

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 3: Medical Cannabis

_____/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 3: Medical Cannabis

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

22P002

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. § 952(c) and 7 V.S.A. § 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 exemption in 7 V.S.A. § 973(b) keeps certain cannabis dispensary 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 dispensary 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. § 956, and 7 V.S.A. § 974.

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 rules: 7 V.S.A. §§ 901, 953, 954, 956, 971, 974, 975, 976, and 978.

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 NOT RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

12. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES 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 will regulate 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).

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

The rule is necessary to maintain a regulated system for patient access to therapeutic cannabis products.

In 2022, the Cannabis Control Board will assume from DPS responsibility for regulating the Patient and Caregiver Registry, which currently regulates medicinal and therapeutic cannabis use. Further, the statutes in Title 18 that govern the registry will be repealed in accordance with Act 164(2020) and Act 62(2021). These laws require the Cannabis Control Board to draft regulations that will replace the DPS rules. This proposed rule provides the required regulations.

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

There is extensive factual basis for this rule, the rule is rationally connected to the factual 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 agencies with relevant expertise and heard input from many current and prospective medicinal cannabis users and caregivers, and others who will be affected by an updated medical cannabis regulatory environment. The Board has further consulted with experts and affected individuals regarding how a legalized recreational cannabis market will affect medicinal cannabis.

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 currently registered patients, caregivers, and dispensaries will be affected by this rule. Ancillary businesses that service dispensaries may have new opportunities to boost business if new dispensaries are licensed pursuant to this rule, which is more permissive of new dispensaries than the DPS rule or current governing statutes. People seeking to register as patients and caregivers pursuant this rule will face a similar regulatory process to the one they do currently.

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):

In accordance with the governing statutes, the proposed rule is designed to avoid increased compliance burden. For this reason, this rule will not have an ongoing economic impact on currently operating dispensaries, caregivers, and patients. There may be some initial transition costs associated with a transfer to new systems implemented by a new regulatory body.

Although the Board does not anticipate significant numbers of new dispensaries, new dispensaries are more likely under the new statutory and regulatory scheme. To the extent that new dispensaries are licensed they will provide economic opportunity for the new business owners and employees and for ancillary businesses that service dispensaries, including construction, HVAC, agricultural enterprises, and others.

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):

2/25/2022

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

Dispensary

Patient

Caregiver

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 3: Medical Cannabis

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 3: Medical Cannabis, Cannabis Control Board
Presented By: David Scherr

Motion made to accept the rule by Brendan Atwood, seconded by Mike Obuchowski, and passed unanimously with the following recommendations:

1. Proposed Filing Coversheet, #9: Consult with the Department of Public Safety regarding the potential to repeal their rules.
2. Proposed Filing Coversheet, #12: Clarify 'significant'.
3. Economic Impact Analysis, #3: Include the estimated costs and benefits anticipated.
4. Incorporation by Reference: Cross reference Vermont rules.
5. Scientific Information Statement, #5: Provide instructions.
6. Proposed Rule, Section 3.1.1: Review the authority sections for appropriateness; include page numbers if deemed helpful; include 7 V.S.A. §§ 881 and §§ 956; remove §§ 971; add (b) to §§ 975, (b)(2) to §§ 976, and (d) to §§ 978; state that there are fees addressed in the rule; and articulate what other applicable laws.
7. Proposed Rule, including Section 3.1.5: Move all define terms to the definitions section.
1. Proposed Rule, Section 3.9: Change language to 'will keep information confidential' and clarify what information.

DRAFT

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 3: Medical Cannabis

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:

Patients, caregivers, dispensaries, persons seeking to become a patient or caregiver, persons seeking to operate a dispensary, cannabis testing facilities, banking and insurance industries, the Cannabis Control Board, and local governments.

There may be costs for dispensaries associated with transitions to new regulatory systems, but these will

be one-time costs, not an ongoing regulatory burden. The Board will make every effort to minimize them.

The benefits will be to all patients, caregivers, and dispensaries who will maintain access to cannabis for therapeutic purposes. There may also be a benefit to small business owners who will have a greater opportunity to open new dispensaries than they had under the prior rules. New dispensaries will also provide opportunity for ancillary businesses that will service dispensaries.

