

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 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 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.