: _____

- ☐ Coversheet
- ☐ Adopting Page
- ☐ Economic Impact Analysis
- ☐ Environmental Impact Analysis
- ☐ Strategy for Maximizing Public Input
- ☐ Scientific Information Statement (if applicable)
- ☐ Incorporated by Reference Statement (if applicable)
- ☐ Clean text of the rule (Amended text without annotation)
- ☐ Annotated text (Clearly marking changes from previous rule)
- ☐ ICAR Minutes
- ☐ Copy of Comments
- ☐ Responsiveness Summary

1. TITLE OF RULE FILING:

Rule 4: Compliance and Enforcement

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

22P003

3. ADOPTING AGENCY:

Cannabis Control Board

4. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: David Scherr

Agency: Cannabis Control Board

Mailing Address: 89 Main Street, Montpelier, VT 05620-7001

Telephone: (802) 558-6022 Fax:

E-Mail: david.scherr@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<https://ccb.vermont.gov/>

5. SECONDARY CONTACT PERSON:

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Kimberley Lashua

Agency: Cannabis Control Board

Mailing Address: 89 Main Street, Montpelier, VT 05620-7001

Telephone: (802) 636-7708 Fax:

E-Mail: kimberly.lashua@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE, EXEMPTING IT FROM INSPECTION AND COPYING?) Yes

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

7 V.S.A. §§ 901(h), 952(c), and 973(b).

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

The exemption in 7 V.S.A. § 952(c) protects the privacy of individuals with diagnosed medical conditions. The exemptions in 7 V.S.A. §§ 901(h) and 973(b) keep certain cannabis business information confidential that is related to public safety, security, transportation, and trade secrets in order to keep citizens safe and

maintain a fair commercial playing field for cannabis operations.

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

7 V.S.A. § 843(b)(1), 7 V.S.A. § 882.

8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

The following statutory citations provide legal authority for the provisions of the proposed rule: 7 V.S.A. §§ 863, 864, 881, 882, 32 V.S.A. § 7906.

9. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.

10. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.

11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

12. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSSES OF ORAL COMMENTS RECEIVED.

13. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

14. CONCISE SUMMARY (150 WORDS OR LESS):

This rule provides the enforcement mechanisms, procedures, and penalties for the Cannabis Control Board's Rules 1 through 3, which govern the licensing and regulation of commercial cannabis businesses and patient access to therapeutic cannabis.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

The rule is necessary for the Board to ensure a safe and fair legalized market for cannabis in Vermont. Enforcement mechanisms help assure product safety, consumer safety, and public safety. They also assure that all participants in the market are held to the same operational standards and share the regulatory burden fairly.

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

There is extensive factual and procedural basis for this rule, the rule is rationally connected to the factual and procedural basis, and the Board believes the rules make sense to a reasonable person.

As discussed further below, in formulating these rules the Board has received extensive information from individuals, businesses, and government agencies who will be affected by a commercial cannabis regulatory environment.

In formulating its enforcement mechanisms the Board drew extensively from the experience of other states in providing for safe, fair cannabis markets in places with experience in enforcement.

The decisions embodied by these rules are directly and rationally connected to the input the Board has received. The decisions made by the Board in drafting these rules will make sense to a reasonable person.

17. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

All potential cannabis businesses, as well as currently registered participants in Vermont's therapeutic cannabis system will be affected by this rule. This includes currently registered patients, caregivers, and dispensaries. Ancillary businesses that service cannabis operations will see significant commercial opportunities with the implementation of the legalized market.

The rule may affect government entities such as the Department of Health, the Agency of Agriculture, Food, and Markets, the Board of Natural Resources, the Agency of Natural Resources, and others.

18. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):

The direct economic impact of the rule will be narrowly focused on potential cannabis businesses and currently operating cannabis dispensaries. If those entities violate

the Board's rules they may be faced with fines or other costs associated with remedying harm caused by their violations.

The indirect economic impact is significantly favorable to Vermont and Vermonters. This rule will ensure the safe, fair, and proper functioning of the commercial cannabis market. Without a properly regulated market the large economic benefits that Vermonters stand to gain from a legalized cannabis market will not be possible.

More information about the economic impact of the cannabis market is available in the prefiling documents accompanying Board Rules 1 and 2, prefiled on November 24, 2021. All such documents are available on the Board's website: <https://ccb.vermont.gov/>.

19. A HEARING WAS HELD.

20. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING, PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 2/18/2022

Time: 11:00 AM

Street Address: 89 Main Street, Montpelier, VT

Zip Code: 05620-7001

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

21. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

2/25/2018

KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Cannabis

Compliance

Enforcement

Penalty

Fine



CANNABIS CONTROL BOARD

89 Main Street Montpelier, VT 05602 | ccb.vermont.gov

Date: March 8, 2022

To: Legislative Committee on Administrative Rules

From: Cannabis Control Board, drafted by David Scherr, General Counsel

Re: Board Response to Public Comments on Cannabis Control Board Proposed Rule 4

The Cannabis Control Board's rulemaking process has been marked by extraordinary public participation and cooperation. As detailed more fully in the "Strategy for Maximizing Public Input" section of this rule filing, the initial filing of this rule was preceded by extensive public comment and input.

The public notice and comment period has been no different, with the Board providing the public numerous opportunities to weigh in on the proposed rules. This included not only the official public comment hearing but also public comment portions of otherwise scheduled Board meetings, as well as many comments submitted through the public portal on the Board's website.

This memo provides the Board's response to each substantively distinct comment. The Board received numerous duplicative comments, which have not been repeated among the attached explanations. The comments as described in this memo are sometimes a summary compilation of the comments on the subject in question.

Verbal comments from public meetings and public comment sessions, and the Board's responses, have been included.

Copies of all written comments submitted to the Board have been compiled into a single section at the back.

Below, each distinct comment is noted with bullet point, and the Board's response is noted below each comment or group of similar comments.

Rule 4 General Comments:

- I would like to see a clear plan to address and reduce driving under the influence of cannabis. I am concerned we will see a dramatic increase in cannabis use with commercialization, and that health consequences and driving fatalities will result.

The Board has no regulatory or enforcement authority with respect to highway safety. Studies in other adult-use states have demonstrated no significant increase in police-responding highway fatalities. Given the amount of time that has passed since Vermont first considered regulating adult-use cannabis, the State has had significant time to prepare. Vermont has more Drug Recognition Experts per capita than any other state.

- Should Rule 4 generally be clearer about the Board's authority with respect to cannabis establishment identification cards? The rule is geared to the regulation of cannabis establishments, but doesn't really talk about regulating individuals who have ID cards to work at the establishments.

Board accepts recommendation; will make this change.

- Where do towns fit in with respect to Rule 4? We should tie into Rule 4 clarity about how towns can perform enforcement.

Rule 4 governs the Board's role in cannabis establishment enforcement but does not impact municipal authority. 7 VSA 863 sets forth role of municipalities in the new cannabis industry. Board has done significant work on providing clarity to towns with respect to their role.

- Manufacturers should be required to demonstrate acceptable homogeneity. I believe that ICP-MSMS is capable of detecting 2.5mg vs 5mg easily. Most labs use HPLC, specifying high class instruments will ensure better control in the program.

This comment is relevant to Rule 2, not this rule. Rule 2 leaves the Board with flexibility to adopt further testing guidelines if needed.

- The current restrictions around consumption in Vermont law can make it very difficult for renters to consume.

These are statutory restrictions; the Legislature has the authority to address this issue, not the Board.

Rule 4 Comments by Section:

4.1.3:

- Subsection(b): The definition of "Cannabis Licensed Agent" can be deleted, and all uses of it within Rule 4 can be revised to reflect the changes made to Rule 2.2.7 which now refers to "individuals who have a Cannabis Establishment identification card"

Comment is correct. Board will make this change.

- Subsection(j): The description of the wholesaler's physical site of operation is too narrow ("product storage"). In addition to storage, wholesalers engage in processing and packaging at their physical site of operation, and the legislature might soon expand wholesaler rights to include the sale of seeds and clones (which might involve propagation of plants). It may be cleanest to simply refer to the location of which the wholesale conducts the activities permitted under 7 VSA 905.

This change would need to be made across the board through all the rules for the sake of consistency, including those rules currently before LCAR. Current definition could accommodate all the activities of the wholesalers. The statute governs what a wholesaler's permitted activities are, not the rule. The Board can make this change in rule later if necessary.

- Subsection (c): In (h), the definition of Patient includes that they have a registration card. We should make (c) for Caregiver consistent.

This makes sense as a drafting issue. Board will make this change.

4.2.1:

- The Board should expand its investigative authority beyond those who engage "in the sale or transfer" of cannabis and cannabis products, to include those who engage in "manufacture", "cultivation," and "transportation" thereof. Further, the rule seems to suggest that the Board has investigative authority over unlicensed sales -- this is criminal activity that is also subject to investigation by police agencies. While I think it's appropriate for the Board to have some investigative authority over unlicensed sales, I imagine the Board would have to coordinate with law enforcement, and suggest the rule clarify that so as to not suggest that the Board will only act alone in those investigations.

Criminal law is not within the Board's purview, though the Board can sanction someone who is engaging in unlicensed participation in the cannabis market. Cooperation with authorities will likely be decided on a case-by-case basis.

- Is this section meaning to address the ability to conduct "inspections" of all persons engaged in sale of transfer of cannabis... and testing labs? An investigation is conducted for cause. An inspection is routine. Random inspections can result in an investigation and enforcement if regulations are not met. The response to a complaint is an investigation into that complaint. If changed to inspections, should change the section title as well?

These terms are common and do not need to be defined. To the extent that clarity around enforcement processes are needed, Board will do so in guidance.

4.2.2:

- The CCB could include in 4.2.2 that it will "investigate" all complaints received.

Similar to last comment: these terms are common and do not need to be changed.

4.3:

- The duty to cooperate in subparts 1 and 2 is limited to licensees -- but perhaps would be more appropriately expanded to also include any person to whom a Cannabis Establishment identification card is issued -- which would include owners, principals, and employees (including ex-employees).

Board accepts recommendation.

4.3.2:

- The term "inspection" is used which may track with the distinction made above. The CCB may need to clarify the rules and make a distinction between inspection and investigation, as suggested.

These terms are common and do not need to be changed.

4.4.2

- The CCB may want to add two new subsections:
 "(e) Prohibition on license renewal, which is mentioned in Section 4.5
 "(f) withhold license issuance", also mentioned in Section 4.5- this could be an incomplete application in conjunction with 4.5.1 (a). A description of what constitutes a complete application may be provided in other rules.

Rule 1 already provides for a mandatory 1 year waiting period before reapplication after denial. No change.

4.5:

- It should be clearer that these categories are in decreasing order of severity. It's not apparent at the beginning that Category I is the most severe and Category V is the least.

Board will provide reader assistance in guidance.

