

Emergency Filing - Coversheet

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” (CVR 04-000-001) adopted by the Office of the Secretary of State, this emergency filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, the Legislative Committee on Administrative Rules and a copy with the Chair of the Interagency Committee on Administrative Rules.

All forms shall be submitted to 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.

This emergency rule may remain in effect for a total of 180 days from the date it first takes effect.

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801(b)(11) for a definition), I believe there exists an imminent peril to public health, safety or welfare, requiring the adoption of this emergency rule.

The nature of the peril is as follows (*PLEASE USE ADDITIONAL SHEETS IF SPACE IS INSUFFICIENT*). Please see included document that follows this page.

I approve the contents of this filing entitled:

Rule 2: Regulation of Cannabis Establishments

_____ /s/ James Pepper _____, on 3/15/2022
(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)

An imminent peril to public health and welfare exists because the Department of Public Safety's rules for administering Vermont's medical cannabis system, including the patient and caregiver registry, have expired and the Cannabis Control Board's replacement rules have not yet completed the adoption process. More than 5,000 Vermont patients and caregivers depend upon the orderly administration of the medical cannabis system to obtain cannabis for symptom relief. Vermont's medical cannabis system provides cannabis and cannabis products to registered patients to relieve symptoms related to medical conditions such as cancer, multiple sclerosis, HIV, Parkinson's disease, and others.

The statutes authorizing the Department of Public Safety's rules governing the medical cannabis system expired on March 1, 2022. The Board had anticipated that the 2022 Budget Adjustment Act would pass before March 1 and would include an extension to the Department's authorizing statutes allowing sufficient time for the Board's rules to become final and effective. The act was not passed by March 1, the statutes expired, and the extension is no longer a viable legislative solution.

For this reason, the Board must act on an emergency basis to maintain the orderly functioning of the medical cannabis system.

This emergency rule is identical to Rule 2 as approved by the Legislative Committee on Administrative Rules on March 10, 2022.

Board Rule 2 has been approved by the Legislative Committee on Administrative Rules and will become effective as a final rule on March 29. However, Board Rule 3, which will be adopted on an emergency basis, heavily incorporates Rule 2 and is not workable without it. For that reason, Rule 2 must be in effect for Rule 3 to operate in the interim prior to March 29.

1. TITLE OF RULE FILING:

Rule 2: Regulation of Cannabis Establishments

2. ADOPTING AGENCY:

Cannabis Control Board

3. 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/>

4. 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: 802 836 - 7708 Fax: -

E-Mail: kimberley.lashua@vermont.gov

5. 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)

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

The exemption keeps information confidential that is related to public safety, security, transportation, and trade secrets in order to keep citizens safe and participants in the cannabis industry on a fair commercial playing field.

6. 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. 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 rules: 7 V.S.A. §§ 843, 865, 866, 881, 883, 884, 901, 902, 903, 904, 907, Section 8 of Act 164 (2020).

8. CONCISE SUMMARY (150 WORDS OR LESS):

Rule 2 regulates the operation of any entity that has received a license to participate in the legal market for cannabis.

9. EXPLANATION OF WHY THE RULE IS NECESSARY:

The Cannabis Control Board is charged with implementing and regulating a legal market for cannabis in Vermont. These rules are necessary to implement and regulate that market.

10. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY AS DEFINED IN 3 V.S.A. § 801(b)(13)(A):

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

11. As discussed further below, in formulating these rules the Board has received extensive information from agencies with expertise on relevant portions, incorporated the experience of other states in implementing and regulating their own cannabis markets, and heard input from many prospective market participants and others who will be affected by a legalized cannabis market in Vermont.

12. The decisions embodied by this rule is directly and rationally connected to the input the Board has received. The decisions made by the Board in drafting this rule will make sense to a reasonable person.

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

All individuals who seek to participate in a legal cannabis market either as consumers or sellers, businesses that seek to join the market, businesses that may service the cannabis industry, such as construction, HVAC, and agricultural enterprises, the Health Department, the Agency of Agriculture, Food, and Markets, the Board of Natural Resources, the Agency of Natural Resources, and others.

