

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*). This emergency rule addresses the unregulated sale of potentially intoxicating synthetic cannabinoids and high-THC hemp-derived products.

I approve the contents of this filing entitled:

Emergency Rule on Synthetic and Hemp-Derived Cannabinoids

_____/s/James Pepper_____, on 4/25/2023
(signature) (date)

Printed Name and Title:
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)

1. TITLE OF RULE FILING:

Emergency Rule on Synthetic and Hemp-Derived
Cannabinoids

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: Gabriel M. Gilman

Agency: Cannabis Control Board

Mailing Address: 89 Main Street

Telephone: 802-261-1510 Fax:

E-Mail: gabriel.gilman@vermont.gov

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

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: Kimberly Lashua

Agency: Cannabis Control Board

Mailing Address: 89 Main Street

Telephone: 802-636-7708 Fax:

E-Mail: kimberly.lasuha@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?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

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. §§ 862a (granting "authority to regulate synthetic cannabinoids and hemp-derived cannabinoids, including delta-8 and delta-10 tetrahydrocannabinol"); 843(b)(1), 866(c) & 881(a)

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

The agency is responsible for regulation of the cannabis marketplace, including oversight of the synthetic and hemp-derived cannabinoids that are the subject of this rule.

8. CONCISE SUMMARY (150 WORDS OR LESS):

This emergency rule addresses the threats to the public health, safety, and welfare created by the unregulated sale of potentially intoxicating synthetic cannabinoids and high-THC hemp-derived products. The emergency rule prohibits production, manufacture, marketing, transfer, and sale of these products in Vermont; it sets a four-trigger test for presumptive prohibited content, based on THC concentration, serving content, net content, and market appeal; and it provides for appropriate exceptions to ensure the emergency rule does not interfere with duly-registered cannabis products, products with utility to a medical patient; and legend drugs approved by the United States Food & Drug Administration for dispensing upon the prescription of a medical provider.

9. EXPLANATION OF WHY THE RULE IS NECESSARY:

This emergency rule is necessary to address a growing interstate market for unregulated, intoxicating THC products. Purveyors of these products exploit a loophole in the federal definition of "hemp," typically by converting precursor cannabinoids found in hemp into THC or a psychoactive analog thereof, such as delta-8 and delta-10 THC. Alternatively, some manufacturers extract THC naturally occurring at low concentration in hemp, concentrate it, and then reintroduce the THC concentrate to hemp flower or other products, creating the functional equivalent to cannabis. These dangerous, intoxicating products have been sold in Vermont gas stations and garden supply stores, where

consumers may mistake them for State-regulated cannabis products. In fact, these "hemp" products have been subjected to no federal or State regulation and reach consumers without any of the protections applicable to regulated cannabis products, including those concerning product cultivation, testing, marketing, packaging, sale, excise taxation, and minimum consumer age.

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

(1) The factual basis for the Board's decision is unquestioned by stakeholders. The products in question have been observed in Vermont stores, and the Board has heard directly from businesses, manufacturers, advocates, and others. The Vermont Department of Health has been consulted and concurs in the Board's findings and action. (2) The Board's decision to carefully define and prohibit the hazardous products in question is the most rational interim response to the problem found. (3) A reasonable person would understand the hazards inherent to unregulated cannabis analogs and the reasons it is sensible for regulators to ensure potentially intoxicating THC products reach consumers exclusively through the regulated marketplace.

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

Cannabis consumers, cannabis licensees, medical providers, retailers, the Vermont Agency of Human Services and Department of Health, the Agency of Education, the Agency of Agriculture, purveyors of hemp products.

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

This emergency rule will prohibit unregulated THC products, improving marketplace fairness by ensuring that the regulated market is the exclusive path to market for THC products. Reduced gray-market competition will tend to benefit cannabis licensees who have incurred the costs of participating in the regulated market. Medical costs associated with consumer harm may be prevented.

Regrettably, it is not possible to credibly estimate the magnitude of these impacts.