- For all the various category penalties, there's a slight change that we might want. Many of the "or" clauses should become "and/or" clauses instead, both for consistency and for optionality. And, we frequently include the possibility of corrective action plans for some offenses but not other repeat offenses, which seems odd; if someone gets their license suspended after a 3rd violation, for example, we should want a corrective action plan for after the suspension.

Board accepts recommendation.

- Generally, the violation lists may impact the ability to enforce other potential violations not included in these lists or limit flexibility for the CCB.

The rule already allows the Board the flexibility to sanction unlisted violations.

- Some aspects of the below violations rule may be difficult to administer because the standard for compliance is unclear. This may lead to inconsistent application on the regulated community.

The Board will include a standard of review in sections 4.9 and 4.10. But some of the challenge this comment identifies is inherent to the nature of enforcement. The multiple levels of review, which include investigation, hearing before the Board, and appeal to Supreme Court will provide appropriate checks and balances on the Board's authority and the rights of licensees.

- The CCB appears to be attempting to enforcing rules from other jurisdictions.

The Board is not enforcing rules from other jurisdictions, but rather noting that violations elsewhere could trigger action in VT; it is appropriate that a violation in another jurisdiction could trigger an action in VT.

- The CCB also ties compliance with its regulations to compliance in other jurisdictions. If the CCB wanted to pursue such a standard, the CCB should identify a point when non-compliance with other rules is actionable by the CCB. It could say that a determination of non-compliance will be any final decision by any jurisdiction that is not appealed to a higher court, or when another jurisdiction has a final decision on a violation against a licensee of the program that impacts that licensee's operation, its license shall be revoked. However, this still will be cumbersome to administer, because it will be based on enforcement by others. The CCB will need to build a system of monitoring violations by its registrants in other permit, certificate registration license programs.

The Board is not enforcing rules from other jurisdictions, but rather noting that violations elsewhere could trigger action in VT; it is appropriate that a violation in another jurisdiction could trigger an action in VT.

4.5.1:

- Subsection (a): The ability of the CCB to monitor and ensure that an applicant receives all required licenses/permits/registrations prior to issuance of a CE license or penalize post license issuance by revocation due to a failure to obtain a license/registration/permit will be difficult to administer. The regulatory processes administered by other jurisdiction/entities is largely outside the control of the CCB so defining when the CCB will take action to revoke or other, uncovering that information, and being consistent will be a challenge.

The Board is not enforcing rules from other jurisdictions, but rather noting that violations elsewhere could trigger action in VT; it is appropriate that a violation in another jurisdiction could trigger an action in VT.

- Subsection (h): This should be changed to more broadly reference a change of control and should use the correct citation to Rule 1.17.

Board accepts recommendation; will make this change.

- For consistency here and elsewhere the reference should be to "Cannabis and Cannabis Product".

Board accepts recommendation; will make this change.

- Subsections (k) and (l) appear to address the same issue.

Board agrees, will eliminate (k).

- Subsection (m): should this include “transferring” or “offering to sell” – including samples?

Board will add transferring language; keep rest the same.

- Subsections (e) and (r) seem similar, does the CCB want to be more specific as to the taxes it is talking about specifically those that are authorized in adult use market laws or any taxes?

Board has no authority to enforce other agencies' rules. No need for greater specificity here.

- Subsection (n): This should be revised to reflect the tolerance limits specified in Rule 2.9.

No cross-reference necessary here because that the Board will have no authority to violate someone for something they are authorized to do. To the extent necessary, this will be addressed in guidance.

- Subsection (o): It's concerning that a newly licensed grower previously operating in the legacy market could have their license revoked for their initial "inversion" of their own seed/plant stock.

This language is necessary to the proper functioning of the market.

- Subsection (t): Is the 60-day suspension of each of the different license types an equitable enforcement mechanism? It could have a more dramatic effect on outdoor cultivation as compared to indoor or wholesale activities. It might be helpful to play out a couple of scenarios, and think about how to manage multiple licenses suspensions with varying start and end dates.

The 60 days is a maximum duration of suspension, not a standard punishment. The rule already allows flexibility to address these issues.

- Subsection (u): Should there also be an option to fine here?

The Board will not add a fine, violations of this nature deserve a significant sanction beyond a monetary penalty.

4.5.2:

- Subsections (a) and (b): These are actions that would be uncovered as part of an investigation into a larger issue and may result in a different violation.

This is true. Board has flexibility to violate on either activity. No change.

- Subsection (c): Does the CCB mean to say “provided that patients with registry cards may purchase or be provided Cannabis of Cannabis products at a dispensary retail operations in accordance with...”

Board accepts recommendation; will make this change.

- Subsection (d): Make sure this is in accordance with Rule 2, which now closely tracks statutory language regarding where a person under 21 can be.

Board accepts recommendation; will make this change.

- Subsection (k): Laboratories should be permitted to improve processes based on new or improved methods and industry standards. This field of testing is evolving, so laboratories should be permitted to evolve. The check on how labs are evolving could occur annually with registrations. Also, labs could be in the course of a year evaluated against their SOPs, QA manuals, etc as updates are made.

No change; this will be ongoing work of Board to ensure we are using best practices and updating licensees accordingly.

- Subsection (l): change this reference to be consistent with the change to section 2.2.17.

No change needed. 2.2.17 only requires reporting for theft.

- Subsection (m): Is the CCB creating a list of pesticides, soil amendments, fertilizers or other crop production aids that are “authorized”. Related to

pesticides, will the CCB regulate other things beside use of product, such as licensure, storage, labeling, mixing?

The Board is creating such a list, relying on the expertise of the Agency of Agriculture, Food and Markets. This will be in guidance not rule.

4.5.3:

- Subsection (a): I remain concerned that the Board's rules prohibiting consumption at a licensed premises unduly burdens home-based business owners, and does not reflect the reality of prevailing cannabis culture. Consider exemptions or other accommodations for off-hours consumption of employee/vendor samples, as well as exempting consumption in areas of home-based businesses where licensed activities are not being conducted.

Any ambiguity in the rule will be clarified in guidance.

- Subsection (a): While I have no objection to the prohibition of cannabis consumption by customers within the boundaries of a licensed retail establishment, the entirety of this section overlooks the population of proprietors who are also licensed medical patients. In order to guarantee that these business owners are legally permitted to medicate inside their own facilities, the state needs to include a kind of "Personal Office Carve-Out" that permits licensed medical patients to take their medication within the bounds of a sanctioned space located inside their business.

There are many intersecting areas of law implicated by this comment, including statutory prohibitions on public consumption. The Board does not have the authority to address this holistically.

- Subsection (a): Under what exceptions would the CCB allow on premise or adjacent premise consumption? Is this distinction related to a special license? Or some other type of event?

This will be addressed if the legislature authorizes additional license types.

- Subsection (c): A failure to respond to a violation or failure to pay fines would appear to set up a cycle of violations and fines.

That is correct; it is incumbent upon the licensee to respond to the Board's requests. There is a provision that the Board will account for the licensee's financial situation when imposing monetary penalties.

- Subsection (e): What are unauthorized products or unauthorized ingredients in the context of this violation, it could be helpful to cross reference the other rule that addresses this?

Cross reference does not provide clarity in this instance. No change.

- Subsection (h): this should include the statutes.

Board will clarify that all the violations include relevant statutory violations.

- Subsection (i): How is “unauthorized” being use in this context?

Fair question; will eliminate the word unauthorized for clarity. Will also fix the technical error.

- Subsection (k): Is “sampling” addressing providing samples of products or sampling crops or products for testing? Cross referencing the rule could be helpful here.

Clarity is warranted here; will clarify that this refers to employee/vendor sampling. The Board will also add a violation specific to representative sampling.

- Subsection (l): this should probably reference “transaction” limits.

Board accepts recommendation; will make this change. The Board will also add a violation for selling unauthorized product.

- Subsection (m): Are there requirements for employee hygiene? What would be necessary for the CCB to observe to understand that a violation was committed.

No change, reference to industry standard should be sufficient.

4.7:

- In each category of violation, penalties escalate for 2nd and subsequent violations -- even where those violations are wholly unrelated to each other. Consider adding, as a mitigating factor, whether subsequent violations were related to initial violations.

No change, the aggravating and mitigating factors already allow the Board to consider such issues.

4.8.4:

- You may want to include service to the registered agent as found on the Sec. of State webpage, and if none exists to the business address.

Board accepts recommendation; will make this change.

Cannabis Control Board

Rule 4 Written Public Comment Compilation

- 4.1.3(c) — In (h), the definition of Patient includes that they have a registration card. We should make (c) for Caregiver consistent.
 - For all the various category penalties, there's a slight change that we might want. Many of the "or" clauses should become "and/or" clauses instead, both for consistency and for optionality. And, we frequently include the possibility of corrective action plans for some offenses but not other repeat offenses, which seems odd; if someone gets their license suspended after a 3rd violation, for example, we should want a corrective action plan for after the suspension.
 - 4.5.1(t) — Turn these into "and/or" clauses, and add option of a corrective action plan.
 - 4.5.1(u) — And/or, and add corrective action plan
 - 4.5.2(p) — And/or
 - 4.5.2(q) — And/or, and add corrective action plan
 - 4.5.2(r) — And/or, and add corrective action plan
 - 4.5.3(t) — And/or
 - 4.5.3(u) — And/or
 - 4.5.3(v) — Add corrective action plan
 - 4.5.3(w) — Add corrective action plan, and clarify the and/or (one clause is "and/or" but the other is just "or")
 - 4.5.4(i) — And/or
 - 4.5.4(j) — And/or
 - 4.5.4(k) — And/or, and add corrective action plan
 - 4.5.4(l) — And/or, and add corrective action plan
 - 4.5.5(e) — And/or
 - 4.5.5(f) — And/or
 - 4.5.5(g) — And/or
 - 4.5.5(h) — And/or, and add corrective action plan
-

Sivan Cotel

From: Stephanie Smith, Cannabis Quality Control Policy Administrator, VAAFM

Date: 1/18/22

RE: Comments Rule 4 Compliance and Enforcement

4.2 Complaints and investigations [Inspections]

4.2.1- Is this section meaning to address the ability to conduct "inspections" of all persons engaged in sale of transfer of cannabis... and testing labs.

An investigation is conducted for cause.

An inspection is routine.

Random inspections can result in an investigation and enforcement if regulations are not met.

The response to a complaint is an investigation into that complaint.

The CCB could include in 4.2.2 that it will “investigate” all complaints received.

4.3.2 Cooperation with Inspections

The term “inspection” is used which may track with the distinction made above. The CCB may need to clarify the rules and make a distinction between inspection and investigation, as suggested.

4.4.2 Penalties

The CCB may want to add two new subsections

“(e) Prohibition on license renewal, which is mentioned in Section 4.5

“(f) withhold license issuance”, also mentioned in Section 4.5- this could be an incomplete application in conjunction with 4.5.1 (a). A description of what constitutes a complete application may be provided in other rules.