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

This rule sets the conditions to participate in a new market that will create extensive economic opportunities for residents of Vermont. Because the Board's rules are creating a new industry, existing small businesses will not be harmed. The rule will affect individuals and businesses looking to enter the adult-use cannabis market as well as consumers, ancillary businesses, and others. Due to the nature of cannabis production and sales, including cannabis' federal status, the market will be heavily regulated for public health and security reasons. But these regulations are designed to prioritize small businesses and social equity applicants as well as minimize the regulatory and cost burdens that fall on those businesses.

15. A HEARING IS NOT SCHEDULED .

16. 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 NEEDED FOR THE NOTICE OF RULEMAKING.

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

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

18. EMERGENCY RULE EFFECTIVE: 03/15/2022

19. EMERGENCY RULE WILL REMAIN IN EFFECT UNTIL

(A DATE NO LATER THAN 180 DAYS FOLLOWING ADOPTION OF THIS EMERGENCY RULE):

03/29/2022

20. NOTICE OF THIS EMERGENCY RULE SHOULD NOT BE PUBLISHED IN THE WEEKLY NOTICES OF RULEMAKING IN THE NEWSPAPERS OF RECORD.

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

Cannabis

Cannabis Control Board

Cannabis Establishment

Licensing

Licensing Cannabis Establishments

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 2: Regulation of Cannabis Establishments

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 as long as 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*):

22-009, Rule 2: Regulation of Cannabis Establishments,
3/29/2022

R&C.

Note: This Emergency Rule implements the exact same text as 22-009 for immediate coverage to provide continuity and function of the medical cannabis system, until 22-009 can take effect.

State of Vermont
Agency of Administration
Office of the Secretary
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Montpelier, VT 05609-0201
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[phone] 802-828-3322
[fax] 802-828-2428

Kristin L. Clouser, Secretary

MEMORANDUM

TO: Jim Condos, Secretary of State
FROM: Douglas Farnham, ICAR Chair Douglas Farnham
DATE: March 18, 2022
RE: Emergency Rule Titled 'Rule 2: Regulation of Cannabis Establishments' by the Cannabis Control Board

Digitally signed by Douglas
Farnham
Date: 2022.03.18 08:42:32
-04'00'

The use of rulemaking procedures under the provisions of [3 V.S.A. §844](#) is appropriate for this rule. I have reviewed the proposed rule titled 'Rule 2: Regulation of Cannabis Establishments', provided by the Cannabis Control Board, and agree that emergency rulemaking is necessary.

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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.

1. TITLE OF RULE FILING:

Rule 2: Regulation of Cannabis Establishments

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, testing facilities, bank and insurance industries, the Cannabis Control Board, and local governments. There will be extraordinary economic benefits for the newly created small

businesses that will come into existence because of this rule, as well as benefits to consumers who can legally purchase cannabis on a regulated marketplace with consumer safety enforcement in place.

The nature of cannabis production and sales, including the federal status of cannabis, requires that the market be heavily regulated. But these are not additional burdens on existing Vermont businesses. They are the requirements to enter a new industry that is projected to grow to over \$250,000,000 in annual sales within the next 5 years.

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 these rules.

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 these rules.

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.

As previously noted, the nature of cannabis production and sales, including the federal status of cannabis, requires that the market be heavily regulated. But these are not additional burdens on existing Vermont

businesses. They are the requirements to enter a new industry that is projected to grow to over \$250,000,000 in annual sales within the next 5 years. The rules will provide certainty and clarity to potential businesses, safety for consumers, security for communities, and revenue for the state and municipalities. Implementing these rules will likely create over 100 new employers and over 1000 new jobs while generating tens of millions of dollars in annual tax and fee revenue for the state. These rules can help make Vermont a leader in promoting an equitable and small businesses-focused adult-use cannabis market.

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.*

As noted above, due to the nature of cannabis production and sales, the industry will need to be heavily regulated. But this rule is designed to ease the burden of compliance for smaller businesses. For instance, the Board has exempted small cultivators from a number of regulatory requirements. In addition, certain security regulations have fewer requirements for small businesses and increase as businesses increase in size. Cultivation businesses are tiered in a way to encourage small farmers to enter the cannabis market.

