

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 4: Compliance and Enforcement

_____/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. Section 11 of H.701, an Act Relating to Cannabis License Fees, provides that Board Rule 4 "shall be deemed to meet the standard for the adoption of emergency rules pursuant to 3 V.S.A. § 844(a)."

This emergency rule is identical to Board Rule 4 as filed with the Legislative Committee on Administrative Rules on March 9, 2022.

1. TITLE OF RULE FILING:

Rule 4: Compliance and Enforcement

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: 802 636 - 7708 Fax: -

E-Mail: kimberly.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), 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.

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 V.S.A. § 882.

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 rule: 7 V.S.A. §§ 863, 864, 881, 882, 32 V.S.A. § 7906.

8. 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.

9. 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.

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

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.

11. 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.

12. 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.

13. 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.

14. **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.

15. **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/>.

16. A HEARING IS NOT SCHEDULED .

17. 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:

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

19. EMERGENCY RULE EFFECTIVE: 03/15/2022

20. EMERGENCY RULE WILL REMAIN IN EFFECT UNTIL

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

06/01/2022

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 NOTICE OF THIS EMERGENCY RULE SHOULD NOT BE PUBLISHED IN THE WEEKLY NOTICES OF RULEMAKING IN THE NEWSPAPERS OF RECORD.

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

Cannabis

Compliance

Enforcement

Penalty

Fine

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 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*):

State of Vermont
Agency of Administration
Office of the Secretary
Pavilion Office Building
109 State Street, 5th Floor
Montpelier, VT 05609-0201
www.aoa.vermont.gov

[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 4: Compliance and Enforcement' by the Cannabis Control Board

Digitally signed by
Douglas Farnham
Date: 2022.03.18
08:43:49 -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 4: Compliance and Enforcement', 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 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

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 to hear from all possible stakeholders in the cannabis market. The Board has 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