4.5

Generally, the violation lists may impact the ability to enforce other potential violations not included in these lists or limit flexibility for the CCB.

Some aspects of the below violations rule may be difficult to administer because the standard for compliance is unclear. This may lead to inconsistent application on the regulated community.

The CCB appears to be attempting to enforcing rules from other jurisdictions.

The CCB also ties compliance with its regulations to compliance in other jurisdictions. If the CCB wanted to pursue such a standard, the CCB should identify a point when non-compliance with other rules is actionable by the CCB. It could say that a determination of non-compliance will be any final decision by any jurisdiction that is not appealed to a higher court, or when another jurisdiction has a final decision on a violation against a licensee of the program that impacts that licensee’s operation, its license shall be revoked. However, this still will be cumbersome to administer, because it will be based on enforcement by others. The CCB will need to build a system of monitoring violations by its registrants in other permit, certificate registration license programs.

In addition to the above, here are some comments by section.

4.5.1 Category I Violations and Penalties

- a. The ability of the CCB to monitor and ensure that an applicant receives all required licenses/permits/registrations prior to issuance of a CE license or penalize post license issuance by revocation due to a failure to obtain a license/registration/permit will be difficult to administer. The regulatory processes administered by other jurisdiction/entities is largely outside the control of the CCB so defining when the CCB will take action to revoke or other, uncovering that information, and being consistent will be a challenge.

(k) and (l) appear to address the same issue.

(m) should this include “transferring” or “offering to sell” – including samples?

(e) and (r) seem similar, does the CCB want to be more specific as to the taxes it is talking about specifically those that are authorized in adult use market laws or any taxes?

(t) Is the 60 day suspension of each of the different license types a equitable enforcement mechanism? It could have a more dramatic effect on outdoor cultivation as compared to indoor or wholesale activities. It might be helpful to play out a couple of scenarios, and think about how to manage multiple licenses suspensions with varying start and end dates.

4.5.2 Category II Violations and Penalties

(a) and (b) These are actions that would be uncovered as part of an investigation into a larger issue and may result in a different violation.

(c) Does the CCB mean to say "provided that patients with registry cards may purchase or be provided Cannabis of Cannabis products at a dispensary retail operations in accordance with..."

(k) Laboratories should be permitted to improve processes based on new or improved methods and industry standards. This field of testing is evolving, so laboratories should be permitted to evolve. The check on how labs are evolving could occur annually with registrations. Also, labs could be in the course of a year evaluated against their SOPs, QA manuals, etc as updates are made.

(m) Is the CCB creating a list of pesticides, soil amendments, fertilizers or other crop production aids that are "authorized". Related to pesticides, will the CCB regulate other things beside use of product, such as licensure, storage, labeling, mixing?

4.5.3 Category III Violations and Penalties

(a) Under what exceptions would the CCB allow on premise or adjacent premise consumption? Is this distinction related to a special license? Or some other type of event?

(c) A failure to respond to a violation or failure to pay fines would appear to set up a cycle of violations and fines.

(e) What are unauthorized products or unauthorized ingredients in the context of this violation, it could be helpful to cross reference the other rule that addresses this?

(i) How is "unauthorized" being use in this context?

(k) Is "sampling" addressing providing samples of products or sampling crops or products for testing? Cross referencing the rule could be helpful here.

(m) Are there requirements for employee hygiene? What would be necessary for the CCB to observe to understand that a violation was committed.

4.8.4 Sufficiency of Service

You may want to include service to the registered agent as found on the Sec. of State webpage, and if none exists to the business address.

4.1.3:

(b) The definition of "Cannabis Licensed Agent" can be deleted, and all uses of it within Rule 4 can be revised to reflect the changes made to Rule 2.2.7 which now refers to "individuals who have a Cannabis Establishment identification card"

(j) The description of the wholesaler's physical site of operation is too narrow ("product storage"). In addition to storage, wholesalers engage in processing and packaging at their physical site of operation, and the legislature might soon expand wholesaler rights to include the sale of seeds and clones (which might involve propagation of plants). It may be cleanest to simply refer to the location of which the wholesale conducts the activities permitted under 7 VSA 905.

4.2.1: The Board should expand its investigative authority beyond those who engage "in the sale or transfer" of cannabis and cannabis products, to include those who engage in "manufacture", "cultivation," and "transportation" thereof. Further, the rule seems to suggest that the Board has investigative authority over unlicensed sales -- this is criminal activity that is also subject to investigation by police agencies. While I think it's appropriate for the Board to have some investigative authority over unlicensed sales, I imagine the Board would have to coordinate with law enforcement, and suggest the rule clarify that so as to not suggest that the Board will only act alone in those investigations.

4.3: The duty to cooperate in subparts 1 and 2 is limited to licensees -- but perhaps would be more appropriately expanded to also include any person to whom a Cannabis Establishment identification card is issued -- which would include owners, principals, and employees (including ex-employees).

4.5.1:

(h) This should be changed to more broadly reference a change of control under Rule 1.17.

(n) This should be revised to reflect the tolerance limits specified in Rule 2.9.

(o) It's concerning that a newly licensed grower previously operating in the legacy market could have their license revoked for their initial "inversion" of their own seed/plant stock.

4.5.3(a): I remain concerned that the Board's rules prohibiting consumption at a licensed premises unduly burdens home-based business owners, and does not reflect the reality of prevailing cannabis culture. Consider exemptions or other accommodations for off-hours consumption of employee/vendor samples, as well as exempting consumption in areas of home-based businesses where licensed activities are not being conducted.

4.7: In each category of violation, penalties escalate for 2nd and subsequent violations -- even where those violations are wholly unrelated to each other. Consider adding, as a mitigating factor, whether subsequent violations were related to initial violations.

With thanks,
Dave

--

Dave Silberman

I am a primary care physician in Vermont. I would like to see labeling of cannabis products include the 6 proposed health warnings. I would like to see a clear plan to address and reduce driving under the influence of cannabis. I am concerned we will see a dramatic increase in cannabis use with commercialization, and that health consequences and driving fatalities will result.

Melissa Volansky

Manufacturers should be required to demonstrate acceptable homogeneity.

I believe that ICP-MSMS is capable of detecting 2.5mg vs 5mg easily. Most labs us HPLC, specifying high class instruments will ensure better control in the program/

Matthew Falco

Adopting Page

Instructions:

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

Rule 4: Compliance and Enforcement

2. ADOPTING AGENCY:

Cannabis Control Board

3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment if the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **A NEW RULE** .

4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):



INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

Meeting Date/Location: January 12, 2022, Virtually via Microsoft Teams; Physical Location in Montpelier, VT

Members Present: Chair Douglas Farnham, Diane Bothfeld, Jennifer Mojo, John Kessler, Diane Sherman, Clare O'Shaughnessy and Michael Obuchowski

Members Absent: Dirk Anderson

Minutes By: Melissa Mazza-Paquette

- 1:01 p.m. meeting called to order, welcome and introductions.
 - New appointments by Governor Scott on December 23, 2021:
 - Chair Doug Farnham, Agency of Administration
 - Member Brendan Atwood, Agency of Human Services
 - Resignation effective January 13, 2022:
 - Dirk Anderson, Department of Labor
- Review and approval of minutes from the December 15, 2021 meeting.
- No additions/deletions to agenda. Agenda approved as drafted.
- No public comments made.
- Note: The following emergency rules were supported by ICAR Chair Farnham:
 - 'PUC Emergency Rule 2.600 COVID-19 Emergency Disconnection Rule' by the Public Utility Commission, on January 4, 2022.
 - On July 15, 2021, the moratorium on gas, electric, and basic telephone disconnections was lifted in order to encourage greater participation in the Vermont COVID-19 Arrearage Assistance Program II ("VCAAP II") and the Vermont Emergency Rental and Utility Assistance Program ("VERAP") that distribute federal funds. On June 15, 2021, the statutory moratorium on water disconnections was lifted. The VCAAP II stopped taking applications in October 2021, but the VERAP continues to take applications until September 2022 or later. This rule encourages continued participation in the arrearage and financial support programs available to utility customers and provides enhanced consumer protections to customers who may be experiencing financial hardship due to COVID-19.
 - 'Emergency Administrative Rules for Remote Hearings for the Board of Medical Practice' by the Agency of Human Services, Department of Health, on January 6, 2022.
 - The proposed rule establishes the process for the Board to conduct virtual hearings.
- Presentation of Proposed Rules on pages 2-4 to follow.
 1. Immigrant Health Insurance Plan, Department of Vermont Health Access, page 2
 2. Rule 3: Medical Cannabis, Cannabis Control Board, page 3
 3. Rule 4: Compliance and Enforcement, Cannabis Control Board, page 4
- Next scheduled meeting is February 14, 2022 at 2:00 p.m.
- 3:05 p.m. meeting adjourned.

Proposed Rule: Rule 4: Compliance and Enforcement, Cannabis Control Board
Presented By: David Scherr

Motion made to accept the rule by John Kessler, seconded by Diane Bothfeld, and passed unanimously with the following recommendations:

2. Proposed Filing Coversheet, 2nd paragraph: Include 'beneficial' after 'significant' and state the overall potential savings and benefits.
3. Economic Impact Analysis, #3: Provide the economic cost summary.
4. Economic Impact Analysis, #7: Identify the net benefit of the rule.
5. Environmental Impact Analysis, #3: Change 'if' to 'as' "...can be curbed or mitigated **if** the state of Vermont..."
6. Public Input #3:
 - a. Clarify 'lived experience' – perhaps change to something like 'with experience personally'.
 - b. Include a word between 'advocates' and 'commercial' and clarify the paragraph of "Board members have individually had extensive discussions with members of the public and various experts and advocates commercial cannabis businesses, including enforcement concerns."
 - c. In the last paragraph:
 - i. Include 'its' between 'provided' and 'national'.
 - ii. Clarify 'comments' – perhaps it should refer to 'commentators'.
7. Incorporation by Reference: Cross reference Vermont rules.
8. Proposed Rule, including Section 4.1.5(b): Move all define terms to the definitions section.
9. Proposed Rule, including Section 4.1.1: Include subsection (b) to 7. V.S.A. §§ 863 are identify other applicable law.
10. Proposed Rule, including Section 4.5.2.(r): Consider including monetary penalties in addition to the suspension, perhaps with reinstation.
11. Proposed Rule, Section 4.5: Reorder so the progression of penalties escalates in order or clarify in the beginning how it reads now.
12. Proposed Rule, Section 4.5.1(t): Clarify during the upcoming notice and comment period if it's 'and/or', 'and', or 'or'.
13. Proposed Rule, Section 4.14: Change language to 'will keep information confidential' and clarify what information.

Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn’t appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

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#### 1. TITLE OF RULE FILING:

**Rule 4: Compliance and Enforcement**

#### 2. ADOPTING AGENCY:

Cannabis Control Board

#### 3. CATEGORY OF AFFECTED PARTIES:

*LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:*

Individuals and companies that plan to enter the adult-use cannabis market, cannabis consumers, existing medical cannabis businesses, dispensaries, patients and caregivers, testing facilities, banking and insurance industries, the Cannabis Control Board, and local governments.

There will be costs to licensees who may have to pay fines or bear the costs of remedying violations. These costs will largely be in the control of licensees who can avoid costs by following the rules.

These rules will have significant positive economic benefit for Vermont and Vermonters. This rule will ensure the safe, fair, and proper functioning of the commercial cannabis market. Without a properly regulated market the large economic benefits that Vermonters stand to gain from a legalized cannabis market will not be possible.

**4. IMPACT ON SCHOOLS:**

*INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:*

Schools are not affected by this rule.

**5. ALTERNATIVES: CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.**

Schools are not affected by this rule.

**6. IMPACT ON SMALL BUSINESSES:**

*INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):*

These rules will greatly expand opportunities for Vermont small businesses. The rules will set up a commercial adult-use cannabis system in Vermont that is likely to create hundreds of new business opportunities for outdoor cultivators, indoor cultivators, retailers, product manufacturers, and other licensed businesses. Additionally, these new businesses, which are designed to displace a large unregulated, illicit market will require many services from ancillary businesses, many of which will be small Vermont businesses.

This rule will provide great benefit for small businesses seeking to enter the legalized cannabis market in 2022 by ensuring a safe and fair regulatory environment exists at the outset of Vermont's legalized market for cannabis. An equal playing field for

cannabis businesses is necessary to a functioning market.

This rule will almost exclusively impact small businesses that do not currently exist, and that will only be permitted to exist by the other Board rules that this rule enforces. Currently existing dispensaries will be impacted by this rule as well, but not all currently existing dispensaries are small businesses. In accordance with statute, the dispensary rules are intended to be no more burdensome than currently existing regulations.

**7. SMALL BUSINESS COMPLIANCE:** *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

Due to the nature of cannabis production and sales, including its federal legal status, cannabis businesses must be tightly regulated.

Although tight regulation is required, as noted in Question 8 below the rule reduces compliance burdens for small cannabis operations.

**8. COMPARISON:**

*COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:*

For the reasons noted in Question 7 of this section, cannabis businesses must be tightly regulated. A separate rule for small cannabis businesses is not possible because cannabis businesses of all sizes will be engaging in cannabis production and sales, activity that requires serious regulation.

The rule does provide separate requirements for certain small cannabis businesses. It cuts in half the maximum penalties for Tier I cultivators and Tier II manufacturers, both categories of cannabis businesses that will likely be small operations.

9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*

The Board has created these rules with extraordinary public input, including from numerous potential small cannabis business owners. The Board has taken into account the particular concerns of small businesses in formulating this rule. For its understanding of the broader commercial cannabis market, the Board has relied on a sophisticated model developed by its consultant, VS Strategies, which is available on its website at this page: <https://ccb.vermont.gov/market-structure> (with the September 9, 2021 materials).

## Environmental Impact Analysis

### **Instructions:**

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis. If no impacts are anticipated, please specify "No impact anticipated" in the field.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

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### 1. TITLE OF RULE FILING:

**Rule 4: Compliance and Enforcement**

### 2. ADOPTING AGENCY:

Cannabis Control Board

### 3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*

Board enforcement activities will require enforcement agents to routinely travel to cannabis businesses. This will increase the number of vehicles and miles driven in Vermont. Each new vehicle may contribute an average of 4.6 metric tons of CO2 per year (according to the EPA). These emissions can be curbed or mitigated as the state of Vermont adds more fuel-efficient vehicles such as hybrid, natural gas, or electric vehicles to its transportation fleets.

4. **WATER:** *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*

Enforcement activities will have no impact on water.

5. **LAND:** *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*

Enforcement activities will have no impact on land.

6. **RECREATION:** *EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:*

Enforcement activities will have no impact on recreation.

7. **CLIMATE:** *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*

Enforcement activities will have a climate impact due to vehicle emissions, as discussed in Question 3 above.

8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*

None.

9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*

The Board looked to the activities of similar state agency enforcement branches, including alcohol enforcement performed by the Department of Liquor and Lottery, and hemp enforcement performed by the Agency of Agriculture, Food, and Markets. This comparison shows that the environmental impact of enforcement derives from vehicle miles traveled.

## Public Input Maximization Plan

### **Instructions:**

Agencies are encouraged to hold hearings as part of their strategy to maximize the involvement of the public in the development of rules. Please complete the form below by describing the agency's strategy for maximizing public input (what it did do, or will do to maximize the involvement of the public).

This form must accompany each filing made during the rulemaking process:

1. TITLE OF RULE FILING:

**Rule 4: Compliance and Enforcement**

2. ADOPTING AGENCY:

Cannabis Control Board

3. PLEASE DESCRIBE THE AGENCY'S STRATEGY TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE, LISTING THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

The Board's strategy has been, and will continue to be, to hear from all possible stakeholders in the cannabis market. The Board has already sought and received extraordinary public involvement and input in the development of its rules. Since the Board was seated in May, 2021, The Board has held more than 25 Board meetings, each of which was noticed, recorded, open to the public, and accessible to all through electronic means, and each included a public comment session. The Board has also received more than 100 written comments submitted through its website. During its meetings the Board has heard from small cannabis cultivators and cannabis policy advocates, experts on racial justice and social equity issues and individuals with personal experience of such issues, medicinal cannabis patients and experts, public health experts and advocates, environmental and energy experts and advocates, agricultural experts and advocates, and more. The Board has considered all of this input in formulating its rules.



In addition to the Board's own meetings, the Board's Advisory Committee (provided for by 7 V.S.A. § 843(h)) has met four times and its Advisory subcommittees have met more than 65 times. Each Advisory Committee and subcommittee meeting was noticed, recorded, open to the public, and included a public comment period.

In addition to formal board meetings, board members have individually had extensive discussions with members of the public and various experts and advocates.

The Board has worked with VS Strategies, a cannabis policy consulting firm that has provided national regulatory experience, including enforcement experience, and economic expertise. The Board plans to hold public hearings during the notice and comment period for these rules, and plans to engage seriously with comments that it receives during the notice and comment period. The Board is ready to make appropriate amendments to the rules on the basis of that feedback.

**4. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:**

In addition to the people and organizations named above, the Board has relied extensively on the expertise of other Vermont state government agencies. The Department of Health helped design warning labels and packaging. The Agency of Agriculture, Food, and Markets provided expertise on laboratory testing and cannabis cultivation issues. The Department of Public Service provided expertise on building and energy standards. The Agency of Natural Resources assisted with environmental standards. The Natural Resources Board consulted on matters related to Act 250. Each of these regulatory areas are applicable to dispensary regulation as well as commercial market regulation.

## Public Input

The Board will continue to seek the advice of experienced regulators to ensure any changes that may be made during the notice and comment period are consistent with the best practices of regulatory experts in the relevant field.

## Incorporation by Reference

**THIS FORM IS ONLY REQUIRED WHEN INCORPORATING MATERIALS BY REFERENCE. PLEASE REMOVE PRIOR TO DELIVERY IF IT DOES NOT APPLY TO THIS RULE FILING:**

### **Instructions:**

In completing the incorporation by reference statement, an agency describes any materials that are incorporated into the rule by reference and how to obtain copies.

This form is only required when a rule incorporates materials by referencing another source without reproducing the text within the rule itself (e.g., federal or national standards, or regulations).

Incorporated materials will be maintained and available for inspection by the Agency.

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#### 1. TITLE OF RULE FILING:

**Rule 4: Compliance and Enforcement**

#### 2. ADOPTING AGENCY:

Cannabis Control Board

#### 3. DESCRIPTION (*DESCRIBE THE MATERIALS INCORPORATED BY REFERENCE*):

This rule references Board Rules 1, 2, and 3.

#### 4. FORMAL CITATION OF MATERIALS INCORPORATED BY REFERENCE:

Board Rule 1 has been assigned rule number 21P038 by the Secretary of State. Board Rule 2 has been assigned rule number 21P039 by the Secretary of State. Board rule 3 is being prefiled at the same time as this rule, and has no number assigned to it.

#### 5. OBTAINING COPIES: (*EXPLAIN WHERE THE PUBLIC MAY OBTAIN THE MATERIAL(S) IN WRITTEN OR ELECTRONIC FORM, AND AT WHAT COST*):

Board rules can be accessed at no cost on the Board's website: <https://ccb.vermont.gov/>.

#### 6. MODIFICATIONS (*PLEASE EXPLAIN ANY MODIFICATION TO THE INCORPORATED MATERIALS E.G., WHETHER ONLY PART OF THE MATERIAL IS ADOPTED AND IF SO, WHICH PART(S) ARE MODIFIED*):



**STATE OF VERMONT  
CANNABIS CONTROL BOARD**

**RULE 4: COMPLIANCE AND ENFORCEMENT**

- 4.1 Section 1: General Provisions
  - 4.1.1 Authority
  - 4.1.2 Scope and Purpose
  - 4.1.3 Definitions
  - 4.1.4 Applicability
  - 4.1.5 Time
- 4.2 Complaints and Investigations
  - 4.2.1 Investigations
  - 4.2.2 Complaints
- 4.3 Duty to Cooperate
  - 4.3.1 General Duty
  - 4.3.2 Cooperation with Inspections
- 4.4 Violations and Penalties
  - 4.4.1 Violations Generally
  - 4.4.2 Penalties
- 4.5 Categories of Violations and Associated Penalties
  - 4.5.1 Category I Violations and Penalties
  - 4.5.2 Category II Violations and Penalties
  - 4.5.3 Category III Violations and Penalties
  - 4.5.4 Category IV Violations and Penalties
  - 4.5.5 Category V Violations and Penalties
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  - 4.6.2 Limitations on Health and Safety Orders
  - 4.6.3 Disposal, Quarantine, and Assignment of Costs
- 4.7 Mitigating and Aggravating Factors
- 4.8 Issuance of a Notice of Violation
  - 4.8.1 Notice of Violation
  - 4.8.2 Content of A Notice of Violation
  - 4.8.3 Waiver Amount
  - 4.8.4 Sufficiency of Service
- 4.9 Process for Notices of Violation Without Immediate Effect

- 4.10 Process for Notices of Violation with Immediate Effect
- 4.11 Extensions and Consolidations
- 4.12 Health and Safety Notices
  - 4.12.1 Purpose of a Health and Safety Notice
  - 4.12.2 Content of a Health and Safety Notice
  - 4.12.3 Process for a Health and Safety Notice
- 4.13 Letter of Warning
- 4.14 Confidentiality

## **4 Rule 4: Compliance and Enforcement**

### **4.1 Section 1: General Provisions**

#### **4.1.1 Authority**

The Cannabis Control Board adopts this rule pursuant to 7 V.S.A. §§ 863, 864, 881, 882, 32 V.S.A. § 7906, and other applicable law.