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 reasons explained above, This rule is required to implement adult-use cannabis sales. Every effort was made to incorporate the thoughts and concerns of potential new small businesses into the drafting of the rule, including numerous public comment sessions, an advisory committee process that listened to stakeholders, and an open public comment portal through our website. A completely separate rule for small businesses is impossible due to the integrated nature of the market and regulatory requirements necessary to safely operate an adult-use cannabis sale program, but

this feedback helped identify the instances alluded to above where smaller businesses will face lower fees or less onerous regulations based on business size.

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 prospective owners of new small businesses that intend to enter the market, and many other stakeholders. For its market size and revenue projections, 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). A more complete summary of the input the Board has utilized in developing these rules may be found in the "Public Input Maximization Plan" portion of this filing.

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

1. TITLE OF RULE FILING:

Rule 2: Regulation of Cannabis Establishments

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.):*

The entire market for legalized cannabis in Vermont will likely be served by less than 15 acres of total cannabis plant canopy, according to the economic analysis conducted for the Board and referenced in Section 9 of the Economic Impact Analysis section. This is much smaller than most farming operations. For this reason the environmental impacts will be limited, but there will be areas of impact.

4. The transportation of cannabis products throughout the distribution streams will increase the number of vehicles and miles traveled in Vermont. Each new vehicle may contribute an average of 4.6 metric tons of CO₂ per year (EPA). These emissions can be curbed or

mitigated by requiring or incentivizing more fuel-efficient vehicles such as hybrid, natural gas, or electric vehicles in transportation fleets. These changes may not be economical for most new businesses without government support. Allowing for distribution specific businesses may also mitigate the impact by bringing in logistical expertise to optimize routes, loads, and driver experience. The additional increase in CO2 emissions by new vehicles used in cannabis transportation is presumed to have a minor environmental impact and is generally unavoidable.

5. Cannabis plants naturally produce volatile organic compounds that have an impact on air quality, though this emission is well below federal limits and considered to be an insignificant impact. Cannabis manufacturing may include solvents such as CO2, ethanol, and hydrocarbons which can off-gas into the environment. This risk is mitigated by strict fire code regulations for employee health and safety as well as the standard industry practice of using recirculation equipment. The greenhouse gas emissions from manufacturing using solvents is a moderate impact.
6. Waste generated by solvent-based manufacturing will release volatile organic compounds into the environment potentially impacting air and water quality. Current regulations on the disposal of hazardous waste will mitigate the risk from regular daily operations to low significance. The risk from accidental leaks and spills is of high significance but the reporting requirement of such incidences will limit the impact of such incidences and increase the potential for successful remediation.
7. **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.):**
Impacts on groundwater - due to the size of individual cultivation sites, water demand on a per site basis would have limited impact but cumulative impact of all cultivation sites has the potential to be meaningful.

8. Cannabis establishments have the potential to contaminate waterways with wastewater discharge containing pesticides, fertilizers, and disinfectants that can negatively impact surface waterways and ecology. This risk is mitigated by requiring safe and sanitary handling procedures and regular employee training on health, safety, and sanitation (as required by rule 2.2.4). The overall risk to the environment from this source of pollution is minimal.
9. Cultivation establishments will utilize water through irrigation. This impact is of low significance and mitigated in Rule 1 by requiring preliminary approval from the appropriate water management entity to ensure the water supply source has the capacity for the operation.
10. Cultivator inspections and required operational plans will mitigate the risk of pollutant discharge into both surface and ground waterways.

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

By creating a Tiered System with cultivation size limitations that are significantly smaller than traditional/conventional agriculture, the environmental impacts on a per site basis are presumed to be negligible to insignificant in relation to current farming operations, especially when compared to the average Vermont farm size. The total cumulative impacts of all proposed licenses have the potential to impact the environment. A positive impact of this rule is that by incorporating legacy growers into a licensing and oversight system, negative environmental practices are mitigated and more operations will be subject to Vermont land use regulations and included in supportive programs. The cultivation licensing tiers favor a small cultivation footprint in comparison to traditional agriculture. Small farmers will have more control over their land and be more proactive and perceptive to any negative impacts their practices may have on the environment and local ecology. Smaller farms will also mean more licenses and the total cumulative impact may