13. A HEARING IS NOT SCHEDULED .

14. 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:

URL for Virtual:

Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

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

16. EMERGENCY RULE EFFECTIVE: 04/24/2023

17. EMERGENCY RULE WILL REMAIN IN EFFECT UNTIL

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

10/23/2023

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

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

THC

hemp

delta-8

delta-10

synthetic cannabinoids

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:

Emergency Rule on Synthetic and Hemp-Derived
Cannabinoids

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: Copeland Hanzas, Secretary of State
FROM: Sean Brown, ICAR Chair Sean
DATE: April 26, 2023 Brown
RE: Emergency Rule Titled ‘Emergency Rule on Synthetic and Hemp-Derived
Cannabinoids’ by the Cannabis Control Board

Digitally signed by Sean Brown
Date: 2023.04.26 14:54:36 -0400

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 ‘Emergency Rule on Synthetic and Hemp-Derived Cannabinoids’, provided by the Cannabis Control Board, and agree that emergency rulemaking is necessary.

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STATE OF VERMONT
CANNABIS CONTROL BOARD

EMERGENCY RULE: SYNTHETIC and HEMP-DERIVED CANNABINOIDS

The Board shall have the authority to regulate synthetic cannabinoids and hemp-derived cannabinoids, including delta-8 and delta-10 tetrahydrocannabinol.

7 V.S.A. § 862a.

Emergency Rule 1: Prohibition

The production, manufacture, marketing, transfer, and sale of hemp-derived intoxicating cannabinoids and synthetic cannabinoids are hereby prohibited, except as set out in Emergency Rule 3. Prohibited cannabinoids include:

- (a) All isomers, variants, analogs, and mimetics of delta-9 tetrahydrocannabinol, including delta-8 and delta-10 tetrahydrocannabinol, created by chemical manipulation of any part or derivative of the plant *Cannabis sativa* L., regardless of the delta-9 tetrahydrocannabinol concentration level of the source plant or plants; and
- (b) delta-9 tetrahydrocannabinol that has been chemically or mechanically concentrated or otherwise derived from hemp and then sprayed, infused, or otherwise artificially introduced onto or into any product, including hemp or hemp products, so as to impart intoxicating properties mimicking those of cannabis and cannabis products.

Emergency Rule 2: Presumptions

A consumable product that is not cannabis or a cannabis product is presumptively prohibited regardless of the delta-9 tetrahydrocannabinol concentration of any plant from which the product is sourced, if the product, in the form offered to consumers:

- (a) contains total tetrahydrocannabinol in a concentration exceeding 0.3 percent on a dry weight basis; or
- (b) contains more than 1.5 mg tetrahydrocannabinol per serving, where “serving” is the amount reasonably ingested by a typical consumer in a single instance; or
- (c) contains more than 10 mg total tetrahydrocannabinol per package, unless the ratio of cannabidiol to tetrahydrocannabinol is at least 20:1; or
- (d) has the dominant market appeal of mimicking the intoxicating effects of tetrahydrocannabinol.

Emergency Rule 3: Exceptions

Rule 1 shall not apply to:

- (a) a product duly evaluated, registered, and regulated by the Board as a cannabis product;
- (b) an otherwise-prohibited cannabinoid-containing product that has been specifically authorized by the Board for sale at a licensed medical dispensary based upon a finding, pursuant to 7 V.S.A. § 971(b)(6), that the product is appropriate for use by a patient; or
- (c) manufactured pharmaceutical drugs approved by the United States Food & Drug Administration for therapeutic use upon the prescription of a medical provider, to include Epidiolex, Marinol, Syndros, Cesamet, and Sativex.

Effective: April 24, 2023

VERMONT **GENERAL ASSEMBLY**

The Vermont Statutes Online

Title 7 : Alcoholic Beverages, Cannabis, And Tobacco

Chapter 033 : Cannabis Establishments

Subchapter 001 : General Provisions

(Cite as: 7 V.S.A. § 862a)

§ 862a. Synthetic and hemp-derived cannabinoids

The Board shall have the authority to regulate synthetic cannabinoids and hemp-derived cannabinoids, including delta-8 and delta-10 tetrahydrocannabinol. (Added 2021, No. 158 (Adj. Sess.), § 10, eff. May 31, 2022.)