#### **4.1.2 Scope and Purpose**

The Board is charged with implementing and regulating a legal market for Cannabis in Vermont. This rule provides for enforcing compliance with the Board's rules.

#### **4.1.3 Definitions**

All definitions in 7 V.S.A. §§ 861 and 951 shall apply to this rule. The following definitions shall also apply:

- (a) "Board designee" means a person designated by the Board to act as its agent for the purpose of executing the Board's responsibilities. This may be an employee of the Board or of another government agency.
- (b) "Caregiver" means a resident of Vermont who has been issued a Caregiver registration card by the Board, identifying the person as someone who has agreed to undertake responsibility for managing the well-being of a Patient with respect to the use of Cannabis or Cannabis Products for symptom relief.
- (c) "Corrective action plan" means a required set of actions imposed by the Board upon a Cannabis Establishment or dispensary for the purpose of curing a violation of Board Rules or of 7 V.S.A. chapter 33, 35, 37, or 39.
- (d) "Inventory Tracking System" means a method implemented by the Board for tracing all Cannabis and Cannabis Products grown, manufactured, and sold in Vermont.
- (e) "Licensee" means a person who has been issued a license pursuant to Board Rule 1 or

Board Rule 3. A licensee does not include a person who has been issued a provisional license.

- (f) "Notice of Violation" means a document in which the Board informs a licensee or a person engaged in the transfer or sale of Cannabis or Cannabis Product that they are the subject of an enforcement action by the Board and includes such other information as required by this rule.
- (g) "Patient" means a resident of Vermont who has been issued a registration card by the Board, identifying the person as having a qualifying medical condition pursuant to the provisions of this rule.
- (h) "Pesticide" shall have the same meaning as "economic poison" as defined in 6 V.S.A. § 911(5).
- (i) "Physical site of operations" means:
  - i. a cultivator's grow site,
  - ii. a wholesaler's product storage facility,
  - iii. a manufacturer's site of manufacture,
  - iv. a retailer's store location, or
  - v. a testing laboratory's testing facility.

#### 4.1.4 Applicability

This rule applies to persons who engage in the sale or transfer of Cannabis or Cannabis Products, including sales or transfers related to cultivating, manufacturing, wholesaling, or retailing Cannabis or Cannabis Products. This rule also applies to those who provide testing services to persons who engage in the sale or transfer of Cannabis or Cannabis Products.

#### 4.1.5 Time

- (a) In computing any time period, measured in days, that is established or allowed by this rule or by order of the Board or Chair:
  - (1) the day of the act or event that triggers the period shall be excluded;
  - (2) every day, including intermediate Saturdays, Sundays, and legal holidays shall be counted;
  - (3) the last day of the period shall be counted, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.
- (b) A "legal holiday" means:
  - (1) any day declared a holiday by the President or Congress of the United States; and
  - (2) any day declared a holiday by the State of Vermont.

## 4.2 Complaints and Investigations

#### 4.2.1 Investigations

The Board shall be empowered to conduct investigations of all persons who engage in the sale or transfer of Cannabis or Cannabis Products to ensure compliance with Board rules or of 7 V.S.A. chapter 33, 35, 37, or 39. The Board shall further be empowered to conduct investigations of

those who provide testing services to persons who engage in the sale or transfer of Cannabis or Cannabis Products. Such investigations may include undercover investigations. Investigations shall be carried out by Board designees.

#### **4.2.2 Complaints**

The Board may accept complaints from any person regarding compliance with these rules, provided that a complaint without further corroboration will not comprise the basis for disciplinary action by the Board. Anyone may file a complaint in a manner determined by the Board and made readily available to the public. Complainants do not have a right to receive updates on disciplinary actions.

### **4.3 Duty to Cooperate**

#### **4.3.1 General Duty**

Licensees and Cannabis Establishment identification card holders shall cooperate with the Board and Board designees who are conducting investigations relevant to the enforcement of the Board's rules and related law.

#### **4.3.2 Cooperation with Inspections**

Licensees and Cannabis Establishment identification card holders shall cooperate with the Board and Board designees who are conducting inspections and shall give the Board and Board designees immediate access to facilities and records upon request, including access to their physical site of operations.

### **4.4 Violations and Penalties**

#### **4.4.1 Violations Generally**

Any violation may be subject to an enforcement action by the Board. The Board will assess the penalty and the severity of the penalty as provided in this rule.

#### **4.4.2 Penalties**

One or more of the following penalties may be imposed for a violation in accordance with the categories defined in section 4.5 of this rule:

- (a) Requirement to produce or comply with a corrective action plan.
- (b) Fine.
- (c) Suspension of a license or Cannabis Establishment identification card.
- (d) Revocation of a license or Cannabis Establishment identification card.

### **4.5 Categories of Violations and Associated Penalties**



The Board will levy fines and penalties in accordance with the following categories, provided that the maximum fines for violations associated with the operations of tier I cultivators and tier II manufacturers shall be half the amount provided for in the categories.

To the extent a violation is not listed in this section the Board shall have discretion to assign the violation to an appropriate category and issue a penalty accordingly.

#### 4.5.1 Category I Violations and Penalties

Category I violations are of a severity that could make a person ineligible to receive, renew, or maintain a license or Cannabis Establishment identification card and include, but are not limited to:

- (a) Operating without all required permits, Board approvals, certificates, registrations and/or licenses;
- (b) Making an intentionally false statement to the Board or a Board designee;
- (c) Intentionally destroying or concealing evidence of a violation;
- (d) Failure to abide by a corrective action plan;
- (e) Failure to pay taxes to the Department of Taxes;
- (f) Knowingly permitting unlawful activity on the premises of a Cannabis Establishment or dispensary, or during transportation of Cannabis or Cannabis Product, that results in death or serious physical injury;
- (g) Operating a Cannabis Establishment or dispensary while the license for the Cannabis Establishment or dispensary is suspended or revoked;
- (h) Attempting to change control of a licensee without prior approval of the Board in accordance with Rule 1.17;
- (i) Transporting Cannabis or Cannabis Product outside of the boundaries of this State;
- (j) Making verbal or physical threats to the Board or a Board designee;
- (k) Refusing to allow an inspection or obstructing a Board designee from performing his or her official duties;
- (l) Purchasing, selling, or transferring Cannabis or Cannabis Product that has not passed the required analysis by an independent testing laboratory;
- (m) Labeling Cannabis or Cannabis Products with potency limits that do not match independent laboratory test results;
- (n) Purchasing, manufacturing, selling or otherwise utilizing Cannabis or Cannabis Products from a source that is not a licensed Cannabis Establishment or dispensary;
- (o) Purchasing, manufacturing, selling or otherwise utilizing Cannabis or Cannabis Products from a Cannabis Establishment or dispensary whose license has been suspended or revoked;
- (p) Purchasing or selling Cannabis or Cannabis Product not found in the Inventory Tracking System;
- (q) Failure to properly collect taxes;

- (r) Transporting or storing Cannabis or Cannabis Product from an unlicensed source or diversion of Cannabis or Cannabis Products; or
- (s) Intentionally selling or transferring unauthorized or unlawful Cannabis Products.

Before consideration of the factors described in section 4.7 of this rule, the Board will presume that the following are appropriate penalties for Category I violations. In no event shall a Category I penalty be greater than those permitted in this section.

For a category I violation which is the:

- (t) First violation in the immediately preceding 3 years, a corrective action plan, a civil penalty of not more than \$20,000, a suspension of a license or Cannabis Establishment identification card for not more than 60 days, and/or revocation of a license or Cannabis Establishment identification card.
- (u) Second or subsequent violation in the immediately preceding 3 years, a corrective action plan, a suspension of license or Cannabis Establishment identification card for a length of time to be determined by the Board, and/or revocation of a license or Cannabis Establishment identification card.

#### 4.5.2 Category II Violations and Penalties

Category II violations are violations of a severity that create a threat to public health or safety and include, but are not limited to:

- (a) Making an unintentional false statement or representation of fact to the Board or Board designee;
- (b) Unintentionally destroying or concealing evidence of a violation;
- (c) Failing to verify the age of, or selling or otherwise providing Cannabis or Cannabis Products to, a person who is less than 21 years, provided that patients with registry cards may purchase Cannabis or Cannabis Products at dispensary retail operations in accordance with Board Rule 3 and 7 V.S.A. chapters 35 and 37;
- (d) Allowing a person under 21 years of age to enter a transport vehicle or a building or enclosure on the premises of a Cannabis Establishment where Cannabis or Cannabis Product is located, provided that Patients with registry cards may enter dispensary retail operations in accordance with Board Rule 3 and 7 V.S.A. chapters 35 and 37;
- (e) Permitting employment or otherwise accepting work by a person without a Cannabis Establishment identification card or temporary work permit;
- (f) Allowing a person who is less than 21 years of age to work at a Cannabis Establishment or dispensary;
- (g) Failure to separate medical Cannabis or Cannabis Product sales from adult use retail sales;
- (h) Unlawful transfer of Cannabis or Cannabis Product from a dispensary into the adult use market;
- (i) Selling or transferring Cannabis or Cannabis Product in excess of transaction limits;

- (j) Failing to maintain required security systems;
- (k) Any intentional variance from approved procedures in a testing laboratory;
- (l) Failing to notify the Board of theft of Cannabis or Cannabis Products as required by Rule 2.2.17;
- (m) Using unauthorized pesticides, soil amendments, fertilizers or other crop production aids;
- (n) Transferring, moving, or disturbing Cannabis or Cannabis Product which has been placed on stop sale or quarantined by the Board without Board approval; or
- (o) Failing to destroy, selling, or transferring Cannabis or Cannabis Product that has been ordered destroyed by the Board, or that has been adulterated or contaminated without successful remediation;
- (p) selling or transferring unauthorized or unlawful Cannabis Products; or
- (q) Failing to abide by Cannabis and Cannabis Product testing requirements.

Before consideration of the factors described in section 4.7 of this rule, the Board will presume that the following are appropriate penalties for Category II violations. In no event shall a Category II penalty be greater than those permitted in this section.

For a category II violation which is the:

- (r) First violation in the immediately preceding 3 years, a corrective action plan, a civil penalty of not more than \$15,000, and/or a suspension for not more than 20 days of a license or Cannabis Establishment identification card.
- (s) Second violation in the immediately preceding 3 years, a corrective action plan, a civil penalty of not more than \$20,000, and/or a suspension for not more than 30 days of a license or Cannabis Establishment identification card.
- (t) Third or subsequent violation in the immediately preceding 3 years, a corrective action plan, a suspension of license or cannabis establishment identification card for a length of time to be determined by the Board, and/or revocation of a license or Cannabis Establishment identification card.