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):

In accordance with statutory requirements, this rule is intended to avoid an increase in regulatory burden on currently operating dispensaries.

New dispensaries are more likely to be licensed under the new statutory and regulatory scheme. This will expand business opportunities for small businesses, both those who choose to operate as a dispensary and those businesses that serve the dispensaries.

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. In Vermont this will be

especially true for dispensaries, which are currently permitted, and will continue to be permitted, to perform functions that regular cannabis businesses may not. This includes selling products with high THC concentrations and delivering cannabis directly to patients.

Although tight regulation is required, the rule does account for dispensaries that choose to operate on a smaller scale by allowing them to avoid certain application requirements that will not be relevant to their proposed 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 dispensaries is not possible because dispensaries of all sizes will engage in cannabis production and sales, activities that require heavy regulation.

As noted in Question 7, the rule does make accommodation for dispensaries that choose not to engage in all permitted aspects of cannabis dispensary operations by eliminating application requirements that will be irrelevant to their proposed 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 patients, caregivers, and dispensary workers and operators. 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). The Board's understanding of the dispensaries' place within

the upcoming legalized market has derived from the extensive public input referenced above.

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 3: Medical Cannabis

2. ADOPTING AGENCY:

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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 general environmental impact of this rule will not be significant. The Board's market analysis shows that the entire commercial recreational cannabis market in Vermont will be supplied by a total of less than 15 acres of cannabis. Dispensaries, which are limited to supplying cannabis to registered patients and caregivers for therapeutic use, will comprise a small portion of that.

Dispensaries are already in operation, and this rule is intended to allow them to keep operating largely as they

have been. For this reason the rule should create minimal new environmental impact.

To the extent that new dispensaries come into operation, they could create greenhouse gas impacts through the use of vehicles to transport cannabis, through cannabis manufacturing that utilizes CO₂, ethanol, and hydrocarbons, and the waste associated with this solvent-based manufacturing. Even for the entire commercial market the greenhouse gas impact is expected to be low, as noted in the Environmental Impact Analysis that accompanied the Board's pre-filing of its proposed Rule 2 on November 24, 2021. The Board anticipates that new dispensary activity will be a comparative fraction of commercial cannabis activity so their impact should be a fractional portion of an already low impact.

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.):

As noted in the Environmental Impact Analysis that accompanied the Board's pre-filing of its proposed Rule 2 on November 24, 2021, the overall risk to the environment from wastewater discharge is minimal and mitigated by the requirements of Rule 2.2.4, which will also apply to dispensaries. The impacts of irrigation will similarly be minimal due to the relatively small size of cannabis cultivation operations.

These impacts are further reduced by the likely small size and number of any new dispensary operations.

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

Even for commercial cannabis operations, 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. New dispensaries will likely be on the smaller end of cultivation sizes due

to the restrictions inherent to the medicinal cannabis market, which can only sell to registered patients and caregivers.

In order to comply with public health and safety requirements, cannabis products will generate additional packaging waste compared to standard consumer packaged goods. This additional packaging will increase landfill material. Allowing for organic material to be composted (as is permitted in part by Rule 2.2.8, which also applies to dispensaries) will remove a significant portion of cultivated wastes from entering the municipal waste stream. Allowing for the collection of recyclable post-consumer packaging at dispensary retail locations will increase the amount of material entering the recycling stream. Allowing for hazardous materials such as vape batteries that contain lithium ion will increase the diversion of this material to landfills.

Again, all such impacts are smaller for dispensaries, and likely quite small for any new dispensaries.

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

There will be no impact on recreation.

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

Certain methods of manufacturing, discussed in Question 3 of this section, can off-gas into the environment, and may require a certain level of investment and expertise to ensure recirculation and other techniques are utilized to minimize climate impacts. This impact will be small for the full commercial market, and will be much smaller for the new dispensary market.

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

There is a potential for public concern related to cannabis odors proximate to residential areas. Agricultural operations are not typically monitored for odor and have an Odor Nuisance Exempt from Right to Farm Ordinances. This will not be the case for cannabis. Depending on input during the notice and