#### 4.5.3 Category III Violations and Penalties

Category III violations are violations of a severity that create a potential threat to public health or safety and include, but are not limited to:

- (a) Allowing consumption by any person of alcohol, Cannabis, or other intoxicants on the premises of the Cannabis Establishment or dispensary, or in areas adjacent to the premises of the Cannabis Establishment or dispensary that are under the licensee's control, except as authorized by the Board;
- (b) Failing to keep any required records, including updating the Inventory Tracking System;
- (c) Failing to respond to a Notice of Violation or failing to pay fines;
- (d) Knowingly permitting any activity on the premises of the Cannabis Establishment or dispensary, or during the transport of Cannabis or Cannabis Products from the premises, that violates Vermont law and that the licensee or an employee has knowledge of;
- (e) Selling or transferring unauthorized products or using unauthorized ingredients;

- (f) Failing to notify the Board of a modification or expansion of the facilities of the Cannabis Establishment or dispensary;
- (g) Violating packaging or labeling requirements, provided that the person or licensee who created the nonconforming label, and any retailer who allows the nonconforming label to be available for sale to a consumer, may both be liable for a violation under this subsection;
- (h) Violating advertising laws or regulations;
- (i) Storing or delivering Cannabis or Cannabis Products outside the Inventory Tracking System;
- (j) Failing to meet requirements for the disposal of Cannabis or Cannabis Product waste;
- (k) Violating restrictions on employee and vendor sampling;
- (l) Exceeding maximum serving requirements for Cannabis or Cannabis Products;
- (m) Failing to comply with requirements for employee hygiene;
- (n) Failing to maintain a reasonably sanitary Cannabis Establishment or dispensary in line with industry standards or applicable regulations;
- (o) Failing to maintain adequate food safety standards, where relevant;
- (p) Selling or failing to dispose of Cannabis, Cannabis Products or food items that are spoiled;
- (q) Failing to properly update the licensee's point of contact with the Board;
- (r) Failure to maintain quality assurance/quality control program in a testing laboratory; or
- (s) Failure to maintain current standard operating procedures, where relevant.

Before consideration of the factors described in section 4.7 of this rule, the Board will presume that the following are appropriate penalties for Category III violations. In no event shall a Category III penalty be greater than those permitted in this section.

For a category III violation which is the:

- (t) First violation in the immediately preceding 3 years, a corrective action plan and/or a civil penalty of not more than \$10,000.
- (u) Second violation in the immediately preceding 3 years, a corrective action plan, a civil penalty of not more than \$15,000, and/or a suspension for not more than 10 days of a license or Cannabis Establishment identification card.
- (v) Third violation in the immediately preceding 3 years, a corrective action plan, a civil penalty of not more than \$20,000 and/or a suspension for not more than 20 days of a license or Cannabis Establishment identification card.
- (w) Fourth or subsequent violation in the immediately preceding 3 years, a corrective action plan, a civil penalty of not more than \$20,000, a suspension of license or Cannabis Establishment identification card for a length of time to be determined by the Board, and/or a revocation of license or Cannabis Establishment identification card.

#### 4.5.4 Category IV Violations and Penalties

Category IV violations create a climate which is conducive to abuses associated with the sale or production of Cannabis or Cannabis Products and include, but are not limited to:

- (a) Failing to have in the immediate possession of each Cannabis Establishment or dispensary employee, while on the premises of a Cannabis Establishment or dispensary, a Cannabis Establishment identification card or temporary work permit;
- (b) Removing, altering or covering any required notice or sign;
- (c) Failing to post any required signs;
- (d) Failure to meet employee training and supervision requirements;
- (e) Improper storage of Cannabis, Cannabis Products, or other foods;
- (f) Failure to take reasonable steps to address pest infestations;
- (g) Lack of compliance with the statutory and regulatory requirements for the operation of a Cannabis Establishment or dispensary in another jurisdiction;
- (h) Violating Cannabis and Cannabis Product transportation regulations.

Before consideration of the factors described in section 4.7 of this rule, the Board will presume that the following are appropriate penalties for Category IV violations. In no event shall a Category IV penalty be greater than those permitted in this section.

For a category IV violation which is the:

- (i) First violation in the immediately preceding 3 years, a corrective action plan and/or a civil penalty of not more than \$5,000.
- (j) Second violation in the immediately preceding 3 years, a corrective action plan, a civil penalty of not more than \$10,000, and/or a suspension for not more than 10 days of a license or Cannabis Establishment identification card.
- (k) Third violation in the immediately preceding 3 years, a corrective action plan, a civil penalty of not more than \$15,000, and/or a suspension for not more than 20 days of a license or Cannabis Establishment identification card.
- (l) Fourth or subsequent violation in the immediately preceding 3 years, a corrective action plan, a civil penalty of not more than \$20,000, and/or a suspension for not more than 30 days of a license or Cannabis Establishment identification card.

#### 4.5.5 Category V Violations and Penalties

Category V violations are inconsistent with the orderly regulation of the sale or production of Cannabis or Cannabis Products and include, but are not limited to:

- (a) Failing to notify the Board of any change in Cannabis Establishment or dispensary contact information;
- (b) Making a payment with a check returned for insufficient funds;
- (c) Failing to properly submit reports required by the Board; or
- (d) Failure to pay for costs involved in screening or testing related to required testing within 60 days.

Before consideration of the factors described in section 4.7 of this rule, the Board will presume that the following are appropriate penalties for Category V violations. In no event shall a Category V penalty be greater than those permitted in this section.

For a category V violation which is the:

- (e) First violation in the immediately preceding 3 years, a corrective action plan and/or a civil penalty of not more than \$2,500.
- (f) Second violation in the immediately preceding 3 years, a corrective action plan, a civil penalty of not more than \$5,000, and/or a suspension for not more than 5 days of a license or Cannabis Establishment identification card.
- (g) Third violation in the immediately preceding 3 years, a corrective action plan, a civil penalty of not more than \$10,000, and/or a suspension for not more than 10 days of a license or Cannabis Establishment identification card.
- (h) Fourth or subsequent violation in the immediately preceding 3 years, a corrective action plan, a civil penalty of not more than \$15,000, and/or a suspension for not more than 20 days of a license or Cannabis Establishment identification card.

#### **4.6 Health and Safety Orders**

##### **4.6.1 Health and Safety Orders Generally**

The Board may issue one or more of the following health and safety orders for a violation related to public health and safety. These orders may be issued in addition to Rule 4.4.2 penalties.

- (a) Stop-sale order.
- (b) Quarantine of Cannabis or Cannabis Product.
- (c) Destruction and, if necessary, the prohibition of Cannabis or Cannabis Product.
- (d) Cease and desist order.

##### **4.6.2 Limitations on Health and Safety Orders**

The Board may issue health and safety orders only when there is a threat or potential threat to health and safety.

##### **4.6.3 Disposal, Quarantine, and Assignment of Costs**

- (a) Licensees who are required to destroy Cannabis or Cannabis Product must dispose of it in accordance with applicable regulations in Board Rule 2.
- (b) The Cannabis Establishment or dispensary in possession of Cannabis or Cannabis Product that the Board orders destroyed or quarantined is responsible for the destruction or quarantine. The Board shall not be a tribunal for determining any potential assignment of costs among licensees for such destruction or quarantine.

#### **4.7 Mitigating and Aggravating Factors**

The Board may consider mitigating and aggravating factors when considering the severity of a penalty. Factors may include, but are not limited to:

- (a) Any prior violations that the person has admitted to or was found to have engaged in.
- (b) Whether the violation impacted public health and safety.
- (c) Whether the violation is ongoing or has stopped.
- (d) Good faith measures by the person to prevent the violation, including but not limited to the following:
  - i. Proper supervision;
  - ii. Consistent and documented employee training; and
  - iii. Standard operating procedures established prior to the Board's investigation that include procedures directly addressing the conduct for which imposition of a penalty is being considered.
- (e) Person's history of success or failure with compliance checks or prior corrective action plans.
- (f) Corrective action(s) taken by the person related to the current violation or prior violations.
- (g) Willfulness and deliberateness of the violation.
- (h) Circumstances surrounding the violation.
- (i) The size of the licensee or operation.
- (j) The revenues of the licensee or operation.
- (k) Person self-reporting the violation(s).
- (l) Owner or management personnel is the violator or has directed an employee or other individual to violate these rules or the law.

#### **4.8 Issuance of a Notice of Violation**

##### **4.8.1 Notice of Violation**

If the Board finds that a person has violated any board rule or related law, the Board may issue a Notice of Violation.

##### **4.8.2 Content of A Notice of Violation**

A Notice of Violation shall contain the following:

- (a) A concise statement of the nature of the violation.
- (b) The factual basis for the violation.
- (c) The penalty or penalties to be imposed.
- (d) Health and safety orders, if necessary.
- (e) Information about how to contest the violation, pay a waiver penalty if applicable, and submit a corrective action plan if applicable.

##### **4.8.3 Waiver Amount**

If the Board assesses a fine penalty, the amount assessed on the Notice of Violation shall be the waiver amount. Paying the waiver amount will constitute acceptance of the Board's fine penalty.

#### 4.8.4 Sufficiency of Service

- (a) The Board may accomplish service of a Notice of Violation in any of the following ways:
  - i. By delivering the notice using certified mail to a licensee's business address provided in accordance with Board Rule 1.
  - ii. By delivering the notice using certified mail to the registered agent of a licensee as recorded in the licensee's business registration with the Vermont Secretary of State.
  - iii. By delivering the notice using certified mail to a Cannabis Establishment identification card holder's address, as provided pursuant to Board Rule 1.16.3.
  - iv. By hand delivery to:
    - 1. a Cannabis Establishment identification card holder;
    - 2. a person who controls a licensee; or
    - 3. a person acting in violation of Board rules or of 7 V.S.A. chapter 33, 35, 37, or 39.
- (b) The Board shall also deliver a Notice of Violation by electronic mail provided pursuant to Board Rule 1, provided that this shall not constitute service unless a licensee chooses to accept service of a Notice of Violation by electronic mail.

#### 4.9 Process for Notices of Violation Without Immediate Effect

Except as provided in section 4.10 of this rule, penalties imposed by a Notice of Violation will not take effect until the Board has rendered a final decision in accordance with the following process:

- (a) Within 15 days after service of a Notice of Violation, a person may contest the violation and/or the penalty to the Board by filing a response in writing. The response must specifically identify each issue and fact in dispute and state the position of the person, the pertinent facts to be determined by the Board, and the reasons supporting the person's position.
- (b) A failure to contest the violation within 15 days will constitute an admission of the violation and acceptance of the penalty.
- (c) The Board shall consider the person's response and issue a final decision in writing within 15 days after receiving the person's response.
- (d) A person who faces suspension or revocation of their license or Cannabis Establishment identification card may request a hearing before the Board. The hearing shall take place within 20 days of the Board receiving the request for a hearing unless the person waives the timeline. Evidence may be introduced at the hearing in accordance with 3 V.S.A. §



810. The Board may issue a final decision on the record at the hearing or may issue a final decision in writing within 15 days after the hearing is complete.

- (e) To the extent a person is contesting whether a violation occurred, the Board may not find that a violation occurred unless such a finding is supported by a preponderance of the evidence.
- (f) The Board's final decision may uphold its original Notice of Violation, may revise the penalty or penalties to be less severe, or may dismiss the Notice of Violation.
- (g) A person who is aggrieved by the Board's final decision may appeal in accordance with 7 V.S.A. 847.

#### **4.10 Process for Notices of Violation with Immediate Effect**

Suspensions, revocations, or health and safety orders imposed by Notices of Violation will have immediate effect if they are accompanied by a written finding that the licensee's violation poses an imminent threat to public health, safety, or welfare.

If a fine or a requirement to produce a corrective action plan accompanies a penalty imposed with immediate effect, the fine or corrective action plan will not take effect until the conclusion of the process provided for in this section.

- (a) The Board's initial Notice of Violation will plainly state that the penalty takes effect immediately. The Board will confirm the Notice of Violation and penalty within 7 days.
- (b) Within 15 days of service of such a violation, a person may contest the violation and/or the penalty to the Board by filing a response in writing. The response must specifically identify each issue and fact in dispute and state the position of the person, the pertinent facts to be determined by the Board, and the reasons supporting the person's position.
- (c) A failure to contest the violation within 15 days will constitute an admission of the violation and acceptance of the penalty.
- (d) The Board shall consider the person's response and issue a final decision in writing within 10 days after receiving the licensee's response.
- (e) A person who faces suspension or revocation of their license or Cannabis Establishment identification card may request a hearing before the Board. The hearing shall take place within 10 days of the Board receiving the request for a hearing unless the licensee waives the timeline. Evidence may be introduced at the hearing in accordance with 3 V.S.A. § 810. The Board may issue a final decision on the record at the hearing or may issue a final decision in writing within 10 days after the hearing is complete.
- (f) To the extent a person is contesting whether a violation occurred, the Board may not find that a violation occurred unless such a finding is supported by a preponderance of the evidence.
- (g) The Board's final decision may uphold its original Notice of Violation, may revise the penalty or penalties to be less severe, or may dismiss the Notice of Violation.
- (h) A person who is aggrieved by the Board's final decision may appeal in accordance with 7 V.S.A. 847.

#### **4.11 Extensions and Consolidations**

- (a) The Board may extend a deadline contained in section 4.9 or section 4.10 of this rule only for good cause. The Board must give written notice of the finding of good cause to the person who is the subject of the Notice of Violation prior to the expiration of the relevant deadline.
- (b) The Board may consolidate decisions and hearings for multiple persons to the extent that the disputed issues in the Notices of Violations relate to substantially similar facts.

#### **4.12 Health and Safety Notices**

##### **4.12.1 Purpose of a Health and Safety Notice**

The Board may find that, even without finding a violation by a person or license holder, the Board must act to protect public health and safety.

##### **4.12.2 Content of a Health and Safety Notice**

If the Board finds that Cannabis or a Cannabis Product is or may be unsafe to the public, it may issue a Health and Safety Notice to any Cannabis Establishment and include within it a health and safety order, as provided for in section 4.6 of this rule.

The Health and Safety Notice will contain the following:

- (a) The identity of the Cannabis or Cannabis Product at issue and a concise statement of the nature of the threat to public health.
- (b) The factual basis for the threat to public health.
- (c) The health and safety order(s) to be imposed.
- (d) Information about how to contest the Health and Safety Notice.

##### **4.12.3 Process for a Health and Safety Notice**

All Health and Safety Notices will have immediate effect. Licensees may contest the notice pursuant to the process established by section 4.10 of this rule.

#### **4.13 Letter of Warning**

The Board may issue a letter of warning to a person instead of a Notice of Violation or other order. Letters of warning will notify a person of a concern with their compliance or operating standards and will be a part of the person's record with the Board. No penalty will be associated with a letter of warning.

#### **4.14 Confidentiality**

The Board abide by the confidentiality requirements of 7 V.S.A. §§ 901(h), 952(c), and 973(b).

# The Vermont Statutes Online

## Title 7 : Alcoholic Beverages, Cannabis, And Tobacco

### Chapter 031 : Cannabis

#### Subchapter 002 : Cannabis Control Board

(Cite as: 7 V.S.A. § 843)

[Section 843 repealed effective July 1, 2024.]

#### § 843. Cannabis Control Board; duties; members

(a) Creation. There is created within the Executive Branch an independent commission named the Cannabis Control Board for the purpose of safely, equitably, and effectively implementing and administering the laws enabling access to adult-use cannabis in Vermont.

(b) Duties. The duties of the Board shall be:

(1) rulemaking in accordance with this chapter, chapters 33-37 of this title, and 3 V.S.A. chapter 25;

(2) administration of a program for licensed cannabis establishments, which shall include compliance and enforcement;

(3) administration of the Medical Cannabis Registry on and after March 1, 2022;

(4) administration of a program for licensed medical cannabis dispensaries, which shall include compliance and enforcement, on and after March 1, 2022; and

(5) submission of an annual budget to the Governor.

(c) Membership.

(1) The Board shall be composed of a chair and two members appointed by the Governor in accordance with sections 841 and 842 of this title.

(2) All Board members shall serve for a term of three years or until a successor is appointed and shall be eligible for reappointment, provided that no member may serve more than three terms.

(3) A vacancy created before the expiration of a term shall be filled in the same manner as the original appointment for the unexpired portion of the term. A member appointed to fill a vacancy created before the expiration of a term shall not be deemed to have served a term for the purpose of subdivision (2) of this subsection.

(4) A member may be removed only for cause by the remaining members of the

Commission in accordance with the Vermont Administrative Procedure Act. The Board shall adopt rules pursuant to 3 V.S.A. chapter 25 to define the basis and process for removal.

(d) Conflicts of interest.

(1) No Board member shall, during his or her term or terms on the Board, be an officer of, director of, organizer of, employee of, consultant to, or attorney for any person subject to regulation by the Board.

(2) No Board member shall participate in creating or applying any law, rule, or policy or in making any other determination if the Board member, individually or as a fiduciary, or the Board member's spouse, parent, or child wherever residing or any other member of the Board member's family residing in his or her household has an economic interest in the matter before the Board or has any more than a de minimus interest that could be substantially affected by the proceeding.

(3) No Board member shall, during his or her term or terms on the Board, solicit, engage in negotiations for, or otherwise discuss future employment or a future business relationship of any kind with any person subject to supervision or regulation by the Board.

(4) No Board member may appear before the Board or any other State agency on behalf of a person subject to supervision or regulation by the Board for a period of one year following his or her last day as a member of the Cannabis Control Board.

(e) Salaries. The Chair and all members of the Board shall be full-time State employees and shall be exempt from the State classified system. The Chair shall receive compensation equal to two-thirds that of a Superior Court Judge and other members shall receive compensation equal to one-half that of a Superior Court Judge.

(f) Executive Director. The Board shall appoint an Executive Director who shall be an attorney with experience in legislative or regulatory matters. The Director shall be a full-time State employee, shall be exempt from the State classified system, and shall serve at the pleasure of the Board. The Director shall be responsible for:

(1) supervising and administering the operation and implementation of this chapter and chapters 35 and 37 of this title and the rules adopted by the Board as directed by the Board;

(2) assisting the Board in its duties and administering the licensing requirements of this chapter and chapters 35 and 37 of this title;

(3) acting as Secretary to the Board, but as a nonvoting member of the Board;

(4) employing such staff as may be required to carry out the functions of the Board;  
and

(5) preparing an annual budget for submission to the Board.

(g) Consultant. The Board is authorized to hire a consultant as needed to assist with its duties under this section.

(h) Advisory committee.

(1) There is an advisory committee established within the Board that shall be composed of members with expertise and knowledge relevant to the Board's mission. The Board shall collaborate with the advisory committee on recommendations to the General Assembly. The advisory committee shall be composed of the following 14 members:

(A) one member with an expertise in public health, appointed by the Governor;

(B) the Secretary of Agriculture, Food and Markets or designee;

(C) one member with an expertise in laboratory science or toxicology, appointed by the Governor;

(D) one member with an expertise in systemic social justice and equity issues, appointed by the Speaker of the House;

(E) one member with an expertise in women- and minority-owned business ownership, appointed by the Speaker of the House;

(F) the Chair of the Substance Misuse Prevention Oversight and Advisory Council or designee;

(G) one member with an expertise in the cannabis industry, appointed by the Senate Committee on Committees;

(H) one member with an expertise in business management or regulatory compliance, appointed by the Treasurer;

(I) one member with an expertise in municipal issues, appointed by the Senate Committee on Committees;

(J) one member with an expertise in public safety, appointed by the Attorney General;

(K) one member with an expertise in criminal justice reform, appointed by the Attorney General;

(L) the Secretary of Natural Resources or designee;

(M) the Chair of the Cannabis for Symptom Relief Oversight Committee or designee; and

(N) one member appointed by the Vermont Cannabis Trade Association.

(2) Initial appointments to the advisory committee as provided in subdivision (1) of this subsection (h) shall be made on or before July 1, 2021.

(3) The Board may establish subcommittees within the advisory committee to accomplish its work.

(4) Members of the advisory committee who are not otherwise compensated by the member's employer for attendance at meetings shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than six meetings annually. These payments shall be made from the Cannabis Regulation Fund. (Added 2019, No. 164 (Adj. Sess.), § 2, eff. Oct. 7, 2020; amended 2021, No. 62, § 2, eff. June 7, 2021; repealed on July 1, 2024 by 2019, No. 164 (Adj. Sess.), § 6e(3).)

VERMONT **GENERAL ASSEMBLY**

# The Vermont Statutes Online

## Title 7 : Alcoholic Beverages, Cannabis, And Tobacco

### Chapter 033 : Cannabis Establishments

#### Subchapter 002 : Administration

(Cite as: 7 V.S.A. § 882)

#### **§ 882. Suspension and revocation of licenses; civil penalties**

(a) The Board shall have the authority to suspend or revoke a cannabis establishment license for violations of this chapter in accordance with rules adopted pursuant to this chapter.

(b) The Board shall have authority to issue civil citations for violations of this chapter in accordance with rules adopted pursuant to this chapter. Any proposed rule under this section shall include the full, minimum, and waiver penalty amounts for each violation.

(Added 2019, No. 164 (Adj. Sess.), § 7, eff. Oct. 7, 2020.)





# Proposed Rules Postings

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### Deadline For Public Comment

Deadline: Feb 25, 2022

The deadline for public comment has expired. Contact the agency or primary contact person listed below for assistance.

### Rule Details

|                  |                                                                                                                                                                                                                                                      |
|------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Rule Number:     | 22P003                                                                                                                                                                                                                                               |
| Title:           | Rule 4: Compliance and Enforcement.                                                                                                                                                                                                                  |
| Type:            | Standard                                                                                                                                                                                                                                             |
| Status:          | Proposed                                                                                                                                                                                                                                             |
| Agency:          | Vermont Cannabis Control Board                                                                                                                                                                                                                       |
| Legal Authority: | 7 V.S.A. § 843(b)(1), 7 V.S.A. § 882.                                                                                                                                                                                                                |
| Summary:         | This rule provides the enforcement mechanisms, procedures, and penalties for the Cannabis Control Board's Rules 1 through 3, which govern the licensing and regulation of commercial cannabis businesses and patient access to therapeutic cannabis. |

**Persons Affected:**

All potential cannabis businesses, as well as currently registered participants in Vermont's therapeutic cannabis system will be affected by this rule. This includes currently registered patients, caregivers, and dispensaries. Ancillary businesses that service cannabis operations will see significant commercial opportunities with the implementation of the legalized market. The rule may affect government entities such as the Department of Health, the Agency of Agriculture, Food, and Markets, the Board of Natural Resources, the Agency of Natural Resources, and others.

**Economic Impact:**

The direct economic impact of the rule will be narrowly focused on potential cannabis businesses and currently operating cannabis dispensaries. If those entities violate the Board's rules they may be faced with fines or other costs associated with remedying harm caused by their violations. The indirect economic impact is significantly favorable to Vermont and Vermonters. This rule will ensure the safe, fair, and proper functioning of the commercial cannabis market. Without a properly regulated market the large economic benefits that Vermonters stand to gain from a legalized cannabis market will not be possible. More information about the economic impact of the cannabis market is available in the prefiling documents accompanying Board Rules 1 and 2, prefiled on November 24, 2021. All such documents are available on the Board's website: <https://ccb.vermont.gov/>.

**Posting date:**

Jan 19,2022

## Hearing Information

**Information for Hearing # 1****Hearing date:**

02-18-2022 11:00 AM

**ADD TO YOUR CALENDAR****Location:**

Cannabis Control Board

**Address:**

89 Main Street

**City:**

Montpelier

**State:**

VT

**Zip:**

05620-7001

**Hearing Notes:**

## Contact Information

**Information for Primary Contact**

**PRIMARY CONTACT PERSON** - A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE.

Level: Primary  
Name: David Scherr  
Agency: Vermont Cannabis Control Board  
Address: 89 Main Street  
City: Montpelier  
State: VT  
Zip: 05620-7001  
Telephone: 802-558-6022  
Fax:  
Email: david.scherr@vermont.gov

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Website Address: <https://ccb.vermont.gov>

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**SECONDARY CONTACT PERSON** - A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON.

Level: Secondary  
Name: Kimberly Lashua  
Agency: Vermont Cannabis Control Board  
Address: 89 Main Street  
City: Montpelier  
State: VT  
Zip: 05620-7001  
Telephone: 802-836-7708  
Fax:  
Email: kimberley.lashua@vermont.gov

[SEND A COMMENT](#)**Keyword Information**

Keywords:

Cannabis  
Compliance  
Enforcement

Penalty

Fine

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# Proposed Rules Postings

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### Deadline For Public Comment

Deadline: Unavailable.

The deadline for public comment is unavailable for this rule. Contact the agency or primary contact person listed below for assistance.

### Rule Details

|                  |                                                                                                                                                         |
|------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| Rule Number:     | 22-E02                                                                                                                                                  |
| Title:           | Emergency Administrative Rules for Notaries Public and Remote Notarization.                                                                             |
| Type:            | Emergency                                                                                                                                               |
| Status:          | Adopted                                                                                                                                                 |
| Agency:          | Office of Professional Regulation, Office of the Secretary of State                                                                                     |
| Legal Authority: | 26 V.S.A. § 5364(b)(2)                                                                                                                                  |
| Summary:         | These Emergency Rules define the "personal appearance" requirement for remote notarial acts conducted through a secure audio-visual communication link. |

## Persons Affected:

Department of Health, Judiciary, Town Clerks, social service agencies, hospitals, nursing homes, and other health care facilities, real estate professionals, banks, mortgage companies, attorneys (including those in elder care, estate planning, and real estate), and the public, particularly individuals who are at a higher risk of contracting or experiencing complications from COVID-19.

## Economic Impact:

These Emergency Rules have allowed notarial acts to continue in the face of a public health crisis and have facilitated the continuance of essential transactions and commerce during these unprecedented times. Adopting these Rules again will continue to facilitate and protect our economy and the public health.

## Posting date:

Mar 14, 2022

## Hearing Information

There are not Hearings scheduled for this Rule

## Contact Information

### Information for Primary Contact

**PRIMARY CONTACT PERSON - A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE.**

Level: Primary  
Name: Lauren Layman  
Agency: Office of Professional Regulation, Office of the Secretary of State  
Address: 89 Main Street, 3rd Floor  
City: Montpelier  
State: VT  
Zip: 05620-3602  
Telephone: 802-828-2883  
Fax: 802-828-2368  
Email: [lauren.layman@vermont.gov](mailto:lauren.layman@vermont.gov)

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Website <https://sos.vermont.gov/notaries-public/statutes-rules-resources/>  
Address: [VIEW WEBSITE](#)

### Information for Secondary Contact

**SECONDARY CONTACT PERSON - A SPECIFIC PERSON FROM WHOM COPI FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON.**

Level: Secondary  
Name: Chris Winters, Deputy Secretary of State  
Agency: Office of the Secretary of State  
Address: 128 State Street  
City: Montpelier  
State: VT  
Zip: 05633-1101  
Telephone: 802-828-2363  
Fax: 802-828-2465  
Email: [chris.winters@vermont.gov](mailto:chris.winters@vermont.gov)

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## Keyword Information

Keywords:

Notary Public  
Notary  
Remote Notarization  
Professional Regulation  
Personal Appearance

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|     | St. Albans Messenger<br>Ben Letourneau ( <a href="mailto:ben.letourneau@samessenger.com">ben.letourneau@samessenger.com</a> )                                                                                                                                                                         | Tel: 524-9771 ext. 117 FAX: 527-1948<br>Attn: Ben Letourneau |
|     | The Islander<br>( <a href="mailto:islander@vermontislander.com">islander@vermontislander.com</a> )                                                                                                                                                                                                    | Tel: 802-372-5600 FAX: 802-372-3025                          |
|     | Vermont Lawyer<br>( <a href="mailto:hunter.press.vermont@gmail.com">hunter.press.vermont@gmail.com</a> )                                                                                                                                                                                              | Attn: Will Hunter                                            |

FROM: APA Coordinator, VSARA

Date of Fax: March 14, 2022

RE: The "Proposed State Rules " ad copy to run on

January 27, 2022

PAGES INCLUDING THIS COVER MEMO:

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**\*NOTE\* 8-pt font in body. 12-pt font max. for headings - single space body. Please include dashed lines where they appear in ad copy. Otherwise minimize the use of white space. Exceptions require written approval.**

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## PROPOSED STATE RULES

By law, public notice of proposed rules must be given by publication in newspapers of record. The purpose of these notices is to give the public a chance to respond to the proposals. The public notices for administrative rules are now also available online at <https://secure.vermont.gov/SOS/rules/>. The law requires an agency to hold a public hearing on a proposed rule, if requested to do so in writing by 25 persons or an association having at least 25 members.

To make special arrangements for individuals with disabilities or special needs please call or write the contact person listed below as soon as possible.

To obtain further information concerning any scheduled hearing(s), obtain copies of proposed rule(s) or submit comments regarding proposed rule(s), please call or write the contact person listed below. You may also submit comments in writing to the Legislative Committee on Administrative Rules, State House, Montpelier, Vermont 05602 (802-828-2231).

### Reportable and Communicable Diseases Rule.

Vermont Proposed Rule: 22P001

AGENCY: Agency of Human Services, Department of Health

CONCISE SUMMARY: This rulemaking does the following: 1) Adds COVID-19 and multisystem inflammatory syndrome in children to the list of reportable diseases; 2) Adds SARS-CoV-2 to the list of reportable laboratory findings and requires that all results be reported including positive, negative, and indeterminate. 3) Adds race and ethnicity data as required reporting content; 4) Adds the definition of electronic reporting to clarify approved methods of reporting and establishes a basis to share data between the Department and Vermont Information Technology Leaders (VITL); 5) Adds standardization procedures for administrative specimen collection; 6) Clarifies the timeframe for reporting laboratory findings to the Department; 7) Removes certain animal diseases from the list of reportable diseases; 8) Reorganizes sections for clarity.

FOR FURTHER INFORMATION, CONTACT: Natalie Weill, Department of Health, 108 Cherry Street, Burlington, VT 05401  
Tel: 802-863-7280 Fax: 802-951-1275 Email: [ahs.vdhrules@vermont.gov](mailto:ahs.vdhrules@vermont.gov) URL: <http://www.healthvermont.gov/about-us/laws-regulations/public-comment>.

FOR COPIES: David Englander, Department of Health, 108 Cherry Street, Burlington, VT 05401 Tel: 802-826-7280 Fax: 802-951-1275 Email: [ahs.vdhrules@vermont.gov](mailto:ahs.vdhrules@vermont.gov).

Note: The two rules below have been promulgated by Vermont's Cannabis Control Board who has requested the notices be combined to facilitate a savings for the agency. When contacting the agency about these rules please note the title and rule number of the rule(s) you are interested in.

- Rule 3: Medical Cannabis. – 22P002
- Rule 4: Compliance and Enforcement. – 22P003

AGENCY: Cannabis Control Board

CONCISE SUMMARY: Rule 3 regulates the use of therapeutic cannabis in Vermont. The rule will regulate patient access to cannabis and cannabis products and will regulate the dispensaries that provide cannabis and cannabis products to patients. These activities are currently regulated by the Department of Public Safety (DPS). They will come under the

purview of the Cannabis Control Board in accordance with Act 164(2020) and Act 62(2021). Rule 4 regulates the enforcement mechanisms, procedures, and penalties for the Cannabis Control Board's Rules 1 through 3, which govern the licensing and regulation of commercial cannabis businesses and patient access to therapeutic cannabis.

FOR FURTHER INFORMATION, CONTACT: David Scherr, Cannabis Control Board, 89 Main Street, Montpelier, VT 05620-7001 Tel: 802-558-6022 Email: [david.scherr@vermont.gov](mailto:david.scherr@vermont.gov) URL: <https://ccb.vermont.gov>.

FOR COPIES: Kimberley Lashua, Cannabis Control Board, 89 Main Street, Montpelier, VT 05620-7001 Tel: 802-836-7708 Email: [Kimberley.lashua@vermont.gov](mailto:Kimberley.lashua@vermont.gov)

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